2011

SENATE
FINANCE

MINUTES

MEMBERSHIP LIST
SENATE FINANCE COMMITTEE
2011-2012

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Senator Bill Rabon, Vice Chair **Room 2108, LB 733-5963** **Bill.Rabon@ncleg.net** **LA: Melissa Dombolis**	**Senator Clark Jenkins** **Room 621, LOB 715-3040** **Clark.Jenkins@ncleg.net** **LA: Megan McCarthy**
Sen. Austin Allran **Room 625, LOB 733-5876** **Austin.Allran@ncleg.net** **LA: Carole Walker**	**Sen. Bob Atwater** **Room 519, LOB 715-3036** **Bob.Atwater@ncleg.net** **LA: Carol Resar**
Senator Daniel G. Clodfelter, **Room 526, LOB 715-8331** **Daniel.Clodfelter@ncleg.net** **LA: Wanda Joyner**	**Senator Andrew C. Brock** **Room 623, LOB 715-0690** **Andrew.Brock@ncleg.net** **LA: Janet Black**
Senator Harris Blake **Room 408, LOB 733-4809** **Harris.Blake@ncleg.net** **LA: Anna Kidd**	**Senator Harry Brown** **Room 300-B, LOB 715-3034** **Harry.Brown@ncleg.net** **LA: Suzanne Gunter**
Senator Peter Brunstetter **Room 2022, LB 733-7850** **Peter.Brunstetter@ncleg.net** **LA: Genie Clark**	**Senator Charlie S. Dannelly** **Room 1127, LB 733-5955** **Charlie.Dannelly@ncleg.net** **LA: Dee Hodge**
Senator Warren Daniel **Room 411, LOB 715-7823** **Warren.Daniel@ncleg.net** **LA: Andy Perrigo**	**Senator James Forrester** **Room 1028, LB 715-3050** **James.Forrester@ncleg.net** **LA: Mona Fitzgerald**
Senator Linda D. Garrou **Room 620, LOB 733-5620** **Linda.Garrou@ncleg.net** **LA: Gail Bishop**	**Senator Thom Goolsby** **Room 2115, LB 715-2525** **Thom.Goolsby@ncleg.net** **LA: Morgan Beam**

Senator Debbie Clary **Room 314, LOB 715-3038** **Debbie.Clary@ncleg.net** **LA. Misty Greene**	**Senator Neal Hunt** **Room 308, LOB 733-5850** **Neal.Hunt@ncleg.net** **LA: Kathy Davis**
Senator Eleanor G. Kinnaird **Room 628, LOB 733-5804** **Ellie.Kinnard@ncleg.net** **LA: Kathie Young**	**Senator Floyd McKissick. Jr** **Room 520, LOB 733-4599** **Floyd.McKissick@ncleg.net** **LA: Rosita Littlejohn**
Senator Wesley Meridith **Room 2106, LB 733-5776** **Wesley.Meridith@ncleg.net** **LA: Debbie Lown**	**Senator Martin L. Nesbitt, Jr.** **Room 1129, LB 715-3001** **Martin.Nesbitt@ncleg.net** **LA: Evelyn Costello**
Senator Buck Newton **Room 410, LOB 715-3030** **Buck.Newton@ncleg.net** **LA: Rachel Lee**	**Senator William R. Purcell** **Room 517, LOB 733-5953** **William.Purcell@ncleg.net** **LA: Becky Hedspeth**
Senator Gladys Robinson **Room 1120B 715-3042** **gladysr@ncleg.net** **LA: Phyllis Cameron**	**Senator David Rouzer** **Room 523, LOB 733-5748** **David.Rouzer@ncleg.net** **LA: Judy Edwards**
Senator Josh Stein **Room 1113, LB 715-6400** **Josh.Stein@ncleg.net** **LA: Candace Finley**	**Senator Richard Y. Stevens** **Room 309, LOB 733-5653** **Richard.Stevens@ncleg.net** **LA: Mary Marchman**
Senator Jerry W. Tillman **Room 627, LOB 733-5870** **Jerry.Tillman@ncleg.net** **LA: Yvonne Hall**	**Senator Michael P. Walters** **Room 1118, LB 733-5651** **Michael.Walters@ncleg.net** **LA: Vickie Spears**
Senator Stan White **Room 1121, LB 715-8293** **Stan.White@ncleg.net** **LA: Suzanne Crosswhite**	
Staff: **Cindy Avrette** **Research Division 733-2578** **Cindy.Avrette@ncleg.net**	 **Rodney Bizzell** **Fiscal Research 733-4910** **Rodney.Bizzell@ncleg.net**
DeAnne Mangum (Finance CA) **Room 329, LOB 733-2405** **DeAnne.Mangum@ncleg.net**	**Paul Rucho (Finance CA)** **Room 300-A, LOB 733-2405** **Paul.Rucho@ncleg.net**

House and Senate Joint Finance Committee Meeting
Wednesday, February 02, 2011 at 8:30AM
Room 544, Legislative Office Building

Minutes

The House and Senate Finance Committees met jointly at 8:30 AM on February 2, 2011, in room 544 of the Legislative Office Building. Twenty five members of the House Finance Committee attended the meeting and fourteen members of the Senate Finance Committee were present. Caroline Law and Erin Vasko of Gaston County, Ocatavia Tisdale and Aaron Teran of Wake county, Jared Dembski of Burke county, Harrison Jenkins of Iredell county and Johanna Kern of Alamance county served as pages. Representative Julia Howard presided.

Key Events in NC State and Local Tax History

Cindy Avrette, Research Division was recognized and started the proceedings with the introduction of all Finance Committee Staff. She then provided the committee with a panoramic view of the North Carolina Tax System which included the evolution of the North Carolinas Tax System going back to 1777 when the tax system was created, the Revenue Act of 1921 which eliminated the State tax on property and created the state Personal income Tax (PIT), the Corporate Income tax and the Motor Fuel excise tax. She concluded her presentation with a message of tax reform emphasizing the goals of Tax Simplification, Economic development and job growth, Revenue stability and Tax modernization which included broadening the base and lowering the rates. A copy of her presentation is attached.

General Fund Revenue Sources

Sandra Johnson, Fiscal Research Division was recognized and provided the committee with a historical overview of General Fund Revenue which highlighted Overall Collections, Major Revenue Sources and Secondary Revenue Sources that make up the fund. She also explained the "Bracket Creep Effect "whereby, tax brackets are not being indexed for inflation and as a result more tax payers are being pushed into higher tax brackets annually noting, that roughly 43% (1.4 Million) of the 3.1 million NC income tax returns filed each year exhibit taxable income below $20,000. She also informed the committee that the Temporary Sales Tax increase is due to expire in July 2011 and that participation in a more Steam-lined Sales Tax Agreement would simplify tax collection for vendors. Due to the economic situation sales tax revenues are down, the legislature has explored broadening the base in the past and continues to do so. A copy of her presentation is attached.

The Meeting Adjourned at 9:49 AM

Representative Julia Howard, Presiding Chair
House Finance Committee

Paul Rucho

Paul Rucho Senate Committee Clerk

AGENDA

Joint House & Senate Finance Committee

Wednesday, February 2, 2011
Room 544 LOB
8:30 a.m.
Chaired by: Representative Julia Howard

House Co-Chairs

Representative Julia Howard ***Representative Dale Folwell***
Representative Mitch Setzer ***Representative Edgar Starnes***

Senate Co-Chairs

Senator Fletcher Hartsell ***Senator Bob Rucho***

Call to Order

Introduction of Pages

Informational Presentations

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

General Fund Revenue Sources
Sandra Johnson, Fiscal Research Division

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

Committee Discussion

Adjournment

Principal Clerk ____
Reading Clerk ____

JOINT HOUSE AND SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	February 2, 2011	8:30 AM	544 LOB

The following will be considered:

Informational presentations by staff

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

KEY EVENTS IN NC STATE AND LOCAL TAX HISTORY

Joint House and Senate Finance, February 2, 2011
Cindy Avrette, Fiscal Research Division

Panoramic View of NC's Tax System

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

Finance Committee Staff

Research Division
300 LOB
733-2578

- Cindy Avrette
- Trina Griffin
- Heather Fennell
- Greg Roney
- Judy Collier

Fiscal Research Division
300 and 308 LOB
733-4910

- Martha Walston
- Rodney Bizzell
- Barry Boardman
- Sandra Johnson
- Jonathan Tart
- Brian Slivka

First name.last name@ncleg.net

Panoramic View of NC's Tax System

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Evolution of NC's Tax System

Created Tax System

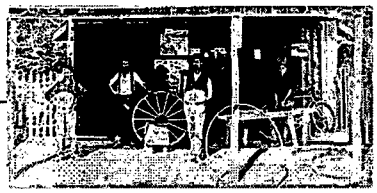
1777

2nd act of General Assembly

Evolution of NC's Tax System

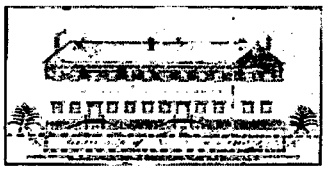
1782

License taxes first enacted



Evolution of NC's Tax System

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



Free public schools in 1839

Evolution of NC's Tax System

Pre-1921 System of Taxation — 1868-1900

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

Evolution of NC's Tax System

Revenue Act of 1921 — 1921

No State tax on property

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

Evolution of NC's Tax System

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

1931-1937

Temporary sales tax of 3% on TPP enacted in 1933

Permanent sales tax enacted in 1939

Evolution of NC's Tax System

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Local Tax Sharing

1937-1986

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

Evolution of NC's Tax System

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Modernization of PIT

1986	1989	1991
Variable component of motor fuel tax rate	Highway use tax and Tax Fairness Act	Budget shortfall of 8.1%, State sales tax rate increased to 4%

Evolution of NC's Tax System

"Bill Lee Act" incentives | Myriad of exemptions, refunds, and credits

1995-1999

Tax Expenditures

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

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

Evolution of NC's Tax System

Streamlined Sales & Use Tax Agreement

2000 2002 2009

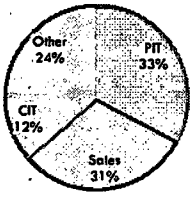
http://www.streamlinedsalestax.org/

Evolution of NC's Tax System

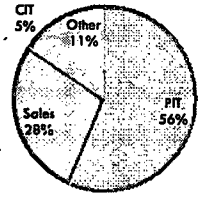
Bust	Boom	Bust	Boom	Bust
1991	1995-2000	2001-2005	2006-2008	2009-2010
Sales tax increase; tax reform studies		Various tax rates reduced & tax expenditures enacted		Temporary tax increases; tax reform studies

NC's Changing Tax Structure

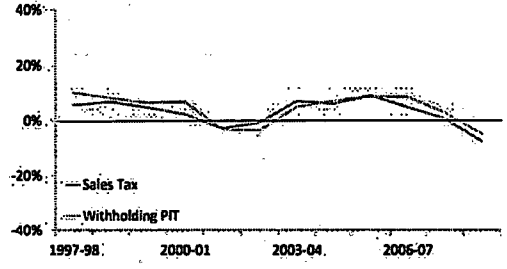
Fiscal Year 1970-71



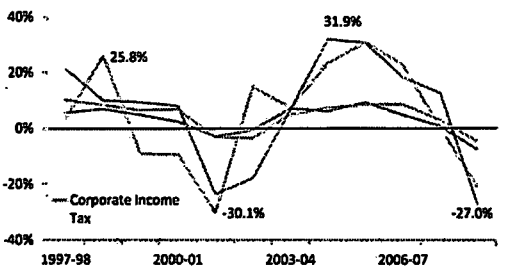
Fiscal Year 2008-09



Growth & Stability



Growth & Stability



Tax Reform Studies

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

Message of Tax Reform

Findings

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

Goals

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

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Questions?

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

GENERAL FUND REVENUE SOURCES

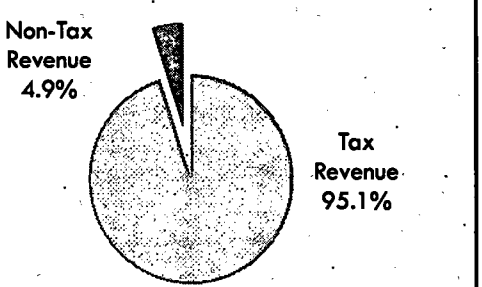
Sandra Johnson
Fiscal Research Division
Joint House and Senate Finance Committee

February 2, 2011

General Fund Overview

- Overall Collections
  - Tax v. Non-Tax
- Major Revenue Sources
  - Individual Income Tax
  - Sales & Use Tax
- Secondary Revenue Sources
  - Corporate Tax
  - Other
    - Franchise, Insurance Premiums, Estate Tax

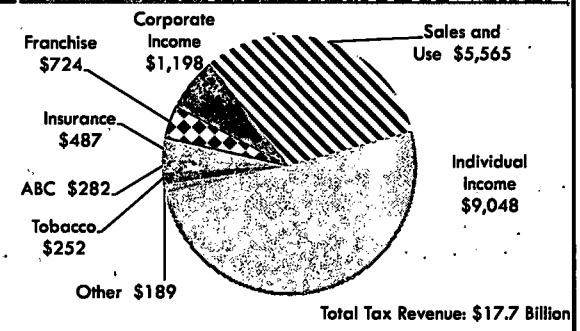
General Fund Revenue by Source, FY 2009-10



Total Revenue: $18.7 Billion

Source: 2010 Statistical Abstract, North Carolina Department of Revenue

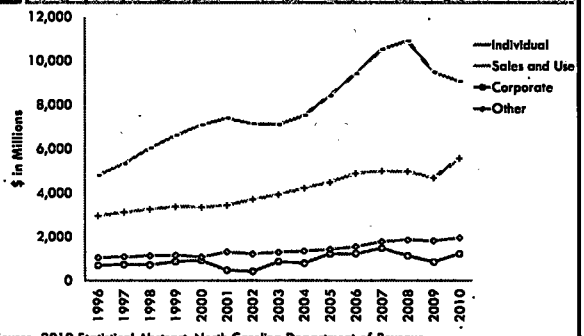
General Fund Tax Revenue by Source, $ In Millions, FY 2009-10



Total Tax Revenue: $17.7 Billion

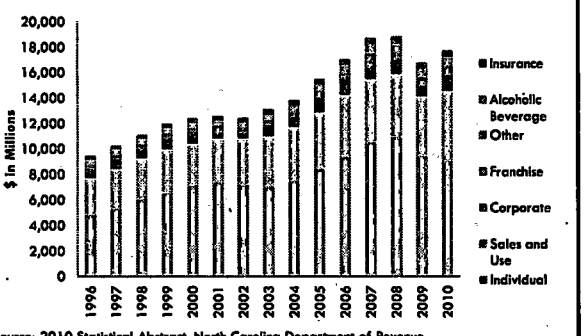
Source: 2010 Statistical Abstract, North Carolina Department of Revenue

Fifteen Year Trend in General Fund Revenue, 1996-2010



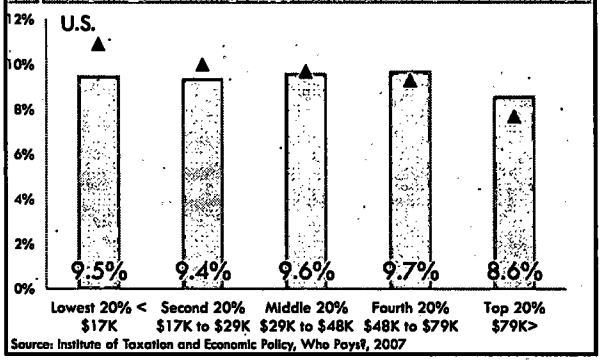
Source: 2010 Statistical Abstract, North Carolina Department of Revenue

Fifteen Year Trend in General Fund Revenue, FY 1995-96 To FY 2009-10



Source: 2010 Statistical Abstract, North Carolina Department of Revenue

Tax Burden by Income Quintile, 2007



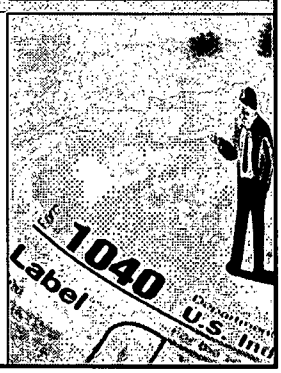
Source: Institute of Taxation and Economic Policy, Who Pays?, 2007

Major Revenue Sources

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

Individual Income Tax - History

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



Individual Income Tax: Brackets

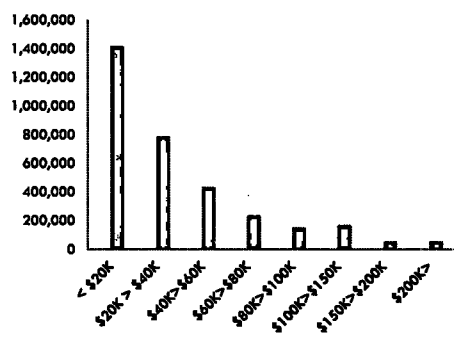
	Taxable Income		
Tax Rates	6%	7%	7.75%
Single	< $12.8K	$12.8K > $60K	$60K >
Head of Household	< $17K	$17K > $80K	$80K >
Married-Joint	< $21.5K	$21.5K > $100K	$100K >
Married-Separate	< $10.6K	$12.8K > $50K	$50K >

Individual Income Tax – Points of Note

- Bracket Creep
  - Tax brackets not indexed for inflation
  - More tax payers are pushed into higher tax brackets annually
- Volatility
  - Revenues move with the economy

Distribution of North Carolina Returns by Taxable Income, 2011

Roughly 40% (1.6 million) of the 3.9 million North Carolina income tax returns filed each year exhibit taxable income below $20K.



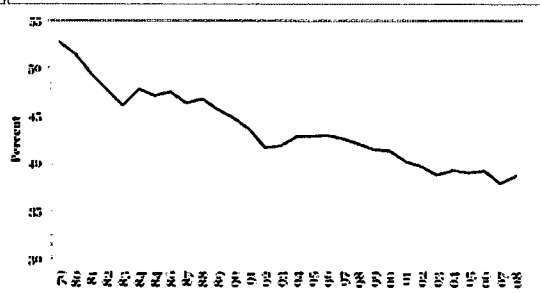
Sales Tax

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

Sales Tax – Points of Note

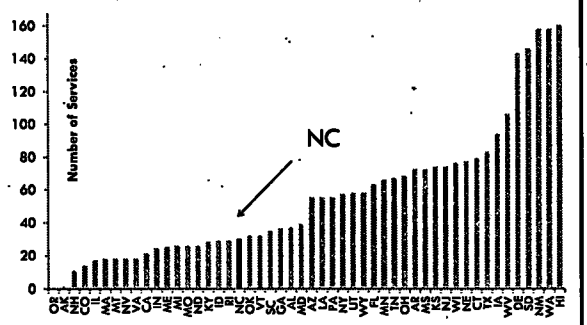
- Temporary increase expires July 2011($1.0B)
- Participation in Streamlined Sales Tax Agreement
  - Simplifies tax collection for vendors
- Erosion of Sales Tax Base
  - Moving to a service based economy
  - Increasing sales tax exemptions and refunds ($2.9B)
  - Transition to e-commerce

U.S. SALES TAX BASE AS A PERCENT OF PERSONAL INCOME, 1979-2008



Source: Fox, William, "US States and the Sales Tax," November 2009

Comparison of Services Taxed, by State, 2007



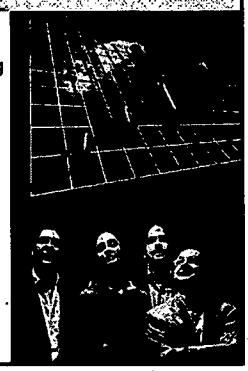
Source: Federation of Tax Administrators Survey. Sales Taxation of Services, 2007

Secondary Revenue Sources

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

Corporate Income Tax

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

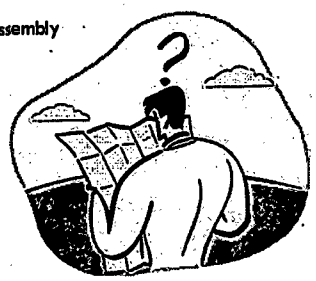


Other Taxes

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

Questions?

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



OVERVIEW OF LOCAL GOVERNMENT REVENUE SOURCES

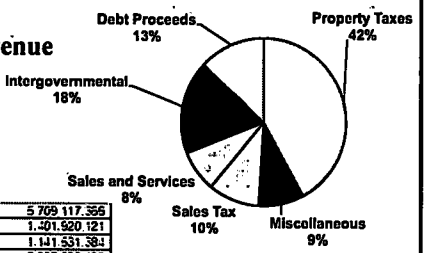
Joint House and Senate Finance, February 2, 2011
Rodney Bizzell, Fiscal Research Division

Sources of Local Revenue

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

Sources of Local Revenue: County

2008-09 County Revenue by Source

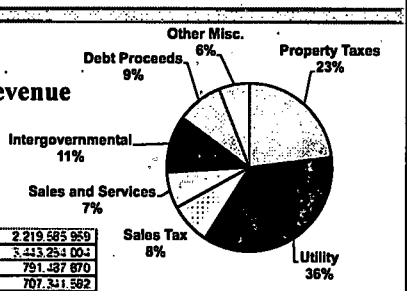


Property Taxes	5.709.117.366
Sales Tax	1.401.920.121
Sales and Services	1.141.531.384
Intergovernmental	2.387.888.132
Debt Proceeds	1.669.919.492
Other Misc.	1.131.756.137
TOTAL	13.472.132.632

Source: Dept. of State Treasurer

Sources of Local Revenue: Municipal

2008-09 Municipal Revenue by Source



Property Taxes	2,219,585,959
Utility	3,443,294,004
Sales Tax	791,437,870
Sales and Services	707,341,582
Intergovernmental	1,059,026,741
Debt Proceeds	899,770,944
Other Misc.	531,858,410
TOTAL	9,662,335,510

Source: Dept. of State Treasurer

Local Taxes: Property Tax

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

Local Taxes: Sales Tax

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

Utility Fees

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

Sales and Services

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

Local Debt

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

Other Local Revenues

- Privilege License Taxes
  - Imposed on the privilege of engaging in certain occupations
- Motor Vehicle License Tax
  - All municipalities are authorized to levy a tax of $5 per vehicle. The General Assembly has authorized amounts up to $30.
- Special Assessments
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  - Approximately 80% of net profits are distributed to local units.
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  - Meals Taxes

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- Beer and Wine Tax - Shared only for the types of beverages allowed in the county.
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Intergovernmental Revenues

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- Beer and Wine Tax – municipalities receive per capita share of taxes if sales are allowed within jurisdiction.
- Telecommunications and Video Programming

13 Questions?

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

Committee Sergeants at Arms

NAME OF COMMITTEE JT. FINANCE

DATE: FEB. 2, 2011 Room: 544

House Sgt-At Arms:

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

Senate Sgt-At Arms:

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

Pages ON separate Sheet !

House PAGES

NAME	COUNTY	SPONSOR
Caroline Law	Gaston	~~Torbett~~
~~Octavia Fiscal~~	WAKE	GILL

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
House	PAGES
Caroline Law ✓	GASTON TORBETT
Tavia Tisdale ✓	Wake Gill
JARed Dembski	Burke Blackwell
Harrison Jenkins	Iredell Rep Setzer
ERIN Vasko	GASTON Rep TORBETT
Johanna Kern	Alamance Rep INGLE
Senate	Page
Aaron Teran	Wake Sen. Hunt

VISITOR REGISTRATION SHEET

House and Senate Finance Committee — Feb. 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Beasley	JFANC
TRACY COLVARD	AHHC
Jason Shuffler	Dept. of Treasurer
[illegible]	DST
[illegible]	UNCW
Will Culpepper	MVJ.
Matt Harrell	"
Jessica Bearden Lawrenz	Planned Parenthood Health Systems
W. Jan Ellis	NCNA
K. Sohari	DSI
Jay Stam	NCAA

VISITOR REGISTRATION SHEET

House and Senate Finance Committee — Feb. 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jessi Hayes	NC HBA
	MSC
David Heinen	NC Center for Nonprofits
Brian Francis	Mecklenburg County
David W. Howard	NC Realtors
Carmen Hooker	Electric Cities of NC

VISITOR REGISTRATION SHEET

House Finance — **Name of Committee**

February 2, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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

VISITOR REGISTRATION SHEET

House Finance — February 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Barrett	Williams Mullen
[signature]	NCRMP
Katherine W. Joyce	NCASA
Elizabeth Bo[illegible]	Brooks Pierce
Leanne Winner	NCSBA
Mildred Spearman	AOC
[signature]	NCAHP
Dion Cox/Hm	Mayor's Office
Lesley Cates	UNC GA
Kitra Hanna	Commerce
Fred Bo[illegible]	Bar Asso.

VISITOR REGISTRATION SHEET

House Finance — **Name of Committee**

February 2, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fred Baggett	Smith Moore Leatherwood
John Bourdeau	AstraZeneca
Gary Harris	NC Petroleum & Convenience Mkters
Wendy Kelly	Policy Group
Meredith Swindell	Policy Group
Doug Lassiter	NCSTA
Elizabeth Robinson	NCRMA
DAVID BARNES	RS
Alice Garland	NCEL
[illegible]	MMP
Amy Whited	NC med Soc.

VISITOR REGISTRATION SHEET

House Finance — February 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara S Canada	BSCGR
Joni Allen	BEGINNINGS
Tom Hanis	NCAHPHA
Paul Taylorson	Inform
Jeff Joyce	AMI Area Chamber
Erica Nelson	NCCCP
Kari Barsness	DENR
Pat Gwaltney	LA Rep Parmon
Jenny Braswell	Connectre, Inc.
Mary Goff	Smith Anderson
Matthew McConnell	Carolinas HealthCare System

VISITOR REGISTRATION SHEET

House Finance — February 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN PEERSON	NCEDA
Michael Holy	Dept of Commerce
Bo Heath	McGuire Woods
Maggie Goff	Smith Anderson
Tim KENT	NC Beer & Wine Wholesalers Assn.
Mary Bethel	AARP - NC
Daniel Soucek	Senate
Henry Lancaster	LCA
Michelle Frazier	MFS
Doug Howey	NCPCM

VISITOR REGISTRATION SHEET

ST. FINANCE — Name of Committee

FEB. 2, 2011 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
D Hamm	NC Farm Bureau
Kathy Hawkins	Duke Energy
L Pe	NCANPHA
Joe Lanier	Nelson Mullins
Bradley Bartlett	BTGR
Mitch S. Kok	R. Clark & Assoc
Daniel Baum	Tharrington Smith

VISITOR REGISTRATION SHEET

House and Senate Finance Committee — Feb. 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Monica Yelverton	Governmental Affairs
Monique Edwards	Citizen
Andrew Taylor	Legislative Employee
Edwin McLenaghan	NC Justice Center
Carl Dean	DSP
James Dean	Visitor

North Carolina General Assembly

Joint House & Senate Committee on Finance

Minutes

~

February 3, 2011

The Senate and House Committee on Finance met on Thursday, February 3, 2011 at 8:30 am in Room 544 of the Legislative Office Building. Twenty-three members of the House Finance Committee attended the meeting and nine members of the Senate Finance Committee were present. Also present were Sergeant-at-Arms Young Bae, John Brandon, Fred Hines, and Bob Rossi. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston.

Chairperson Starnes called the meeting to order at 8:35 am and recognized the seven (7) pages present: (1) Octavia Tisdale of Wake County, sponsored by Representative Gill; (2) Harrison Jenkins of Iredell County, sponsored by Representative Setzer; (3) Johanna Kern of Alamance County, sponsored by Representative Ingle; (4) Jared Dembski of Burke County, sponsored by Representative Blackwell; and (5) Aaron Teran of Wake County, sponsored by Senator Hunt; (6) Erin Vasko of Gaston County, sponsored by Representative Torbett; and (7) Sterling Carter of Caswell County, sponsored by Senator Gunn.

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

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

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

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

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

Respectfully submitted,

Representative Edgar Starnes
Presiding Co-Chair

Paul Rucho
Senate Committee Clerk

Principal Clerk ____
Reading Clerk ____

JOINT HOUSE AND SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	February 3, 2011	8:30 AM	544 LOB

The following will be considered:

Informational presentations by staff

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

AGENDA

Joint House & Senate Finance Committee

Thursday, February 3, 2011
Room 544 LOB
8:30 a.m.
Chaired by: Representative Edgar Starnes

House Co-Chairs

Representative Julia Howard ***Representative Dale Folwell***
Representative Mitch Setzer ***Representative Edgar Starnes***

Senate Co-Chairs

Senator Fletcher Hartsell ***Senator Bob Rucho***

Call to Order

Introduction of Pages

nformational Presentations

Overview of Local Revenue Sources
Rodney Bizzell, Fiscal Research Division

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

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

Committee Discussion

Adjournment

OVERVIEW OF LOCAL GOVERNMENT REVENUE SOURCES

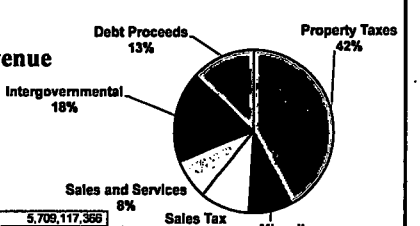
Joint House and Senate Finance, February 2, 2011
Rodney Bizzell, Fiscal Research Division

Sources of Local Revenue

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

Sources of Local Revenue: County

2008-09 County Revenue by Source

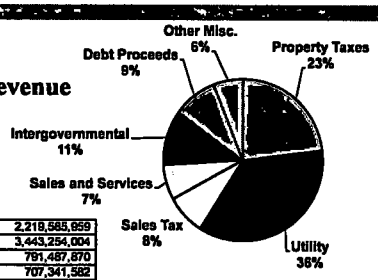


Property Taxes	5,709,117,366
Sales Tax	1,401,920,121
Sales and Services	1,141,531,384
Intergovernmental	2,387,888,132
Debt Proceeds	1,699,819,492
Other Misc.	1,131,756,137
TOTAL	13,472,132,632

Source: Dept. of State Treasurer

Sources of Local Revenue: Municipal

2008-09 Municipal Revenue by Source.



Property Taxes	2,218,585,959
Utility	3,443,254,004
Sales Tax	791,487,870
Sales and Services	707,341,562
Intergovernmental	1,069,026,741
Debt Proceeds	899,770,944
Other Misc.	531,868,410
TOTAL	9,662,335,510

Source: Dept. of State Treasurer

Local Taxes: Property Tax

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

Local Taxes: Sales Tax

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

Utility Fees

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

Sales and Services

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

Local Debt

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

Other Local Revenues

- Privilege License Taxes
  - Imposed on the privilege of engaging in certain occupations
- Motor Vehicle License Tax
  - All municipalities are authorized to levy a tax of $5 per vehicle. The General Assembly has authorized amounts up to $30.
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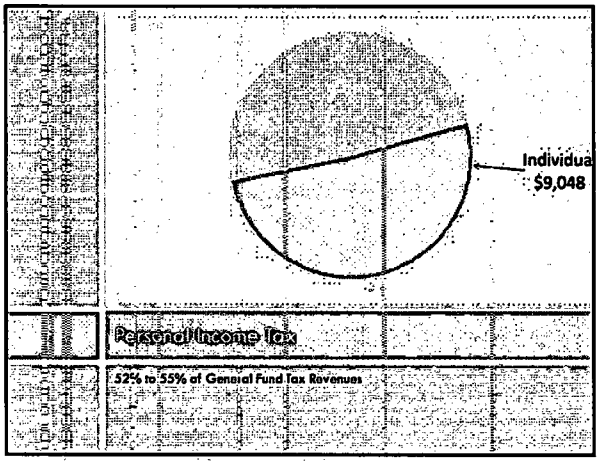
PERSONAL TAXES: INCOME AND ESTATE

Joint House and Senate Finance, February 9, 2011
Cindy Avrette, Fiscal Research Division

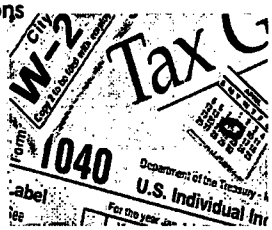


NC's Personal Income Tax

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

NC PIT Prior to 1989

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



Tax Fairness Act of 1989 (SB 51)

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

Calculating NC Taxable Income

State taxable income =

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

Taxable Income v. AGI

Taxable Income

- 6 states use as a starting point
- Represents income after all federally allowed deductions
  - Personal exemptions
  - Itemized deductions or standard deduction
    - 37% itemize
    - Mortgage interest and charitable contributions

Adjusted Gross Income

- 29 states use as a starting point
- Represents income after 'above the line' deductions
  - Business related expenses
  - Few non-business related expenses
    - Alimony, qualified education expenses, IRA contributions

Federal Taxable Income

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

Calculating NC Taxable Income

Adjustments to federal taxable income: Exemptions

State taxable income =

Federal taxable income

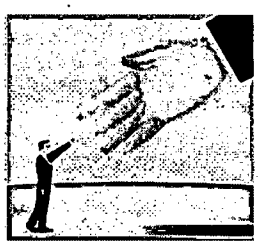
- Amounts exempt from State income tax

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

State Tax Exemptions: Federal Law

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

State Tax Exemptions: Contractual



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

State Tax Exemptions: Practice

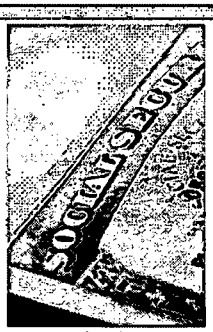
- Interest on NC and local government obligations and obligations of a nonprofit educational institution charted in NC
- The deductible amount for interest on US, NC, and nonprofit educational institutions = $20.9 m
  - Deductible amount for NC obligations > $ 1 m

State Tax Exemptions: Accounting

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

State Tax Exemptions: Social Security

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



Federal Taxation of SSI Benefits

Federal law began taxing a portion of social security benefits in 1937

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

State Tax Exemption: Retirement

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

Misc. State Tax Exemptions

- Severance Wages
  - Not to exceed $35,000
  - $15.5 million
- Erroneous Conviction
- Disaster Relief Reserve Fund
- NC 529 Plan
  - AGI limits in 2012
  - $5 million
- Volunteer Fire and Rescue
  - $1 million
- Sale of Mfg'd Home Community to Mfg'd Home Owners

Calculating NC Taxable Income

State taxable income =

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

Add Backs: IRC Decoupling

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

Calculating NC State Tax Liability

Applicable tax rates

State taxable income

x Applicable Rate

= State tax liability

Tax Brackets and Rates

- Prior to 1989
  - 6 brackets
  - Rates ranging from 3% to 7%
- 1989
  - Two brackets
  - Rates of 6% and 7%
- 1991
  - Three brackets
  - 6%, 7%, and 7.75%
- 2001-2006
  - Temporary 4th bracket of 8.25%
  - Extended twice
- 2007
  - Temporary rate phased down to 8%
- 2008
  - 3 brackets
  - 6%, 7%, and 7.75%
- 2009 and 2010
  - Temporary surtax
  - 2% surtax, taxable income exceeds $100K (MFJ)
  - 3% surtax, taxable income exceeds $250K (MFJ)

Comparison to Other States

Rates

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

The rest of the story . . .

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

Calculating NC State Tax Due

Credits

State taxable income
x applicable tax rate
= Tax liability
– Credits
= Tax Due

Tax Credits: Children

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

Tax Credit: Earned Income

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

Tax Credits: Non-itemizers

- Charitable contributions by non-itemizers
  - $26.5 million

Tax Credits: Health

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

Tax Credits: Energy

- Investing in renewable energy property
  - $4 million
  - Sunsets 2016
- Donations to acquire renewable energy property
- Refund motor fuel excise tax for biodiesel
  - $1.2 million
  - Sunsets 2010
- Tax Credits for renewable fuels
  - Fuel dispensing facilities
  - Constructing fuel processing facilities
  - Sunset 2011
- Recycling facility
  - $7.0 million

Tax Credits: Business

- Creating jobs
  - $8 million
  - Sunsets 2011
- Investing in business property
  - $16.5 million
  - Sunsets 2011
- Investing in real property
  - $0.4 million
  - Sunsets 2011
- Research & development
  - Business ($19 million)
  - UNC ($2.5 million)
  - Sunsets 2014
- Low-income housing
  - $34 million, refundable
  - Sunsets 2015
- Film production
  - $22.5 million, refundable
  - Sunsets 2014

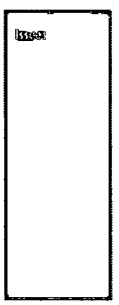
Miscellaneous Tax Credits

- Real property donations
  - $25.7 million
- Conservation tillage equipment
- Gleaned crops
- Poultry composting facility
- Property taxes paid on farm machinery
  - $1.6 million
- Recycling oyster shells
  - Sunsets 2011
- Work opportunity
  - $0.4 million
  - Sunsets 2012

Tax Credits: Historic Rehabilitation

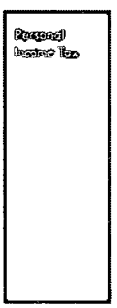
- Income producing historic structure
  - $3.0 million
- Non-income producing historic structure
  - $5 million
- Income producing mill property
  - $1 million
  - Sunsets 2011
- Non-income producing mill property
  - $5 million
  - Sunsets 2011

PIT Points to Remember

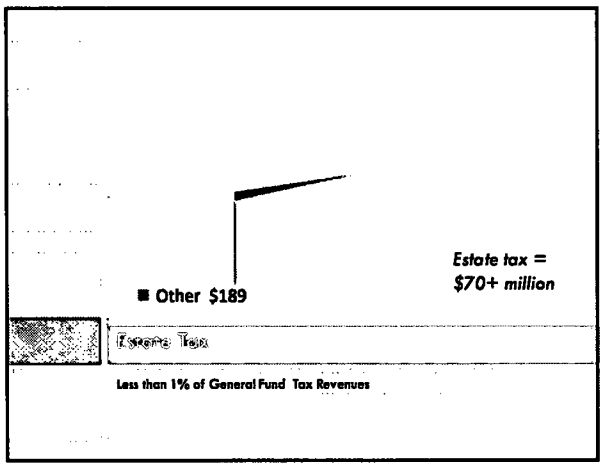


- Largest single source of GF revenues
- Non-withholding portion of the tax is highly volatile
- Reliance on federal tax code changes
- Many adjustments

Tax Reform Recommendations



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



NC's Estate Tax

- Repealed inheritance tax in 1998
- Replaced with estate tax = "pickup tax"
  - State estate tax credit on federal return
  - Federal credit phased out in 2005
- Repealed gift tax in 2008, effective 2009

NC's Estate Tax

Decedent dying in 2010	Decedent dying in 2011
▫ No State estate tax	▫ State estate tax imposed
▫ State estate tax imposed when a federal estate tax is imposed	▫ Tax = State estate tax credit amount, 2001
▫ Modified carry-over basis in property	▫ Exclusion amount ▫ 2001 = $1million ▫ 2010 = $5 - $10 million (w/ portability)

Questions?

Contacts

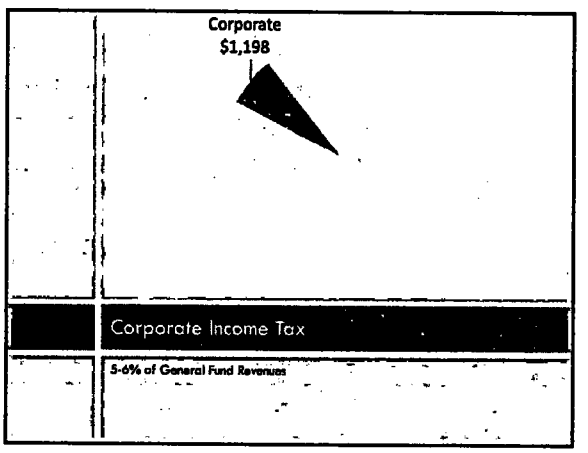
- Department of Revenue
  - Tom Dixon, Assistant Secretary of Tax Administration
    - 733-4433
    - Tom.dixon@dornc.com
- Legislative Staff
  - Research, 733-2578
  - Fiscal Research, 733-4910
  - Bill Drafting, 733-6660
  - First name.last name@ncleg.net

OVERVIEW OF CORPORATE TAXES AND TAX INCENTIVES

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

Income/Franchise Tax Revenue

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



NC Corporate Income Tax Rates

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

Some Statistics from 2008 Tax Year

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

More Statistics from 2008

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

Computing NC Taxable Income

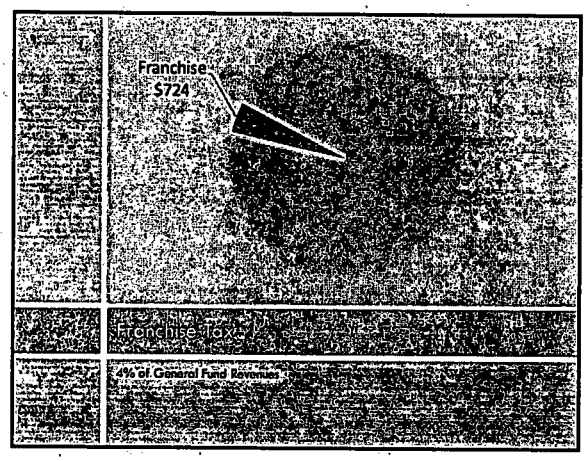
- NC taxable income = Federal taxable income, as adjusted
- Internal Revenue Code Update
- Key differences
  - NEL vs NOL
  - Bonus depreciation

NC taxable Income Apportioned

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

Separate Entity Reporting

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



Franchise Tax

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

Who pays Franchise Tax?

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

Businesses Not Subject to the Tax

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

Calculation of Tax

Tax rate applied to highest of three asset bases:

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

Some Statistics from 2008 Tax Year

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

Rate of Tax

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

Utility Franchise Tax

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

Tax Incentives

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

Article 3J Tax Credits

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

2008 Article 3J Jobs Credits Generated

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

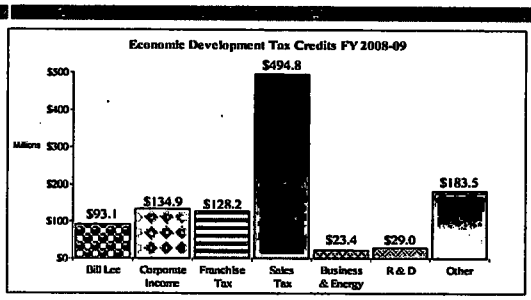
2008 Investment in Business Property Credits Generated

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

Other Tax Incentives

- Exemptions
- Deductions
- Refunds
- Caps
- Preferential rates

Tax Incentives



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

Questions?

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

Committee Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: Feb 3, 2011 Room: 544

House Sgt-At Arms:

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

Senate Sgt-At Arms:

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

House Pages

Name	COUNTY	SPONSOR
1. OCTAVIA TISDALE	WAKE	GILL
2. ALLISON JENKINS	IREDELL	SETZER
3. Anna Korn Le Dembski	Alamance Burlington	Ingle Blackwell
4. Erin Vasko	Gaston	Torbett

SENATE PAGES

STERLING CARTER	SPONSOR GUNN

PAGES ATTENDING

COMMITTEE: Joint Finance **ROOM:** 544

DATE: 2-3 **TIME:** 8:30

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Sterling Carter	Yanceyville	Gunn
2 Aaron Teran	Raleigh	Hunt
3		
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

House & Senate Finance
Name of Committee

February 3, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Mecher	CapStrat
Dave Fenton	City of Charlotte
Paul Stock	NCBIA
Kara Lamm	NCACC
David R. Andrews	DIFPNC
Abby Swaim	Biopharm Ass NC
Sa Hathi	DST
Daniel Baum	Troutman Sanders
Becki Gray	John Locke Foundation
Evelyn Hawthorne	DHHR
Julia Adams	The Arc of NC

VISITOR REGISTRATION SHEET

House & Senate Finance
Name of Committee

February 3, 2011
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VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jenny Braswell	Connections, Inc
Erica Nelson	NC CCP
Diana Lee	Cardon
Tom Atkins	NCANPHA
Alice Garland	NCEL
Meredith Studdell	Policy Group
Lesley Cates	UNC GA
Henry Lancaster	LCA
	BCS
David McLaurin	NC Realtors
Anna Lockhart	NCBWLWA
Tom Cors	TNC

VISITOR REGISTRATION SHEET

House and Senate Finance Committee — Feb. 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dirk Gritta	Wyndham
Jim Harrell	Harrell + Assoc.
Tim KENT	NC Beer & Wine Wholesalers
[illegible]	NCICU
Cody Thomas	NCAR
Maeve Goff	Smith, Anderson
DAVID BARNES	PS
[illegible]	NCFA
Ashley Ellen	NCPWA
Mildred Spearman	AOC
Jennifer Mahan	ASNC

VISITOR REGISTRATION SHEET

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Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Bowdish	Altria Zenaca
Zeb Accey	NMRS
Hobbie Bloom	NARMA
Hope Williams	NCICU
Elizabeth Bise	Brooks Pierce
Allison Waller	Charlotte Chamber
Steve Mitchell	ASTEMS
Gary Salamido	GSK
[illegible]	NCPA
Wendy Kelly	Policy Group
Kathryn Joyce	NCASA

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VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gene Ainsworth	A&A

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Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Donald James	AP
Connie Wilson	CWC

VISITOR REGISTRATION SHEET

House and Senate Finance Committee — Feb. 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Bosley	JEANC
Dona Dowell	DOR
Lennie Collins	DOR
Tom Dixon	DOR
Linda Millsaps	DOR
Cancan Hui e	DOR
David Heaven	NC Center for Nonprofits

VISITOR REGISTRATION SHEET

House & Senate Finance
Name of Committee

February 3, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Lynch	NC Department State Treasurer
Carl Howell	Dept of State Treasurer
Jason Sheffield	Dept of State Treasurer
TRACY COLVARD	AHIC
Michael Houser	N.C. DOR
[signature]	Misc

House and Senate Joint Finance Committee Meeting
Wednesday, February 09, 2011 at 8:30AM
Room 544, Legislative Office Building

Minutes

The House and Senate Finance Committees met jointly at 8:30 AM on February 9, 2011, in room 544 of the Legislative Office Building. Twenty one members of the House Finance Committee attended the meeting and five members of the Senate Finance Committee were present. Nae Nae Blount and Kristopher Faheem of Wake County, Tiffany Davis of Davie County, Jordan Jackson of Surry County and Hannah Andrews of Alamance County served as pages. Representative Julia Howard presided.

Business Taxes (Corporate Franchise Tax)

Jonathan Tart, a fiscal analyst with the Fiscal Research Division, was recognized and completed the presentation that was held over from the Finance Committee meeting of February 6, 2011. The topic of the presentation was Corporate Franchise Taxes where Mr. Tart provided the committee with an overview of the NC Franchise Tax. It represents 4% ($724 million) of the General Fund Revenues. His presentation outlined who pays franchise taxes and the types of businesses that are not subject to the franchise tax. The current franchise tax rate for the State of North Carolina is $1.50 per $1,000 of taxable assets. A copy of his presentation is attached.

Sales & Use Tax

Trina Griffin, a staff attorney with the Research Division, was recognized and started her presentation with the introduction of Eric Wayne Director of the State Tax Division of the Department of Revenue. Mr. Wayne was recognized by the Chair to introduce members of his staff: Jimmy Upchurch, Assistant Director; Amy McElroy, Administrative Officer; Ed Strickland, Administrative Officer; and Jeff Hendrickson, Administrative Officer. After the introductions, Mrs. Griffin was again recognized to explain Sales and Use Tax. In her presentation, she provided the committee with a historical overview of the sales tax in North Carolina and that over the years the state has seen a shift in consumption from durable and nondurable goods to services. She also covered in her presentation the use tax which is a tax on tangible personal property, digital property and certain services. She also noted the problem of tax collection of items purchased outside of the state for use, storage, or consumption in the state. This tax is paid by the purchaser when sales tax has not been collected by the seller. She also discussed Nexus in conjunction with the Sales & Use Tax; a retailer has Nexus with the state when it has a physical presence in the state to be required to collect NC sales tax. During the presentation Eric Wayne from the DOR was recognized to explain the dollars generated by the "Click Through legislation". A copy of Mrs. Griffin's presentation is attached

Sandra Johnson, a fiscal analyst with the Fiscal Research Division, was recognized to present on Rates & Exemptions. The current general state rate of tax for North Carolina is 5.75%. Ms. Johnson provided the committee a historical overview of select sales tax exemptions and refunds pointing out the three major sales and use tax exemptions which are food, prescription drugs and durable medical equipment. She also identified the organization types that are eligible for sales tax refunds: government agencies, religious & charitable, nonprofit hospitals, nonprofit educational institutions and qualifying continuing care and retirement communities. Ms. Johnson concluded her presentation discussing tax reform some items proposed were, elimination of preferential rates, elimination/modify exemptions and rates, transition of certain "priviledge" taxes to sales tax base and broaden the base to include more personal services and lower the rate. A copy of her presentation is attached

The Meeting Adjourned at 9:47 AM

Representative Julia Howard, Presiding Chair
House Finance Committee

Paul Rucho

Paul Rucho Senate Committee Clerk

AGENDA

Joint House & Senate Finance Committee

Wednesday, February 9, 2011
Room 544 LOB
8:30 a.m.
Chaired by: Representative Julia Howard

House Co-Chairs

Representative Julia Howard ***Representative Dale Folwell***
Representative Mitch Setzer ***Representative Edgar Starnes***

Senate Co-Chairs

Senator Fletcher Hartsell ***Senator Bob Rucho***

Call to Order

Introduction of Pages

Informational Presentations

Business Taxes (Corporate Franchise Tax)
Jonathan Tart, Fiscal Research Division

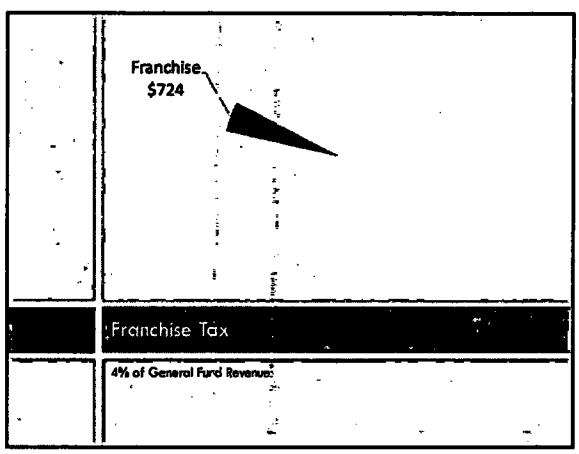
Sales and Use Tax
Trina Griffin, Research Division
Sandra Johnson, Fiscal Research Division

Committee Discussion

Adjournment

OVERVIEW OF FRANCHISE TAX

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



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Questions?

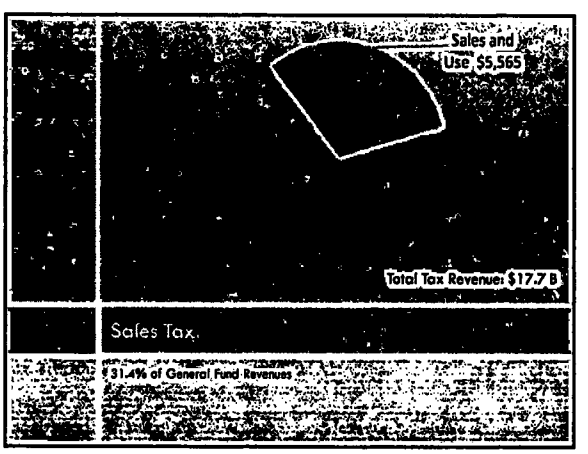
Jonathan Tart
Fiscal Research Division
733-4910
Jonathan.tart@ncleg.net

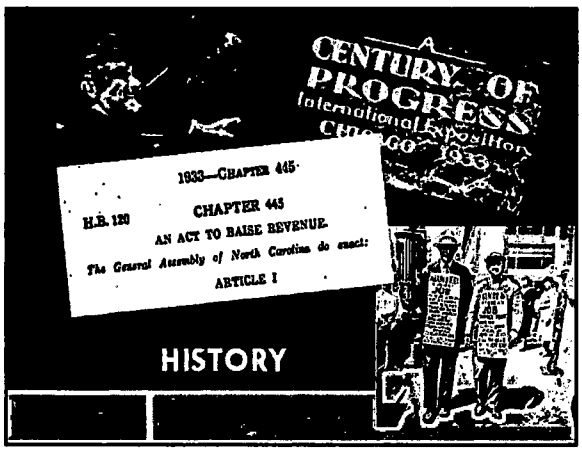
AN OVERVIEW OF SALES AND USE TAX

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

Outline

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





History

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

That Was Then...

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

That Was Then...

1981-1990	1991-2000	2001-Present
Merchants discount repealed	1st rate increase since enactment – 4%	Streamlined
Highway use tax on vehicles	Exempt food	Third ½¢ local sales tax
Two ½¢ local sales tax authorizations	Use of exemptions & refunds as economic devpt.	Rate increases
Exempt food purchased with food stamps		Sales tax holidays
Sales tax on utilities		Video programming
		Medicaid swap
		Digital products

This Is Now

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

Shift in Consumption

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

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

Services Currently Taxed in NC

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

USE TAX/NEXUS

Use Tax

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

Nexus

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

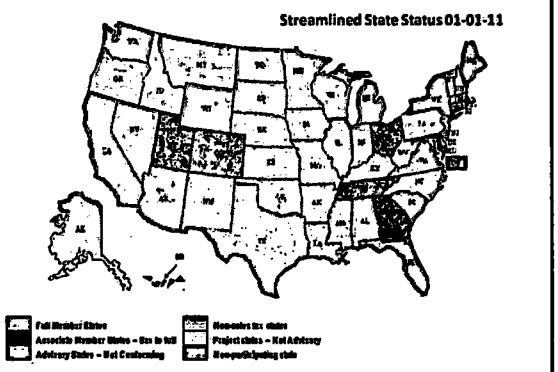
E-Commerce in NC

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

STREAMLINED SALES TAX AGREEMENT

Streamlined Sales Tax Agreement

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



Simplification

Uniformity

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

Administration

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

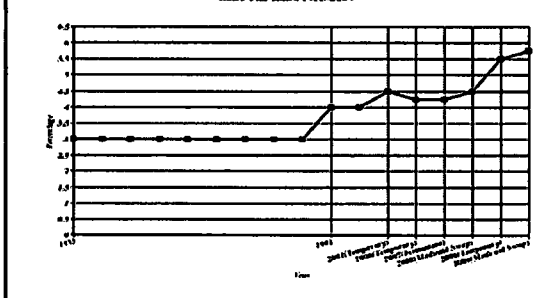
RATES

General Rate

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

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

State Rate Changes



"Combined General Rate"

- What is it?
  - Defined term enacted in S.L. 2005-276.
  - Not the same as general rate of State and local tax
  - State's general rate (5.75%) + sum of rates of local sales tax authorized for every county (2.25%)*
  - Current combined general rate = 8%
- What is subject to the combined general rate?
  - Spirituous liquor – State only
  - Telecommunications – shared with locals
  - Video Programming – shared with locals

*Not necessarily the rate levied in every county.

Preferential Rates

Item	Rate	Cap?
Manufactured Homes	2%	$300
Modular Homes	2.5%	No
Aircraft & boats	3%	$1,500
Electricity	Varies based on purchaser	No
Certain M&E*	1%	$80

Electricity

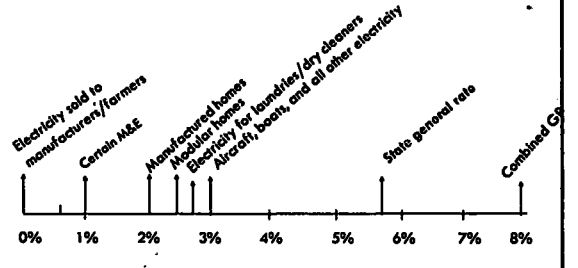
- The rate varies depending on the purchaser of electricity and the purpose for which it is used.
- Sold to:
  - Manufacturers and farmers — EXEMPT*
  - Commercial laundry or dry cleaners — 2.83%
  - Commercial businesses and residences — 3%

*Effective July 1, 2010.

Excise Tax on Machinery

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

Range of Current State Rates



SELECT SALES TAX EXEMPTIONS AND REFUNDS

History: Three Classes of Exemptions

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

History

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

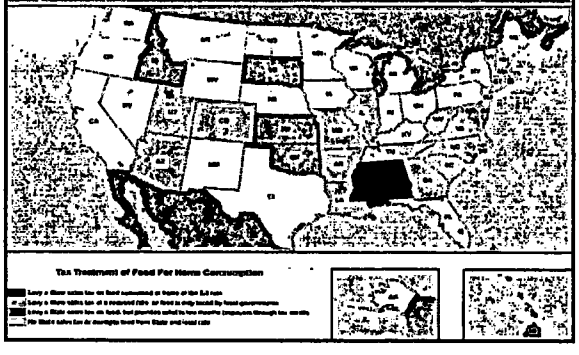
History

1951	2011
32 sales tax exemptions • Sales to non-profit, religious, and charitable organizations • Sales of gasoline or other motor fuels • Public school books • Sales of mill machinery	59 sales tax exemptions • Supplements sold by chiropractors $400K • Sales from vending machines $11.4M • Newspapers sales made by street vendors $7.5M 26 types of organizations eligible for sales tax refunds

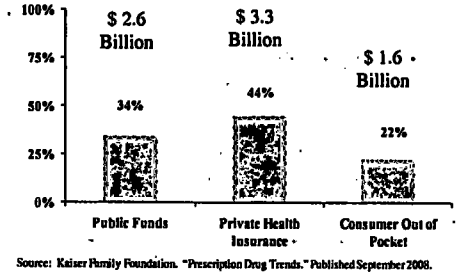
Three Major Sales and Use Tax Exemptions, FY 2009-10

Food	Prescription Drugs	Durable Medical Equip
$722.6 Million	$410 Million	$35 Million
G.S. 164.13B	G.S. 164.13(12)	G.S. 164.13B

History of the Sales and Use Tax and Food, 2010



Percent of Drug Expenditures, U.S. by Type of Payer, 2006



Source: Kaiser Family Foundation. "Prescription Drug Trends." Published September 2008.

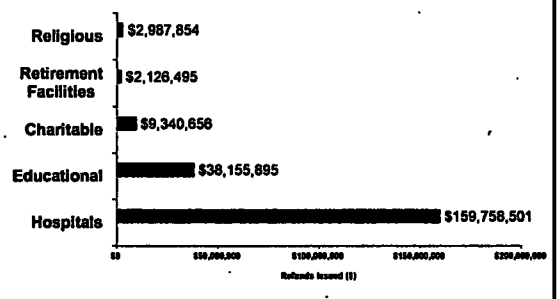
Organization Types Eligible for Sales Tax Refunds

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

Government Refunds

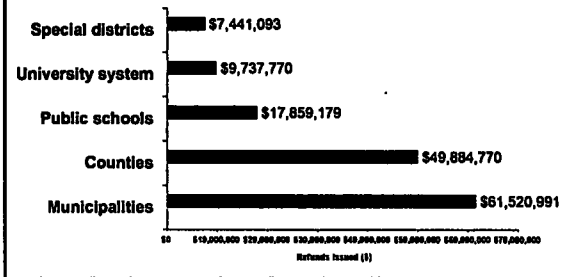
- Sub-state governments
  - Counties
  - Municipalities
  - Special districts
  - Public schools

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



Source: Statistical Abstract of North Carolina Taxes, NC DOR

Governmental Sales Tax Refunds FY 2009-10



Source: Statistical Abstract of North Carolina Taxes, NC DOR

TAX REFORM PROPOSALS

Tax Reform Proposals

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

Contacts

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

North Carolina

Biennial Tax Expenditure Report

2009

Policy Analysis and
Statistics Division

VISITOR REGISTRATION SHEET

Finance — 2/9/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN SHAW	SIERRA CLUB - CAPITAL GROUP
CHUCK WOLF	WILLIAMS MULLEN
Will Culpepper	MVA
Paul Sherman	NCFB
JOHN GOODMAN	NC CHAMBER
Allison Waller	Charlotte Chamber
[signature]	[illegible]
Don Cooper	National Heritage Academies
[signature]	Nantcomes Hendrickson Chesson
Jimmy Broughton	Womble Carlyle
[signature]	Bond & Assoc.

VISITOR REGISTRATION SHEET

Finance — 2/9/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Troxler	NCACC
S Mullis	Fidelity
Joe Stewart	NC Chamber
Katherine Davis	Electric Cities of NC
Becki Gray	John Locke Foundation
Reggie Holley	Longmire

VISITOR REGISTRATION SHEET

Finance — 2/9/11

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Forrest Gillon	Gov Office
Mitchell Sanders	Rep. Lucas
Bill Wilson	AARP
Henry Hutchins	N.C.B.A.
Tom Dixon	NCDOR
Eric Wayne	NCDOR
Ginny Upchurch	NCDOR
Amy McLemore	NCDOR
Jeff Henderson	NCDOR
Ed Strickland	NCDOR
ZEB ALLEY	NMRS

VISITOR REGISTRATION SHEET

Finance — Name of Committee

2/09/11 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NMRS
Jim Stegall	NCAPCS
Chip Killian	Nelson Mullins
[illegible]	NCAPCS
Samantha Colafrancesco	NCAPCS
Gail Worthington	parent
Michelle Terrell	NC Alliance for Public CS
John Bellettо	NC Alliance for Public Schools

HOUSE PAGES

NAME OF COMMITTEE FINANCE DATE 2-9-11

1. Name: Nae-Nae Blount
   County: Wake
   Sponsor: Hall
2. Name: Tiffany Davis
   County: Davie
   Sponsor: Julia Howard
3. Name: Hannah Andrews
   County: Alamance
   Sponsor: Dan Ingle
4. Name: Jordan Jackson
   County: Surry
   Sponsor: Sarah Stevens
5. Name:
   County:
   Sponsor:

SGT-AT-ARM

1. Name: Fred Hines
2. Name: John Brandon
3. Name: Earl Coker
4. Name: Ken Kirby

Senate **PAGES ATTENDING**

COMMITTEE: Joint Finance **ROOM:** 544 LOB

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

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Kristopher Faheem	Raleigh	Blue
2		
3		
5		
6		
7		
8		
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10		

Do not add names below the grid.

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

Senate Finance Committee Meeting
Wednesday, February 09, 2011 at 1:00PM
Room 544, Legislative Office Building

Minutes

The Senate Finance Committee met at 1:00 PM on February 9, 2011, in room 544 of the Legislative Office Building. Twenty members of the Senate Finance Committee attended the meeting. Andrew Price, Eden County served as page. Senator Bob Rucho presided.

Business Taxes (Corporate Franchise Tax)

Jonathan Tart, a fiscal analyst with the Fiscal Research Division, was recognized and completed the presentation that was held over from the Finance Committee meeting of February 6, 2011. The topic of the presentation was Corporate Franchise Taxes where Mr. Tart provided the committee with an overview of the NC Franchise Tax. It represents 4% ($724 million) of the General Fund Revenues. His presentation outlined who pays franchise taxes and the types of businesses that are not subject to the franchise tax. The current franchise tax rate for the State of North Carolina is $1.50 per $1,000 of taxable assets. A copy of his presentation is attached.

Sales & Use Tax

Trina Griffin, a staff attorney with the Research Division, was recognized and started her presentation with the introduction of Eric Wayne Director of the State Tax Division of the Department of Revenue. Mr. Wayne was recognized by the Chair to introduce members of his staff: Jimmy Upchurch, Assistant Director; Amy McElroy, Administrative Officer; Ed Strickland, Administrative Officer; and Jeff Hendrickson, Administrative Officer. After the introductions, Mrs. Griffin was again recognized to explain Sales and Use Tax. In her presentation, she provided the committee with a historical overview of the sales tax in North Carolina and that over the years the state has seen a shift in consumption from durable and nondurable goods to services. She also covered in her presentation the use tax which is a tax on tangible personal property, digital property and certain services. She also noted the problem of tax collection of items purchased outside of the state for use, storage, or consumption in the state. This tax is paid by the purchaser when sales tax has not been collected by the seller. She also discussed Nexus in conjunction with the Sales & Use Tax; a retailer has Nexus with the state when it has a physical presence in the state to be required to collect NC sales tax. A copy of Mrs. Griffin's presentation is attached

Sandra Johnson, a fiscal analyst with the Fiscal Research Division, was recognized to present on Rates & Exemptions. The current general state rate of tax for North Carolina is 5.75%. Ms. Johnson provided the committee a historical overview of select sales tax exemptions and refunds pointing out the three major sales and use tax exemptions which are food, prescription drugs and durable medical equipment. She also identified the organization types that are eligible for sales tax refunds: government agencies, religious & charitable, nonprofit hospitals, nonprofit educational institutions and qualifying continuing care and retirement communities. Ms. Johnson concluded her presentation discussing tax reform some items proposed were, elimination of preferential rates, elimination/modify exemptions and rates, transition of certain "priviledge" taxes to sales tax base and broaden the base to include more personal services and lower the rate. A copy of her presentation is attached

The Meeting Adjourned at 2:20 PM

Senator Robert Rucho, Presiding Chair
Senate Finance Committee

Paul Rucho Senate Committee Clerk

Sales Tax on Services

Federation of Tax Administrators
February 1, 2011

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

Utility Service-Industrial Use					
29	Intrastate telephone & telegraph	6	44	5.19	
30	Interstate telephone & telegraph	6	26	5.81	
31	Cellular telephone services	6	40	5.32	
32	Electricity	3	37	4.97	*5
33	Water	E	18	4.92	*6
34	Natural gas	E	37	4.92	*7
35	Other fuel (incl. heating oil)	5.75	38	5.23	*8
36	Sewer and refuse, industrial	E	13	4.61	
Utility Service-Residential Service					
37	Intrastate telephone & telegraph	8	41	5.46	
38	Interstate telephone & telegraph	8	26	5.88	
39	Cellular telephone services	8	43	5.48	
40	Electricity	3	24	4.82	*9
41	Water	E	12	4.98	*10
42	Natural gas	E	22	4.72	*11
43	Other fuel (incl. heating oil)	5.75	23	5.07	
44	Sewer and refuse, residential	E	9	4.13	
Finance, Insurance, & Real Estate					
45	Service charges of banking institutions	E	3	3.83	
46	Insurance services	E	6	3.41	
47	Investment counseling	E	6	3.31	
48	Loan broker fees	E	4	3.88	
49	Property sales agents (real estate or personal)	E	5	2.98	
50	Real estate mgmt fees (rental agents)	E	5	2.98	
51	Real estate title abstract services	E	5	3.98	
52	Tickertape reporting (financial reporting)	E	8	4.11	
Personal Services					
53	Barber shops and beauty parlors	E	7	3.70	
54	Carpet and upholstery cleaning	E	18	4.91	*12
55	Dating services	E	8	4.61	
56	Debt counseling	E	7	3.84	
57	Diaper service	5.75	23	4.96	
58	Income from funeral services	5.75	14	4.39	*13
59	Fishing and hunting guide services	E	10	4.86	
60	Garment services (altering &repairing)	E	19	5.13	
Business Services					

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

98	Secretarial and court reporting services	E	8	4.11	
99	Security services	E	16	4.84	
100	Sign construction and installation	E	29	5.40	*21
101	Telemarketing services on contract	E	6	3.48	
102	Telephone answering service	E	19	4.98	
103	Temp. help agencies	E	10	4.81	
104	Test laboratories (excluding medical)	E	8	3.86	
105	Tire recapping and repairing	E	28	5.26	*22
106	Window cleaning	E	18	4.95	
Computer					
107	Software-package or canned program	5.75	47	5.32	
108	Software-modifications to canned program	E	30	5.03	
109	Software-custom programs-material	E	25	5.15	*23
110	Software-customer programs-professional serv.	E	14	4.46	*24
111	Internet service providers-Dialup	E	11	5.89	
112	Internet service providers-DSL or other broadband	E	14	5.64	
113	Info services	E	12	4.09	
114	Data processing services	E	9	3.76	
115	Mainframe computer access and processing serv.	E	11	4.26	
Automotive Services					
116	Auto washing and waxing	E	21	5.25	
117	Auto road service and towing serv.	E	18	5.14	
118	Auto service. Except repairs, incl. painting & lube	E	24	5.32	
119	Parking lots & garages	E	20	5.55	
120	Auto rust proofing & undercoating	E	26	5.31	
Admissions & Amusements					
121	Pari-mutuel racing events	3	27	6.46	*25
122	Amusement park admission & rides	3	37	5.26	*26
123	Billiard parlors	E	27	5.32	
124	Bowling alleys	E	27	5.13	
125	Cable TV services	E	25	5.57	*27
126	Direct satellite TV	5	22	6.00	
127	Circuses and fairs -- admission and games	3	34	5.53	*28
128	Coin operated video games	E	18	4.81	
129	Admission to school and college sports events	3	22	5.67	*29
130	Membership fees to private clubs	E	22	5.46	

131	Admission to cultural events	3	33	5.42	*30
132	Pinball and other mechanical amusements	E	19	4.88	
133	Admission to professional sports events	3	37	5.43	*31
134	Rental of films and tapes by theaters	E	8	4.06	
135	Rental of video tapes for home viewing	5.75	45	5.39	
Professional Services					
136	Accounting and bookkeeping	E	5	2.98	
137	Architects	E	5	2.98	
138	Attorneys	E	5	2.98	
139	Dentists	E	4	2.72	
140	Engineers	E	5	2.98	
141	Land surveying	E	7	3.88	
142	Medical test laboratories	E	4	2.72	
143	Nursing services out-of-hospital	E	4	2.72	
144	Physicians	E	4	2.72	
Leases & Rentals					
145	Personal property, short-term (generally)	5.75	45	5.37	
146	Personal property, long-term (generally)	5.75	45	5.35	
147	Bulldozers, draglines and const. mach., short term	5.75	45	5.32	
148	Bulldozers, draglines and const. mach., long term	5.75	45	5.30	
149	Rental of hand tools to licensed contractors	5.75	45	5.37	
150	Short term auto rental	8	48	6.35	*32
151	Long term auto lease	3	38	5.42	*33
152	Limo service (with driver)	E	14	4.55	
153	Aircraft rental to individual pilots, short term	3	40	5.08	
154	Aircraft rental to individual pilots, long term	3	39	5.06	*34
155	Chartered flights (with pilot)	E	11	4.44	
156	Hotels, motels, lodging houses	5.75	48	6.08	*35
157	Trailer parks-overnight	E	27	5.67	
Fabrication, Installation & Repair Services					
158	Custom fabrication labor	5.75	38	5.38	*36
159	Repair material, generally	5.75	47	5.32	*37
160	Repair labor, generally	E	24	5.24	*38
161	Labor charges on repair of aircraft	E	19	5.17	
162	Labor charges - repairs to interstate vessels	E	12	5.07	
163	Labor charges - repairs to intrastate vessels	E	19	5.05	
164	Labor- repairs to commercial fishing vessels	E	15	4.96	

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

*1 Items subject to the general State rate of sales or use tax are subject to the applicable local rate of tax.

*2 Typesetting exempt; sales of printing plates to manufacturers for use in their printing presses to imprint containers used to ship their manufactured products- 1% State, $80.00 maximum tax per article.

*3 Receipts are exempt. Buses are subject to the 3% state rate of highway use tax with maximum of $1,000.

*4 Parts and material only taxable.

*5 Sales of electricity to manufacturers, farmers, and commercial laundries and dry cleaners for the prescribed purposes are subject to a 2.83% rate of tax. Not subject to local taxes.

*6 Exempt if delivered through mains. Subject to a general state & local tax if delivered in bottles.

*8 Sales to commercial laundries freezer locker plants, manufacturers for use in connection with the industry or plant but not for residential heating purposes, farmers for other than household purposes, and commercial laundries are taxed at 1%. Not subject to local sales tax.

*9 Not subject to local taxes.

*10 Exempt if delivered through mains. Subject to the general state & local tax if delivered in bottles.

*11 Subject to an excise tax based on therms delivered; rates from .047 to .003 per therm.

*12 Rug cleaning services exempt if performed in home.

*13 First $1,500 of charge is exempt.

*14 Materials used in repair are taxable.

*15 Sales of newspapers by newspaper street vendors and by newspaper carriers making door-to-door deliveries and by vending machines are exempt. Sales of newspapers by others are subject to the general State sales tax and applicable local sales tax

*16 Sales of magazines by magazine vendors making door-to-door deliveries are exempt. Sales of magazines by others are subject to the general State sales tax and applicable local sales tax.

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

*****

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

PAGES ATTENDING

COMMITTEE: Joint Finance **ROOM:** 544 LOB

DATE: 2-9 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Andrew Price	Eden	P. Berger
2		
3		
5		
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Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance — **Name of Committee**

February 9, 2011 PM — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sandy York	HANC.
Will Culpepper	MVA
Emily Grimm	McGuire Woods Consulting
Kerri Burke	NWC
Amy McConkey	NC Beverage Assn
Moore Goff	Smith Anderson
	Misc
Bo Heath	McGuire Woods

VISITOR REGISTRATION SHEET

House and Senate Finance Committee — [redacted]
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jessi Hayes	NCHBA
Lisa Martin	NCABA
Cady Thomas	NCAR
Michael Houser	DOR
Ed Strickland	NCDOR
Ellen Wagner	NCDOR
Heaney Hutaff	N.C.B.A.
Amy McLemore	NCDOR
Jeff Hendrickson	NCDOR
Chuck Stone	SEANC
Ben Brown	State Ports Pilot

VISITOR REGISTRATION SHEET

House and Senate Finance Committee — Feb. 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jonathan Spiers	The State Port Pilot 114 E. Moore St. Southport NC
JOHN SHAW	WAKE UP WAKE Co.
Piggie Potter	NCDS & NCPTA
DAVID BARNES	PS
DAVID LAMBERT	Association of Student Governments
Kathryn Westcott	ACEC/NC
Andrew Coyle	DLC + Assoc.
Pat	NCAEC

VISITOR REGISTRATION SHEET

House and Senate Finance Committee — Feb. 3, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
CS Hall	TSS
Lori Ann Harris	LHHA
Andrew Henson	Civitas
Dirk Collins	self
D Beverly	GIC
Heather Robison	NCBMA
Nancy Thompson	Weyerhaeuser

Senate Finance Committee Meeting
Wednesday, February 15, 2011 at 1:00PM
Room 544, Legislative Office Building

Minutes

The Senate Finance Committee met at 1:00 PM on February 15, 2011, in room 544 of the Legislative Office Building. Twenty seven members of the Senate Finance Committee attended the meeting. Victoria Martin, Oxford County and Nate Andrews of Vale County served as pages. Senator Fletcher Hartsell presided.

SB 29 Tax Certification – Alamance County

Senator Gunn was recognized to explain the bill. Senator Clodfelter moved to adopt the bill and the motion carried as Favorable. The bill authorizes Alamance County to require the payment of delinquent property taxes before recording deeds conveying property. A copy of the bill and summary is attached

Economic Development Tax Incentive

Rodney Bizzell, a fiscal analyst with the Fiscal Research Division, was recognized and provided the committee with an Overview of Economic Development Tax Incentives. In his presentation he discussed installments and carry forwards, tax credits generated vs. tax credits taken and identified savings from repeal of certain incentives. He concluded his presentation to the committee by identifying Corporate and Franchise tax expenditures and Sales tax expenditures that are related to economic development. A copy of his presentation is attached.

Consensus Forecast for the 2011-2013 Biennium

Barry Boardman a fiscal analyst with the Fiscal Research Division was recognized and provided the committee with a Consensus Forecast for the 2011-2013 Biennium. He explained the forecast process the numbers, and highlighted some of the expected revenue numbers.

Miscellaneous Taxes

Heather Fennell, a staff attorney with the Research Division, was recognized to present on Miscellaneous Taxes. She discussed the following taxes: Insurance Gross Premium Tax which represents (2.7 % of the General Fund revenues) the Alcohol Beverage Excise Tax which represents (1.6% of the General Fund revenues) and the Tobacco Product Tax which represents (1.4% of the General Fund revenues). A copy of her presentation is attached

The Meeting Adjourned at 1:55 PM

Senator Fletcher Hartsell, Presiding Chair
Senate Finance Committee

Paul Rucho

Paul Rucho Senate Committee Clerk

AGENDA

Senate Finance Committee

Tuesday February 15, 2011
Room 544 LOB
1:00 PM
Chaired by: Senator Fletcher Hartsell

Senate Co-Chairs

Senator Fletcher Hartsell ***Senator Bob Rucho***

Call to Order

Introduction of Pages

Bills Presented to Committee

SB 29 *Tax Certification - Alamance County. – Senator Rick Gunn*

Informational Presentations

Economic Development Tax Incentives

Jonathan Tart, Fiscal Research Division
Rodney Bizzell, Fiscal Research Division

Consensus Forecast for the 2011-2013 Biennium

Barry Boardman, Fiscal Research Division

Miscellaneous Taxes: Gross Premiums Tax; Alcoholic Beverage Excise Tax; Tobacco Products Tax; Piped Natural Gas Tax

Heather Fennell, Research Division

Committee Discussion

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 29*

Short Title:	Tax Certification - Alamance County.	(Local)
Sponsors:	Senator Gunn.	
Referred to:	Finance.	

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ALAMANCE COUNTY TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to Alamance, Alexander, Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin Counties."

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

SENATE BILL 29:
Tax Certification - Alamance County

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	February 14, 2011
Introduced by:	Sen. Gunn	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 29 would authorize Alamance County to require the payment of delinquent property taxes before recording deeds conveying property.***[1]

CURRENT LAW: G.S. 161-31(a) provides that the board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property unless the county tax collector has certified that there are no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. In the resolution, the county commissioners may describe the form the certification must take.

G.S. 161-31(a1) provides an exception. It requires that the register of deeds must accept, without certification, a deed that contains the following statement: "This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

G.S. 161-31 applies to the following 69 counties: Alexander, Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Davidson, Davie, Duplin[2], Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin.

The following counties have a similar requirement but under different authorizing legislation:

Avery County	S.L. 1963-305, as amended by S.L. 1997-410, S.L. 1998-73[3] and S.L. 2010-51
Ashe County	S.L. 1993-657, as amended by S.L. 1997-410 and S.L. 2005-433[4]
Alleghany County	S.L. 1997-410
Mitchell County	S.L. 1987-537, as amended by S.L. 1997-410 and S.L. 1999-326[5]

These local acts state that the Register of Deeds shall not record any deed unless it is accompanied by a certification that all delinquent taxes have been paid. These local acts are in contrast to G.S. 161-31, which gives certain counties the discretion to pass a resolution to that effect.

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[1] This bill is identical to HB 38, introduced by Representatives Bordsen and Ingle. HB 38 is currently in the House Government Committee.

[2] S.L. 2010-24 provides the Register of Deeds in Duplin County must also receive a certification that no municipal taxes or any other taxes the collector is charged with collecting are a lien on the property before a deed transferring the property may be recorded.

[3] The Town of Newland was added in 1997; the Town of Banner Elk was added in 1998; the Village of Sugar Mountain was added in 2010.

[4] S.L. 2005-433 provides that in addition to receiving a certification from the county tax collector, the Register of Deeds must also receive a certification from any municipal tax collector, where applicable, verifying that all delinquent taxes on the property have been paid.

[5] This local act also provides that if the property is located in the Town of Spruce Pine or the Town of Bakersville, the deed must also be accompanied by a certification from each town tax collector that all delinquent municipal taxes have been paid with respect to the property.

BILL ANALYSIS: Senate Bill 29 would add Alamance County to the list of counties that would permit the board of commissioners to pass a resolution requiring that the register of deeds not accept any deed transferring real property unless the county tax collector certifies that the taxes listed in the statute are not delinquent and are not a lien on the property described in the deed.

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

S29-SMRE-1(e1) v3

Cindy Avrette, counsel to Senate Finance Committee significantly contributed to this summary.

OVERVIEW OF ECONOMIC DEVELOPMENT TAX INCENTIVES

Joint House and Senate Finance, February 10th, 2011
Rodney Bizzell, Fiscal Research Division

Overview

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

Economic Development Incentives

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

Economic Development Incentives

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

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

Economic Development Incentives

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

Source: UNC Center for Competitive Economies

Article 3J Tax Credits

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

2008 Article 3J Jobs Credits Generated

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

2008 Investment in Business Property Credits Generated

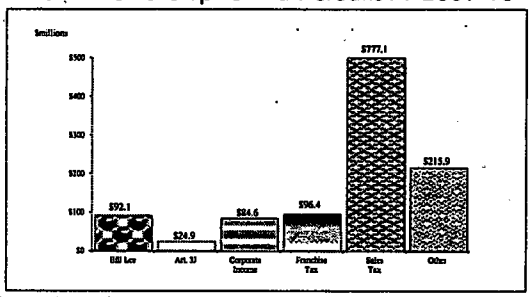
	Investment	Credits Generated
Tier One	402,168,157	28,095,346
Tier Two	235,859,128	11,843,752
Tier Three	703,924,546	36,273,286
Total	$1,341,951,831	$76,212,384

Timing of Tax Credit Impact

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

Tax Incentives

Economic Development Tax Credits FY 2009-10



Source: NC Dept. of Revenue 2009 Biennial Tax Expenditure Report

Corporate Income Tax Expenditures

- Double-weighting Sales Apportionment
  - $41.8 million
  - Sales apportionment factor for corporate income tax is double-weighted
  - Benefits companies with a large physical presence in North Carolina
- Cigarette Exportation Credit
  - $9.1 million
  - Credit amount up to $10 million for companies that export cigarettes to a foreign country through state ports.
- Film Industry Production
  - $22.5 million

Sale Tax Expenditures

- Includes Exemptions, Refunds and Preferential Rates
- Sales to Farmers
  - $294.9 million
  - Sales tax exemption for various items sold to farmers for agricultural purposes.
- Packaging Costs for Manufacturers
  - $126.6
  - Sales tax exemption for wrapping paper, cloth, plastic bags, packages, containers, etc.
- Refund for Certain Industrial Facilities
  - $2.4 million
  - Refund for building materials for facilities in eligible industries (air courier, aircraft manufacturing, bioprocessing, computer manufacturing, financial services, vehicle manufacturing, pharmaceutical, semiconductor, solar electricity

Economic Development Inventory

- http://www.ncleg.net/fiscalresearch/frd_reports/frd_reports_pdfs/Inventories/Final_2010_EDI.pdf

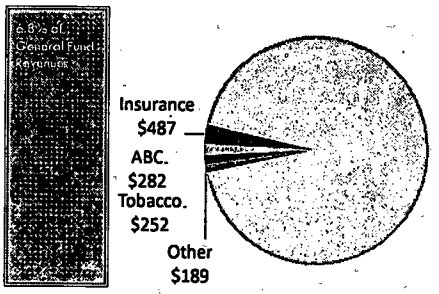
Questions?

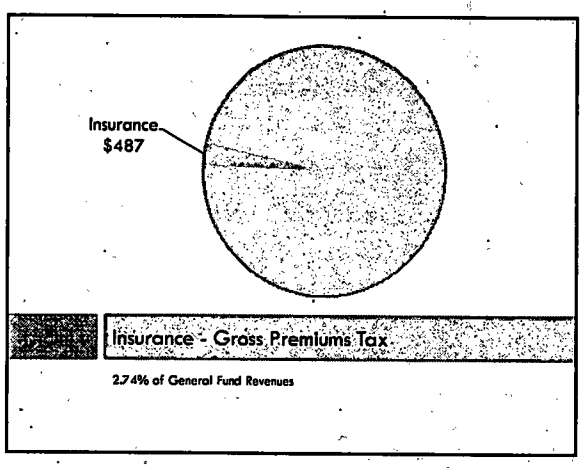
Rodney Bizzell
Fiscal Research Division
733-4910
Rodney.Bizzell@ncleg.net

OVERVIEW OF MISCELLANEOUS TAXES

Joint House and Senate Finance, February 10, 2011
Heather Fennell, Research Division

Insurance, ABC, tobacco, and other.



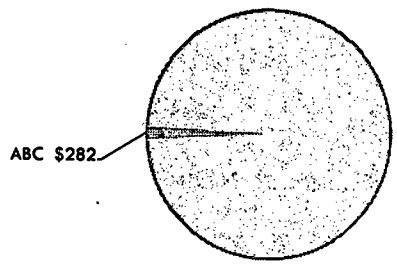


Gross Premiums Tax

- Imposed on gross premiums covering all persons, property and risk.
- Rates:
  - 2.5% on gross premiums of workers' compensation policies.
  - 1.9% on gross premiums of all other insurance policies – including health policies.

Gross Premiums Tax

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



Alcoholic Beverage Excise Taxes

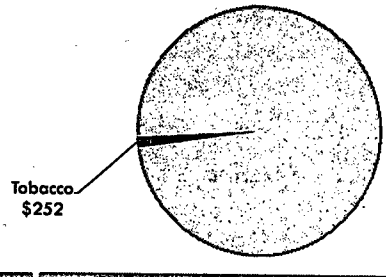
1.59% of General Fund Revenues

Alcoholic Beverage Taxes

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

Alcoholic Beverage Taxes - Distribution

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



Tobacco Products Tax

1.40% of General Fund Revenues

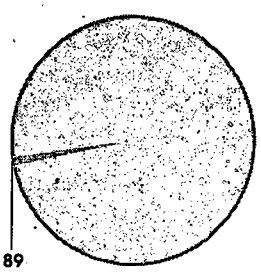
Tobacco – Cigarettes and OTP.

Cigarettes

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

Other Tobacco Products (OTP)

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



"Other" Taxes

1.07% of General Fund Revenues

Freight Car Tax

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

Piped Natural Gas

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

Piped Natural Gas

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

State Privilege Taxes

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

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

VISITOR REGISTRATION SHEET

Senate Finance
Name of Committee

February 15, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Will Culpepper	MVA
Ken Melton	K.M.A.
Bill Rowe	NC Justice Center

VISITOR REGISTRATION SHEET

Senate Finance — February 15, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy McConkey	NC BEV
Maeve Goff	Smith Anderson
Michelle Frazier	MFS
Cameron Hanley	Electi Cities
Daniel Baum	Troutman Sanders
Allison Waller	Charlotte Chamber
Lydia Daniel	Spouse
Carl Howell	DST
Jason Shuttleworth	DST
John Palumbo	NCBAA
Chris Killian	Nelson Mullins

SENATE FINANCE COMMITTEE
Wednesday, February 16, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on February 16, 2011 in room 544 of the Legislative Office Building. Micaela Thiery of Hendersonville served as the page. Twenty-four members of the committee were present. Senator Rucho presided as chair.

S.B. 55 – Increase Property Tax Appeals Efficiency

Senator Clodfelter was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS amended the property tax appeals process in Mecklenburg County. The PCS made technical changes only. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS, the bill and the summary is attached.

Presentations

Department of Revenue

Secretary Hoyle was recognized to update the committee on the status of tax form reviews and refunds. He stated that 6,900 items remain to be reviewed and that $1 billion had been collected since his last report to the committee. He requested that North Carolina become a mandatory combined returns state to increase revenue and cut down on some corporate abuses. He also asked that for a reduced corporate rate, from 6.9% to 4.9% to benefit in-state businesses. His next request was for funding to hire up to 400 more employees and to update antiquated equipment. He warned that ABC license applicants owe the State a lot of money due to loopholes in his authority, so he asked for clarification and an increase in authority. He has also seen more fraud by tax preparers and wants the State to piggyback on the federal governments efforts.

The meeting adjourned at 2:48 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	February 16, 2011	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 55	Increase Property Tax Appeals Efficiency.	Senator Dannelly Senator Clodfelter

Informational Presentations by staff.

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, February 16, 2011

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

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

S.B. **55** Increase Property Tax Appeals Efficiency.

Draft Number:	55058
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Senate Finance Committee
Wednesday, February 16, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

S55	Increase Property Tax Appeals Efficiency.	Sen. Dannelly Sen. Clodfelter

Presentations

Department of Revenue
Secretary Hoyle

Motor Fuel and Highway Use Taxes
Greg Roney, Research Division

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

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 55
PROPOSED COMMITTEE SUBSTITUTE S55-CSTD-2 [v.2]

2/16/2011 11:24:12 AM

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

Sponsors:

Referred to:

February 10, 2011

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

(c) Oath. – Each member of the board of equalization and review shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added

to it: "that I will not allow my actions as a member of the board of equalization and review to be influenced by personal or political friendships or obligations,". The oath must be filed with the clerk of the board of county commissioners.

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

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

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

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

(1) Duty to Review Tax Lists. – The board shall examine and review the tax lists of the county for the current year to the end that all taxable property shall be listed on the abstracts and tax records of the county and appraised according to the standard required by G.S. 105-283, and the board shall correct the abstracts and tax records to conform to the provisions of this Subchapter. In carrying out its responsibilities under this subdivision (g)(1), the board, on its own motion or on sufficient cause shown by any person, shall:

a. List, appraise, and assess any taxable real or personal property that has been omitted from the tax lists.

b. Correct all errors in the names of persons and in the description of properties subject to taxation.

c. Increase or reduce the appraised value of any property that, in the board's opinion, has been listed and appraised at a figure that is below or above the appraisal required by G.S. 105-283; however, the board shall not change the appraised value of any real property from that at which it was appraised for the preceding year except in accordance with the terms of G.S. 105-286 and 105-287.

d. Cause to be done whatever else is necessary to make the lists and tax records comply with the provisions of this Subchapter.

e. Embody actions taken under the provisions of subdivisions (g)(1)a through (g)(1)d, above, in appropriate orders and have the orders entered in the minutes of the board.

f. Give written notice to the taxpayer at the taxpayer's last known address in the event the board, by appropriate order, increases the appraisal of any property or lists for taxation any property omitted from the tax lists under the provisions of this subdivision (g)(1).

(2) Duty to Hear Taxpayer Appeals. – On request, the board of equalization and review shall hear any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of the taxpayer's property or the property of others.

a. A request for a hearing under this subdivision (g)(2) shall be made in writing to or by personal appearance before the board prior to its adjournment. However, if the taxpayer requests review of a decision made by the board under the provisions of subdivision (g)(1), above, notice of which was mailed fewer than 15 days prior to the board's adjournment, the request for a hearing thereon may be made within 15 days after the notice of the board's decision was mailed.

b. Taxpayers may file separate or joint requests for hearings under the provisions of this subdivision (g)(2) at their election.

c. At a hearing under provisions of this subdivision (g)(2), the board, in addition to the powers it may exercise under the provisions of subdivision (g)(3), below, shall hear any evidence offered by the appellant, the assessor, and other county officials that is pertinent to the decision of the appeal. Upon the request of an appellant, the board shall subpoena witnesses or documents if there is a reasonable basis for believing that the witnesses have or the documents contain information pertinent to the decision of the appeal.

d. On the basis of its decision after any hearing conducted under this subdivision (g)(2), the board shall adopt and have entered in its minutes an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed. The board shall notify the appellant by mail as to the action taken on the taxpayer's appeal not later than 30 days after the board's adjournment.

(3) Powers in Carrying Out Duties. – In the performance of its duties under subdivisions (g)(1) and (g)(2), above, the board of equalization and review may exercise the following powers:

a. It may appoint committees composed of its own members or other persons to assist it in making investigations necessary to its work. It may also employ expert appraisers in its discretion. The expense of

the employment of committees or appraisers shall be borne by the county. The board may, in its discretion, require the taxpayer to reimburse the county for the cost of any appraisal by experts demanded by the taxpayer if the appraisal does not result in material reduction of the valuation of the property appraised and if the appraisal is not subsequently reduced materially by the board or by the Department of Revenue.

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

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

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

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

a. To hear and decide all appeals relating to discovered property under G.S. 105-312(d) and (k).

b. To hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b).

c. To hear and decide all appeals relating to audits conducted under G.S. 105-296(j) and relating to audits conducted under G.S. 105-296(j) and (l) of property classified at present-use value and property exempted or excluded from taxation.

d. To hear and decide all appeals relating to personal property under G.S. 105-317.1(c).

e. To appraise and reappraise property under G.S. 105-325(a)(6)."

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

SENATE PCS 55:
Increase Property Tax Appeals Efficiency

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	February 16, 2011
Introduced by:	Sens. Clodfelter, Dannelly	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S55-CSTD-1		

SUMMARY: The proposed committee substitute (PCS) to Senate Bill 55 would amend the property tax appeals process in Mecklenburg County. The PCS makes technical changes only. This PCS differs from the PCS that was distributed by email. This PCS makes further technical changes requested by Mecklenburg County.

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

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

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

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

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

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

S55-SMTD-3(CSTD-1) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 55

Short Title:	Increase Property Tax Appeals Efficiency.	(Local)
Sponsors:	Senators Clodfelter, Dannelly; Graham, Rucho, and Tucker.	
Referred to:	Finance.	

February 10, 2011

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

SECTION 2. This act applies only to Mecklenburg County.

SECTION 3. Upon the adoption of a resolution so providing, the Mecklenburg County Board of Commissioners is authorized to appoint and delegate to a special board of equalization and review to perform the duties imposed under G.S. 105-322. The resolution shall provide for the membership of the special board, which shall be at least five members, qualifications, terms of office, filling of vacancies, appointment of the clerk, compensation, time and notice of meetings, adjournment, and establishment of rules and procedures of the special board, including separation into panels of three or more for deliberations. The resolution may authorize a taxpayer to appeal a decision of the special board with respect to the listing or appraisal of property to the Board of Commissioners. The resolution shall be adopted not later than the first Monday in March of the year for which it is to be effective and shall continue in effect until revised or rescinded. The resolution shall be entered in the minutes of the meeting of the Board of Commissioners, and a copy shall be forwarded to the Department of Revenue. The members of the special board shall take the oath required in G.S. 105-322(c).

SECTION 4. A resolution adopted pursuant to Section 3 of this act may authorize the tax assessor to appoint deputy clerks, as needed.

SECTION 5. The time of meeting of a special board appointed pursuant to Section 3 of this act shall be as provided in G.S. 105-322(e), except that the resolution appointing the special board may authorize the special board to sit beyond the end of the current calendar year until the first meeting of the special board in the next calendar year to hear and determine requests made under the provisions of G.S. 105-322(g)(2) for appeals filed in the current calendar year.

SECTION 6. The publication of notice of meetings and adjournment shall be the same as provided in G.S. 105-322(f), except that no publication will be required of meetings after the initial meeting.

SECTION 7. A special board appointed pursuant to Section 3 of this act shall have the powers and duties provided in G.S. 105-322(g), as amended from time to time.

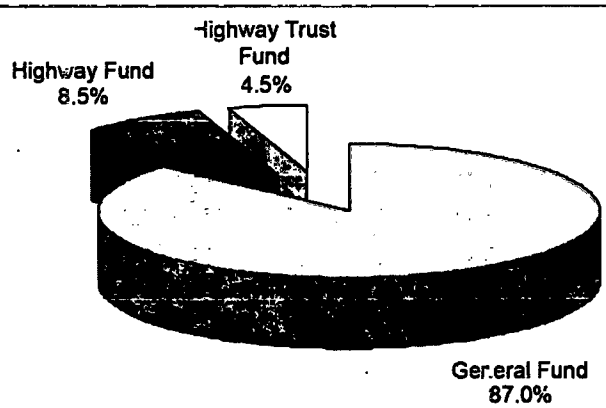
SECTION 8. A resolution adopted pursuant to Section 3 of this act may provide for the special board appointed pursuant to Section 3 of this act to have the duties set forth in G.S. 105-325(a)(6), as amended from time to time.

SECTION 9. This act becomes effective January 1, 2011.

MOTOR FUELS EXCISE TAX AND HIGHWAY USE TAX

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

Overview-State Tax Collections 2009-2010

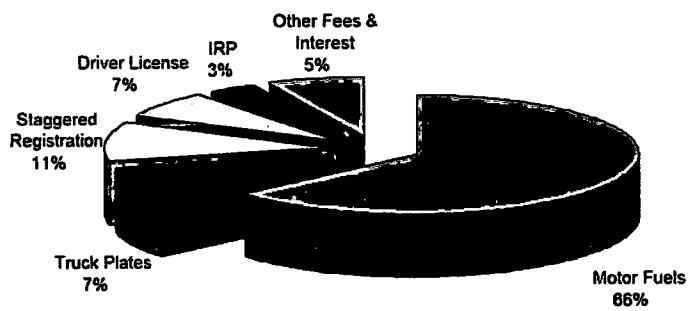


General Fund	$ 17,746,040,209
Highway Fund	1,731,643,883
Highway Trust Fund	909,150,646
Total	$ 20,386,834,738

Overview-Highway Fund

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

NC Highway Fund Tax Collections

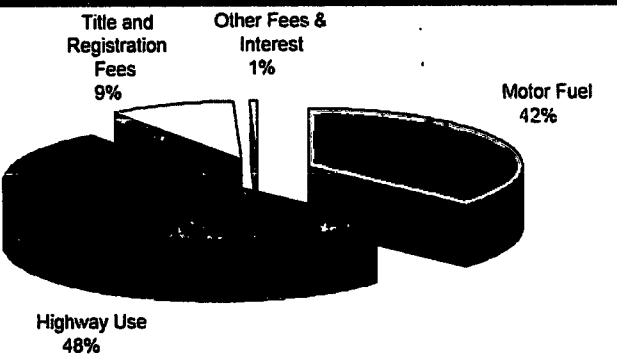


Motor Fuels	$ 1,145,528,928
Truck Plates	128,136,502
Staggered Registration	189,076,290
Driver License	126,530,919
IRP	58,684,032
Other Fees & Interest	83,687,212
Total	$ 1,731,643,883

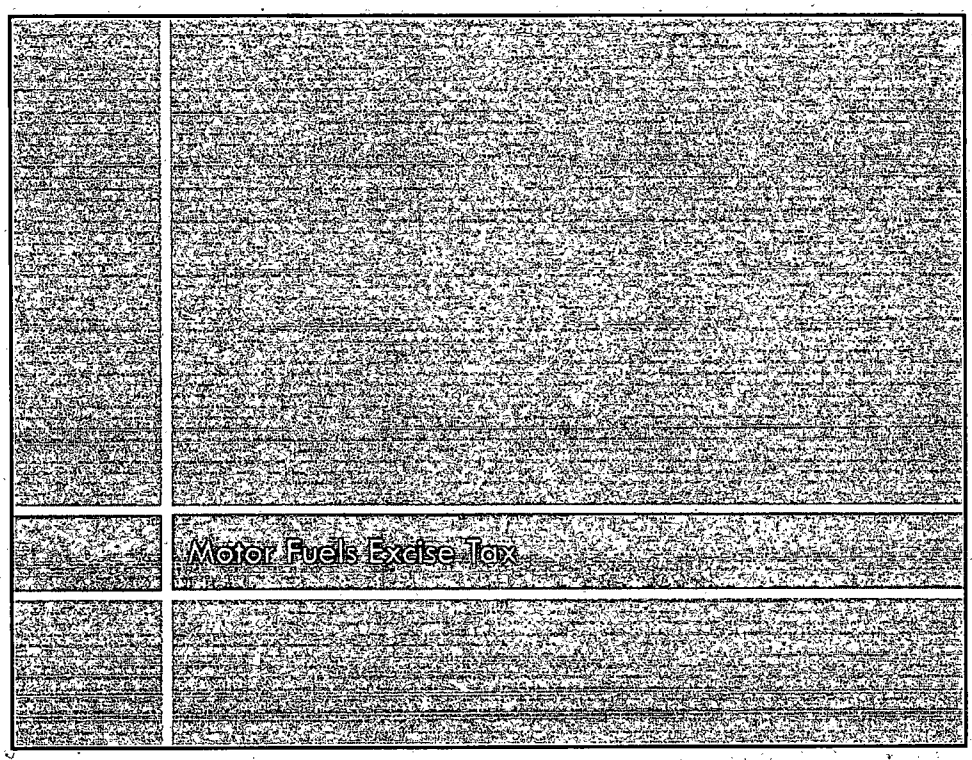
Overview- Highway Trust Fund

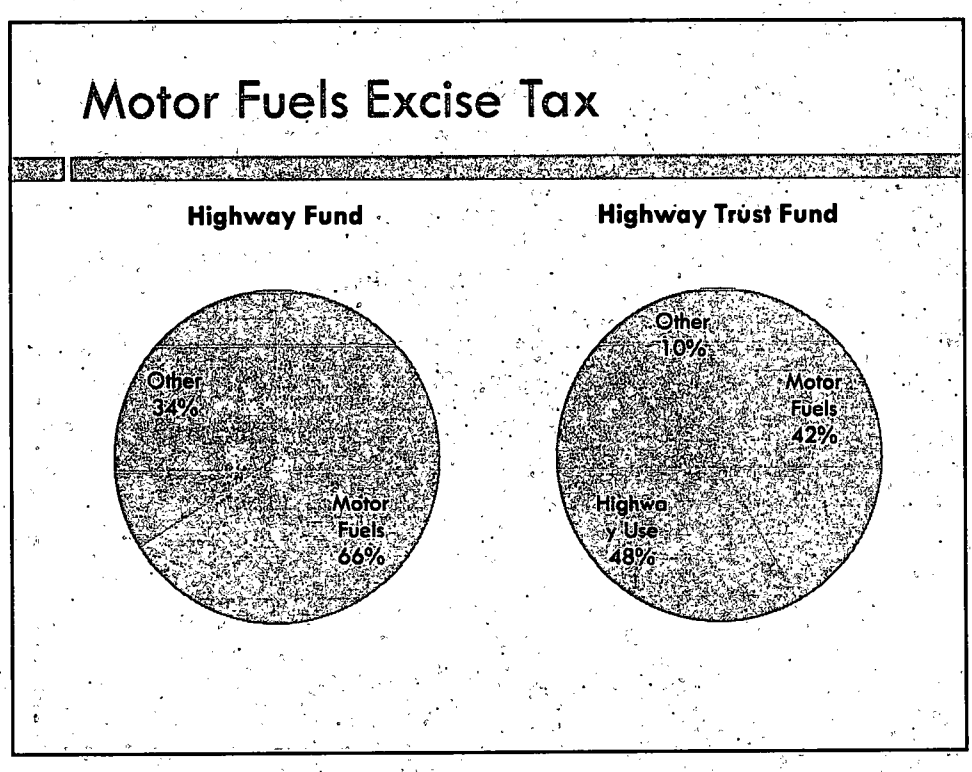
- Highway Trust Fund revenue used to design and build public roads
  - Road Construction: Interstate, Urban Loops, Secondary Roads, Aid to Municipalities
  - Other: Match Federal Aid, Administration, NC Turnpike Administration Gap Funding, Mobility Fund
- Funding Sources
  - Motor Fuels Excise Tax (25% of Tax Collection)
  - Highway Use Tax
  - Fees: Title and Registration Fees

NC Highway Trust Fund Tax Collections



Motor Fuel	$	381,909,743
Highway Use		440,483,265
Title and Registration Fees		82,843,951
Other Fees & Interest		3,913,687
Total	$	909,150,646


Motor Fuels Excise Tax


Motor Fuels Excise Tax
Highway Fund
Other 34%
Motor Fuels 66%
Highway Trust Fund
Other 10%
Motor Fuels 42%
Highway Use 48%

Motor Fuels Excise Tax-Overview

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

Motor Fuels Excise Tax-History

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

Motor Fuels Excise Tax-History-Continued

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

Motor Fuels Excise Tax-History-Continued

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

Motor Fuels Excise Tax-Collection

Interstate Trucking Industry

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

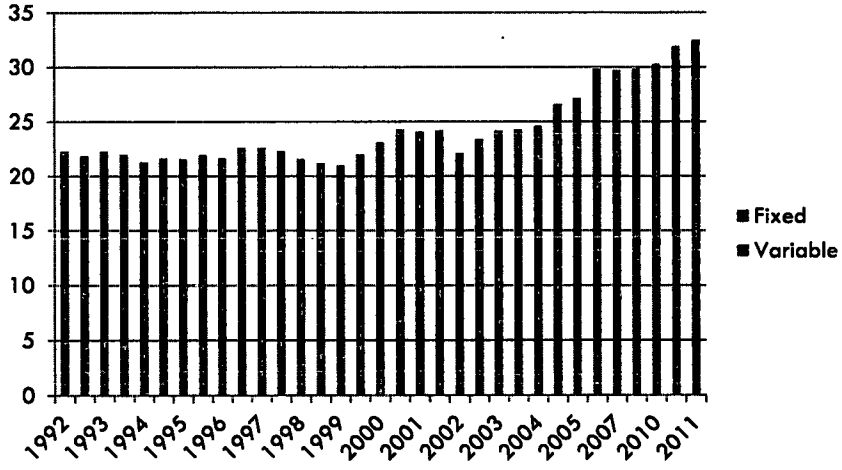
"Tax at the Rack"

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

Motor Fuels Excise Tax-Exemptions and Refunds

- Fuel not used on the highway (100% refund but subject to sales tax)
- Exemptions
  - US Government
  - State Agencies
  - Counties
  - Municipal Corporations
  - Community Colleges
  - Boards of Education
  - Fuel for Export
  - Fuel for Aircraft
- Volunteer fire dept and rescue squads; sheltered workshops; taxicabs; nonprofits operating for a local government (refund of tax paid less $0.01)
- Concrete mixing vehicles; solid waste compacting vehicles; vehicles delivering and spreading mulch, soil, and similar materials; certain agricultural and tank delivery vehicles (33 1/3 % Refund)

Motor Fuels Excise Tax-Components



Comparison-State Roadways

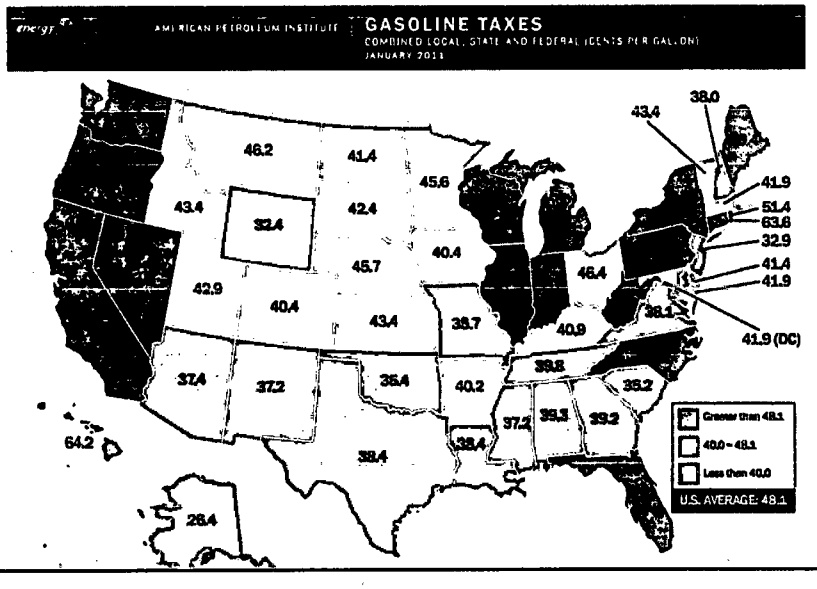
- NC and Texas have largest state-controlled highway systems, over 79,000 miles
- NC controls 76% of the road miles
- Comparison to Surrounding States

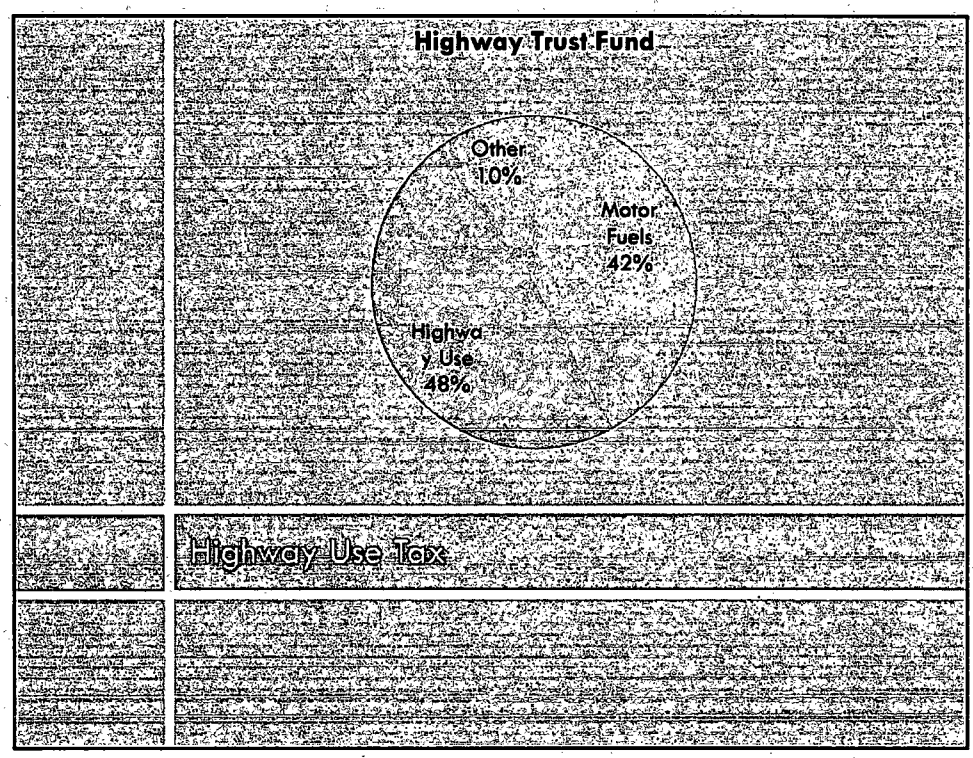
	Total Miles	State-Controlled	Percentage
Georgia	118,778	17,930	15%
South Carolina	66,249	41,437	63%
Tennessee	91,956	13,886	15%
Virginia	72,659	57,72	79%

Comparison-State Taxation of Gasoline

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

Comparison-Tax on Gasoline





Highway Use Tax-History

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

Highway Use Tax-Rates and Comparison

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

Highway Use Tax-Exemptions

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

Highway Use Tax-Companion Tax

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

LOCAL REVENUE SOURCES

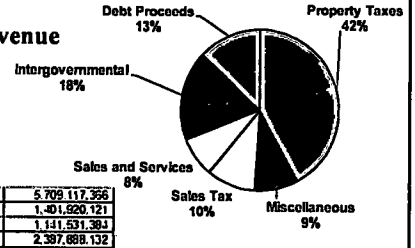
Martha Walston, Fiscal Research Division
February 16, 2011

Local Revenue Sources

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

Sources of Local Revenue: County

2008-09 County Revenue by Source



Property Taxes	5,709,117,356
Sales Tax	1,401,920,121
Sales and Services	1,141,531,384
Intergovernmental	2,397,688,132
Debt Proceeds	1,699,919,492
Other Misc.	1,131,756,137
TOTAL	13,472,132,632

Source: Dept. of State Treasurer

Property Tax Constitutional authority

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

Property Tax Constitutional Authority

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

Generalities

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

Generalities

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

Generalities
Appraisal of real property

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

Generalities
Appraisal of real property

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

Generalities
Appeal

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

Exemptions and Exclusions

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

Property Tax Relief Programs
Exclusions and Deferrals

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

Elderly or disabled property tax homestead exclusion

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

Elderly or disabled property tax homestead exclusion

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

Disabled veteran property tax homestead exclusion

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

Property Tax Deferral Generalities

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

Property Tax Deferral Homestead Circuit Breaker

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

Property Tax Deferral Homestead Circuit Breaker

- Tax limitation (2011)

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

Property Tax Deferral
Homestead Circuit Breaker

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

Property Tax Deferral
Present-Use Value (PUV)

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

Property Tax Deferral
Present-Use Value

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

Property Tax Deferral
Present-Use Value

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

Property Tax Deferral
Present-use Value

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

Property Tax Deferral
Present-Use Value

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

Property Tax Deferral
Present-Use Value

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

Property Tax Deferral
Working Waterfront Property

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

Property Tax Deferral
Wildlife Conservation Land

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

Property Tax Deferral
Historic Property

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

Property Tax Deferral
Historic District Property

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

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

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

Property Tax Deferral Inventory Property

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

Property Tax Motor Vehicles

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

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

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

Deed Stamp Tax

- State imposes a tax on most recorded deeds
- Tax measured by price paid for property
- Rate is $1 for each $500 of sales price
- Tax collected by county: ½ to county for any public purpose, and remaining ½ to Department of Revenue (75% to Parks and Recreation Trust Fund and 25% to Natural Heritage Trust Fund)

Deed Stamp Tax

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

Local land transfer tax

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

Questions????

OVERVIEW OF OTHER LOCAL REVENUE SOURCES

House and Senate Finance,
Heather Fennell, Research Division

General Rate and Local Rates

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

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

Current Local Sales Taxes

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

Local Privilege License Taxes

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

Local Occupancy Taxes

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

Occupancy Tax - Guidelines

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

Local Meals Tax

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

Other taxes

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

State and Local Shared Revenue

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

Department of Revenue Report

- http://www.dornc.com/publications/reimbursement.html

County/ Municipality	Beer and Wine Excise Tax ($)	Scrap Tire Disposal Tax ($)	Whitegoods Disposal Tax ($)	Electric Franchise/ Natural Gas Excise Tax ($)	Telecommunications Tax ($)	Video Programming Distribution ($)	Solid Waste Disposal Tax ($)
Alamance County	78,741.39	158,359.84	43,218.32	-	-	194,574.97	46,953.30
Alamance	526.31	-	-	22,132.41	6,025.00	278.94	256.66
Burlington	72,637.93	-	-	2,012,698.36	1,305,077.00	426,186.49	35,079.32
Elon	10,383.00	-	-	190,013.33	83,186.00	75,940.41	5,062.30
Graham	21,201.34	-	-	428,574.53	314,876.00	120,434.95	10,270.96
Green Level	3,499.78	-	-	39,737.19	18,071.00	10,463.13	1,704.39
Haw River	2,911.04	-	-	71,002.87	52,909.00	14,285.60	1,420.85
Mebane	14,050.07	-	-	357,341.33	159,909.00	60,773.60	6,726.61
Ossipee	672.43	-	-	11,044.00	5,153.00	2,015.45	-
Swepsonville	1,772.84	-	-	59,057.00	4,130.00	5,224.18	-
Alexander County	-	40,197.52	-	-	-	145,591.38	29,643.95
Taylorsville	2,755.54	-	-	88,153.67	80,372.00	38,903.10	1,347.72
Alleghany County	13,237.29	12,116.05	3,305.96	-	-	49,517.84	7,908.28
Sparta	2,558.71	-	-	218,550.40	33,195.00	9,972.46	1,245.39
Anson County	-	27,641.01	-	-	-	27,661.94	12,411.12

GUIDELINES FOR OCCUPANCY TAX LEGISLATION

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

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

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

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

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

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

a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies;
b. The nonfederal share of the cost required to construct these projects;
c. The costs associated with providing enhanced public beach access; and
d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.

- **Administration** – The net revenues must be administered by a local tourism promotion agency, typically referred to as a "Tourism Development Authority," that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ½ of the members must be currently active in the promotion of travel and tourism in the taxing district and 1/3 of the members must be affiliated with organizations that collect the tax.[2]
- **Costs of Collection** – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.
- **Conformity with Other Local Occupancy Taxes** – In 2008, the NCTTC formally revised its policy position with regard to occupancy taxes to include a statement that if a city seeks to impose a new occupancy tax or increase its existing tax on lodging facilities in a county that also has an existing occupancy tax, the county occupancy tax must conform to the guidelines in order for the Coalition to support the proposed municipal tax. During the 2009 Regular Session, the House Finance Chairs[3] considered the revised policy statement of the NCTTC but declined to amend the House Finance Committee's Guidelines for Occupancy Tax accordingly.

Research Division
NC General Assembly
Revised 2/14/11

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

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

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 2-16 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Micaela Thiery	Hendersonville	Apodaca
2		
3		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — Name of Committee

Feb. 16, 2011 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mark Hoyle	
David Baker	DOR
Bill Wilkes	DOR
Kent Dozier	Nash County Citizens Against Forced Annexation
Lonnie Lorbacher	Nash County Citizens Against Forced Annexation
Karl Knapp	NCLM
Linda Millsaps	NCDOR
Canaan Huie	NCDOR
Virginiaann Lifchez	Harrell & Assoc.
Piggie Potter	NCDS & NCPTA
Daniel Baum	Troutman Sanders

VISITOR REGISTRATION SHEET

Senate Finance Committee — Feb. 16, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Allison Waller	Charlotte Chamber
David McGowan	NC Realtors
Keith Richards	City of Charlotte
Fred Bonn	Bonn's Assoc.
Scott Dearmin	Nexus
Amy McConkey	NC Bev.
Sandy York	HANC

SENATE FINANCE COMMITTEE
Tuesday February 22, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on February 22, 2011, in Room 544 of the Legislative Office Building. Thirty-one members of the Committee were present. Senator Hartsell presided as chair. Cameron Chauvaux of Cary, Sarah Cooper of Swansboro, and David Torres of Raleigh served as pages.

Secretary of Commerce, Keith Crisco, was recognized by the Committee.

S.B. 76 – TC: Eligibility:Indus Facil/Fix Uwharrie Com.

This bill was removed from the agenda and placed on the February 23, 2011 Finance Committee agenda.

S.B. 32 – Hospital Medicaid Assessment/Payment Program

Senators Brunstetter and Clodfelter were recognized to explain the proposed committee substitute (PCS) and Senator Clodfelter moved to adopt the PCS for discussion. The motion carried. The PCS makes one substantive change to the bill, as requested by the sponsor: both assessments proposed by the bill would have an outpatient and inpatient component. The PCS also places the substance of the bill into Chapter 108A of the General Statutes. Senator Tillman moved for a favorable report and the motion carried. The PCS was referred to Appropriations Base Budget Committee. A copy of the PCS, the summary, and the fiscal memo is attached.

S.B. 8 – No Cap on Number of Charter Schools

Senator Stevens was recognized to explain the bill. Senator Stevens offered an amendment which would delete the portion of the bill that deals with local property taxes and moved to adopt the amendment. The motion carried. Senator Stein offered an amendment which transfers local school funds each fiscal year to charter schools based on the number of transferring students. The amendment was discussed and the motion failed. Senator McKissick offered an amendment regarding the funding of transportation for students to charter schools. The amendment was discussed and the motion failed. Senator Tillman moved for a favorable report as amended and the motion carried. A copy of the bill and all amendments are attached.

S.B. 27 – Involuntary Annexation Moratorium

Senator Brock was recognized to explain the bill, he reported to the Committee the reason why the bill was in Finance was to address any tax issue that may arise from the property being annexed or de-annexed. Senator Jenkins offered an amendment to change the date from "2012" to "2011". The amendment was discussed and the motion failed. Senator Clodfelter offered an amendment regarding municipality expenditures specific to Mecklenburg County. The amendment was discussed in Committee and the motion was adopted. Senator Hartsell moved for a favorable report and the motion carried. A copy of the PCS, the summary and the amendments is attached.

Motor Fuel and Highway Use Tax Presentation

Greg Roney, a staff attorney from the Research Division, was recognized by the Committee and provided an overview of the Highway Trust Fund. The revenue from the Highway Trust Fund is used to design and build public roads. The funding sources for this fund are the Motor Fuels Tax, Highway Use Tax, and Title & Registration Fees. In his presentation, he indicated that all states impose a Motor Fuels Tax and in North Carolina the revenue derived is distributed 75% to the Highway Fund and 25% to the Highway Trust Fund. He also provided a comparison of the surrounding states taxation of gasoline. A copy of his presentation is attached.

Other Local Revenue Sources Presentation

Heather Fennell, a staff attorney with the Research Division, provided the Committee with an overview of other local revenue sources. Some of the revenue sources are local sales taxes, local privilege license taxes, local occupancy taxes and local meal taxes. The general State rate of tax is 5.75%.

The meeting adjourned at 2:25 PM.

Sen. Fletcher Hartsell, Presiding Chair
Senate Finance Committee

Paul Rucho

Paul Rucho, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	February 22, 2011	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 8	No Cap on Number of Charter Schools.	Senator Stevens
SB 32	Hospital Medicaid Assessment/Payment Program.	Senator Clodfelter Senator Brunstetter
SB 76	TC: Eligibility: Indus Facil/Fix Uwharrie Com.	Senator Clary Senator Hartsell Senator Rucho

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: 02-21-2011

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AND
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SB 27	Involuntary Annexation Moratorium.	Senator Brock Senator Newton Senator Goolsby

SB 27 Involuntary Annexation Moratorium has been added

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, February 22, 2011

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

FAVORABLE, AS AMENDED

S.B. **8** No Cap on Number of Charter Schools.

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

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

S.B. **27** Involuntary Annexation Moratorium.

Draft Number:	35072
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **32** Hospital Medicaid Assessment/Payment Program.

Draft Number:	35067
Sequential Referral:	Appropriations/Base Budget
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

Senate Finance Committee
Tuesday, February 22, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 8	No Cap on Number of Charter Schools.	Sen. Stevens
SB 32	Hospital Medicaid Assessment/Payment Program.	Sen. Clodfelter Sen. Brunstetter
SB 76	TC: Eligibility: Indus Facil/Fix Uwharrie Com.	Sen. Clary Sen. Hartsell Sen. Rucho
SB 27	Involuntary Annexation Moratorium	Sen. Brock Sen, Newton Sen Goolsby

Presentations

Motor Fuel and Highway Use Taxes
Greg Roney, Research Division

Local Government Revenue Resources
Martha Walston, Fiscal Research Division
Heather Fennell, Research Division

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 2

SENATE BILL 8
Education/Higher Education Committee Substitute Adopted 2/16/11

Short Title: No Cap on Number of Charter Schools. (Public)

Sponsors:

Referred to:

January 31, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE EDUCATIONAL OPPORTUNITIES FOR THE CHILDREN OF NORTH CAROLINA BY REMOVING THE CAP ON CHARTER SCHOOLS; AND BY CREATING A NEW PUBLIC CHARTER SCHOOLS COMMISSION TO APPROVE AND MONITOR CHARTER SCHOOLS; AND BY STRENGTHENING THE STANDARDS FOR GRANTING AND RETAINING A CHARTER FOR A CHARTER SCHOOL; AND BY AUTHORIZING LOCAL BOARDS OF EDUCATION TO CONVERT SCHOOLS TO CHARTER SCHOOLS WITHOUT FORMING A NONPROFIT CORPORATION; AND BY CLARIFYING THE FUNDING FORMULA FOR CHARTER SCHOOLS; AND BY PROVIDING THAT COUNTIES MAY PROVIDE FUNDING FOR CHARTER SCHOOLS IN THEIR JURISDICTIONS; AND TO MAKE OTHER CHANGES TO THE STATUTES GOVERNING CHARTER SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Charter Schools Act of 2011."

SECTION 2. Part 6A of Article 16 of Chapter 115C of the General Statutes reads as rewritten:

"Part 6A. Charter Schools.

"§ 115C-238.29A. Purpose.

The purpose of this Part is to authorize a system of charter schools to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently of existing schools, as a method to ~~accomplish all of~~accomplish, in the aggregate, the following:

(1) Improve student ~~learning;~~learning.

(2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as at risk of academic failure or academically ~~gifted;~~gifted.

(3) Encourage the use of different and innovative teaching ~~methods;~~methods.

(4) Create new professional opportunities for teachers and administrators, including the opportunities to be responsible for the learning program at the school ~~site;~~site.

(5) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school ~~system;~~system.

(6) Hold the schools established under this Part accountable for meeting measurable student achievement results, and provide the schools with a

method to change from rule-based to performance-based accountability systems.

(7) Encourage the replication of successful charter schools.

"**§ 115C-238.29A1. North Carolina Public Charter Schools Commission established.**

(a) Creation. – There is created the North Carolina Public Charter Schools Commission, hereinafter referred to as the Commission. The Commission shall exercise its powers and functions independently of the State Board of Education and the Department of Public Instruction except as provided in this section.

(b) Purpose. – The purpose of the Commission is to authorize and oversee high-quality public charter schools throughout the State, consistent with the purposes of this Part, and to exercise authority for approval of any charter applicant.

(c) Membership. – The Commission shall consist of the following eleven members:

(1) Two members appointed by the Governor.

(2) Four members, one of whom shall be a teacher, administrator, or board member of a charter school or a parent of a child attending a charter school, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) Four members, one of whom shall be a teacher, administrator, or board member of a charter school or a parent of a child attending a charter school, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) The Superintendent of Public Instruction or the Superintendent's designee.

(d) Qualifications of Members. – Members appointed to the Commission shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, assessment, curriculum and instruction, public charter schools, and public education law. All appointed members of the Commission shall have demonstrated an understanding of and a commitment to charter schools as a strategy for strengthening public education.

(e) Terms of Office. – No appointed member shall serve more than seven consecutive years. The terms of office are as follows:

(1) The initial term of office for members appointed by the Governor shall be two years until June 30, 2013, and thereafter shall be three years.

(2) The initial term of office for the four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be three years until June 30, 2014, and thereafter shall be three years.

(3) The initial term of office for the four Commission members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be four years until June 30, 2015, and thereafter shall be three years.

(f) Officers. – The Commission shall elect a chair and a vice-chair from among its membership. In the absence of the chair, the vice-chair shall preside over the Commission's meetings. All members are voting members, and a majority of the Commission constitutes a quorum. The Commission shall adopt rules to govern its proceedings.

(g) Meetings. – Meetings of the Commission shall be held upon the call of the chair or the vice-chair with the approval of the chair.

(h) Expenses. – Members of the Commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).

(i) Removal. – Any member of the Commission, other than the Superintendent of Public Instruction, may be removed by a vote of at least two-thirds of members at any duly held meeting, for any cause that renders the member incapable or unfit to discharge the duties of the

office. Whenever a vacancy on the Commission exists, the original appointing authority shall appoint or elect a member for the remaining portion of the term.

(j) Staff. – The State Board of Education shall assign the Office of Charter Schools as staff to the Commission.

(k) Powers and Duties. – The Commission shall have the following duties:

(1) To provide technical assistance, through the Office of Charter Schools and the Department of Public Instruction, to charter school applicants and to charter schools that are approved under this Part.

(2) To adopt policies regarding all aspects of charter school operation, including time lines, standards, and criteria for acceptance and approval of applications, monitoring of charter schools, and grounds for revocation of charters.

(3) To oversee the process for accepting and approving applications for charters and to make final approval of charter applications.

(4) To oversee the process for monitoring the operation of charter schools, with the assistance and counsel of staff from the Department of Public Instruction.

(5) To take any actions regarding a charter school, including renewals of charters, nonrenewals of charters, and revocation of charters.

(6) To undertake any duties and responsibilities consistent with the above powers and duties and incident thereto.

(l) The State Board shall have the authority to veto any decision of the Commission by a three-fourths vote.

"§ 115C-238.29B. Eligible applicants; contents of applications; submission of applications for approval.

(a) Any person, group of persons, or nonprofit corporation seeking to establish a charter school may apply to establish a charter school. If ~~the~~ any applicant other than a local board of education seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion.

(b) The application shall include an executive summary and shall contain at least the following information:

(1) A description of a program that aligns with State standards and implements one or more of the purposes in G.S. 115C-238.29A.

(1a) The targeted student population and the community the school hopes to serve, as well as evidence of need and community support for the proposed charter school.

(2) A description of student achievement goals for the school's educational program and the method of demonstrating that students have attained the skills and knowledge specified for those student achievement goals.

(2a) A description of the school's instructional design, including the type of learning environment, such as classroom-based or independent study, class size and structure, curriculum overview, and teaching methods.

(2b) The school's plans for identifying and successfully serving students with disabilities, students who are English language learners, academically at-risk students, and academically gifted students, including, but not limited to, compliance with applicable laws and regulations.

(3) The governance structure of the ~~school~~ school, including proposed governing bylaws and the names and biographical information of the proposed initial members of the board of directors of the nonprofit, tax-exempt ~~corporation~~

corporation. ~~and the process to be followed by the school to ensure parental involvement.~~ A local board of education seeking to convert a school to a charter school shall not be required to form a nonprofit, tax-exempt corporation if the local board of education serves as the board of directors of the charter school.

(3a) The local school administrative unit in which the school will be located.

(4) Admission policies and procedures.

(5) A proposed budget for the school for at least the first five years of operation and evidence that the financial plan for the school is economically sound.

(6) Requirements and procedures for program and financial audits.

(7) A description of how the school will comply with G.S. 115C-238.29F.

(8) Types and amounts of insurance coverage, including bonding insurance for the principal officers of the school, to be obtained by the charter school.

(9) The term of the charter.

(10) The qualifications required for individuals employed by the school.

(11) The procedures by which students can be excluded from the charter school and returned to a public school. Notwithstanding any law to the contrary, any local board may refuse to admit any student who is suspended or expelled from a charter school due to actions that would lead to suspension or expulsion from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(12) ~~The number of students to be served, which number shall be at least 65,~~ The number of students to be served, including the grades to be served each year for the full term of the charter, and the minimum, planned, and maximum enrollment per grade per year for the term of the charter.~~and the minimum number of teachers to be employed at the school, which number shall be at least three. However, the charter school may serve fewer than 65 students or employ fewer than three teachers if the application contains a compelling reason, such as the school would serve a geographically remote and small student population.~~

(12a) The minimum number of teachers to be employed at the school.

(12b) An organization chart that clearly presents the school's organizational structure, including lines of authority and reporting between the governing board, staff, any related bodies, such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school.

(13) Information regarding the facilities to be used by the school and the manner in which administrative services of the school are to be provided.

(14) Repealed by Session Laws 1997-430, s. 1.

(15) The process to be followed by the school to ensure parental involvement.

(16) The school's plans, if any, for providing transportation or food services.

(17) Explanations of any partnerships or contractual relationships central to the school's operations or mission.

(18) A detailed school start-up plan, identifying tasks, time lines, and responsible individuals.

(c) ~~,~~ An applicant shall submit the application to the Commission, which shall have the authority to approve the charter school in accordance with the standards and criteria set forth in this Part. ~~a chartering entity for preliminary approval. A chartering entity may be:~~

~~(1) The local board of education of the local school administrative unit in which the charter school will be located;~~

~~(2) The board of trustees of a constituent institution of The University of North Carolina, so long as the constituent institution is involved in the planning, operation, or evaluation of the charter school; or~~

~~(3) The State Board of Education.~~

~~Regardless of which chartering entity receives the application for preliminary approval, the State Board of Education shall have final approval of the charter school.~~

~~Notwithstanding the provisions of this subsection, if the State Board of Education finds that an applicant (i) submitted an application to a local board of education and received final approval from the State Board of Education, but (ii) is unable to find a suitable location within that local school administrative unit to operate, the State Board of Education may authorize the charter school to operate within an adjacent local school administrative unit for one year only. The charter school cannot operate for more than one year unless it reapplies, in accordance with subdivision (1), (2), or (3) of this subsection, and receives final approval from the State Board of Education.~~

(d) ~~Unless an applicant submits its application under subsection (c) of this section to the local board of education of the local school administrative unit in which the charter school will be located, the~~The applicant shall submit a copy of its application to ~~that local board~~the local board of education of the local school administrative unit in which the charter school will be located within seven days of its submission under subsection (c) of this section. The local board may offer any information or comment concerning the application it considers appropriate to the ~~chartering entity.~~Commission within a time period to be determined by the Commission and imposed uniformly for all applications. ~~The local board shall deliver this information to the chartering entity no later than January 1 of the next calendar year.~~ The applicant shall not be required to obtain or deliver this information to the ~~chartering entity~~Commission on behalf of the local board. The ~~State Board~~Commission shall consider any information or comment it receives from a local board and shall consider the impact on the local school administrative unit's ability to provide a sound basic education to its students when determining whether to grant ~~preliminary and final~~ final approval of the charter school.

"§ 115C-238.29C. ~~Preliminary approval of~~Completeness determination for applications for charter schools.

(a) The ~~chartering entity that receives a request for preliminary approval of a charter school shall act on each request received prior to November 1 of a calendar year by February 1 of the next calendar year.~~Commission shall determine the schedule and deadlines for the submission of charter school applications.

(b) The ~~chartering entity~~Commission shall ~~give preliminary approval to the application~~ issue a determination that the application is complete if the ~~chartering entity~~Commission determines that ~~(i)~~the information contained in the application meets the requirements set out in this Part or adopted by the ~~State Board of Education,~~Commission. ~~(ii) the applicant has the ability to operate the school and would be likely to operate the school in an educationally and economically sound manner, and (iii) granting the application would improve student learning and would achieve one of the other purposes set out in G.S. 115C-238.29A. In reviewing applications for the establishment of charter schools within a local school administrative unit, the chartering entity is encouraged to give preference to applications that demonstrate the capability to provide comprehensive learning experiences to students identified by the applicants as at risk of academic failure. If the chartering entity approves more than one application for charter schools located in a local school administrative unit, the chartering entity may state its order of preference among the applications that it approves.~~

~~(c) If a chartering entity other than the State Board disapproves an application, the applicant may appeal to the State Board of Education prior to February 15. The State Board shall consider the appeal at the same time it is considering final approval in accordance with G.S. 115C-238.29D. The State Board shall give preliminary approval of the application if it~~

~~finds that the chartering entity acted in an arbitrary or capricious manner in disapproving the application, failed to consider appropriately the application, or failed to act within the time set out in G.S. 115C-238.29C.~~

~~If the chartering entity, the State Board of Education, or both, disapprove an application, the applicant may modify the application and reapply subject to the application deadline contained in subsection (a) of this section.~~

"§ 115C-238.29D. Final approval of applications for charter schools.

(a) The ~~State Board shall~~Commission may grant final approval of an application if it ~~finds that~~ determines that the application meets the requirements set out in this Part or adopted by the ~~State Board of Education~~ Commission and that granting the application would achieve one or more of the purposes set out in G.S. 115C-238.29A.

The ~~State Board~~Commission shall ~~act by March 15 of a calendar year on all applications and appeals it receives prior to February 15 of that calendar year.~~establish a time line to take final action on applications declared complete under G.S. 115C-238.29C and shall make this information available to applicants. The Commission's decision shall be based on the evidence contained in the application or collected by the Commission following a procedure for application review that is uniform across all applicants and provides opportunities for applicants to respond to questions and requests for further information.

~~(b) The State Board shall authorize no more than five charter schools per year in one local school administrative unit. The State Board shall authorize no more than 100 charter schools statewide. If more than five charter schools in one local school administrative unit or more than 100 schools statewide meet the standards for final approval, the State Board shall give priority to applications that are most likely to further State education policies and to strengthen the educational program offered in the local school administrative units in which they are located.~~

(b1) If the Commission disapproves an application, it shall provide the applicant with the opportunity to request reconsideration of the Commission's decision. However, the Commission shall not be required to consider any request for reconsideration from an applicant that fails to include additional information not previously presented by the applicant to the Commission.

(b2) A decision to disapprove an application is exempt from review pursuant to Chapter 150B of the General Statutes.

(c) The ~~State Board of Education~~Commission may authorize a school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. The State Board shall not allocate any funds to the school until the school has obtained space.

(d) The ~~State Board of Education~~Commission may grant the initial charter for a period not to exceed 10 years and may renew the charter upon the request of the chartering entity for subsequent periods not to exceed 10 years each. The Commission may include in the charter any standards or requirements it determines are necessary to fulfill the purposes of this Part as well as any other objectives set forth by the charter school applicant. The ~~State Board of Education~~Commission shall review the operations of each charter school at least once every five years to ensure that the school is meeting the expected academic, financial, and governance standards.

A material revision of the provisions of a charter application shall be made only upon the approval of the ~~State Board of Education.~~Commission.

~~It shall not be considered a material revision of a charter application and shall not require the prior approval of the State Board for a charter school to increase its enrollment during the charter school's second year of operation and annually thereafter (i) by up to ten percent (10%) of the school's previous year's enrollment or (ii) in accordance with planned growth as authorized in the charter. Other enrollment growth shall be considered a material revision of the~~

~~charter application, and the State Board may approve such additional enrollment growth of greater than ten percent (10%) only if the State Board finds that:~~

~~(1) The actual enrollment of the charter school is within ten percent (10%) of its maximum authorized enrollment;~~

~~(2) The charter school has commitments for ninety percent (90%) of the requested maximum growth;~~

~~(3) The board of education of the local school administrative unit in which the charter school is located has had an opportunity to be heard by the State Board of Education on any adverse impact the proposed growth would have on the unit's ability to provide a sound basic education to its students;~~

~~(4) The charter school is not currently identified as low-performing;~~

~~(5) The charter school meets generally accepted standards of fiscal management; and~~

~~(6) It is otherwise appropriate to approve the enrollment growth.~~

(e) The Commission shall not restrict the number of students a charter school may enroll. The capacity of the charter school shall be determined annually by the board of directors of the charter school in conjunction with the Commission and in consideration of the charter school's ability to facilitate the academic success of its students, to achieve the other objectives specified in the charter, and to ensure that its student enrollment does not exceed the capacity of its facility or site.

"§ 115C-238.29E. Charter school operation.

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is ~~located. It shall be accountable to the local board of education if it applied for and received preliminary approval from that local board for purposes of ensuring compliance with applicable laws and the provisions of its charter. All other charter schools~~located, and shall be accountable to the ~~State Board~~Commission for ensuring compliance with applicable laws and the provisions of their ~~charters, except that any of these charter schools may agree to be accountable to the local board of the school administrative unit in which the charter school is located rather than to the State Board.~~charters.

(b) A charter school shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the application. A local board of education approved to convert a school to a charter school shall not be required to form a nonprofit, tax-exempt corporation if the local board of education serves as the board of directors of the charter school.

(c) A charter school shall operate under the written charter signed by the Commission ~~entity to which it is accountable under subsection (a) of this section~~ and the applicant. A charter school is not required to enter into any other contract. The charter shall incorporate the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the ~~State Board of Education~~Commission. No other terms may be imposed on the charter school as a condition for receipt of local funds.

(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

(e) A charter school's specific location shall not be prescribed or limited by a local board or other authority except a zoning authority. The school may lease space from a local board of education or as is otherwise lawful in the local school administrative unit in which the charter school is located. If a charter school leases space from a sectarian organization, the charter school classes and students shall be physically separated from any parochial students, and there shall be no religious artifacts, symbols, iconography, or materials on display in the charter school's entrance, classrooms, or hallways. Furthermore, if a charter school leases space

from a sectarian organization, the charter school shall not use the name of that organization in the name of the charter school.

At the request of the charter school, the local board of education of the local school administrative unit in which the charter school will be located shall lease any available building or land to the charter school unless the board demonstrates that the lease is not economically or practically feasible or that the local board does not have adequate classroom space to meet its enrollment needs. Notwithstanding any other law, a local board of education may provide a school facility to a charter school free of charge; however, the charter school is responsible for the maintenance of and insurance for the school facility.

(f) Except as provided in this Part and pursuant to the provisions of its charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit.

"§ 115C-238.29F. General requirements.

(a) Health and Safety Standards. – A charter school shall meet the same health and safety requirements required of a local school administrative unit. The Department of Public Instruction shall ensure that charter schools provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Department of Public Instruction shall also ensure that charter schools provide parents and guardians with information about cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. This information shall be provided at the beginning of the school year to parents of children entering grades five ~~though~~ through 12. This information shall include the causes and symptoms of these diseases, how they are transmitted, how they may be prevented by vaccination, including the benefits and possible side effects of vaccination, and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Department of Public Instruction shall also ensure that charter schools provide students in grades nine through 12 with information annually on the manner in which a parent may lawfully abandon a newborn baby with a responsible person, in accordance with G.S. 7B-500.

The Department of Public Instruction shall also ensure that the guidelines for individual diabetes care plans adopted by the State Board of Education under G.S. 115C-12(31) are implemented in charter schools in which students with diabetes are enrolled and that charter schools otherwise comply with the provisions of G.S. 115C-375.3.

(b) School Nonsectarian. – A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition or fees. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution.

(c) Civil Liability and Insurance. –

(1) The board of directors of a charter school may sue and be sued. The ~~State Board of Education~~ Commission shall adopt rules to establish reasonable amounts and types of liability insurance that the board of directors shall be required by the charter to obtain. The board of directors shall obtain at least the amount of and types of insurance required by these rules to be included in the charter. Any sovereign immunity of the charter school, of the organization that operates the charter school, or its members, officers, or directors, or of the employees of the charter school or the organization that operates the charter school, is waived to the extent of indemnification by insurance.

(2) No civil liability shall attach to any chartering entity, to the State Board of Education, the Commission, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school.

(d) Instructional Program. –

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the charter.

(3) A charter school shall conduct the student assessments required for charter schools by the ~~State Board of Education.~~Commission.

(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with disabilities.

(5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General Statutes, except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its charter.

(e) Employees. –

(1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is ~~located.~~ located, except for employees of charter schools converted by a local board of education where a nonprofit, tax-exempt corporation was not required to be formed because the local board of education serves as the board of directors of the charter school. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. All teachers in grades six through 12 who are teaching in the core subject areas of mathematics, science, social studies, and language arts shall be college graduates.

The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.

(2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.

(3) If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at a charter school, the local school administrative unit shall grant the leave for one year. For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has career status under G.S. 115C-325 prior to receiving a leave of

absence to teach at a charter school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

(3a) A teacher employed by a charter school who returns to employment with a local school administrative unit without a break in service shall have unused sick leave and annual leave from previous employment with a local school administrative unit reinstated. A teacher employed by a charter school who returns to employment with a local school administrative unit without a break in service shall be credited for the years of service at the charter school for the purposes of the salary schedule, longevity pay, and rate of earned leave.

(4) The employees of the charter school shall be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the State Health Plan for Teachers and State Employees. The State Board of Education provides funds to charter schools, and the Commission approves the original members of the boards of directors of the charter schools, has the authority to grant, supervise, and revoke charters, and demands full accountability from charter schools for school finances and student performance. Accordingly, it is the determination of the General Assembly that charter schools are public schools and that the employees of charter schools are public school employees. Employees of a charter school whose board of directors elects to become a participating employer under G.S. 135-5.3 are "teachers" for the purpose of membership in the North Carolina Teachers' and State Employees' Retirement System. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System.

(f) Accountability. –

(1) The school is subject to the financial audits, the audit procedures, and the audit requirements adopted by the ~~State Board of Education~~ Commission for charter schools. These audit requirements may include the requirements of the School Budget and Fiscal Control Act.

(2) The school shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting ~~System.~~ System, except that reports shall be made to the Commission as well as the State Board of Education.

(3) The school shall report at least annually to the ~~chartering entity~~Commission and the State Board of Education the information required by the ~~chartering entity~~Commission or the State Board.

(g) Admission Requirements. –

(1) Any child who is qualified under the laws of this State for admission to a public school is qualified for admission to a charter school. Any charter school that is unable to fill its current enrollment with students qualified under the laws of this State for admission to a public school may enroll persons of school age who are not domiciliaries of the State and charge those

students a tuition amount equal to the per pupil allocation of the local appropriation for the county in which the charter school is located and the per pupil State appropriation for that school year. The number of persons of school age who are not domiciliaries of the State who are enrolled in a charter school may not exceed ten percent (10%) of the total number of students enrolled in the charter school.

(2) No local board of education shall require any student enrolled in the local school administrative unit to attend a charter school.

(3) Admission to a charter school shall not be determined according to the school attendance area in which a student resides, except that any ~~local school administrative unit in which a public school converts to a charter school shall give admission preference to students who reside within the former attendance area of that school.~~ public school converting to a charter school shall adopt a policy giving enrollment preference to students who reside within the former attendance area of that public school for at least the first two years of operation of the charter school.

(4) Admission to a charter school shall not be determined according to the local school administrative unit in which a student resides.

(5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. The charter school may give enrollment priority to siblings of currently enrolled students who were admitted to the charter school in a previous year and to children of the school's principal, teachers, and teacher assistants. In addition, and only for its first year of operation, the charter school may give enrollment priority to children of the initial members of the charter school's board of directors, so long as (i) these children are limited to no more than ten percent (10%) of the school's total enrollment or to 20 students, whichever is less, and (ii) the charter school is not a former public or private school. If multiple birth siblings apply for admission to a charter school and a lottery is needed under G.S. 115C-238.29F(g)(6), the charter school shall enter one surname into the lottery to represent all of the multiple birth siblings. If that surname of the multiple birth siblings is selected, then all of the multiple birth siblings shall be admitted. Within one year after the charter school begins operation, the population of the school shall reasonably reflect the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit.

(6) During each period of enrollment, the charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, students shall be accepted by lot. Once enrolled, students are not required to reapply in subsequent enrollment periods.

(7) Notwithstanding any law to the contrary, a charter school may refuse admission to any student who has been expelled or suspended from a public

school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(8) Nothing in this subsection shall be interpreted to preclude the formation of a charter school whose mission is focused on serving students with disabilities, students of the same gender, students who pose such severe disciplinary problems that they warrant a specific educational program, academically at-risk students, or academically gifted students.

(h) Transportation. – The charter school may provide transportation for students enrolled at the school. The charter school shall develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located. ~~The charter school is not required to provide transportation to any student who lives within one and one-half miles of the school.~~ At the request of the charter school and if the local board of the local school administrative unit in which the charter school is located operates a school bus system, then that local board may contract with the charter school to provide transportation in accordance with the charter school's transportation plan to students who reside in the local school administrative unit and who reside at least one and one-half miles ~~of~~ from the charter school. A local board may charge the charter school a reasonable charge that is sufficient to cover the cost of providing this transportation. Furthermore, a local board may refuse to provide transportation under this subsection if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible to provide this transportation. No requirement of this subsection shall be interpreted to require a charter school to provide busing or any other mode of transportation to any particular student.

(i) Assets. – Upon dissolution of the charter school or upon the nonrenewal of the charter, ~~all net~~ the assets of the charter school purchased with public funds shall be distributed to satisfy the creditors of the charter school. Any surplus that remains after the charter school's creditors are satisfied shall then be deemed the property of the local school administrative unit in which the charter school is located.

(j) Driving Eligibility Certificates. – In accordance with rules adopted by the State Board of Education, the designee of the school's board of directors shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions.

(k) The Display of the United States and North Carolina Flags and the Recitation of the Pledge of Allegiance. – A charter school shall (i) display the United States and North Carolina flags in each classroom when available, (ii) require the recitation of the Pledge of Allegiance on a daily basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. A charter school shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom.

"§ 115C-238.29G. Causes for nonrenewal or termination; disputes.

(a) The ~~State Board of Education, or a chartering entity subject to the approval of the State Board of Education,~~ Commission may terminate or not renew a charter upon any of the following grounds:

(1) Failure to meet the requirements for student performance contained in the charter;

(2) Failure to meet generally accepted standards of fiscal management;

(3) Violations of law;
(4) Material violation of any of the conditions, standards, or procedures set forth in the charter;
(5) Two-thirds of the faculty and instructional support personnel at the school request that the charter be terminated or not renewed; or
(6) Other good cause identified.

(b) The ~~State Board of Education~~Commission shall develop and implement a process to address contractual and other grievances between a charter school and ~~its chartering entity~~the Commission or the local board of education during the time of its charter.

(c) The ~~State Board~~Commission and the charter school are encouraged to make a good-faith attempt to resolve the differences that may arise between them. They may agree to jointly select a mediator. The mediator shall act as a neutral facilitator of disclosures of factual information, statements of positions and contentions, and efforts to negotiate an agreement settling the differences. The mediator shall, at the request of either the ~~State Board~~Commission or a charter school, commence a mediation immediately or within a reasonable period of time. The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A of the General Statutes governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement.

Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation proceedings shall be conducted in private. Evidence of statements made and conduct occurring in a mediation are not subject to discovery and are inadmissible in any court action. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. The mediator shall not be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation in any civil proceeding for any purpose, except disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators. The mediator may determine that an impasse exists and discontinue the mediation at any time. The mediator shall not make any recommendations or public statement of findings or conclusions. The ~~State Board~~Commission and the charter school shall share equally the mediator's compensation and expenses. The mediator's compensation shall be determined according to rules adopted under Chapter 7A of the General Statutes.

(d) A decision to terminate or not renew a charter is exempt from review pursuant to Chapter 150B of the General Statutes."

"§ 115C-238.29H. State and local funds for a charter school.

(a) The State Board of Education shall allocate to each charter school:
(1) An amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school except for the allocation for children with disabilities and for the allocation for children with limited English proficiency;
(2) An additional amount for each child attending the charter school who is a child with disabilities; and
(3) An additional amount for children with limited English proficiency attending the charter school, based on a formula adopted by the State Board.

In accordance with G.S. ~~115C-238.29D(d),~~115C-238.29D(e), the State Board shall allow for annual adjustments to the amount allocated to a charter school based on its enrollment growth in school years subsequent to the initial year of operation.

In the event a child with disabilities leaves the charter school and enrolls in a public school during the first 60 school days in the school year, the charter school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with disabilities enrolls in a charter school during the first 60 school days in the

school year, the State Board shall allocate to the charter school the pro rata amount of additional funds for children with disabilities.

(a1) Funds allocated by the State Board of Education may be used to enter into operational and financing leases for real property or mobile classroom units for use as school facilities for charter schools and may be used for payments on loans made to charter schools for facilities or equipment. Funds allocated by the State Board of Education may also be used to acquire equipment, real property, buildings, and mobile classroom units for use as school facilities for charter schools, and to enter into operational and financing leases for equipment. ~~However, State funds shall not be used to obtain any other interest in real property or mobile classroom units.~~ No indebtedness of any kind incurred or created by the charter school shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions. Every contract or lease into which a charter school enters shall include the previous sentence. The school also may own land and buildings it obtains through non-State sources.

(b) If a student attends a charter school, the local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year. The amount transferred under this subsection that consists of revenue derived from supplemental taxes shall be transferred only to a charter school for students residing within ~~located in~~ the tax district for which these taxes are ~~levied and in which the student resides.~~ levied. The local school administrative unit shall provide a detailed accounting of the funds to be transferred and transfer these funds based on a preliminary projection of charter school enrollment provided to the local school administrative unit by the charter school no later than 15 days after the local school administrative unit receives its local current expense appropriation. Adjustments to this amount shall be made within 30 days of the State Board of Education determining and certifying to the charter school its average daily membership for the school year. If the local school administrative unit fails to comply with the deadlines set forth in this subsection, it shall pay a penalty of one percent (1%) of the amount transferred to the charter school.

(c) Counties may provide funds to the nonprofit tax-exempt corporation that holds the charter of a charter school by direct appropriation as set forth in G.S. 153A-457. These funds shall be used only for the following purposes:

(1) The acquisition of real property for school purposes, including, but not limited to, school sites, playgrounds, and athletic fields.

(2) The acquisition, construction, reconstruction, enlargement, renovation, or replacement of buildings and other structures, including, but not limited to, buildings for classrooms and laboratories, physical and vocational educational purposes, libraries, auditoriums, and gymnasiums.

(3) The acquisition or replacement of furniture and furnishings, instructional apparatus, and similar items of furnishings and equipment.

~~"§ 115C-238.29I. Notice of the charter school process; review of charter schools; Charter School Advisory Committee.~~

~~(a) The State Board of Education shall distribute information announcing the availability of the charter school process described in this Part to each local school administrative unit and public postsecondary educational institution and, through press releases, to each major newspaper in the State.~~

~~(b) Repealed by Session Laws 1997-18, s. 15(i).~~

~~(c) The State Board of Education shall review and evaluate the educational effectiveness of the charter school approach authorized under this Part and the effect of charter schools on the public schools in the local school administrative unit in which the charter schools are located. The Board shall report no later than January 1, 2002, to the Joint~~

~~Legislative Education Oversight Committee with recommendations to modify, expand, or terminate that approach. The Board shall base its recommendations predominantly on the following information:~~

~~(1) The current and projected impact of charter schools on the delivery of services by the public schools.~~

~~(2) Student academic progress in the charter schools as measured, where available, against the academic year immediately preceding the first academic year of the charter schools' operation.~~

~~(3) Best practices resulting from charter school operations.~~

~~(4) Other information the State Board considers appropriate.~~

~~(d) The State Board of Education may establish a Charter School Advisory Committee to assist with the implementation of this Part. The Charter School Advisory Committee may (i) provide technical assistance to chartering entities or to potential applicants, (ii) review applications for preliminary approval, (iii) make recommendations as to whether the State Board should approve applications for charter schools, (iv) make recommendations as to whether the State Board should terminate or not renew a charter, (v) make recommendations concerning grievances between a charter school and its chartering entity, the State Board, or a local board, (vi) assist with the review under subsection (c) of this section, and (vii) provide any other assistance as may be required by the State Board.~~

~~(e) Notwithstanding the dates set forth in this Part, the State Board of Education may establish an alternative time line for the submission of applications, preliminary approvals, criminal record checks, appeals, and final approvals so long as the Board grants final approval by March 15 of each calendar year.~~

"§ 115C-238.29J. Public and private assistance to charter schools.

(a) Local boards of education are authorized and encouraged to provide administrative and evaluative support to charter schools located within their local school administrative units.

(b) Private persons and organizations are encouraged to provide funding and other assistance to the establishment or operation of charter schools.

(c) The State Board of Education shall direct the Department of Public Instruction to provide guidance and technical assistance, upon request, to existing charter schools as well as applicants ~~and~~ or potential applicants for charters.

(d) The State Board of Education shall direct the Department of Public Instruction to notify the Department of Revenue when the ~~State Board of Education~~Commission terminates, fails to renew, or grants a charter for a charter school.

"§ 115C-238.29K. Criminal history checks.

(a) As used in this section:

(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses

Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "School personnel" means any:

a. Member of the board of directors of a charter school,

b. Employee of a charter school, or

c. Independent contractor or employee of an independent contractor of a charter school if the independent contractor carries out duties customarily performed by school personnel,

whether paid with federal, State, local, or other funds, who has significant access to students or who has responsibility for the fiscal management of a charter school.

(b) The ~~State Board of Education~~Commission shall adopt a policy on whether and under what circumstances school personnel shall be required to be checked for a criminal history. ~~The policy shall not require school personnel to be checked for a criminal history check before preliminary approval is granted under G.S. 115C-238.29B.~~ The ~~Board~~ Commission shall apply its policy uniformly in requiring school personnel to be checked for a criminal history. The ~~Board~~ Commission may grant conditional approval of an application while the ~~Board~~ Commission is checking a person's criminal history and making a decision based on the results of the check.

The ~~State Board~~Commission shall not require members of boards of directors of charter schools or employees of charter schools to pay for the criminal history check authorized under this section.

(c) The ~~Board of Education~~Commission shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the ~~State Board,~~Commission, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The ~~State Board~~ Commission shall consider refusal to consent when deciding whether to grant final approval of an application under G.S. 115C-238.29D and when making an employment recommendation. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Justice shall provide to the ~~State Board of Education~~Commission the criminal history from the State and National Repositories of Criminal Histories of any school personnel for which the ~~Board~~ Commission requires a criminal history check.

The ~~State Board~~Commission shall not require members of boards of directors of charter schools or employees of charter schools to pay for the fingerprints authorized under this section.

(d) The ~~State Board~~Commission shall review the criminal history it receives on an individual. The ~~State Board~~Commission shall determine whether the results of the review

indicate that the individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel and shall use the information when deciding whether to grant final approval of an application for a charter school under G.S. 115C-238.29D and for making an employment recommendation to the board of directors of a charter school. The ~~State Board~~Commission shall make written findings with regard to how it used the information when deciding whether to grant final approval under G.S. 115C-238.29D and when making an employment recommendation.

(e) The ~~State Board~~Commission shall notify in writing the board of directors of the charter school of the determination by the ~~State Board~~Commission as to whether the school personnel is qualified to operate or be employed by a charter school based on the school personnel's criminal history. At the same time, the ~~State Board~~Commission shall provide to the charter school's board of directors the written findings the ~~Board~~ Commission makes in subsection (d) of this section and its employment recommendation. If the ~~State Board~~Commission recommends dismissal or nonemployment of any person, the board of directors of the charter school shall dismiss or refuse to employ that person. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the ~~State Board~~Commission shall not release nor disclose any portion of the school personnel's criminal history to the charter school's board of directors or employees. The ~~State Board~~Commission also shall notify the school personnel of the procedure for completing or challenging the accuracy of the criminal history and the personnel's right to contest the ~~State Board's~~Commission's determination in court.

(f) All the information received by the ~~State Board of Education~~Commission or the charter school in accordance with subsection (e) of this section through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the ~~State Board of Education~~Commission or the board of directors of the charter school. The ~~State Board of Education~~Commission or the board of directors of the charter school may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of the ~~State Board of Education~~Commission or the board of directors of the charter school, or their employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 3. G.S. 105-278.4 reads as rewritten:

"**§ 105-278.4. Real and personal property used for educational purposes.**

(a) Buildings. – Buildings, the land they actually occupy, and additional land reasonably necessary for the convenient use of any such building shall be exempted from taxation if all of the following requirements are met:

(1) Owned by either of the following:
   a. An educational institution; or
   b. A nonprofit entity for the sole benefit of a constituent or affiliated institution of The University of North Carolina, an institution as defined in G.S. 116-22, a North Carolina community college, or a combination of these;

(2) The owner is not organized or operated for profit and no officer, shareholder, member, or employee of the owner or any other person is entitled to receive

pecuniary profit from the owner's operations except reasonable compensation for services;

(3) Of a kind commonly employed in the performance of those activities naturally and properly incident to the operation of an educational institution such as the owner; and

(4) Wholly and exclusively used for nonprofit educational purposes by ~~the owner or occupied gratuitously by another nonprofit educational institution and wholly and exclusively used by the occupant for nonprofit educational purposes.~~any of the following:

a. The owner.

b. A nonprofit educational institution occupying the building gratuitously.

c. A charter school, whether or not the charter school is the owner.

...."

SECTION 4. G.S. 114-19.2 reads as rewritten:

"**§ 114-19.2. Criminal record checks of school personnel.**

(a) The Department of Justice may provide a criminal record check to the local board of education of a person who is employed in a public school in that local school district or of a person who has applied for employment in a public school in that local school district, if the employee or applicant consents to the record check. The Department may also provide a criminal record check of school personnel as defined in G.S. 115C-332 by fingerprint card to the local board of education from National Repositories of Criminal Histories, in accordance with G.S. 115C-332. The information shall be kept confidential by the local board of education as provided in Article 21A of Chapter 115C of the General Statutes.

(a1) The Department of Justice may provide a criminal history record check to the North Carolina Public Charter Schools Commission of a person who is employed at a charter school or of a person who has applied for employment at a charter school, if the employee or applicant consents to the record check. The Department may also provide a criminal history record check of school personnel as defined in G.S. 115C-238.29K by fingerprint card to the North Carolina Public Charter Schools Commission from National Repositories of Criminal Histories, in accordance with G.S. 115C-238.29K. The information shall be kept confidential by the North Carolina Public Charter Schools Commission as provided in G.S. 115C-238.29K.

(b) The Department of Justice may provide a criminal record check to the employer of a person who is employed in a nonpublic school or of a person who has applied for employment in a nonpublic school, if the employee or applicant consents to the record check. For purposes of this subsection, the term nonpublic school is one that is subject to the provisions of Article 39 of Chapter 115C of the General Statutes, but does not include a home school as defined in that Article.

(c) The Department of Justice shall charge a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(c1) The Department of Justice may provide a criminal record check to the schools within the Department of Health and Human Services of a person who is employed, applies for employment, or applies to be selected as a volunteer, if the employee or applicant consents to the record check. The Department of Health and Human Services shall keep all information pursuant to this subsection confidential, as provided in Article 7 of Chapter 126 of the General Statutes.

(d) The Department of Justice shall adopt rules to implement this section."

SECTION 5. G.S. 115C-105.37B(a)(2) reads as rewritten:

"(a) Notwithstanding any other provision of this Article, the State Board of Education is authorized to approve a local board of education's request to reform any school in its

administrative unit which the State Board of Education has identified as one of the continually low-performing schools in North Carolina.

If the State Board of Education approves a local board of education's request to reform a school, the State Board of Education may authorize the local board of education to adopt one of the following models in accordance with State Board of Education requirements:

...

(2) Restart model, in which the State Board of Education would authorize the local board of education to operate the school with the same exemptions from statutes and rules as a charter school authorized under Part 6A of Article 16 of this Chapter, or under the management of an educational management organization that has been selected through a rigorous review process. A school operated under this subdivision remains under the control of the local board of education, and employees assigned to the school are employees of the local school administrative unit with the protections provided by G.S. 115C-325. ~~This subdivision shall not be interpreted to increase the maximum number of charter schools provided in G.S. 115C-238.29D(b). No school authorized under this subsection shall count against the limit provided for charter schools in G.S. 115C-238.29D(b).~~"

SECTION 6. G.S. 115C-426 reads as rewritten:

"**§ 115C-426. Uniform budget format.**

...

(c) The uniform budget format shall require the following funds:

(1) The State Public School Fund.

(2) The local current expense fund.

(3) The capital outlay fund.

In addition, other funds may be used ~~to account for reimbursements, including indirect costs, fees for actual costs, tuition, sales tax revenues distributed using the ad valorem method pursuant to G.S. 105-472(b)(2), sales tax refunds, gifts and grants restricted as to use,~~ only if necessary to comply with a requirement imposed by the donor or grantor that the school system separately account for trust funds, ~~federal appropriations made directly to local school administrative units, funds received for prekindergarten programs,~~ and federal grants restricted as to use. ~~and special programs. In addition, the appropriation or use of fund balance or interest income by a local school administrative unit shall not be construed as a local current expense appropriation.~~

Each local school administrative unit shall maintain those funds shown in the uniform budget format that are applicable to its operations."

SECTION 7. G.S. 115C-546.2 reads as rewritten:

"**§ 115C-546.2. Allocations from the Fund; uses; expenditures; reversion to General Fund; matching requirements.**

...

(d) Monies transferred into the Fund in accordance with Chapter 18C of the General Statutes shall be allocated for capital projects for school construction projects as follows:

(1) A sum equal to sixty-five percent (65%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education.

(2) A sum equal to thirty-five percent (35%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated to those local school administrative units located in whole or part in counties in which the effective county tax rate as a percentage of the State average effective tax

rate is greater than one hundred percent (100%), with the following definitions applying to this subdivision:

a. "Effective county tax rate" means the actual county rate for the previous fiscal year, including any countywide supplemental taxes levied for the benefit of public schools, multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies.

b. "State average effective tax rate" means the average effective county tax rates for all counties.

c. "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(3) No county shall have to provide matching funds required under subsection (c) of this section.

(4) A county may use monies in this Fund to pay for school construction projects in local school administrative units and to retire indebtedness incurred for school construction projects incurred on or after January 1, 2003.

(5) A county may not use monies in this Fund to pay for school technology needs.

(6) Counties receiving funds under this subsection may allocate a portion of funds received each budget year under this subsection to charter schools on a per average daily membership basis according to each such school's share of the average daily membership of the unit. Charter schools may use the monies to pay for school construction projects or to retire indebtedness incurred for school construction projects incurred on or after July 1, 2011, and shall not be subject to the matching fund requirement set forth in subsection (c) of this section."

SECTION 8.(a) G.S. 135-5.3 reads as rewritten:

"**§ 135-5.3. Optional participation for charter schools operated by private nonprofit corporations.**

...

(b) No later than 30 days after both parties have signed the written charter under G.S. 115C-238.29E, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Retirement System in accordance with this Article. This election shall be in writing and filed with the Retirement System and with the State Board of Education and is effective for each charter school employee as of the date of that employee's entry into eligible service. This subsection applies to charter schools that receive approval from the State Board of Education or the North Carolina State Public Charter Schools Commission ~~approval~~ under G.S. 115C-238.29D after 1998.

...."

SECTION 8.(b) G.S. 135-45.5 reads as rewritten:

"**§ 135-45.5. Optional participation for charter schools operated by private nonprofit corporations.**

...

(b) No later than 30 days after both parties have signed the written charter under G.S. 115C-238.29E, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Plan in accordance with this Article. This election shall be in writing and filed with the Executive Administrator, the Board of Trustees, and the State Board of Education. This election is effective for each charter school employee as of the date of that employee's entry into eligible service. This subsection applies to charter schools that receive approval from the State Board of Education or

North Carolina Public Charter Schools Commission ~~approval~~ under G.S. 115C-238.29D after 1998.

...."

SECTION 9. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(18) The State Board of Education with respect to the disapproval, termination, or nonrenewal of charters under Part 6A of Article 16 of Chapter 115C of the General Statutes."

SECTION 10.(a) Article 23 of Chapter 153A is amended by adding a new section to read:

"**§ 153A-457. Charter schools.**

Each county is authorized to appropriate funds and lease real property to schools chartered under Chapter 115C, Article 16, Part 6A of the General Statutes. Counties may provide funds only for the purposes set forth in G.S. 115C-238.29H(c)."

SECTION 10.(b) G.S. 153A-149(c) reads as rewritten:

"(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to a combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) appraised value of property subject to taxation. Authorized purposes subject to the rate limitation are:

...

(8a) Charter Schools. – To provide capital funding for charter schools as authorized by G.S. 153A-457.

...."

SECTION 11. Each local board of education shall amend its budget resolution for the 2010-2011 fiscal year to comply with G.S. 115C-426, as amended by Section 6 of this act. In the event that a local board of education fails to amend its budget resolution for the 2010-2011 fiscal year to comply with G.S. 115C-426, as amended by Section 6 of this act, and therefore fails to include in the local current expense fund all those moneys required under G.S. 115C-426(e), such amendments shall be deemed to have been made for purposes of compliance with G.S. 115C-238.29H(b).

SECTION 12. If in any fiscal year a local board of education approves a budget resolution that, as amended, fails to comply with G.S. 115C-426 and therefore fails to include in the local current expense fund all those moneys required under G.S. 115C-426(e), that budget resolution shall be deemed to have been amended to include all such moneys in the local current expense fund for the purposes of compliance with G.S. 115C-238.29H(b).

SECTION 13. Section 3.2 of S.L. 2010-123 and Section 7.17(b) of S.L. 2010-31 are repealed.

SECTION 14. The State Board of Education shall repeal all adopted policies inconsistent with this act.

SECTION 15. Beginning in 2012, the North Carolina Public Charter Schools Commission shall prepare an annual report to the Joint Legislative Education Oversight Committee of the General Assembly no later than October 15 of each year. The report shall include, at a minimum, the following information:

(1) The Commission's strategic vision and plan for charter schools and progress toward achieving the vision and carrying out the plan.

(2) The academic and financial performance of all operating charter schools overseen by the Commission, according to the performance expectations for charter schools set forth in this act.

(3) The status of the Commission's charter school portfolio, identifying all charter schools in each of the following categories: approved to open, in operation, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened.

SECTION 16. Appointments required in Section 2 of this act shall be made no later than October 1, 2011. Sections 6, 11, 12, and 13 of this act are effective when they become law. The remainder of this act becomes effective July 1, 2011.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ARB-3 [v.1]

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

Date _____ ,2011

Senator Stevens.

moves to amend the bill on page 17, line 39 through page 18, line 14, by deleting those lines;

and by renumbering the remaining sections accordingly;

and on page 22, line 2, by rewriting the line to read: "later than October 1, 2011. Sections 5, 10, 11, and 12 of this act are effective when they".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ATC-18 [v.2]

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

Date Feb 22 ,2011

Senator Stein

moves to amend the bill on page 14, lines 16-29, by deleting those lines and substituting the following:

"(b) If a student attends a charter school, the local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year. The amount transferred under this subsection that consists of revenue derived from supplemental taxes shall be transferred only to a charter school located in the tax district for which these taxes are levied and in which the student resides.",

and on page 19, lines 20-37, by deleting those lines and renumbering the remaining sections accordingly,

and on page 21, lines 23-36, by deleting those lines and renumbering the remaining sections accordingly,

and on page 22, lines 1-3, by deleting those lines and substituting the following,

"SECTION 12. Appointments required in Section 2 of this act shall be made no later than October 1, 2011. The remainder of this act becomes effective July 1, 2011.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ARQ-6 [v.10]

Comm. Sub. [NO]
Amends Title [NO]
2nd Edition

Date _____,2011

Senator McKissick

moves to amend the bill on page 12, lines 8-23 by deleting those lines and substituting the following:

"(h) Transportation. – The charter school may provide transportation for students enrolled at the school. If a charter school approved after July 1, 2011 provides transportation for students, the charter school shall receive the average per pupil share of the local school administrative unit's allocation for transportation. ~~The charter school shall develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located.~~ The charter school is not required to provide transportation to any student who lives within one and one-half miles of the school. At the request of the charter school and if the local board of the local school administrative unit in which the charter school is located operates a school bus system, then that local board may contract with the charter school to provide transportation in accordance with the charter school's transportation plan to students who reside in the local school administrative unit and who reside at least one and one-half miles ~~of~~ from the charter school. A local board may charge the charter school a reasonable charge that is sufficient to cover the cost of providing this transportation. Furthermore, a local board may refuse to provide transportation under this subsection if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible to provide this transportation.",

and on page 13, lines 34-43, by deleting those lines and substituting the following:

"(a) The State Board of Education shall allocate to each charter school each of the following:

(1) An amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which

the charter school is located for each child attending the charter school except for the allocation for children with disabilities and for the allocation for children with limited English ~~proficiency;~~proficiency. For charter schools approved after July 1, 2011, the amount shall not include the average per pupil share of the local school administrative unit's allocation for transportation, except as provided in G.S. 115C-238.29F(h).

(2) An additional amount for each child attending the charter school who is a child with ~~disabilities; and~~disabilities.

(3) An additional amount for children with limited English proficiency attending the charter school, based on a formula adopted by the State Board.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 32
PROPOSED COMMITTEE SUBSTITUTE S32-CSRBx-2 [v.1]

2/21/2011 6:58:02 PM

Short Title: Hospital Medicaid Assessment/Payment Program. (Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR HOSPITAL ASSESSMENTS TO BE USED TO OBTAIN MATCHING FEDERAL MEDICAID FUNDS TO REDUCE THE LOSSES HOSPITALS SUSTAIN WHEN TREATING MEDICAID AND UNINSURED PATIENTS, TO REDUCE THE INEQUITY IN MEDICAID PAYMENTS BETWEEN PUBLIC AND NONPUBLIC HOSPITALS, AND TO PROVIDE FORTY-THREE MILLION DOLLARS IN ADDITIONAL FUNDING FOR THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 108A of the General Statutes is amended by adding a new Article to read:

Article 7.
Hospital Provider Assessment Act.

"**§ 108A-120. Short title and purpose.**

This Article shall be known as the "Hospital Provider Assessment Act". The assessments imposed by this Article are to provide revenue to improve funding for payments for hospital services provided to Medicaid and uninsured patients. All assessment proceeds and corresponding matching federal funds must be used to make the payments required under G.S. 108A-124. This Article does not authorize a political subdivision of the State to license a hospital for revenue or impose a tax or assessment on a hospital.

"**§ 108A-121. Definitions.**

The following definitions apply in this Article:

(1) CMS. – Centers for Medicare & Medicaid Services.
(2) Critical access hospital. – Defined in 42 C.F.R. § 400.202.
(3) Department. – The Department of Health and Human Services.
(4) Equity assessment. – The assessment payable under G.S. 108A-123.
(5) Medicaid equity payment. – The amount required to be paid under G.S. 108A-124.
(6) Public hospital – A hospital that certifies its public expenditures to the Department pursuant to 42 C.F.R. § 433.51(b) during the fiscal year for which the assessment applies.
(7) Secretary. – The Secretary of Health and Human Services.
(8) State's annual Medicaid payment. – Forty-three million dollars ($43,000,000).

(9) Total hospital costs. – The costs as calculated using the most recent available Hospital Cost Report Information Systems cost report data, available through CMS, or other comparable data.
(10) UPL – Upper pay limit.
(11) Upper pay limit. – The maximum ceiling imposed by federal regulation on hospital Medicaid payments under 42 C.F.R. § 447.272 for inpatient services.
(12) Upper pay limit assessment. – The assessment payable under G.S. 108A-123.
(13) Upper pay limit gap. – The difference between the UPL attributable to hospital inpatient services and the reasonable costs of inpatient hospital services as defined in Section (f)(2)(A) on page 11 of Attachment 4.19-A of the State Medicaid Plan as approved on December 15, 2005.
(14) Upper pay limit payment. – The amount required to be paid under G.S. 108A-124.

"**§ 108A-122. Assessment.**

(a) Assessment Imposed. – Except as provided in this section, the assessments authorized under this Article are imposed as a percentage of total hospital costs on all licensed North Carolina hospitals. The assessments are due quarterly in the time and manner prescribed by the Secretary. Payment of an assessment is considered delinquent if not paid within seven days of the due date. With respect to any past-due assessment, the Department may withhold the unpaid amount from Medicaid payments otherwise due or impose a late-payment penalty. The Secretary may waive a penalty for good cause shown.

(b) Allowable Cost. – An assessment paid under this Article may be included as allowable costs of a hospital for purposes of any applicable Medicaid reimbursement formula. An assessment imposed under this Article may not be added as a surtax or assessment on a patient's bill.

(c) Full Exemption. – The following hospitals are exempt from both the equity assessment and the UPL assessment:
(1) State-owned and State-operated hospitals.
(2) The primary affiliated teaching hospital for each University of North Carolina medical school.
(3) Critical access hospitals.
(4) Long-term care hospitals.
(5) Freestanding psychiatric hospitals.
(6) Freestanding rehabilitation hospitals.

(d) Partial Exemption. – A public hospital is exempt from the equity assessment.

"**§ 108A-123. Assessment amount.**

(a) Annual Calculation. – The Secretary must annually calculate the equity assessment amount and the upper pay limit assessment amount for each hospital subject to the respective assessment. Each assessment must comply with applicable federal regulations and may be prorated for any partial year. The Secretary must notify each hospital that is assessed the amount of its UPL assessment and, if applicable, its equity assessment. The notice must include all of the following:
(1) The applicable assessment rates.
(2) The hospital costs on which the hospital's assessments are based.
(3) The elements of the calculation of the hospital's UPL.

(b) Equity Assessment. – The equity assessment consist of both inpatient and outpatient components. The equity assessment percentage rate must be calculated to produce an aggregate annual amount equal to the following:

(1) The amount needed to make the Medicaid equity payments under G.S. 108-124.

(2) The applicable portion of the State's annual Medicaid payment, as provided in subsection (d) of this section.

(c) UPL Assessment. – The UPL assessment consists of both inpatient and outpatient components. The UPL assessment percentage rate must be calculated to produce an aggregate annual amount equal to the following:

(1) The amount needed to make the UPL payments under G.S. 108A-124.

(2) The applicable portion of the State's annual Medicaid payment, as provided in subsection (d) of this section.

(d) State's Annual Medicaid Payment. – The State's annual Medicaid payment must be allocated between the equity assessment and the UPL assessment based on the amount of gross payments received by hospitals under G.S. 108A-124.

(e) Appeal. – A hospital may appeal an assessment determination through a reconsideration review. The pendency of an appeal does not relieve a hospital from its obligation to pay an assessment amount when due.

"**§ 108A-124. Use of assessment proceeds.**

(a) Use. – The proceeds of the assessments imposed under this Article and all corresponding matching federal funds must be used to make the State annual Medicaid payment to the State and the Medicaid equity payments and UPL payments to hospitals.

(b) Quarterly Payments. – Within seven days of the due date for each quarterly assessment imposed under G.S. 108A-123, the Secretary must do the following:

(1) Transfer to the State Controller twenty-five percent (25%) of the State's annual Medicaid payment amount.

(2) Pay to each hospital that has paid its equity assessment for the respective quarter twenty-five percent (25%) of its Medicaid equity payment amount. A hospital's Medicaid equity payment amount is the sum of the hospital's Medicaid inpatient and outpatient deficits after calculating all other Medicaid payments, excluding disproportionate share hospital payments and the UPL payment remitted to the hospital under subdivision (3) of this subsection.

(3) Pay to the primary affiliated teaching hospital for the East Carolina University Brody School of Medicine, to the critical access hospitals, and to each hospital that has paid its UPL assessment for the respective quarter twenty-five percent (25%) of its UPL payment amount, as determined under subsection (c) of this section.

(c) UPL Payment Amount. –The aggregate UPL payments made to eligible hospitals that are public hospitals is the sum of the UPL gaps for all public hospitals. The aggregate UPL payments made to eligible hospitals that are not public hospitals is the sum of the UPL gaps for these hospitals. UPL payments are payable to the individual hospitals in the ratio of each hospital's Medicaid inpatient costs to the total Medicaid inpatient costs for the respective group.

(d) Refund of Assessment. – If all or any part of a payment required to be made under this section is not made to one or more hospitals when due, the Secretary must promptly refund to each such hospital the corresponding assessment proceeds collected in proportion to the amount of assessment paid by that hospital.

"**§ 108A-125. Deferral of assessment due date.**

In the event the data necessary to calculate the assessments required under G.S. 108A-123 or the payments required under G.S. 108A-124 is not available to the Secretary in time to impose the quarterly assessments for a payment year, the Secretary may defer the due date for the assessments and payments to a subsequent quarter.

"**§ 108A-126. Approval of assessment program.**

The Department must file a State plan amendment with the CMS that incorporates the assessment payments and distributions consistent with the provisions of this Article. Upon CMS approval, the Secretary may impose the initial assessment retroactive to the first day of the quarter in which the State Plan amended was filed, provided the Secretary remits the corresponding payments to hospitals required under G.S. 108A-124 for that quarter. If CMS approves only one component of the equity assessment, the Secretary may adjust the percentage rate on the approved component to produce the required aggregate Medicaid equity payment amounts under G.S. 108A-124. If CMS approves only one component of the UPL assessment, the Secretary may adjust the percentage rate on the approved component to produce the required aggregate UPL payment amounts under G.S. 108A-124. The Secretary may adopt rules as necessary to implement the assessment program under this Article.

"**§ 108A-127. Repeal.**

The authority to impose an assessment under this Article is repealed in the event that CMS determines that the assessment or payment methodologies described in this Article are impermissible or CMS revokes approval of any portion of the State Plan amendment authorizing the payments required under G.S. 108A-124."

SECTION 2. The Department of Health and Human Services must file with the Centers for Medicare & Medicaid Services a State Plan amendment as required under Article 7 of Chapter 108A of the General Statutes, as enacted by this act, by March 31, 2011.

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

SENATE PCS 32: Hospital Medicaid Assessment/Payment Program

2011-2012 General Assembly

Committee:	Senate Ref to Finance. If fav, re-ref to Appropriations/Base Budget	**Date:**	February 22, 2011
Introduced by:	Sens. Brunstetter, Clodfelter	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S32-CSRBx-2		

SUMMARY: ***Senate Bill 32[1] would impose an annual assessment on hospitals, payable quarterly, and use the revenue derived from the assessment to obtain additional federal Medicaid funds. The assessment proceeds and corresponding Medicaid funds would be used to address hospitals' cost of treating Medicaid recipients and uninsured patients and to generate an additional $43,000,000 for the General Fund to be used for the State's Medicaid program.***

The proposed committee substitute makes one substantive change to the bill, as requested by the sponsor: both assessments proposed by the bill would have an outpatient and inpatient component. The PCS also places the substance of the bill into Chapter 108A of the General Statutes.

CURRENT LAW: Forty-six states and the District of Columbia have some type of Medicaid-related provider tax, assessment, or fee this year. States have used Medicaid-related provider assessments since 1990 to help pay for the costs of states' Medicaid programs. North Carolina began utilizing provider assessments in 2003 to enhance payment rates for nursing facilities and intermediate care facilities for the mentally retarded and developmentally disabled.[2]

A Medicaid-related provider assessment collects revenue from specific categories of providers to generate new in-state funds and match them with federal funds so that the state gets additional federal Medicaid dollars. Because Medicaid is an entitlement program, the amount of total federal matching funds for Medicaid has no statutory limit. Federal spending is only limited by states' ability to provide matching funds.

In most states that impose a provider assessment, the cost of the assessment is promised back to providers through an increase in the Medicaid reimbursement rate. Under federal law, a state's ability to use provider-specific assessments to fund their state share of Medicaid expenditures has limits. Generally, those assessments cannot exceed 25% of the state's share of Medicaid expenditures and the state cannot provide a guarantee to the providers that the assessments will be returned to them. However, federal law provides a 'safe harbor' that says if the assessments returned to a provider are less than 6% of the provider's revenues, the prohibition on guaranteeing the return of assessment funds is not violated. Therefore, a state may impose a provider assessment of 5.5% of revenues, return those revenues directly or indirectly back to those providers in the form of a Medicaid payment and receive a federal match for those amounts. Unless altered by Congress, this maximum amount will increase to 6% of revenues in October 2011.

BILL ANALYSIS: Senate Bill 32 would impose two different Medicaid-related assessments on hospitals: an equity assessment and an upper pay limit (UPL) assessment. The assessments would be

[1] SB 32, as introduced, was identical to HB 53, introduced by Reps. Barnhart, Avila, Crawford, and Glazier. HB 53 is currently in House Finance.

[2] Section 10.28 of S.L. 2003-284, the Appropriations Act of 2003.

imposed as a percentage of total hospital costs on all licensed North Carolina hospitals. The Secretary of Health and Human Services would annually calculate the assessment amount for each hospital. The assessment would be payable quarterly. The Secretary would use the proceeds of the assessments to make quarterly distributions to the hospitals as well as a quarterly transfer to the General Fund of $10,750,000. The payments to the hospitals would be due within seven days after the assessment is paid. If an assessment payment is not made to a hospital when due, the Secretary must refund to the hospital the corresponding assessment proceeds collected in proportion to the amount of assessment paid by the hospital.

The equity assessment would be levied on the inpatient and outpatient Medicaid costs of each private hospital. Public hospitals are exempt from this assessment. The percentage of the assessment is to be calculated by DHHS so that the amount generated from the assessment, when matched with federal Medicaid funds, is sufficient to reimburse the 67 private hospitals for their Medicaid costs consistent with the Medicaid reimbursements received by the 43 public hospitals and to fund a pro-rata share of the State annual Medicaid amount. To fulfill this purpose, the rate would need to be set at 1.45% for the first year.

The UPL assessment would be levied on the inpatient and outpatient Medicaid costs of public and private hospitals, with the exception of the following:

- State-operated hospitals
- Teaching hospitals of the University of North Carolina Medical School.
- Critical access hospitals.
- Long-term care hospitals.
- Free-standing psychiatric and rehabilitation hospitals.

The percentage of the UPL assessment is to be calculated by DHHS so that the amount generated from the assessment, when matched with federal Medicaid funds, is sufficient to reduce the losses that both public and private hospitals sustain when treating Medicaid and uninsured patients and to fund a pro-rata share of the State annual Medicaid amount. To fulfill this purpose, the rate would need to be set at 0.76% for the first year.

The State's assessment program would need to be approved by the Centers for Medicare & Medicaid Services. DHHS would need to evaluate the assessment percentages and assessment payments each year to ensure that the assessments do not exceed the federal provider assessment guidelines. The bill directs DHHS to file a State plan amendment with the Centers for Medicare & Medicaid Services to implement the hospital assessments and payments by March 31, 2011.

EFFECTIVE DATE: The bill becomes effective when it becomes law. The bill **BACKGROUND:**

Lee Dixon, in the Fiscal Research Division, substantially contributed to this summary. I also used resources from NCSL.

S32-SMRB-4(CSRBx-2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 32 (First Edition)

SHORT TITLE: Hospital Medicaid Assessment/Payment Program.

SPONSOR(S): Senators Clodfelter and Brunstetter

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES					
Assessments	**$215,615,530**		**See Assumptions and Methodology**		
Federal Medicaid Funds	**$413,347,075**		**See Assumptions and Methodology**		
EXPENDITURES					
Hospital Reimbursements	**$585,962,605**		**See Assumptions and Methodology**		
DHHS State Medicaid Program	**$43,000,000**	**$43,000,000**	**$43,000,000**	**$43,000,000**	**$43,000,000**
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Health & Human Service, Division of Medical Assistance

EFFECTIVE DATE: Upon enactment

BILL SUMMARY:

Senate Bill 32 proposes to establish assessments on hospitals and use the revenue derived from the assessments to obtain Federal Medicaid funds. The purpose of these funds would be to address the difference between hospitals' cost of treating Medicaid recipients and what hospitals are reimbursed.

ASSUMPTIONS AND METHODOLOGY:

Background

Healthcare Provider Assessments

Provider-specific assessments have been used by States since 1990 to help pay for the costs of States' Medicaid programs. The assessments, proposed by State policymakers and enacted by State legislatures, must meet the requirements of federal laws and regulations. In 2010 the number of states with some type of Medicaid-related provider assessment increased to 46 states.

States with Provider Assessments—2010	
Provider being Assessed	**States with Assessment**
Hospitals	34
ICF/MR-DD	34
Nursing Facility	38
Managed Care Facility	11
Other	15

Source: Kaiser Family Foundation, 2010

Currently, North Carolina utilizes provider assessments to enhance payment rates for 1) Intermediate Care Facilities for the Mentally Retarded and Developmentally Disabled and 2) Nursing Facilities by providing the state share of increases or offsets to recent year's rate decreases.

Example of a Provider Assessment Program

Federal regulations (42 CFR 433.56) allow for an assessment of up to 5.5% to be made against a healthcare provider's non-Medicare net revenue.

- *Initial assessment on health care services.* The first step in the process is to adopt an assessment on health care services.

- *Increased Medicaid payments.* The second step is to use the increased revenue to enhance the state's Medicaid program, e.g. through Medicaid reimbursements, generating additional Federal matching payments at the rate of nearly 2:1, in the case of North Carolina in SFY 2011-12.

- *Net impact on providers and the State.* The new Medicaid reimbursements can be split between providers who contributed to the assessment, other healthcare providers who were not assessed, and the state.

    - *Assessed providers.* Most providers end up net winners due to the increase in Medicaid reimbursement. The Federal government requires that the assessment result in some redistribution of funds on net, so that some providers will inevitably lose.

- *Non-assessed providers*. Non-assessed providers who benefit from the increase in Medicaid reimbursements are pure winners.

Hospital Medicaid Costs and Reimbursements

Medicaid's reimbursement of a hospital's inpatient treatment costs are based on Diagnostic Related Groups (DRGs). These DRG payment rates are based on the 1994 cost for each hospital, indexed forward based on General Assembly's approved changes in provider rates. Each year North Carolina's Medicaid program adjusts the Medicaid DRG reimbursement rate for any inflation or decrease approved by the General Assembly. However, during the past 15 years the North Carolina General Assembly has often foregone an inflationary increase in Medicaid provider rates.

According to the North Carolina Hospital Association (NCHA), which represents public and private hospitals in the state, the current North Carolina Medicaid DRG reimbursement rate for inpatient costs is 50% of the cost of delivering care to a Medicaid recipient. Medicaid's reimbursement of a hospital's outpatient and emergency treatment costs are at 80% of cost. In the aggregate, the NCHA asserts that its hospitals are reimbursed by Medicaid at 63% of their combined inpatient and outpatient costs. NCHA acknowledges that this percentage increases to 85% when the Disproportionate Share Hospital payment to North Carolina hospitals is factored in.

Analysis of Senate Bill 32

Under the applicable Federal regulations (42 CFR 433.56), SB 32 directs the Secretary of the Department of Health and Human Services (DHHS) to implement a hospital assessment program for eligible hospitals to improve funding for payments for hospital services provided to Medicaid and uninsured patients. The program proposed in SB 32 includes two different assessments on hospitals:

1. Equity Assessments
2. Upper Payment Limit Assessments

The assessments are to be levied as a percent of total hospital cost calculated using the most recent available Hospital Cost Report Information Systems cost report or comparable data. The receipts derived from these assessments would be used by the Department's Division of Medical Assistance to draw down Federal matching funds at an approximate rate of $2 Federal for every $1 State, beginning in July 2011. If the assessment is implemented prior to July 1, 2011, the federal match (FMAP) rate will be higher due to ARRA, requiring a lower assessment rate. The rate will have to be adjusted in July 2011 to compensate for the change in FMAP.

Equity Assessments/Medicaid Equity Payment

DHHS is to levy an Equity Assessment on the inpatient and outpatient Medicaid costs of each private hospital. The percentage of this assessment is to be calculated by DHHS so that the amount generated from assessment when matched with Federal funds in the Medicaid program is sufficient to reimburse the 67 private hospitals for their Medicaid costs consistent with the Medicaid reimbursements received by the 43 public hospitals and to fund an additional amount for the State's Medicaid program.

To fulfill the purpose of reimbursing the private hospitals, the rate must be set at 1.45% and would generate $118,317,394 for the first year, according to data from NCHA and DHHS.

As noted above, in order to maintain the payments at this level, the percentage would have to increase effective July 1, 2011, when the enhanced ARRA FMAP ends. At the end of each year, DHHS will be required to evaluate the amount of the Equity Assessment on Medicaid costs, to ensure that it does not exceed the Federal provider assessment guidelines, which permit an assessment on non-Medicare inpatient and outpatient revenue of up to 5.5%.

Upper Payment Limit Assessment/Upper Limit Payment

The bill also provides that DHHS levy an Upper Payment Limit (UPL) Assessment on the inpatient Medicaid costs of public and private hospitals, excluding:

- State-operated hospitals,
- Teaching Hospitals of the University of North Carolina Medical School,
- Critical Access Hospitals,
- Long-term Care Hospitals, and
- Free-standing Psychiatric and Rehabilitation Hospitals.

The percentage of this assessment is to be calculated by DHHS so that the amount generated from the assessment when matched with Federal funds in the Medicaid program is sufficient to reduce the losses that both public and private hospitals sustain when treating Medicaid and uninsured patients and to fund an additional amount for the State's Medicaid program.

To fulfill the purpose of reimbursing the public and private hospitals, the rate must be set at 0.76% and generate $ 97,298,136 for the first year, according to data from NCHA and DHHS.

Here again, in order to maintain the payments at this level, the percentage would have to increase effective July 1, 2011, due to the expiration of the enhanced FMAP. As with the Equity Assessment, DHHS will be required to evaluate the amount of the assessment on Medicaid costs, to ensure that it does not exceed the Federal provider assessment guidelines, which permit an assessment on non-Medicare inpatient and outpatient revenue.

Total Amount of Assessments

The combined Equity and UPL assessments in SB 32 will generate $215,615,530 in receipts the first year. This amount should be sufficient to cover the nonfederal share of the Equity and Upper Limit payments, as well as the $43 million payment for the State Medicaid program also provided for in the bill.

Payments to Hospitals

Of the nearly $216 million in receipts collected from the combined assessment, DHHS would use $173 million in the Medicaid program to draw down and an additional $413 million, for a total of $586 million Medicaid funds on an annual basis based on the current FMAP. DHHS would pay out this amount to the hospitals. The legislation calls for DHHS to disburse the Medicaid funds derived from these assessments on a quarterly basis.

In the aggregate, the public and private hospitals in North Carolina would net $370 million in payments over the assessments they paid ($586 million, less $216 million) for the first year. The total amount of the assessments and payments will more than likely change each year as hospital cost changes each year. However, because of the uncertainty of the changes in these costs, reasonable estimates of the assessments and payments to hospitals in future years cannot be determined.

SB32—Hospital Assessment Plan					
Assessments to Hospitals	Amount to DHHS	State Share Medicaid	Federal Matching	Payments to Hospitals	Net Benefit to Hospitals
$215,615,530	$43,000,000	$172,615,530	$413,347,075	$585,962,605	$370,347,074

Source: Department of Health and Human Services

With the proposed assessments, receipts, and resultant Medicaid funds, all North Carolina acute care hospitals included in SB 32 would be paid at the Medicare UPL for inpatient services for Medicaid patients, using hospital assessments to generate the additional needed federal matching funds. As a result, hospitals will have 86% of Medicaid allowable costs covered on an actual, net cash received basis and 27% of uninsured costs covered on the same basis, according to NCHA.

Payment to DHHS

SB 32 calls for $43 million of the amount collected from the Equity and UPL assessments each year to go to the State's Medicaid program. DHHS can use these funds as it chooses. If it were to use them for the Medicaid program, the $43 million would draw down an additional $86 million, approximately, in Federal matching funds for a total of $129 million in SFY 2011-12.

Each year the receipts derived from the two assessments in SB 32 will increase as hospital inpatient and outpatient costs increase. However, the amount DHHS is to receive will remain at $43 million.

Summary

SB 32 provides for the following:

1. An Equity Assessment and Payment to compensate private hospitals for their Medicaid costs and a level comparable to public hospitals. This assessment and payment would be adjusted each year.

2. An Upper Payment Limit Assessment and Payment to compensate public and private hospitals for treatment of the uninsured. This assessment and payment would be adjusted each year.

3. DHHS to receive $43 million from the Equity and Upper Payment Limit assessments. This amount would not be adjusted each year, but remain at $43 million.

SOURCES OF DATA: Kaiser Family Foundation; National Conference of State Legislatures; North Carolina Hospital Association; Department of Health and Human Services, Division of Medical Assistance

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lee Dixon

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: February 18, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 32

Short Title:	Hospital Medicaid Assessment/Payment Program.	(Public)
Sponsors:	Senators Brunstetter, Clodfelter; Allran, Apodaca, Atwater, Bingham, Blake, Brown, Daniel, Dannelly, Garrou, Goolsby, Hartsell, Hise, Hunt, Jackson, Jenkins, Jones, Mansfield, McKissick, Meredith, Preston, Purcell, Rabon, Robinson, Rouzer, Rucho, Soucek, Stein, Tillman, Tucker, and Walters.	
Referred to:	Finance.	

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR HOSPITAL ASSESSMENTS TO BE USED TO OBTAIN MATCHING FEDERAL MEDICAID FUNDS TO REDUCE THE LOSSES HOSPITALS SUSTAIN WHEN TREATING MEDICAID AND UNINSURED PATIENTS, TO REDUCE THE INEQUITY IN MEDICAID PAYMENTS BETWEEN PUBLIC AND NONPUBLIC HOSPITALS, AND TO PROVIDE FORTY-THREE MILLION DOLLARS IN ADDITIONAL FUNDING FOR THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Secretary of Health and Human Services shall implement a hospital assessment program for eligible hospitals to improve funding for payments for hospital services provided to Medicaid and uninsured patients.

SECTION 1.(b) The hospital assessment program shall consist of two different assessments, Equity Assessments and Upper Payment Limit (UPL) Assessments. Each assessment shall be levied as a percent of total hospital costs calculated using the most recent available Hospital Cost Report Information Systems (HCRIS) cost report data or comparable data. Equity Assessments shall consist of both inpatient and outpatient components and shall be calculated to produce annually the nonfederal share of the aggregate payment amount required under Section 1(d)(1) of this act plus an additional amount for the State's Medicaid program. UPL Assessments shall consist solely of an inpatient component and shall be calculated to produce annually the nonfederal share of the aggregate Medicaid payments for which provision is made in Section 1(d)(2) of this act plus an additional amount for the State's Medicaid program. The total annual amount for the State's Medicaid program under this section shall be forty-three million dollars ($43,000,000) annually, allocated between the Equity Assessment and the UPL Assessment based on the amount of gross payments received by hospitals under Sections 1(d)(1) and 1(d)(2) of this act respectively. Each assessment shall comply with applicable federal regulations. Assessments shall be calculated annually and paid quarterly, and shall be prorated for any partial year.

SECTION 1.(c) The assessments shall be levied on all licensed North Carolina hospitals except State-owned and State-operated hospitals, the primary affiliated teaching hospital for each University of North Carolina medical school, critical access hospitals as defined in 42 C.F.R. § 400.202 (Critical Access Hospitals), long-term care hospitals, freestanding psychiatric hospitals, and freestanding rehabilitation hospitals, all of which shall be exempt from all assessments. Hospitals that certify their public expenditures to the Department for the respective assessment year pursuant to 42 C.F.R. § 433.51(b) (Public

Hospitals) are subject to UPL Assessments but exempt from Equity Assessments. Assessments shall be levied quarterly and shall be accompanied by notice to each hospital being assessed that includes the applicable assessment rates, the hospital costs on which the hospital's assessments are based, and the elements of the calculation of the hospital's Upper Payment Limit, which is the maximum ceiling imposed by federal regulation on hospital Medicaid payments under 42 C.F.R. § 447.272 for inpatient services. A hospital may appeal an assessment determination through a reconsideration review, however, the pendency of an appeal shall not relieve a hospital from its obligation to pay any assessment amount when due. The Department shall set the due date for each assessment. Payment of an assessment amount shall be considered delinquent if not paid within seven days of the due date. With respect to any past-due unpaid assessment, the Department may withhold the unpaid amount from Medicaid payments otherwise due or impose a reasonable penalty. The Department may waive a penalty for good cause shown. All assessment proceeds and corresponding matching federal funds shall be used solely for the purpose of making the payments to hospitals and transfers to the General Fund described in Section 1(d) of this act.

SECTION 1.(d) Within seven days of the due date for each quarterly assessment installment, the Secretary shall make the following payments to hospitals and shall transfer to the State Controller the quarterly share of the forty-three million dollars ($43,000,000) described in Section 1(b) of this act:

(1) A quarterly Medicaid Equity Payment shall be made to each hospital that has paid its Equity Assessment for the respective quarter. The amount of the Medicaid Equity Payment shall be the sum of the participating hospital's Medicaid inpatient and outpatient deficits after calculating all other Medicaid payments, excluding disproportionate share hospital payments and the Upper Payment Limit Payment described below.

(2) A quarterly Upper Payment Limit Payment shall be made to each of the following hospitals: (i) hospitals that paid their Upper Payment Limit Assessment for the respective quarter, (ii) the primary affiliated teaching hospital for the East Carolina University Brody School of Medicine, and (iii) Critical Access Hospitals. The aggregate Upper Payment Limit Payment made to Public Hospitals shall be the sum of the Upper Payment Limit Gaps for all Public Hospitals. The Aggregate Upper Payment Limit Payment for the remaining hospitals eligible for Upper Payment Limit Payments (the Non-Public Hospitals) shall be the sum of the Upper Payment Limit Gaps for all Non-Public Hospitals. Upper Payment Limit Gap means the difference between the Upper Payment Limit attributable to hospital inpatient services and the reasonable costs of inpatient hospital services as defined in Section (f)(2)(A) on page 11 of Attachment 4.19-A of the State Medicaid Plan as approved on December 15, 2005 (Medicaid Inpatient Costs). Upper Payment Limit Payments shall be paid to the individual hospitals in the ratio of each hospital's Medicaid Inpatient Costs to the total Medicaid Inpatient Costs for the respective group.

(3) Notwithstanding any other provision in this act to the contrary, if for any payment year the data necessary to calculate the assessments or the Medicaid Equity Payment or the Upper Payment Limit Payments is not available to the Division in time to levy a quarterly assessment as contemplated in this Article, then the due dates for assessments and payments under this Article shall be deferred to a subsequent quarter.

If all or any part of a payment required hereunder is not made to one or more hospitals when due, the Secretary shall promptly refund to each such hospital the corresponding assessment proceeds collected in proportion to the amount of assessment paid by that hospital.

SECTION 1.(e) Assessments shall be implemented promptly after approval by Centers for Medicare & Medicaid Services (CMS) of a State Plan amendment that incorporates the payment provisions of this Article. The Department shall file with CMS a State Plan amendment consistent with the provisions of this Article no later than March 31, 2011. Upon CMS approval, the Secretary may levy the initial assessment retroactive to the first day of the quarter in which the State Plan amendment was filed, provided that the corresponding payments to hospitals described in Section 1(d) of this act are made for that quarter. If CMS approves only one component of the Equity Assessment (either inpatient or outpatient), the Secretary may adjust the Equity Assessment rate on the approved component to produce the required aggregate payment amounts under Section 1(d) of this act. This Article shall terminate and be of no further force or effect in the event that CMS determines at any time that the assessment or payment methodologies described in this Article are impermissible or if CMS revokes approval of any portion of the State Plan amendment authorizing the payments required by this section.

SECTION 1.(f) Assessments paid under this act may be included as allowable costs of a hospital for purposes of any applicable Medicaid reimbursement formula but shall not be added as a surtax or assessment on a patient's bill. Nothing in this section authorizes a political subdivision of the State to license a hospital for revenue or impose a tax or assessment on a hospital.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 27

Short Title:	Involuntary Annexation Moratorium.	(Public)
Sponsors:	Senators Brock, Newton, Goolsby; Apodaca, Bingham, Brown, Daniel, Harrington, Hartsell, Jackson, Meredith, Preston, Rabon, Rucho, Soucek, Tillman, and Tucker.	
Referred to:	State and Local Government.	

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO ADOPT A MORATORIUM ON INVOLUNTARY ANNEXATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. No resolution of consideration, resolution of intent, or annexation ordinance may be adopted under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes from the date this act becomes law until July 1, 2012. If any annexation proceeding has been initiated under those Parts prior to the date this act becomes effective but the annexation ordinance has not yet been adopted, any provision of law requiring any action or notice by the municipality or any person within a certain period of time is tolled during the suspension of authority provided by this section. Nothing in this section shall prohibit municipalities from developing policies, planning, collecting data, or developing materials with respect to potential future annexations under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes.

SECTION 2. An annexation ordinance adopted under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes that has an effective date on or after the day this act becomes law shall not become effective until July 1, 2012, unless the municipality by ordinance adopts a new effective date later than July 1, 2012, for the annexation ordinance. An annexation ordinance that was adopted under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes prior to the effective date of this act and is the subject of litigation in any court on the effective date of this act shall not become effective until after July 1, 2012, unless the municipality by ordinance adopts a new effective date later than July 1, 2012, for the annexation ordinance.

SECTION 3. Any annexation litigation under Parts 2 or 3 of Article 4A of Chapter 160A of the General Statutes pending in any court of this State shall be stayed upon enactment of this act.

SECTION 4. If any municipality has adopted its budget ordinance for the 2010-2011 fiscal year prior to the date this act becomes effective and the total amount of assessed valuation estimated in that budget ordinance has been reduced because of this act, the municipality may amend the budget ordinance to account for this act, including establishment of a different tax rate.

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 6. This act is effective when it becomes law and expires on June 30, 2012.

SENATE BILL 27:
Involuntary Annexation Moratorium

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	February 21, 2011
Introduced by:	Sens. Brock, Newton, Goolsby	**Prepared by:**	Giles S. Perry
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 27 would place a moratorium on involuntary municipal annexations until July 30, 2012.***

CURRENT LAW: Under current State law, municipalities are authorized to involuntarily add territory to their municipal limits, if the area meets the statutory requirements for involuntary annexation.

Involuntary annexations are initiated by a resolution of intent, adopted by the municipal board. Involuntary annexations may also be initiated by an earlier and optional resolution of consideration, which allows the annexation ordinance to become effective earlier.

Once the municipal resolution of intent to annex is adopted, the statutes impose a timetable for the remaining steps prior to the adoption of an annexation ordinance. Once the annexation ordinance is adopted, there is an additional statutory time period prior to it becoming effective.

The statutory time lines for the involuntary annexation process are illustrated in the attached charts.

BILL ANALYSIS: Senate Bill 27 makes the following changes:

Section 1:

- Prohibits municipal adoption of an involuntary annexation resolution of consideration, resolution of intent, or annexation ordinance for cities of less than 5,000 (Part 2 of Article 4A of Chapter 160A) or by cities of 5,000 or more (Part 3 of Article 4A of Chapter 160A).
- Tolls (suspends) any action or notice required for any involuntary annexation ordinance that has been initiated, but not yet adopted.
- Allow municipalities to continue to develop polices, plan, collect data, or develop materials for potential future annexations.

Section 2:

- Provides that any involuntary annexation ordinance adopted prior to the effective date of this act with an effective date or or after the effective date of this act shall not become effective until July 1, 2012, or a later date adopted by the municipality.
- Provides that an annexation ordinance adopted prior to the effective date of this act that is the subject of litigation in any court on the effective date of this act shall not become effective until July 1, 2012, or a later date adopted by the municipality.

Section 3:

- Stays (suspends) any pending involuntary annexation litigation.

Section 4:

- Provides that a municipality may amend its budget ordinance to account for the effect of this act, including establishment of a different tax rate.

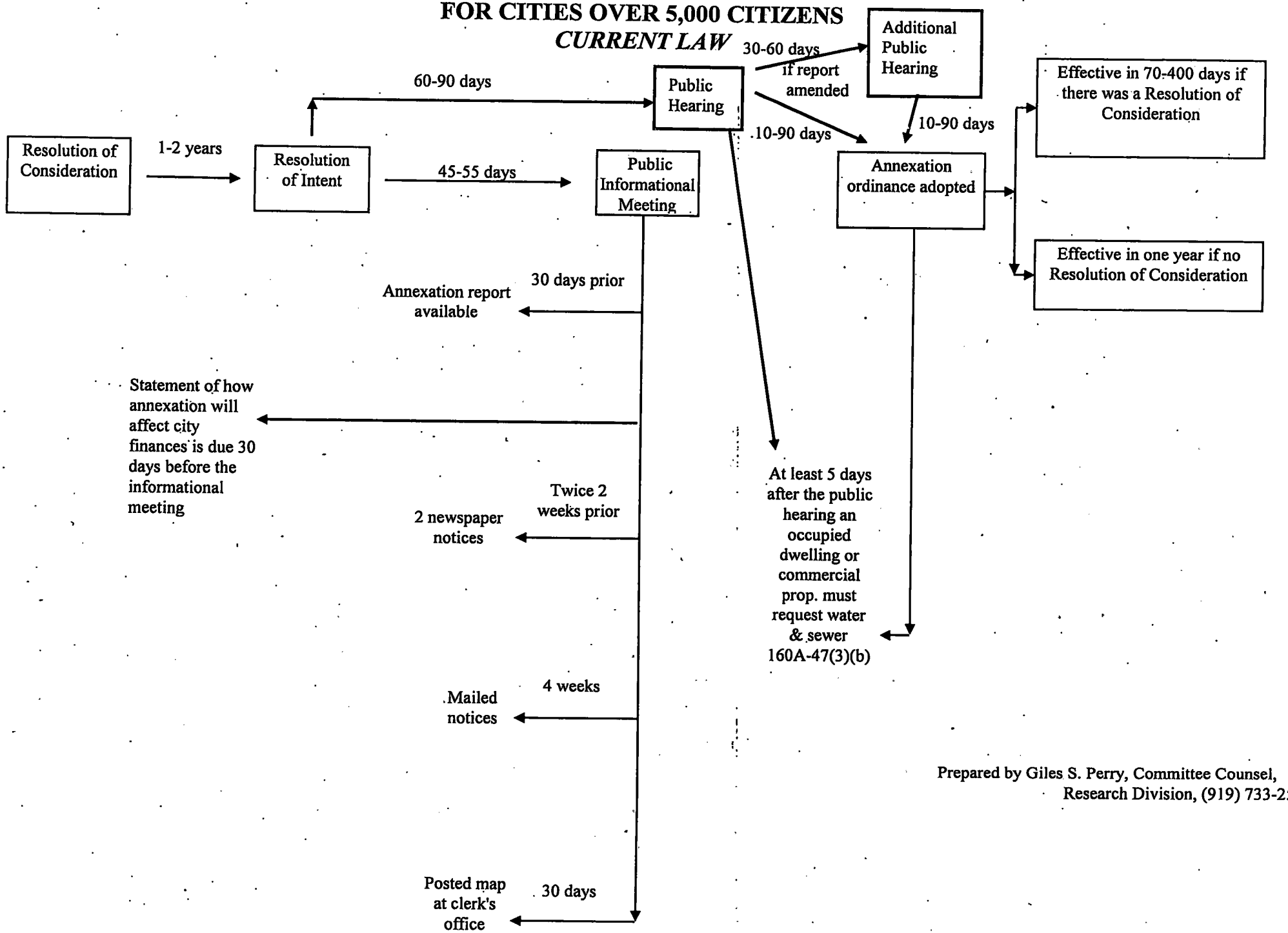
Section 5:

- Contains a severability clause.

EFFECTIVE DATE: Effective when it becomes law, expires June 30, 2012.

S27-SMRW-3(e1) v4
S27-SMRW-15(e1) v1

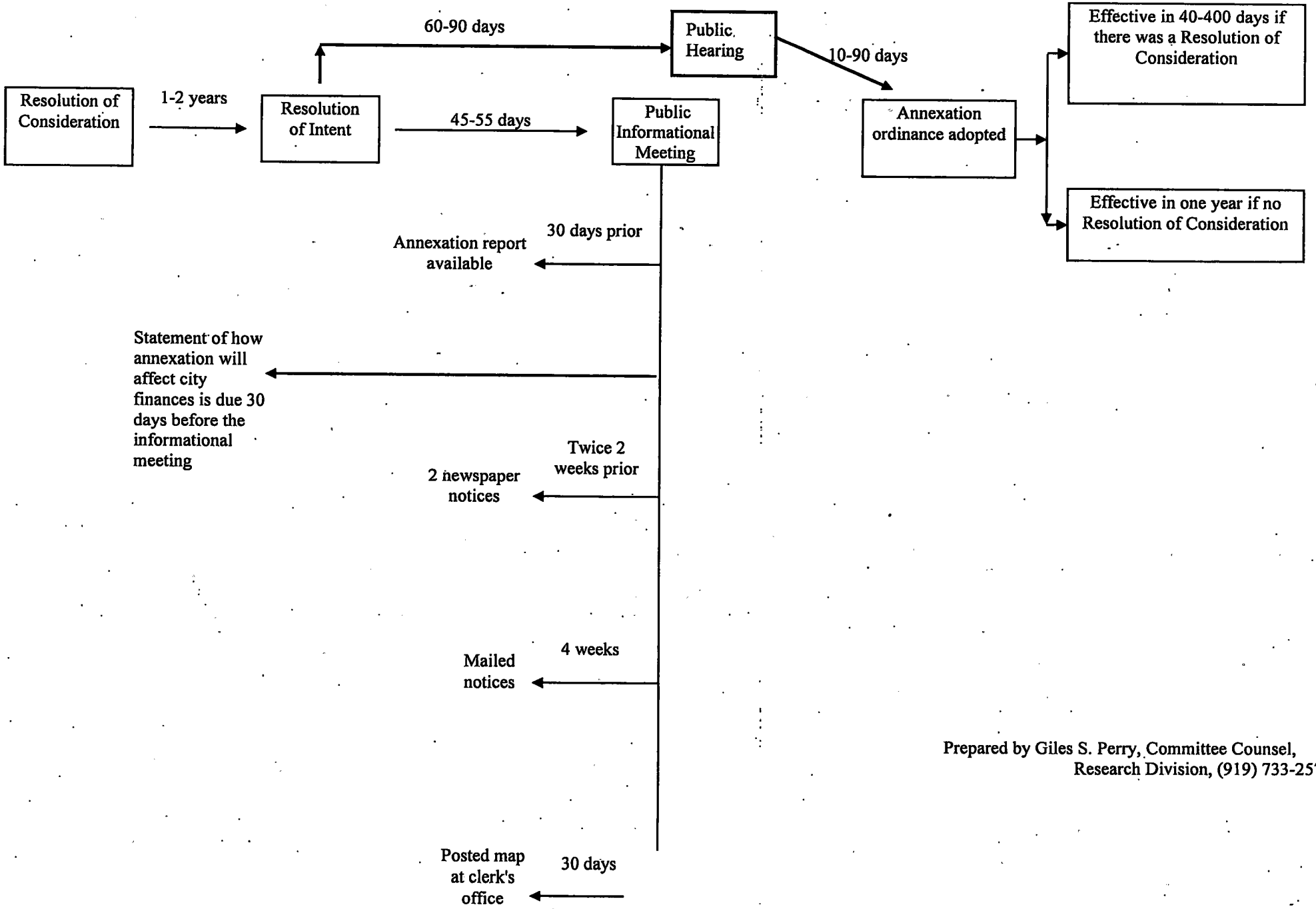
INVOLUNTARY AN ATION PROCEDURE
FOR CITIES OVER 5,000 CITIZENS
CURRENT LAW



Prepared by Giles S. Perry, Committee Counsel,
Research Division, (919) 733-257

INVOLUNTARY ANNEXATION PROCEDURE FOR CITIES UNDER 5,000 CITIZENS

CURRENT LAW



Prepared by Giles S. Perry, Committee Counsel,
Research Division, (919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 27

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

S27-ARB-4 [v.1]

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

Date _____,2011

Senator Clodfelter

moves to amend the bill on page 1, lines 13 through 21, by rewriting the lines to read:

"**SECTION 2.(a)** An annexation ordinance adopted under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes that has an effective date on or after the day this act becomes law shall not become effective until July 1, 2012, unless one of the following applies:

(1) The municipality by ordinance adopts a new effective date later than July 1, 2012, for the annexation ordinance.

(2) The municipality meets the restrictions of subsection (c) of this section.

SECTION 2.(b) An annexation ordinance that was adopted under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes prior to the effective date of this act and is the subject of litigation in any court on the effective date of this act shall not become effective until after July 1, 2012, unless the municipality by ordinance adopts a new effective date later than July 1, 2012, for the annexation ordinance.

SECTION 2.(c) An annexation ordinance adopted under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes that has an effective date on June 30, 2011, may become effective on June 30, 2011, if all of the following requirements are met:

(1) The ordinance of annexation was adopted before the effective date of this act.

(2) The ordinance of annexation was preceded by the adoption of a resolution of consideration.

(3) No legal challenge to the ordinance of annexation has been filed.

(4) The time allowed for filing a legal challenge to the ordinance of annexation has expired."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 27 Amendment S27 ARB-4 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Clodfelter
)
Sen.)

amendment S27-ARB-4

moves to amend ~~the bill~~ on page 1, line 22

( ) WHICH CHANGES THE TITLE

by adding at the end of that line:

"(5) The municipality has incurred or contracted to incur expenditures in excess of five million dollars ($5,000,000) in connection with annexation as of the effective date of the bill."

SIGNED Daniel G. Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Failed

EDITION No. _____

H. B. No. _____ DATE 2/22/11

S. B. No. 27 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Jenkins

1 moves to amend the bill on page 1, line 35
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the term "2012." and substituting the term
4 "2011.".
5
6
7
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

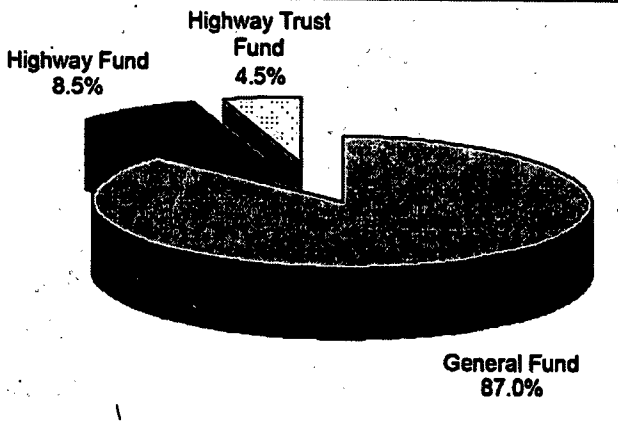
GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

MOTOR FUELS EXCISE TAX AND HIGHWAY USE TAX

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

Overview-State Tax Collections 2009-2010

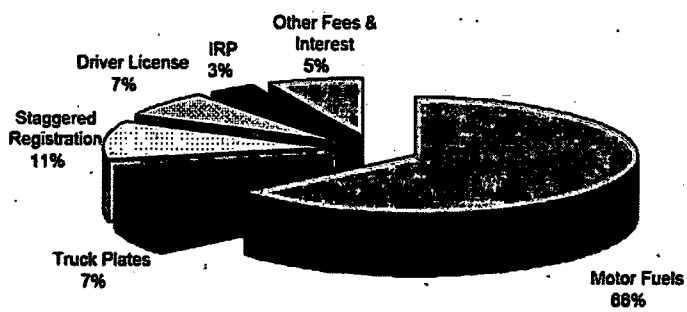


General Fund	$ 17,746,040,209
Highway Fund	1,731,643,883
Highway Trust Fund	909,150,646
Total	$ 20,386,834,738

Overview-Highway Fund

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

NC Highway Fund Tax Collections

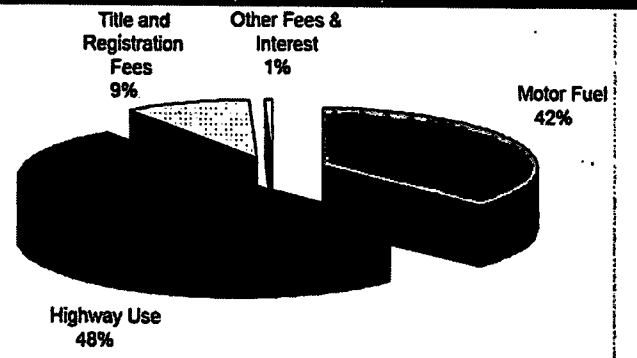


Motor Fuels	$ 1,145,528,928
Truck Plates	128,136,502
Staggered Registration	189,076,290
Driver License	126,530,919
IRP	58,684,032
Other Fees & Interest	83,687,212
Total	$ 1,731,643,883

Overview- Highway Trust Fund

- Highway Trust Fund revenue used to design and build public roads
  - Road Construction: Interstate, Urban Loops, Secondary Roads, Aid to Municipalities
  - Other: Match Federal Aid, Administration, NC Turnpike Administration Gap Funding, Mobility Fund
- Funding Sources
  - Motor Fuels Excise Tax (25% of Tax Collection)
  - Highway Use Tax
  - Fees: Title and Registration Fees

NC Highway Trust Fund Tax Collections

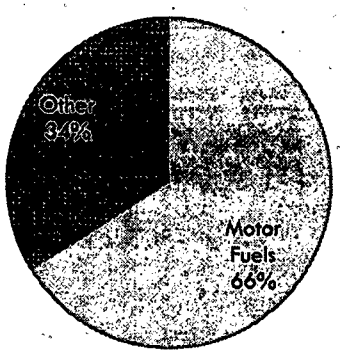


Motor Fuel	$	381,909,743
Highway Use		440,483,265
Title and Registration Fees		82,843,951
Other Fees & Interest		3,913,687
Total	$	909,150,646

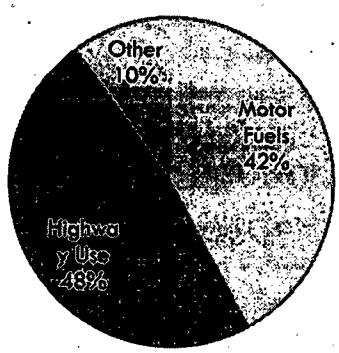
Motor Fuels Excise Tax

Motor Fuels Excise Tax

Highway Fund



Highway Trust Fund



Motor Fuels Excise Tax-Overview

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

Motor Fuels Excise Tax-History

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

Motor Fuels Excise Tax-History-Continued

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

Motor Fuels Excise Tax-History-Continued

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

Motor Fuels Excise Tax-Collection

Interstate Trucking Industry

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

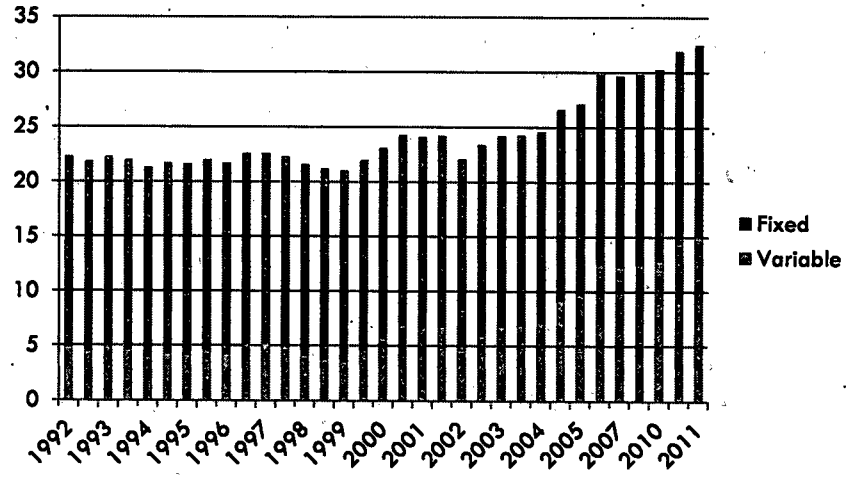
"Tax at the Rack"

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

Motor Fuels Excise Tax-Exemptions and Refunds

- Fuel not used on the highway (100% refund but subject to sales tax)
- Exemptions
  - US Government
  - State Agencies
  - Counties
  - Municipal Corporations
  - Community Colleges
  - Boards of Education
  - Fuel for Export
  - Fuel for Aircraft
- Volunteer fire dept and rescue squads; sheltered workshops; taxicabs; nonprofits operating for a local government (refund of tax paid less $0.01)
- Concrete mixing vehicles; solid waste compacting vehicles; vehicles delivering and spreading mulch, soil, and similar materials; certain agricultural and tank delivery vehicles (33 1/3 % Refund)

Motor Fuels Excise Tax-Components



Comparison-State Roadways

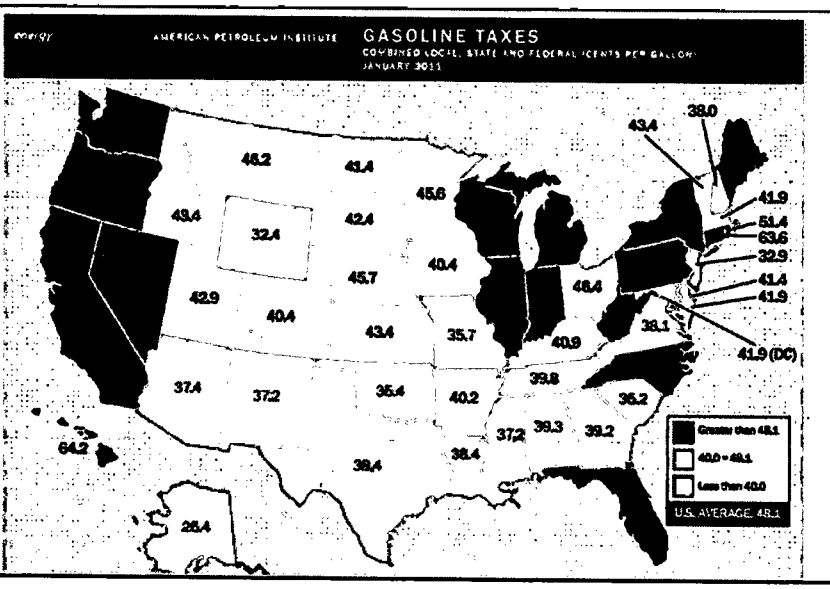
- NC and Texas have largest state-controlled highway systems, over 79,000 miles
- NC controls 76% of the road miles
- Comparison to Surrounding States

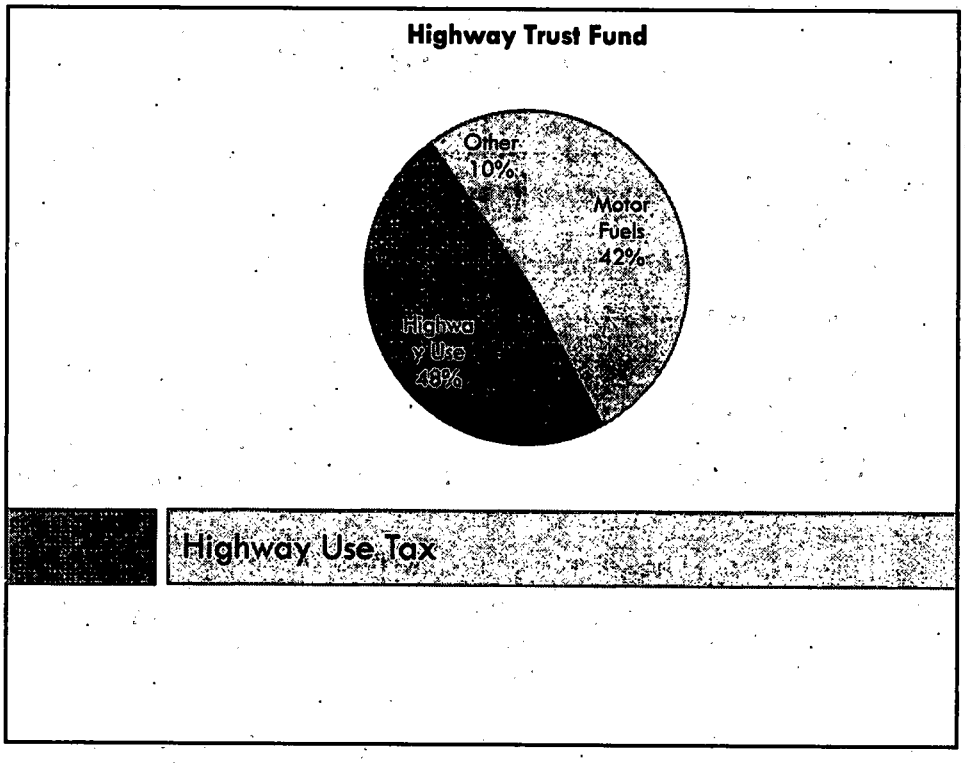
	Total Miles	State-Controlled	Percentage
Georgia	118,778	17,930	15%
South Carolina	66,249	41,437	63%
Tennessee	91,956	13,886	15%
Virginia	72,659	57,72	79%

Comparison-State Taxation of Gasoline

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

Comparison-Tax on Gasoline





Highway Use Tax-History

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

Highway Use Tax-Rates and Comparison

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

Highway Use Tax-Exemptions

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

Highway Use Tax-Companion Tax

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

OVERVIEW OF OTHER LOCAL REVENUE SOURCES

House and Senate Finance
Heather Fennell, Research Division

General Rate and Local Rates

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

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

Current Local Sales Taxes

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

Local Privilege License Taxes

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

Local Occupancy Taxes

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

Occupancy Tax - Guidelines

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

Local Meals Tax

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

Other taxes

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

State and Local Shared Revenue

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

Department of Revenue Report

- http://www.dornc.com/publications/reimbursement.html

County/ Municipality	Beer and Wine Excise Tax [$]	Scrap Tire Disposal Tax [$]	Whitegoods Disposal Tax [$]	Electric Franchise/ Natural Gas Excise Tax [$]	Telecommunications Tax [$]	Video Programming Distribution [$]	Solid Waste Disposal Tax [$]
Alamance County	78,741.59	159,359.84	45,218.52	-	-	154,574.97	46,955.30
Alamance	526.31	-	-	22,152.41	6,025.69	278.84	256.65
Burlington	72,657.65	-	-	2,012,698.36	1,365,657.69	426,186.49	35,079.32
Elon	10,585.69	-	-	150,615.33	83,186.62	75,940.41	5,962.36
Graham	21,201.34	-	-	428,374.55	314,876.69	129,436.65	10,270.56
Green Level	3,462.78	-	-	38,737.19	18,071.89	16,465.15	1,705.59
Haw River	2,911.84	-	-	71,092.87	52,959.69	14,295.69	1,520.85
Mebane	14,050.87	-	-	557,341.53	159,909.69	69,773.58	6,726.61
Ossipee	572.45	-	-	11,044.69	5,153.69	2,015.45	-
Swepsonville	1,732.84	-	-	59,057.69	4,150.69	5,224.18	-
Alexander County	-	40,397.53	-	-	-	145,491.85	39,643.95
Taylorsville	2,755.51	-	-	88,153.87	80,372.80	36,998.10	1,247.72
Alleghany County	13,237.39	12,516.05	3,305.96	-	-	46,517.84	7,905.26
Sparta	2,538.71	-	-	218,550.45	35,195.69	9,972.45	1,245.35
Anson County	-	27,611.01	-	-	-	27,661.94	12,511.12

GUIDELINES FOR OCCUPANCY TAX LEGISLATION

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

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

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

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

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

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

a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies;
b. The nonfederal share of the cost required to construct these projects;
c. The costs associated with providing enhanced public beach access; and
d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.

- **Administration** – The net revenues must be administered by a local tourism promotion agency, typically referred to as a "Tourism Development Authority," that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ½ of the members must be currently active in the promotion of travel and tourism in the taxing district and 1/3 of the members must be affiliated with organizations that collect the tax.[2]
- **Costs of Collection** – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.
- **Conformity with Other Local Occupancy Taxes** – In 2008, the NCTTC formally revised its policy position with regard to occupancy taxes to include a statement that if a city seeks to impose a new occupancy tax or increase its existing tax on lodging facilities in a county that also has an existing occupancy tax, the county occupancy tax must conform to the guidelines in order for the Coalition to support the proposed municipal tax. During the 2009 Regular Session, the House Finance Chairs[3] considered the revised policy statement of the NCTTC but declined to amend the House Finance Committee's Guidelines for Occupancy Tax accordingly.

Research Division
NC General Assembly
Revised 2/14/11

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

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

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544 LOB

DATE: 2-22 **TIME:** 1 PM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Cameron Chauvaux	Cary	P. Berger
2 Sarah Cooper	Swansboro	Brown
3 David Torres	Raleigh	P. Berger
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance — February 22, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	[illegible]
[illegible]	Ed Consultant -
Mary Klenz	League of Women Voters Char-Meck
DAVID WINSTEAD	NASH County OCCHFA
CAVORNE WINSTEAD	NASH COUNTY OCCHFA
ROSE CHAPPER	NASH COUNTY OCCHFA
[illegible]	Duke 6
Janet Mason	Rutherford County Schools
Meredith Mason	Rutherford County School Studies
BJ Miller	Moses Cone

VISITOR REGISTRATION SHEET

Senate Finance — February 22, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy McConkey	NC Beverage Assn
Dana Sykes	Smithfield's
Christine Craig	Wake Med
Butch Gunnells	NC Beverage A
John Merrill	Policy Group
Meredith Smith	The Policy Group
Alice Garland	NCEL
Leslie Bevacqua Cox	Capitol Pt
BRUCE THOMPSON	PARKER POE
John Bowdish	Altria Group
Barbara S Gardner	Brave

VISITOR REGISTRATION SHEET

Senate Finance — February 22, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Hieron	William Mueller
[signature]	NCSBA
Darry Bunk	NCGA
Michael James	NCBA
Andrew Bell	NCGA
Jessi Hayes	NC HBA
Lisa Martin	NC HBA
Lori Kroll	NCGA
[signature] Holtzy	Longview Group
[signature]	NCLM
Cameron Hanley	Electricities

VISITOR REGISTRATION SHEET

Senate Finance
Name of Committee

February 22, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
HERB CRENSHAW	AT&T

VISITOR REGISTRATION SHEET

Senate State and Local Government — 02-22-2011
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Herbert Moon	Nash Co., OLCAFA
Kent Dozier	Nash Co. OAK LEVEL ~~LOBBYIST~~ FARCA (Robbery) ~~ADMINISTRATOR~~
Royce May	NASH
Kathy Hartkopf	NC Freedom Works
Charlene Moore	OLCAFA Nash Co.
Tony Tellerton	FAC
Curry Gaskins	Womble Carlyle Sandridge & Rice
Sara Riggins	NCFPC
Kellie Slappey	JLF
Tyler Younts	Campbell Law
Ellie Gordon	NC Alliance

VISITOR REGISTRATION SHEET

Senate State and Local Government — 02-22-2011
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emily Doyle	NCPAPA
THARA FIELDS	Benchmarks
Ken McKee	Benchmarks
Rev. Mark Creech	EAL
Bill Wilkes	DDR
Virginia Liftner	Harrell & ASSOC.
David Baker	DDR
Marge Freeman	NCAE
[illegible]	DCS
Paul J. Fogleman	NSC
Mary McLennan	NCCAT

SENATE FINANCE COMMITTEE
Tuesday February 23, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on February 23, 2011, in Room 544 of the Legislative Office Building. Twenty-six members of the Committee were present. Senator Rucho presided as chair. Nick Hall of Raleigh served as page.

S.B. 99 – Reform UI Tax Structure/Expedite Analysis

Senator Clary was recognized to explain the bill. The bill would authorize the Department of Commerce to hire a consultant to analyze the State's unemployment insurance (UI) tax structure. The Secretary of Commerce, Keith Crisco, was recognized by the Committee to confirm Commerce's position in support of the bill. Connie Wilson, a lobbyist for the Employee Coalition of North Carolina, was recognized also in support. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 76 – TC: Eligibility: Indus Facil/Fix Uwharrie Com.

Senator Hartsell was recognized to explain the proposed committee substitute (PCS) and moved to adopt the PCS for discussion. The motion carried. The PCS makes technical changes to the sales tax refunds to industrial facilities and corrects the stated number of members of the Uwharrie Commission. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 97 – Clarify Refunds of Tax Overpayments

Senator Hartsell was recognized to explain the bill. The bill clarifies when the Department of Revenue is required to initiate a refund of an overpayment of tax and directs the Department to issue refunds for overpayments that have been discovered within the statute of limitations consistent with this clarification. Senator Atwater moved for a favorable report and the motion carried. A copy of the bill and the summary is attached

S.B. 94 – IRC Update

Senator Hartsell was recognized to explain the PCS and moved to adopt the PCS for discussion. The motion carried. The PCS clarifies the State's conformity on three issues identified by practitioners and the Department of Revenue: the definition of qualifying property for the purpose of section 179 expense deductions and the basis of property passing through an estate. Senator Clark moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal memo is attached.

Local Revenue Sources Presentation

Martha Walston, a staff attorney with the Fiscal Research Division, provided the Committee with an overview of local revenue sources which included property tax, deed stamp tax, sales tax, occupancy tax, meal tax, and privilege tax. Her presentation provided a strong emphasis of the property tax portion of the list of local revenue sources. During her presentation she introduced David Baker, the Department of Revenue's Property Tax Division Director, who in turn introduced Bill Wilkes, Assistant Director. A copy of Ms. Walston's presentation is attached.

The meeting adjourned at 1:49 PM.

Senator Bob Rucho, Presiding Chair
Senate Finance Committee

Paul Rucho, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY

SENATE

FINANCE COMMITTEE REPORT

Senator Fletcher L. Hartsell, Jr., Co-Chair

Senator Bob Rucho, Co-Chair

CORRECTED REPORT

Wednesday, February 23, 2011

Senator RUCHO,

submits the following with recommendations as to passage:

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

S.B. **76** TC: Eligibility: Indus Facil/Fix Uwharrie Com.

Draft Number:	65010
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Corrrected PCS number

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, February 23, 2011

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

FAVORABLE

S.B. **97** Clarify Refunds of Tax Overpayments.
Sequential Referral: None
Recommended Referral: None

S.B. **99** Reform UI Tax Structure/Expedite Analysis.
Sequential Referral: None
Recommended Referral: None

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

S.B. **94** IRC Update.
Draft Number: 85043
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

SB 94 Sen. Hartsell
SB 97 Sen. Hartsell
SB 99 Sen. Clary

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	February 23, 2011	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 76	TC: Eligibility: Indus Facil/Fix Uwharrie Com.	Senator Clary Senator Hartsell Senator Rucho
SB 94	IRC Update.	Senator Newton Senator Hartsell Senator Tillman
SB 97	Clarify Refunds of Tax Overpayments.	Senator Hartsell Senator Rucho Senator Daniel
SB 99	Reform UI Tax Structure/Expedite Analysis.	Senator Clary Senator Hartsell Senator Rucho

Informational Presentation by Staff

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Senate Finance Committee
Wednesday, February 23, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 76	TC: Eligibility: Indus Facil/Fix Uwharrie Com.	Senator Clary Senator Hartsell Senator Rucho
SB 94	IRC Update.	Senator Newton Senator Hartsell Senator Tillman
SB 97	Clarify Refunds of Tax Overpayments.	Senator Hartsell Senator Rucho Senator Daniel
SB 99	Reform UI Tax Structure/Expedite Analysis.	Senator Clary Senator Hartsell Senator Rucho

Presentations

Local Government Revenue Resources, "Property Tax"
Martha Walston-Fiscal Research Division

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 76*
PROPOSED COMMITTEE SUBSTITUTE S76-CSTD-4 [v.8]

2/22/2011 6:53:45 PM

Short Title: TC: Eligibility: Indus Facil/Fix Uwharrie Com. (Public)

Sponsors:

Referred to:

February 16, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE INDUSTRIAL FACILITIES SALES TAX REFUND, A TECHNICAL CORRECTION TO THE MEMBERSHIP COUNT OF THE UWHARRIE COMMISSION, TO PROVIDE INTEREST ON OVERPAYMENT OF PROPERTY TAX, AND TO PROVIDE DELAY OF THE COLLECTION OF PROPERTY TAX PENDING APPEAL.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 105-164.14B(a) reads as rewritten:

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

...

(12) Owner. – The term includes a lessee under a capital lease.

(13) Paper-from-pulp manufacturing. – An industry primarily engaged in manufacturing or converting paper, other than newsprint or uncoated groundwood paper, from pulp or pulp products, or in converting purchased sanitary paper stock or wadding into sanitary paper products.

...

~~(20) Strategic partner. – A business that is engaged in activities at the facility that directly contribute to the manufacture and distribution of computers and computer peripherals and with whom the taxpayer has contracted to provide those activities at the facility in direct support of its manufacturing and distribution activities.~~

(21) Reserved.

(22) Turbine manufacturing. – An industry primarily engaged in manufacturing turbines or complete turbine generator set units, such as steam, hydraulic, gas, and wind. The term does not include the manufacturing of aircraft turbines."

SECTION 1.(b) G.S. 105-164.14B(b) reads as rewritten:

"(b) Refund. – An owner of an industrial facility that meets the business, minimum investment, and industry-specific requirements of this section is allowed an annual refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that are installed in the construction of the facility and that become a part of the real property of the facility. Liability incurred indirectly by the owner for sales and use taxes on those items is considered tax paid by the owner. The requirements are:

(1) Business requirement. – The facility is primarily engaged in one or more of the following:
a. Air courier services.
b. Aircraft manufacturing.
c. Bioprocessing.
d. Financial services, securities operations, and related systems development.
e. Motor vehicle manufacturing.
f. Paper-from-pulp manufacturing.
g. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines.
~~g.~~h. Semiconductor manufacturing.
~~h.~~i. Solar electricity generating materials manufacturing.
j. Turbine manufacturing.

(2) Minimum investment requirement. – The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in a development tier one area, the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). ~~In the case of a computer manufacturing facility, the~~ The owner may invest these funds either directly or indirectly through a related ~~entity or strategic partner.~~entity.

(3) Industry-specific requirements:
a. If the facility is primarily engaged in financial services, securities operations, and related systems development, it satisfies all of the following conditions:
1. It is owned and operated by the business for which the services are provided or by a related entity of that business as defined in G.S. 105-130.7A.
2. No part of it is leased to a third-party tenant that is not a related entity of the business.
b. If the facility is primarily engaged in solar electricity generating materials manufacturing, the business satisfies a wage standard at the facility. The wage standard is equal to one hundred five percent (105%) of the lesser of the average weekly wage for all insured private employers in the State and the average weekly wage for all insured private employers in the county. A business satisfies the wage standard if it pays an average weekly wage that is at least equal to the amount required by this sub-subdivision. In making the wage calculation, the business must include any jobs that were filled for at least 1,600 hours during the calendar year."

SECTION 2. G.S. 153C-3(d) reads as rewritten:

"(d) Membership. – The Commission shall consist of ~~10~~ 12 members as follows:
(1) One representative from the public at large who is a resident of the Uwharrie region of North Carolina appointed by the President Pro Tempore of the Senate.
(2) One representative from the public at large who is a resident of the Uwharrie region of North Carolina appointed by the Speaker of the House of Representatives.

(3) Four representatives from the public at large who are residents of the Uwharrie region of North Carolina to be appointed by the Governor, including:
a. Two who shall at the time of appointment be actively connected with or have experience in local government within the Uwharrie region of North Carolina.
b. One who shall at the time of appointment have experience in tourism or tourism development in the Uwharrie region of North Carolina.
c. One who shall have experience in economic development in the Uwharrie region of North Carolina.
(4) Two members to represent each of the following regional councils of government as appointed by those councils: the Centralina Council of Governments and the Piedmont Triad Council of Governments.
(5) The Secretary of Commerce or the Secretary's designee.
(6) The Secretary of Environment and Natural Resources or the Secretary's designee.

The members of the Commission shall elect a chair, vice-chair, and any other officers they consider necessary and shall determine the length of the term of office, not to exceed two years, of each officer. A majority of the Commission shall constitute a quorum. Each member appointed to the Commission shall be appointed to serve a four-year term. Any vacancy on the Commission shall be filled by the original appointing authority for the remainder of the unexpired term. Initial terms commence September 1, 2010."

SECTION 3.(a) G.S. 105-360 is amended by adding a new subsection to read:

"(e) When an order of the county board of equalization and review reduces the valuation of property or removes the property from the tax lists and, based on the order, the taxpayer has paid more tax than is due on the property, the taxpayer is entitled to receive interest on the overpayment in accordance with this subdivision. An overpayment of tax bears interest at the rate set under subsection (a) of this section from the date the interest begins to accrue until a refund is paid. Interest accrues from the later of the date the tax was paid and the date the tax would have been considered delinquent under G.S. 105-360. A refund is considered paid on a date determined by the governing body of the taxing unit that is no sooner than five days after a refund check is mailed."

SECTION 3.(b) G.S. 105-378(d) reads as rewritten:

"(d) Enforcement and Collection Delayed Pending Appeal. – When the board of county commissioners or municipal governing body delivers a tax receipt to a tax collector for any assessment that has been or is subsequently appealed to the county board of equalization and review or the Property Tax Commission, the tax collector may not seek collection of taxes or enforcement of a tax lien resulting from the assessment until the appeal has been finally adjudicated. The tax collector, however, may send an initial bill or notice to the taxpayer."

SECTION 4. Section 1 of this act becomes effective July 1, 2010, and applies to sales made on or after that date. Section 3 of this act becomes effective for taxable years beginning on or after January 1, 2011. The remainder of this act is effective when it becomes law.

SENATE PCS 76:
TC: Eligibility: Indus Facil/Fix Uwharrie Com

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	February 22, 2011
Introduced by:	Sens. Hartsell, Rucho, Clary	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S76-CSTD-4		

SUMMARY: ***The proposed committee substitute to Senate Bill 76 makes technical changes to the sales tax refunds to industrial facilities, and corrects the stated number of members of the Uwharrie Commission. The PCS make the following changes to the original bill:***

- ***For the industrial facilities sales tax refunds: Amends the definition of owner, removes an obsolete defined term, and allows owners of all facilities to make minimum investment requirements either directly or indirectly through related entities.***
- ***Adds section 3 of the bill which provides for interest on overpayments of property tax, and delays the collection of property tax pending appeal.***

CURRENT LAW:

Section 1: Section 4 of S.L. 2010-91 expanded the list of industries allowed an annual sales and use tax refund to include paper-from-pulp manufacturing and turbine manufacturing. The change was intended to become effective July 1, 2010, and applied to sales made on or after that date.

S.L. 2010-166 made technical changes to the sales and use tax refunds, but did not include the newly enacted refunds of S.L. 2010-91. Statutory construction provides that when the General Assembly enacts two bills that amend the same existing general statute, the bill enacted last will control. Therefore, the refunds enacted in S.L. 2010-91 were in effect removed by S.L. 2010-166.

Section 2: S.L. 2010-176 established the Uwharrie Regional Resources Commission to foster economic development, and to protect and enhance the natural resources of the Uwharrie Region, including Davidson, Davie, Montgomery, Rowan, Randolph, and Stanly counties. The total number of members authorized for appointment by statute is 12; however, the statute states the membership of the Commission is 10.

Section 3: Individuals may appeal property tax valuations to the county board of equalization and review. The State Property Tax Commission hears appeals from the local boards of equalization and review. If the Property Tax Commission reduces the value of the property, or removes the property from taxation, the taxpayer is receives interest on any overpayment of taxes. The tax collector may not enforce collection of the tax while the appeal to the Property Tax Commission is pending, but interest will accrue if the taxes are not timely paid. There are not corresponding provisions for appeals pending at county boards of equalization and review.

BILL ANALYSIS:

Section 1: Reenacts the sales tax refunds for paper-from-pulp manufacturing and turbine manufacturing enacted in S.L. 2010-91. The PCS makes the additional changes to the refunds for industrial facilities:

- Amends the definition of "owner" to include lessees under a capital lease.
- Deletes the defined term "strategic partner." This term was solely used in the refund for computer manufacturing facility which has been repealed.

- Remove additional reference to computer manufacturing facilities.
- Clarifies the minimum investment requirement for the refunds can be met by funds invested directly or indirectly through a related entity.

Section 2: Corrects the total number of members of the Uwharrie Commission.

Section 3: Provides interest on overpayments and suspension of the enforcement proceedings for property valuations that have been appealed to the county boards of equalization and review. If the county board of equalization and review reduces the value of the property, or removes the property from taxation, the taxpayer is receives interest on any overpayment of taxes. The interest for overpayments is the same as the interest charged for delinquent taxes. The tax collector may not enforce collection of the taxes while the appeal to the board is pending, but interest will accrue if the tax is not timely paid.

EFFECTIVE DATE: Section 1 of this act is effective July 1, 2010 and applies to sales on or after that date. Section 3 becomes effective for taxable years beginning on or after January 1, 2011. The remainder of this act is effective when it becomes law.

S76-SMTD-4(CSTD-4) v4

SENATE BILL 76*

Short Title:	TC: Eligibility: Indus Facil/Fix Uwharrie Com.	(Public)
Sponsors:	Senators Hartsell, Rucho, and Clary.	
Referred to:	Finance.	

February 16, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE A TECHNICAL CORRECTION TO THE INDUSTRIAL FACILITIES SALES TAX REFUND AND A TECHNICAL CORRECTION TO THE MEMBERSHIP COUNT OF THE UWHARRIE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 105-164.14B(a) reads as rewritten:

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

...

(12) Owner. – The term includes a lessee under a lease-purchase contract.

(13) Paper-from-pulp manufacturing. – An industry primarily engaged in manufacturing or converting paper, other than newsprint or uncoated groundwood paper, from pulp or pulp products, or in converting purchased sanitary paper stock or wadding into sanitary paper products.

...

(21) Reserved.

(22) Turbine manufacturing. – An industry primarily engaged in manufacturing turbines or complete turbine generator set units, such as steam, hydraulic, gas, and wind. The term does not include the manufacturing of aircraft turbines."

SECTION 1.(b) G.S. 105-164.14B(b)(1) reads as rewritten:

"(1) Business requirement. – The facility is primarily engaged in one or more of the following:

a. Air courier services.
b. Aircraft manufacturing.
c. Bioprocessing.
d. Financial services, securities operations, and related systems development.
e. Motor vehicle manufacturing.
f. Paper-from-pulp manufacturing.
g. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines.
~~g.~~h. Semiconductor manufacturing.
~~h.~~i. Solar electricity generating materials manufacturing.
j. Turbine manufacturing."

SECTION 2. G.S. 153C-3(d) reads as rewritten:

"(d) Membership. – The Commission shall consist of ~~10~~ 12 members as follows:

(1) One representative from the public at large who is a resident of the Uwharrie region of North Carolina appointed by the President Pro Tempore of the Senate.

(2) One representative from the public at large who is a resident of the Uwharrie region of North Carolina appointed by the Speaker of the House of Representatives.

(3) Four representatives from the public at large who are residents of the Uwharrie region of North Carolina to be appointed by the Governor, including:

a. Two who shall at the time of appointment be actively connected with or have experience in local government within the Uwharrie region of North Carolina.

b. One who shall at the time of appointment have experience in tourism or tourism development in the Uwharrie region of North Carolina.

c. One who shall have experience in economic development in the Uwharrie region of North Carolina.

(4) Two members to represent each of the following regional councils of government as appointed by those councils: the Centralina Council of Governments and the Piedmont Triad Council of Governments.

(5) The Secretary of Commerce or the Secretary's designee.

(6) The Secretary of Environment and Natural Resources or the Secretary's designee.

The members of the Commission shall elect a chair, vice-chair, and any other officers they consider necessary and shall determine the length of the term of office, not to exceed two years, of each officer. A majority of the Commission shall constitute a quorum. Each member appointed to the Commission shall be appointed to serve a four-year term. Any vacancy on the Commission shall be filled by the original appointing authority for the remainder of the unexpired term. Initial terms commence September 1, 2010."

SECTION 3. Section 1 of this act becomes effective July 1, 2010, and applies to sales made on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 94*
PROPOSED COMMITTEE SUBSTITUTE S94-CSRBx-6 [v.1]

2/23/2011 10:38:50 AM

Short Title: IRC Update. (Public)

Sponsors:

Referred to:

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2010,~~ January 1, 2011, including any provisions enacted as of that date that become effective either before or after that date."

SECTION 2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(15b) For taxable years 2010 through 2012, eighty-five percent (85%) of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service during the taxable year. In addition, for taxable year 2010, a taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 2.(b) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(21b) An amount equal to twenty percent (20%) of the amount added to federal taxable income as accelerated depreciation under subdivision (a)(15b) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012. For the amount added to taxable income in the 2012 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2013."

SECTION 2.(c) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(8b) For taxable years 2010 through 2012, eighty-five percent (85%) of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service during the taxable year. In addition, for taxable year 2010, a taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 2.(d) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(17b) An amount equal to twenty percent (20%) of the amount added to federal taxable income as accelerated depreciation under subdivision (c)(8b) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012. For the amount added to taxable income in the 2012 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2013."

SECTION 3.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(23) For taxable years 2010 and 2011, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code for property placed in service in taxable year 2010 or 2011 exceeds the amount that would have been allowed for the respective taxable year under section 179 of the Code as of May 1, 2010. For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code as of January 1, 2011. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.(b) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(26) An amount equal to twenty percent (20%) of the amount added to federal taxable income under subdivision (a)(23) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012."

SECTION 3.(c) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(15) For taxable years 2010 and 2011, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code for property placed in service in taxable year 2010 or 2011 exceeds the amount that would have been allowed for the respective taxable year under section 179 of the Code as of May 1, 2010. For purposes of this subdivision, the definition of section 179 property has the same meaning as under section

179 of the Code as of January 1, 2011. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.(d) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(21) An amount equal to twenty percent (20%) of the amount added to federal taxable income under subdivision (c)(15) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012."

SECTION 4. This act is effective when it becomes law. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North Carolina taxable income for the 2010 taxable year become effective for taxable years beginning on or after January 1, 2011.

SENATE PCS 94: IRC Update

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	February 23, 2011
Introduced by:	Sens. Hartsell, Tillman, Newton	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S94-CSRBx-6		Committee Counsel

SUMMARY: ***Senate Bill 94[1] would update the reference to the Internal Revenue code used in defining and determining certain State tax provisions from May 1, 2010, to January 1, 2011. By doing so, North Carolina would conform to many of the changes made by the federal Small Business Jobs Act of 2010 and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, including part of the estate tax changes, a modified version of the enhanced section 179 expense deduction changes, and all of the business and individual income tax extenders from the Bush-era tax legislation of 2001. Senate Bill 94 would not conform to the bonus depreciation provisions. This bill is a recommendation of the Revenue Laws Study Committee. With the exception of the estate tax, the bill's impact on General Fund availability is minimal.***

The proposed committee substitute clarifies the State's conformity on three issues identified by practitioners and the Department of Revenue: the definition of qualifying property for purposes of the section 179 expense deduction and the basis of property passing through an estate.

The proposed committee substitute differs from the one you received last night. It modifies the provisions based upon further comments received from the practitioners and the Department of Revenue.

CURRENT LAW: North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[2] The General Assembly determines each year whether to update its reference to the Code.[3] Updating the reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made. Maintaining conformity with federal tax law simplifies tax reporting because a taxpayer will not need to account for differing federal and State treatment of the same asset.

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[1] SB 94, as introduced, was identical to HB 124, introduced by Representatives Howard, Brubaker, Starnes, and Setzer. HB 124 is in House Finance.

[2] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[3] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

BILL ANALYSIS: The current reference to the Code is May 1, 2010.[4] Since that time, Congress has enacted two Acts that make substantial changes to the tax code: the Small Business Jobs Act of 2010, enacted September 27, 2010, as P. L. 111-240 (2010 Jobs Act), and the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act, enacted December 17, 2010, as P. L. 111-312 (2010 Tax Relief Act). Both Acts contain provisions that became effective retroactively on January 1, 2010. Since the General Assembly will not have had an opportunity to enact legislation prior to the end of the 2010 taxable year, taxpayers may have to make adjustments on their 2010 State tax return for items included in, or excluded from, federal taxable income as a result of one of these two Acts.

The 2010 Jobs Act enhances existing business tax incentives and partially offsets this revenue loss with changes which are expected to increase revenue. The incentives in the 2010 Jobs Act are not limited to small businesses, and the accelerated deduction for depreciation represents a major benefit to large businesses. The 2010 Tax Relief Act boosts some of the business tax incentives in the 2010 Jobs Act and extends the Bush-era individual and business tax incentives, included in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)[5], for two years.

Extension of 50% Bonus Depreciation for 2010, 2011, and 2012

Businesses may depreciate the cost of a new asset[6] over a period of time, usually five to 15 years. Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over the normal depreciation schedule. The federal Economic Stimulus Act of 2008[7] provided a 50% first year bonus depreciation for qualified property acquired and placed in service in 2008. The federal American Recovery and Reinvestment Act of 2009 extended the 50% bonus depreciation provided to qualified property for an additional year through 2009.

The 2010 Jobs Act extends the bonus depreciation for 2010 and applies retroactively to property acquired and placed in service in 2010.[8] The 2010 Tax Relief Act increases the 50% bonus depreciation extended under the 2010 Jobs Act to 100% for property acquired and placed in service after September 8, 2010, and before January 1, 2012. It also provides 50% bonus depreciation for qualified property placed in service after December 31, 2012, and before January 1, 2013. Under the 2010 Jobs Act, the bonus depreciation would have expired for the 2012 taxable year. Under the 2010 Tax Relief Act, the bonus deprecation expires for the 2013 taxable year.

The 2010 Jobs Act also allows taxpayers using the percentage of completion accounting method to benefit from bonus depreciation at the federal level for assets with a depreciable life of seven years or less. The percentage of completion accounting method might prevent taxpayers from receiving benefit from the bonus depreciation because the accounting method spreads expenses, including depreciation,

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[4] Part 31 of S.L. 2010 31 updated the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2009, to May 1, 2010. However, S.L. 2010 31 did not conform to the five year carryback of net operating losses incurred by large businesses. S.L. 2010 31 incorporated tax changes made by five federal acts: the Worker, Homeownership, and Business Assistance Act (WHBA), P.L. 111-92; Acceleration of Income Tax Benefits for Haiti Relief, P.L. 111-126; the Patient Protection and Affordable Care Act, P.L. 111-148; the Health Care and Education Reconciliation Act, P.L. 111-152; and the Hiring Incentives to Restore Employment Act (HIRE), P.L. 111-147.

[5] Most of the tax provisions in EGTRRA were scheduled to expire in 2010 or 2011 and revert to the provisions as they existed in 2001.

[6] One important difference between bonus depreciation and section 179 expensing is that bonus depreciation applies only to new equipment, while section 179 expensing may apply to new and used equipment.

[7] Congress has authorized bonus depreciation several times to encourage business investment, specifically after September 11, 2001. The Jobs Creation and Worker Assistance Act of 2002 provided a 30% bonus depreciation allowance. The Jobs and Growth Tax Relief Reconciliation Act of 2003 extended the sunset and increased the amount to 50%.

[8] The property may be placed in service during 2011 for property with a recovery period of 10 years or longer and for transportation property (i.e., tangible personal property used to transport people or property).

throughout the life of a long-term contract. Under this accounting method, taxpayers could not deduct the bonus depreciation in the first year. Construction contractors use the percentage of completion accounting method. This provision is new.

North Carolina decoupled from the extension of the bonus depreciation provisions in 2008 and 2009. The State delayed the impact of the bonus depreciation deduction in a manner similar to what it has done in the past: State tax law provides that a taxpayer may deduct the same amount of an asset's basis under State law as under federal law, it is just that the timing of the deduction differs. Under State tax law, a taxpayer must add back 85% of the accelerated depreciation amount[9] in the year that it is claimed for federal purposes. Then, in subsequent tax years, the taxpayer may deduct from federal taxable income the total amount of the add-back, divided into five equal installments. This adjustment means that for State tax purposes, a taxpayer may deduct a greater depreciation amount in the outlying tax years, which will be the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back.

Senate Bill 94 would decouple from the bonus depreciation provisions for 2010, 2011, and 2012 in the same manner as it has decoupled from them in the past: A taxpayer would add-back 85% of the accelerated depreciation amount in the year that it is claimed for federal purposes. Then, in subsequent tax years, the taxpayer would deduct from federal taxable income the total amount of the add-back, divided into five equal installments.

Enhanced Section 179 Expensing for 2010, 2011, and 2012

Section 179 of the Code allows the expensing of the purchase price of some business assets[10] in the year of purchase rather than taking depreciation[11] throughout the life of the asset. In other words, expensing trades a smaller yearly deduction over time for a larger deduction in year one.

Prior to the Emergency Economic Stabilization Act of 2008 (EESA), the deduction limit for section 179 expensing was $128,000[12] of the cost of the property with a dollar for dollar phase-out of this amount whenever the total cost of qualifying property placed in service that year exceeded $510,000.[13] EESA increased the deduction limit from $128,000 to $250,000 with a phaseout at $800,000 for the 2008 tax year. The American Recovery and Reinvestment Tax Act of 2009 (ARRTA) extended the temporary increase through 2009. The federal HIRE Act of 2010 extended the 2008 and 2009 increase through 2010. The limits were scheduled to revert to the prior levels of $25,000 and $200,000 in taxable year 2011. North Carolina conformed to those changes.

The 2010 Jobs Act not only delayed the reversion to the prior levels until the 2012 taxable year, it also increased the section 179 expensing deduction for tax years 2010 and 2011 from $250,000 and $500,000 to $800,000/$2 million. In addition to the expansion of the limits, the Act broadened the definition of qualified property to include qualified leasehold improvement property, qualified restaurant property, qualified retail improvement property, and computer software.[14] The enhancements made by the 2010

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[9] The accelerated depreciation amount for property placed in service in 2008 is 50%.

[10] The business asset must be newly purchased tangible personal property that is used more than 50% for business purposes and is eligible to be depreciated under the Code. The newly purchased property may be new or used equipment.

[11] Generally, taxpayers take the Section 179 expensing deduction first and claim Section 168(k) depreciation on any remaining basis.

[12] Prior to the EESA, the dollar limits would have been $125,000 with a phase-out beginning at $500,000; both amounts would have been indexed for inflation resulting in the limits of $128,000 and $510,000.

[13] For example, if the taxpayer placed in service during the taxable year one or more items of qualifying property totaling $520,000, the amount that could be expensed under section 179 would be $118,000 -- $128,000 less $10,000, which is the excess of $520,000 over $510,000.

[14] Qualified real property is limited to a maximum deduction of $250,000.

Jobs Act are set to expire for the 2012 taxable year. The 2010 Tax Relief Act does not continue the expansion of the types of property that may qualify for the deduction beyond the 2011 taxable year, but it does increase the limits for the 2012 taxable year from $25,000 and $200,000 to $125,000 and $500,000. Under the 2010 Tax Relief Act, the deduction limits are set to revert to their prior levels of $25,000 and $200,000 in 2013.

North Carolina has conformed to the enhanced section 179 expense deduction provisions in the past. However, the enhancements made by the 2010 Jobs Act are the most expansive ever enacted. Senate Bill 94 would conform to the expanded definition of qualified property; it would maintain the 2010 deduction limits of $250,000 and $800,000 for taxable years 2010 and 2011; and it would decouple from the enhanced limits of $500,000 and $2,000,000 for taxable years 2010 and 2011. Senate Bill 94 would provide that the property's basis would be the same for federal and State purposes and would treat the difference in the same manner as State tax law has historically treated the bonus depreciation: A taxpayer would add-back 85% of the additional expensing taken under federal law in 2010 and 2011 and would deduct 20% of this amount over the succeeding five years. Senate Bill 94 would conform to the expensing limits of $125,000 and $500,000 for the taxable year 2012 and, like federal law, would revert to the prior expense limits of $25,000 and $200,000 for the tax year 2013.

Estate Tax for 2010 - 2012

EGTRRA gradually reduced the federal estate tax over a period of years and abolished it for decedents dying in 2010. During the year of its repeal, the basis of property passing through an estate was determined by the modified carryover basis rules under EGTRRA. EGTRRA also repealed the state estate tax credit for decedents dying on or after 2004 and replaced the credit with a deduction. The estate tax was scheduled to revert to the 2001 law in 2011: the 2001 maximum estate tax rate of 55% and a $1 million applicable exclusion amount.

The 2010 Tax Relief Act revives the estate tax retroactively for decedents dying on or after January 1, 2010, and thereby allows property passing through the estate to acquire a stepped-up basis. The maximum federal estate tax rate is 35% with an applicable exclusion amount of $5 million. The 2010 Tax Relief Act also provides for portability between spouses of the exclusion amount. This portability means that any unused exclusion amount by one spouse is available to the surviving spouse, effectively allowing a married couple to exclude up to $10 million from estate tax.[15] The new estate tax law is scheduled to sunset on December 31, 2012, to the pre-EGTRRA amounts. The 2010 Tax Relief Act gives the estates of decedents dying in 2010 the option to pay no estate tax and assume the modified carryover basis in the property.

North Carolina imposes an estate tax on the estate of a decedent when a federal estate tax is imposed on the estate.[16] By virtue of this language, the federal and state exclusion amounts are the same. The amount of the State's estate tax is the amount of the credit allowed on the federal estate tax return for state estate tax paid, as the federal law provided in 2001.[17]

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[15] The portability election is set to sunset December 31, 2012. Therefore the utility of the portability election is limited to situations where both spouses die within the two-year term (2011 and 2012).

[16] North Carolina repealed its inheritance tax in 1998 and replaced it with an estate tax that was equivalent to the federal state estate tax credit allowed on a federal estate tax return. This type of state estate tax was known as a "pick up" tax because it picked up for the state the amount of federal estate tax that would otherwise be paid to the federal government.

[17] When Congress phased out the state estate tax credit, beginning in 2002, North Carolina enacted legislation not to conform to the phase out of the credit. In other words, North Carolina began tying the amount of the State estate tax owed to the federal credit as it existed in 2001 rather than as it currently exists. Georgia, South Carolina, and Tennessee have not had an estate tax since January 1, 2005, because their estate tax equals the amount of the state estate tax credit allowed on the federal estate tax return. Virginia repealed its estate tax, effective July 1, 2007.

Since the federal estate tax did not exist in 2010, North Carolina's estate tax was repealed for 2010. With the revival of the federal estate tax in 2011, North Carolina's estate tax is revived for decedents dying in 2011.[18] Senate Bill 94, by conforming to the definition of federal taxable income for income tax purposes, also adopts the federal basis of any property passing through an estate. Unlike Congress, North Carolina cannot the estate tax retroactively[19] on the estates of decedents dying on or after January 1, 2010, and before January 1, 2011. The effective date clarifies this constitutional restriction.

Business Tax Extenders for 2010 and 2011

The 2010 Tax Relief Act extended many of the tax incentives enacted in EGTRRA for two years. The business tax incentives included enhanced deduction and expensing items, charitable deductions, and tax credits. North Carolina conformed to these incentives in 2002[20]; however, under existing North Carolina law, these incentives expired for the 2010 taxable year. Senate Bill 94 would conform to these extensions.

The 2010 Tax Relief Act extended the following business tax incentives that were set to expire for the 2010 taxable year for the 2010 and 2011 taxable years:

- 15-year recovery period for qualified leasehold improvements, restaurant building and improvements, and retail improvements
- Seven-year recovery period for motor sports entertainment costs recovery
- Expensing election for certain film and television production costs
- Brownfields remediation expensing

The 2010 Tax Relief Act extends the Work Opportunity Tax Credit (WOTC) to include individuals who begin employment after August 31, 2011, and before January 1, 2012. The WOTC is equal to 40% of up to $6,000 of the targeted employee's qualified first year wages. North Carolina's WOTC is equal to 6% of the federal WOTC for wages paid for positions located in this State. The federal WOTC was scheduled to expire September 1, 2011.

The 2010 Tax Relief Act extends the following charitable incentives for taxable years 2010 and 2011:

- Deduction for contributions of food inventory
- Deduction for contributions by C corporations of books to public schools
- Deduction for corporate contributions of computer equipment for educational purposes
- Basis adjustment to stock of S corporations making charitable contributions of property

Individual Income Tax Extenders for 2010, 2011, and 2012

The 2010 Tax Relief Act extends many of the Bush-era individual tax incentives included in the EGTRRA for two years. Some of the tax incentives expired in 2010 and others were scheduled to expire in 2011. North Carolina conformed to these incentives in 2002[21]; however, under existing North Carolina law, many of these incentives expired for the 2010 taxable year and others are scheduled to expire for the 2011 taxable year. Senate Bill 94 would conform to these extensions.

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[18] North Carolina's estate tax would have been revised in 2011 based upon the Code as written on May 1, 2010.
[19] Article I, Sec. 16 of the North Carolina Constitution.
[20] S.L. 2002-126.
[21] S.L. 2002-126.

The following three individual income tax incentives were scheduled to expire in 2010, but the 2010 Tax Relief Act extends the incentives retroactively for the 2010 tax year and the 2011 tax year:

- Tax deduction for higher education tuition expenses
- Up to $250 deduction for teacher's classroom expenses
- Charitable contribution of IRA proceeds

The following individual income tax incentives were scheduled to expire in 2011, but 2010 Tax Relief Act extends the incentives for the 2011 and 2012 taxable years:

- *No limitation on itemized deductions.* Section 68 of the Code, first added in 1990, established an overall limitation on itemized deductions. This limitation was gradually repealed starting in 2006, with the phase-out complete in taxable year 2010. The limitation was scheduled to revert in full in 2011. The 2010 Tax Relief Act extends the complete repeal of the limitation for 2011 and 2012.
- *Enhancements to the earned income tax credit (EITC).* The EITC is a refundable tax credit that varies depending on the number of the taxpayer's qualifying children. North Carolina's EITC is equal to 5% of the federal credit amount. EGTRRA increased the EITC from 40% to 45% of a family's first $12,570 of earned income for families with three or more children and an increase in the beginning point of the phase-out range for married coupled filing a joint return by $1,880. The enhancements were set to expire for the 2011 taxable year. The 2010 Tax Relief Act extends the enhancements through the 2011 and 2012 taxable years.
- *Enhancements to the adoption tax credit.* EGTRRA increased the dollar limitation for the credit and the income exclusion for employer paid expenses to $10,000, indexed for inflation. The Patient Protection and Affordable Care Act increased the credit and exclusion by another $1,000 for 2010 and 2011. The credit cap was scheduled to return to $5,000[22] for taxable years beginning on or after January 1, 2012. North Carolina's adoption tax credit is equal to 50% of the federal credit amount. The 2010 Tax Relief Act extends the enhancements made by EGTRRA for one year. Under the Act, the credit caps will revert to their prior levels in taxable year 2013.
- *Deductibility of mortgage insurance premiums.* Mortgage insurance premiums became deductible in 2007. The insurance must be in connection with home acquisition debt for a first or second home. The deduction is subject to phase-out based on a taxpayer's income. The deductibility of mortgage insurance premiums was set to expire for taxable year 2011. The 2010 Tax Relief Act extends the deduction for one more year, through taxable year 2011.
- *Educational assistance exclusion.* EGTRRA allowed employees to exclude up to $5,250 in employer-provided education assistance from income and employment taxes. The exclusion was set to expire for taxable year 2011. The 2010 Tax Relief Act extends the exclusion for taxable years 2011 and 2012.
- *Student loan interest deduction.* The student loan interest deduction is a deduction from gross income used to determine a taxpayer's adjusted gross income (AGI). The deduction is subject to a phase-out based on the taxpayer's AGI. EGTRRA eliminated the rule that the deduction only applies to payments made during the first 60 months that interest payments were

[22]The limit is $6,000 for a special needs child.

required and it increased significantly the phase-out amounts. These changes were set to expire in 2011, but the 2010 Tax Relief Act extends the changes for taxable years 2011 and 2012.

- *Coverdale education savings accounts.* Coverdale education savings accounts allow a taxpayer to make nondeductible contributions and to withdraw the proceeds tax free if they are used towards educational expenses. EGTRRA increased the amount that may be contributed to an account from $500 to $2,000 and it made elementary and secondary school expenses qualified expenses. The enhancements were set to expire for the 2011 taxable year. The 2010 Tax Relief Act extends the enhancements for taxable years 2011 and 2012.
- *Qualified scholarships.* Qualified scholarships may be excluded from taxable income. EGTRRA provided that the national Health Services Corps Scholarship Program and the Armed Forces Scholarship Program are qualified scholarships for exclusion for income purposes. These scholarships were scheduled to be included in a recipient's income in taxable year 2011. The 2010 Tax Relief Act extends the income exclusion for taxable years 2011 and 2012.

Miscellaneous Business Incentives

The 2010 Jobs Act provided several tax incentives for businesses. Senate Bill 94 would conform to these incentives.

- *Increase in amount allowed as a deduction for start-up expenditures.* The Code allows up to $5,000 of start-up expenses to be deducted. The deduction is reduced by the amount of start-up costs that exceed $50,000. The 2010 Jobs Act increased the deduction to $10,000 for start-up and organization expenses of the taxpayer's trade or business in 2011 and increased the phase-out threshold to $60,000.
- *Modification to exclusion for gain from certain small business stock.* Fifty percent of the gain realized on qualified small business stock may be excluded from income. To qualify, the stock must be purchased at its original issue and the aggregate gross assets of the issuing corporation may not exceed $50 million and at least 80% of the value of its assets must be used in the active conduct of one or more trades or businesses. The exclusion is capped at the greater of 10 times the taxpayer's basis in the stock or $10 million. ARRTA temporarily increased from 50% to 75% the exclusion for qualified small business stock sold by an individual. The increased exclusion percentage is applicable to stock acquired after February 17, 2009, and before January 1, 2011. North Carolina conformed to ARRTA's temporary increase of the exclusion. The 2010 Jobs Act increaseed the exclusion percentage to 100% for stock acquired after September 27, 2010, and before January 1, 2011.

Provisions in the 2010 Jobs Act Designed to Increase Revenue

The 2010 Jobs Act contained provisions to increase revenues. The provisions projected to raise the most revenue were related to higher federal tax penalty provisions. These provisions would not apply to North Carolina and would not increase any revenues payable to North Carolina. The Act also contained some retirement-friendly provisions that, if chosen by the taxpayer, would encourage up-front distributions that would be taxable. Senate bill 94 would conform to these changes.

- *Deduction for health insurance costs in computing self-employment taxes.* The 2010 Jobs Act allows self-employed individuals to deduct the cost of health insurance for the individual and immediate family to determine income subject to federal self-employment taxes. Health insurance costs were already deductible for regular income tax purposes. The reduction in

self-employment taxes affects North Carolina taxable income because self-employment taxes were deductible in determining State taxable income. Self-employed taxpayers with health insurance costs will have larger State taxable incomes because less self-employment taxes were imposed and deducted at the federal level.

- *Allow participants in governmental 457 plans to treat elective deferrals as Roth contributions.* The 2010 Jobs Act gives participants the option to move retirement savings from government 457(b) plans to Roth accounts starting in 2011. The conversion will be taxable while the earrings and distributions from Roth accounts are generally tax free.
- *Allow rollovers from elective deferral plans to Roth designated accounts.* The 2010 Jobs Act allows retirement plans to offer participants the option starting September 27, 2010 to rollover distributions into Roth accounts within the same retirement plan. The rollover will be taxable while the earnings and distributions from the Roth account are generally tax free.
- *Permit partial annuitization of a nonqualified annuity contract.* The 2010 Jobs Act allows the owner of an annuity contract to begin receiving benefits based on a portion of the value of the annuity and leaving the balance of the annuity to accumulate earnings tax free. This option starts in 2011.
- *Source rules for income on guarantees.* The 2010 Jobs Act clarifies the federal tax treatment of guarantee fees as income sourced to the United States if connected to the United States by a domestic payer or by the conduct of a trade or business in the United States.

EFFECTIVE DATE: Senate Bill 94 would become effective when it becomes law. However, any amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North Carolina taxable income for the 2010 taxable year or impose an estate tax on the estate of a decedent dying in calendar year 2010 would become effective for taxable years beginning on or after January 1, 2011.

S94-SMRB-7(CSRBx-6) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 94 (First Edition)

SHORT TITLE: IRC Update.

SPONSOR(S): Senators Hartsell, Tillman, and Newton

FISCAL IMPACT					
	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES:					
($ millions)					
Decouple from Bonus depreciation	-.5	-1.1	-.2	1.1	.5
Decouple from Section 179 expensing for 2010 and 2011, keep 250k limit for 2011, conform to fed in 2012 and 2013	-.1	-4	-.3	.3	.4
Increase to capital gain exclusion for small business stock	0	0	0	0	-2
Increased start-up expense deduction	-2.5	-.8	.1	.2	.2
Deduction of health insurance for SE tax	2.8	1.2	.1	0	0
Allow 457 plan deferral to be treated as Roth	.1	.2	.2	.3	.4
Allow rollovers from elective deferral plans to Roth	1.6	4.3	4.7	3.9	4.4
Partial Annuitization of a nonqualified annuity contract	0	.2	.3	.5	.7
Source rules for income on guarantees	1.4	1.9	1.9	1.9	1.9
Tax Relief Act	0	0	0	5.4	3.1
Estate Tax	0	-59	-79	-20	0
Total	2.8	-57.1	-72.2	-6.4	9.6
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue					
EFFECTIVE DATE: Effective when it becomes law					

BILL SUMMARY: This proposal would update the reference to the Internal Revenue code used in defining and determining certain State tax provisions from May 1, 2010, to January 1, 2011. By doing so, North Carolina would conform to many of the changes made by the federal Small Business Jobs Act of 2010 (2010 Jobs Act) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (2010 Tax Relief Act). The proposal would not conform to the following federal tax law provisions:

- Bonus depreciation. – Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over the normal deprecation schedule. Over the life of the asset, the taxpayer receives the same benefit. The normal deprecation schedule is usually five to 15 years, depending upon the asset. In the past, Congress has provided 50% bonus depreciation for qualified property to spur economic investment. The bonus depreciation provision was scheduled to expire for property acquired and placed in service in 2010. The 2010 Jobs Act extended the 50% bonus depreciation provision to property placed in service in taxable years 2010 and 2011. The 2010 Tax Relief Act boosted the 50% bonus depreciation to 100% for property acquired and placed in service after September 8, 2010, and before January 1, 2012, and it provided 50% bonus depreciation for property placed in service after December 31, 2012, and before January 1, 2013. Although the proposal decouples from bonus depreciation, it provides that the property's basis is the same for federal and State purposes. The taxpayer must add-back 85% of the accelerated depreciation amount in the year that it is claimed for federal tax purposes, and then deduct 20% of this amount, plus the normal depreciation amount, over the next five years.

- Section 179 expensing. – Section 179 expensing allows the expensing of the purchase price of some business assets in the year of purchase rather than taking depreciation over the life of the asset. Section 179 has a deduction limit that begins to phase out on a dollar for dollar scale once an investment limit is reached. The deduction limit is $25,000 and the investment limit is $200,000. In the past, Congress has increased both the deduction limit and the investment limit to spur economic investment. For the 2010 taxable year, the deduction limit was $250,000 and the investment limit was $800,000. The expensing limits were scheduled to revert to their prior levels in 2011. The 2010 Jobs Act expanded the section 179 deduction limits from $250,000 to $500,000 for the 2010 taxable year and from $25,000 to $500,000 for the 2011 taxable year; it expanded the investment limits from $800,000 to $2,000,000 for the 2010 taxable year and from $200,000 to $2,000,000 for the 2011 taxable year; the expensing limits were scheduled to revert to their prior levels in 2012. It also broadened the definition of qualified property to include certain real property investments for the 2010 and 2011 taxable years. The 2010 Tax Relief Act expanded the section 179 deduction limits for the 2012 taxable year from $25,000/$200,000 to $125,000/$500,000; the expensing limits are scheduled to revert to their prior levels of $25,000/$200,000 in 2013. The proposal would maintain the 2010 deduction limits of $250,000 and $800,000 for taxable years 2010 and 2011. It would

decouple from the enhanced limits of $500,000 and $2,000,000 for taxable years 2010 and 2011 but provide that the property's basis would be the same for federal and State purposes. The proposal provides that a taxpayer must add-back 85% of the additional expensing taken under federal law in 2010 and 2011 and may deduct 20% of this amount over the succeeding five years. The proposal would conform to the expensing limits of $125,000/$500,000 for the 2012 taxable year.

- Estate tax. – The federal estate tax expired for decedents dying in 2010. The estate tax had been scheduled to reemerge in 2011 at the 2001 exclusion amount of $1 million and the maximum estate tax rate of 55%. The 2010 Tax Relief Act revived the federal estate tax retroactively to January 1, 2010, with an exclusion amount of $5 million (the portability provision effectively provides an exclusion amount of $10 million for married couples) and a maximum estate tax rate of 35%. The estate of a decedent dying in 2010 may elect not to pay estate tax, and receive a modified carryover basis in the property passing through the estate. The estate tax provisions are scheduled to return to the 2001 rates and exclusion amounts for decedents dying on or after January 1, 2013. The proposal would conform to the higher exclusion amounts and give estates that chose to pay federal estate tax and receive the stepped-up basis in the property passing through the estate to elect to receive the stepped-up basis for NC purposes by paying the State estate tax for 2010.

The proposal would conform to all other provisions in the 2010 Jobs Act and the 2010 Tax Relief Act. The other provisions in the 2010 Jobs Act include the following:

- An increased exclusion amount of the gain realized on qualified small business stock. The exclusion amount is increased from 50% to 75% for stock acquired after February 17, 2009, and before January 1, 2011, and held for more than five years.
- An increased deduction limit for start-up expenses. The deduction is reduced by the amount of start-up costs that exceed a certain amount. The deduction limit is increased from $5,000 to $10,000 and the phase-out threshold is increased from $50,000 to $60,000.
- Various other small provisions that are intended to generate revenue. – Deduction for health insurance costs, 457 plans, 401(k) rollovers to Roth accounts, annuitization of a nonqualified annuity contract, sources rules for income on guarantees.

The 2010 Tax Relief Act extended many of the tax incentives enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 for two years. North Carolina conformed to these incentives in 2002; however, under existing North Carolina law, several of these incentives expired for the 2010 taxable year and many others are scheduled to expire for the 2011 taxable year. The proposal would conform to the federal effective date extensions.

The 2010 Tax Relief Act extended the following business tax incentives that were set to expire for the 2010 taxable year for the 2010 and 2011 taxable years:

- 15-year recovery period for qualified leasehold improvements, restaurant building and improvements, and retail improvements
- Seven-year recovery period for motor sports entertainment costs recovery
- Expensing election for certain film and television production costs
- Brownfields remediation expensing

The 2010 Tax Relief Act extended the Work Opportunity Tax Credit (WOTC) to include individuals who begin employment after August 31, 2011, and before January 1, 2012. North Carolina's WOTC is equal to 6% of the federal WOTC for wages paid for positions located in this State. The federal WOTC was scheduled to expire September 1, 2011.

The 2010 Tax Relief Act extended the following charitable incentives for taxable years 2010 and 2011:

- Deduction for contributions of food inventory
- Deduction for contributions by C corporations of books to public schools
- Deduction for corporate contributions of computer equipment for educational purposes
- Basis adjustment to stock of S corporations making charitable contributions of property

The 2010 Tax Relief Act extended the following individual income tax incentives retroactively for the 2010 taxable year and the 2011 taxable year:

- Tax deduction for higher education tuition expenses
- Up to $250 deduction for teacher's classroom expenses
- Charitable contribution of IRA proceeds

The following individual income tax incentives were scheduled to expire in 2011, but 2010 Tax Relief Act extends the incentives for the 2011 and 2012 taxable years:

- No limitation on itemized deductions.
- Enhancements to the earned income tax credit (EITC). North Carolina's EITC is equal to 5% of the federal credit amount.
- Enhancements to the adoption tax credit. North Carolina's adoption tax credit is equal to 50% of the federal credit amount.
- Deductibility of mortgage insurance premiums.
- Educational assistance exclusion.
- Student loan interest deduction.
- Increased amount that may be contributed to Coverdale education savings accounts and expansion of qualified expenses to include elementary and secondary school expenses.
- Exclusion of scholarships received from the national Health Services Corps Scholarship Program and the Armed Forces Scholarship Program from income.

Source: Committee Counsel Bill Summary

ASSUMPTIONS AND METHODOLOGY:
Except as outlined below, the fiscal impact to the General Fund from partial conformity with the IRC update is based on the US Joint Committee on Taxation (JCT) estimates on changes to federal taxes from the update. The methodology used begins with these JCT estimates, which are calculated by federal fiscal year. Fiscal Research adjusts these numbers back to an approximate calendar year tax impact. Then the next step was to prorate the national numbers to the state impact. This adjustment involved two steps: accounting for the relative size of the state based on federal tax collections and then adjusting for the difference in federal and state marginal tax rates. Once North Carolina's share of the JCT estimates were determined, state tax liability changes were estimated and allocated to the appropriate fiscal year.

The estimate of the bonus depreciation provision is based on data obtained from the Department of Revenue from the 2004 and 2008 tax returns. The estimate is derived from the tax that would not have been paid had North Carolina not required an add-back for bonus depreciation in computing State taxable income for both of those years. In order to assess the impact of the 85% add-back of the bonus depreciation and the Section 179 deduction, a depreciation schedule was developed. The depreciation simulation was used to determine the impact of the bonus depreciation and the Section 179 deduction with the adoption of an 85% add-back rule and a 5 year deduction for each fiscal year.

The estimate to conform to the estate tax provision of the Tax Relief Act was prepared based on tax return data obtained from the Department of Revenue for the 2007, 2008, and 2009 tax years. The impact is estimated from the tax that would not have been received as a result of the increase in the federal exclusion amount.

The Tax Relief Act of 2010 included multiple extensions of tax credits and deductions which were first enacted under the Economic Growth and Tax Relief Reconciliation Act of 2001. Because the changes were extensive and the Act was in place for ten years, the revenue base was adjusted to include the impacts from the Act. If the Tax Relief Act had not been enacted, then the result would have been an increase in General Fund revenue as result of the various federal tax law changes expiring for the 2011 tax year. Because they were extended for two years, there is no impact for FY 2011-12 and FY 2012-13. In the out years, after the latest extensions expire there will be a net gain to General Fund revenues. As with other calculations related to federal tax changes, analysis from the JCT was used to determine state tax liability. General Fund revenue changes would occur in FY 2013-14 and FY 2014-15.

SOURCES OF DATA: US Joint Committee on Taxation, US Bureau of Economic Analysis, NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jonathan Tart

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: February 23, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 94*

Short Title:	IRC Update.	(Public)
Sponsors:	Senators Hartsell, Tillman, Newton; East, Jenkins, Jones, Rucho; and Stein.	
Referred to:	Finance.	

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2010,~~ January 1, 2011, including any provisions enacted as of that date that become effective either before or after that date."

SECTION 2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(15b) For taxable years 2010 through 2012, eighty-five percent (85%) of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service during the taxable year. In addition, for taxable year 2010, a taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 2.(b) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(21b) An amount equal to twenty percent (20%) of the amount added to federal taxable income as accelerated depreciation under subdivision (a)(15b) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012. For the amount added to taxable income in the 2012 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2013."

SECTION 2.(c) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(8b) For taxable years 2010 through 2012, eighty-five percent (85%) of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service during

the taxable year. In addition, for taxable year 2010, a taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 2.(d) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(17b) An amount equal to twenty percent (20%) of the amount added to federal taxable income as accelerated depreciation under subdivision (c)(8b) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012. For the amount added to taxable income in the 2012 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2013."

SECTION 3.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(23) For taxable years 2010 and 2011, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code for property placed in service in taxable year 2010 or 2011 exceeds the amount that would have been allowed for the respective taxable year under section 179 of the Code as of May 1, 2010. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.(b) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(26) An amount equal to twenty percent (20%) of the amount added to federal taxable income under subdivision (a)(23) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012."

SECTION 3.(c) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(15) For taxable years 2010 and 2011, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code for property placed in service in taxable year 2010 or 2011 exceeds the amount that would have been allowed for the respective taxable year under section 179 of the Code as of May 1, 2010. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.(d) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(21) An amount equal to twenty percent (20%) of the amount added to federal taxable income under subdivision (c)(15) of this section. For the amount

added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012."

SECTION 4. Article 1A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-32.2A. Election to receive stepped-up basis for 2010.**

A personal representative of an estate of a decedent dying in calendar year 2010 for which the federal estate tax is paid may elect to conform the North Carolina basis of the property in the estate to that of the federal stepped-up basis obtained by payment of the federal estate tax by filing an election with the Secretary and paying the amount of tax that would have been payable under this Article had the federal estate tax that was paid been in effect when the decedent died. In the absence of this election and payment, the North Carolina basis of the property differs from the federal basis. To make the election, an executor must file a return with the Secretary within the time allowed for filing the federal estate tax return."

SECTION 5. This act is effective when it becomes law. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North Carolina taxable income for the 2010 taxable year become effective for taxable years beginning on or after January 1, 2011.

SENATE BILL 97:
Clarify Refunds of Tax Overpayments

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	February 23, 2011
Introduced by:	Sens. Rucho, Hartsell, Daniel	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 97 clarifies when the Department of Revenue is required to initiate a refund of an overpayment of tax and directs the Department to issue refunds for overpayments that have been discovered within the statute of limitations consistent with this clarification.***

CURRENT LAW: Generally speaking, there are two methods for obtaining a refund of tax from the Department of Revenue. If a taxpayer is aware that he or she has made an overpayment, then the taxpayer may request a refund by filing an amended return or by filing a claim for refund. If the taxpayer is not aware of the overpayment, the Department is required to initiate the refund process if, within the statute of limitations period, it becomes aware of or "finds" the overpayment.

Specifically, the Department is required to initiate a refund of an overpayment of tax when the Department processes a return and finds all of the following:

1. The statute of limitations for obtaining a refund has not expired.
2. The amount shown due on the return is not correct.
3. The correction of the amount due shows that the taxpayer has overpaid the tax.

The general statute of limitations for obtaining a refund is the later of three years after the due date of the return or two years after the payment of tax.

The current statute does not specify what constitutes "finding" or discovering an overpayment for purposes of satisfying the statute of limitations. In other words, it does not identify what action must take place by the Department before the statute of limitations expires.

BILL ANALYSIS: **Section 1** of the bill clarifies when the discovery of an overpayment occurs, which triggers the Department of Revenue's obligation to issue a refund. Discovery occurs in any of the following circumstances:

1. When the automated processing of a return indicates the return requires further review.
2. When a review of a return by an employee indicates an overpayment.
3. When an audit of a taxpayer by an employee indicates an overpayment.

If the Department's computer system flags a return for further review, the Department must still verify that an overpayment exists before issuing a refund because the automated flagging does not always indicate the precise nature of an error on a return. However, this bill clarifies that the verification need not occur within the statute of limitations period. The flagging of the return is sufficient to put the Department on notice that a refund may be due for purposes of satisfying the statute of limitations.

Section 2 of the bill directs the Department to issue refunds of overpayments that have been discovered within the statute of limitations in a manner consistent with the clarification in Section 1 of the bill. Over the last year, the Department has been working through a backlog of returns that were flagged for review, some dating as far back as 1996. By December 2010, the vast majority of returns had been reviewed and many refunds were issued. However, there remain approximately 7,000 returns in which an overpayment has been made but a refund has not been issued because the Department wants

clarification from the General Assembly about the application of the current law. These overpayments total a little over $2 million plus interest.

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

BACKGROUND: The Revenue Laws Study Committee looked at this issue during the recent interim. The Committee heard differing opinions about the interpretation of the law and its application to overpayments. One interpretation is that the Department is required to issue a refund of an overpayment only if the overpayment is verified by a Departmental employee within the statute of limitations period. Under this interpretation, a taxpayer's receipt of a refund is dependent on the Department's ability to timely review the return, which can vary depending on its workload and resources. The other interpretation is that the Department is required to issue a refund of an overpayment if the return is flagged by the Department's computer system within the statute of limitations. The Department may need to verify that an overpayment exists by manual review of a flagged return, but the manual review need not occur within the statute of limitations. Because returns are processed by the computer system almost immediately after they are filed, this interpretation assures that taxpayers will eventually get a refund.

The Committee concluded that when a return is flagged by the computer system, sufficient notice is provided to the Department that a refund may be due.

S97-SMSV-7(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 97*

Short Title:	Clarify Refunds of Tax Overpayments.	(Public)
Sponsors:	Senators Rucho, Hartsell, Daniel; Apodaca, Blake, Brock, Davis, Harrington, Hise, Mansfield, Meredith, Newton, Pate, Rouzer, and Tucker.	
Referred to:	Finance.	

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN THE DEPARTMENT OF REVENUE IS REQUIRED TO INITIATE A REFUND OF AN OVERPAYMENT OF TAX AND TO AUTHORIZE THE ISSUANCE OF REFUNDS OF OVERPAYMENTS THAT HAVE BEEN IDENTIFIED BY THE DEPARTMENT CONSISTENT WITH THIS CLARIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-241.7(a) reads as rewritten:

"**§ 105-241.7. Procedure for obtaining a refund.**

(a) Initiated by Department. – The Department must refund an overpayment made by a taxpayer ~~when~~ if the Department ~~processes a return and finds all of the following:~~ discovers the overpayment before the expiration of the statute of limitations for obtaining a refund. Discovery occurs in any of the following circumstances:

(1) ~~The statute of limitations for obtaining a refund has not expired.~~The automated processing of a return indicates the return requires further review.

(2) ~~The amount shown due on the return is not correct.~~ A review of a return by an employee of the Department indicates an overpayment.

(3) ~~The correction of the amount due shows that the taxpayer has overpaid the tax.~~An audit of a taxpayer by an employee of the Department indicates an overpayment."

SECTION 2.(a) The General Assembly makes the following findings concerning the application of the statute of limitations to a refund initiated by the Department of Revenue:

(1) The statute of limitations is satisfied when the Department is on notice that a refund may be due.

(2) The Department is on notice that a refund may be due when the Department's automated processing of a return indicates that the return requires further review, regardless of when an employee of the Department verifies whether a refund is in fact due.

(3) Former G.S. 105-266 and G.S. 105-241.7 are consistent with the findings in this section and require the Department to refund an overpayment of tax if, before the statute of limitations expires, the Department discovers through its automated processing that a return requires further review.

SECTION 2.(b) The Department of Revenue is directed to issue refunds the Department discovered within the statute of limitations as applied in accordance with subsection (a) of this section.

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

SENATE BILL 99

Short Title:	Reform UI Tax Structure/Expedite Analysis.	(Public)
Sponsors:	Senators Clary, Rucho, and Hartsell.	
Referred to:	Finance.	

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPEDITE THE ANALYSIS OF THE TAX STRUCTURE FOR UNEMPLOYMENT INSURANCE IN NORTH CAROLINA GIVEN THE SUBSTANTIAL NEGATIVE BALANCE IN THE STATE'S UNEMPLOYMENT INSURANCE TRUST FUND AND THE SUBSTANTIAL FEDERAL LOAN BALANCE OWED BY THE STATE FOR PAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS.

Whereas, North Carolina's Unemployment Insurance Trust Fund balance had a deficit of $2,500,000,000, as of December 31, 2010, according to the Employment Security Commission; and

Whereas, the State owes the federal government $2,500,000,000 for loan liabilities incurred by the Employment Security Commission to continue unemployment insurance benefits payments to jobless North Carolinians during the current economic crisis; and

Whereas, the total collected by the State in unemployment insurance taxes in the 12-month period ending December 2010 amounted to $955,200,000, while the sum paid in unemployment insurance benefits for the same period totaled $1,900,000,000; and

Whereas, businesses large and small pay into the unemployment insurance system with the expectation that their contributions will be sufficient to provide assistance to their qualified former jobless employees; and

Whereas, it is in the best interest of the employers and employees of this State to have the most efficient and cost effective unemployment insurance tax structure; and

Whereas, the current unemployment insurance tax structure no longer serves the businesses and citizens of this State in the manner required by these and future economic times; and

Whereas, major reforms regarding the unemployment insurance tax structure must be developed and implemented as soon as practicable; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that the State must take swift and prudent action to address the two billion five hundred million dollars ($2,500,000,000) in debt liability for unemployment insurance benefits currently owed to the federal government and the substantial deficit in the North Carolina Unemployment Insurance Trust Fund. To that end, the Department of Commerce shall contract with an independent consulting firm specializing in unemployment insurance and employment security reform to obtain recommendations on what tax structure changes would be fair to the employers of North Carolina and how these revenues, and other financial options, might be used in servicing and liquidating the State's debt and deficits incurred to pay unemployment insurance benefits.

SECTION 2. The Department of Commerce shall begin work immediately to identify a qualified independent consultant with the expertise to conduct a thorough analysis of the State's unemployment insurance tax structure then expedite entering into a contract with that qualified consultant. The consultation contract may be funded from departmental funds available. The Department of Commerce may seek and accept non-State funds, grants, and in-kind contributions specifically designated for the purpose of carrying out the analysis required by this act.

SECTION 3. The Department of Commerce shall provide the Fiscal Research Division and the Program Evaluation Division with periodic updates on the progress of the analysis. Within 45 days from the completion of the independent consultant's analysis, the Department of Commerce shall report to the Governor and to the General Assembly on the independent consultant's recommendations for reform of the State's unemployment insurance tax structure.

SECTION 4. The Employment Security Commission and the Department of Revenue shall cooperate fully with the Department of Commerce, the Fiscal Research Division, and the Program Evaluation Division by giving all information and all data within their possession or ascertainable from their records necessary to carry out the purposes of this act.

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

SENATE BILL 99:
Reform UI Tax Structure/Expedite Analysis

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	February 23, 2011
Introduced by:	Sens. Clary, Rucho, Hartsell	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 99 would authorize the Department of Commerce to hire a consultant to analyze the State's unemployment insurance (UI) tax structure.***

CURRENT LAW: The General Assembly made substantial changes in the State's UI tax structure in the 1990s.[1] There have been no legislative changes made to the rate structure since 1999. All states' UI rate structures use a system of experience rating by which individual employers' contribution rates are varied on the basis of their experience with the risk of unemployment.

- The current State UI tax rates range from 0% to 6.84%.
- An employer may qualify for the 0% tax rate if no unemployment insurance benefits have been paid to employees after five years.
- The standard beginning tax rate is 1.2%.
- The average UI tax rate for 2011 is 1.688%. The average UI tax rate for 2010 was 1.427%.
- The UI tax rate automatically adjusts downward whenever the UI Trust Fund balance reaches $800 million. The Trust Fund balance has not exceeded $800 million since 2001. The last positive Trust Fund balance was in 2008 at $414 million.
- The taxable wage base in NC is $19,700. This amount is indexed annually. The taxable wage base in other states ranges from $7,000 to $37,300.
- The federal payroll tax (FUTA) on employers is 6.2% on a taxable wage base of $7,000. The federal taxable wage base has not been increased since 1983.
- Employers in states that are in compliance with federal regulations receive a 5.4% credit on their FUTA. The tax credit percentage is reduced by 0.3% annually on states that have a federal loan balance outstanding for two consecutive Januarys. With the credit, the effective FUTA in NC is 0.08%.

BILL ANALYSIS: The bill directs the Department of Commerce to contract with a consultant to conduct a thorough analysis of the State's UI tax structure. The bill does not appropriate any funds to the Department for the contract. The bill states that the Department may seek and accept non-State funds, grants, and in-kind contributions to pay for the analysis. The Department must provide periodic updates on the progress of the analysis and it must report the findings and recommendations of the analysis to the General Assembly within 45 days after the analysis is complete.

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

BACKGROUND: Unemployment tax contributions are paid by employers on a quarterly basis and deposited into the State Unemployment Insurance Trust Fund. After deducting any refunds payable from the Fund, the money is deposited with the Secretary of the Treasury of the United States to the credit of this State's account in the Unemployment Trust Fund. Funds in the State's account earn interest that is

[1] The General Assembly reduced the UT tax contribution rate in 1993, 1994, 1995, and 1996.

also credited to the account. As money in the State's account is needed to pay benefits, it is transferred to the State and credited to the benefits account of the State's Unemployment Insurance Fund to be used to pay benefits to people who lost their job through no fault of their own.

If the benefits payable exceed the revenue in the State's account, the federal government loans money to the State's account to make the benefit payments. The State received a loan from the federal government in February 2009. The current loan balance is $2.6 billion. Interest began accruing on the loan in January 2011. The first interest payment is due September 30, 2011. The necessary funds are available in the State's reserve account to make this interest payment.

To avoid a 0.3% reduction in the FUTA credit, the entire balance of the loan must be paid by November 10th, 2011. The 0.3% increase would effectively increase employers FUTA from 0.08% to 1.1%; this increase equates to $21 per employee. The revenue collected from the FUTA rate increase would be applied to the State's principal balance or it would lessen the amount of funds the State needs to borrow if the State is still a borrowing State at that time.

President Obama's budget proposal includes waiving the interest payment due September 30, 2011. The budget proposal also includes suspending the FUTA tax increase. It is unclear what action Congress may take on these issues.

S99-SMRB-6(e1) v2

LOCAL REVENUE SOURCES

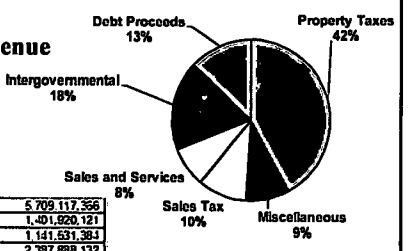
Martha Walston, Fiscal Research Division
February 16, 2011

Local Revenue Sources

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

Sources of Local Revenue: County

2008-09 County Revenue by Source



Property Taxes	5,709,117,356
Sales Tax	1,401,920,121
Sales and Services	1,141,531,384
Intergovernmental	2,397,888,132
Debt Proceeds	1,699,919,492
Other Misc.	1,131,756,137
TOTAL	13,472,132,632

Source: Dept. of State Treasurer

Property Tax Constitutional authority

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

Property Tax Constitutional Authority

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

Generalities

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

Generalities

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

Generalities
Appraisal of real property

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

Generalities
Appraisal of real property

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

Generalities
Appeal

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

Exemptions and Exclusions

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

Property Tax Relief Programs
Exclusions and Deferrals

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

Elderly or disabled property tax homestead exclusion

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

Elderly or disabled property tax homestead exclusion

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

Disabled veteran property tax homestead exclusion

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

Property Tax Deferral Generalities

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

Property Tax Deferral Homestead Circuit Breaker

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

Property Tax Deferral Homestead Circuit Breaker

- Tax limitation (2011)

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

Property Tax Deferral
Homestead Circuit Breaker

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

Property Tax Deferral
Present-Use Value (PUV)

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

Property Tax Deferral
Present-Use Value

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

Property Tax Deferral
Present-Use Value

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

Property Tax Deferral
Present-use Value

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

Property Tax Deferral
Present-Use Value

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

Property Tax Deferral
Present-Use Value

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

Property Tax Deferral
Working Waterfront Property

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

Property Tax Deferral
Wildlife Conservation Land

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

Property Tax Deferral
Historic Property

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

Property Tax Deferral
Historic District Property

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

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

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

Property Tax Deferral Inventory Property

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

Property Tax Motor Vehicles

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

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

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

Deed Stamp Tax

- State imposes a tax on most recorded deeds
- Tax measured by price paid for property
- Rate is $1 for each $500 of sales price
- Tax collected by county: ½ to county for any public purpose, and remaining ½ to Department of Revenue (75% to Parks and Recreation Trust Fund and 25% to Natural Heritage Trust Fund)

Deed Stamp Tax

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

Local land transfer tax

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

Questions????

SENATE FINANCE COMMITTEE
Tuesday, March 1, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on March 1, 2011 in room 544 of the Legislative Office Building. Matt Avrette and Steven Sorrell of Lillington served as pages. Twenty-seven members of the committee were present. Senator Rucho presided as chair.

S.B. 27 – Involuntary Annexation

Senator Clodfelter was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would remove the amendment adopted by the Finance Committee on February 24 and restore the bill to its original provisions, with no exceptions to the moratorium. Senator Clodfelter moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

Senator Rucho then introduced Michael Hannah, the new Senate Tax Counsel.

Presentations

North Carolina's Investments

Shawn Wischmeier, Chief Investment Officer for the State, was recognized. He explained that he currently manages $85 billion in NC Retirement System total assets and outlined how the money was invested. He presented three requests: expand the benchmark indices that may be used for internally managed equity, increase "Alternatives" maximum from 5% of assets to 10% of assets, and allow long/short term hedge fund strategies within the public equity portfolio. He presented data which showed the differences in invest with the current guidelines and the requested guidelines. A copy of his powerpoint is attached.

State Treasurer, Janet Cowell, was recognized. She explained that the pension is a big line item with investments at 80% and members contributing the rest with a 7% deduction from their paychecks. She thinks that a change is needed in the current investment formula to prevent NC citizens from having to bail-out the retirement fund in the future. She requested permission to increase investments.

State of North Carolina Debt Affordability

Vance Holloman, Deputy Treasurer of State and Local Finance, was recognized. He described the Debt Affordability Advisory Committee (DAAC), defined debt affordability and tax-supported debt. He explained the State's AAA rating. He went on to outline the DAAC's legislative recommendations. They are: achieve structural budget balance and replenish reserves (tax reform may be needed), establish a preference for General Obligation Debt, the State should maintain its historically conservative debt

management practices, and other liabilities that do not impact debt capacity directly will need to be addressed (OPEB, ESC borrowings, and pension funding). A copy of his powerpoint is attached.

The meeting adjourned at 2:03 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, March 01, 2011

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **27** Involuntary Annexation Moratorium.

Draft Number:	85056
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

S27 – Sen. Brock

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 1, 2011	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 27	Involuntary Annexation Moratorium.	Senator Brock Senator Newton Senator Goolsby

Presentations by the Office of the State Treasurer

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Senate Finance Committee
Tuesday, March 1, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 27	Involuntary Annexation Moratorium.	Sen. Brock Sen. Newton Sen. Goolsby

Presentation on the State's Investments
Shawn Wischmeier, Chief Investment Officer for the State

Presentation on the State's Debt Affordability Study
Vance Holloman, Deputy Treasurer of State and Local Finance

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 27
Finance Committee Substitute Adopted 2/22/11
PROPOSED COMMITTEE SUBSTITUTE S27-PCS85056-RBx-8

Short Title: Involuntary Annexation Moratorium. (Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO ADOPT A MORATORIUM ON INVOLUNTARY ANNEXATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. No resolution of consideration, resolution of intent, or annexation ordinance may be adopted under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes from the date this act becomes law until July 1, 2012. If any annexation proceeding has been initiated under those Parts prior to the date this act becomes effective but the annexation ordinance has not yet been adopted, any provision of law requiring any action or notice by the municipality or any person within a certain period of time is tolled during the suspension of authority provided by this section. Nothing in this section shall prohibit municipalities from developing policies, planning, collecting data, or developing materials with respect to potential future annexations under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes.

SECTION 2. An annexation ordinance adopted under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes that has an effective date on or after the day this act becomes law shall not become effective until July 1, 2012, unless the municipality by ordinance adopts a new effective date later than July 1, 2012, for the annexation ordinance. An annexation ordinance that was adopted under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes prior to the effective date of this act and is the subject of litigation in any court on the effective date of this act shall not become effective until after July 1, 2012, unless the municipality by ordinance adopts a new effective date later than July 1, 2012, for the annexation ordinance.

SECTION 3. Any annexation litigation under Parts 2 or 3 of Article 4A of Chapter 160A of the General Statutes pending in any court of this State shall be stayed upon enactment of this act.

SECTION 4. If any municipality has adopted its budget ordinance for the 2010-2011 fiscal year prior to the date this act becomes effective and the total amount of assessed valuation estimated in that budget ordinance has been reduced because of this act, the municipality may amend the budget ordinance to account for this act, including establishment of a different tax rate.

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 6. This act is effective when it becomes law and expires on June 30, 2012.

SENATE PCS 27:
Involuntary Annexation Moratorium

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	February 28, 2011
Introduced by:	Sens. Brock, Newton, Goolsby	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to Second Edition S27-CSRBx-8		

SUMMARY: ***Senate Bill 27 would place a moratorium on involuntary municipal annexations until July 30, 2012. Senate Finance first heard this bill at its meeting last Tuesday, February 22nd. At that meeting, the Committee adopted an amendment that would have allowed an exception to the moratorium for an annexation that met five restrictive requirements:***

- ***The ordinance of annexation was adopted before the effective date of the act.***
- ***The ordinance of annexation was preceded by the adoption of a resolution of consideration.***
- ***No legal challenge to the ordinance of annexation has been filed.***
- ***The time allowed for filing a legal challenge to the ordinance of annexation has expired.***
- ***The municipality has incurred or contracted to incur expenditures in excess of $5 million in connection with annexation as of the effective date of the act.***

The proposed committee substitute would remove the amendment adopted by the Finance Committee last week and restore the bill to its original provisions, with no exceptions to the moratorium. At least 27 municipalities have an annexation pending, in some form, at this time.

CURRENT LAW: Under current State law, municipalities are authorized to involuntarily add territory to their municipal limits, if the area meets the statutory requirements for involuntary annexation.

Involuntary annexations are initiated by a resolution of intent, adopted by the municipal board. Involuntary annexations may also be initiated by an earlier and optional resolution of consideration, which allows the annexation ordinance to become effective earlier.

Once the municipal resolution of intent to annex is adopted, the statutes impose a timetable for the remaining steps prior to the adoption of an annexation ordinance. Once the annexation ordinance is adopted, there is an additional statutory time period prior to it becoming effective.

BILL ANALYSIS: Senate Bill 27 makes the following changes:

Section 1:

- Prohibits municipal adoption of an involuntary annexation resolution of consideration, resolution of intent, or annexation ordinance for cities of less than 5,000 (Part 2 of Article 4A of Chapter 160A) or by cities of 5,000 or more (Part 3 of Article 4A of Chapter 160A).
- Tolls (suspends) any action or notice required for any involuntary annexation ordinance that has been initiated, but not yet adopted.
- Allow municipalities to continue to develop polices, plan, collect data, or develop materials for potential future annexations.

Section 2:

- Provides that any involuntary annexation ordinance adopted prior to the effective date of this act with an effective date on or after the effective date of this act shall not become effective until July 1, 2012, or a later date adopted by the municipality.
- Provides that an annexation ordinance adopted prior to the effective date of this act that is the subject of litigation in any court on the effective date of this act shall not become effective until July 1, 2012, or a later date adopted by the municipality.

Section 3:

- Stays (suspends) any pending involuntary annexation litigation.

Section 4:

- Provides that a municipality may amend its budget ordinance to account for the effect of this act, including establishment of a different tax rate.

Section 5:

- Contains a severability clause.

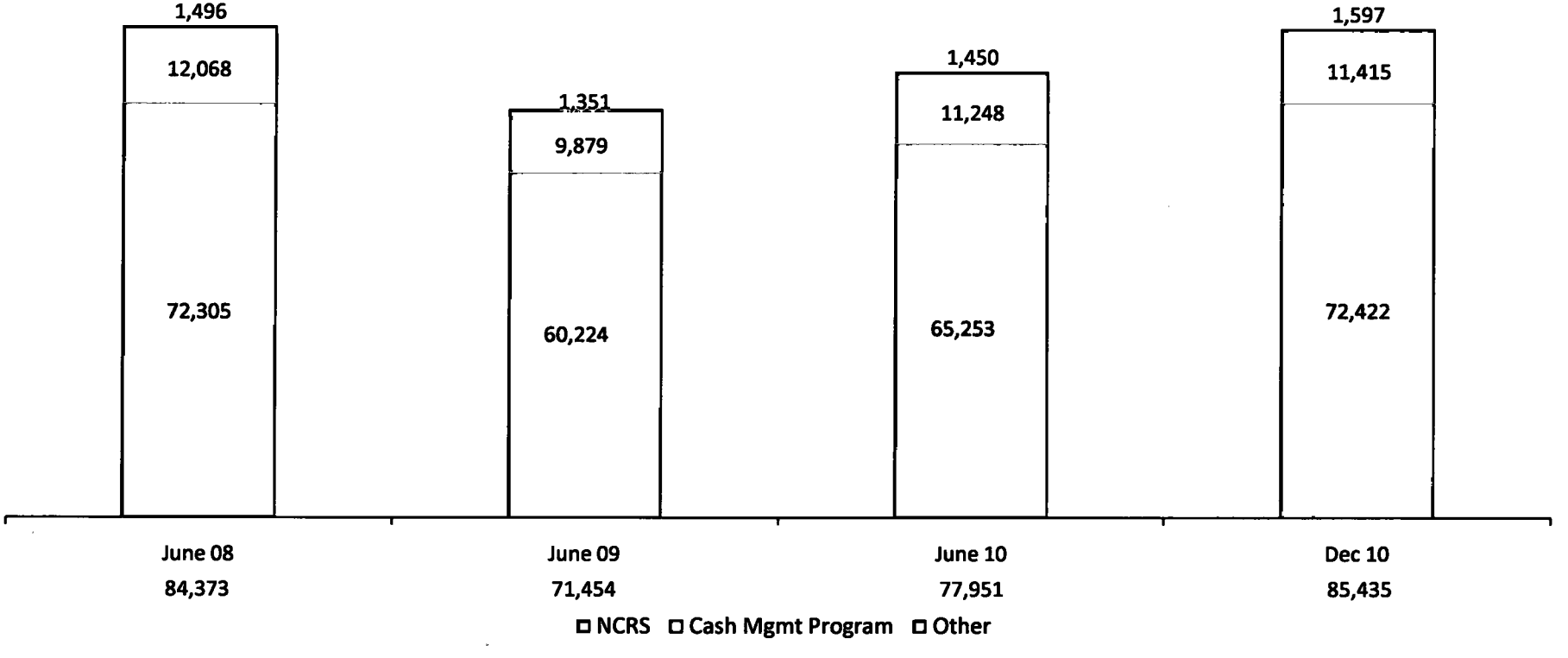
EFFECTIVE DATE: Effective when it becomes law, expires June 30, 2012.

S27-SMRB-9(CSRBx-8) v1

North Carolina Department of State Treasurer
2011 Legislative Session

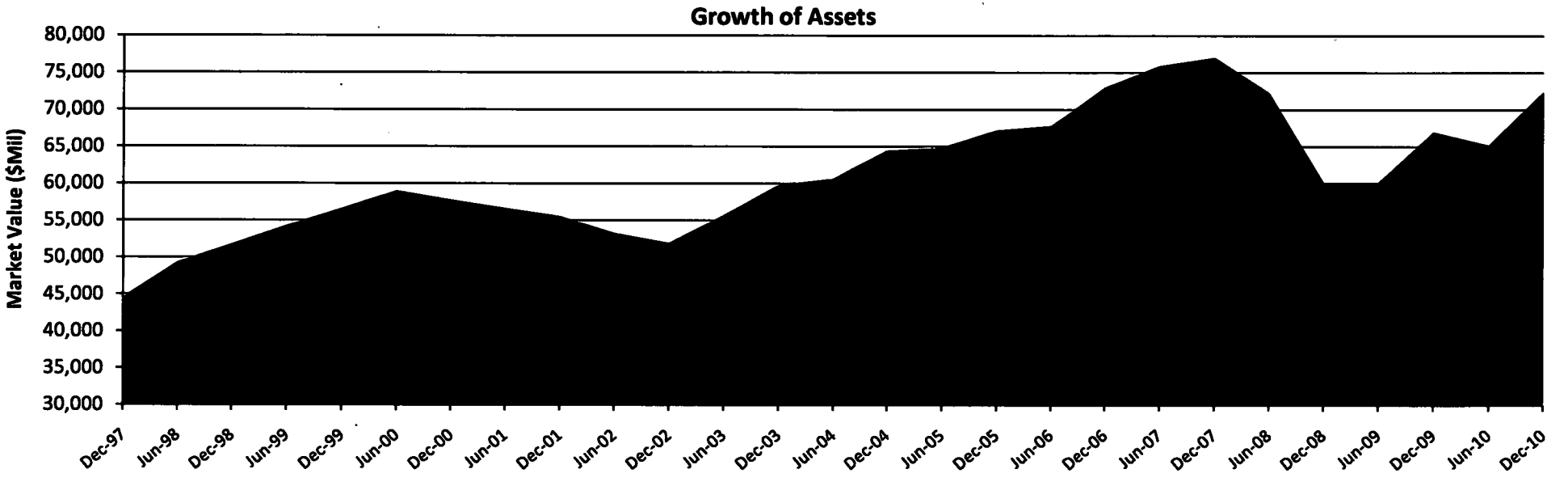
$85 Billion in Total Assets Under Management

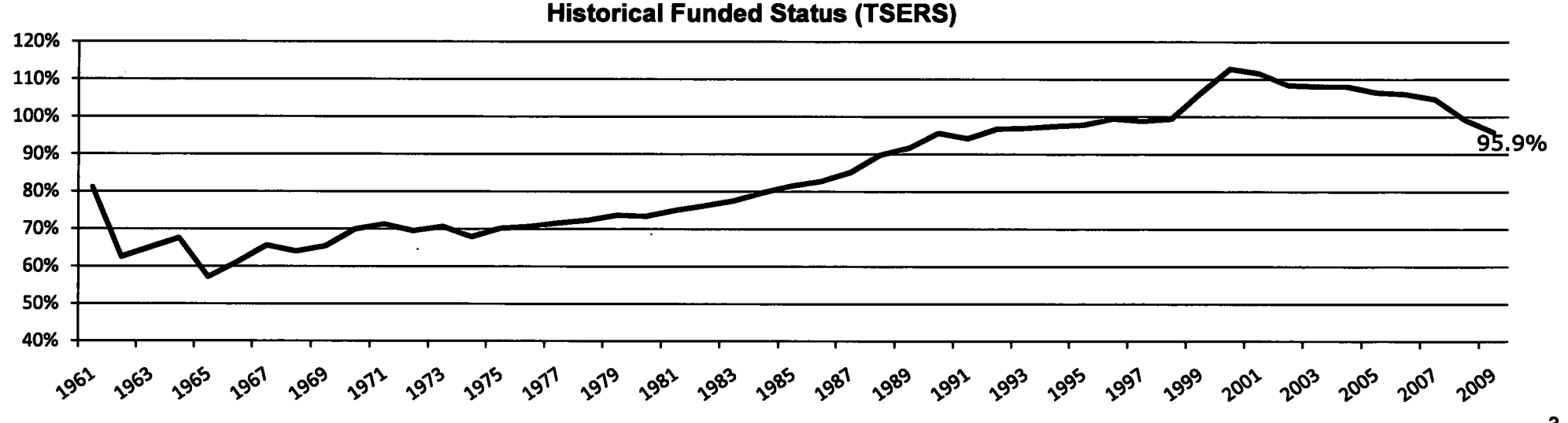
Assets Under Management ($mil)
as of December 31, 2010



NCRS: The North Carolina Retirement System (also referred to as the Pension Plan) consists of seven retirement plans: Teachers' and State Employees', Consolidated Judicial, Firemen's and Rescue Workers, Local Governmental Employees, Legislative, and North Carolina National Guard.
Cash Management Program: Comprised mainly of the STIF (Short Term Investment Fund), the cash management program serves as the main operating account for state agencies. It's objective is the maximize income consistent with principals of preservation of capital and liquidity.
Other: Includes the Non-Pension participants in the LTIF, as well as investments of the Escheat Fund, UNC and Public Hospitals, and the Local Government Other Post-Employment Benefits Fund.

NCRS is Well Funded but Vulnerable





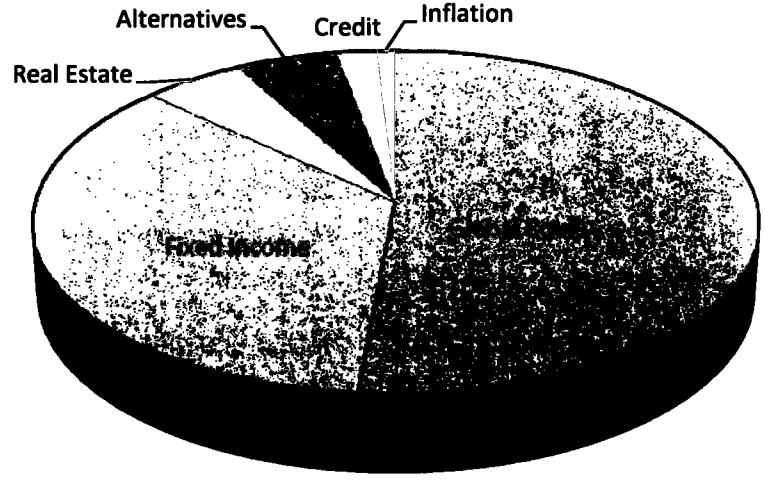
Overview of Team

Investment Management Division

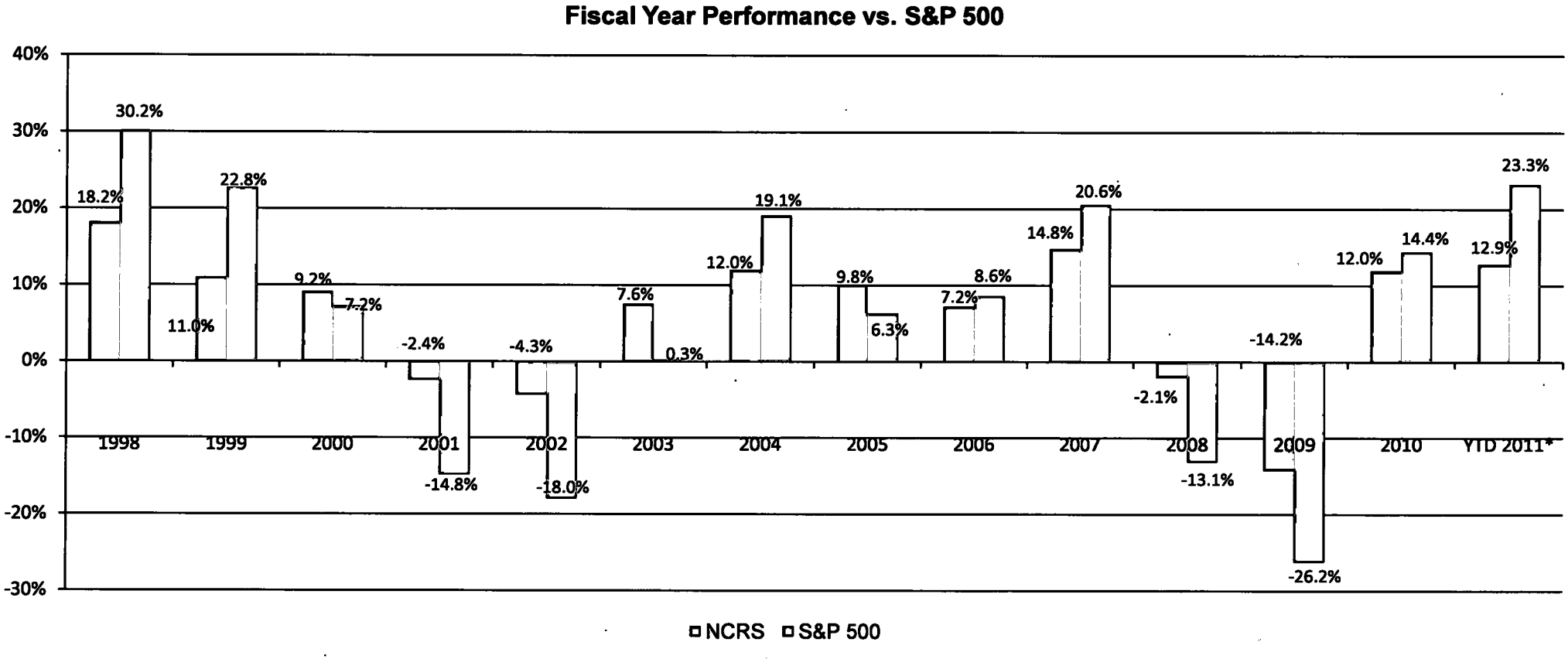
- **27 Investment Professionals**
- **355 Total Years of Experience (15 Year Average)**
- **5 CFA (Chartered Financial Analyst) Charterholders; 3 Candidates in the CFA Program**
- **12 MBAs**
  - Harvard / Wharton / Northwestern / University of Chicago / UNC / Miami / Loyola / Pace / Appalachian State / Robert Morris
- **Depth of Prior Experience**
  - Duke Mgmt Co / State of Maryland / State Street Bank / Alliance Bernstein / BB&T / Citigroup / Credit Suisse / Eli Lilly / Indiana PERF / Goldman Sachs / JP Morgan / Progress / PIMCO / Lehman Brothers / Suiss Re / CIBC World Markets

Assets Concentrated in Public Equity & Fixed Income

	Market Value ($millions)	Current %	Target %
Global Equity	$37,239	51.42%	40.50%
Fixed Income	$25,723	35.52%	38.00%
Real Estate	$3,632	5.02%	8.00%
Alternatives	$3,716	5.13%	4.50%
Credit	$1,429	1.97%	4.50%
Inflation	$682	0.94%	4.50%
Total Fund	$72,422	100%	100%



Portfolio Closely Mirrors Market Movements



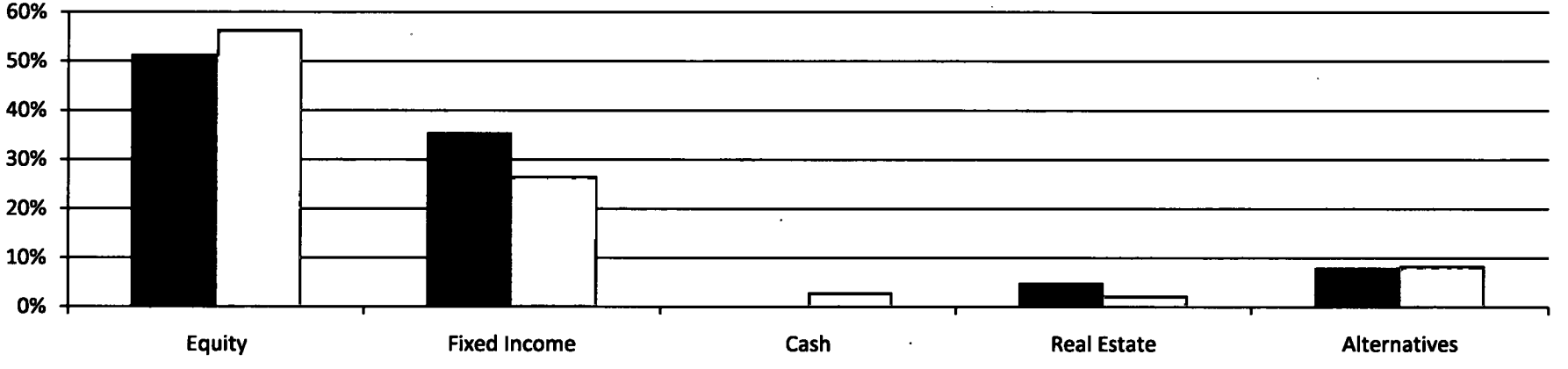
*as of 12/31/10

2009 Legislative Changes Helped Lower Portfolio Risk

2009 legislation allowed NCRS to invest in Credit and Inflation linked-strategies, which increased expected return and decreased expected risk of the total plan

Asset Class	Prior Target	Current Target
Global Equity	50.0%	40.5%
Fixed Income	39.5%	38.0%
Real Estate	6.0%	8.0%
Alternatives	4.5%	4.5%
Credit	0%	4.5%
Inflation	0%	4.5%
Expected Return	**7.19%**	**7.30%**
Expected Risk	**10.05%**	**9.49%**

Fixed Income Allocation Key Driver of Returns Versus Peers



SOURCE: Wilshire TUCS

Returns	1 Year	3 Year	5 Year	10 Year
25th Percentile	14.26%	1.39%	5.21%	5.62%
Median	13.49%	0.37%	4.51%	5.15%
75th Percentile	12.01%	-0.72%	3.94%	4.62%
NCRS	**12.11%**	**1.43%**	**4.81%**	**5.20%**
Risk				
25th Percentile	9.12	13.16	10.74	9.26
Median	10.82	14.23	11.69	10.28
75th Percentile	11.79	15.20	12.36	10.80
NCRS	**8.85**	**12.03**	**9.84**	**8.73**

Source: BNY Mellon Total Funds – Public Funds $1+ Billion (Gross of Fees)

Three Proposed Legislative Changes in 2011 Session

- Expand the benchmark indices that may be used for internally managed equity
- Increase "Alternatives" maximum from 5% of assets to 10% of assets
- Allow long/short equity hedge fund strategies within the public equity portfolio

The key principle underlying these changes is to achieve the same or slightly better returns at a meaningfully lower level of risk.

S&P 500 Only 32% of Global Equity Universe

S&P 500

- Covers approximately 75% of the U.S. equity market
- Focuses on large cap stocks

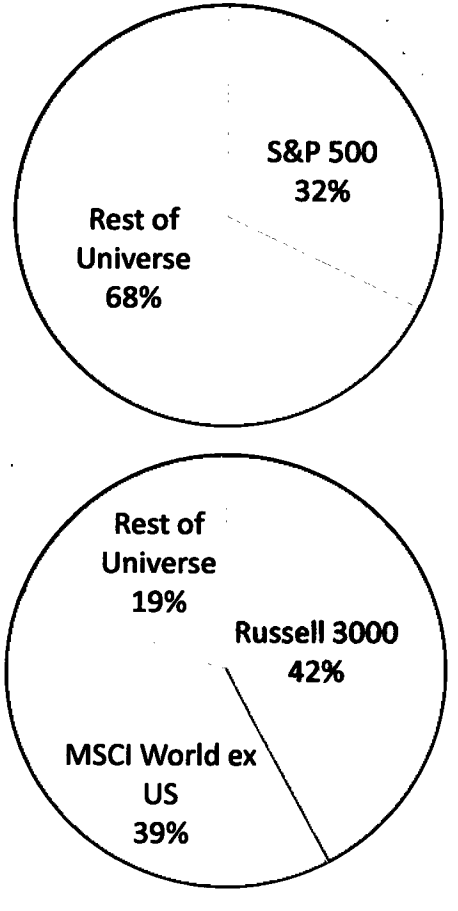
Russell 3000

- Covers approximately 98% of the U.S. equity market
- Coverage includes large cap, mid cap, and small cap stocks

MSCI World ex US

- Consists of 23 developed market countries outside of the United States

Global Equity Universe



Private Equity is Not Identical to Public Equity

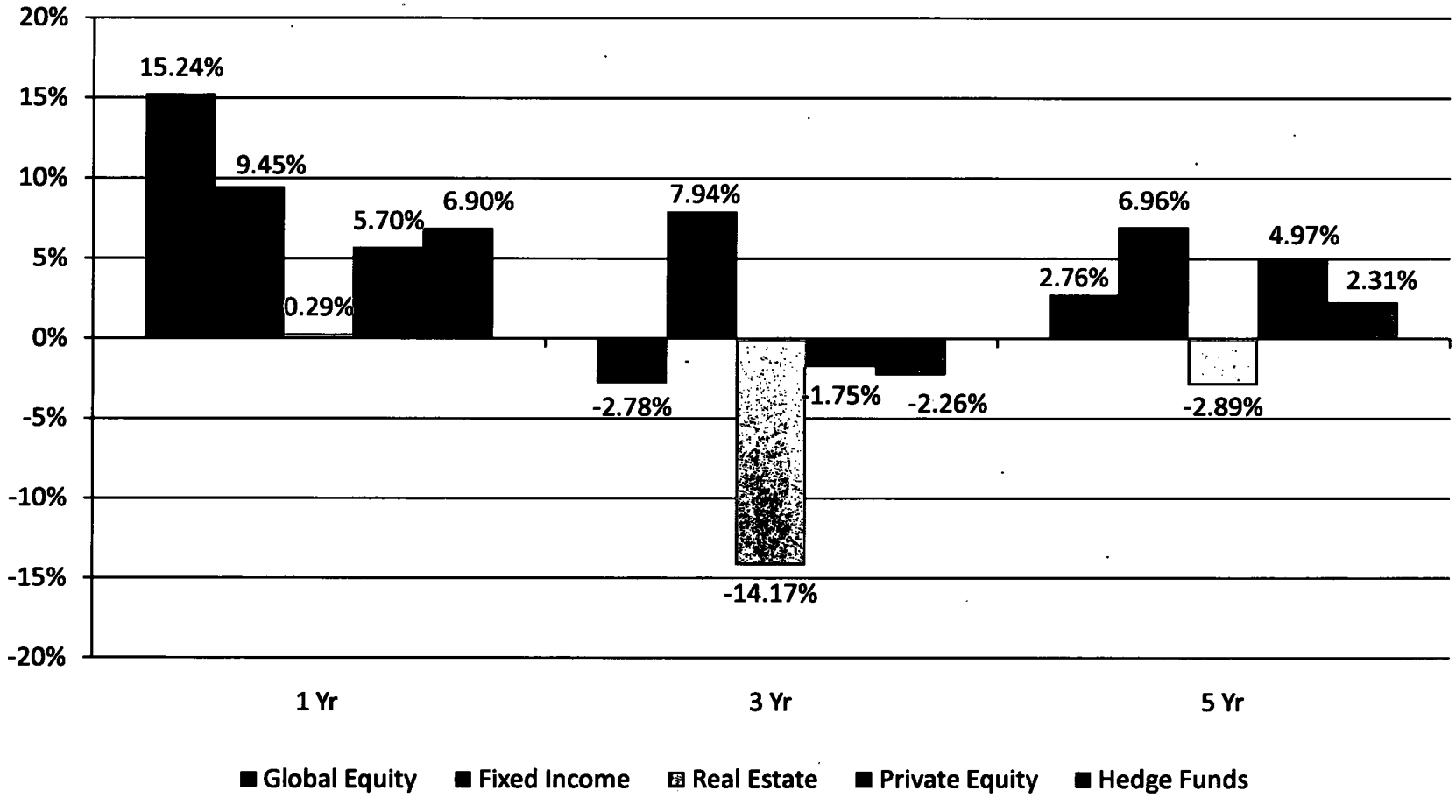
Correlation Matrix*

Asset Class	Fixed Income	High Yield	U.S. Large-Cap	U.S. Small-Cap	Non-U.S. Dev'd	Non-U.S. EM	Private Equity	Real Estate	Hedge Funds	Commodities	Timber	Infrastructure
Fixed Income	1.00											
High Yield	0.42	1.00										
U.S. Large-Cap	0.15	0.57	1.00									
U.S. Small-Cap	0.12	0.58	0.91	1.00								
Non-U.S. – Dev'd	0.14	0.56	0.80	0.78	1.00							
Non-U.S. – EM	0.03	0.50	0.68	0.70	0.76	1.00						
Private Equity	0.03	0.49	0.72	0.75	0.67	0.59	1.00					
Real Estate	0.16	0.42	0.43	0.44	0.40	0.31	0.32	1.00				
Hedge Funds	-0.01	0.40	0.49	0.54	0.56	0.52	0.43	0.26	1.00			
Commodities	-0.01	0.21	0.18	0.18	0.26	0.32	0.16	0.16	0.33	1.00		
Timber	0.01	0.10	0.08	0.08	0.13	0.12	0.12	0.11	0.19	0.17	1.00	
Infrastructure	0.18	0.39	0.47	0.46	0.48	0.41	0.37	0.28	0.39	0.35	0.19	1.00

Private Equity provides <u>some</u> diversification benefits

*Source: NCRS Asset Allocation Study 2010

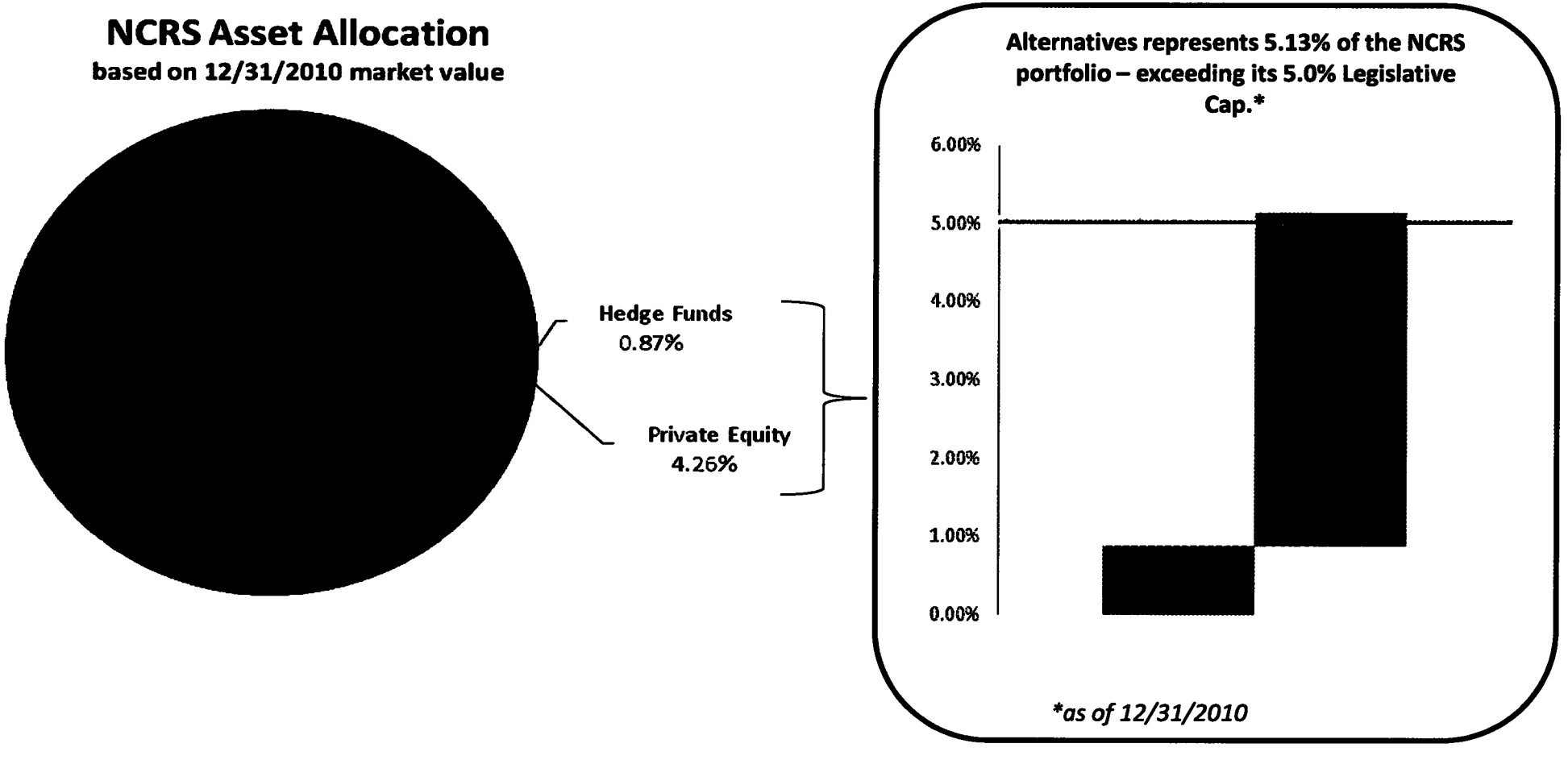
Private Equity One of Best Asset Classes over Last Five Years



Private Equity provides <u>some</u> enhancement to portfolio returns

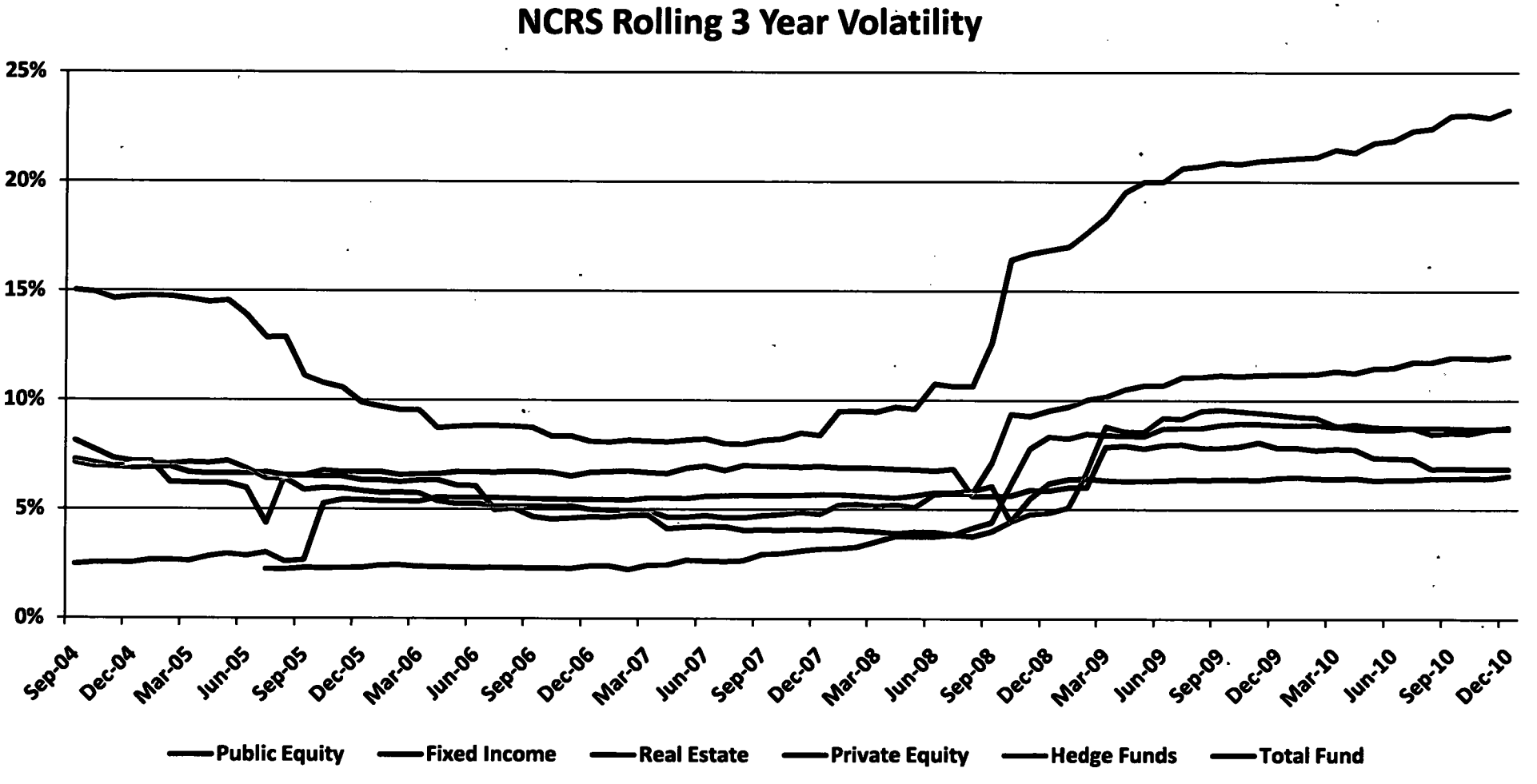
as of 12/31/2010

NCRS Managing to the Legislative Cap



Long/Short Equity Strategies Reduce Portfolio Risk

Public Equity Portfolio is currently the riskiest asset class

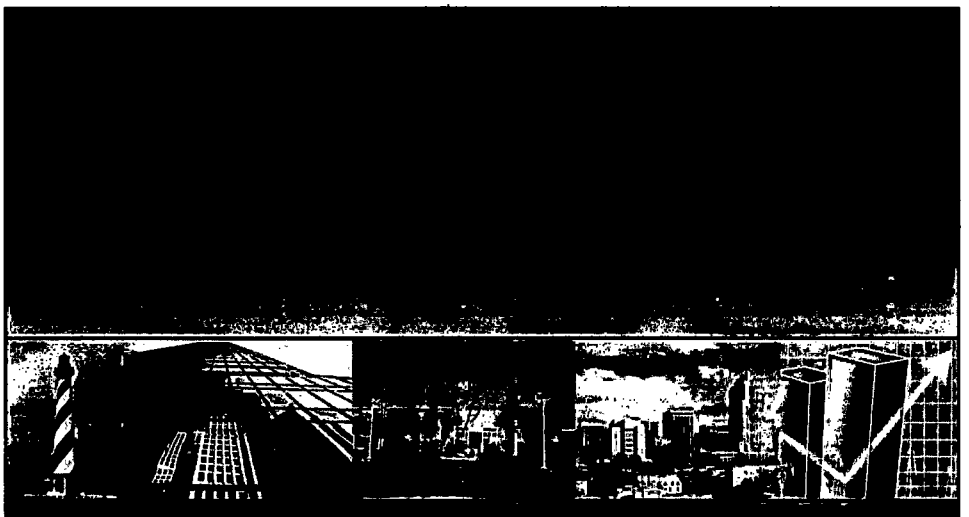


Diversifying Portfolio Allocations Further Reduces Risk

Asset Class	Prior Target	Current Target	Proposed Target A	Proposed Target B
Global Equity	50.0%	40.5%	37.0%*	37.0%**
Fixed Income	39.5%	38.0%	38.0%	38.0%
Real Estate	6.0%	8.0%	8.0%	8.0%
Alternatives	4.5%	4.5%	8.0%	8.0%
Credit Strategies	0%	4.5%	4.5%	4.5%
Inflation Portfolio	0%	4.5%	4.5%	4.5%
Expected Return	**7.19%**	**7.30%**	**7.38%**	**7.24%**
Expected Risk	**10.05%**	**9.49%**	**9.43%**	**8.54%**

* 95% of Proposed Target in Long-Only Equities / 5% of Proposed Target in Hedge Funds

** 75% of Proposed Target in Long-Only Equities / 25% of Proposed Target in Hedge Funds



State of North Carolina Debt Affordability

Presented by T. Vance Holloman

March 1, 2011

North Carolina Department of State Treasurer
State and Local Government

Learn. Invest. Grow. Prosper.

Debt Affordability Advisory Committee

About the Commission

The Committee is legislatively directed to:

- Annually advise the Governor and the General Assembly of the estimated debt capacity of the State (General Fund) for the upcoming ten years
- Annually advise the Governor and the General Assembly of the estimated debt capacity of the Transportation and Transportation Trust Funds for the upcoming ten years
- Recommend other debt management policies it considers desirable and consistent with the sound management of the State's debt

Study makes no recommendations regarding the use of available debt capacity.

Study is due February 1.

2

North Carolina Department of State Treasurer
State and Local Government

Learn. Invest. Grow. Prosper.

Debt Affordability Advisory Committee

Members of the Debt Affordability Committee

- Janet Cowell, State Treasurer
- Charles Perusse, State Budget Officer
- David Hoyle, Secretary of Revenue
- Beth Wood, State Auditor
- David McCoy, State Controller

Senate Appointees

- Stuart Bell
- J.W. Davis

House Appointees

- James V. Porto
- Jack Vogt

3

Review: What is Debt Affordability?

The amount of debt that may be prudently authorized and issued in a given period *without* negatively affecting the credit position or impairing the budget flexibility of the issuer.

- The amount of debt that is affordable ("capacity") is finite.
- Capacity can be measured and compared.
- Issuance beyond a prescribed level can erode credit ratings.
- The State measures its available capacity using tax-supported debt.

4

What is Tax-Supported Debt?

- The three bond rating agencies view all debt supported by state-wide taxes, fees, or levies as "tax-supported debt" and measure it on a combined basis. The measurement includes both General Fund and Transportation debt.
- For example, debt supported by both NC's Motor Fuels Tax and/or Vehicle registration and title fees would count as tax-supported debt.
- Debt supported by specifically pledged project revenues (e.g. tolls) would not count as tax-supported debt.

OPEB and ESC obligations are excluded.

Outstanding Tax-Supported Debt by Type (at 6/30/2010)

General Obligation (GO) Bonds	
Highway Fund GO Bonds	$527.9
General Fund GO Bonds	$4,708.4
Total General Obligation Bonds	**$5,236.3**

Special Indebtedness	
Net Tax-Supported Special Indebtedness (Limited Obligation Bonds, COPs, Lease Revenue Bonds, Installment Purchase Contracts)	$1,375.6
Total General Fund Tax-Supported Debt	**$6,084.0**
GARVEEs	$434.8
Other (energy and other non-GF supported)	$450.3

(millions)

Authorized but Unissued Tax-Supported Debt (as of 2/16/2011)

Total	
General Obligation (GO)	$0.0
Special Indebtedness	$1,088.3
Total	**$1,088.3**

Purpose	
Universities	$544.2
Psychiatric Hospitals	$218.0
R&R Projects	$142.1
Correctional Facilities	$56.1
State Projects and other	$127.9

(millions)

7

2010 GA Session New Debt Authorizations

New Debt Authorizations	
Repair and Renovation Projects	$120
Equipment	$55
Total New Authorizations	**$175**

(millions)

8

"Triple-Triple A" States

"Triple-Triple A" States are those achieving the highest rating from each of the three major bond rating agencies.

Our peer group is comprised of these 8 states (including Iowa):

- Delaware
- Maryland
- North Carolina
- Virginia
- Georgia
- Missouri
- Utah
- Iowa*

North Carolina

One of only 7 states in the U.S. to have GO debt rated "AAA" by all three agencies

** Iowa has non-GO debt rated "double A plus" and has been awarded an implied "AAA".*

"AAA" States Debt Comparisons

State	Debt/Personal Income	Debt per Capita	DS % Gov Expenditures
Delaware	6.2%	$2,489	5.2%
Georgia	3.3%	1,120	5.3%
Iowa	.2%	73	0.7%
Maryland	3.4%	1,608	4.3%
Missouri	2.2%	780	3.0%
North Carolina	**2.3%**	**765**	**2.0%**
Utah	3.2%	957	3.9%
Virginia	2.1%	895	3.4%
Median	**2.8%**	**$926**	**3.7%**

Source: Moody's 2010 State Debt Medians and S&P 2009 State Debt Review
Note: Rating Agency comparisons are historic in nature and do not include authorized but unissued debt.

Not "Apples to Apples"

- States develop debt affordability guidelines that are applicable to their individual situations and needs.
- Not all states utilize debt service as a percentage of revenues as the main metric, but a majority of the "AAA" rated states do.
- This calculation is most valuable because both numerator and denominator are directly controlled by policymakers.

GF Model Assumptions

- Tax-Supported Debt Service as a percentage of DAAC Revenues is the preferred calculation because both numerator and denominator directly controlled by policymakers.
  - 4% Guideline
  - 4.75% Ceiling
- Other Measures Evaluated:
  - Debt to Personal Income (2.5%/3.0%)
  - 10-year Payout Ratio (55%/50%)
  - Level of GF Unreserved Fund Balance and/or reserves
  - Debt per Capita

When NC adopted its limits (2003), policymakers were concerned that the State not become over-leveraged in a time of revenue uncertainty and negative fund balances.

In hindsight, that decision provided a measure of fiscal discipline that has served the State well in the current downturn and has helped it to regain its "AAA" rating from Moody's in 2007 and maintain its "AAA" rating from Fitch and S&P.

February 2011 DAAC Study

North Carolina General Fund Tax-Supported Debt Statistics

Projected as of	Debt to Personal Income	Debt per Capita	Debt Service as % DAAC Revenues	10-Year Payout Ratio
6/30/10 (actual)	1.8%	$638	3.61%	59%
6/30/11	1.8%	$663	3.62%	63%
6/30/12	1.8%	$672	4.12%	66%
6/30/13	1.7%	$641	4.22%	70%

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February 1, 2011 DAAC Study

General Fund Results

4%	2011	2012	2013	2014	2015
Total Capacity	$0.0	$0.0	$54.2	$314.2	$422.1
Annual Capacity*	$0.0	$0.0	$0.0	$0.0	$0.0
Actual Ratios	3.6%	4.1%	4.2%	3.9%	3.8%
Debt Service Overage		$21.5	$42.6		

** Amount available each and every year*

(millions)

14

Transportation Debt Capacity

- Highway and Highway Trust Fund capacity combined
- All State-level transportation revenues used (DOT projection)
- Federal revenues and GARVEES excluded
- Guideline adopted: transportation-related debt service should not exceed 6% of the State's transportation revenues

Transportation Liabilities

- Outstanding Highway General Obligations
- "Gap Funding" support for NCTA ($25 million - $112 million/year)
- P3 and/or "design/build/finance" obligations count depending upon revenue source
- **Transportation debt service is projected to exceed its limits and capacity has been exhausted until FY 2014**

February 1, 2011 DAAC Study

Transportation Results

	2011	2012	2013	2014	2015
Total Capacity	$0.0	$0.0	$0.0	$83.8	$161.0
Annual Capacity*	$0.0	$0.0	$0.0	$0.0	$0.0
Actual Ratios	6.2%	6.3%	6.5%	6.3%	5.8%
Debt Service Overage	$5.0	$8.9	$15.1	$8.4	

** Amount available each and every year*

(millions)

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North Carolina Department of State Treasurer
State and Local Government

Learn. Invest. Grow. Prosper.

Tax-Supported Debt Burden

Combined General Fund and Transportation Tax-Supported Debt Burden

2013 actual projection	Target D.S. % Revenues*	Ceiling*
General Fund (4.22%)	4.0%	4.75%
Transportation (6.51%)	6.0%	6.0%
Combined Result (4.53%)	4.27%	4.92%

* Based on 2007 revenues

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North Carolina Department of State Treasurer
State and Local Government

Learn. Invest. Grow. Prosper.

2011 DAAC Other Recommendations

- Achieve structural budget balance and replenish reserves. Tax reform may need to be considered.
- Establish a preference for General Obligation debt (versus special indebtedness).
- State should maintain its historically conservative debt management practices, including:
  - Centralized authorization, issuance and management of debt
  - Inclusion of all debt and debt-like obligations in calculations
  - GA clarification regarding individual agencies' ability to enter into alternative financings that may include debt and debt-like obligations
- Other Liabilities that do not impact debt capacity directly will need to be addressed:
  - OPEB
  - ESC Borrowings
  - Pension Funding

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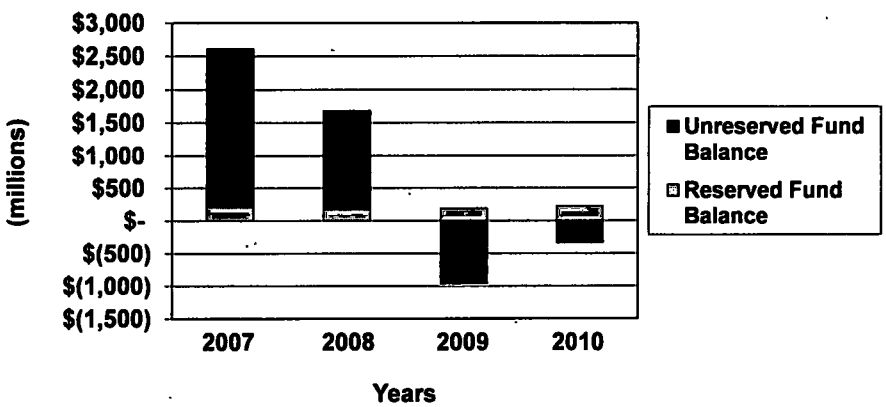
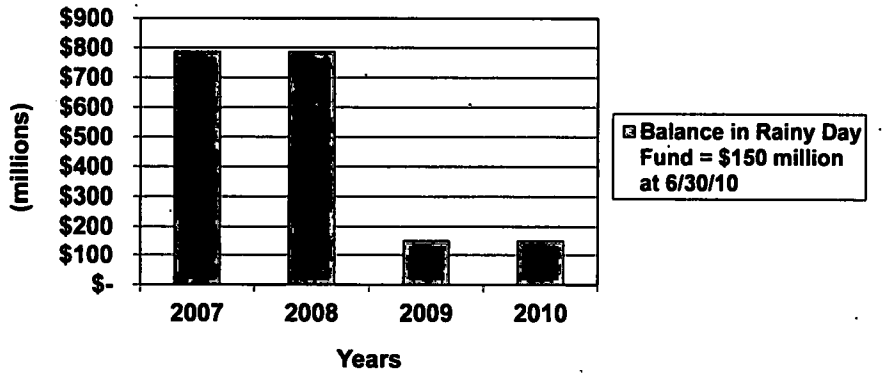
Structured Budget Balance and Replenish Reserves



20

Rainy Day Fund



21

General Obligation versus Special Indebtedness

- Since 2000, the State has relied extensively on the authorization of Special Indebtedness (Limited Obligation Bonds, COPs, other)
- Special Indebtedness as a percentage of all tax-supported debt will exceed 40% in FY 2014
- Peer group around 26%

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Conservative Debt Management Practices

- Conservative Debt Management Practices include:
  - Centralized debt authorization
  - Centralized debt management and issuance
  - All debt and debt-like obligations counted in debt burden
- Recommendation is that General Assembly clarify its intent regarding individual agencies' ability to borrow by adopting limits, terms and taking into consideration the impact on debt burden.

Other Debt and Debt-Like Obligations

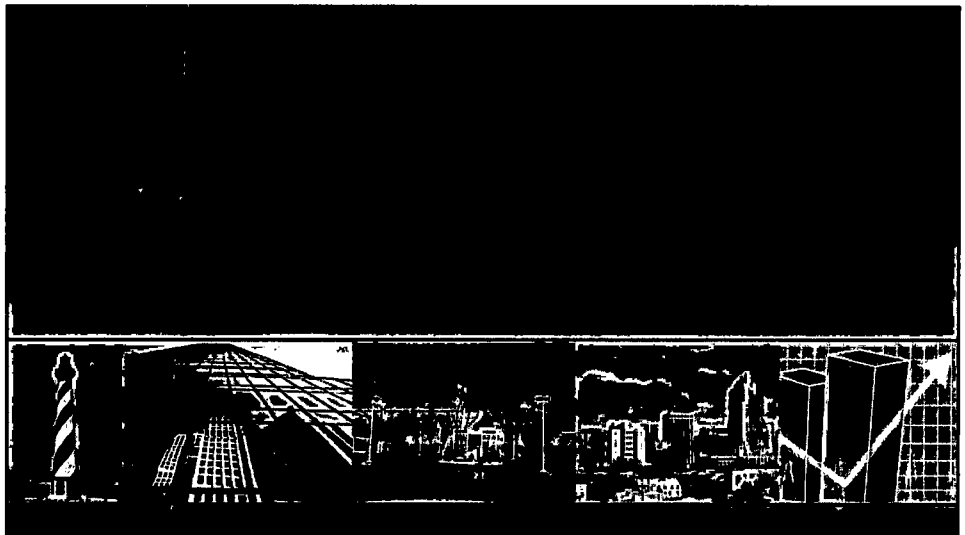
Debt Affordability Treatment

- Depends upon source of repayment
  - "General Governmental Funds" versus pledged revenue stream
- Public Private Partnerships
  - Financing costs higher
  - May count against debt affordability
  - Process to evaluate variables

Speed Control	Quality Public Access Compensation	Priority of Project Financing Costs

Other Liabilities

- The Committee recommended that the General Assembly determine the best course of action to address:
  - OPEB Liabilities
  - ESC Borrowings
  - Pension System Funding
- Although these liabilities do not impact debt capacity directly, they could have a negative impact upon the bond ratings of the State.



Thank you!

Together, we can build and maintain a fiscally strong and prosperous North Carolina.

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PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 3-1 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Matt Averette	Lillington	P. Berger
2 Steven Sorrell	"	"
3		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 1, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Buffkin	NCAEC
D Cox	NCLM
Mitch Leonard	SEANC
Ed Regen	NCRGEA
Dennis Arnold	Farm Bureau
Brent Cleveland	Entrust
John Connet	City of Clinton
David Steele	NCCN
Kent Dozier	NOSH Co Community Action Forced Annexation
Will Culpepper	NVA
Ted Fogleman	Tarheel
[illegible]	MISC

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

March 1, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mark Stronge	UNC-TV / Legislative Week in Review
Mary Arnold	Citizen
Kay Emanuel	Legislative Reporting Services
Vance Holloman	NCDST
Dora Fazzini	NCDST
Jason Simpson	Wake Forest Univ. Baptist Medical Ctr.
Maeve Hoffman	Smith Anderson
Amy McConkey	NCBCU
Cameron Henley	Electric Cities of NC
Jim Pridgen	Red Oak Beer
Mark Briggs	

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 1, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Stacy Hardy	
Cody Thomas	NCAR
David McGowan	"
SHAWN WISCHMEIER	DST
CRAIG DEMKO	DST
Pam Myers	NCLM
Becki Gray	Gov't
Bill Rowe	NC Justice Center
Lisa Mills	NC Home Builders
Jessi Hayes	↓
Janet Cowell	Treasurer

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 1, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Starling	NCDST
B. Stacy Bailey	PENC
Chris Valauri	Valauri Group, LLC
Bill Brooks	NCFPC
Skip Orser	NCFPC
Andrew Meehan	Capstreet
John Goodman	NC CHAMBER
Jim Johnson	BSA
Ken Melton	K.M.A.
Chip Kullman	nelson mullins
Kevin Leonard	NCACC

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

March 1, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lakiesha Brown	City of Wilmington
A. Sokari	DST
Andrew Holton	DST
Carl Hall	DST

SENATE FINANCE COMMITTEE
Wednesday, March 8, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on March 8, 2011 in room 544 of the Legislative Office Building. Darius Evans of Wake Forest, Douglas Piercy of Asheville, and Will Klemme of High Point served as pages. Twenty-four members of the committee were present. Senator Hartsell presided as chair.

H123 – Business Entity Changes

Representative Brubaker was recognized to explain the bill. It is a recommendation of the Revenue Laws Study Committee. The bill makes changes to the business entity ownership requirements for qualification of land at its present-use value for property tax purposes, so that the requirements are met when the current owner of the land shares members in common with the prior owner of the land. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H124 – IRC Update

Representative Brubaker was recognized to explain the House Committee Substitute. It would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2010 to January 1, 2011. This change in the date would incorporate many of the tax provisions contained in the federal Small Business Jobs Act of 2010 and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. Cindy Avrette, a staff attorney with the Research Division, was recognized to answer questions. Senator Hunt moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

The meeting adjourned at 1:12 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, March 08, 2011

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

FAVORABLE

H.B.	**123**	Business Entity Changes.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #1)	**124**	IRC Update.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 2

Committee Clerk Comments:

H123 – Sen. Hartsell
H124 – Sen. Hartsell

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 8, 2011	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 123	Business Entity Changes.	Representative Hill Representative Brubaker Representative Howard Representative Luebke
HB 124	IRC Update.	Representative Starnes Representative Brubaker Representative Howard Representative Setzer

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Senate Finance Committee
Tuesday, March 8, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 123	Business Entity Changes.	Rep. Hill Rep. Brubaker Rep. Howard Rep. Luebke
HB 124	IRC Update.	Rep. Starnes Rep. Brubaker Rep. Howard Rep. Setzer

Presentations

Adjournment

HOUSE BILL 123

Short Title:	Business Entity Changes.	(Public)
Sponsors:	Representatives Howard, Brubaker, Luebke, and Hill (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Finance.	

February 17, 2011

A BILL TO BE ENTITLED

AN ACT TO REVISE THE BUSINESS ENTITY OWNERSHIP REQUIREMENTS OF LAND AT PRESENT-USE VALUE.

The General Assembly of North Carolina enacts:

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

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

...

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

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

a. The business entity.

b. A member of the business entity.

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

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

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

HOUSE BILL 123:
Business Entity Changes

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 7, 2011
Introduced by:	Reps. Howard, Brubaker, Luebke, Hill	**Prepared by:**	Martha Walston
Analysis of:	First Edition		Committee Counsel

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

[This bill is identical to S93, as introduced by Sens. Hartsell, Clodfelter, Tillman, which is currently in Senate Finance.]

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

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

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

- Farmland owned by ABC Partnership for past four years applies for PUV status.
- The partners of ABC Partnership are Tom, Dick, and Harry.
- The previous owner of the farmland was XYZ Partnership.
- XYZ Partnership shares one or more partners in common with the current owner ABC Partnership.
- Counties have denied PUV status to the farmland based upon the language in G.S. 105-277. 3(b1): The farmland had not been owned by its current owner, ABC Partnership, for four years immediately preceding the application, nor was the land owned by a partner of ABC Partnership.

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

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

House Bill 123 would allow the business entity ownership requirements to be satisfied when the business entity that currently owns the farmland shares one or more members in common with the business entity that previously owned the farmland. For example, because one or more partners of the partnership that currently owns the farmland are the same partners of the partnership that previously owned the farmland, the ownership requirement would be met.

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

H123-SMLA-4(e1) v1

HOUSE BILL 124*
Committee Substitute Favorable 2/24/11

Short Title: IRC Update. (Public)

Sponsors:

Referred to:

February 17, 2011

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2010,~~ January 1, 2011, including any provisions enacted as of that date that become effective either before or after that date."

SECTION 2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(15b) For taxable years 2010 through 2012, eighty-five percent (85%) of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service during the taxable year. In addition, for taxable year 2010, a taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 2.(b) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(21b) An amount equal to twenty percent (20%) of the amount added to federal taxable income as accelerated depreciation under subdivision (a)(15b) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012. For the amount added to taxable income in the 2012 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2013."

SECTION 2.(c) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(8b) For taxable years 2010 through 2012, eighty-five percent (85%) of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service during the taxable year. In addition, for taxable year 2010, a taxpayer who placed

property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 2.(d) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(17b) An amount equal to twenty percent (20%) of the amount added to federal taxable income as accelerated depreciation under subdivision (c)(8b) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012. For the amount added to taxable income in the 2012 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2013."

SECTION 3.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(23) For taxable years 2010 and 2011, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code for property placed in service in taxable year 2010 or 2011 exceeds the amount that would have been allowed for the respective taxable year under section 179 of the Code as of May 1, 2010. For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code as of January 1, 2011. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.(b) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(26) An amount equal to twenty percent (20%) of the amount added to federal taxable income under subdivision (a)(23) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012."

SECTION 3.(c) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(15) For taxable years 2010 and 2011, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code for property placed in service in taxable year 2010 or 2011 exceeds the amount that would have been allowed for the respective taxable year under section 179 of the Code as of May 1, 2010. For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code as of January 1, 2011. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.(d) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(21) An amount equal to twenty percent (20%) of the amount added to federal taxable income under subdivision (c)(15) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012."

SECTION 4. This act is effective when it becomes law. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North Carolina taxable income for the 2010 taxable year become effective for taxable years beginning on or after January 1, 2011.

HOUSE BILL 124: IRC Update

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 7, 2011
Introduced by:	Reps. Howard, Brubaker, Starnes, Setzer	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 124 would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2010, to January 1, 2011. This change in the date would incorporate many of the tax provisions contained in the federal Small Business Jobs Act of 2010 and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.***

This bill is the identical to Senate Bill 94, which received a favorable report in Senate Finance on February 23rd. The bill is a recommendation of the Revenue Laws Study Committee. With the exception of the estate tax, the bill's impact on General Fund availability is minimal.

The bill would make the following changes to State individual and corporate income tax laws:

- ***Extend various individual and business tax deductions that expired in 2010 for an additional two years, such as the tax deduction for higher education expenses and the $250 tax deduction for teacher's classroom supplies.***
- ***Require an 85% add back of any accelerated depreciation a taxpayer claimed on the federal return for taxable years 2010[1] through 2012 and a corresponding deduction of 20% of this amount over the next five tax years. This provision effectively decouples from the federal bonus depreciation provision while maintaining the same basis in the property for federal and State tax purposes.***
- ***Maintain the current section 179 expense deduction limit and cap through 2011 and conform to the federal section 179 expense deduction limit and cap for 2012. It would conform to the expanded definition of qualifying property for taxable years 2010 and 2011. It would require an 85% add back of the additional expensing taken under federal law and provide a corresponding deduction of 20% of this amount over the next five tax years. The bill stipulates that the basis in the property would be the same for federal and State tax purposes.***

[1] The effective date of the federal 100% bonus depreciation provision applied to property placed in service after September 8, 2010, *in taxable years ending after such date.* This effective date means the bonus depreciation provision may be taken in the 2009 taxable year if a taxpayer had a taxable year ending after September 8, 2010, and before December 31, 2010. Therefore, the bill would provide that the adjustments needed to decouple from this provision may be reflected on a taxpayer's 2009 tax year return.

CURRENT LAW: North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[2] The General Assembly determines each year whether to update its reference to the Code.[3] Updating the reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made. Maintaining conformity with federal tax law simplifies tax reporting because a taxpayer will not need to account for differing federal and State treatment of the same asset.

BILL ANALYSIS: The current reference to the Code is May 1, 2010.[4] Since that time, Congress has enacted two Acts that make substantial changes to the tax code: the Small Business Jobs Act of 2010, enacted September 27, 2010, as P. L. 111-240 (2010 Jobs Act), and the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act, enacted December 17, 2010, as P. L. 111-312 (2010 Tax Relief Act). Both Acts contain provisions that became effective retroactively on January 1, 2010. Since the General Assembly will not have had an opportunity to enact legislation prior to the end of the 2010 taxable year, taxpayers may have to make adjustments on their 2010 State tax return for items included in, or excluded from, federal taxable income as a result of one of these two Acts.

The 2010 Jobs Act enhances existing business tax incentives and partially offsets this revenue loss with changes which are expected to increase revenue. The incentives in the 2010 Jobs Act are not limited to small businesses, and the accelerated deduction for depreciation represents a major benefit to large businesses. The 2010 Tax Relief Act boosts some of the business tax incentives in the 2010 Jobs Act and extends the Bush-era individual and business tax incentives, included in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)[5], for two years.

Extension and Expansion of Bonus Depreciation for 2010, 2011, and 2012

Businesses may depreciate the cost of a new asset[6] over a period of time, usually five to 15 years. Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over

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[2] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[3] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

[4] Part 31 of S.L. 2010 31 updated the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2009, to May 1, 2010. However, S.L. 2010 31 did not conform to the five year carryback of net operating losses incurred by large businesses. S.L. 2010 31 incorporated tax changes made by five federal acts: the Worker, Homeownership, and Business Assistance Act (WHBA), P.L. 111-92; Acceleration of Income Tax Benefits for Haiti Relief, P.L. 111-126; the Patient Protection and Affordable Care Act, P.L. 111-148; the Health Care and Education Reconciliation Act, P.L. 111-152; and the Hiring Incentives to Restore Employment Act (HIRE), P.L. 111-147.

[5] Most of the tax provisions in EGTRRA were scheduled to expire in 2010 or 2011 and revert to the provisions as they existed in 2001.

[6] One important difference between bonus depreciation and section 179 expensing is that bonus depreciation applies only to new equipment, while section 179 expensing may apply to new and used equipment.

the normal depreciation schedule. The federal Economic Stimulus Act of 2008[7] provided a 50% first year bonus depreciation for qualified property acquired and placed in service in 2008. The federal American Recovery and Reinvestment Act of 2009 extended the 50% bonus depreciation provided to qualified property for an additional year through 2009.

The 2010 Jobs Act extends the bonus depreciation for 2010 and applies retroactively to property acquired and placed in service in 2010.[8] The 2010 Tax Relief Act increases the 50% bonus depreciation extended under the 2010 Jobs Act to 100% for property acquired and placed in service after September 8, 2010, and before January 1, 2012. It also provides 50% bonus depreciation for qualified property placed in service after December 31, 2012, and before January 1, 2013. Under the 2010 Jobs Act, the bonus depreciation would have expired for the 2012 taxable year. Under the 2010 Tax Relief Act, the bonus deprecation expires for the 2013 taxable year.

The 2010 Jobs Act also allows taxpayers using the percentage of completion accounting method to benefit from bonus depreciation at the federal level for assets with a depreciable life of seven years or less. The percentage of completion accounting method might prevent taxpayers from receiving benefit from the bonus depreciation because the accounting method spreads expenses, including depreciation, throughout the life of a long-term contract. Under this accounting method, taxpayers could not deduct the bonus depreciation in the first year. Construction contractors use the percentage of completion accounting method. This provision is new.

North Carolina decoupled from the extension of the bonus depreciation provisions in 2008 and 2009. The State delayed the impact of the bonus depreciation deduction in a manner similar to what it has done in the past: State tax law provides that a taxpayer may deduct the same amount of an asset's basis under State law as under federal law, it is just that the timing of the deduction differs. Under State tax law, a taxpayer must add back 85% of the accelerated depreciation amount[9] in the year that it is claimed for federal purposes. Then, in subsequent tax years, the taxpayer may deduct from federal taxable income the total amount of the add-back, divided into five equal installments. This adjustment means that for State tax purposes, a taxpayer may deduct a greater depreciation amount in the outlying tax years, which will be the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back.

House Bill 124 would decouple from the bonus depreciation provisions for 2010, 2011, and 2012 in the same manner as it has decoupled from them in the past: A taxpayer would add-back 85% of the accelerated depreciation amount in the year that it is claimed for federal purposes. Then, in subsequent tax years, the taxpayer would deduct from federal taxable income the total amount of the add-back, divided into five equal installments. Under the 2010 Tax Relief Act, the 100% bonus depreciation applied to property placed in service after September 8, 2010, *in taxable years ending after such date.* This effective date means the bonus depreciation provision may be taken in the 2009 taxable year if a taxpayer had a taxable year ending after September 8, 2010, and before December 31, 2010. Therefore, the bill would provide that the adjustments needed to decouple from this provision may be reflected on a taxpayer's 2009 tax year return. The cost to conform to the bonus depreciation provision would be approximately $460 million. As of February 16, 2011, it appears 15 of 43 states conformed to this provision in some form while the remaining 28 states did not.

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[7] Congress has authorized bonus depreciation several times to encourage business investment, specifically after September 11, 2001. The Jobs Creation and Worker Assistance Act of 2002 provided a 30% bonus depreciation allowance. The Jobs and Growth Tax Relief Reconciliation Act of 2003 extended the sunset and increased the amount to 50%.

[8] The property may be placed in service during 2011 for property with a recovery period of 10 years or longer and for transportation property (i.e., tangible personal property used to transport people or property).

[9] The accelerated depreciation amount for property placed in service in 2008 is 50%.

Enhanced Section 179 Expensing for 2010, 2011, and 2012

Section 179 of the Code allows the expensing of the purchase price of some business assets[10] in the year of purchase rather than taking depreciation[11] throughout the life of the asset. In other words, expensing trades a smaller yearly deduction over time for a larger deduction in year one.

Prior to the Emergency Economic Stabilization Act of 2008 (EESA), the deduction limit for section 179 expensing was $128,000[12] of the cost of the property with a dollar for dollar phase-out of this amount whenever the total cost of qualifying property placed in service that year exceeded $510,000.[13] EESA increased the deduction limit from $128,000 to $250,000 with a phaseout at $800,000 for the 2008 tax year. The American Recovery and Reinvestment Tax Act of 2009 (ARRTA) extended the temporary increase through 2009. The federal HIRE Act of 2010 extended the 2008 and 2009 increase through 2010. The limits were scheduled to revert to the prior levels of $25,000 and $200,000 in taxable year 2011. North Carolina conformed to those changes.

The 2010 Jobs Act not only delayed the reversion to the prior levels until the 2012 taxable year, it also increased the section 179 expensing deduction for tax years 2010 and 2011 from $250,000 and $500,000 to $800,000 and $2 million. In addition to the expansion of the limits, the Act broadened the definition of qualified property to include qualified leasehold improvement property, qualified restaurant property, qualified retail improvement property, and computer software.[14] The enhancements made by the 2010 Jobs Act are set to expire for the 2012 taxable year. The 2010 Tax Relief Act does not continue the expansion of the types of property that may qualify for the deduction beyond the 2011 taxable year, but it does increase the limits for the 2012 taxable year from $25,000 and $200,000 to $125,000 and $500,000. Under the 2010 Tax Relief Act, the deduction limits are set to revert to their prior levels of $25,000 and $200,000 in 2013.

North Carolina has conformed to the enhanced section 179 expense deduction provisions in the past. However, the enhancements made by the 2010 Jobs Act are the most expansive ever enacted. House Bill 124 would conform to the expanded definition of qualified property; it would maintain the 2010 deduction limits of $250,000 and $800,000 for taxable years 2010 and 2011; and it would decouple from the enhanced limits of $500,000 and $2,000,000 for taxable years 2010 and 2011. House Bill 124 would provide that the property's basis would be the same for federal and State purposes and would treat the difference in the same manner as State tax law has historically treated the bonus depreciation: A taxpayer would add-back 85% of the additional expensing taken under federal law in 2010 and 2011 and would deduct 20% of this amount over the succeeding five years. House Bill 124 would conform to the expensing limits of $125,000 and $500,000 for the taxable year 2012 and, like federal law, would revert to the prior expense limits of $25,000 and $200,000 for the tax year 2013. Full conformity to the section 179 expense deduction would be approximately $97 million. As of February 16, 2011, it appears 24 of 43 states conformed to this provision in some form while the remaining 19 states did not.

Estate Tax for 2010 - 2012

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[10] The business asset must be newly purchased tangible personal property that is used more than 50% for business purposes and is eligible to be depreciated under the Code. The newly purchased property may be new or used equipment.

[11] Generally, taxpayers take the Section 179 expensing deduction first and claim Section 168(k) depreciation on any remaining basis.

[12] Prior to the EESA, the dollar limits would have been $125,000 with a phase-out beginning at $500,000; both amounts would have been indexed for inflation resulting in the limits of $128,000 and $510,000.

[13] For example, if the taxpayer placed in service during the taxable year one or more items of qualifying property totaling $520,000, the amount that could be expensed under section 179 would be $118,000 -- $128,000 less $10,000, which is the excess of $520,000 over $510,000.

[14] Qualified real property is limited to a maximum deduction of $250,000.

EGTRRA gradually reduced the federal estate tax over a period of years and abolished it for decedents dying in 2010. During the year of its repeal, the basis of property passing through an estate was determined by the modified carryover basis rules under EGTRRA. EGTRRA also repealed the state estate tax credit for decedents dying on or after 2004 and replaced the credit with a deduction. The estate tax was scheduled to revert to the 2001 law in 2011: the 2001 maximum estate tax rate of 55% and a $1 million applicable exclusion amount.

The 2010 Tax Relief Act revives the estate tax retroactively for decedents dying on or after January 1, 2010, and thereby allows property passing through the estate to acquire a stepped-up basis. The maximum federal estate tax rate is 35% with an applicable exclusion amount of $5 million. The 2010 Tax Relief Act also provides for portability between spouses of the exclusion amount. This portability means that any unused exclusion amount by one spouse is available to the surviving spouse, effectively allowing a married couple to exclude up to $10 million from estate tax.[15] The new estate tax law is scheduled to sunset on December 31, 2012, to the pre-EGTRRA amounts. The 2010 Tax Relief Act gives the estates of decedents dying in 2010 the option to pay no estate tax and assume the modified carryover basis in the property.

North Carolina imposes an estate tax on the estate of a decedent when a federal estate tax is imposed on the estate.[16] By virtue of this language, the federal and state exclusion amounts are the same. The amount of the State's estate tax is the amount of the credit allowed on the federal estate tax return for state estate tax paid, as the federal law provided in 2001.[17]

Since the federal estate tax did not exist in 2010, North Carolina's estate tax was repealed for 2010. With the revival of the federal estate tax in 2011, North Carolina's estate tax is revived for the estates of decedents dying on or after January 1, 2011.[18] House Bill 124, by conforming to the definition of federal taxable income for income tax purposes, also adopts the federal basis of any property passing through an estate. Unlike Congress, North Carolina cannot the estate tax retroactively[19] on the estates of decedents dying on or after January 1, 2010, and before January 1, 2011.

Business Tax Extenders for 2010 and 2011

The 2010 Tax Relief Act extended many of the tax incentives enacted in EGTRRA for two years. The business tax incentives included enhanced deduction and expensing items, charitable deductions, and tax credits. North Carolina conformed to these incentives in 2002[20]; however, under existing North Carolina law, these incentives expired for the 2010 taxable year. House Bill 124 would conform to these extensions.

The 2010 Tax Relief Act extended the following business tax incentives that were set to expire for the 2010 taxable year for the 2010 and 2011 taxable years:

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[15] The portability election is set to sunset December 31, 2012. Therefore the utility of the portability election is limited to situations where both spouses die within the two-year term (2011 and 2012).

[16] North Carolina repealed its inheritance tax in 1998 and replaced it with an estate tax that was equivalent to the federal state estate tax credit allowed on a federal estate tax return. This type of state estate tax was known as a "pick up" tax because it picked up for the state the amount of federal estate tax that would otherwise be paid to the federal government.

[17] When Congress phased out the state estate tax credit, beginning in 2002, North Carolina enacted legislation not to conform to the phase out of the credit. In other words, North Carolina began tying the amount of the State estate tax owed to the federal credit as it existed in 2001 rather than as it currently exists. Georgia, South Carolina, and Tennessee have not had an estate tax since January 1, 2005, because their estate tax equals the amount of the state estate tax credit allowed on the federal estate tax return. Virginia repealed its estate tax, effective July 1, 2007.

[18] North Carolina's estate tax would have been revised in 2011 based upon the Code as written on May 1, 2010.

[19] Article I, Sec. 16 of the North Carolina Constitution.

[20] S.L. 2002-126.

- 15-year recovery period for qualified leasehold improvements, restaurant building and improvements, and retail improvements
- Seven-year recovery period for motor sports entertainment costs recovery
- Expensing election for certain film and television production costs
- Brownfields remediation expensing

The 2010 Tax Relief Act extends the Work Opportunity Tax Credit (WOTC) to include individuals who begin employment after August 31, 2011, and before January 1, 2012. The WOTC is equal to 40% of up to $6,000 of the targeted employee's qualified first year wages. North Carolina's WOTC is equal to 6% of the federal WOTC for wages paid for positions located in this State. The federal WOTC was scheduled to expire September 1, 2011.

The 2010 Tax Relief Act extends the following charitable incentives for taxable years 2010 and 2011:

- Deduction for contributions of food inventory
- Deduction for contributions by C corporations of books to public schools
- Deduction for corporate contributions of computer equipment for educational purposes
- Basis adjustment to stock of S corporations making charitable contributions of property

Individual Income Tax Extenders for 2010, 2011, and 2012

The 2010 Tax Relief Act extends many of the Bush-era individual tax incentives included in the EGTRRA for two years. Some of the tax incentives expired in 2010 and others were scheduled to expire in 2011. North Carolina conformed to these incentives in 2002[21]; however, under existing North Carolina law, many of these incentives expired for the 2010 taxable year and others are scheduled to expire for the 2011 taxable year. House Bill 124 would conform to these extensions.

The following three individual income tax incentives were scheduled to expire in 2010, but the 2010 Tax Relief Act extends the incentives retroactively for the 2010 tax year and the 2011 tax year:

- Tax deduction for higher education tuition expenses
- Up to $250 deduction for teacher's classroom expenses
- Charitable contribution of IRA proceeds

The following individual income tax incentives were scheduled to expire in 2011, but 2010 Tax Relief Act extends the incentives for the 2011 and 2012 taxable years:

- *No limitation on itemized deductions.* Section 68 of the Code, first added in 1990, established an overall limitation on itemized deductions. This limitation was gradually repealed starting in 2006, with the phase-out complete in taxable year 2010. The limitation was scheduled to revert in full in 2011. The 2010 Tax Relief Act extends the complete repeal of the limitation for 2011 and 2012.
- *Enhancements to the earned income tax credit (EITC).* The EITC is a refundable tax credit that varies depending on the number of the taxpayer's qualifying children. North Carolina's EITC is equal to 5% of the federal credit amount. EGTRRA increased the EITC from 40% to 45% of a family's first $12,570 of earned income for families with three or more children and

[21] S.L. 2002-126.

an increase in the beginning point of the phase-out range for married coupled filing a joint return by $1,880. The enhancements were set to expire for the 2011 taxable year. The 2010 Tax Relief Act extends the enhancements through the 2011 and 2012 taxable years.

- *Enhancements to the adoption tax credit.* EGTRRA increased the dollar limitation for the credit and the income exclusion for employer paid expenses to $10,000, indexed for inflation. The Patient Protection and Affordable Care Act increased the credit and exclusion by another $1,000 for 2010 and 2011. The credit cap was scheduled to return to $5,000[22] for taxable years beginning on or after January 1, 2012. North Carolina's adoption tax credit is equal to 50% of the federal credit amount. The 2010 Tax Relief Act extends the enhancements made by EGTRRA for one year. Under the Act, the credit caps will revert to their prior levels in taxable year 2013.
- *Deductibility of mortgage insurance premiums.* Mortgage insurance premiums became deductible in 2007. The insurance must be in connection with home acquisition debt for a first or second home. The deduction is subject to phase-out based on a taxpayer's income. The deductibility of mortgage insurance premiums was set to expire for taxable year 2011. The 2010 Tax Relief Act extends the deduction for one more year, through taxable year 2011.
- *Educational assistance exclusion.* EGTRRA allowed employees to exclude up to $5,250 in employer-provided education assistance from income and employment taxes. The exclusion was set to expire for taxable year 2011. The 2010 Tax Relief Act extends the exclusion for taxable years 2011 and 2012.
- *Student loan interest deduction.* The student loan interest deduction is a deduction from gross income used to determine a taxpayer's adjusted gross income (AGI). The deduction is subject to a phase-out based on the taxpayer's AGI. EGTRRA eliminated the rule that the deduction only applies to payments made during the first 60 months that interest payments were required and it increased significantly the phase-out amounts. These changes were set to expire in 2011, but the 2010 Tax Relief Act extends the changes for taxable years 2011 and 2012.
- *Coverdale education savings accounts.* Coverdale education savings accounts allow a taxpayer to make nondeductible contributions and to withdraw the proceeds tax free if they are used towards educational expenses. EGTRRA increased the amount that may be contributed to an account from $500 to $2,000 and it made elementary and secondary school expenses qualified expenses. The enhancements were set to expire for the 2011 taxable year. The 2010 Tax Relief Act extends the enhancements for taxable years 2011 and 2012.
- *Qualified scholarships.* Qualified scholarships may be excluded from taxable income. EGTRRA provided that the national Health Services Corps Scholarship Program and the Armed Forces Scholarship Program are qualified scholarships for exclusion for income purposes. These scholarships were scheduled to be included in a recipient's income in taxable year 2011. The 2010 Tax Relief Act extends the income exclusion for taxable years 2011 and 2012.

Miscellaneous Business Incentives

[22]The limit is $6,000 for a special needs child.

The 2010 Jobs Act provided several tax incentives for businesses. House Bill 124 would conform to these incentives.

- *Increase in amount allowed as a deduction for start-up expenditures.* The Code allows up to $5,000 of start-up expenses to be deducted. The deduction is reduced by the amount of start-up costs that exceed $50,000. The 2010 Jobs Act increased the deduction to $10,000 for start-up and organization expenses of the taxpayer's trade or business in 2011 and increased the phase-out threshold to $60,000.
- *Modification to exclusion for gain from certain small business stock.* Fifty percent of the gain realized on qualified small business stock may be excluded from income. To qualify, the stock must be purchased at its original issue and the aggregate gross assets of the issuing corporation may not exceed $50 million and at least 80% of the value of its assets must be used in the active conduct of one or more trades or businesses. The exclusion is capped at the greater of 10 times the taxpayer's basis in the stock or $10 million. ARRTA temporarily increased from 50% to 75% the exclusion for qualified small business stock sold by an individual. The increased exclusion percentage is applicable to stock acquired after February 17, 2009, and before January 1, 2011. North Carolina conformed to ARRTA's temporary increase of the exclusion. The 2010 Jobs Act increaseed the exclusion percentage to 100% for stock acquired after September 27, 2010, and before January 1, 2011.

Provisions in the 2010 Jobs Act Designed to Increase Revenue

The 2010 Jobs Act contained provisions to increase revenues. The provisions projected to raise the most revenue were related to higher federal tax penalty provisions. These provisions would not apply to North Carolina and would not increase any revenues payable to North Carolina. The Act also contained some retirement-friendly provisions that, if chosen by the taxpayer, would encourage up-front distributions that would be taxable. House Bill 124 would conform to these changes.

- *Deduction for health insurance costs in computing self-employment taxes.* The 2010 Jobs Act allows self-employed individuals to deduct the cost of health insurance for the individual and immediate family to determine income subject to federal self-employment taxes. Health insurance costs were already deductible for regular income tax purposes. The reduction in self-employment taxes affects North Carolina taxable income because self-employment taxes were deductible in determining State taxable income. Self-employed taxpayers with health insurance costs will have larger State taxable incomes because less self-employment taxes were imposed and deducted at the federal level.
- *Allow participants in governmental 457 plans to treat elective deferrals as Roth contributions.* The 2010 Jobs Act gives participants the option to move retirement savings from government 457(b) plans to Roth accounts starting in 2011. The conversion will be taxable while the earrings and distributions from Roth accounts are generally tax free.
- *Allow rollovers from elective deferral plans to Roth designated accounts.* The 2010 Jobs Act allows retirement plans to offer participants the option starting September 27, 2010 to rollover distributions into Roth accounts within the same retirement plan. The rollover will be taxable while the earnings and distributions from the Roth account are generally tax free.
- *Permit partial annuitization of a nonqualified annuity contract.* The 2010 Jobs Act allows the owner of an annuity contract to begin receiving benefits based on a portion of the value of the annuity and leaving the balance of the annuity to accumulate earnings tax free. This option starts in 2011.

- *Source rules for income on guarantees.* The 2010 Jobs Act clarifies the federal tax treatment of guarantee fees as income sourced to the United States if connected to the United States by a domestic payer or by the conduct of a trade or business in the United States.

EFFECTIVE DATE: House Bill 124 would become effective when it becomes law. However, any amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North Carolina taxable income for the 2010 taxable year or impose an estate tax on the estate of a decedent dying in calendar year 2010 would become effective for taxable years beginning on or after January 1, 2011

H124-SMRB-11(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 124 (First Edition)

SHORT TITLE: IRC Update.

SPONSOR(S): Representatives Brubaker, Howard, Starnes, and Setzer

FISCAL IMPACT					
	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES:					
($ millions)					
Decouple from Bonus depreciation	-.5	-1.1	-.2	1.1	.5
Decouple from Section 179 expensing for 2010 and 2011, keep 250k limit for 2011, conform to fed in 2012 and 2013	-.1	-4	-.3	.3	.4
Increase to capital gain exclusion for small business stock	0	0	0	0	-2
Increased start-up expense deduction	-2.5	-.8	.1	.2	.2
Deduction of health insurance for SE tax	2.8	1.2	.1	0	0
Allow 457 plan deferral to be treated as Roth	.1	.2	.2	.3	.4
Allow rollovers from elective deferral plans to Roth	1.6	4.3	4.7	3.9	4.4
Partial Annuitization of a nonqualified annuity contract	0	.2	.3	.5	.7
Source rules for income on guarantees	1.4	1.9	1.9	1.9	1.9
Tax Relief Act	0	0	0	5.4	3.1
Estate Tax	0	-59	-79	-20	0

Total	2.8	-57.1	-72.2	-6.4	9.6
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue					
EFFECTIVE DATE: Effective when it becomes law					

BILL SUMMARY: This proposal would update the reference to the Internal Revenue code used in defining and determining certain State tax provisions from May 1, 2010, to January 1, 2011. By doing so, North Carolina would conform to many of the changes made by the federal Small Business Jobs Act of 2010 (2010 Jobs Act) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (2010 Tax Relief Act). The proposal would not conform to the following federal tax law provisions:

- Bonus depreciation. – Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over the normal deprecation schedule. Over the life of the asset, the taxpayer receives the same benefit. The normal deprecation schedule is usually five to 15 years, depending upon the asset. In the past, Congress has provided 50% bonus depreciation for qualified property to spur economic investment. The bonus depreciation provision was scheduled to expire for property acquired and placed in service in 2010. The 2010 Jobs Act extended the 50% bonus depreciation provision to property placed in service in taxable years 2010 and 2011. The 2010 Tax Relief Act boosted the 50% bonus depreciation to 100% for property acquired and placed in service after September 8, 2010, and before January 1, 2012, and it provided 50% bonus depreciation for property placed in service after December 31, 2012, and before January 1, 2013. Although the proposal decouples from bonus depreciation, it provides that the property's basis is the same for federal and State purposes. The taxpayer must add-back 85% of the accelerated depreciation amount in the year that it is claimed for federal tax purposes, and then deduct 20% of this amount, plus the normal depreciation amount, over the next five years.

- Section 179 expensing. – Section 179 expensing allows the expensing of the purchase price of some business assets in the year of purchase rather than taking depreciation over the life of the asset. Section 179 has a deduction limit that begins to phase out on a dollar for dollar scale once an investment limit is reached. The deduction limit is $25,000 and the investment limit is $200,000. In the past, Congress has increased both the deduction limit and the investment limit to spur economic investment. For the 2010 taxable year, the deduction limit was $250,000 and the investment limit was $800,000. The expensing limits were scheduled to revert to their prior levels in 2011. The 2010 Jobs Act expanded the section 179 deduction limits from $250,000 to $500,000 for the 2010 taxable year and from $25,000 to $500,000 for the 2011 taxable year; it expanded the investment limits from $800,000 to $2,000,000 for the 2010 taxable year and from $200,000 to $2,000,000 for the 2011 taxable year; the expensing limits were scheduled to revert to their prior levels in 2012. It also broadened the definition of qualified property to include certain real property investments for the 2010 and 2011 taxable years. The 2010 Tax Relief Act expanded the section 179 deduction limits for the 2012 taxable year from $25,000/$200,000 to $125,000/$500,000; the expensing limits are scheduled to revert to their prior levels of $25,000/$200,000 in 2013. The proposal would maintain the 2010

deduction limits of $250,000 and $800,000 for taxable years 2010 and 2011. It would decouple from the enhanced limits of $500,000 and $2,000,000 for taxable years 2010 and 2011 but provide that the property's basis would be the same for federal and State purposes. The proposal provides that a taxpayer must add-back 85% of the additional expensing taken under federal law in 2010 and 2011 and may deduct 20% of this amount over the succeeding five years. The proposal would conform to the expensing limits of $125,000/$500,000 for the 2012 taxable year.

- Estate tax. – The federal estate tax expired for decedents dying in 2010. The estate tax had been scheduled to reemerge in 2011 at the 2001 exclusion amount of $1 million and the maximum estate tax rate of 55%. The 2010 Tax Relief Act revived the federal estate tax retroactively to January 1, 2010, with an exclusion amount of $5 million (the portability provision effectively provides an exclusion amount of $10 million for married couples) and a maximum estate tax rate of 35%. The estate of a decedent dying in 2010 may elect not to pay estate tax, and receive a modified carryover basis in the property passing through the estate. The estate tax provisions are scheduled to return to the 2001 rates and exclusion amounts for decedents dying on or after January 1, 2013. The proposal would conform to the higher exclusion amounts and give estates that chose to pay federal estate tax and receive the stepped-up basis in the property passing through the estate to elect to receive the stepped-up basis for NC purposes by paying the State estate tax for 2010.

The proposal would conform to all other provisions in the 2010 Jobs Act and the 2010 Tax Relief Act. The other provisions in the 2010 Jobs Act include the following:

- An increased exclusion amount of the gain realized on qualified small business stock. The exclusion amount is increased from 50% to 75% for stock acquired after February 17, 2009, and before January 1, 2011, and held for more than five years.
- An increased deduction limit for start-up expenses. The deduction is reduced by the amount of start-up costs that exceed a certain amount. The deduction limit is increased from $5,000 to $10,000 and the phase-out threshold is increased from $50,000 to $60,000.
- Various other small provisions that are intended to generate revenue. – Deduction for health insurance costs, 457 plans, 401(k) rollovers to Roth accounts, annuitization of a nonqualified annuity contract, sources rules for income on guarantees.

The 2010 Tax Relief Act extended many of the tax incentives enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 for two years. North Carolina conformed to these incentives in 2002; however, under existing North Carolina law, several of these incentives expired for the 2010 taxable year and many others are scheduled to expire for the 2011 taxable year. The proposal would conform to the federal effective date extensions.

The 2010 Tax Relief Act extended the following business tax incentives that were set to expire for the 2010 taxable year for the 2010 and 2011 taxable years:

- 15-year recovery period for qualified leasehold improvements, restaurant building and improvements, and retail improvements
- Seven-year recovery period for motor sports entertainment costs recovery
- Expensing election for certain film and television production costs
- Brownfields remediation expensing

The 2010 Tax Relief Act extended the Work Opportunity Tax Credit (WOTC) to include individuals who begin employment after August 31, 2011, and before January 1, 2012. North Carolina's WOTC is equal to 6% of the federal WOTC for wages paid for positions located in this State. The federal WOTC was scheduled to expire September 1, 2011.

The 2010 Tax Relief Act extended the following charitable incentives for taxable years 2010 and 2011:

- Deduction for contributions of food inventory
- Deduction for contributions by C corporations of books to public schools
- Deduction for corporate contributions of computer equipment for educational purposes
- Basis adjustment to stock of S corporations making charitable contributions of property

The 2010 Tax Relief Act extended the following individual income tax incentives retroactively for the 2010 taxable year and the 2011 taxable year:

- Tax deduction for higher education tuition expenses
- Up to $250 deduction for teacher's classroom expenses
- Charitable contribution of IRA proceeds

The following individual income tax incentives were scheduled to expire in 2011, but 2010 Tax Relief Act extends the incentives for the 2011 and 2012 taxable years:

- No limitation on itemized deductions.
- Enhancements to the earned income tax credit (EITC). North Carolina's EITC is equal to 5% of the federal credit amount.
- Enhancements to the adoption tax credit. North Carolina's adoption tax credit is equal to 50% of the federal credit amount.
- Deductibility of mortgage insurance premiums.
- Educational assistance exclusion.
- Student loan interest deduction.
- Increased amount that may be contributed to Coverdale education savings accounts and expansion of qualified expenses to include elementary and secondary school expenses.
- Exclusion of scholarships received from the national Health Services Corps Scholarship Program and the Armed Forces Scholarship Program from income.

Source: Committee Counsel Bill Summary

ASSUMPTIONS AND METHODOLOGY:
Except as outlined below, the fiscal impact to the General Fund from partial conformity with the IRC update is based on the US Joint Committee on Taxation (JCT) estimates on changes to federal taxes from the update. The methodology used begins with these JCT estimates, which are calculated by federal fiscal year. Fiscal Research adjusts these numbers back to an approximate calendar year tax impact. Then the next step was to prorate the national numbers to the state impact. This adjustment involved two steps: accounting for the relative size of the state based on federal tax collections and then adjusting for the difference in federal and state marginal tax rates. Once North Carolina's share of the JCT estimates were determined, state tax liability changes were estimated and allocated to the appropriate fiscal year.

The estimate of the bonus depreciation provision is based on data obtained from the Department of Revenue from the 2004 and 2008 tax returns. The estimate is derived from the tax that would not have been paid had North Carolina not required an add-back for bonus depreciation in computing State taxable income for both of those years. In order to assess the impact of the 85% add-back of the bonus depreciation and the Section 179 deduction, a depreciation schedule was developed. The depreciation simulation was used to determine the impact of the bonus depreciation and the Section 179 deduction with the adoption of an 85% add-back rule and a 5 year deduction for each fiscal year.

The estimate to conform to the estate tax provision of the Tax Relief Act was prepared based on tax return data obtained from the Department of Revenue for the 2007, 2008, and 2009 tax years. The impact is estimated from the tax that would not have been received as a result of the increase in the federal exclusion amount.

The Tax Relief Act of 2010 included multiple extensions of tax credits and deductions which were first enacted under the Economic Growth and Tax Relief Reconciliation Act of 2001. Because the changes were extensive and the Act was in place for ten years, the revenue base was adjusted to include the impacts from the Act. If the Tax Relief Act had not been enacted, then the result would have been an increase in General Fund revenue as result of the various federal tax law changes expiring for the 2011 tax year. Because they were extended for two years, there is no impact for FY 2011-12 and FY 2012-13. In the out years, after the latest extensions expire there will be a net gain to General Fund revenues. As with other calculations related to federal tax changes, analysis from the JCT was used to determine state tax liability. General Fund revenue changes would occur in FY 2013-14 and FY 2014-15.

SOURCES OF DATA: US Joint Committee on Taxation, US Bureau of Economic Analysis, NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jonathan Tart

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: February 22, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544 LOB

DATE: 3-8 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Darius Evans	Wake Forest	Robinson
2 Douglas Pierce	Asheville	Jenkins
Will Klemme	High Point	Bingham
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 8, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Will Culpepper	MVA
David Barnes	PS
Cameron Hunking	Electric Cities
Maeve Goff	Smith Anderson
Jason Sheffield	DST
Andrew Lynch	PST
John Hardin	Manning Fulton
Mindy Ellis	NCRMA
Tim Kent	NC Beer & Wine Wholesalers
Emily Grimm	MWC
Lu-Ann Penzin	Carolina State Strategies

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 8, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ken McHan	K.M.A.
Dan Heron	

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 8, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Nelson	NCALTCF
Gene Ainsworth	A&A
Lennie Collins	DOR
Bill Wilkes	DOR
Don McConnachie	SAS

SENATE FINANCE COMMITTEE
Wednesday, March 9, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on March 9, 2011 in room 544 of the Legislative Office Building. Casey Potter of Wilson, Kerstin Brolon of Willow Springs and Will Klemme of High Point served as pages. Twenty-six members of the committee were present. Senator Rucho presided as chair.

S.B. 51 – Charitable Solicitations/Clarify Exemption

Senator Bingham was recognized to explain the bill which would exempt from the charitable solicitation licensure requirements any organization with a membership that is composed solely of 20 or more educational institutions. He distributed a list of North Carolina's independent colleges and universities. Senator Rabon moved for a favorable report and the motion carried. A copy of the bill, the summary and the college list is attached.

Presentations

The Recession and the UI Trust Fund

David Clegg, Deputy Chair and Chief Operating Officer of the Employment Security Commission (ESC), was recognized. He gave an overview of the history of the Unemployment Trust Fund, how it has been affected by the recession, how it is used and ESC recommendations to improve the condition of the fund. A copy of his powerpoint is attached.

The meeting adjourned at 1:59 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, March 09, 2011

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

FAVORABLE

S.B. **51** Charitable Solicitations/Clarify Exemption.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

S51 – Sen. Bingham

Senate Finance Committee
Wednesday, March 9, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 51 Charitable Solicitations/Clarify Exemption. Sen. Bingham

Presentations

The Recession and the UI Trust Fund
David Clegg, Deputy Chairman & Chief Operating Officer
Employment Security Commission

Adjournment

SENATE BILL 51

Short Title:	Charitable Solicitations/Clarify Exemption.	(Public)
Sponsors:	Senator Bingham.	
Referred to:	Finance.	

February 10, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT CERTAIN ORGANIZATIONS OF EDUCATIONAL INSTITUTIONS ARE COVERED BY THE EDUCATIONAL INSTITUTION EXEMPTION FROM CHARITABLE SOLICITATION LICENSING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131F-3 reads as rewritten:

"**§ 131F-3. Exemptions.**

The following are exempt from the provisions of this Chapter:

(1) Any person who solicits charitable contributions for a religious institution.

(2) Solicitation of charitable contributions by the federal, State, or local government, or any of their agencies.

(3) Any person who receives less than twenty-five thousand dollars ($25,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser, or solicitor.

(4) Any educational institution, the curriculum of which, in whole or in part, is registered, approved, or accredited by the Southern Association of Colleges and Schools or an equivalent regional accrediting body, ~~and~~ any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes, ~~and~~ any foundation or department having an established identity with any of these educational ~~institutions.~~institutions, and any organization with a membership that is composed solely of 20 or more educational institutions as defined under this Chapter.

(5) Any hospital licensed pursuant to Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes and any foundation or department having an established identity with that hospital if the governing board of the hospital, authorizes the solicitation and receives an accounting of the funds collected and expended.

(6) Any noncommercial radio or television station.

(7) A qualified community trust as provided in 26 C.F.R. § 1.170A-9(e)(10) through (e)(14).

(8) A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor.

(9) An attorney, investment counselor, or banker who advises a person to make a charitable contribution.

(10) A volunteer fire department, REACT (Radio Emergency Associated Communications Teams), rescue squad, or emergency medical service.

(11) A Young Men's Christian Association or a Young Women's Christian Association.

(12) A nonprofit continuing care facility licensed under Article 64 of Chapter 58 of the General Statutes.

(13) Any tax exempt nonprofit fire or emergency medical service organization involved in the sale of goods or services that does not ask for a donation."

SECTION 2. This act becomes effective July 1, 2011.

SENATE BILL 51:
Charitable Solicitations/Clarify Exemption

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 8, 2011
Introduced by:	Sen. Bingham	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 51 would exempt from the charitable solicitation licensure requirements any organization with a membership that is composed solely of 20 or more educational institutions.***

CURRENT LAW AND BILL ANALYSIS: A charitable organization that solicits contributions in this State must be licensed to do so by the Secretary of State. The license must be renewed annually. The cost of the license varies depending upon the amount of contributions received in the last fiscal year. For an organization that receives contributions of $200,000 or more, the license fee is $200. The organization must also file an annual report.

Among the list of nonprofits[1] exempt from the licensure and reporting requirements are educational institutions accredited by the Southern Association of Colleges and Schools and any foundation having an established identity with any of these schools. The North Carolina Independent Colleges and Universities is an organization comprised of 36 North Carolina private, non-profit colleges and universities accredited by the Southern Association of Colleges and Schools. In addition to services the organization provides to its member schools, it solicits contributions for its Independent College Fund of NC. The money in the Fund is used to provide student scholarship aid. In the past, this organization has been considered a foundation having an established identity with an educational institution. Recently, a question has arisen about the clarity of the law on this issue. This bill would provide that clarity by specifying that an organization with a membership composed solely of 20 or more educational institutions is exempt.

EFFECTIVE DATE: The bill would become effective July 1, 2011.

S51-SMRB-13(e1) v1

[1] Other nonprofit entities exempt from the licensure requirements include religious institutions, volunteer fire departments, and nonprofit continuing care retirement homes.

North Carolina
INDEPENDENT
Colleges & Universities

A. Hope Williams
President

Barton College
Wilson
Belmont Abbey College
Belmont
Bennett College for Women
Greensboro
Brevard College
Brevard
Cabarrus College of Health Sciences
Concord
Campbell University
Buies Creek
Catawba College
Salisbury
Chowan University
Murfreesboro
Davidson College
Davidson
Duke University
Durham
Elon University
Elon
Gardner-Webb University
Boiling Springs
Greensboro College
Greensboro
Guilford College
Greensboro
High Point University
High Point
Johnson C. Smith University
Charlotte
Lees-McRae College
Banner Elk
Lenoir-Rhyne University
Hickory
Livingstone College
Salisbury
Louisburg College
Louisburg
Mars Hill College
Mars Hill
Meredith College
Raleigh
Methodist University
Fayetteville
Montreat College
Montreat
Mount Olive College
Mount Olive
N.C. Wesleyan College
Rocky Mount
Peace College
Raleigh
Pfeiffer University
Misenheimer
Queens University of Charlotte
Charlotte
St. Andrews Presbyterian College
Laurinburg
Saint Augustine's College
Raleigh
Salem College
Winston-Salem
Shaw University
Raleigh
Wake Forest University
Winston-Salem
Warren Wilson College
Asheville
Wingate University
Wingate

North Carolina Independent Colleges and Universities

List of Institutions

Barton College
Wilson, NC

Belmont Abbey College
Belmont, NC

Bennett College for Women
Greensboro, NC

Brevard College
Brevard, NC

Cabarrus College of Health Sciences
Concord, NC

Campbell University
Buies Creek, NC

Catawba College
Salisbury, NC

Chowan University
Murfreesboro, NC

Davidson College
Davidson, NC

Duke University
Durham, NC

Elon University
Elon, NC

Gardner-Webb University
Boiling Springs, NC

Greensboro College
Greensboro, NC

Guilford College
Greensboro, NC

High Point University
High Point, NC

Johnson C. Smith University
Charlotte, NC

Lees-McRae College
Banner Elk, NC

Lenoir-Rhyne University
Hickory, NC

Livingstone College
Salisbury, NC

Louisburg College
Louisburg, NC

Mars Hill College
Mars Hill, NC

Meredith College
Raleigh, NC

Methodist University
Fayetteville, NC

Montreat College
Montreat, NC

Mount Olive College
Mount Olive, NC

N.C. Wesleyan College
Rocky Mount, NC

Peace College
Raleigh, NC

Pfeiffer University
Misenheimer, NC

Queens University of Charlotte
Charlotte, NC

St. Andrews Presbyterian College
Laurinburg, NC

Saint Augustine's College
Raleigh, NC

Salem College
Winston-Salem, NC

Shaw University
Raleigh, NC

Wake Forest University
Winston-Salem, NC

Warren Wilson College
Asheville, NC

Wingate University
Wingate, NC

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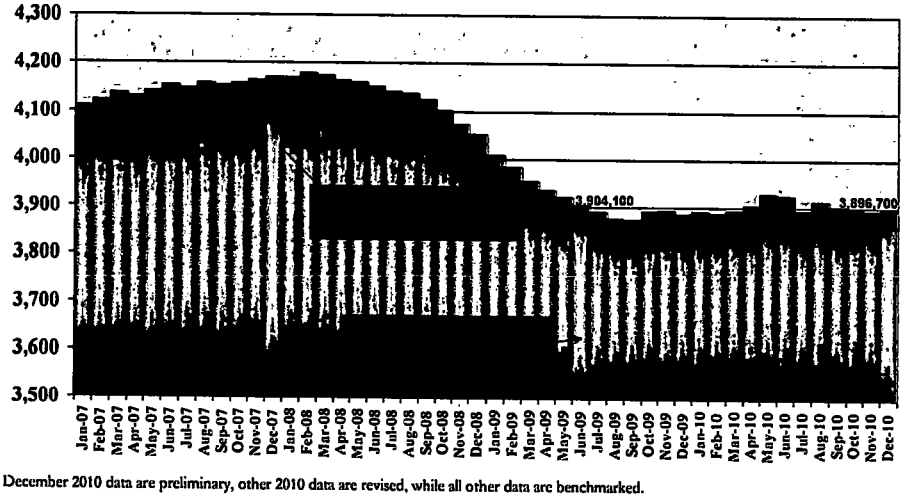
Trust Fund Review
Senate Finance Committee

David L. Clegg
Deputy Chairman &
Chief Operating Officer

March 9, 2011

North Carolina Employment

Nonfarm Employment
January 2007-December 2010
(Seasonally Adjusted, in thousands)



December 2010 data are preliminary, other 2010 data are revised, while all other data are benchmarked.

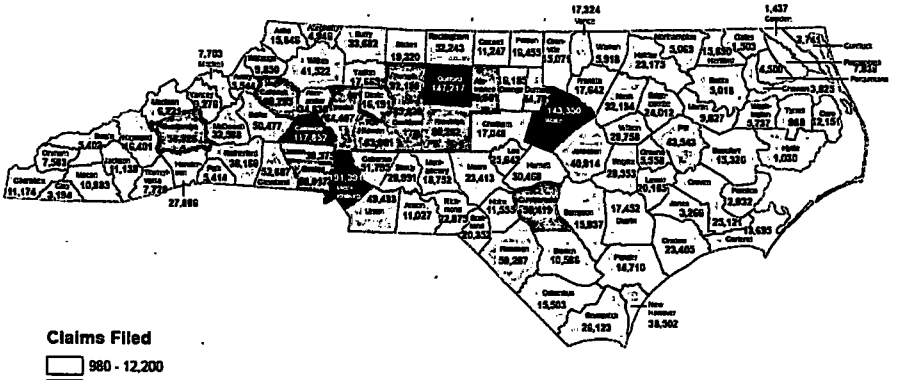
North Carolina Situation

- **As of December 2010**
  - **215,665 more individuals unemployed in North Carolina than in December 2007**
  - **Lost 272,800 jobs**
    - **Need to add 4,547 net jobs a month for the next 60 months to reach December 2007 employment levels**
  - **Total Private Jobs decreased 306,700 (8.8%)**

State and Federal Benefits

- **Benefit Weeks**
  - **Regular Unemployment Insurance**
    - **UI – 26 weeks**
  - **Extended Benefits –**
    - **EB – 20 weeks**
  - **Extended Unemployment Compensation Tier I**
    - **(EUC Tier I) – 20 weeks**
  - **Extended Unemployment Compensation Tier II**
    - **(EUC Tier II) – 14 weeks**
  - **Extended Unemployment Compensation Tier III**
    - **(EUC Tier III) – 13 weeks**
  - **Extended Unemployment Compensation Tier IV**
    - **(EUC Tier IV) – 6 weeks**
  - **Individuals <u>may</u> be eligible for up to 99 weeks of benefits**

North Carolina
Regular Initial Claims Filed by County
January 2008-December 2010



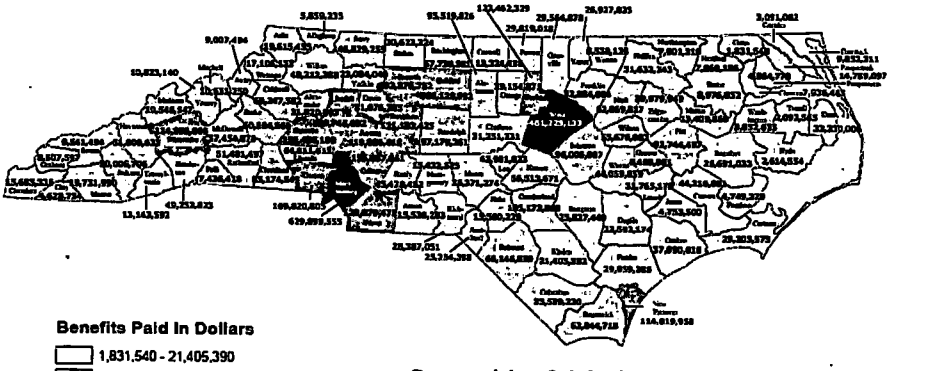
Claims Filed

- 980 - 12,200
- 12,201 - 30,500
- 30,501 - 52,700
- 52,701 - 92,200
- 92,201 - 191,400

Statewide 3,033,167

Note: County data does not sum to statewide total.
Source: ETA Reporting
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2_2011

North Carolina
UI Benefits Paid by County
January 2008-December 2010



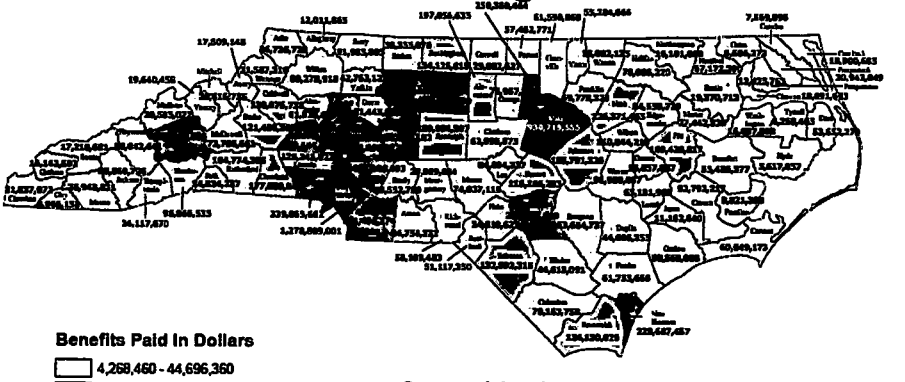
Benefits Paid In Dollars

- 1,831,540 - 21,405,390
- 21,405,391 - 51,401,500
- 51,401,501 - 105,173,890
- 105,173,891 - 306,129,000
- 306,129,001 - 629,899,560

Statewide $6,029,022,671

Source: Employment Security Commission of North Carolina (ESC), Information Systems (IS)
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2_2011

North Carolina
UI Benefits Paid by County
January 2008-December 2010
Total All Programs



Benefits Paid In Dollars

- 4,268,460 - 44,696,360
- 44,696,361 - 104,774,390
- 104,774,391 - 197,056,640
- 197,056,641 - 629,021,090
- 629,021,091 - 1,278,809,005

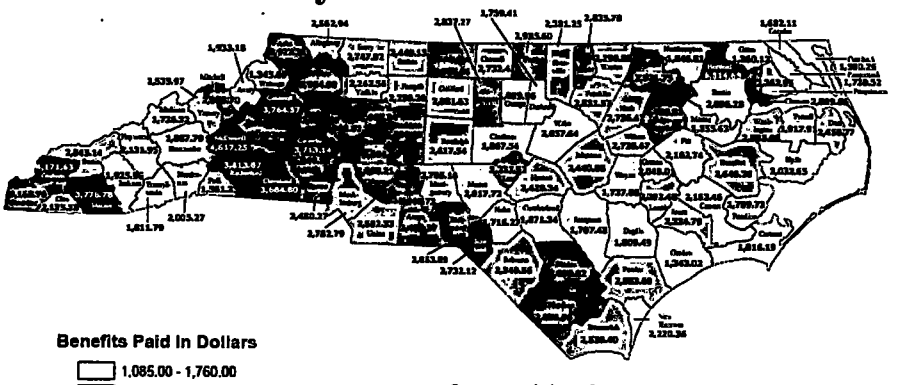
Statewide $11,917,266,824

Note: All programs include Regular Unemployment Insurance (UI), Emergency Unemployment Compensation Tier I (EUCI), Emergency Unemployment Compensation Tier II (EUCII), Emergency Unemployment Compensation Tier III (EUCIII), Emergency Unemployment Compensation Tier IV (EUCIV), Extended Benefits (EB) and Federal Additional Compensation (FAC). County data does not sum to statewide total

Source: Employment Security Commission of North Carolina (ESC), Information Systems (IS)

Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 1_2011

North Carolina
Total All Benefits Paid
Per Capita Civilian Labor Force
January 2008-December 2010



Benefits Paid In Dollars

- 1,085.00 - 1,760.00
- 1,760.01 - 2,250.00
- 2,250.01 - 2,785.00
- 2,785.01 - 3,565.00
- 3,565.01 - 6,515.00

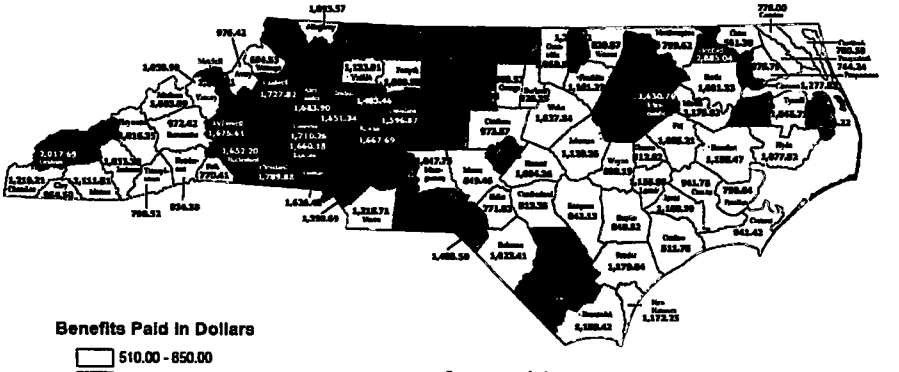
Statewide $2,639.08

Note: All programs include Regular Unemployment Insurance (UI), Emergency Unemployment Compensation Tier I (EUCI), Emergency Unemployment Compensation Tier II (EUCII), Emergency Unemployment Compensation Tier III (EUCIII), Emergency Unemployment Compensation Tier IV (EUCIV), Extended Benefits (EB) and Federal Additional Compensation (FAC). County data does not sum to statewide total

Source: Employment Security Commission of North Carolina (ESC), Information Systems (IS)

Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 1_2011

North Carolina
Total All Programs
Per Capita Benefits Paid
January 2008-December 2010



Benefits Paid in Dollars

- 510.00 - 850.00
- 850.01 - 1,060.00
- 1,060.01 - 1,220.00
- 1,220.01 - 1,565.00
- 1,565.01 - 2,890.00

Statewide $1,270.38

Note: All programs include Regular Unemployment Insurance (UI), Emergency Unemployment Compensation Tier I (EUCI), Emergency Unemployment Compensation Tier II (EUCII), Emergency Unemployment Compensation Tier III (EUCIII), Emergency Unemployment Compensation Tier IV (EUCIV), Extended Benefits (EB) and Federal Additional Compensation (FAC). County data does not sum to statewide total.

Source: Employment Security Commission of North Carolina (ESC), Information Systems (IS); Census Bureau Population Estimates July 2009. Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2, 2011

NC UI Benefit Payments

January 2010 – December 2010

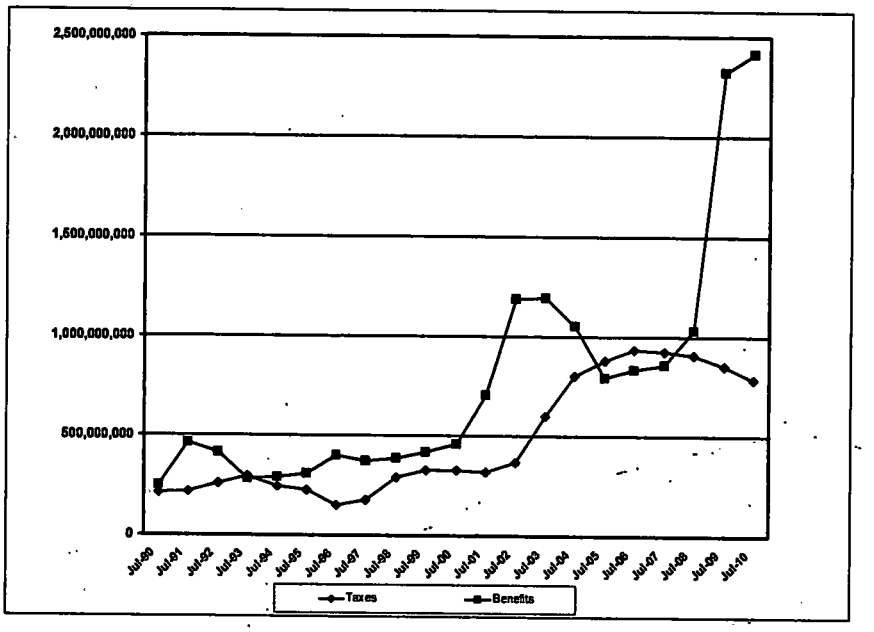
$5.43 Billion Total Benefits

$3.45 Billion Federal Benefits

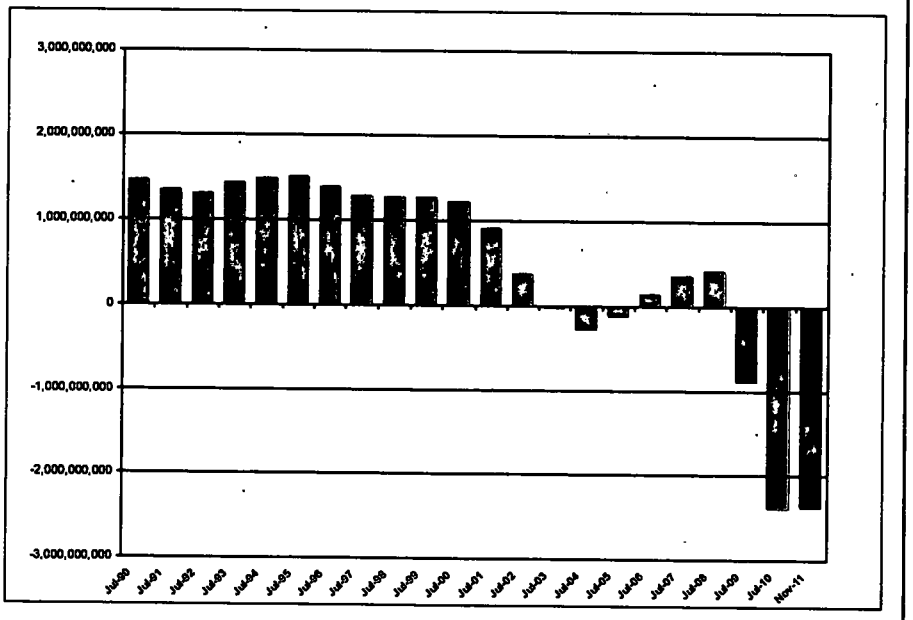
$1.98 Billion in State Benefits

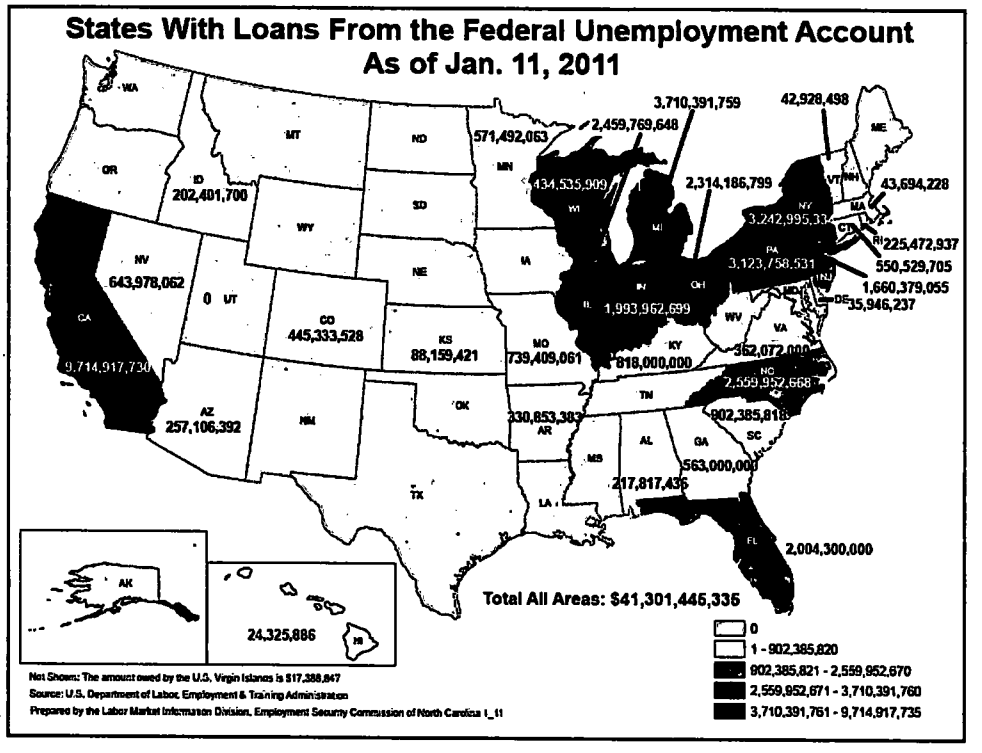
$955.2 Million in Tax Collections
(Trust Fund and State Reserve)

UI Trends - Taxes and Benefits



UI Trends - Trust Fund Balance





Purpose of UI Trust Fund

- Provide temporary assistance to those who have lost their jobs through no fault of their own
- Help stabilize the economy in times of economic downturn.

Title XII of Social Security Act

- "...provides for state advances (loans) when a state determines their Unemployment Fund will not have adequate funding to allow for the payment of Unemployment Benefits."
- Current loan balance: $2,631,866,556

Tax Changes

- **March 1994: (Senate Bill 151 – Extra Session 1994)**
  - **50% tax rate reduction when fund balance equals or exceeds $800m**
  - **Employers with a credit ratio of 6.4% or more received a tax rate of .01%**
  - **Also reduced new employer tax rate from 2.25% to 1.8%**
- **February 1995: (Senate Bill 13 – 1995 Session)**
  - **Employers with a credit ratio of 5% or more received a tax rate of 0%**
- **July 1995: (Senate Bill 180 – 1995 Session)**
  - **Imposed a 60% overall tax rate reduction on employers with a credit ratio when the fund ratio was equal to 5.0% or greater**

Tax Law Changes

- **February 1996: (Senate Bill 2 – Extra Session 1996)**
  - **Provided a tax moratorium for all credit ratio employers for 1996**
  - **Also lowered new employer tax rate from 1.8% to 1.2%**
- **July 1999: (House Bill 275 – 1999 Session)**
  - **Training and Reemployment Contribution provided a 20% reduction in employer tax rates while imposing a corresponding 20% contribution for Department of Community College training programs and ESC reemployment services**
  - **Expanded 0% tax rate to employers with credit ratios of 4% or greater**
  - **Lowered new employer tax rate from 1.2% to 1.0%**
  - **Repealed 1-1-2011**

Tax Law Changes

- **July 2003: (HB 1241 – 2003 Session) Imposed a delay in collection of 20% unemployment surtax for one year.**
- **2003 – NC issued $172 million in Tax Anticipation Notes (TAN) to pay Federal Loans.**
- **2004 – NC issued $269 million in TANs to pay additional borrowing. These bonds were repaid in 2005.**
- **August 2005: (SB 757 – 2005 Session) Raised trigger for 50% tax reduction from $800 million to 1.95% of gross taxable wages reported to ESC.**

Benefits vs. Tax Collections

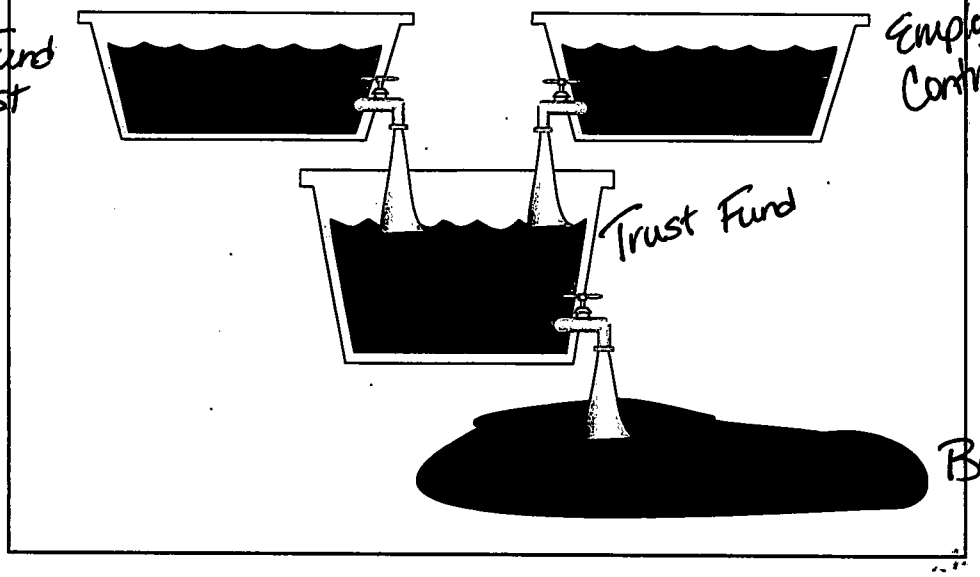
(in thousands)

Year	Tax Collections	Benefits	Trust Fund
1995	$225,540	$307,804	$1,499,887
1996	$150,656	$398,847	$1,383,604
1997	$177,130	$371,708	$1,279,586
1998	$291,593	$385,790	$1,272,798
1999	$327,527	$419,319	$1,267,232
2000	$326,670	$459,685	$1,219,353
2001	$319,337	$706,494	$ 906,711
2002	$367,970	$1,192,915	$ 368,517
2003	$602,211	$1,196,798	$ <23,433>
2004	$803,674	$1,056,019	$<273,232>

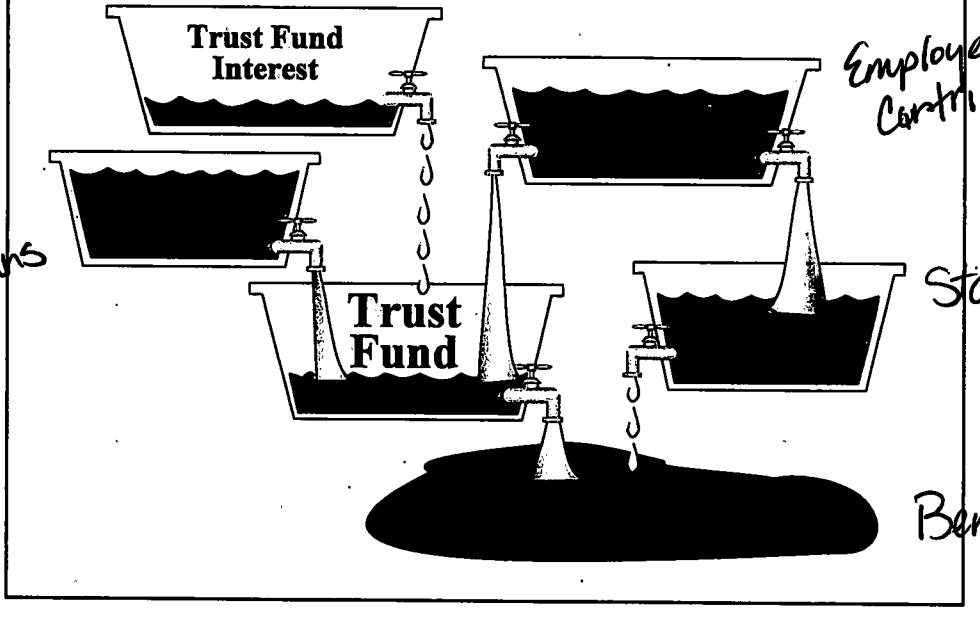
UI Trust Fund Report

Months	Taxes	Total Benefits	State Reserve	Interest	Balance
JULY 2008	907,454,994	1,032,703,139	171,052,000	20,464,298	414,673,061
JULY 2009	855,942,820	2,321,036,300	153,980,000	10,558,388	(885,882,030)
JULY 2010	786,066,147	2,413,298,782	125,458,000	49,877	(2,387,606,788)
DEC 2010	368,697,000	569,527,670	0	0	(2,588,437,458)

Trust Fund Monetary Flow - Regular



Trust Fund Monetary Flow - Recession



Compounding Factors

- Short recovery period between recessions
  - Recession 2002-04
  - Recession 2008-10
- Increase in the average duration of weeks
  - Avg. duration 1st Qtr. 2009 – 13.2 weeks
  - Avg. duration 4th Qtr. 2010 – 18.2 weeks
- Severity of the recession

Individuals Exhausting Benefits

Year	Number of Individuals
2000	42,564
2001	74,072
2002	135,370
2003	141,892
2004	115,456
2005	94,240
2006	96,747
2007	100,241
2008	132,019
2009	310,305
2010	283,304

Appeals
G.S. 96-15

- Claim Adjudicated
- Appeals Referee - Aggrieved Party may appeal the adjudicator's decision within 15 days of the date of notification or mailing of conclusion. Commission – Aggrieved Party may appeal the referee's decision within 10 days of the date of notification or mailing of the decision rendered in the appeals hearing.
- Court System – Aggrieved Party may appeal the Commission decision to Superior Court within 30 days of notification of Commission decision

Appeals Decisions Rendered

■ Appeals Referee	53,565
■ Claimant	37,407
■ Ruled in Favor	**49.3%**
■ Employer	16,158
■ Ruled in Favor	**54.6%**
■ Second Level Appeals	10,576
■ Claimant	7,926
■ Ruled in Favor of Employer	**80.9%**
■ Employer	2,650

Experience Rated Accounts

- Annual Computation July 31
- Average Tax Rate 2011: 1.8%
- 2011 Tax Rates
  - 197,691 Experience Rated Employers
    - **59,972 Higher (30%)**
      - **13,000 came off New Employer Tax rate**
    - **68,812 Lower (35%)**
    - **68,907 No Change (35%)**

Employer Accounts

- 197,691 Liable Employers
  - 8,774 Employers with the highest capped tax rate of 5.7%
- 25,087 Employers with 0% tax rate
  - 0% Tax rate is available to employers who have a credit ratio of 4% or greater

Time Line

- February 2009 – First Advance by NC of Federal Loan
- January 2011 – Interest starts accruing on Federal Debt
- September 30, 2011 – Interest Payment Due
  - **Current Rate is 4.0869%**
  - **$100 million in State Reserve to pay interest**
- November 10, 2011 – Principal Balance due to avoid FUTA credit reduction

Federal Loan Request and Repayment

- Governor or designee submits a request to the Secretary of Labor estimating amounts to be borrowed for each month of a consecutive three month period.
- Secretary of Labor certifies to Secretary of the Treasury the amounts that a State can borrow each month.
- State can access the amount of funds needed electronically.

Federal Loan Request and Repayment

- A State may elect to repay loans with any funds available at the end of each day over a specified period.
- North Carolina sweeps all revenue collected each day to pay benefits before borrowing.

Federal Loan Request and Repayment

- **Interest rate applicable to a calendar year is the rate of interest paid on balances in the Unemployment Trust Fund (UTF) for the fourth quarter of the prior calendar year.**
- **Interest rate on outstanding balances for 2011 is: 4.0869 percent.**
- **Interest cannot be paid directly or indirectly from funds in a State's account in the UTF.**
- **A State cannot use grant funds or Reed Act funds to pay interest.**

FUTA

- Federal payroll tax on employers at 6.2% on a taxable wage base of $7,000
- Employers in States that are in compliance with Federal Regulations are given a 5.4% credit on their FUTA
- A tax credit reduction of .3% annually on States with Federal loan balance outstanding for 2 consecutive Januarys
  - If NC's debt is not paid by November 10, 2011, employers effective FUTA tax rate will increase from .08% to 1.1%. Currently, employers pay $56 per employee. The increase would raise the FUTA tax to $77 per employee.

FUTA Tax Issue

	Estimated FUTA Credit Reduction*		
	2009	2010	2011
State	(%)	(%)	(%)
Alabama			0.3
Arkansas			0.3
California			0.3
Connecticut			0.3
Florida			0.3
Georgia			0.3
Idaho			0.3
Illinois			0.3
Indiana		0.3	0.6
Kentucky			0.3
Michigan	0.3	0.6	0.9
Minnesota			0.3
Missouri			0.3
North Carolina			0.3
New Jersey			0.3
Nevada			0.3
New York			0.3
Ohio			0.3
Pennsylvania			0.3
Rhode Island			0.3
South Carolina		0.3	0.6
Virginia			0.3
Virgin Islands			0.3
Wisconsin			0.3

* Assumes balance on January 1 every year and on November 10 of the indicated year and no application of the possible third year 2.7% add-on amount.

Current Proposals

- President Obama proposed in his budget to give State's a two year moratorium on the interest.
- Provides a delay in the FUTA tax penalty
- Also provides for a increase in the taxable wage base while lowering the FUTA tax rate

Senate Bill 386

- Senator Durbin proposed a bill similar to Obama's proposal except:
  - Would provide a partial forgiveness on the debt principle if States meet certain criteria

Congressional Action

- Extension of the Emergency Unemployment Compensation through December 2011
- Extension of the interest free borrowing?
- Eliminate the FUTA credit reduction?
- Loan forgiveness?

Policy Options

- Do Nothing
- Adjust Existing Statutes
- Trust Fund Solvency

Do Nothing

- Make interest payments at Federal Rate and continue to borrow from Federal Trust Fund
- Allow FUTA tax increases to apply to outstanding balance.
  - **.3% increase in FUTA rate annually until loan is settled**
  - **Cost to employers: $56 to $77 per employee; $83 million first year**
    - **By 2015, the rate would be 2.3%, or $161 per employee**

ESC Internal Committee Recommendations

- Incrementally increase Taxable Wage Base
  - **60% - 2012; 70% - 2013; 80% - 2014**
    - **Cost to employers:**
      - **$10 - $20 million – Year 1**
      - **$30 - $40 million – Year 2**
      - **$30 - $40 million – Year 3**
- Require approximately an additional $700 million in collections to replenish the trust fund

ESC Internal Committee Recommendations

- Adjust Standard Beginning Rate
  - Change the Standard Beginning Rate from 1.2% to 2.7%
- Eliminate 0% Tax Rate
- Adjust the tax rates for Debit Ratio Employers
  - Current Rates are 2.9% - 5.7%
    - **Approximately 17,000 employers have a deficit balance in their ERA**

ESC Internal Committee Recommendations

- Adjust the standard beginning rate
  - Currently new employers rate is 1.2% for 2 years
    - **Oklahoma and South Dakota have rates this low**
  - USDOL recommended new employer rate of 2.7%
    - **Generate $38 million a year**

ESC Internal Committee Recommendations

- Modify Existing Tax Schedules
  - Have been at the highest tax schedule allowed by statute since tax year 2003
  - Current Highest rates:
    - **Credit Ratio Experience Rate – 2.7%**
    - **Debit Ratio Experience Rate – 5.7%**

Bond Issuance

- Existing debt is not a general obligation of the State
- Bonds would be a general obligation
- Tax Anticipation Notes (TAN) are not a general obligation but are capped at 50% of the anticipated annual revenue

Lynn R. Holmes
Chairman
esc.chairman@ncesc.gov
919.733.7546

David L. Clegg
Deputy Chairman & Chief Operating Officer
david.clegg@ncesc.gov
919.733.4636

P.O. Box 25903
Raleigh, NC 27611-5903

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 3 - 9 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Casey Potter	Wilson	Newton
2 Kerstin Brown	Willow Springs	Senator Rouzer
Will Klemme II	High Point	Bingham
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 9, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lockhart Taylor	ESC
David Hansen	NC Center for Nonprof. Tr
Debra Dees	ESC
Reed VanMatre	NC Medical Soc.
	NNC
Andrew Bell	NCGA
Rita Harris	Commerce
BRUCE THOMPSON	PARKER POE
Bill Rowe	NC Justice Center
	LPA's
Patty Maynard	

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 9, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCICU
DAVID BARNES	Power Square
[signature]	PFFPNC
Zeb Alley	NMRS
Amy McCaffrey	NC Bev
[signature]	Elizabeth
Dave Heron	NM
Butch Gunnells	NCBA
[signature]	Senator Stein
[signature]	BSA
Allison Wallen	Charlotte Chamber

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 9, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
JOHN MIDGETTE	NCPBA
Doug Mistun	PSG
Connie Wilson	ECNC
Mary Hill	Smith Anderson
Kimberly Robinson	NCRLA
Andrea Ellen	NCRLA
Teresa Young	Food Lion
Ken Melton	K. M. A.
David Sachs	nnn
Joel Maynard	GPM : Kroger

SENATE FINANCE COMMITTEE
Tuesday, March 15, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on March 15, 2011 in room 544 of the Legislative Office Building. Cameron Miller of Willow Spring and Cole Nye and Kathryn Bridgers of Elizabethtown served as pages. Twenty-nine members of the committee were present. Senator Hartsell presided as chair.

S.B. 118 – Downtown Service District Definition

Senator Preston was recognized to explain the bill which expands the list of examples of improvements authorized in a municipal service district for downtown revitalization to include public buildings, restrooms, docks, visitor centers, and tourism facilities. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 155 – Wake Local Stormwater Utility Fees

Senator Stein was recognized to explain the bill. It would allow the towns of Garner, Knightdale, Morrisville, Wendell, and Zebulon to bill stormwater utility fees in the same manner as property taxes, and in the case of nonpayment, to collect them in the same manner as property taxes. Senator Dannelly moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 269 – Hillsborough Occupancy Tax

Senator Kinnaird was recognized to explain the bill. It authorizes the Town of Hillsborough, located in Orange County, to levy a 3% room occupancy tax. At least two-thirds of the proceeds would be used to promote travel and tourism and the remainder would be used for tourism-related expenditures. Mayor Tom Stevens was recognized to speak in favor of the bill. Senator Garrou moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

Presentations

Senator Hartsell recognized Harry Payne, the State's former labor commissioner.

David Clegg, Deputy Commissioner of the Employment Security Commission (ESC), was recognized to answer questions regarding his presentation at the previous meeting. Mr. Payne was recognized to commend Mr. Clegg's presentation. He said that many years ago the ESC did forewarn the Legislature of the pending debt, but received no support. The process has now improved and North Carolina's ESC has received national attention. The current economic collapse has added to the ESC's debt and every state is suffering.

The meeting adjourned at 2:26 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, March 15, 2011

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

FAVORABLE

S.B.	**118**	Downtown Service District Definition.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**155**	Wake Local Stormwater Utility Fees.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**269**	Hillsborough Occupancy Tax.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 3

Committee Clerk Comments:

SB 118 Sen. Preston
SB 155 Sen. Stein
SB 269 Sen. Kinnaird

Principal Clerk ____
Reading Clerk ____

Corrected: S168 – Reed Gold Mine Revolving Funds has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 15, 2011	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 118	Downtown Service District Definition.	Senator Preston
SB 269	Hillsborough Occupancy Tax.	Senator Kinnaird
SB 155	Wake Local Stormwater Utility Fees.	Senator Stein

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Senate Finance Committee
Tuesday, March 15, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 118	Downtown Service District Definition.	Senator Preston
SB 155	Wake Local Stormwater Utility Fees.	Senator Stein
SB 269	Hillsborough Occupancy Tax.	Senator Kinnaird

Presentations

Recession and the UI Trust Fund Q & A
David Clegg, Deputy Commissioner of the Employment Security Commission

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 269

Short Title:	Hillsborough Occupancy Tax.	(Local)
Sponsors:	Senator Kinnaird.	
Referred to:	Finance.	

March 9, 2011

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

The following definitions apply in this subsection:

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

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

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

SECTION 1.2. Tourism Development Authority. – (a) Appointment and Membership. – When the Town Board adopts a resolution levying a room occupancy tax under

this act, it shall also adopt a resolution creating the Hillsborough Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of the travel and tourism in the town. The Town Board shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer for the Town of Hillsborough shall be the ex officio finance officer of the Authority.

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

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

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

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

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

SENATE BILL 269:
Hillsborough Occupancy Tax

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 14, 2011
Introduced by:	Sen. Kinnaird	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

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

CURRENT LAW: Currently, the Town of Hillsborough does not have authority to levy a room occupancy tax. Orange County has had authority to levy a room occupancy tax of up to 3% since 1991.[1] The other municipalities in Orange County, Carrboro and Chapel Hill, have had authority to levy a room occupancy tax of up to 3% since 2001 and 1987 respectively.[2]

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

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

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

[1] S.L. 1991-392. Orange County's occupancy tax does not conform to the occupancy tax guidelines.
[2] S.L. 2001-439 and S.L. 1987-460. Chapel Hill's occupancy tax does not conform to the occupancy tax guidelines; Carrboro's occupancy tax does conform to the guidelines.

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

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the guidelines established by a House Finance Subcommittee on Occupancy Taxes in 1993. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes that scrutinizes occupancy tax legislation to determine whether the legislation adheres to the guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

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

Trina Griffin, counsel to the House Finance Committee, substantially contributed to this summary.

S269-SMRB-14(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 269 (First Edition)

SHORT TITLE: Hillsborough Occupancy Tax.

SPONSOR(S): Senator Kinnaird

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES					
Town of Hillsborough	**$46,385**	**$49,327**	**$52,164**	**$54,371**	**$56,230**
EXPENDITURES					
POSITIONS (cumulative):					

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

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

BILL SUMMARY:

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

ASSUMPTIONS AND METHODOLOGY:

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

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

SOURCES OF DATA:

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 14, 2011

Official Fiscal Research Division Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE BILL 155*

Short Title:	Wake Local Stormwater Utility Fees.	(Local)
Sponsors:	Senator Stein.	
Referred to:	State and Local Government.	

March 2, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWNS OF GARNER, KNIGHTDALE, MORRISVILLE, WENDELL, AND ZEBULON TO COLLECT DELINQUENT STORMWATER UTILITY FEES IN THE SAME MANNER AS THEY MAY COLLECT DELINQUENT PERSONAL AND REAL PROPERTY TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2005-441 reads as rewritten:

"**SECTION 4.** This act is effective when it becomes law and applies to stream-clearing activities commenced on or after that date. Section 3 of this act applies only to the ~~Town~~Towns of Garner, ~~Kernersville~~ Kernersville, Knightdale, Morrisville, Wendell, and Zebulon and the Village of Clemmons."

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

SENATE BILL 155:
Wake Local Stormwater Utility Fees

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 14, 2011
Introduced by:	Sen. Stein	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 155[1] would allow the towns of Garner, Knightdale, Morrisville, Wendell, and Zebulon to bill stormwater utility fees in the same manner as property taxes, and in the case of nonpayment, to collect them in the same manner as property taxes. The Senate State and Local Government Committee gave the bill a favorable report.

CURRENT LAW: Cities may operate a stormwater management program as a public enterprise[2] and may establish a schedule of fees for the services furnished by the program. A city may collect delinquent fees by any remedy provided by law for collecting and enforcing private debts. As a general rule, fees for enterprisory services cannot be a lien upon the property served by the enterprisory service. In 1991, the General Assembly provided an exception to this rule for fees imposed for solid waste collection and disposal services when it allowed cities and counties to collect the fees for this service in the same manner as property taxes. Delinquent property taxes may be collected using any one or more of the remedies provided in G.S. 105-366 through G.S. 105-375:

- Levy upon and sell or attach personal property.
- Attachment and garnishment of wages and other compensation, rents, bank deposits, the proceeds of property subject to levy, or any other intangible property.
- Foreclosure of real property.

By local acts, the General Assembly has authorized numerous cities and counties to collect delinquent water and sewer fees or sewer treatment fees in the same manner as property taxes.[3] In 2005, the General Assembly authorized the Town of Kernersville and the Village of Clemmons to collect delinquent stormwater management fees in the same manner as property taxes.

BILL ANALYSIS: Senate Bill 155 is a local act that would add the towns of Garner, Knightdale, Morrisville, Wendell, and Zebulon to the local legislation enacted for Kernersville and Clemmons in 2005, thereby allowing these towns to adopt an ordinance providing that stormwater utility fees may be billed with property taxes and made payable in the same manner as property taxes, and in the case of nonpayment, may be collected in the same manner as delinquent property taxes. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee.

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

S155-SMRB-16(e1) v1

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[1] H216, introduced by Reps. Murry, Jackson, Ross, is the House companion bill.

[2] Other types of public enterprises a city may operate include electric power generation, water and sewer systems, natural gas distribution, public transportation systems, cable television systems, parking facilities, and solid waste collection and disposal.

[3] S.L. 1993-768, City of Durham; S.L. 1995-577, Counties of Camden, Chowan, Currituck, Pasquotank, Perquimans, Tyrrell, and Washington; S.L. 2003-270, Counties of Davie, Duplin, and Lenoir and the municipalities in those counties; S.L. 2003-270, the municipalities in Columbus County; S.L. 2004-96, Town of Holden Beach; S.L. 2006-54, Oak Island; S.L. 2010-29, Caswell Beach; S.L. 2010-59, City of Locust and the towns of New London and Stanfield.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 118

Short Title:	Downtown Service District Definition.	(Public)
Sponsors:	Senator Preston.	
Referred to:	State and Local Government.	

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE DEFINITION OF DOWNTOWN REVITALIZATION IN THE MUNICIPAL SERVICE DISTRICT LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-536(b) reads as rewritten:

"(b) Downtown Revitalization Defined. – As used in this section "downtown revitalization projects" include by way of illustration but not limitation public buildings, restrooms, docks, visitor centers, and tourism facilities, improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street, and other improvements intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area. In addition, a downtown revitalization project may, in order to revitalize a downtown area and further the public health, safety, welfare, and convenience, include the provision of city services or functions in addition to or to a greater extent than those provided or maintained for the entire city. A downtown revitalization project may also include promotion and developmental activities (such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area) designed to improve the economic well-being of the downtown area and further the public health, safety, welfare, and convenience. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a service district shall not prejudice the city's authority to undertake urban renewal projects in the same area."

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

SENATE BILL 118:
Downtown Service District Definition

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 14, 2011
Introduced by:	Sen. Preston	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 118 expands the list of examples of improvements authorized in a municipal service district for downtown revitalization to include public buildings, restrooms, docks, visitor centers, and tourism facilities. The bill received a favorable report from the Senate State and Local Government Committee.

CURRENT LAW: Under current law, Article 23 of Chapter 160A of the General Statutes, a city council may define a municipal service district for downtown revitalization, in order to finance, with property taxes or bonds, improvements in the district.

A wide variety of projects are currently authorized within downtown revitalization municipal service districts, including:

> *--improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights of way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on street and off street, and other improvements intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area.*
>
> *--the provision of city services or functions in addition to or to a greater extent than those provided or maintained for the entire city, in order to revitalize a downtown area and further the public health, safety, welfare, and convenience.*
>
> *--promotion and developmental activities (such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area) designed to improve the economic well-being of the downtown area and further the public health, safety, welfare, and convenience.*

BILL ANALYSIS: Senate Bill 118 expands the list of examples of improvements authorized in a municipal service district for downtown revitalization to include public buildings, restrooms, docks, visitor centers, and tourism facilities.

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

Giles Perry, counsel to the Senate State and Local Government Committee, substantially contributed to this summary.

S118-SMRB-17(e1) v1

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 3-15 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

	Page Name	Hometown	Sponsoring Senator
1	Cameron Miller	Willow Spring	Berger P.
2	Cole Nye	Elizabethtown	Purcell
3	Kathryn Bridgers	Elizabethtown	Meredith
4			
5			
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10			

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 15, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dick Carlton	atty.
Cammie Harley	Elected Official
David Hamm	NCLM
Mayor Tom Stevens	Town of Hillsborough
Comm. Mike Gering	"
Tn Mgr. Eric Peterson	"
Bob Hornik	"
Mike Olsen	NCAFLCIO
Lucius PULLEN	ATTORNEY
Gene Ainsworth	A & A
Michelle Frazier	MF+S

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

March 15, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowe	NC Justice Center
Butch Bunnells	NC Bev A.
[signature]	NSS

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

March 15, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Will Culpepper	NVA
W. Gary Pugh	Visitor
Debra Dew	E&C
Kerry Raynor	N.C Justice
Jamy Parker	ESC
Lockhart Taylor	ESC
[illegible]	ESC
Cady Thomas	NCAR
Virginia Cook	Harrell & Assoc.
Michael Howser	NC DOR
Angel Sams	CAA

SENATE FINANCE COMMITTEE
Wednesday, March 16, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on March 16, 2011 in room 544 of the Legislative Office Building. Whitney Roberts of Wilmington, Kathryn Bridgers and Cold Nye of Elizabethtown and Kristina Karpovich of Lexington served as pages. Twenty-seven members of the committee were present. Senator Rucho presided as chair.

H.B. 92 – Repeal Land Transfer Tax

Representative Howard was recognized to explain the bill which repeals the authority granted to counties in 2007 to levy, upon approval of voters in the county, a tax on the sale of real property at the rate of up to 0.4% of the value of the property. Senator Apodaca moved for a favorable report but the motion was held to allow for further discussion. Sandra Johnson, a fiscal analyst with the Fiscal Research Division was recognized to answer questions. Kevin Leonard, NC Association of County Commissioner's Director of Government Relations, was recognized. He spoke in opposition to the bill and requested that counties be allowed to continue to have this option for generating revenue and possibly reduce property taxes. A vote was called and Senator Apodaca's motion carried. A copy of the bill, the summary and the fiscal note is attached.

The meeting adjourned at 1:20 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, March 16, 2011

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

FAVORABLE

H.B. **92** Repeal Land Transfer Tax.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

H92 – Sen. Rucho

Senate Finance Committee
Wednesday, March 16, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 92	Repeal Land Transfer Tax.	Rep. Starnes Rep. Jordan Rep. Howard Rep. Brawley, Jr.

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 1

HOUSE BILL 92

Short Title:	Repeal Land Transfer Tax.	(Public)
Sponsors:	Representatives Howard, Starnes, Brawley, and Jordan (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Finance.	

February 16, 2011

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LAND TRANSFER TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 105 of the General Statutes is repealed.

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

HOUSE BILL 92:
Repeal Land Transfer Tax

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 15, 2011
Introduced by:	Reps. Howard, Starnes, Brawley, Jordan	**Prepared by:**	Martha Walston Committee Counsel
Analysis of:	First Edition		

SUMMARY: HB 92 repeals the authority granted to counties in 2007 to levy, upon approval of voters in the county, a tax on the sale of real property at the rate of up to 0.4% of the value of the property.

[S226, as introduced by Sen. Tucker, is identical to H92 and is currently in Ref to Finance. If fav, re-ref to Rules and Operations of the Senate.]

CURRENT LAW: In 2007, legislation was enacted authorizing a board of county commissioners, by resolution and after 10 days public notice, to levy a local land transfer tax on instruments conveying interests in real property located in the county, up to a rate of 0.4%, in increments of 0.1%. The imposition of the tax is subject to voter approval in a public referendum. The tax is payable by the transferor of the property. The legislation exempts the same transfers as the State excise tax on conveyances.

To date, no county has achieved voter approval to levy this local land transfer tax, although 21 counties have conducted public referendums. The 21 counties are Ashe, Avery, Brunswick, Chatham, Clay, Davie, Gates[1], Graham, Harnett, Henderson, Hoke, Johnston, Macon, Moore, Orange, Pender, Polk, Rutherford, Swain, Tyrrell[2], and Union.

BILL ANALYSIS: House Bill 92 would repeal the County Land Transfer Tax Act.

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

BACKGROUND: The following counties have been given the authority by the General Assembly to levy a land transfer tax on instruments conveying an interest in real property.

COUNTY	SESSION LAW	RATE	LEVY	REVENUE FY 08-09	APPEALS BOARD	USE OF FUNDS
Dare	1985-525	$1/$100	No Vote	$4,037,302	Yes	Capital needs; shared with towns
Currituck	1985-670	$1/$100	No Vote	$1,890,224	Yes	Capital needs
Chowan	1985-881	$1/$100	No Vote	$277,266	No	Capital needs; shared with towns
Camden	1985-954	$1/$100	No Vote	$261,656	No	Capital needs
Pasquotank	1989-393	$1/$100	Vote required	$798,249	Yes	Capital needs
Perquimans	1989-393	$1/$100	Vote required	$435,085	Yes	Capital needs
Washington[3]	1989-393	$1/$100	Vote required	N/A	Yes	Capital needs

[1] Gates County conducted two public referendums, one on November 6, 2007 and one on May 4, 2008.
[2] Tyrrell County conducted two public referendums, one on May 4, 2008 and one on November 4, 2008.
[3] Has been on ballot three times, but never passed.

H92-SMSV-5(e1) v13

The State excise tax on conveyances is imposed at the rate of $1 for each $500 of sales price. The proceeds from this tax are distributed as follows: ½ to the county for any public purpose, and the remaining ½ to the Department of Revenue (75% goes to Parks and Recreation Trust Fund and 25% goes to Natural Heritage Trust Fund). The following transfers are exempt from the State excise tax on conveyances:

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

H92-SMLA-7(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 92 (First Edition)

SHORT TITLE: Repeal Land Transfer Tax

SPONSOR(S): Representatives Howard, Starnes, Brawley, and Jordan

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES		***No Fiscal Impact***			
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, County Register of Deeds

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY:

House Bill (HB) 92 repeals Article 60 of the General Statutes Chapter 105, the County Land Transfer Tax. The land transfer tax represents one of two local financing options enacted during the 2007 legislative session (S.L. 2007-323 under Sec. 31.17). As an alternative to the land transfer tax, counties also received the option levy a one-quarter cent sales and use tax, Article 46.

Article 60 provides counties with the authority to levy a tax on conveyances if a majority of referendum voters support the tax. The land transfer tax operates alongside the excise stamp tax on conveyances of land and is administered in the same manner as the tax on conveyances. Land exempt from the tax on conveyances is also exempt from the land transfer tax. The maximum land transfer tax rate levied equals 0.4% of the greater: 1) the property value or 2) consideration paid for the property. Counties can enact or increase the land transfer tax in increments of 0.1%.

If HB 92 is enacted, the repeal of the County Land Transfer Tax will become effective when the bill becomes law.

ASSUMPTIONS AND METHODOLOGY: The repeal of Article 60, the Land Transfer Tax, has no fiscal impact because none of the counties implemented the levy. Since the enactment of Article 60 in 2007, 21 of the 100 counties have submitted the option to public vote, with two counties submitting the option twice. The decision to levy Article 60 failed public referendum in all instances.

Table 1 of the appendix covers the forgone revenue associated with the counties' decisions to not implement the levy and/ or the repeal of Article 60.

SOURCES OF DATA: North Carolina Association of County Commissioners, "Local Option Referendum Results," available at: http://www.ncacc.org/revenueoptions.html.

North Carolina Department of Revenue, Statistical Abstract, "Table 65. County Tax Levies and County Shares of State Taxes by Type, Fiscal Year 2009-10."

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:
Sandra Johnson, Fiscal Analyst

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 2, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

APPENDIX

Table 1. Revenue Associated with the Enactment of Article 60, by County, FY 2009-10					
Counties	Value of Property Sold Subject to Article 60 [$] In Millions	Revenue Associated with a 0.1% Land Transfer Tax under Article 60 [$] In Dollars	Counties	Value of Property Sold Subject to Article 60 [$] In Millions	Revenue Associated with a 0.1% Land Transfer Tax under Article 60 [$] In Dollars
Alamance	397.8	397,826	Jones	19.7	19,708
Alexander	52.5	52,499	Lee	114.6	114,554
Alleghany	50.5	50,522	Lenoir	74.8	74,841
Anson	29.3	29,350	Lincoln	261.4	261,355
Ashe	100.3	100,305	Macon	215.8	215,802
Avery	130.0	129,962	Madison	65.9	65,946
Beaufort	113.2	113,182	Martin	24.0	24,004
Bertie	23.6	23,607	McDowell	103.9	103,878
Bladen	49.8	49,825	Mecklenburg	4,794.0	4,794,029
Brunswick	1,003.6	1,003,566	Mitchell	29.5	29,468
Buncombe	1,131.7	1,131,709	Montgomery	54.2	54,239
Burke	128.8	128,802	Moore	391.8	391,787
Cabarrus	563.4	563,422	Nash	177.9	177,897
Caldwell	152.8	152,770	New Hanover	1,138.8	1,138,779
Camden	29.0	28,974	Northampton	35.4	35,412
Carteret	427.3	427,347	Onslow	874.1	874,142
Caswell	38.7	38,713	Orange	731.3	731,342
Catawba	388.6	388,590	Pamlico	54.3	54,297
Chatham	352.9	352,898	Pasquotank	90.5	90,527
Cherokee	118.0	118,045	Pender	244.7	244,715
Chowan	35.2	35,165	Perquimans	42.2	42,225
Clay	54.6	54,627	Person	74.3	74,277
Cleveland	153.8	153,781	Pitt	468.9	468,857
Columbus	53.1	53,118	Polk	64.9	64,947
Craven	284.3	284,349	Randolph	245.2	245,244
Cumberland	816.1	816,081	Richmond	63.6	63,613
Currituck	271.9	271,872	Robeson	104.5	104,521
Dare	821.2	821,249	Rockingham	136.6	136,596
Davidson	346.4	346,390	Rowan	245.4	245,395
Davie	111.7	111,735	Rutherford	169.7	169,692
Duplin	66.7	66,654	Sampson	76.9	76,865
Durham	1,276.5	1,276,509	Scotland	39.5	39,546
Edgecombe	46.0	45,971	Stanly	110.7	110,725
Forsyth	1,131.9	1,131,855	Stokes	73.4	73,417
Franklin	190.0	189,986	Surry	70.0	69,994
Gaston	480.7	480,680	Swain	31.4	31,372
Gates	16.7	16,687	Transylvania	173.5	173,518
Graham	14.5	14,471	Tyrrell	6.1	6,116
Granville	144.4	144,429	Union	1,011.5	1,011,459
Greene	22.5	22,493	Vance	49.7	49,661
Guilford	1,551.7	1,551,720	Wake	5,249.1	5,249,074
Halifax	73.6	73,556	Warren	49.4	49,387
Harnett	374.3	374,335	Washington	23.8	23,816
Haywood	207.5	207,472	Watauga	309.9	309,884
Henderson	395.4	395,411	Wayne	231.8	231,784
Hertford	27.3	27,260	Wilkes	132.9	132,942
Hoke	174.7	174,693	Wilson	177.6	177,559
Hyde	24.9	24,941	Yadkin	46.8	46,773
Iredell	705.9	705,906	Yancey	66.0	65,964
Jackson	346.4	346,381	**Total**	**35,103**	**35,103,294**
Johnston	559.7	559,659			

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 3-16 **TIME:** 1 pm

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Page Name	Hometown	Sponsoring Senator
1 Whitney Roberts	Wilmington	Goolsby
2 Kathryn Bridgers	Elizabethtown	Meredith
Kristina Karpovich	Lexington	Bingham
4 Cole Nye	Elizabethtown	Purcell
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ges: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE FINANCE COMMITTEE
Tuesday, March 22, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on March 22, 2011 in room 544 of the Legislative Office Building. Hanna Patel of Cary served as the page. Twenty-six members of the committee were present. Senator Hartsell presided as chair.

S.B. 145 – Southern Shores Canal Dredging/Maintenance

Senator White was recognized to explain the bill which is a local act that would allow the Town of Southern Shores to impose a canal dredging and maintenance fee and to assess for navigation projects. Senator White moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 107 – Tax of Improved Property in Roadway Corridors

Senator Brunstetter was recognized to explain the bill. Senator Tillman moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The original bill would reduce the property tax owed on improved property inside a roadway corridor. Unimproved property inside a roadway corridor is already taxed at a reduced value. The PCS sunsets the provision in ten years. Cindy Avrette, a staff attorney with the Research Division, was recognized to answer questions. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal memo is attached.

Senator Rucho started to preside as chair at this point in the meeting.

S.B. 91 – Extend e-NC Sunset.

Senator Hartsell was recognized to explain the bill. Senator Brown moved to adopt the PCS for discussion and the motion carried. The PCS would extend the sunset provision pertaining to the e-NC Authority. It changes the repeal date from June 30, 2015 to December 31, 2015 and corrects the short title. Senator Clodfelter moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal memo is attached.

S.B. 137 – Establish Forgivable Loan Fund

Senator Stevens was recognized to explain the bill. It would consolidate specific existing financial aid programs to establish the new Forgivable Education Loans for Service Program and Fund to: 1) provide financial assistance to qualified students for certain high-need professions and 2) respond to current and future employment needs in the State. The State Education Assistance Authority (SEAA) would administer the Program and Fund. The SEAA would make a report on loans from the Fund no later than December 1, 2013 and annually thereafter to the Joint Legislative Education Oversight Committee. Senator Stevens offered a technical amendment and moved for

a favorable motion. The motion carried. Senator Dannelly moved for a favorable report as amended and the motion carried. A copy of the bill, the amendment, the summary and the fiscal memo is attached.

S.B. 281 – Municipal Service District/Streets

Senator Stein was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would expand the purposes for which a city could create a municipal service district to include the conversion of private streets to public streets. The city may impose a higher property tax rate on the taxpayers within a defined service district to pay for the additional services received in that district. Cindy Avrette was recognized to answer questions. John Whitson, Morrisville Town Manager, was recognized to speak in favor of the bill and to answer questions. Due to the number of questions, Senator Stein requested to displace the bill to improve the bill's language. A copy of the PCS and the summary is attached.

S.B. 340 – State Historic Sites Special Fund

This bill was displaced at the request of Senator Hartsell, the bill's sponsor.

The meeting adjourned at 1:32 PM.

Bob Rucho

Senator Bob Rucho, Presiding Chair

DeAnne Mangum

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, March 22, 2011

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

FAVORABLE

S.B. **145** Southern Shores Canal Dredging/Maintenance.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

S.B. **137** Establish Forgivable Loan Fund.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

S145 – Sen. White
S137 – Sen. Stevens

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, March 22, 2011

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

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

S.B. **107** Tax of Improved Prop. in Roadway Corridors.

Draft Number:	35137
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **91** Repeal e-NC Sunset.

Draft Number:	15098
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

S91 – Sen. Hartsell
S107 – Sen. Brunstetter

Principal Clerk ____
Reading Clerk ____

Corrected: S137 – Establish Forgivable Loan Fund has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 22, 2011	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 91	Repeal e-NC Sunset.	Senator Hartsell
SB 107	Tax of Improved Prop. in Roadway Corridors.	Senator Garrou Senator Brunstetter
SB 137	Establish Forgivable Loan Fund.	Senator Vaughan Senator Stevens
SB 145	Southern Shores Canal Dredging/Maintenance.	Senator White
SB 281	Municipal Service District/Streets.	Senator Stein
SB 340	State Historic Sites Special Fund.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 22, 2011	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 91	Repeal e-NC Sunset.	Senator Hartsell
SB 107	Tax of Improved Prop. in Roadway Corridors.	Senator Garrou Senator Brunstetter
SB 145	Southern Shores Canal Dredging/Maintenance.	Senator White
SB 281	Municipal Service District/Streets.	Senator Stein
SB 340	State Historic Sites Special Fund.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 145

Short Title:	Southern Shores Canal Dredging/Maintenance.	(Local)
Sponsors:	Senator White.	
Referred to:	State and Local Government.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF SOUTHERN SHORES TO IMPOSE A CANAL DREDGING AND MAINTENANCE FEE AND TO ASSESS FOR NAVIGATION PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2004-104 as rewritten by S.L. 2005-47 and S.L. 2005-90 reads as rewritten:

"**SECTION 7.** This act applies only within the municipal boundaries of the Towns of Emerald Isle, Holden Beach, ~~and Ocean Isle Beach.~~"Ocean Isle Beach, and Southern Shores."

SECTION 2.(a) This section applies only to the Town of Southern Shores.

SECTION 2.(b) Sections 1 through 4 of S.L. 2004-104 as amended by Section 1 of S.L. 2007-335 reads as rewritten:

"**SECTION 1.** Fee-Supported Canal Dredging and Maintenance District. – A municipality by resolution may create a fee-supported canal dredging and maintenance district for all properties that are contiguous to a canal within the corporate limits.

"**SECTION 2.** Imposition of Annual Fees. – A municipality may impose annual fees for the dredging and maintenance of canals, both natural and concrete, within the corporate limits. The governing board shall establish the fees on or before July 1 each year.

"**SECTION 3.** Fees. – The fees imposed by the municipality may not exceed the cost of providing for the dredging and maintenance of the canals within the municipality. The fees shall be imposed on owners of each dwelling unit or parcel of property that could or does benefit from water access through the canal system ~~on the island~~ within the municipality's corporate limits, and shall be made on the basis of one of the following:

(1) The frontage abutting the project at an equal rate per foot of frontage.

(2) Per unit or parcel of property.

"**SECTION 4.** Billing of Fees. – The municipality may include a fee imposed under this section on the property tax bill for each parcel of property lying within the municipal limits on which the fee is imposed. Said fee shall be collected in the same manner as provided for in the General Statutes for the collection of ad valorem taxes, and remedies available by statute for the collection of taxes shall apply to the collection of the canal dredging and maintenance fees."

SECTION 3. Section 3 of Chapter 725 of the 1985 Session Laws reads as rewritten:

"Sec. 3. This act applies to the ~~Town of~~ Towns of Southern Shores and Sunset Beach only."

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

SENATE BILL 145:
Southern Shores Canal Dredging/Maintenance

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 22, 2011
Introduced by:	Sen. White	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 145 is a local act that would allow the Town of Southern Shores to impose a canal dredging and maintenance fee and to assess for navigation projects. The bill received a favorable report from the Senate State and Local Government Committee on March 8, 2011.

BILL ANALYSIS: The General Assembly authorized the Town of Ocean Isle Beach to create a fee-supported canal dredging district in 2004[1], and it granted similar authority to the Towns of Emerald Isle and Holden Beach in 2005.[2] Sections 1 and 2 of this bill would allow the Town of Southern Shores to impose a canal dredging and maintenance fee. Specifically, the bill would allow the Town of Southern Shores to do the following:

- Create a fee-supported canal dredging and maintenance district for all properties that are contiguous to a canal within its corporate limits.
- Impose annual fees for the dredging and maintenance of canals, both natural and concrete, on or before July 1 of each year. The fees may not exceed the cost of providing for the dredging and maintenance of the canals. The fees must be imposed on owners that could or do benefit from water access through the canal system within the municipality's corporate limits. The fees may be imposed on the property tax bill and collected in the same manner as ad valorem taxes.
- Abolish the district whenever there is no longer a need for it.
- Establish a capital reserve fund. If a capital reserve fund is established to build up funds to provide the service, the Town may delay providing the service until sufficient funds have accumulated (but not for longer than five years).

G.S. 160A-238 allows a city to make special assessments for beach erosion control or flood and hurricane protection. In 1985, the General Assembly authorized the Town of Sunset Beach to impose an assessment for navigation projects[3] as well. Section 3 would extend the authority to impose a special assessment for navigation projects to the Town of Southern Shores. To impose a special assessment, the Town would need to follow the procedures set forth in Article 10 of Chapter 160A: it must adopt a preliminary resolution, hold a public hearing, adopt an assessment resolution, determine the total costs of the project, prepare a preliminary assessment roll, hold a public hearing, and affirm the assessment roll.

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

Brad Krehely, counsel to the Senate State and Local Government Committee, substantially contributed to this summary.

S145-SMRB-22(e1) v1

[1] S.L. 2004-104.
[2] S.L. 2005-47 and S.L. 2005-90.
[3] The term would include dredging and bulkheading canals. S.L. 1985-725.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 107
PROPOSED COMMITTEE SUBSTITUTE S107-CSRB-15 [v.1]

3/21/2011 7:16:43 PM

Short Title: Tax of Improved Prop. in Roadway Corridors. (Public)

Sponsors:

Referred to:

February 23, 2011

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE PROPERTY TAX OWED FOR IMPROVED PROPERTY INSIDE CERTAIN ROADWAY CORRIDORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.9 reads as rewritten:

"**§ 105-277.9. Taxation of property inside certain roadway corridors.**

Real property that lies within a transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at twenty percent (20%) of the ~~general tax rate levied on real property by the taxing unit in which~~appraised value of the property ~~is situated if:~~if each of the following requirements is met:

(1) As of January 1, no building or other structure is located on the ~~property; and~~property.

(2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor."

SECTION 2. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.9A. Taxation of improved property inside certain roadway corridors.**

(a) Reduced Assessment. – Real property on which a building or other structure is located and that lies within a transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at fifty percent (50%) of the appraised value of the property if the property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor.

(b) Sunset. – This section is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2021."

SECTION 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.

SENATE BILL 107:
Tax of Improved Prop. in Roadway Corridors

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 21, 2011
Introduced by:	Sens. Brunstetter, Garrou	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S107-CSRB-15		Committee Counsel

SUMMARY: ***Senate Bill 107 would reduce the property tax owed on improved property inside a roadway corridor. Unimproved property inside a roadway corridor is already taxed at a reduced value. The Proposed Committee Substitute sunsets the provision in 10 years.***

CURRENT LAW: Article V, Sec. 2(2) of the North Carolina Constitution grants the General Assembly the power to classify property for taxation. That power must be exercised on a State-wide basis, by uniform rule, in a general law uniformly applicable in every unit of local government. In 1987, the General Assembly classified unimproved property in a transportation corridor marked on an official map as a special class of property and provided that it would be taxable at 20% of its appraised value.

A transportation corridor map may be adopted by the governing body of a local government as part of a comprehensive plan for streets and highways or by the Department of Transportation for part of the State highway system. Once a transportation corridor official map is filed with the register of deed, no building permit may be issued for any building or structure on the property for up to three years.[1] If a building or structure exists on the property at the time the map is recorded, a permit may be issued provided the size of the building or structure is not increased.

There is no limit on how long the filer of a transportation corridor map may keep a proposed route on a map without purchasing the property. A property owner may petition the filer of the map for acquisition of the property due to an undue hardship on the affected property owner.[2] There are many proposed routes in the Transportation Improvement Plan and local transportation plans. Although a proposed route does not prevent the sale of the property, it does affect its salability because lenders and purchasers may not want to purchase property that may eventually be part of a highway corridor.

BILL ANALYSIS: Senate Bill 107 would classify improved property within a transportation corridor marked on an official map as a special class of property and provide that it would be taxable at 50% of its appraised value. The proposed committee substitute would sunset this property tax reduction in 10 years. The Department of Transportation's ability to purchase property in recent years has been hampered by fiscal constraints. This constraint has placed a hardship on some property owners located in a transportation corridor. The reduction in the property tax assessment is one way to ease the financial burden on the property owners. However, the reduction in the property's tax value reduces the property tax revenue available to the counties in which these corridors lie. The counties most affected are the larger ones and some of the smaller counties adjacent to them. The sunset would give the General Assembly an opportunity to review the policy in the future.

EFFECTIVE DATE: The bill would become effective for taxes imposed for taxable years beginning on or after July 1, 2011.

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[1] G.S. 136-44.51.

[2] G.S. 136-44.53. In the last nine years, 684 hardship advance acquisition requests in protected corridors have been received with approximately 500 receiving approval. Most hardship requests are related to financial or medical difficulties.

BACKGROUND: The Department of Transportation has used the corridor protection review program since 1989. The purpose of the program is to promote greater public knowledge of a project, to help prevent uninformed buying of property within the corridor, and to prevent development in a corridor thus reducing the cost of purchasing possible rights-of-ways. Twenty-four corridors are currently recorded. Acquisitions are complete in five corridors and the process has begun in 12 others. Seven corridors have map protection only. Of those seven, it is my understanding that two are under consideration for the acquisition process to begin.[3]

In the fall of 2010, the Department implemented some changes to its current corridor protection review program:

- Proposed evaluation of each protected corridor every 10 years to ensure the protected corridor remains valid.
- Established criteria to be used in determining whether a corridor official map should be filed.
- Established a Department Roadway Corridor Official Map Committee to oversee the corridor official map process.
- Made corridor protection less restrictive for property owners by setting a timeline to respond to requests for hardship acquisitions and by allowing more flexibility with permits for variance.

Giles Perry, counsel to the Transportation Committee, contributed to this summary. Information also obtained from the Department of Transportation.

S107-SMRB-21(CSRB-15) v1

[3] US 1 Rockingham/Hamlet and Asheboro Bypass.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: March 21, 2011

TO: Senator Brunstetter

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS to SB 107

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
General Fund	***No General Fund Impact***				
Local Governments	***Approximate Annual Revenue Loss of $550,000***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue; NC Local Governments

EFFECTIVE DATE: Taxable Years on or after July 1, 2011.

BILL SUMMARY:
Under current law, vacant property within a roadway corridor is taxable at 20 percent of its appraised value. Improved property is taxable at the appraised value. SB 107 would provide a 50 percent reduction in the taxable value of improved property in a transportation corridor.

ASSUMPTIONS AND METHODOLOGY:
The NC Department of Transportation identified the roadway corridors that are not scheduled for near-term right-of-way acquisition. The corridors included six projects located in five counties. Fiscal Research contacted the tax assessors for those counties to determine the potential revenue loss associated with SB 107. The table below provides the revenue loss by county.

SB 107 Revenue Loss by County	
Currituck	$0 (no improved property in corridor)
Wake	$44,588
Johnston	$18,581
Pitt	$99,826
Forsyth	$385,714
Total	**$548,709**

SOURCES OF DATA: Currituck County Tax Assessor; Wake County Tax Assessor; Johnston County Tax Assessor; Forsyth County Tax Assessor; Pitt County Tax Assessor

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 91*
Commerce Committee Substitute Adopted 3/15/11
PROPOSED COMMITTEE SUBSTITUTE S91-CSTD-10 [v.1]

3/21/2011 11:20:47 AM

Short Title: Extend e-NC Sunset. (Public)

Sponsors:

Referred to:

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET PROVISION PERTAINING TO THE E-NC AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2003-425, as amended by Section 12.3(a) of S.L. 2006-66, reads as rewritten:

"**SECTION 4.** Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. The e-NC Authority created in this act is dissolved effective ~~December 31, 2011.~~December 31, 2015. This act is repealed effective ~~December 31, 2011.~~December 31, 2015. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective ~~December 31, 2011.~~December 31, 2015."

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

SENATE BILL 91:
Repeal e-NC Sunset

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 22, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S91-CSTD-10		

SUMMARY: ***The PCS to Senate Bill 91would extend the sunset provision pertaining to the e-NC Authority. The PCS changes the repeal date from June 30, 2015 to December 31, 2015 and corrects the short title.***

[As introduced, this bill was identical to H91, as introduced by Reps. Faison, K. Alexander, Tolson, West, which is currently in House Commerce and Job Development.]

CURRENT LAW: The e-NC Authority is an independent agency within the Department of Commerce. The purpose of the Authority is to manage, oversee, promote, and monitor efforts to provide rural counties and distressed urban areas with high-speed broadband Internet access. The Authority also serves as the central rural and urban distressed areas Internet access policy planning body of the State. The authority is directed by law to communicate and coordinate with State, regional, and local agencies and private entities in order to continue the development and facilitation of a coordinated Internet access policy for the citizens of North Carolina.

BILL ANALYSIS: The e-NC Authority was created by the General Assembly in 2003 and designated as the successor entity of the Rural Internet Access Authority. E-NC was initially scheduled to be dissolved effective December 31, 2006; but it was extended for an additional five years and is now scheduled to be dissolved effective December 31, 2011. The PCS to Senate Bill 91 would extend the sunset to December 31, 2015.

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

S91-SMTD-13(CSTD-10) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: March 22, 2011

TO: Senate Finance Chairs

FROM: Kristin Walker
Fiscal Research Division

RE: Repeal e-NC Sunset
Senate Bill 91 (Second Edition)

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
EXPENDITURES:	*See assumptions & methodology. Impact up to $442,035*				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Commerce State-Aid

EFFECTIVE DATE: When the bill becomes law

BILL SUMMARY:

SB 91 extends the sunset for the e-NC Authority from December 31, 2011 to June 30, 2015.

ASSUMPTIONS AND METHODOLOGY:

For FY 2011- 12, the e-NC Authority has a recurring General Fund appropriation through the Commerce State-Aid budget of $442,035. If e-NC was eliminated as of December 31, 2011, then only half a year of funding would be required and no future funds would be needed. Thus, if e-NC sunset on December 31, 2011, there would be a savings to the State of $221,017 in the first year and $442,035 each year thereafter.

The extension of the sunset means that funds could still be appropriated to support the operations of e-NC through June 30, 2015, at which point funding could be eliminated. The amount of funding required by e-NC was originally established as $500,000 annually for administration and operating. In recent years, that amount has been reduced to $442,035 and could be subject to future reductions.

Thus, the impact of extending the e-NC Authority's sunset is variable depending on what level of funding the General Assembly determines is necessary. It would presumably be in the range of $0 to $442,035 annually.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

SENATE BILL 137*

Short Title:	Establish Forgivable Loan Fund.	(Public)
Sponsors:	Senators Stevens, Vaughan; Atwater and McKissick.	
Referred to:	Education/Higher Education.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE FORGIVABLE EDUCATION LOANS FOR SERVICE PROGRAM AND THE FORGIVABLE EDUCATION LOANS FOR SERVICE FUND AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON STATE FUNDED STUDENT FINANCIAL AID.

The General Assembly of North Carolina enacts:

SECTION 1. Effective July 1, 2011, Part 1 of Article 23 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-209.45. Forgivable Education Loans for Service Program and Fund.**

(a) Policy. – The General Assembly finds that it is in the public interest to provide financial assistance in the form of forgivable loans for service to qualified students who are committed to working in the State in order to respond to critical employment shortages.

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

(1) Eligible Institution. – Notwithstanding G.S. 116-201(b)(5) and G.S. 116-201(b)(6) and for purposes of this section only, an institution of higher education that is any of the following:

a. A postsecondary constituent institution of The University of North Carolina as defined in G.S. 116-2(4).

b. A community college as defined in G.S. 115D-2(2).

c. A nonprofit postsecondary institution as defined in G.S. 116-22(1).

d. A postsecondary institution owned or operated by a hospital authority as defined in G.S. 131E-16(14).

e. A school of nursing affiliated with a nonprofit postsecondary institution as defined in G.S. 116-22(1).

f. Another public or nonprofit postsecondary institution offering a program of study not otherwise available in North Carolina that is deemed to be eligible under rules promulgated by the Authority.

(2) Fund. – The Forgivable Education Loans for Service Fund.

(3) Loan. – A forgivable loan made under the Program.

(4) Program. – The Forgivable Education Loans for Service Program.

(c) Establish Forgivable Education Loans for Service Program. – There is established the Forgivable Education Loans for Service Program to be administered by the Authority. The purpose of the program is to facilitate and promote the making, insuring, and collection of loans from the Forgivable Education Loans for Service Fund. The Program shall initially target future teachers, nurses, and allied health professionals.

(d) Establish Forgivable Loans for Service Fund. – There is established the Forgivable Education Loans for Service Fund to be administered by the Authority. The purpose of the Fund is to provide financial assistance to qualified students to enable them to obtain the

requisite education beyond the high school level to work in North Carolina in certain high-need professions as identified by the General Assembly, and to respond to current as well as future employment shortages in North Carolina.

(e) Eligibility for Loans. – The Authority shall establish the criteria for initial and continuing eligibility to participate in the Program. All loan recipients shall be residents of North Carolina and shall attend an eligible institution.

The Authority shall adopt standards deemed appropriate by the Authority to ensure that only qualified, potential recipients receive a loan under the Program. The standards may include minimum grade point average and satisfactory academic progress.

(f) Loan Terms and Conditions. – The following terms and conditions shall apply to each loan made pursuant to this section:

(1) Promissory note. – All loans shall be evidenced by promissory notes made payable to the Authority.

(2) Interest. – All promissory notes shall bear an interest rate established by the Authority that does not exceed ten percent (10%) and is in relation to the current interest rate for non-need-based federal loans made pursuant to Title IV of the Higher Education Act of 1965, as amended. Interest shall accrue from the date of disbursement of the Loan funds.

(3) Loan amount. – The Authority shall establish the amount of the loan based on funds available and factors such as the recipient's educational program, enrollment status, and field of study.

(4) Repayment. – The Authority shall establish the criteria for loan forgiveness for employment in a designated field in North Carolina. These criteria may provide for accelerated repayment and less than full-time employment options. The Authority shall collect cash repayments when service repayment is not completed. The Authority shall establish the terms for cash repayment, including a minimum monthly repayment amount and maximum period of time to complete repayment.

(5) Death and disability. – The Authority may forgive all or part of a loan if it determines that it is impossible for the recipient to repay the loan in cash or service because of the death or disability of the recipient.

(6) Hardship. – The Authority may grant a forbearance, a deferment, or both in hardship circumstances when a good faith effort has been made to repay the loan in a timely manner.

(7) Other. – The Authority may establish other terms and conditions that are necessary or convenient to effectuate the Program.

(g) Advisory Group. – The Authority shall appoint an advisory group composed of, at minimum, appropriate representatives from higher education institutions and health and labor departments, agencies, or commissions to make recommendations to the Authority regarding the Authority's future apportionment and distribution of Program loans based on projected labor market shortages, higher education enrollment projections, and other relevant information.

(h) Use of Fund Monies. – All funds appropriated to or otherwise received by the Authority to provide loans through the Program, all funds received as repayment of loans, and all interest earned on these funds shall be placed in the Fund. The Fund shall be used only for loans made pursuant to this section and for administrative costs of the Authority.

(i) Rule-making Authority. – The Authority may adopt rules necessary to implement, administer, and enforce the provisions of this section.

(j) Report to the General Assembly. – The Authority shall report no later than December 1, 2013, and annually thereafter to the Joint Legislative Education Oversight Committee regarding the Fund and loans awarded from the Fund."

SECTION 2.(a) G.S. 90-171.100 and G.S. 90-171.101 are repealed.

SECTION 2.(b) All financial obligations to any student awarded a scholarship loan from the Graduate Nurse Scholarship Program for Faculty Production Fund before July 1, 2012, shall be fulfilled with funds from the Forgivable Education Loans for Service Fund established under G.S. 116-209.45 provided the student remains eligible under the provisions of the Graduate Nurse Scholarship Program for Faculty Production Fund. All contractual agreements between a student awarded a scholarship loan from the Graduate Nurse Scholarship Program for Faculty Production Fund before July 1, 2012, and the State Education Assistance Authority remain enforceable and the provisions of G.S. 90-171.100 and G.S. 90-171.101 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2012.

SECTION 2.(c) All assets and liabilities in the Graduate Nurse Scholarship Program for Faculty Production Fund shall be transferred to the Forgivable Education Loans for Service Fund established under G.S. 116-209.45.

SECTION 3.(a) G.S. 90-171.60, 90-171.61, and 90-171.62 are repealed.

SECTION 3.(b) All financial obligations to any student awarded a scholarship loan from the Nursing Scholars Program Fund and the Masters Nursing Scholars Program Fund before July 1, 2012, shall be fulfilled with funds from the Forgivable Education Loans for Service Fund established under G.S. 116-209.45 provided the student remains eligible under the provisions of the Nursing Scholars Program Fund and the Masters Nursing Scholars Program Fund. All contractual agreements between a student awarded a scholarship loan from the Nursing Scholars Program Fund and the Masters Nursing Scholars Program Fund before July 1, 2012, and the State Education Assistance Authority remain enforceable and the provisions of G.S. 90-171.60, 90-171.61, and 90-171.62 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2012.

SECTION 3.(c) All assets and liabilities in the Nursing Scholars Program Fund and the Masters Nursing Scholars Program Fund shall be transferred to the Forgivable Education Loans for Service Fund established under G.S. 116-209.45.

SECTION 4.(a) G.S. 90-171.65 is repealed.

SECTION 4.(b) All financial obligations to any student awarded a scholarship loan from the Nurse Education Scholarship Loan Fund before July 1, 2012, shall be fulfilled with funds from the Forgivable Education Loans for Service Fund established under G.S. 116-209.45 provided the student remains eligible under the provisions of the Nurse Education Scholarship Loan Fund. All contractual agreements between a student awarded a scholarship loan from the Nurse Education Scholarship Loan Fund before July 1, 2012, and the State Education Assistance Authority remain enforceable and the provisions of G.S. 90-171.65 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2012.

SECTION 4.(c) All assets and liabilities in the Nurse Education Scholarship Loan Fund shall be transferred to the Forgivable Education Loans for Service Fund established under G.S. 116-209.45.

SECTION 5.(a) G.S. 116-40.10 is repealed.

SECTION 5.(b) All financial obligations to any student awarded a scholarship loan from the Board of Governors' Dental Scholarship Loan Fund before July 1, 2012, shall be fulfilled with funds from the Forgivable Education Loans for Service Fund established under G.S. 116-209.45 provided the student remains eligible under the provisions of the Board of Governors' Dental Scholarship Loan Fund. All contractual agreements between a student awarded a scholarship loan from the Board of Governors' Dental Scholarship Loan Fund before July 1, 2012, and the State Education Assistance Authority remain enforceable and the provisions of G.S. 116-40.10 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2012.

SECTION 5.(c) All assets and liabilities in the Board of Governors' Dental Scholarship Loan Fund shall be transferred to the Forgivable Education Loans for Service Fund established under G.S. 116-209.45.

SECTION 6.(a) G.S. 116-40.9 is repealed.

SECTION 6.(b) All financial obligations to any student awarded a scholarship loan from the Board of Governors' Medical Scholarship Loan Fund before July 1, 2012, shall be fulfilled with funds from the Forgivable Education Loans for Service Fund established under G.S. 116-209.45 provided the student remains eligible under the provisions of the Board of Governors' Medical Scholarship Loan Fund. All contractual agreements between a student awarded a scholarship loan from the Board of Governors' Medical Scholarship Loan Fund before July 1, 2012, and the State Education Assistance Authority remain enforceable and the provisions of G.S. 116-40.9 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2012.

SECTION 6.(c) All assets and liabilities in the Board of Governors' Medical Scholarship Loan Fund shall be transferred to the Forgivable Education Loans for Service Fund established under G.S. 116-209.45.

SECTION 7.(a) G.S. 116-209.33 and G.S. 116-209.34 are repealed.

SECTION 7.(b) All financial obligations to any student awarded a scholarship loan from the Prospective Teachers Scholarship Loan Fund before July 1, 2012, shall be fulfilled with funds from the Forgivable Education Loans for Service Fund established under G.S. 116-209.45 provided the student remains eligible under the provisions of the Prospective Teachers Scholarship Loan Fund. All contractual agreements between a student awarded a scholarship loan from the Prospective Teachers Scholarship Loan Fund before July 1, 2012, and the State Education Assistance Authority remain enforceable and the provisions of G.S. 116-209.33 and G.S. 116-209.34 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2012.

SECTION 7.(c) All assets and liabilities in the Prospective Teachers Scholarship Loan Fund shall be transferred to the Forgivable Education Loans for Service Fund established under G.S. 116-209.45.

SECTION 8. G.S. 116-209.35 is repealed.

SECTION 9.(a) G.S. 116-209.30 is repealed.

SECTION 9.(b) All contractual agreements between a student awarded a scholarship loan from the Social Workers' Education Loan Fund before July 1, 2012, and the State Education Assistance Authority remain enforceable and the provisions of G.S. 116-209.30 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2012.

SECTION 9.(c) All assets and liabilities in the Social Workers' Education Loan Fund shall be transferred to the Forgivable Education Loans for Service Fund established under G.S. 116-209.45.

SECTION 10.(a) All financial obligations to any student awarded a scholarship loan from the Student Loan Program for Health, Science and Mathematics Fund before July 1, 2012, shall be fulfilled with funds from the Forgivable Education Loans for Service Fund established under G.S. 116-209.45 provided the student remains eligible under the provisions of the Student Loan Program for Health, Science and Mathematics Fund. All contractual agreements between a student awarded a scholarship loan from the Student Loan Program for Health, Science and Mathematics Fund before July 1, 2012, and the State Education Assistance Authority regarding the loan remain enforceable.

SECTION 10.(b) All assets and liabilities in the Student Loan Program for Health, Science and Mathematics Fund shall be transferred to the Forgivable Education Loans for Service Fund established under G.S. 116-209.45.

SECTION 11. All assets and liabilities in the Future Teachers of North Carolina Fund shall be transferred to the Forgivable Education Loans for Service Fund established under G.S. 116-209.45.

SECTION 12. All assets and liabilities in the Physical Education Scholarship Loan Fund shall be transferred to the Forgivable Education Loans for Service Fund established under G.S. 116-209.45.

SECTION 13. All assets and liabilities in the Optometry Scholarship Loan Fund shall be transferred to the Forgivable Education Loans for Service Fund established under G.S. 116-209.45.

SECTION 14. Except as otherwise provided herein, this act becomes effective July 1, 2012.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 137*

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

S137-ARJ-23 [v.2]

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

Date _____, 2011

Senator _____

moves to amend the bill on page 5, line 7, by deleting the phrase "Physical Education" and substituting the phrase "Coaching".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 137:
Establish Forgivable Loan Fund

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 22, 2011
Introduced by:	Sens. Stevens, Vaughan	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 137[1] would consolidate specific existing financial aid programs to establish the new Forgivable Education Loans for Service Program and Fund to: 1) provide financial assistance to qualified students for certain high-need professions and 2) respond to current and future employment needs in the State. The State Education Assistance Authority (SEAA) would administer the Program and Fund. The SEAA would make a report on loans from the Fund no later than December 1, 2013 and annually thereafter to the Joint Legislative Education Oversight Committee. The bill received a favorable report from the Senate Committee on Education/Higher Education on March 16, 2011.***

BILL ANALYSIS: Senate Bill 137 is a recommendation of the Joint Select Committee on State Funded Student Financial Aid that consolidates the following funds into the newly created Forgivable Education Loans for Service Fund:

* Graduate Nurse Scholarship Program for Faculty Production Fund
*Nurse Education Scholarship Loan Fund
*Nursing Scholars Program Fund
*Board of Governors' Dental Scholarship Loan Fund
*Board of Governors' Medical Scholarship Loan Fund
*Prospective Teachers Scholarship Loan Fund
*Teacher Assistant Scholarship Fund
*Social Workers' Education Loan Fund
*Student Loan Program for Health, Science and Mathematics Fund
*Future Teachers of North Carolina Fund
*Coaching Scholarship Loan Fund
*Optometry Scholarship Loan Fund

Section 1 would create the Forgivable Education Loan for Service Program and Fund to provide financial assistance to qualified students to prepare them for certain high-need professions, initially targeting future teachers, nurses and other allied health professionals. The State Education Assistance Authority would be responsible for: 1) administering the program, 2) adopting the eligibility criteria to participate in the Program, 3) establishing the interest rate, loan amount and repayment terms for the loans, 4) appointing an advisory group to make recommendations on the future distribution of loans, 5) making an annual report to the Joint Legislative Education Oversight Committee beginning December 1, 2013, and 6) adopting the rules necessary to implement and administer the Program.

Section 2(a) through Section 7(c) and Sections 9(a) through 9(c) would terminate the existing funds, repeal the statutes that created the existing funds, transfer the assets and liabilities to the Forgivable Education Loans for Service Fund, provide that financial obligations to students who received loans from the terminated funds will be honored under the new Program, and that all contractual agreements between a student with an award from a terminated program and the Authority would remain enforceable. The affected existing programs are: Graduate Nurse Scholarship Program for Faculty Production Fund (Secs. 2(a) – 2(c)), Nursing Scholars Program Fund and Masters Nursing Scholars Program Fund (Secs. 3(a) – 3(c)), Nurse Education Scholarship Loan Fund (Secs. 4(a) – 4(c), Board of

[1] As introduced, this bill is identical to House Bill 120.

Governors' Dental Scholarship Loan Fund (Secs. 5a – 5(c)), Board of Governors' Medical Scholarship Loan Fund (Secs. 6(a) – 6(c), the Prospective Teachers Scholarship Loan Fund (Secs. 7(a) – 7(c)) and the Social Workers' Education Loan Fund (Secs. 9(a) – 9(c)).

Section 8 would repeal the Teacher Assistant Scholarship Fund.

Sections 10(a) and 10(b) would transfer the assets and liabilities in the Student Loan Program for Health, Science and Mathematics to the Forgivable Education Loans for Service Fund, and provide that financial obligations to students who received loans from the terminated fund will be honored under the new Program.

Sections 11 through 13 would transfer the assets and liabilities in the Future Teachers of North Carolina Fund, Physical Education Scholarship Loan, and the Optometry Scholarship Loan Fund to the Forgivable Education Loans for Service Fund.

EFFECTIVE DATE: Section 1 of the bill would become effective July 1, 2011 and the remaining sections of the bill would become effective July 1, 2012.

TECHNICAL CONSIDERATION: An amendment is needed to correct the name of the Coaching Scholarship Loan Fund. The bill incorrectly calls it the *Physical Education* Scholarship Loan Fund.

BACKGROUND: In October 2009, the Joint Select Committee on State Funded Student Financial Aid was created, in part, to study the feasibility of consolidating existing scholarship, loan, and grant programs, especially those programs available for teacher education students. In April 2010, the Committee heard a presentation to consolidate eight existing career-based financial aid programs into one program of "forgivable loans for service" that was supported by UNC President Erskine Bowles and Community Colleges President Scott Ralls.

The Committee's interim report to the 2010 Session of the General Assembly included recommended legislation to create a Work Group to design the forgivable loans for service program. The Work Group included representatives of the State Education Assistance Authority, The University of North Carolina System, the North Carolina Community College System, the NC Independent Colleges and Universities and the NC General Assembly Fiscal Research Division. The Work Group was directed to design a "forgivable loans for service" program that combined at least the following existing programs: the Nurse Educators of Tomorrow; Nurse Scholars Program; Nurse Education Scholarship Loan Program; Board of Governors Medical Scholarship Loans; Board of Governors Dental Scholarship Loans; Health, Science, and Mathematics Student Loan Program; Prospective Teacher Scholarship Loan Program; and the Teacher Assistant Scholarship Loan Program. The consolidated program is to initially focus on the high needs areas of teaching and health professions (including nursing, allied health, and medical, dental and pharmacy careers. The Work Group recommends that loan offers to students would begin in Spring 2012 for academic terms beginning after July 1, 2012 and full implementation would begin in the 2012-13 academic year.

Dr. Steve Brooks, Executive Director, State Education Assistance Authority, presented the Work Group's recommended legislative proposal to the Committee on October 19, 2010. The Committee adopted the Work Group's legislative proposal which became Senate Bill 137.

Sara Kamprath, counsel to the Senate Education/Higher Education Committee, substantially contributed to this summary.

S137-SMRB-23(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: March 21, 2011

TO: Senator Rucho

FROM: Andrea Poole
Fiscal Research Division

RE: Senate Bill 137 (First Edition)

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE:

BILL SUMMARY:
Senate Bill 137 consolidates twelve scholarship-loan and scholarship programs to establish the new Forgivable Education Loans for Service Program (FELS) and Fund. Of the twelve funds consolidated, eight are currently operating programs and the remaining four are for programs no longer in operation, but still receiving repayments from past recipients. The existing programs are funded from both General Fund and Escheat Fund money, and target students in health, science, mathematics, and teaching careers. The State Education Assistance Authority (SEAA) administers the twelve funds.

The new FELS would provide financial assistance in the form of forgivable loans to qualified students for certain high-need professions. Loans could be forgiven through employment in a designated field in North Carolina. The program would be able to respond to current and future employment needs in the State, and would initially target future teachers, nurses, and allied health professionals. The State Education Assistance Authority (SEAA) would administer the Program and Fund. The bill requires SEAA to make a report on loans from the Fund no later than December 1, 2013 and annually thereafter to the Joint Legislative Education Oversight Committee.

ASSUMPTIONS AND METHODOLOGY:
The bill transfers all assets and liabilities of the twelve funds into the Forgivable Education Loans for Service Fund, but does not change the total amount of funding available for the programs. Therefore, there is no fiscal impact.

It is important to note, however, that SEAA's administrative expenses for these programs have historically been paid from federal receipts generated from new loan originations under the Federal Family Education Loan program. This federal program has ended, and those receipts will no longer be available for purposes of administration of State programs, including those that Senate Bill 137 would combine into FELS. The bill does permit the SEAA to use the Fund for administrative costs as well as for loans, as is done for other SEAA-administered State programs. If SEAA does use a portion of the funds for administration, it would reduce the amount available for scholarship-loans, but would not change the total program funding.

SOURCES OF DATA:
State Education Assistance Authority

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 137*

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S137-ARJ-23 [v.2]

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

Date March 22 ,2011

Senator Stevens

moves to amend the bill on page 5, line 4 by deleting the phrase "Physical Education" and substituting the phrase "Coaching".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 281
PROPOSED COMMITTEE SUBSTITUTE S281-CSRBx-16 [v.3]

3/22/2011 12:00:43 PM

Short Title: Municipal Service District/Streets. (Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES TO ESTABLISH A MUNICIPAL SERVICE DISTRICT FOR THE PURPOSE OF CONVERTING PRIVATE RESIDENTIAL STREETS TO PUBLIC STREETS AND TO AUTHORIZE RELATED COMMUNITY ASSOCIATIONS TO TRANSFER PLANNED COMMUNITY PROPERTY TO CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-536(a) is amended by adding a new subdivision to read:

"(a) Purposes. – The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

...

(6) Conversion of private residential streets to public streets as provided in subsection (e) of this section."

SECTION 2. G.S. 160A-536 is amended by adding a new subsection to read:

"(e) Converting Private Residential Streets to Public Streets. – A city may establish a municipal service district for the purpose of converting private residential streets to public streets if a majority of the lot owners of the owners' association have signed a petition requesting the city to establish a municipal service district for the purpose of paying the costs related to converting private residential streets to public streets and the converted streets will be accepted by the city for perpetual public maintenance. Notwithstanding the provisions of the North Carolina Planned Community Act in Chapter 47F of the General Statutes, related articles of declaration, deed covenants, or any other similar document recorded with the Register of Deeds, the executive board of an owners' association for which the city has received a petition under this subsection may transfer street-related common elements to the city.

The property tax levied in a municipal service district created for this purpose may only be used to pay the costs related to the transfer of ownership of the streets, evaluation of the condition of the private streets, and the design and construction costs related to improving the private streets to meet public streets standards as approved by the governing board. Notwithstanding G.S. 160A-542, the property tax rate in a district created for this purposes may not be in excess of thirty percent (30%) of the ad valorem tax rate in effect in the city in the fiscal year prior to the establishment of the district. After the private streets have been upgraded to meet public street standards and all costs have been recovered from the tax in the district, no

further tax may be levied in the district and the city council must abolish the municipal service district as provided by G.S. 160A-541.

Notwithstanding G.S. 160A-299, if a city abandons the streets and associated rights-of-way acquired pursuant to this subsection, the street-related common elements must be returned to the owners' association from which the city acquired them in a manner that makes the owners' association's holdings in common elements as they were prior to the establishment of the municipal service district."

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

SENATE BILL 281:
Municipal Service District/Streets

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 22, 2011
Introduced by:	Sen. Stein	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S281-CSRBx-16		Committee Counsel

SUMMARY: ***Senate Bill 281 would expand the purposes for which a city could create a municipal service district to include the conversion of private streets to public streets. The city may impose a higher property tax rate on the taxpayers within a defined service district to pay for the additional services received in that district. The Proposed Committee Substitute properly classifies the bill as a "Public" bill and reorganizes subsection (e); it does not make any substantive changes to the bill.***

CURRENT LAW: Article V, Sec. 2(4) of the North Carolina Constitution allows the General Assembly to enact *general* laws authorizing the governing board of a local governmental unit to define territorial areas and to levy additional taxes within those areas to finance a service that is provided to a greater extent in that area than is provided to the entire area of the governmental unit. The purposes for which a service district may be created are: Beach erosion control and flood and hurricane protection works; any service which the municipality may by law provide, such as placing utility wiring underground; downtown revitalization projects; transit-oriented development projects; drainage projects; sewage collection and disposal systems; lighting at interstate highway interchange ramps; off-street parking facilities; and watershed improvement projects.

Based on that provision, Article 23 of Chapter 160A authorizes a city to define a municipal service district and to levy a property tax in that district that is in addition to those levied through the city. A city may incur debt, as allowed under general law, to finance services within a service district. When there is no longer a need for the service district, the district may be abolished.

To create a district, a city must hold a public hearing on a proposed resolution. The resolution must define the service district and find that the area defined is in need of one or more of the services for which a district may be created to a demonstrably greater extent than the remainder of the city. The resolution may become effective at the beginning of a fiscal year. Once a district is created, the city must provide or let contracts for the service for which the residents of the district are being taxed within one year of the effective date of the district.

BILL ANALYSIS: The PCS for Senate Bill 281 reclassifies the bill as a "Public" bill because Article V, Sec. 2(4) of the North Carolina Constitution prohibits a local bill creating a special tax district. Senate Bill 281 would expand the purposes for which a city could create a municipal service district to include the conversion of private streets to public streets. The bill also creates the following limitations upon the creation of a district for this purpose:

- A city must receive a petition signed by a majority of the lot owners of the area to be included within the special district requesting the city to establish the district.
- A city must be willing to accept the converted streets for perpetual public maintenance.
- The additional tax rate levied in the special district may not exceed 30% of the property tax rate currently imposed in that district in the fiscal year prior to the establishment of the district.

- After the private streets have been upgraded to meet public street standards and all of the costs have been recovered, the district must be abolished.

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

BACKGROUND: There are 14 residential developments in the Town of Morrisville that were constructed with private streets. These 14 developments comprise about one-third of Morrisville's homes. The private streets were constructed to a lesser standard than public streets. The Town no longer approves residential developments with private streets.

Of these 14 neighborhoods, five have submitted petitions to the Town Council signed by a majority of the residents requesting the town to upgrade and convert the streets to publicly maintained streets. Three neighborhoods are continuing to collect petitions; the remaining seven have indicated no interest in pursuing the issue. The Town's website offers additional information on the issue and the number of petitions received for and against the creation of a municipal service district for this purpose:

https://nc-morrisville.civicplus.com/index.aspx?NID=542

The Town does not have the authority to expend public funds for private streets. To address the issue brought to the Town by the residents, the Town is seeking the authority to create a municipal service district for the purpose of converting the private streets to public streets. The conversion would include the transfer of ownership of the streets, an evaluation of the condition of the streets, and the design and construction costs related to improving the private streets to meet public streets standards. The maximum tax rate proposed to accomplish this purpose is 10¢ per $100 valuation. The Town estimates that it would take 15.2 years to recover the conversion costs for the 1.88 miles of roadway for the five neighborhoods requesting the service. If the remaining three neighborhoods are included, the Town estimates that it would take 14.3 years to recover the conversion costs for the 3.87 miles of roadway. The municipal service district would be abolished once all streets were brought up to standard and all associated costs recovered.

S281-SMRB-24(CSRBx-16) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 340*
PROPOSED COMMITTEE SUBSTITUTE S340-CSRB-13 [v.3]

3/21/2011 7:44:44 PM

Short Title: State Historic Sites Special Fund. (Public)

Sponsors:

Referred to:

March 15, 2011

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE STATE HISTORIC SITES FUND IN THE DIVISION OF STATE HISTORIC SITES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 121 of the General Statutes is amended by adding a new section to read:

"**§ 121-7.6. State Historic Sites special fund.**

(a) Fund. – The State Historic Sites Fund is created as a special revenue fund in the Division of State Historic Sites. The Fund consists of all receipts derived from the lease or rental of property or facilities, disposition of structures or products of the land, and admissions and fees collected at the State Historic Sites. Revenues in the Fund may be invested by the State Treasurer and any interest accrued shall be added to the Fund.

(b) Disposition of Fees. – The Fund shall be used for the operation, interpretation, maintenance, preservation, development, and expansion at the State Historic Sites. Funds are annually appropriated for these purposes in accordance with G.S. 143C-1-2.

(c) Application. – This section applies to the individual State Historic Sites owned by or under the control of the Division of State Historic Sites. This section does not apply to the receipts derived from the Bentonville Battlefield State Historic Site and the monies in the Fund may not be appropriated to the Bentonville Battlefield State Historic Site.

(d) Reports. – The Department shall submit to the Joint Legislative Commission on Governmental Operations, the House of Representatives and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division by September 30 of each year a report on the Fund that shall include the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year."

SECTION 2. This act becomes effective July 1, 2011.

SENATE BILL 340:
State Historic Sites Special Fund

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 21, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S340-CSRB-13		Committee Counsel

SUMMARY: ***Senate Bill 340[1] would establish a non-reverting, interest-bearing fund consisting of all receipts derived from the State Historic Sites. The money in the Fund would be appropriated for the operation, maintenance, and development of the State Historic Sites. The Proposed Committee Substitute clarifies the fund type; it does not make any substantive changes.***

CURRENT LAW: North Carolina Historic Sites is a division of the North Carolina Department of Cultural Resources Office of Archives and History. There are 27 unique North Carolina historic sites in North Carolina. As a general rule, the sites are funded through appropriations to the Division of Cultural Resources, which is then allocated by the Division to the various State historic sites. The receipts generated by the historic sites are considered departmental receipts. As departmental receipts, the revenue is applied against the cost of a site's operations and is used to reduce the amount of General Fund monies that needs to be allocated to it. If the sites generate more receipts in a year than is appropriated to them, the 'over-realized receipts' revert to the General Fund.[2]

Twenty-four[3] of the 27[4] historic sites are owned by and under the control of the Division of State Historic Sites. One of these 24 sites, Bentonville Battlefield has a special nonreverting, interest-bearing fund that consists of the receipts generated on the property. The General Assembly created the Fund in 2008. The site has considerable acreage that is leased to farmers for agricultural uses. The rental receipts derived at the Bentonville Battlefield have allowed the Fund to experience growth over the past three years and provided for the operation and expansion of the site.

BILL ANALYSIS: Senate Bill 340 would seek to emulate the concept of a special, nonreverting, interest-bearing fund for the other 23 historic sites owned by and under the control of the Division of State Historic Sites. The Division believes the Fund would encourage the sites to be more entrepreneurial and more self-sufficient financially. The Fund, like the current individual site budgets, would be administered at the Division level which would provide for the greatest amount of budgeting flexibility.

Whether these revenues would be applied against the cost of maintaining and operating the historic sites, much like they are today, is a budgetary decision. The advantage of establishing a special revenue fund is that any unused money in the Fund at the end of the fiscal year would not revert to the General Fund[5], as is the current practice with over-realized fee receipts, and that any interest that accrues on the monies

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[1] As introduced, the bill is identical to House Bill 368.

[2] Over-realized receipts cannot be used because the funds have not been appropriated.

[3] Thomas Wolfe Memorial, Zebulon B. Vance Birthplace, Horne Creek Living Historical Farm, Fort Dobbs, Charlotte Hawkins Brown Museum, NC Transporation Musuem, Reed Goldmine, James K. Polk Memorial, Alamance Battleground, Bennett Place, Historic Stagville, Duke Homestead, House in the Horseshoe, Town Creek Indian Mound, Bentonville Battlefield, Historic Halifax, Historic Edenton, Somerset Place, Historic Bath, Aycock Birthplace, CSS Neuse, Fort Fisher, Brunswick Town/Ft. Anderson.

[4] Tryon Palace, USS North Carolina Battleship Memorial, and the Roanoke Island Festival Park are not owned by or controlled by the Division of Cultural Resources.

[5] G.S. 143C-1-2(b).

in the Fund would remain in the Fund to be appropriated for the use of the historic sites, as opposed to the current practice where the interest on the funds accrues to the General Fund.

EFFECTIVE DATE: The bill would become effective July 1, 2011.

S340-SMRB-19(CSRB-13) v2

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544 LOB

DATE: 3-22 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Henna Patel	Cary	Stevens
2		
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

SENATE FINANCE COMMITTEE
Tuesday, March 29, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on March 29, 2011 in room 544 of the Legislative Office Building. Katherine Leak of Winston-Salem, Jamie Ammons of Fayetteville, and R.C. Brunstetter of Mocksville served as pages. Twenty-seven members of the committee were present. Senator Rucho presided as chair.

S.B. 281 – Municipal Service District/Streets

Senator Stein was recognized to explain the bill. Senator Tillman moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would expand the purposes for which a city could create a municipal service district to include the conversion of private streets to public streets. The city may impose a higher property tax rate on the taxpayers within a defined service district to pay for the additional services received in that district. Senator Stevens moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 340 – State Historic Sites Special Fund

Senator Hartsell was recognized to explain the bill. Senator Brunstetter moved to adopt the PCS for discussion and the motion carried. The bill would establish a non-reverting, interest-bearing fund consisting of all receipts derived from the State Historic Sites. The money in the Fund would be appropriated for the operation, maintenance, and development of State Historic Sites. The PCS does two things: 1) clarifies the fund type and removes unnecessary language, and 2) specifies that the funds attributable to each site may only be used at that site and that how the funds would be used at the site is based upon a joint decision by the staff from the site and the Division of State Historic Sites. Cindy Avrette, a staff attorney with the Research Division, was recognized to answer questions. Senator Garrou moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 1:12 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Tuesday, March 29, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 281	Municipal Service District/Streets.	Senator Stein
SB 340	State Historic Sites Special Fund.	Senator Hartsell

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 281
PROPOSED COMMITTEE SUBSTITUTE S281-CSRBx-18 [v.6]

3/29/2011 10:50:13 AM

Short Title: Municipal Service District/Streets. (Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES TO ESTABLISH A MUNICIPAL SERVICE DISTRICT FOR THE PURPOSE OF CONVERTING PRIVATE RESIDENTIAL STREETS TO PUBLIC STREETS AND TO AUTHORIZE RELATED COMMUNITY ASSOCIATIONS TO TRANSFER PLANNED COMMUNITY PROPERTY TO CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-536(a) is amended by adding a new subdivision to read:

"(a) Purposes. – The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

...

(6) Conversion of private residential streets to public streets as provided in subsection (e) of this section."

SECTION 2. G.S. 160A-536 is amended by adding a new subsection to read:

"(e) Converting Private Residential Streets to Public Streets. – A city may establish a municipal service district for the purpose of converting private residential streets to public streets if the conditions of this subsection are met. The property tax levied in a municipal service district created for this purpose may only be used to pay the costs related to the transfer of ownership of the streets, evaluation of the condition of the private streets, and the design and construction costs related to improving the private streets to meet public streets standards as approved by the governing board. Notwithstanding G.S. 160A-542, the property tax rate in a district created for this purpose may not be in excess of thirty percent (30%) of the ad valorem tax rate in effect in the city in the fiscal year prior to the establishment of the district. After the private streets have been upgraded to meet public street standards and all costs have been recovered from the tax in the district, no further tax may be levied in the district and the city council must abolish the municipal service district as provided by G.S. 160A-541.

Notwithstanding G.S. 160A-299, if a city abandons the streets and associated rights-of-way acquired pursuant to this subsection, the street-related common elements must be returned to the owners' association from which the city acquired them in a manner that makes the owners' association's holdings in common elements as they were prior to the establishment of the municipal service district.

For a city to create a municipal service district for the purpose of converting private residential streets to public streets, all of the following conditions must be met:

(1) The private residential road must be non-gated.

(2) The city must receive a petition signed by at least sixty percent (60%) of the lot owners of the owners' association requesting the city to establish a municipal service district for the purpose of paying the costs related to converting private residential streets to public streets. The executive board of an owners' association for which the city has received a petition under this subsection may transfer street-related common elements to the city notwithstanding the provisions of the North Carolina Planned Community Act in Chapter 47F of the General Statutes, related articles of declaration, deed covenants, or any other similar document recorded with the Register of Deeds.

(3) The city must agree to accept the converted streets for perpetual public maintenance.

(4) The city must be meet one of the following requirements:

a. Located primarily in a county that has a population of 750,000 or over according to the most recent decennial federal census, and also located in an adjacent county with a population of 250,000 or over according to the most recent decennial federal census.

b. Located primarily in a county with a population of 250,000 or over according to the most recent decennial federal census, and also located in an adjacent county with a population of 750,000 or over according to the most recent decennial federal census."

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

SENATE BILL 281:
Municipal Service District/Streets

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 29, 2011
Introduced by:	Sen. Stein	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S281-CSRBx-18		Committee Counsel

SUMMARY: ***Senate Bill 281 would expand the purposes for which a city could create a municipal service district to include the conversion of private streets to public streets. The city may impose a higher property tax rate on the taxpayers within a defined service district to pay for the additional services received in that district.***

The Senate Finance Committee considered this bill at its meeting last week, March 22nd. The Proposed Committee Substitute addresses the following issues raised at that meeting:

- ***The bill's scope is effectively limited to Morrisville and Raleigh in Wake County and to Durham in Durham County.***
- ***The threshold of petitions from property owners seeking the conversion of private streets to public streets is increased from 50% to 60%.***
- ***The provisions would not apply to gated roads.***

CURRENT LAW: Article V, Sec. 2(4) of the North Carolina Constitution allows the General Assembly to enact *general* laws authorizing the governing board of a local governmental unit to define territorial areas and to levy additional taxes within those areas to finance a service that is provided to a greater extent in that area than is provided to the entire area of the governmental unit. The purposes for which a service district may be created are: Beach erosion control and flood and hurricane protection works; any service which the municipality may by law provide, such as placing utility wiring underground; downtown revitalization projects; transit-oriented development projects; drainage projects; sewage collection and disposal systems; lighting at interstate highway interchange ramps; off-street parking facilities; and watershed improvement projects.

Based on that provision, Article 23 of Chapter 160A authorizes a city to define a municipal service district and to levy a property tax in that district that is in addition to those levied through the city. A city may incur debt, as allowed under general law, to finance services within a service district. When there is no longer a need for the service district, the district may be abolished.

To create a district, a city must hold a public hearing on a proposed resolution. The resolution must define the service district and find that the area defined is in need of one or more of the services for which a district may be created to a demonstrably greater extent than the remainder of the city. The resolution may become effective at the beginning of a fiscal year. Once a district is created, the city must provide or let contracts for the service for which the residents of the district are being taxed within one year of the effective date of the district.

BILL ANALYSIS: The PCS for Senate Bill 281 reclassifies the bill as a "Public" bill because Article V, Sec. 2(4) of the North Carolina Constitution prohibits a local bill creating a special tax district.

However, by limiting the reach of the bill to cities within counties of a certain size, the bill is effectively limited to the following municipalities: Durham, Morrisville, and Raleigh.[1]

Senate Bill 281 would expand the purposes for which a city could create a municipal service district to include the conversion of private streets to public streets. The bill also creates the following limitations upon the creation of a district for this purpose:

- The private road must be non-gated.
- A city must receive a petition signed by 60% of the lot owners of the area to be included within the special district requesting the city to establish the district.
- A city must be willing to accept the converted streets for perpetual public maintenance.
- The additional tax rate levied in the special district may not exceed 30% of the property tax rate currently imposed in that district in the fiscal year prior to the establishment of the district.
- After the private streets have been upgraded to meet public street standards and all of the costs have been recovered, the district must be abolished.

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

BACKGROUND: There are 14 residential developments in the Town of Morrisville that were constructed with private streets. These 14 developments comprise about one-third of Morrisville's homes. The private streets were constructed to a lesser standard than public streets. The Town no longer approves residential developments with private streets.

Of these 14 neighborhoods, five have submitted petitions to the Town Council signed by more than 60% of the residents requesting the town to upgrade and convert the streets to publicly maintained streets. Three neighborhoods are continuing to collect petitions; the remaining seven have indicated no interest in pursuing the issue. The Town's website offers additional information on the issue and the number of petitions received for and against the creation of a municipal service district for this purpose:

https://nc-morrisville.civicplus.com/index.aspx?NID=542

The Town does not have the authority to expend public funds for private streets.[2] To address the issue brought to the Town by the residents, the Town is seeking the authority to create a municipal service district for the purpose of converting the private streets to public streets. The conversion would include the transfer of ownership of the streets, an evaluation of the condition of the streets, and the design and construction costs related to improving the private streets to meet public streets standards. The maximum tax rate proposed to accomplish this purpose is 10¢ per $100 valuation. The Town estimates that it would take 15.2 years to recover the conversion costs for the 1.88 miles of roadway for the five neighborhoods requesting the service. If the remaining three neighborhoods are included, the Town estimates that it would take 14.3 years to recover the conversion costs for the 3.87 miles of roadway. The municipal service district would be abolished once all streets were brought up to standard and all associated costs recovered.

S281-SMRB-27(CSRBx-18) v1

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[1] Although both Wake and Mecklenburg Counties have populations that exceed 750,000, the only county that is 250,000 and over that abuts either of these two counties is Durham County.

[2] G.S. 153A-205 gives counties the authority to expend funds for the cost of improvements needed to bring residential streets up to State standards so they may become part of the State-maintained system. An argument may be made that cities have authority under Article 10A of Chapter 160A of the General Statutes to impose a special assessment for this purpose, but it is not clear.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 340*
PROPOSED COMMITTEE SUBSTITUTE S340-CSRB-17 [v.4]

3/28/2011 3:38:22 PM

Short Title: State Historic Sites Special Fund. (Public)

Sponsors:

Referred to:

March 15, 2011

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE STATE HISTORIC SITES FUND IN THE DIVISION OF STATE HISTORIC SITES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 121 of the General Statutes is amended by adding a new section to read:

"**§ 121-7.6. State Historic Sites special fund.**

(a) Fund. – The State Historic Sites Fund is created as a special, interest-bearing, revenue fund in the Division of State Historic Sites. The Fund consists of all receipts derived from the lease or rental of property or facilities, disposition of structures or products of the land, and admissions and fees collected at the State Historic Sites. The revenues in the Fund may be used only for the operation, interpretation, maintenance, preservation, development, and expansion of the individual State Historic Site where the receipts are generated. The Division and the staff from each State Historic Site will determine how the funds will be used at that Historic Site.

(b) Application. – This section applies to the individual State Historic Sites owned by or under the control of the Division of State Historic Sites, with the exception of the Bentonville Battlefield State Historic Site. The Bentonville Battlefield State Historic Site is subject to G.S. 121-7.5.

(c) Reports. – The Department of Cultural Resources must submit to the Joint Legislative Commission on Governmental Operations, the House of Representatives and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division by September 30 of each year a report on the Fund that includes the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year."

SECTION 2. This act becomes effective July 1, 2011.

SENATE BILL 340:
State Historic Sites Special Fund

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	March 28, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S340-CSRB-17		Committee Counsel

SUMMARY: ***Senate Bill 340[1] would establish a non-reverting, interest-bearing fund consisting of all receipts derived from the State Historic Sites. The money in the Fund would be appropriated for the operation, maintenance, and development of the State Historic Sites. The Proposed Committee Substitute does two things:***

- ***It clarifies the fund type and removes unnecessary language.***
- ***It specifies that the funds attributable to each site may only be used at that site and that how the funds would be used at the site is based upon a joint decision by the staff from the site and the Division of State Historic Sites.***

CURRENT LAW: North Carolina Historic Sites is a division of the North Carolina Department of Cultural Resources Office of Archives and History. There are 27 unique North Carolina historic sites in North Carolina. As a general rule, the sites are funded through appropriations to the Division of Cultural Resources, which is then allocated by the Division to the various State historic sites. The receipts generated by the historic sites are considered departmental receipts. As departmental receipts, the revenue is applied against the cost of a site's operations and is used to reduce the amount of General Fund revenue that needs to be allocated to it. If the sites generate more receipts in a year than is appropriated to them, the 'over-realized receipts' revert to the General Fund.[2] Under G.S. 143C-1-4(a), interest earned on all funds is credited to the General Fund unless the law provides otherwise.

Twenty-four[3] of the 27[4] historic sites are owned by and under the control of the Division of State Historic Sites. One of these 24 sites, Bentonville Battlefield has a special nonreverting, interest-bearing fund that consists of the receipts generated on the property. The General Assembly created the Fund in 2008. The site has considerable acreage that is leased to farmers for agricultural uses. The rental receipts derived at the Bentonville Battlefield have allowed the Fund to experience growth over the past three years and provided for the operation and expansion of the site.

BILL ANALYSIS: Senate Bill 340 would seek to emulate the concept of a special, nonreverting, interest-bearing fund for the other 23 historic sites owned by and under the control of the Division of State Historic Sites. The Division believes the Fund would encourage the sites to be more entrepreneurial and more self-sufficient financially. The Fund, like the current individual site budgets,

[1] As introduced, the bill is identical to House Bill 368.

[2] Over-realized receipts cannot be used because the funds have not been appropriated.

[3] Thomas Wolfe Memorial, Zebulon B. Vance Birthplace, Horne Creek Living Historical Farm, Fort Dobbs, Charlotte Hawkins Brown Museum, NC Transportation Museum, Reed Goldmine, James K. Polk Memorial, Alamance Battleground, Bennett Place, Historic Stagville, Duke Homestead, House in the Horseshoe, Town Creek Indian Mound, Bentonville Battlefield, Historic Halifax, Historic Edenton, Somerset Place, Historic Bath, Aycock Birthplace, CSS Neuse, Fort Fisher, Brunswick Town/Ft. Anderson.

[4] Tryon Palace, USS North Carolina Battleship Memorial, and the Roanoke Island Festival Park are not owned by or controlled by the Division of Cultural Resources.

would be administered at the Division level which would provide for the greatest amount of budgeting flexibility.

Whether these revenues would be applied against the cost of maintaining and operating the historic sites, much like they are today, is a budgetary decision. The advantage of establishing a special revenue fund is that any unused money in the Fund at the end of the fiscal year would not revert to the General Fund[5], as is the current practice with over-realized fee receipts, and that any interest that accrues on the monies in the Fund would remain in the Fund to be appropriated for the use of the historic sites, as opposed to the current practice where the interest on the funds accrues to the General Fund[6].

EFFECTIVE DATE: The bill would become effective July 1, 2011.

S340-SMRB-26(CSRB-17) v1

[5] G.S. 143C-1-2(b).
[6] G.S. 143C-1-4(a).

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 3-29 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Katherine Leak	Winston-Salem	Senator Brunstetter
2 Jamie Amaos	Fayetteville	Erik Mansfield
R.C. Brunstetter	[redacted] Mocksville	Brunstetter
4		
5		
6		
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10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 29, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
MIKE WATERS	NCRPA
GENE AINSWORTH	A & A
JOHN PERSON	NCEOD
Jeffrey Crow	DCR
KEITH HARDISON	DCR
Mel Sowers	DCR
Rick Techini	Progress Energy
[illegible]	[illegible]
Michael James	NEGA
Cady Thomas	NCAR

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 29, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tammy Patterson	Tate
Bill Phillips	NWC
John A Whitson	MORRISVILLE
Henry Jones	Jordan Price
K. Myers	Smith Anderson
Jeff Pearce	WFU
DAVID BARNES	DS
Cameron Hardy	Electricities

SENATE FINANCE COMMITTEE
Tuesday, April 5, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on April 5, 2011 in room 544 of the Legislative Office Building. Caroline McMurry of Statesville, Olivia Lanier of Jacksonville, and Breana Smith of Wendell served as pages. Twenty-three members of the committee were present. Senator Hartsell presided as chair.

S.B. 343 – Communications Regulatory Reform

Senator Brown was recognized to explain the bill. Senator Stein moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS provides an alternative form of regulation for certain telecommunications providers and makes technical changes to the description of the State mechanism to support universal service. Senator Stein moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal memo is attached.

The meeting adjourned at 1:09 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, April 05, 2011

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

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

S.B. **343** Communications Regulatory Reform.

Draft Number:	75109
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Senate Finance Committee
Tuesday, April 5, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 343	Communications Regulatory Reform.	Sen. Brown

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 343*
PROPOSED COMMITTEE SUBSTITUTE S343-CSTD-13 [v.1]

4/4/2011 11:13:16 AM

Short Title: Communications Regulatory Reform. (Public)

Sponsors:

Referred to:

March 15, 2011

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE COMMUNICATIONS REGULATORY REFORM AND INVESTMENT ACT OF 2011.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110(f1) reads as rewritten:

"(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23) a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the

reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted. In adopting rules to establish an appropriate definition of universal service, the Commission shall consider evolving trends in telecommunications services and the need for consumers to have access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits to the public at a reasonable cost.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

Except as provided in subsections (f4) and (f5) of this section, each local exchange company shall be the universal service provider (carrier of last resort) in the area in which it is certificated to operate on July 1, 1995. Each local exchange company or telecommunications service provider with carrier of last resort responsibility may satisfy its carrier of last resort obligation by using any available technology. In continuing this State's commitment to universal service, the Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some other funding mechanism. At a time determined by the Commission to be in the public interest, the Commission shall conduct an investigation for the purpose of adopting final rules concerning the provision of universal services, and whether universal service should be funded through interconnection rates or through some other funding mechanism, and, consistent with the provisions of subsections (f4) and (f5) of this section, the person that should be the universal service provider. A local exchange company that has elected to be subject to alternative regulation under G.S. 62-133.5(l) does not have any carrier of last resort obligations.

The Commission shall make the determination required pursuant to this subsection in a manner that furthers this State's policy favoring universally available telephone service at reasonable rates."

SECTION 2. G.S. 62-302(b)(4)b. reads as rewritten:

"(b) Public Utility Rate. –

...

(4) As used in this section, the term "North Carolina jurisdictional revenues" means:

...

b. All revenues derived from retail services no longer otherwise regulated by the operation of G.S. 62-133.5(h) or G.S. 62-133.5(l) for a local exchange company or competing local provider that has elected to be regulated under ~~that subsection.~~those subsections."

SECTION 3. G.S. 62-133.5 reads as rewritten:

"**§ 62-133.5. Alternative regulation, tariffing, and deregulation of telecommunications utilities.**

...

(g) The following sections of Chapter 62 of the General Statutes shall not apply to local exchange companies subject to price regulation under the terms of subsection (a) of this section or electing companies subject to alternative regulation under the terms of ~~subsection~~

~~(h)~~subsection (h) or (l) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132, 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153.

...

(i) A competing local provider authorized by the Commission to do business under the provisions of G.S. 62-110(f1) may also elect to have its rates, terms, and conditions for its services determined pursuant to the ~~plan~~ plans described in ~~subsection (h)~~subsection (h) or (l) of this section. However, it is provided further that any provisions of subsection (h) of this section requiring the provision of a specific retail service or impacting the pricing of such service, including stand-alone residence service, shall not apply to competing local providers.

...

(k) To evaluate the affordability and quality of local exchange service provided to consumers in this State, a local exchange company or competing local provider offering basic local residential exchange service that elects to have its rates, terms, and conditions for its services determined pursuant to the ~~plan~~ plans described in ~~subsection (h)~~subsection (h) or (l) of this section shall make an annual report to the General Assembly on the state of its company's operations. The report shall be due 30 days after the close of each calendar year and shall cover the period from January 1 through December 31 of the preceding year. The Joint Legislative Utility Review Committee must review the annual reports and decide whether to recommend that the General Assembly take corrective action in response to those reports. The report shall include the following:

(1) An analysis of telecommunications competition by the local exchange company or competing local provider, including access line gain or loss and the impact on consumer choices from ~~enactment of the Consumer Choice and Investment Act of 2009.~~ the date the local exchange company makes its election to be subject to alternative regulation under the terms of subsection (h) or (l) of this section.

(2) An analysis of service quality based on customer satisfaction studies from ~~enactment of the Consumer Choice and Investment Act of 2009.~~ the date the local exchange company makes its election to be subject to alternative regulation under the terms of subsection (h) or (l) of this section.

(3) An analysis of the level of local exchange rates from ~~enactment of the Consumer Choice and Investment Act of 2009.~~ the date the local exchange company makes its election to be subject to alternative regulation under the terms of subsection (h) or (l) of this section.

(k1) For a local exchange company that has made an election to be subject to alternative regulation under subsection (l) of this section, the requirement to report annually to the General Assembly under subsection (k) of this section shall no longer apply on and after the third anniversary following the date of the local exchange company's election.

(l) Notwithstanding any other provision of this Chapter, a local exchange company that is subject to rate of return regulation or subject to another form of regulation authorized under this section and who forgoes receipt of any funding from a State funding mechanism, other than interconnection rates, that may be established to support universal service as described in G.S. 62-110(f1) and whose territory is open to competition from competing local providers may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection by filing notice of its intent to do so with the Commission. The election is effective immediately upon filing. The terms "local exchange company" and "open to competition from competing local providers" shall have the same meanings as in subsection (h) of this section.

(1) Beginning on the date the local exchange company's election under this subsection becomes effective, the Commission shall not:

a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's retail services, regardless of the technology used to provide these services.

b. Otherwise regulate any of the local exchange company's retail services, regardless of the technology used to provide these services.

c. Impose any tariffing requirements on any of the local exchange company's services that were not tariffed as of the date of the election, or impose any constraints on the rates of the local exchange company's services that were subject to full pricing flexibility as of the date of election.

(2) A local exchange company's election under this subsection does not affect the obligations or rights of an incumbent local exchange carrier, as that term is defined by section 251(h) of the Federal Telecommunications Act of 1996 (Act), under sections 251 and 252 of the Act or any Federal Communications Commission regulation relating to sections 251 and 252 of the Act.

(3) A local exchange company's election under this subsection does not affect the Commission's jurisdiction concerning:

a. Enforcement of federal requirements on the local exchange company's marketing activities as set forth in 47 U.S.C. Part 64. However, the Commission may not adopt, impose, or enforce other requirements on the local exchange company's marketing activities.

b. The telecommunications relay service pursuant to G.S. 62-157.

c. The Life Line or Link Up programs consistent with Federal Communications Commission rules and relevant orders of the North Carolina Utilities Commission.

d. Universal service funding pursuant to G.S. 62-110(f1).

e. The authority delegated to it by the Federal Communications Commission to manage the numbering resources involving that local exchange company.

f. Regulatory authority over the rates, terms, and conditions of wholesale services.

g. The Commission's authority under section 214(e) of the Federal Communications Act of 1934, consistent with Federal Communications Commission rules.

h. The authority of the Commission to act in accordance with federal or State laws or regulations, including those granting authority to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements.

(4) A local exchange company's election under this subsection does not prevent a consumer from seeking the assistance of the Public Staff of the North Carolina Utilities Commission to resolve a complaint with that local exchange company, as provided in G.S. 62-73.1."

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

SENATE BILL 343:
Communications Regulatory Reform

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	April 5, 2011
Introduced by:	Sen. Brown	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S343-CSTD-13		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 343 provides an alternative form of regulation for certain telecommunications providers. The PCS makes technical changes to the description of the State mechanism to support universal service.***

CURRENT LAW: S.L. 2009-238 (HB 1180) allowed incumbent telephone providers, designated in the statutes as local exchange providers (LECs), open to competition from competing local telephone providers (CLPs), and to the extent applicable CLPs, to elect to participate in an alternative form of regulation. Companies that that select this new form of regulation are currently referred to as "subsection (h) companies." Under the alternative form of regulation, subsection (h) companies are no longer required to file tariffs and certain reports, including service line, access line, and service quality reports with the Utilities Commission. LECs may not elect regulation under subsection (h) unless they commit to providing stand-alone basic service to rural customers at rates comparable to rates charged to urban customers. Once an LEC elects regulation under the plan, it may not increase the rates for stand-alone basic service by more than the GDP price index unless otherwise authorized by the Utilities Commission. For those LECs and CLPs that elect regulation under the plan, the Utilities Commission retains jurisdiction over certain federal requirements of providers, telecommunications relay services, Lifeline or Link Up programs, universal service programs, carrier of last resort obligations, and the authority to manager numbering resources. Electing regulation under the plan does not prevent a customer from seeking assistance from the Public Staff of the Utilities Commission and electing providers must inform customer complainants that the customer may contact the Public Staff.

Each LEC is the carrier of last resort for the area in which it was certified to operate on July 1, 1995. The carrier of last resort (COLR and also known as the universal service provider) must provide basic local exchange service in this area.

S.L. 2005-85 modified this requirement by providing that when a competing telecommunications provider enters into an agreement to provide local telephone service to a subdivision or area, and the right of way or access to deliver phone service is not made available to other telecommunications providers, the LEC is relieved of its carrier of last resort obligations and the telecommunication service provider that entered into the agreement is considered the carrier of last resort. The LEC must notify the appropriate State agency that it is no longer the carrier of last resort.[1] The appropriate State agency retains the authority to re-designate the LEC as the carrier of last resort if the telecommunications provider that entered into the agreement is no longer willing or able to provide adequate services to the subdivision or area.

S.L. 2009-202 allowed carriers of last resort the authority to meet COLR obligations using any available technology that allows access to the local switched network, including traditional phone service, wireless, and VoIP (Voice over internet protocol).

[1] The Utilities Commission is generally the State agency. However, the Rural Electrification Authority has jurisdiction over certain providers.

A provider also may be granted a waiver of its COLR responsibilities if it makes a showing to the appropriate State agency of all of the following:

- Providing service in the area would be inequitable or unduly burdensome.
- One or more alternative service providers exist.
- Granting the waiver is in the public interest.

BILL ANALYSIS:

Subsection (l) alternative form of regulation: Local telephone providers (LECs) open to competition from competing local telephone providers (CLPs) may elect to participate in a new alternative form of regulation. This differs from the subsection (h) treatment in the following ways:

- The LEC will no longer have carrier of last resort responsibilities.
- The LEC will not be eligible to receive funds from a state fund that may be established to support universal service.
- The LEC will not be required to provide stand-alone basic service to rural customers at rates comparable to rates charged to urban customers.

Subsection (l) also clarifies that election of the new alternative form of regulation will not affect the authority of the Utilities Commission under two existing provisions:

- 47 USC 241(e) – This section provides which carriers are eligible to receive federal universal service funds. This section also provides that if an area is unserved either the FCC or the Utilities Commission may designate a carrier to provide service to the area. The FCC designates the carrier for interstate service; the Utilities Commission designates the carrier for intrastate service.
- Unbundled network elements and interconnection agreements – The Telecommunications Act of 1996 requires incumbent telephone providers to allow competing providers to interconnect to the unbundled network elements of the incumbent providers. Essentially these are the provisions that allow competing providers to provide service to individuals over the equipment of the incumbent providers. The price for access to the unbundled network elements is approved by the Utilities Commission. The agreements between the incumbent provider and the competing provider that allow access to the unbundled network elements are interconnection agreements. The Utilities Commission has the authority to arbitrate and enforce interconnection agreements.

Reports: Clarifies that reports required for providers that elect alternative subsection (h) treatment, or the subsection (l) treatment must file reports from the date the provider makes the election. Previously the reports were required from the date S.L. 2009-238 was enacted. The reports provide an analysis of telecommunications competition, customer satisfaction studies, and local exchange rates. Companies that elect alternative regulation under **subsection (l)** will only file reports for the first 3 years after electing the alternative regulation.

Regulatory Fee: Section 2 of the bill clarifies that revenues from service subject to the subsection (l) alternative form of regulation will remain subject to the utility regulatory fee.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: April 4, 2011

TO: Senators Rucho and Hartsell

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS to S343

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:	*No impact on current taxes or fees*				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

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

BILL SUMMARY:

Enacts new subsection (l) under GS 62-133.5 to provide that a local exchange company may elect alternative regulation under this proposed section providing that it meets specified criteria including foregoing funding from a state Universal Service Fund or alternate funding mechanism and having territory open to competition from competing local providers. Provides that the election of the alternative regulation is effective immediately upon the filing of the local exchange company. Adds subsection (k1) to provide that a local exchange company that has made an alternative election under proposed subsection (l) is no longer subject to the requirement to report annually to the General Assembly on or after the third anniversary following the date of the local

exchange company's election. Provides that a local exchange company's election of the alternative regulation under new GS 62-133.5(l) does not affect (1) the obligations or rights of an incumbent local exchange carrier as defined under federal law and regulations nor (2) North Carolina Utilities Commissions (Commission) jurisdiction concerning specified enforcement and regulatory authority. Provides that a local exchange company's election under this proposed subsection does not prevent a consumer from seeking the assistance of the Commission to resolve a complaint with the local exchange company as provided in GS 62-73.1. Makes conforming changes to GS 62-133.5 and 62-302(b)(4)b. Amends GS 62-110(f1) to provide that a local exchange that has chosen alternative regulation under proposed GS 62-133.5(l) does not have any carrier of last resort obligations.

Source: Bill Digest

ASSUMPTIONS AND METHODOLOGY:
Although the PCS to S343 provides for an alternate form of regulation for eligible LECs, it would not make any changes to taxes or fees that apply to telephone service, including the telecommunications sales tax and the utility regulatory fee. As a result, the bill does not have a fiscal impact.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 4-5 **TIME:** 1 pm

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	Page Name	Hometown	Sponsoring Senator
1	Caroline McMurry	Statesville	Forrester
2	Olivia Lanier	Jacksonville	Brown
3	Breana Smith	Wendell	Berger
4			
5			
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Do not add names below the grid.

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 5, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mary Todd	Brooks Pierce
Celeste Stanley	Freedomworks
MATTHEW KANDRACH	60 PLUS ASSOC.
LaVoy Spooner	AT&T
Matt Wolfe	Parker Poe
Chuck Greene	AT+T
CARLOS E. SANCHEZ	AT&T
John Tyler	ATT
Elizabeth Biser	Brooks Pierce
Selena Brent	Delta Sigma Theta
Mabel Watson	Delta Sigma Theta
Venessa Hazelton	AT&T

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

April 5, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Zelma Dixon-Johnson	Delta Sigma Theta

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

April 5, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Poyner Spruill
Jaime King	NCTEL
Thomas Lee	Fitch, Lee, Mercer
Dianna Downey	NCUC - Public Staff
John Garrison	NCUC - Public Staff
Rob Smith	AT&T
Barbara Hoot	NCCTA
Walter Wells	AT&T
Lemuel Hinton	NCUC Staff
Daniel Hoy	"
Connie Hanby	Electricities of NC

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

April 5, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Virginia Ann Lichner	Harrell & Assoc

SENATE FINANCE COMMITTEE
Wednesday, April 13, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on April 13, 2011 in room 544 of the Legislative Office Building. Amaranth Brunner of Murphy and Mary Shell of Bryson City served as pages. Twenty-nine members of the committee were present. Senator Rucho presided as chair.

H.B. 129 – Level Playing Field/Local Gov't Competition

Representative Avila was recognized to explain the bill. Senator Tillman moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would create new requirements for cities and joint agencies that operate a communications service that is offered to the public for a fee. It also expands that service area boundary for MI-Connection and makes clarifying and conforming changes. Heather Fennell, a staff attorney with the Research Division, was recognized to explain the bill. Susan Klutz, mayor of Salisbury, was recognized to speak in opposition to the bill and said that she did not want this to be a "municipality vs. cable" bill. Randy Heeman, North Hills Christian School, was happy about being able to link to Salisbury's system to have internet at the school. Casey Mahoney, a Rowan County small business owner, was dissatisfied with Time Warner's lack of customer service and happy with Salisbury's service. Vance Holloman, Deputy State Treasurer, spoke in opposition to the bill due to the debt incurred by the municipalities, concerned that it was detrimental to the state as a whole. He also felt it was unfair to change the rules after the system was in place. Jeff Klein, a BB&T representative, spoke of the benefits of Wilson's Green Light system to BB&T's loan division. Grant Goings, Wilson City Manager, was recognized to that after a 15 negotiation with Embarq to attempt a private/public partnership, Embarq changed its mind. He requested exemptions to protect Wilson. Don Oliver, Wilson Fire Department, stated the benefits to public safety. Eric Smith, Wilson police department, was concerned about how other departments will operate without Wilson's type of system. Glen Jernigan, Fayetteville City Works' lobbyist, requested that Fayetteville be exempted from this bill. John Bayer, a Salisbury citizen, spoke in opposition to the Salisbury system. Bobby Cashion, a Davidson citizen, called the system a fiscal fiasco. Jeff Mixon, Americans for Prosperity, thought municipalities should not be allowed to offer this service. Jack Stanley, Time Warner's regional vice president, spoke in favor of the bill. Marcus Trathen, lobbyist for the NC Cable Telecommunications Association, spoke of the conflict of cities providing services already for being provided by businesses. Steve Brewer, a lobbyist for Century Link, spoke in favor of the bill. Paul Meyer, a lobbyist for the League of Municipalities, said that the industry has legitimate concerns, but an agreement was reached between industries and municipalities and now industries want to change the rules. Arek Kempinski, a Cedar Grove citizen, expressed outrage at the customer service and lack of service provided by Embarq. A copy of the PCS, the summary, and the speakers' signup sheet is attached.

The meeting adjourned at 1:56 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 26, 2011	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 125	NC School of Biotechnology and Agriscience.	Senator Hartsell Senator Brown
SB 144	Cash Converters Must Keep Purchase Records.	Senator Meredith
SB 366	Manufactured Home Titling Changes.	Senator Newton Senator Goolsby Senator Daniel
SB 438	Clarify Motor Vehicle Licensing Law.	Senator Apodaca
SB 447	Rewrite Landscape Contractor Laws.	Senator Brown Senator Apodaca
SB 709	Energy Jobs Act.	Senator Brown Senator Rucho Senator Tucker

Senator Harry Brown, Chair

ROBERT S. CASHION

April 6, 2011

North Carolina Senate Standing Committee
North Carolina General Assembly
Legislative Building
16 West Jones Street
Raleigh, NC 27601

RE: Level Playing Field legislation (HB 129 - SB 87).

Dear Committee:

I am writing you as concerned citizen regarding the pending North Carolina Senate Bill 87 "an Act to protect jobs and investment by regulating local government competition with private business".

As you know on or about August 16, 2007, the towns of Davidson and Mooresville entered into a purchase agreement to purchase the assets of Adelphia Communications Corporation which Time Warner was acting as the operating trustee/receiver for the operating assets of Adelphia. This transaction was financed with $80.00 million bond offering (Certificate of Participation "COP" bonds). The COP bonds give municipalities the flexibility to raise capital **without** the consensus of a bond referendum. These bonds were issued contrary to the will of the citizens of the Town of Davidson. Five board members recklessly indebted the town due to the greed of competing with Timer Warner. When asked about the cable company in 2007, Mayor John Woods said "Don't worry we are going to make a ton of money on this".

The Local Government Commission "LGC" imprudently gave the towns of Mooresville and Davidson the right to incur the bond indebtedness and by default the license to compete with private enterprises. Currently, the operating performance of MI Connection is not able to pay all of their obligations in a timely manner. As of June 30, 2010, the financial profile of the company is revenues of $14.8 million and operating cash flow (EBIDA) of $1.26 million and $100.0 million in debt. This is not enough to support the $7.4 million required for principal and interest payments and the $3.0 million in annual capital expense that is required to keep the business update in current technological improvements. Capital contributions from the town's of Mooresville and Davidson are $6.0 - $ 8.0 million dollars annually which supports the cash flow shortfall of MI Connection.

The COP's bonds are non-recourse debts to the Town of Mooresville as they are not general obligation bonds. The COP's official statement on page 15 states:

"NO DEFICIENCY JUDGEMENT MAY BE RENDERED AGAINST THE TOWN IN ANY ACTION FOR ANY BREACH OF CONTRACT. THE TAXING POWER OF THE TOWN IS

Post Office Box 1702, Davidson, NC 28036
704-896-5994 Home 704-906-1658 Cell

NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UND THE CONTRACT."

The towns are continuing to fund the operations in spite of having no legal compulsion to do so. These payments account for 25% of The Town of Davidson's budget. Again, the indebtedness was entered into without the consent of the citizens.

The towns were not professionally equipped to take on such a project and have mismanaged one fiasco to another. The towns were out negotiated in the purchase of the assets and enter into a poorly negotiated management contract with BVU Utilities. Additionally, the towns have mismanaged and had budget overruns in the upgrade of the cable system. All of this was enabled because the town have unlimited resources to levy taxes on citizens that did not vote for these bonds. Every cable and satellite provider would like to have unlimited ability to have price increases on their customers which is what the towns effectively have with the ability to increase taxes on their citizens.

Government should not be able to compete with private enterprise when there are a viable providers of such services in the municipality's area. Time Warner, Direct TV, AT&T and Dish Network are all very competent providers of cable and satellite services in the area. Municipal intervention in the cable industry was not needed and should not be permitted. City governments are ill-suited to compete against private businesses in offering subscription video, telephone and broadband services. These technologies are rapidly changing, as are consumer preferences, requiring constant investment and innovation.

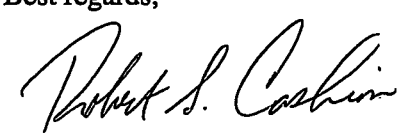
The decisions of a few from the LGC, Town of Mooresville and Town of Davidson have forever negatively affected the citizens of these towns. These decisions will force the towns to raise property taxes and put undue burden on citizens. In particular, elder citizens on fixed incomes may have to leave their homes because they can no longer afford the tax burden of living in these towns.

This bill will prevent other cities from making the same mistakes that the towns of Davidson and Mooresville have made.

Please vote YES for North Carolina Senate Bill 87.

Thank you for your time.

Best regards,



Robert S. Cashion
704-896-5994
413 Pine Rd
Davidson, NC 28036

POLICY PAPER

March 2009
No. 0309

Published by AMERICANS FOR PROSPERITY

Municipal Broadband's Record of Failure

A Profile in Market Intrusion

James Valvo
Assistant for Policy and Public Affairs

The recently passed American Recovery and Reinvestment Act included over $7 billion to stimulate broadband infrastructure development and Internet demand. The legislation intends for the funds to help both unserved and underserved areas. Unserved areas include rural communities with no existing service provider, while underserved indicates areas with low capacity or exceedingly low enrollment rates. This bill must not be hijacked to redirect funds into markets that already contain multiple private Internet service providers.

Before billions of taxpayer dollars are spent on municipal broadband projects under the guise of economic stimulus, we should consider the results of recent projects that have already been undertaken. The results, almost without exception, have been overwhelmingly negative.

The complexity of public-private structures that are employed in municipal broadband projects introduces a bureaucracy and an inertia that makes these systems poor competitors with commercial services, leading to taxpayer dollars being squandered on subsidized systems. On the whole, such hybrid relationships have not performed as advertised.

Conversely, the private sector continues to rapidly develop new broadband services that offer higher quality and innovative services at competitive prices. Since 1996, more than $146 billion has been reinvested by the cable industry to expand broadband services. Rapid technological advances by wireless providers has improved the speed and coverage of wireless data services, reducing the demand for WiFi services overall and even further with municipal providers in particular.

The stated goal of "free" or low-cost municipal service is to bridge the digital divide and provide poor citizens with access to the online world. However, the private sector, including charity and non-profit organizations, has proven far more adept at solving these types of issues in other areas and Internet service will certainly be no exception; see the Philadelphia example below.

Easily the biggest problem with municipal projects is that they commit taxpayer money to projects that nearly always run over budget for construction, are not financially sustainable once they are built and rely on future subsidies to provide so-called "free

Private "investors will finish building the network ... and plan to work with nonprofit organizations ... to offer services to people who don't have Internet access."
- IDG News Service, 06/17/2008

service." As is always the case when governments enter the free market, distortions in price, customer service and availability hinder competition and ruin what could otherwise be a profitable venture.

This paper will examine the recent history of local governments attempting to subsidize broadband access in the face of private sector competition. This document is a compilation of available public information regarding the most significant municipal broadband projects. We examine large and small markets domestically as well as international examples in Asia and Australia.

The result of our investigation is that taxpayer-subsidized municipal broadband projects are nothing more than a record of failure.

Domestic Case Studies

Philadelphia, Pennsylvania

The Wireless Philadelphia project is a good example of how technological innovation outstrips the languid pace of bureaucracy. In 2005, the project was initially hailed as the nation's most ambitious municipal effort to provide free citywide coverage. Philadelphia planned to use "refurbished gear [that] could build the entire project with 'non-city' resources."[1] While the city struggled to get the system in place, the private sector forged ahead with innovation; in three short years the entire project was out of date and the private partner EarthLink withdrew saying, "making significant further investments in this business could be inconsistent with our objective of maximizing shareholder value."[2] Additional complications with the project include:

- By 2007, the project had already run 30% over budget, while corporate partner EarthLink massively scaled back its scope.[3]
- As many critics had warned, EarthLink had to deploy 42 Wi-Fi access points per square mile, twice what city planners had predicted.[4]
- The New York Times reported on the unrealistic ambitions and technological glitches that are endemic when inexperienced bureaucrats venture into the technological marketplace.[5]
- In June 2008, Philadelphia Mayor Michael Nutter announced that a group of private investors were saving the project, and would complete the city network in coordination with non-profit organizations to deliver free services to those who cannot afford them, focusing on fostering adoption and getting hardware, support and training to people who need it.[6]

The Philadelphia experience should provide a clarion example to those who insist on putting government planning ahead of private sector development. In this case, the citizens of Philadelphia were lucky because the private sector ultimately rode to the rescue and saved the project.

Chicago, Illinois

In contrast to the Philadelphia project, Chicago's foray into the municipal broadband arena was not plagued by technological inefficacy but instead fell prey to market cost structures. The city government launched an initiative to bring in private companies to compete for the citywide project. However, by the time the bidding process had ended the private Internet service providers in the area were already effectively serving the demand. The Chicago Tribune profiled the collapse of the project this way, "technology is advancing and the cost of online access for consumers is declining so dramatically that Chicago has other avenues to promote more use of the Internet."[7]

With EarthLink rethinking their

municipal broadband activity and other bids evaporating due to price point constraints, AT&T and Sprint Nextel are both developing private projects to serve the Chicago market now that it is free of government distortion.

Houston, Texas

As EarthLink's business model fell apart due to untenable municipal cost structures, the company was forced to pay penalties for the contracts is was unable to service, once such community was Houston. An August 2007 article in the Houston Chronicle profiled the delays that the city was experiencing due to lack of interested customers. The piece quoted Craig Settles, a municipal Wi-Fi consultant, who said, "All of the numbers are pointing toward the consumer being a weak part of the financial foundation." Even with a $2.5 million commitment from the city to serve as an anchor tenant to offset the expected low customer demand, the project was deemed unviable.

Houston provides "another case where the resulting municipal system turns out to be nothing like what was promised." **- Reason Foundation, 11/12/2008**

The company instead decided it was better fiscally to pay a multi-million dollar fine to walk away from the unsound investment. The city is now using the $3.5 million received from EarthLink upon cancellation of the project to fund hotspots in low-income areas, which will be used exclusively for publicly-funded computers in classrooms, community centers, and other public programs.[8] These city networks will be password protected and will not be available to the general public. This is clearly not in line with the original intent.

Lompoc, California

Large cities are not the only ones who have tried unsuccessfully to manage municipal broadband as though it were a utility. Even on a small scale, like the one implemented in Lompoc, California, cities are running into service issues. The private sector thrives because it has a vested interest in providing a high-quality, customer driven product. Municipalities fail to this effect because they are exercising a near-monopoly funded through taxes that are wrested from its citizens.

Lompoc ran into this harsh reality when it spent nearly $3 million on a citywide municipal wireless network and only signed up 281 customers in the networks first seven months of operation.[9] The city has reported that is needs more than 4,000 paying customers to break even, with Lompoc Utilities Director Ron Stassi admitting that that figure may be too low because the city slashed rates trying to attract more customers. It is unknown if they will ever reach the needed penetration, in the mean time taxpayers are subsidizing the venture. Stassi continued by saying "With WiFi we're in a competitive environment ... it forces us to have a high concentration on customer satisfaction to keep customers from going to a competitor." A fight the city is currently losing.

"... 24 new customers per month, far short of the number that the city needs to make the wireless Internet utility service financially viable." **- Lompoc Record, 4/9/2007**

Lompoc has also been plagued by poor reception on the wireless network—a problem that is indicative of the inexperience that municipalities are grappling with when trying to enter the market. The city's Wireless Services Administrator Richard Gracyk said "he hadn't realized how important the back-end elements were to the whole picture."[10] The city has spent $10,676 per subscriber to provide service, using currently available connection figures to get the poor performance that is making attracting and retaining customer difficult. In July 2008, Lompoc switched to a new gateway server built by Aptilo Networks. The new server provides back-end upgrades that improve customer service and network troubleshooting.[11] This transition has added cost to the project and further pushed back the breakeven point.

The odds of Portland meeting its targeted 90% coverage are "one in a billion." – **Willamette Week Online, 3/29/2007**

Portland, Oregon

Lompoc is not the only city to have poor quality connections doom their municipal Wi-Fi dreams. According to a report by Portland's Personal Telco Project, a nonprofit committed to building a community-supported wireless network, the city's system has failed to meet the benchmark of 90% coverage within 500 feet of a Wi-Fi access point. Instead the plan reaches just 50%.[12] The study's authors estimated the odds of meeting the 90% threshold at "one in a billion." The spotty coverage has put service out of reach for many would be users, dampening advertising revenue on the ad-supported free-of-charge system, forcing Portland's corporate partner to shut down the service.

The Willamette Week Online reported that "Metro-Fi began establishing the network in December of [2006] and is responsible for its complete roll-out. The network is an ad-supported, free-of-charge system and is not subsidized by tax or levy." However, this light-duty network, which is that only type that can be supported without tax dollars, is the cause of the problems with establishing service.

In April 2008, MetroFi, contracted to develop the network, stated that only fifteen to twenty percent of the system was operational, and that it did not have the necessary funds to complete the project.[13] The company returned to the city seeking more funds but was turned away, marking an end to the saga. Officials have given the company that developed the city's failed municipal WiFi until the end of the year to remove the equipment it installed on city utility poles.[14]

MetroFi was also forced to discontinue service in Foster City, California effective June 20, 2008 for similar reasons.[15]

Ashland, Oregon

When private companies have business models that do not perform, they go out of business as we have seen in the aforementioned examples. However, when cities engage in incursions into the marketplace that go sour, they turn to taxpayers to bail them out. Ashland, Oregon is once such example. In early 2007, when the city folded its cable TV business, which was financed by taxpayer bonds, it incurred a $15.5 million deficit. With interest on the debt mounting, the city plans to subsidize the payments using revenues from other city departments. Some city officials are worried that these cross subsidies will result in electric and other utility rate hikes, while others are considering property tax hikes to make up the difference.[16]

St. Cloud, Florida

Even when municipalities do get networks up and running, the service they provide is often so far below the industry standard that citizens would rather pay the higher price than suffer through government mismanagement. In St. Cloud, Florida, many educators and residents in the 28,000-person Orlando suburb are still paying to use their own internet service providers, as dead spots and weak signals keep them offline and force engineers to retool the free system.[17]

An Associated Press story profiled a disappointed St. Cloud resident Joe Lusardi who is frustrated with the city's administration of the system. Lusardi said he was told that he had to pay $170 for a special wireless bridge to access the "free" network.

From the AP article:

At first, a desktop computer in Lusardi's house could use the Wi-Fi network with no problem, but his laptop would only work outdoors.

"It'll probably be a major challenge for some time until the technology is such that it works properly."
- St. Cloud Mayor Donna Hart, eSchool News 6/15/2006

"The experience is that large-scale Wi-Fi projects have proved ineffective at meeting the needs of local businesses and the community. Most schemes sponsored by overseas governments have collapsed and require further funding to the tune of tens of millions of dollars ... I cannot expose taxpayers to that sort of risk."
- Eric Roozendaal, Member New South Wales Legislative Council, The Sydney Morning Herald, 5/1/2008

Even then it was too slow and unreliable, so he kept his $20 per month Sprint DSL service. Now the desktop doesn't even work, and he's completely abandoned the idea of dropping his pay service and using the network. "

It's just total frustration," Lusardi said. "I'm going to stay with the DSL and just forget it, because I don't think it's going to work. Very few people are going to use it, and they're going to say it's underutilized and they're going to shut it down.

Additionally, after spending $2.6 million to establish its poorly functioning public WiFi network, $236,920 more taxpayer dollars were requested from the city in order to bring service to 14 neighborhoods that "slipped through a hole in the project."[18]

International Trends

Sydney, Australia

Despite a concerted effort by the local government to blanket Sydney, Australia and the surrounding areas in high-speed Internet coverage, the plan never got off the ground. In May of 2008, the Minister of Commerce announced that plans for free wireless broadband for Sydney and other major population centers had been canceled, based upon the impracticatlity of fifteen proposals to build the network.[19]

Taipei, Taiwan

The East Asian powerhouse has fallen victim to the same forces that have plagued American projects. Undependable coverage, poor customer service and inability to compete on price have all put Taipei in the same untenable position as the American cities profiled above. Competition from private companies has put the government-sponsored enterprise in jeopardy.[20]

A 2007 report from the Taiwan Review said, about 60,000 people signed up for free subscriptions to the Wi-Fi service during the beta testing phase. But in 2006, when people started to be charged for the service, $12 per month or $127 per year, only a few thousand subscribers remained. Interest has grown to over 200,000, but it is still far from a break-even point in the business model, which is estimated at 500,000. [21]

Conclusion

This list of examples should serve as a cautionary tale for those designing the implementation of the broadband section of the stimulus program. Ideally, broadband services would be provided by the free market without government interference or subsidy. However, given that massive subsidies are now a reality, they should be primarily structured to encourage private Internet service in unserved rural communities. These areas are in need of service but do not have a private sector provider who will suffer from taxpayer subsidized municipal service.

A secondary priority should be underserved areas. Grants should be awarded to companies to encourage increased viability on the demand side of the equation, which has the potential to make these projects financially sustainable. However, this should not occur through the same style of so-called public-private partnerships that has produced disastrous results over the past decade.

An active government role in the broadband marketplace has produced nothing but wasted tax dollars and a record of failure.

Citations

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[2]*EarthLink Press Release "EarthLink Considering Strategic Alternatives for Municipal Wireless Business" 16 Nov. 2007*

[3]*Sharma, Amol. "Wireless -- With Strings Attached." Wall Street Journal. 16 Aug. 2007*

[4]*Titch, Steve. "Competition and Choice." Reason.org. Weblog post. Political. 11 Feb. 2009*

[5]*Urbina, Ian. "Hopes for Wireless Cities Fade as Internet Providers Pull Out." New York Times 22 Mar. 2008*

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[11]*See 10.*

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[13]*Weiss, Todd R. "Portland muni Wi-Fi project hits hard times." Computerworld 23 Apr. 2008.*

[14]*Springer, Pete. "Portland May Have WiMAX Internet Access By End Of The Year." OPB News 13 Aug. 2008.*

[15]*Lorenz, Andra "MetroFI Discontinues Foster City Wireless Services" Press Release 22 May 2008*

[16]*Admin. "Case Study: Ashland Fiber Network." Online posting. 5 Feb. 2009*

[17]*"Pioneering Wi-Fi city faces setbacks." eSchool News 15 June 2006.*

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[20]*"Cities Realize Wi-Fi Isn't Magic Pixie Dust." Broadband DSL Reports 10 Apr. 2007.*

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 4

HOUSE BILL 45*

Committee Substitute Favorable 3/3/11
Committee Substitute #2 Favorable 3/10/11
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/6/11

Short Title: Accelerate Cleanup of Industrial Properties. (Public)

Sponsors:

Referred to:

February 8, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND PRIVATE RESOURCES.

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a remediation process that requires that contaminated industrial sites be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that there are contaminated industrial sites in North Carolina, including land and other property, surface water, and groundwater, that are adversely affected by environmental contamination due to the presence of drilling waste; hazardous and toxic materials, substances, and wastes; solid waste; oil; and other wastes, contaminants, and regulated substances; and

Whereas, the General Assembly finds that the presence of environmental contamination on industrial sites creates both potential and actual harm to public health, safety, and welfare and to the environment; and

Whereas, the General Assembly finds that this potential and actual harm results in substantial economic losses, including reduced property values and tax revenues, decreased ability to develop and expand the beneficial use of these sites, and other opportunity costs because of the uncertainties and concerns that result from the environmental contamination of these sites; and

Whereas, the General Assembly finds that it is in the public interest that contaminated industrial sites are cleaned up or managed in a manner that protects public health, safety, and welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987; the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976; the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988; the Brownfields

Property Reuse Act of 1997; the Dry-Cleaning Solvent Cleanup Act of 1997; the federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986; and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that North Carolina's groundwater is a valuable public and private resource, serving as the drinking water source for one-half of the State's population and also as a water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of North Carolina's surface water and groundwater resources will become increasingly important to the continued economic vitality of the State in the future; and

Whereas, the General Assembly finds that use of site-specific remediation standards based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated site can be protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that use of site-specific remediation standards in appropriate circumstances may encourage accelerated cleanup of contaminated industrial sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated site are to be applicable or relevant under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or release of contaminants to the environment that would result in additional contaminated sites; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310.62 through G.S. 130A-310.64 are reserved for future codification purposes.

SECTION 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 8. Risk-Based Environmental Remediation of Industrial Sites.

"**§ 130A-310.65. Definitions.**

As used in this Part:

(1) "Background standard" means the naturally occurring concentration of a substance in the absence of the release of a contaminant.

(2) "Commission" means the Environmental Management Commission created pursuant to G.S. 143B-282.

(3) "Contaminant" means any substance regulated under any program listed in G.S. 130A-310.67(a).

(4) "Contaminated industrial site" or "site" means any real property that meets all of the following criteria:

a. The property is contaminated and may be subject to remediation under any of the programs or requirements set out in G.S. 130A-310.67(a).

b. The property is or has been used primarily for manufacturing or other industrial activities for the production of a commercial product. This includes a property used primarily for the generation of electricity.

c. No contaminant associated with activities at the property is located off of the property at the time the remedial action plan is submitted.

d. No contaminant associated with activities at the property will migrate to any adjacent properties above unrestricted use standards for the contaminant.

(5) "Contamination" means a contaminant released into an environmental medium that has resulted in or has the potential to result in an increase in the concentration of the contaminant in the environmental medium in excess of unrestricted use standards.

(6) "Fund" means the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11.

(7) "Institutional controls" means nonengineered measures used to prevent unsafe exposure to contamination, such as land-use restrictions.

(8) "Registered environmental consultant" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to Part 3 of Article 9 of Chapter 130A of the General Statutes and rules adopted to implement the Part.

(9) "Remedial action plan" means a plan for eliminating or reducing contamination or exposure to contamination.

(10) "Remediation" means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.

(11) "Systemic toxicant" means any substance that may enter the body and have a harmful effect other than causing cancer.

(12) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses; that are protective of public health, safety, and welfare and the environment; and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Commission, the Commission for Public Health, or the Department.

"**§ 130A-310.66. Purpose.**

It is the purpose of this Part to authorize the Department to approve the remediation of contaminated industrial sites based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety, and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination.

"**§ 130A-310.67. Applicability.**

(a) This Part applies to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9 of Chapter 130A of the General Statutes, including voluntary actions under G.S. 130A-310.9 of that act, and rules promulgated pursuant to those statutes.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976,

Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, and Article 9 of Chapter 130A of the General Statutes.

(3) The solid waste management program administered pursuant to Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article 9 of Chapter 130A of the General Statutes.

(5) The groundwater protection corrective action requirements adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes.

(b) This Part shall not apply to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Leaking Petroleum Underground Storage Tank Cleanup program under Part 2A of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(3) The pre-1983 landfill assessment and remediation program established under G.S. 130A-310.6(c) through (g).

(c) This Part shall apply only to sites where a discharge, spill, or release of contamination has been reported to the Department prior to March 1, 2011.

"**§ 130A-310.68. Remediation standards.**

(a) When conducting remediation activities pursuant to this Part, a person who proposes to or is required to respond to the release of a contaminant at a contaminated industrial site shall comply with one of the following standards:

(1) The unrestricted use standards applicable to each affected medium.

(2) The background standard, if the background standard exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

(b) Site-specific remediation standards shall be developed for each medium as provided in this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property comprising the site. Site-specific remediation standards shall be developed in accordance with all of the following:

(1) Remediation methods and technologies that result in emissions of air pollutants shall comply with applicable air quality standards adopted by the Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated

whether the receptors are located on or off the site where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Permits for facilities located at sites covered by any of the programs or requirements set out in G.S. 130A-310.67(a) shall contain conditions to avoid exceedances of applicable groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to operation of the facility.

(5) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(6) Soil shall be remediated to unrestricted use standards on residential property with the following exceptions:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to contaminated soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures or impracticability of removal, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(7) The potential for human inhalation of contaminants from the outdoor air and other site-specific indoor air exposure pathways shall be considered, if applicable.

(8) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(9) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one-in-1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (July 1, 2003 Edition). The cumulative excess lifetime cancer risk to an exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

(10) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.

(11) The site-specific remediation standards for each medium shall be adequate to avoid foreseeable adverse effects to other media or the environment that are inconsistent with the risk-based approach under this Part.

"**§ 130A-310.69. Remedial investigation report; remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall submit a remedial investigation report to the Department prior to submitting a remedial action plan. The remedial investigation report shall include, but is not limited to, a legal description of the location of the site; a map showing the location of the site; a description of the contaminants involved and their concentration in the media of the site; a narrative description of the methodology used in the investigation; a description of all on-site releases of contamination; a site map, drawn to scale, showing benchmarks, directional arrow, location of property boundaries, buildings, structures, all perennial and nonperennial surface water features, drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities, storage vessels, and existing on-site wells; identification of adjacent property owners and adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the site and adjacent properties for the existence of environmentally sensitive areas; a description of groundwater monitoring well design and installation procedures; a map, drawn to scale, that shows all groundwater sample locations; a description of field and laboratory quality control and quality assurance procedures followed during the remedial investigation; a description of methods used to manage investigation-derived wastes; tabulation of analytical results for all sampling; copies of all laboratory reports; a description of procedures and the results of any special assessments; and any other information required by the Department or considered relevant by the investigator. The remedial investigation shall assess all contaminated areas of the site, including types and levels of contamination, and the risk that the contamination poses to public health, safety, and welfare and to the environment.

(b) A person who proposes to conduct remediation pursuant to this Part shall develop and submit a proposed remedial action plan to the Department. A remedial action plan shall provide for the protection of public health, safety, and welfare and the environment. A remedial action plan shall do all of the following:

(1) Identify actions required to remove, treat, or otherwise appropriately mitigate or isolate the source of contamination to ensure that the source will not cause unrestricted use standards to be exceeded in any medium.

(2) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 130A-310.68. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(3) Identify the current and anticipated future uses of property comprising the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(4) Identify the current and anticipated future uses of groundwater in the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(5) Determine the appropriate method of remediation to achieve the site-specific remediation standards.

(6) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.

(7) Specify any measures that may be necessary to prevent any discharge into surface waters during implementation of the remedial action plan that violates applicable surface water quality standards adopted by the Commission.

(8) Specify any measures that may be necessary to prevent any air emission during implementation of the remedial action plan that violates applicable air quality standards adopted by the Commission.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 130A-310.68.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated site at the conclusion of the contaminant-reduction phase of remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide for the imposition and recordation of land-use restrictions as provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.

(12) Provide for submission of an annual certification to the Department by the property owner that land use at the site is in compliance with land-use restrictions recorded pursuant to this Part and that the land-use restrictions are still properly recorded in the chain of title for the property.

(13) Provide a detailed description of the proposed remedial action to be taken; the results of any treatability studies and additional site characterization needed to support the proposed remedial action; plans for postremedial and confirmatory sampling; a project schedule; a schedule for progress reports to the Department; and any other information required by the Department or considered relevant by the person who submits the proposed remedial action plan.

(14) Provide a description of measures that will be employed to ensure that the safety and health of persons on properties in the vicinity of the site and persons visiting or doing business on the site will not be adversely affected by any remediation activity.

(15) Provide a reasonable estimate of the probable cost of the remedial action sufficient for the Department to determine an acceptable level of financial assurance.

(16) Provide proof of financial assurance as required by G.S. 130A-310.72.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation, including an evaluation of all of the following:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any postremediation activity that may be required, including, but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

e. Time required to achieve remediation standards.

(2) Toxicity, mobility, and volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, and volume; and the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

(3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures; expected operational reliability; available capacity and location of needed treatment, storage, and disposal services for wastes; time to initiate remediation; and approvals necessary to implement the remediation.

(d) The development of a remedial action plan may require supplemental submissions and revisions based on Department review, remedial action pilot studies, and public comment from local government and citizens.

"**§ 130A-310.70. Notice of intent to remediate.**

In addition to the public participation requirements of the individual programs listed in G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site, and to all adjoining landowners. The notice shall include all of the information required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to site-specific remediation standards. The person shall submit to the Department a copy of the notice of intent provided to local governments and adjoining landowners, a certification that the notice of intent to remediate was so provided to those parties, and all information and comments that the person received in response to the notice. In addition, the person shall, when appropriate, describe how the remedial action plan was modified to address comments received in response to the notice.

"**§ 130A-310.71. Review and approval of proposed remedial action plans.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall do all of the following:

(1) Determine whether site-specific remediation standards are appropriate for a particular contaminated site. In making this determination, the Department shall consider proximity of the contamination to water supply wells or other receptors; current and probable future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(2) Determine whether the party conducting the remediation has adequately demonstrated through modeling or other scientific means acceptable to the Department that no contamination will migrate to adjacent property at levels above unrestricted use standards.

(3) Determine whether the proposed remedial action plan meets the requirements of G.S. 130A-310.69.

(4) Determine whether the proposed remedial action plan meets the requirements of any other applicable remediation program except those pertaining to remediation standards.

(5) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(6) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated site at the conclusion of the contaminant-reduction phase of the remediation.

(7) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(8) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(9) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment.

(10) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan has the burden of demonstrating with reasonable assurance that contamination from the site will not migrate to adjacent property above unrestricted use levels and that the remedial action plan is protective of public health, safety, and welfare and the environment by virtue of its compliance with this Part. The demonstration shall (i) take into account actions proposed in the remedial action plan that will prevent contamination from migrating off the site; and (ii) use scientifically valid site-specific data.

(c) The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments and adjoining landowners pursuant to G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 120 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved at the end of that time period.

"**§ 130A-310.72. Financial assurance requirement.**

The person conducting remediation of a contaminated industrial site pursuant to the provisions of this Part shall establish financial assurance that will ensure that sufficient funds are available to implement and maintain the actions or controls specified in the remedial action plan for the site. The person conducting remediation of a site may establish financial assurance through one of the following mechanisms, or any combination of the following mechanisms, in a form specified or approved by the Department: insurance products issued from entities having no corporate or ownership association with the person conducting the remediation; funded trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local government financial tests; corporate guarantees; local government guarantees; capital reserve funds; or any other financial mechanism authorized for the demonstration of financial assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition) and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina

Administrative Code. Proof of financial assurance shall be provided in the remedial action plan and annually thereafter on the anniversary date of the approval of the plan.

"**§ 130A-310.73. Attainment of the remediation standards.**

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been implemented and applicable soil, groundwater, surface water, and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering, or institutional controls, except that the person conducting the remediation may not demonstrate attainment of an unrestricted use standard or a background standard through the use of institutional controls alone. When the remedial action plan has been fully implemented, the person conducting the remediation shall submit a final report to the Department, with notice to all local governments with taxing and land-use jurisdiction over the site, that demonstrates that the remedial action plan has been fully implemented, that any land-use restrictions have been certified on an annual basis, and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a determination that no further remediation beyond that specified in the approved remedial action plan is required.

(b) The person conducting the remediation has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the person conducting the remediation has completed remediation to the approved remediation standard and met all the requirements of the approved remedial action plan, the Department shall issue a determination that no further remediation beyond that specified in the approved remedial action plan is required at the site. Once the Department has issued a no further action determination, the Department may require additional remedial action by the responsible party only upon finding any of the following:

(1) Monitoring, testing, or analysis of the site subsequent to the issuance of the no further action determination indicates that the remediation standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the site as part of the remediation have been violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or no further action determination for the site are not adequately funded or are not adequately implemented.

(4) A contaminant or hazardous substance release is discovered at the site that was not the subject of the remedial investigation report or the remedial action plan.

(5) A material change in the facts known to the Department at the time the written no further action determination was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

(6) The no further action determination was based on fraud, misrepresentation, or intentional nondisclosure of information by the person conducting the remediation.

(7) Installation or use of wells would induce the flow of contaminated groundwater off the site.

(d) The Department shall issue a final decision on a request for a determination that remediation has been completed to approved standards and that no further remediation beyond

that specified in the approved remedial action plan is required within 180 days after receipt of a complete final report. Failure of the Department to issue a final decision on a no further remediation determination within 180 days after receipt of a complete final report and request for a determination of no further remediation may be treated as a denial of the request for a no further remediation determination. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

"**§ 130A-310.74. Compliance with other laws.**

Where a site is covered by an agreement under the Brownfields Property Reuse Act of 1997, as codified as Part 5 of Article 9 of Chapter 130A of the General Statutes, any work performed by the prospective developer pursuant to that agreement is not required to comply with this Part, but any work not covered by such agreement and performed at the site by another person not a party to that agreement may be performed pursuant to this Part.

"**§ 130A-310.75. Use of registered environmental consultants.**

The Department may approve the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part. If remediation under this Part is not undertaken voluntarily, the Department may not require the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part.

"**§ 130A-310.76. Fees; permissible uses of fees.**

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund in an amount equal to four thousand five hundred dollars ($4,500) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than one hundred twenty-five thousand dollars ($125,000) to the Fund for any individual site, regardless of its size. This one-time fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

(b) Funds collected pursuant to subsection (a) of this section may be used only for the following purposes:

(1) To pay for administrative and operating expenses necessary to implement this Part.

(2) To establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to this Part.

"**§ 130A-310.77. Construction of Part.**

This Part shall not be construed or implemented in any of the following ways:

(1) In any manner that would jeopardize federal authorization under any of the federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or would otherwise conflict with federal authority under those statutes, programs, and requirements. This Part is supplemental to the programs and requirements set out in G.S. 130A-310.67(a) that would otherwise govern the remediation of a contaminated industrial site. Where the definitions, provisions, or requirements of this Part conflict with the definitions, provisions, or requirements of an otherwise applicable remediation program, this Part shall control, unless expressly stated to the contrary.

(2) To limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law necessary to address an imminent threat to public health, safety, or welfare or the environment.

(3) To alter the requirements of programs to prevent or mitigate the release or discharge of contaminants to the environment, including permitting requirements that regulate the handling of hazardous substances or wastes.

(4) To supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a site and any land-use restrictions imposed as part of a remedial action plan shall comply with land-use and development controls adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

SECTION 3. G.S. 130A-310.78 through G.S. 130A-310.80 are reserved for future codification purposes.

SECTION 4. G.S. 130A-310.10(a) reads as rewritten:

"(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division on or before 1 October of each year. The report shall include at ~~least:~~least the following:

(1) The Inactive Hazardous Waste Sites Priority ~~List;~~List.

(2) A list of remedial action plans requiring State funding through the Inactive Hazardous Sites Cleanup ~~Fund;~~Fund.

(3) A comprehensive budget to implement these remedial action plans and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of said ~~plans;~~plans.

(4) A prioritized list of sites that are eligible for remedial action under CERCLA/SARA together with recommended remedial action plans and a comprehensive budget to implement such plans. The budget for implementing a remedial action plan under CERCLA/SARA shall include a statement as to any appropriation that may be necessary to pay the State's share of such ~~plan;~~plan.

(5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental ~~approval;~~approval.

(6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the possible costs of said ~~plans;~~plans.

(7) A list of sites that pose an imminent ~~hazard;~~hazard.

(8) A comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Inactive Hazardous Sites Cleanup ~~Fund; and~~Fund.

(8a) The amounts and sources of funds collected by year received under G.S. 130A-310.76, the amounts and sources of those funds paid into the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11, the number of acres of contamination for which funds have been received pursuant to G.S. 130A-310.76, and a detailed annual accounting of how the funds collected pursuant to G.S. 130A-310.76 have been utilized by the Department to advance the purposes of Part 8 of Article 9 of Chapter 130A of the General Statutes.

(9) Any other information requested by the General Assembly or the Environmental Review Commission."

SECTION 5. The Secretary of Environment and Natural Resources shall make all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 8 of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 2 of this act, is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended.

SECTION 6. G.S. 143-215.104M(f) reads as rewritten:

"**§ 143-215.104M. (Repealed effective January 1, 2012 – See notes) Notice of Dry-Cleaning Solvent Remediation; land-use restrictions in deeds.**

...

(f) Enforcement. – Any restriction on the current or future use of property subject to a Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall be enforced by any owner of the property or by any other potentially responsible party. Any land-use restriction may also be enforced by the Commission through the remedies provided in this Part or by means of a civil action in the superior court. The Commission may enforce any land-use restriction without first having exhausted any available administrative remedies. Restrictions also may be enforced by any unit of local government having jurisdiction over any part of the property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of privity of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction. Failure to submit an annual certification that land-use restrictions are properly recorded and followed shall result in a notice from the Commission to the property owner. The notice shall inform the person of the actions that need to be taken in order for the person to come into compliance and specify a date by which the person must comply, which shall not be less than 30 calendar days from the date the notice is mailed. Any person who fails to comply within the time specified shall then be subject to enforcement procedures as provided in this Part."

SECTION 7. The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially viable responsible party. The Commission shall also identify potential sources of funds to address the projected need for assessment and remediation. The Environmental Review Commission shall report its findings and recommendations, including any legislative proposals, to the 2012 General Assembly upon its convening.

SECTION 8. This act is effective when it becomes law.

HOUSE BILL 45:
Accelerate Cleanup of Industrial Properties

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	April 13, 2011
Introduced by:	Representatives Gillespie, Cook, Gibson	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Fourth Edition		

SUMMARY: ***House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site.***

[As introduced, this bill was identical to S48, as introduced by Sen. Allran, which is currently in Senate Agriculture/Environment/Natural Resources.]

CURRENT LAW AND BACKGROUND:

North Carolina, in conjunction with the federal government, has implemented a number of programs to address remediation or cleanup of environmental contamination. Based on the source, location, and nature of the contaminants present, requirements for oversight and cleanup are established within an applicable program. Each program has its own standards, methods, and requirements. In some cases, a contaminated site may come under the authority of multiple programs.

Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning contaminant concentrations present at a location are acceptable for all uses; are protective of public health, safety, and welfare and the environment; and comply with an applicable program's standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or the Department of Environment and Natural Resources (DENR). Some State programs for cleanup of environmental contamination, however, allow cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards. These programs include the Petroleum Underground Storage Tank Cleanup Program, the Dry-Cleaning Solvent Cleanup Program, and the State's Brownfields Property Reuse Act.

BILL ANALYSIS:

House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site.

Applicability:

Risk-based cleanup would be available for contaminated industrial sites that are governed by cleanup programs for hazardous and solid waste management, groundwater protection, and oil pollution control and where the release of contamination was reported to DENR prior to March 1, 2011. Risk-based cleanup would not be available for contaminated industrial sites that are governed by cleanup programs for leaking underground storage tanks, dry-cleaning facilities, and certain landfills.

Site-specific Remediation Standards:

Site-specific remediation or cleanup standards would be developed for contaminated industrial sites to eliminate or reduce to protective levels any substantial or probable future risk to human health and the environment based on the present or anticipated future use of the site. The standards would have to be developed in accordance with a number of specific requirements for the protection of air quality, surface water and groundwater quality, and human health.

Remedial Investigation Report and Remedial Action Plan:

A person who proposes a risk-based cleanup must prepare and submit to DENR a remedial investigation report that provides detailed information on the site, contamination at the site, risks posed by the contamination, adjacent properties, and any other information required by DENR. The person would then prepare and submit to DENR a proposed remedial action plan that provides for how the site would be cleaned up in order to protect public health, safety, and welfare and the environment and proof of financial assurance that sufficient funds are available to carry out the cleanup.

Notice of Intent to Remediate:

A person who proposes a risk-based cleanup must send a notice of intent to conduct the risk-based cleanup to all local governments having jurisdiction over the site and to all adjoining landowners. The notice must include all of the information contained in the remedial investigation report. The person must also submit to DENR a certification that the notice of intent was properly distributed, information and comments received in response to the notice, and a description of how the remedial action plan was modified in response to the comments.

Review and Approval of Proposed Remedial Action Plans:

DENR must review each proposed remedial action plan and make a number of determinations prior to approving a plan, including whether the site-specific cleanup standards are appropriate for the site, that no unauthorized levels of contaminants will migrate from the site to adjacent properties, and that the plan is protective of public health, safety, and welfare and the environment. In its review and consideration of the proposed plan, DENR must consider information provided by the person who proposes the plan as well as information provided by the local governments and adjoining landowners.

Attainment of the Remediation Standard:

When DENR determines that an approved remedial action plan has been implemented and applicable cleanup standards have been attained, it will issue a determination that no further cleanup is required. Once a determination has been issued, DENR may only require additional cleanup under specific circumstances, such as a finding that subsequent monitoring indicates that cleanup standards were not achieved; an undocumented contaminant release is discovered; or one or more of the restrictions imposed on the site as part of the cleanup have been violated.

Fees:

The fee for participation in a risk-based cleanup is $4,500 for each acre or portion of an acre of contamination, with a cap of $125,000 regardless of the size of the site. The fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program.

Construction of the Act:

The Act may not be construed or implemented to jeopardize federal authorization under any of the federal statutes, programs, or requirements for the cleanup of contamination; limit the authority of DENR to require investigation, response, or cleanup of environmental contamination necessary to address an imminent threat to public health, safety, or welfare or the environment; or to affect or prevent the enforcement of any local government land-use or development regulation or ordinance.

Dry-cleaning Site Compliance with Land-use Restrictions:

House Bill 45 would provide that if a person responsible for a property subject to land-use restrictions under the Dry-Cleaning Solvent Cleanup Act fails to submit an annual certification that the land-use restrictions are properly recorded and followed, the Environmental Management Commission shall issue a notice of such failure to the person. The notice must inform the person of the actions needed to come into compliance and give the person at least 30 calendar days within which to come into compliance. If the person fails to come into compliance during this time, the person will then be subject to enforcement procedures.

Study of Costs Associated with Inactive Hazardous Substance or Waste Disposal Sites:

House Bill 45 would direct the Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, to study the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially-viable responsible party. The Commission will report its findings and recommendations including any legislative proposals to the 2012 General Assembly, upon its convening.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 129*
Committee Substitute Favorable 3/23/11
Third Edition Engrossed 3/28/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H129-CSTD-14 [v.3]

4/12/2011 4:23:49 PM

Short Title: Level Playing Field/Local Gov't Competition. (Public)

Sponsors:

Referred to:

February 21, 2011

A BILL TO BE ENTITLED

AN ACT TO PROTECT JOBS AND INVESTMENT BY REGULATING LOCAL GOVERNMENT COMPETITION WITH PRIVATE BUSINESS.

Whereas, certain cities in the State have chosen to compete with private providers of communications services; and

Whereas, these cities have been permitted to enter into competition with private providers as a result of a decision of the North Carolina Court of Appeals rather than legislation enacted by the General Assembly; and

Whereas, the communications industry is an industry of economic growth and job creation; and

Whereas, as expressed in G.S. 66-58, known as the Umstead Act, it is against the public policy of this State for any unit, department, or agency of the State, or any division or subdivision of a unit, department, or agency of the State to engage directly or indirectly in the sale of goods, wares, or merchandise in competition with citizens of the State; and

Whereas, to protect jobs and to promote investment, it is necessary to ensure that the State does not indirectly subsidize competition with private industry through actions by cities and to ensure that where there is competition between the private sector and the State, directly or through its subdivisions, it exists under a framework that does not discourage private investment and job creation; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 160A of the General Statutes is amended by adding a new Article to read as follows:

"Article 16A.

"Provision of Communications Service by Cities.

"**§ 160A-340. Definitions.**

The following definitions apply in this Article:

(1) City-owned communications service provider. – A city that provides communications service using a communications network, whether directly, indirectly, or through an interlocal agreement or a joint agency.

(2) Communications network. – A wired or wireless network for the provision of communications service.

(3) Communications service. – The provision of cable, video programming, telecommunications, broadband, or high-speed Internet access service to the public, or any sector of the public, for a fee, regardless of the technology used to deliver the service. The terms "cable service," "telecommunications service," and "video programming service" have the same meanings as in G.S. 105-164.3. Neither the sharing of data or voice between governmental entities for internal governmental purposes nor the provision of free services to the public or a subset thereof shall be considered the provision of communications service.

(4) High-speed Internet access service. – Internet access service with transmission speeds that are equal to or greater than the requirements for basic broadband tier 1 service as defined by the Federal Communications Commission for broadband data gathering and reporting.

(5) Interlocal agreement. – An agreement between units of local government as authorized by Part 1 of Article 20 of Chapter 160A of the General Statutes.

(6) Joint agency. – A joint agency created under Part 1 of Article 20 of Chapter 160A of the General Statutes.

"**§ 160A-340.1. City-owned communications service provider requirements.**

(a) A city-owned communications service provider shall meet all of the following requirements:

(1) Comply in its provision of communications service with all local, State, and federal laws, regulations, or other requirements applicable to the provision of the communications service if provided by a private communications service provider.

(2) In accordance with the provisions of Chapter 159 of the General Statutes, the Local Government Finance Act, establish one or more separate enterprise funds for the provision of communications service, use the enterprise funds to separately account for revenues, expenses, property, and source of investment dollars associated with the provision of communications service, and prepare and publish an independent annual report and audit in accordance with generally accepted accounting principles that reflect the fully allocated cost of providing the communications service, including all direct and indirect costs. An annual independent audit conducted under G.S. 159-34 and submitted to the Local Government Commission satisfies the audit requirement of this subdivision.

(3) Limit the provision of communications service to within the corporate limits of the city providing the communications service.

(4) Shall not, directly or indirectly, under the powers of a city, exercise power or authority in any area, including zoning or land-use regulation, or exercise power to withhold or delay the provision of monopoly utility service, to require any person, including residents of a particular development, to use or subscribe to any communications service provided by the city-owned communications service provider.

(5) Shall provide nondiscriminatory access to private communications service providers on a first-come, first-served basis to rights-of-way, poles, or conduits owned, leased, or operated by the city unless the facilities have insufficient capacity for the access and additional capacity cannot reasonably be added to the facilities. For purposes of this subdivision, the term "nondiscriminatory access" means that, at a minimum, access shall be granted on the same terms and conditions as that given to a city-owned communications service provider.

(6) Shall not air advertisements or other promotions for the city-owned communications service on a public, educational, or governmental access channel if the city requires another communications service provider to carry the channel. The city shall not use city resources that are not allocated for cost accounting purposes to the city-owned communications service to promote city-owned communications service in comparison to private services or, directly or indirectly, require city employees, officers, or contractors to purchase city services.

(7) Shall not subsidize the provision of communications service with funds from any other noncommunications service, operation, or other revenue source, including any funds or revenue generated from electric, gas, water, sewer, or garbage services.

(8) Shall not price any communications service below the cost of providing the service, including any direct or indirect subsidies received by the city-owned communications service provider and allocation of costs associated with any shared use of buildings, equipment, vehicles, and personnel with other city departments. The city shall, in calculating the costs of providing the communications service, impute (i) the cost of the capital component that is equivalent to the cost of capital available to private communications service providers in the same locality and (ii) an amount equal to all taxes, including property taxes, licenses, fees, and other assessments that would apply to a private communications service provider, including federal, State, and local taxes; rights-of-way, franchise, consent, or administrative fees; and pole attachment fees. In calculating the costs of the service the city may amortize the capital assets of the communications system over the useful life of the assets in accordance with generally accepted principles of governmental accounting.

(9) The city shall annually remit to the general fund of the city an amount equivalent to all taxes or fees a private communications service provider would be required to pay the city or county in which the city is located, including any applicable tax refunds received by the city-owned communications service provider because of its government status and a sum equal to the amount of property tax that would have been due if the city-owned communications service provider were a private communications service provider.

(b) A city-owned communications service provider shall not be required to obtain voter approval under G.S. 160A-321 prior to the sale or discontinuance of the city's communications network.

"**§ 160A-340.2. Exemptions.**

(a) The provisions of G.S. 160A-340.1, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to the purchase, lease, construction, or operation of facilities by a city to provide communications service within the city's corporate limits for the city's internal governmental purposes, including the sharing of data or voice between governmental entities for internal governmental purposes, or within the corporate limits of another unit of local government that is a party with the city to an interlocal agreement under Part 1 of Article 20 of Chapter 160A of the General Statutes for the provision of internal government services.

(b) The provisions of G.S. 160A-340.1, 160A-340.4, and 160A-340.5 do not apply to the provision of communications service in an unserved area. A city seeking to provide communications service in an unserved area shall petition the North Carolina Utilities Commission for a determination that an area is unserved. The petition shall identify with specificity the geographic area for which the designation is sought. Any private

communications service provider, or any other interested party, may, within a time established by order of the Commission, which time shall be no fewer than 30 days, file with the Commission an objection to the designation on the grounds that one or more areas designated in the petition is not an unserved area or that the city is not otherwise eligible to provide the service. For purposes of this subsection, the term "unserved area" means a Census block, as designated by the most recent census of the U.S. Census Bureau, in which at least fifty percent (50%) of households either have no access to high-speed Internet service or have access to high-speed Internet service only from a satellite provider. A city may petition the Commission to serve multiple contiguous unserved areas in the same proceeding.

(c) The provisions of G.S. 160A-340.1, 160A-340.3, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to a city or joint agency providing communications service as of January 1, 2011, provided the city or joint agency limits the provision of communications service to any one or more of the following:

(1) Persons within the corporate limits of the city providing the communications service. For the purposes of this subsection, corporate limits shall mean the corporate limits of the city as of April 1, 2011 or as expanded through annexation.

(2) Existing customers of the communications service as of April 1, 2011. Service to customers outside the service area of the city or joint agency shall comply with the open bidding procedures of Article 8 of Chapter 143 upon the expiration or termination of the existing service contract.

(3) The following service areas:

a. For the joint agency operated by the cities of Davidson and Mooresville, the service area is the combined areas of the city of Cornelius; the town of Troutman; the town of Huntersville; the unincorporated areas of Mecklenburg County north of a line beginning at Highway 16 along the west boundary of the county, extending eastward along Highway 16, continuing east along Interstate 485, and continuing eastward to the eastern boundary of the county along Eastfield Road; and the unincorporated areas of Iredell County south of Interstate 40, excluding Statesville and the extraterritorial jurisdiction of Statesville.

b. For the city of Salisbury, the service area is the corporate limits of the cities of Salisbury, Spencer, East Spencer, Rockwell, Granite Quarry, and the corridors between Salisbury and those cities only to the extent necessary to provide service to those cities.

c. For all other cities or joint agencies offering communications service, the service area is the area designated in the map filed as part of the initial notice of franchise with the Secretary of State as of January 1, 2011.

(d) The exemptions provided in this section do not exempt a city or joint agency from laws and rules of general applicability to governmental services, including nondiscriminatory obligations.

(e) In the event a city subject to the exemption set forth in subsection (c) of this section provides communications service to a customer outside the limits set forth in that subsection, the city shall have thirty days from the date of notice or discovery to cease providing service to the customer without loss of the exemption.

"**§ 160A-340.3. Notice; public hearing.**

A city or joint agency that proposes to provide communications service shall hold not fewer than two public hearings, which shall be held not less than 30 days apart, for the purpose of gathering information and comment. Notice of the hearings shall be published at least once a

week for four consecutive weeks in the predominant newspaper of general circulation in the area in which the city is located. The notice shall also be provided to the North Carolina Utilities Commission, which shall post the notice on its Web site, and to all companies that have requested service of the notices from the city clerk. The city shall deposit the notice in the U.S. mail to companies that have requested notice at least 45 days prior to the hearing subject to the notice. Private communications service providers shall be permitted to participate fully in the public hearings by presenting testimony and documentation relevant to their service offerings and the city's plans. Any feasibility study, business plan, or public survey conducted or prepared by the city in connection with the proposed communications service project is a public record as defined by G.S. 132-1 and shall be made available to the public prior to the public hearings required by this section. This section does not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto.

"**§ 160A-340.4. Financing.**

(a) A city or joint agency subject to the provisions of G.S. 160A-340.1 shall not enter into a contract under G.S. 160A-19 or G.S. 160A-20 to purchase or to finance the purchase of property for use in a communications network or to finance the construction of fixtures or improvements for use in a communications network unless it complies with subsection (b) of this section. The provisions of this section shall not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto.

(b) A city shall not incur debt for the purpose of constructing a communications system without first holding a special election under G.S. 163-287 on the question of whether the city should incur debt for the proposed purposes. If a majority of the votes cast in the special election are for the city incurring the debt, the city may provide the communication service. If a majority of the votes cast in the special election are against the city incurring the debt, the city shall not provide the communications service. However, nothing in this section shall prohibit a city from revising its plan to offer communications service and calling another special election on the question prior to providing or offering to provide the service. A special election required under Chapter 159 of the General Statutes as a condition to the issuance of bonds shall satisfy the requirements of this section.

"**§ 160A-340.5. Taxes; payments in lieu of taxes.**

(a) A communications network owned or operated by a city or joint agency shall be exempt from property taxes. However, each city possessing an ownership share of a communications network and a joint agency owning a communications network shall, in lieu of property taxes, pay to any county authorized to levy property taxes the amount which would be assessed as taxes on real and personal property if the communications network were otherwise subject to valuation and assessment. Any payments in lieu of taxes shall be due and shall bear interest, if unpaid, as in the case of taxes on other property.

(b) A city-owned communications service provider shall pay to the State, on an annual basis, an amount in lieu of taxes that would otherwise be due the State if the communications service was provided by a private communications service provider, including State income, franchise, vehicle, motor fuel, and other similar taxes. The amount of the payment in lieu of taxes shall be set annually by the Department of Revenue and shall approximate the taxes that would be due if the communications service was undertaken by a private communications service provider. A city-owned communications provider must provide information requested by the Secretary of Revenue necessary for calculation of the assessment. The Department must inform each city-owned communications provider of the amount of the assessment by January 1 of each year. The assessment is due by March 15 of each year. If the assessment is unpaid, the State may withhold the amount due, including interest on late payments, from distributions otherwise due the city under G.S. 105-164.44I.

(c) A city-owned communications service provider or a joint agency that provides communications service shall not be eligible for a refund under G.S. 105-164.14(c) for sales and use taxes paid on purchases of tangible personal property and services related to the provision of communications service, except to the extent a private communications service provider would be exempt from taxation.

"**§ 160A-340.6. Public-private partnerships for communications service.**

(a) Prior to undertaking to construct a communications network for the provision of communications service, a city shall first solicit proposals from private business in accordance with the procedures of this section.

(b) The city shall issue requests for proposals that specifies the nature and scope of the requested communications service, the area in which it is to be provided, any specifications and performance standards, and information as to the city's proposed participation in providing equipment, infrastructure, or other aspects of the service. The city may prescribe the form and content of proposals, and may require that proposals contain sufficiently detailed information to allow for an objective evaluation of proposals using the factors stated in subsection (d) of this section. Each proposal shall at minimum contain all of the following:

(1) Information regarding the proposer's experience and qualifications to perform the requirements of the proposal.

(2) Information demonstrating the proposer's ability to secure financing needed to perform the requirements of the proposal.

(3) Information demonstrating the proposer's ability to provide staffing, implement work tasks, and carry out all other responsibilities necessary to perform the requirements of the proposal.

(4) Information clearly identifying and specifying all elements of cost of the proposal for the term of the proposed contract, including the cost of the purchase or lease of equipment and supplies, design, installation, operation, management, and maintenance of any system, and any proposed services.

(5) Any other information the city determines has a material bearing on its ability to evaluate the proposal.

(c) The city shall provide notice that it is requesting proposals in accordance with this subsection. The notice shall state the time and place where plans and specifications for the proposed service may be obtained and the time and place for opening proposals. Any notice given under this subsection shall reserve to the city the right to reject any or all proposals. Notice of request for proposals shall be given by all of the following methods:

(1) By mailing a notice of request for proposals to each firm that has obtained a license or permit to use the public rights-of-way in the city to provide a communications service within the city by depositing such notices in the U.S. mail at least 30 days prior to the date specified for the opening of proposals. In identifying firms, the city may rely upon lists provided by the Office of the Secretary of State and the North Carolina Utilities Commission.

(2) By posting a notice of request for proposals on the city's web site at least 30 days before the time specified for the opening of proposals.

(3) By publishing a notice of request for proposals in a newspaper of general circulation in the county in which the city is predominantly located at least 30 days before the time specified for the opening of proposals.

(d) In evaluating proposals, the city may consider any relevant factors, including system design, system reliability, operational experience, operational costs, compatibility with existing systems and equipment, and emerging technology. The city may negotiate aspects of any proposal with any responsible proposer with regard to these factors to determine which

proposal is the most responsive. A determination of most responsive proposer by the city shall be final.

(e) The city may negotiate a contract with the most responsive proposer for the performance of communications services specified in the request for proposals. All contracts entered into pursuant to this section shall be approved and awarded by the governing body of the city.

(f) If the city is unable to successfully negotiate the terms of a contract with the most responsive proposer with 60 days of the opening of the proposals, the city may proceed to negotiate with the firm determined to be the next most responsive proposer if such a proposer exists. If the city is unable to successfully negotiate the terms of a contract with the next most responsive proposer within 60 days, it may proceed under this Article to provide communications services.

(g) All proposals shall be sealed and shall be opened in public."

SECTION 1.(b) G.S. 105-164.14 is amended by adding a new subsection to read:

"(d2) A city subject to the provisions of G.S. 160A-340.5 is not allowed a refund of sales and use taxes paid by it under this Article for purchases related to the provision of communications services as defined in Article 16A of Chapter 160A."

SECTION 1.(c) Subsection (b) of this section is effective when it becomes law and applies to sales made on or after that date.

SECTION 2.(a) G.S. 62-3(23) is amended by adding the following new sub-subdivision to read:

"l. The term "public utility" shall include a city or a joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes that provides service as defined in G.S. 62-3(23)a.6. and is subject to the provisions of G.S. 160A-340.1."

SECTION 2.(b) This section shall not be construed to change the regulatory nature of or requirements applicable to any particular service currently regulated by the Commission under Chapter 62 of the General Statutes.

SECTION 3. Subchapter IV of Chapter 159 of the General Statutes is amended by adding a new Article to read as follows:

"Article 9A.

"Borrowing by Cities for Competitive Purposes.

"**§ 159-175.10. Additional requirements for review of city financing application; communications service.**

The Commission shall apply additional requirements to an application for financing by a city or a joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes for the construction, operation, expansion, or repair of a communications system or other infrastructure for the purpose of offering communications service, as that term is defined in G.S. 160A-340(2), that is or will be competitive with communications service offered by a private communications service provider. This section does not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto, but does apply to the expansion of such existing network. The additional requirements are the following:

(1) Prior to submitting an application to the Commission, a city or joint agency shall comply with the provisions of G.S. 160A-340.3 requiring at least two public hearings on the proposed communications service project and notice of the hearings to private communications service providers who have requested notice.

(2) At the same time the application is submitted to the Commission, the city or joint agency shall serve a copy of the application on each person that provides competitive communications service within the city's jurisdictional

boundaries or in areas adjacent to the city. No hearing on the application shall be heard by the Commission until at least 60 days after the application is submitted to the Commission.

(3) Upon the request of a communications service provider, the Commission shall accept written and oral comments from competitive private communications service providers in connection with any hearing or other review of the application.

(4) In considering the probable net revenues of the proposed communications service project, the Commission shall consider and make written findings on the reasonableness of the city or joint agency's revenue projections in light of the current and projected competitive environment for the services to be provided, taking into consideration the potential impact of technological innovation and change on the proposed service offerings and the level of demonstrated community support for the project.

(5) The city or joint agency making the application to the Commission shall bear the burden of persuasion with respect to subdivisions (1) through (4) of this section."

SECTION 4. G.S. 159-81(3) is amended by adding a new sub-subdivision to read:

"q. Cable television systems."

SECTION 5. Sections 2, 3, and 4 of this act do not apply to a city or joint agency providing communications service as of January 1, 2011, provided the city or joint agency limits the provision of communications service as provided in G.S. 160A-340.2(c).

SECTION 6. Any city that is designated as a public utility under Chapter 62 of the General Statutes when this act becomes law shall not be subject to the provisions of this act with respect to any of its operations that are authorized by that Chapter.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 8. Except as otherwise provided, this act is effective when it becomes law and applies to the provision of communications service by a city or joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes on and after that date.

HOUSE BILL 129:
Level Playing Field/Local Gov't Competition

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	April 13, 2011
Introduced by:	Reps. Avila, Howard, Carney, Wainwright	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Third Edition H129-CSTD-14		

SUMMARY: ***House Bill 129 would create new requirements for cities and joint agencies that operate a communications service that is offered to the public for a fee. The PCS expands the service area boundary for MI-Connection and makes clarifying and conforming changes. All of the changes made in the PCS are provided in the bill analysis section below.***

[As introduced, this bill was identical to S87, as introduced by Sen. Apodaca, which is currently in Senate Judiciary I.]

CURRENT LAW: Under G.S. 160A-311, cities are authorized to operate and finance a number of public enterprises, including cable television systems. A North Carolina Court of Appeals case, *BellSouth Telecommunications, Inc. v. City of Laurinburg*, 168 N.C. App. 75, 606 S.E. 2d 721 (2005), interprets the statutory authority to operate a cable television system to include operation of a fiber optic network. Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson (Greenlight), and Mooresville and Davidson (MiConnection) currently offer cable and internet service as a public enterprise.

The cities that currently operate cable and internet systems financed their systems through the installment purchase contract method authorized by G.S. 160A-20. This financing mechanism is commonly known as certificates of participation. Under this financing method, a city enters into an installment contract secured by a security interest in the system that is constructed. Unlike the issuance of general obligation bonds, installment purchase financing is not subject to a vote of the people. The Local Government Commission must approve a local unit's use of certificates of participation and the unit must give notice and hold a public hearing before it can enter into certificates of participation involving real property.

BILL ANALYSIS: House Bill 129 would create a new Article 16A in Chapter 160A of the General Statutes. The new Article would provide the following:

Communications Service Definition: The bill defines "communications service" as the provision of cable, video programming, telecommunications, broadband, or high-speed Internet access service to the public for a fee. "City-owned communications service provider" includes cities that offer the service through an interlocal agreement or joint agency. Data sharing between governmental entities and service offered to the public for free are not included in the definition of "communications service" and therefore, not subject to the limitations in the bill. The PCS provides that the sharing of voice service between government entities is also excluded from the definition. The PCS also clarifies that the sharing of data and voice between governmental entities must be for *internal* governmental purposes.

High-speed Internet Access Service Definition: The bill defined "High-speed internet access service" as service with transmission speeds consistent with basic broadband service as defined by the FCC. The PCS clarifies the service can be equal to or greater than the FCC requirements. The PCS also clarifies the reference is to the FCC requirements for broadband tier 1 service for broadband data gathering and reporting.

Requirements for City-owned Communications Providers: The bill would require city-owned communications service providers to comply with all of the following:

- All State, local, and federal laws and regulations that a private company providing the same service would be subject to.
- Establish separate enterprise funds for the communications service. Conduct annual audits of the communications service. The annual audit conducted under G.S. 159-34 satisfies this requirement.
- Limit the provision of service to the jurisdictional boundaries of the city.
- Prohibit the use of the city's authority to require individuals or developments to subscribe to the communications service.
- Provide nondiscriminatory access to other service providers to the city's rights-of-way, poles, or conduits.
- Prohibit advertisements of the city-owned communications service on PEG channels of competing providers if the channel is required to be carried on the system of another service provider. Prohibit the use of funds not allocated to the communications service for advertisement.
- Prohibit the subsidization of the communications service with other revenue.
- The service must not be priced below the cost of providing the service. The cost of providing the service must include the cost of capital components that would be equal to the cost of capital components a private provider would incur and an amount equal to all taxes a private provider would pay.
- Remit to its General Fund an amount equal to all the taxes and fees a private provider would pay if the private provider supplied the service..

Cities that choose to sell or discontinue a city-owned communications service would not be required to hold a referendum prior to sale or discontinuous of the service.

Exemptions: The following exemption are exempt from the provisions of the bill:

- A city that provides communications services, including intergovernmental data or voice sharing, within its jurisdictional boundaries for the city's internal governmental purposes is exempt from the provider requirements, limitations on installment purchase contract financing, requirements of payments in lieu of taxes, and public-private partnership requirements. The PCS conforms the exemption for internal governmental purposes with the language used in the definition for "communications service."
- The provision of communications services in an area that has been established by order of the Utilities Commission to be an "unserved area" are exempt from the provider requirements, public hearing requirements, limitations on installment purchase contract financing, and requirements of payments in lieu of taxes. For the purposes of this determination, unserved area is an area in which 50% of the households have no access to high-speed internet, or only access to high-speed internet from a satellite provider. The PCS clarifies that the unserved areas will be determined by census block.

- Cities that are offering communications service as of January 1, 2011 are exempt from all of the provisions in the bill provided the city limits the provision of service to any one or more of the following:
    - Persons within the corporate limits of the city providing the service. The PCS clarifies that the corporate limits include areas in the corporate limits as of April 1, 2011, and any later annexed areas.
    - Existing customers of the service as of April 1, 2011, provided that contracts outside the service area is subject to public bidding upon expiration.
    - The following service areas:
        - For MI-Connection – the PCS expands the service area to the combined areas of the city of Cornelius; the town of Troutman; the town of Huntersville; the unincorporated areas of Mecklenburg County north of a line beginning at Highway 16 along the west boundary of the county, extending eastward along Highway 16, continuing east along Interstate 485, and continuing eastward to the eastern boundary of the county along Eastfield Road; and the unincorporated areas of Iredell County south of Interstate 40, excluding Statesville and the extraterritorial jurisdiction of Statesville.
        - For the city of Salisbury – the cities of Salisbury, Spencer, East Spencer, Rockwell, Granite Quarry, and the corridors between those cities to the extent necessary to serve those cities.
        - For all other cities and joint agencies – the area designated in the map filed with the notice of franchise.

The PCS makes the following two clarifications to the exemptions:

- The exemptions do not exempt a city or joint agency from laws of general applicability, including nondiscrimination requirements.
- A city that is subject to a service area boundary will have 30 days from discovery or notice of providing service outside of the boundary to cease providing service outside the boundary without losing the exemption.

Public Hearings: Prior to offering communications services, cities would be required to hold at least 2 public hearings for comment on the service. The cities are required to provide notice for the hearings in the local newspaper and with the Utilities Commission. Private communications providers must be allowed to participate in the hearings. Feasibility studies, business plans, and public surveys for the communications service are deemed public records and must be available to the public prior to the hearings. The public hearing requirement does not apply to the repair or upgrade of an existing service.

Financing: Cities and joint agencies would be prohibited from incurring debt for a communications system unless it holds a special election. Cities and joint agencies are also prohibited from using installment purchase contracts and certificates of participation to finance a communications network unless it holds a holds a special election. The prohibition on certificates of participation and the referendum requirement would not apply to repairs or improvements of an existing system.

Taxes, Payments in Lieu of Taxes: Cities and joint agencies operating a communications service would be required to make the following payments in lieu of taxes:

- To the applicable county, a payment of the amount of property taxes that would be due if the communications system was subject to the property tax.
- To the State, an amount set by the Department of Revenue that approximates the amount of income, franchise, vehicle, motor fuel and other taxes that would be due if the communications system was subject to these taxes. Cities subject to this provision must provide information to the Department of Revenue necessary for the calculation of the payment. The PCS also provides that the amount of the assessment is set by January 1 of each year, and due by March 15 of each year.
- Cites and joint agencies would not receive a sales tax refund for purchases related to the provision of the communications service.

Public-Private Partnerships for Communications Service: Cities would be required to solicit proposals from private providers before constructing a communications network. Cities must issue request for proposals that requires proposals to have sufficient information to make an objective evaluation of the proposals. The city must provide notice of the request for proposals. The city may consider any relevant factors, including system design, system reliability, operational experience, operational costs, compatibility with existing systems and equipment, and emerging technology. If the city in unable to negotiate terms with the 2 most responsive proposers, the city may proceed with offering communications service.

Designation as Public Utility: Cities and joint agencies that provide telephone service would be included in the term "public utility" as defined by Chapter 62 of the General Statutes. Telephone service provided by these entities would be subject to oversight by the Utilities Commission. This section does not expand the regulatory authority of the Utilities Commission in regards to telephone service.

Additional Financing Requirements: For review by the Local Government Commission (LGC) of an application for financing the construction, operation, expansion, or repair of a communications system by a city or joint agency, the following would apply:

- The public hearings required by the bill must be held before an application for financing may be submitted.
- A copy of the application must be given to private communications providers that serve the city and areas adjacent to the city. The LGC must accept written and oral comments from private providers as a part of the application review.
- The LGC must consider and make written findings regarding the reasonableness of the revenue projections of the service in light of the current and projected competitive environment, the impact of innovation, and the level of community support for the project.

Revenue Bonds: Cities may issue revenue bonds to provide a cable television system. Although a referendum is not normally required for revenue bonds, cities that offer communications service as defined in G.S. 160A-340.1 would be subject to G.S. 160A-340.4(b) which requires a city to hold a referendum before incurring debt to construct a communications system.

EFFECTIVE DATE: This act is effective when it becomes law and applies to the provision of communications services by cities or joint agencies on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: March 16, 2011

TO: House Finance Committee

FROM: Sandra Johnson
Fiscal Research Division

RE: House Bill 129 (Unknown Edition)

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	*No Fiscal Impact on Current Municipal Broadband Systems* *Payment in Lieu of Taxes Estimated at $18.98 per Subscriber for Future Systems*				
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue; North Carolina Department of State Treasurer, Local Government Commission

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: House Bill (HB) 129 implements new regulatory, public information, and financial requirements for cities and joint agencies providing communication services to the public for a fee. Four cities/joint agencies, Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson

(Greenlight), Mooresville-Davidson (MI Connection), currently offer municipal broadband services that could fall within the purview of HB 129. The bill, however, specifically exempts these groups by exempting entities providing telecom services prior to January 1, 2011.

The new regulations set forth in HB 129 require that future municipal broadband companies:

- Comply with all State, local and federal laws and regulations adhered to by private communication companies.
- Establish separate enterprise funds for the communications service, and conduct annual audits.
- Limit the communication services to the jurisdictional boundaries of the city.
- Eliminate the practice of requiring individuals or developments subscribe to municipal broadband services.
- Provide other service providers with access to the city's rights-of-way, conduits, and other distribution facilities.
- Prohibit advertisements for municipal broadband on the public, education, and government (PEG) channels of competing providers.
- Limit the revenue used to finance communication services to the income generated from the service.
- Price municipal communication services a rate equal to the cost of providing the service. The price should include adjustments for capital costs and taxes incurred in the private sector.

The new public information standards set forth in HB 129 require that municipal broadband companies:

- Hold two public hearings prior to offering services.
- Provide notice for the public hearings in local newspaper and with the Utilities Commission.
- Provide the public with all feasibility studies, business plans, and surveys prior to the hearings.
- Allow private communications providers to participate in the hearing.

The new financial standards set forth in HB 129 require that municipal broadband companies:

- Eliminate the practice of using certificates of participation to finance the construction of a system.
- Make payments in lieu of property taxes to the county/counties in which the services are contained.
- Remit to the State payments in lieu of taxes (PiLoTs), an amount set by the Department of Revenue equivalent to the income, franchise, vehicle, motor fuel, and other taxes due if operating as a private enterprise.

ASSUMPTIONS AND METHODOLOGY: Should HB 129 be enacted, newly operational municipal broadband companies will be required to make payments in lieu of taxes (PiLoTs) of roughly $202,000 annually. PiLoTs will serve as a significant barrier to entry for municipal broadband companies. The PiLoT estimates are based on information provided by the North Carolina Cable Telecommunications Association. According to the association, private telecommunication providers pay roughly, $19 per subscriber in State and local taxes. Table 1 provides a breakdown of the estimated state and local taxes paid by revenue type.

Table 1: Payment in Lieu of Taxes for Public Entities Providing Communication Services		
Tax	**Description**	**Estimated Tax Revenue per Subscriber**
Sales and Use Tax	Governmental entities would no longer be eligible to receive sales and use tax refunds under G.S. 105-164.14(c) for tangible personal property utilized in providing communication services.	$2.07
Corporate Income Tax	Income generated from providing communication services would no longer be eligible for the income tax exemption for governmental units provided under G.S. 105-103.11, but subject to the 6.9% corporate income tax as described in G.S. 105-103.3.	$2.91
Franchise Tax	G.S. 105-122 levies a franchise/privilege tax on corporations at a rate of $1.50 per $1,000 on one of three bases: 1) the profits apportioned to the State, 2) 55% of the value of real property owned in the state and subject to local property tax, 3) the book value of real and tangible personal property less any debt used to acquire real property in the state.	$2.21
Property Tax	Government entities would be required to remit taxes on real property (buildings, land, etc.) used in conjunction with providing communication services.	$11.79
Total Tax Due Per Subscriber		**$18.98**
Source: North Carolina Cable Telecommunications Association; Time Warner Cable		

The four public broadband enterprises operating as of January 2011, Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson (Greenlight), Mooresville-Davidson (MI Connection), jointly serve a region covering 42,761 households. Table 2, provides a snapshot of the regions in which these systems operate, years of operation, number of households served, as well as income and assets for the 2010, fiscal year. As illustrated, only one system, CoMPAS, in Morganton, operated at a net profit during the 2010 fiscal year. CoMPAS began providing telecommunication services in 1992, financing the system's construction through debt and revenue from other utility services. The city upgraded the system in 2004 using funding provided through low interest debt called certificates of

participation (COPs). Morganton made its final COPs payment in December 2010 and expects to generate roughly one million dollars in net income annually in future years.

Table 2. Financial and Customer Data on Existing Municipal Broadband Providers, 2010							
Provider	**City Detail**	**Length of Operation**	**Certificates of Participation ($ In Millions)**	**Number of Households in Service Area, 2010**	**2010 Net Income/(Loss) ($ In Millions)**	**Assets ($ In Millions)**	
						Real Property (Buildings, Land)	**Tangible Personal Property**
Greenlight	Wilson, Wilson County, NC	2.8 years	31.80	19,799	(1.37)	0.93	8.47
Fibrant (2)	Salisbury, Rowan County, NC	3 months	29.10	7,562	(0.45)	4.59	
MI Connection (3)	Mooresville-Davidson	3.1 years	79.65	9,000 (actual); 13,489 (projected)	(5.60)	0.65	0.701
CoMPAS (4)	Morganton, Burke County, NC	Began in 1992 (infrastructure financed through utility system revenue), system upgrade occurred in 2004	7.32	6,400	0.2	Owned by Burke County	
Total			**$147.87**	**42,761**	**$ (7.22)**		

SOURCES OF DATA:
North Carolina Department of Revenue and North Carolina State Treasurer, Local Government Commission

(2) Numbers represent projected information gathered through the Local Government Commission, Certificates of Participation Application, City of Salisbury, and Annual Financial Report City of Salisbury, "Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2010." Available at: http://www.ci.salisbury.nc.us/finance/audit/2010/Supplemental.pdf.

(3) Numbers represent projected information gathered through Local Government Commission, Certificates of Participation Application, City of Mooresville, and Annual Financial Report for MI Connection;

(4) Numbers represent projected information gathered through Local Government Commission, Certificates of Participation Application, City of Morganton, and Annual Financial Report for City of Morganton, and conversations with Bill Harkins (CoMPAS General Manager)

TECHNICAL CONSIDERATIONS: None

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 13, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jessica Ward	Wilson
CHARLIE BOONE	CBA of NC
Bill Haigh	Verizon
Kem Burke	MWC
Emily Grimm	MWC
LAURA SYKORA	Century Link
John Garrison	NCUC - Public Staff
Pam Melton	CenturyLink

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

April 13, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bobby Cashion	Citizen of Davidson
Beth Cashion	Citizen of Davidson
MARK TURNER	CONCERNED CITIZEN
GRANT GOINES	WILSON
Jeff Klein	BB&T - JKLEIN@BBANDT.COM
JOHN BARE	SALISBURY, N.C.
Mary Tatten	Brooks Pierce
[illegible]	TWC
Elizabeth Biser	Brooks Pierce
Rochelle McCoy	Lenoir Times
Olivia Neely	Wilson Times

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Senate Finance Committee — April 13, 2011

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
AREK KEMPINSKI	TOWNSHIP: CEDAR GROVE
Sharon Miller	CUCA
Vance Holloman	St. Treas. Office
Carl Harrell	DST
Tony Spears	DST
David McGowan	NC Realtors
Matt Wolfe	PPAB
Daniel Baum	Troutman Sanders
[illegible]	[illegible]
Kelli Kuhma	NCLM
Kim Hibbard	NCLM
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

April 13, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jim Kaylor	Kaylor Law Firm
Doug Hogan	um
Mark Beaman	
Robin Smith	DENR

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Senate Finance Committee — April 13, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dave Treme	City of Salisbury
Doug Paris	City of Salisbury
Susan Kluttz	Mayor of Salisbury
Daniel Long	NCVC staff
Bob Welch	North State Comm.
Neal Whitley	Orbit Energy
Michael Crowell	City of Salisbury
Randy Hemann	North Hills Christian School - Salisbury
Casey Mahoney	Rowan Onsite Computer Solutions - Salisbury
Paul Fuglaar	Town Inc
[illegible]	Williams Mullen

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Senate Finance Committee
Name of Committee

April 13, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Patsy McGhee	Nash Co., 120 W. Washington St., Nashville NC 27856
Jay Ouitture	SEATOA
[illegible]	Cetyc
Eric Smith	City of Wilson, POBox 10, Wilson NC 27894
Don Oliver	City of Wilson, Wilson Fire/Rescue
Matthew McConnell	Carolinas HealthCare System
Angie Harris	WM
Allison Waller	Charlotte Chamber
Carmen Hanly	Electric Cities of NC
Gary Harris	NC Petroleum & Conv. Mktrs
Doug Howey	NCPCM

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Senate Finance Committee — April 13, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	MF+S
Kristi Huff	NCHCFA
Bill Scoggin	TSC
DAVID BARNES	PS
Will Culpepper	MVH
Gretchen Kelly	FirstHealth
BJ Miller	MCHS
Breeden Blackwell	CFUMC
Heather Barnett	WM
Agnes Spaulding	City of Wilson
Brian Brannan	City of Wilson
John McMillan	MFar

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 13, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Mixon	AFPNC
Jimmy Carter	Solutions - IES
Dexter Mathews	DENR - Waste Mgmt
Charlotte Jesnech	NC DENR
TERRANCE TERVICH	UNC
Dan Crawford	NCLCV
Kathy Hartkopf	NC Freedom Works
Steve Brewer	CenturyLink
Jack Stanley	Time Warner Cable
Bill Phillips	TWC
Buck Yarborough	NCCTA

*2 minute

SPEAKER REGISTRATION SHEET

Senate Finance Committee — April 13, 2011
Name of Committee — **Date**

BILL # _____

NAME	FIRM OR AGENCY AND ADDRESS
~~Broad Band~~ Salisbury Full Exemption Mayor Susan Klutz ✓	
Randy Heeman ✓	300 Student. Hookup to Fiber optic System N. Hills Christian School Salisbury
Casey Mahoney ✓	Rowan Co. Small Business Owner did not like Time Warner Service
Vance Holloman ✓	LGC Looks a Economic Development. Treasurer's office. +$120 of Limit Source Area, Rules after Debt.??
Jeff Kline ✓	12K Employees - Economic Development for Wilson BB&T Needs Broad Band green Light.
Grant Goings ✓	Wilson City Mgr.
Don Oliver ✓	Wilson Fire Dept.
Eric Smith ✓	Wilson Police Dept.
Glen Jernigan ✓	Fayetteville Public Works
Arek Kempinski	Cedar Grove

SPEAKER REGISTRATION SHEET

Senate Finance Committee — April 13, 2011

Name of Committee — **Date**

BILL # _____

NAME	FIRM OR AGENCY AND ADDRESS
JOHN BARE	1402 GLENWOOD AVE. SALISBURY NC
Bobby Cashion ✓	Citizen of Davidson, NC 413 Pine Rd, Davidson, NC
Jeff Mixon ✓	AFP-NC Raleigh NC
Jack Stanley ✓	Time Warner Cable
Marcus Trathen ✓	Brooks Pierce
Jay Dittore ✓	SEATOA
Steve Brewer ✓	CenturyLink
Pam [redacted] MEYER ✓	North Carolina League of Municipalities NCLM
Arek Kempenski ✓	Chapel Hill

SENATE FINANCE COMMITTEE
Wednesday, April 27, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on April 27, 2011 in room 544 of the Legislative Office Building. Blake Scruggs of Chapel Hill, Marques McPhail of Goldsboro, Drew Connery of Charlotte, Zac Johnson of Siler City, Prathna Raval of Fayetteville, and Nora Standish of Concord served as pages. Thirty-one members of the committee were present. Senator Hartsell presided as chair.

H.B. 129 – Level Playing Field/Local Gov't Competition

Representative Avila was recognized to explain the bill. Senator Apodaca moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would create new requirements for cities and joint agencies that operate a communications service that is offered to the public for a fee. It also expands that service area boundary for MI-Connection and makes clarifying and conforming changes. Jay Ovittore, SEATOA's legislative representative, was recognized to speak in opposition to the bill. A copy of his remarks is attached. Senator Brock was recognized to offer an amendment which would outline Salisbury's service areas. Mayor Klutz of Salisbury was recognized to speak in favor of the amendment. Heather Fennell, a staff attorney with the Research Division, was recognized to explain the amendment and answer questions. Senator Brock moved for the amendment's adoption and the motion carried. Senator Kinnaird was recognized to offer an amendment which would define the use of subsidies. Representative Avila expressed some concern, but was not opposed to the amendment. A vote was taken and the amendment's vote did not pass. Senator Newton was recognized to offer an amendment which expanded Wilson's service area to include all counties contiguous to Wilson County. Representative Avila voiced opposition to the amendment. A vote was taken and the amendment did not pass. Senator Meredith was recognized to offer an amendment which would exclude Fayetteville from Sections 2, 3, and 4 of the act. Representative Avila spoke in opposition to the amendment. A vote was taken and the motion failed. Senator Atwater was recognized to offer an amendment regarding the provision of service in unserved areas. Representative Avila spoke in opposition and Senator Atwater withdrew his amendment. Senator Apodaca was recognized to offer an amendment which defines Wilson's service area. Representative Avila spoke in favor of the amendment, a vote was taken and the motion carried. Senator Clodfelter was recognized to offer a perfecting amendment which would define "service corridors" and moved for its adoption. The motion carried. Senator Jenkins moved for a favorable report as amended and the motion carried. A copy of the PCS, the summary, the fiscal note, and the amendments is attached.

The meeting adjourned at 2:11 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Wednesday, April 27, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 129	Level Playing Field/Local Gov't Competition.	Rep. Carney Rep. Howard Rep. Avila Rep. Wainwright

Adjournment

COMMENTS OF JAY OVITTORE - SEATOA LEGISLATIVE REPRESENTATIVE

GOOD AFTERNOON.
I AM JAY OVITTORE, LEGISLATIVE REPRESENTATIVE OF SEATOA.

I AM HERE TO TELL YOU WHAT TIME WARNER CABLE IS NOT TELLING YOU:

THEY ARE NOT TELLING YOU THAT THEY ARE THE AUTHOR OF H129, NOT BECAUSE THEY CARE ABOUT TAXPAYERS, NOT TO STIMULATE COMPETITION, BUT TO MAINTAIN THEIR MONOPOLY.

THEY ARE NOT TELLING YOU THAT THEY ARE A $19 BILLION DOLLAR COMPANY, BASED IN NEW YORK CITY, NOT DRIVEN BY INNOVATION (AS YOU HAVE HEARD), BUT BY PROFIT, WHO HAS NO LOYALTY TO NORTH CAROLINA, AND SO HAS ELIMINATED HUNDREDS OF NORTH CAROLINA JOBS IN THE LAST FEW YEARS, RAISED THE RATES ON THEIR NORTH CAROLINA SUBSCRIBERS EVERY YEAR, WHILE NOT UPGRADING THEIR INFRASTRUCTURE IN 10 YEARS;

THEY ARE NOT TELLING YOU THESE MUNICIPAL SYSTEMS ARE MORE ADVANCED THEN THEIR OWN INFRASTRUCTURE AND THAT H129 WILL SHUT DOWN COMMUNITY SYSTEMS SO TIME WARNER WILL NOT HAVE TO UPGRADE ITS OUTDATED INFRASTRUCTURE.

THEY HAVE NOT TOLD YOU THAT THE RULES ARE ALREADY IN PLACE THAT CONTROL HOW MUNICIPALITIES PROVIDE BROADBAND SERVICES AND THAT THESE ARE THE SAME RULES TIME WARNER CABLE PLAYS BY BECAUSE THESE REGULATIONS ARE DETERMINED BY SERVICE; NOT BY WHO PROVIDES THE SERVICE.

AND THAT IS WHY I AM HERE TO TELL YOU THAT MARKET FORCES HAVE FAILED NORTH CAROLINA, THE FCC HAS STATED WE HAVE THE WORST BROADBAND IN THE COUNTRY, AND THAT IS THE ONLY REASON COMMUNITIES HAVE STEPPED IN.

GOOGLE, ALCATEL-LUCENT, INTEL, AMONG NINE OTHER HIGH TECH COMPANIES AND ASSOCIATIONS OPPOSE H129 BECAUSE THEY UNDERSTAND THAT IT EFFECTIVELY TERMINATES ALL INCENTIVES FOR THE LARGEST BROADBAND PROVIDERS IN OUR STATE TO INCREASE THE BANDWIDTH NEEDED FOR INNOVATION AND KNOWLEDGE COMMERCE ON WHICH THEIR COMPANIES, AND OUR STATE'S ECONOMIC FUTURE, DEPENDS. **H129 IS BAD FOR BUSINESS.**

PLEASE VOTE NO ON 129 AND INSTEAD SUPPORT SENATOR HARTSELL'S S511, WHICH PROTECTS THE MOST ADVANCED FIBER SYSTEMS IN OUR STATE, TO RAISE US OUT OF OUR LOST TOBACCO AND TEXTILE ECONOMY, AND TO ENCOURAGE PUBLIC/PRIVATE PARTNERSHIPS TO FIX OUR STATE'S BROADBAND PROBLEM.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 129*
Committee Substitute Favorable 3/23/11
Third Edition Engrossed 3/28/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H129-CSTD-21 [v.1]

4/26/2011 4:19:07 PM

Short Title: Level Playing Field/Local Gov't Competition. (Public)

Sponsors:

Referred to:

February 21, 2011

A BILL TO BE ENTITLED

AN ACT TO PROTECT JOBS AND INVESTMENT BY REGULATING LOCAL GOVERNMENT COMPETITION WITH PRIVATE BUSINESS.

Whereas, certain cities in the State have chosen to compete with private providers of communications services; and

Whereas, these cities have been permitted to enter into competition with private providers as a result of a decision of the North Carolina Court of Appeals rather than legislation enacted by the General Assembly; and

Whereas, the communications industry is an industry of economic growth and job creation; and

Whereas, as expressed in G.S. 66-58, known as the Umstead Act, it is against the public policy of this State for any unit, department, or agency of the State, or any division or subdivision of a unit, department, or agency of the State to engage directly or indirectly in the sale of goods, wares, or merchandise in competition with citizens of the State; and

Whereas, to protect jobs and to promote investment, it is necessary to ensure that the State does not indirectly subsidize competition with private industry through actions by cities and to ensure that where there is competition between the private sector and the State, directly or through its subdivisions, it exists under a framework that does not discourage private investment and job creation; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 160A of the General Statutes is amended by adding a new Article to read as follows:

"Article 16A.

"Provision of Communications Service by Cities.

"**§ 160A-340. Definitions.**

The following definitions apply in this Article:

(1) City-owned communications service provider. – A city that provides communications service using a communications network, whether directly, indirectly, or through an interlocal agreement or a joint agency.

(2) Communications network. – A wired or wireless network for the provision of communications service.

(3) Communications service. – The provision of cable, video programming, telecommunications, broadband, or high-speed Internet access service to the public, or any sector of the public, for a fee, regardless of the technology used to deliver the service. The terms "cable service," "telecommunications service," and "video programming service" have the same meanings as in G.S. 105-164.3. Neither the sharing of data or voice between governmental entities for internal governmental purposes nor the provision of free services to the public or a subset thereof shall be considered the provision of communications service.

(4) High-speed Internet access service. – Internet access service with transmission speeds that are equal to or greater than the requirements for basic broadband tier 1 service as defined by the Federal Communications Commission for broadband data gathering and reporting.

(5) Interlocal agreement. – An agreement between units of local government as authorized by Part 1 of Article 20 of Chapter 160A of the General Statutes.

(6) Joint agency. – A joint agency created under Part 1 of Article 20 of Chapter 160A of the General Statutes.

"**§ 160A-340.1. City-owned communications service provider requirements.**

(a) A city-owned communications service provider shall meet all of the following requirements:

(1) Comply in its provision of communications service with all local, State, and federal laws, regulations, or other requirements applicable to the provision of the communications service if provided by a private communications service provider.

(2) In accordance with the provisions of Chapter 159 of the General Statutes, the Local Government Finance Act, establish one or more separate enterprise funds for the provision of communications service, use the enterprise funds to separately account for revenues, expenses, property, and source of investment dollars associated with the provision of communications service, and prepare and publish an independent annual report and audit in accordance with generally accepted accounting principles that reflect the fully allocated cost of providing the communications service, including all direct and indirect costs. An annual independent audit conducted under G.S. 159-34 and submitted to the Local Government Commission satisfies the audit requirement of this subdivision.

(3) Limit the provision of communications service to within the corporate limits of the city providing the communications service.

(4) Shall not, directly or indirectly, under the powers of a city, exercise power or authority in any area, including zoning or land-use regulation, or exercise power to withhold or delay the provision of monopoly utility service, to require any person, including residents of a particular development, to use or subscribe to any communications service provided by the city-owned communications service provider.

(5) Shall provide nondiscriminatory access to private communications service providers on a first-come, first-served basis to rights-of-way, poles, or conduits owned, leased, or operated by the city unless the facilities have insufficient capacity for the access and additional capacity cannot reasonably be added to the facilities. For purposes of this subdivision, the term "nondiscriminatory access" means that, at a minimum, access shall be granted on the same terms and conditions as that given to a city-owned communications service provider.

(6) Shall not air advertisements or other promotions for the city-owned communications service on a public, educational, or governmental access channel if the city requires another communications service provider to carry the channel. The city shall not use city resources that are not allocated for cost accounting purposes to the city-owned communications service to promote city-owned communications service in comparison to private services or, directly or indirectly, require city employees, officers, or contractors to purchase city services.

(7) Shall not subsidize the provision of communications service with funds from any other noncommunications service, operation, or other revenue source, including any funds or revenue generated from electric, gas, water, sewer, or garbage services.

(8) Shall not price any communications service below the cost of providing the service, including any direct or indirect subsidies received by the city-owned communications service provider and allocation of costs associated with any shared use of buildings, equipment, vehicles, and personnel with other city departments. The city shall, in calculating the costs of providing the communications service, impute (i) the cost of the capital component that is equivalent to the cost of capital available to private communications service providers in the same locality and (ii) an amount equal to all taxes, including property taxes, licenses, fees, and other assessments that would apply to a private communications service provider, including federal, State, and local taxes; rights-of-way, franchise, consent, or administrative fees; and pole attachment fees. In calculating the costs of the service the city may amortize the capital assets of the communications system over the useful life of the assets in accordance with generally accepted principles of governmental accounting.

(9) The city shall annually remit to the general fund of the city an amount equivalent to all taxes or fees a private communications service provider would be required to pay the city or county in which the city is located, including any applicable tax refunds received by the city-owned communications service provider because of its government status and a sum equal to the amount of property tax that would have been due if the city-owned communications service provider were a private communications service provider.

(b) A city-owned communications service provider shall not be required to obtain voter approval under G.S. 160A-321 prior to the sale or discontinuance of the city's communications network.

"**§ 160A-340.2. Exemptions.**

(a) The provisions of G.S. 160A-340.1, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to the purchase, lease, construction, or operation of facilities by a city to provide communications service within the city's corporate limits for the city's internal governmental purposes, including the sharing of data or voice between governmental entities for internal governmental purposes, or within the corporate limits of another unit of local government that is a party with the city to an interlocal agreement under Part 1 of Article 20 of Chapter 160A of the General Statutes for the provision of internal government services.

(b) The provisions of G.S. 160A-340.1, 160A-340.4, and 160A-340.5 do not apply to the provision of communications service in an unserved area. A city seeking to provide communications service in an unserved area shall petition the North Carolina Utilities Commission for a determination that an area is unserved. The petition shall identify with specificity the geographic area for which the designation is sought. Any private

communications service provider, or any other interested party, may, within a time established by order of the Commission, which time shall be no fewer than 30 days, file with the Commission an objection to the designation on the grounds that one or more areas designated in the petition is not an unserved area or that the city is not otherwise eligible to provide the service. For purposes of this subsection, the term "unserved area" means a Census block, as designated by the most recent census of the U.S. Census Bureau, in which at least fifty percent (50%) of households either have no access to high-speed Internet service or have access to high-speed Internet service only from a satellite provider. A city may petition the Commission to serve multiple contiguous unserved areas in the same proceeding.

(c) The provisions of G.S. 160A-340.1, 160A-340.3, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to a city or joint agency providing communications service as of January 1, 2011, provided the city or joint agency limits the provision of communications service to any one or more of the following:

(1) Persons within the corporate limits of the city providing the communications service. For the purposes of this subsection, corporate limits shall mean the corporate limits of the city as of April 1, 2011 or as expanded through annexation.

(2) Existing customers of the communications service as of April 1, 2011. Service to customers outside the service area of the city or joint agency shall comply with the open bidding procedures of Article 8 of Chapter 143 upon the expiration or termination of the existing service contract.

(3) The following service areas:

a. For the joint agency operated by the cities of Davidson and Mooresville, the service area is the combined areas of the city of Cornelius; the town of Troutman; the town of Huntersville; the unincorporated areas of Mecklenburg County north of a line beginning at Highway 16 along the west boundary of the county, extending eastward along Highway 16, continuing east along Interstate 485, and continuing eastward to the eastern boundary of the county along Eastfield Road; and the unincorporated areas of Iredell County south of Interstate 40, excluding Statesville and the extraterritorial jurisdiction of Statesville.

b. For the city of Salisbury, the service area is the corporate limits of the cities of Salisbury, Spencer, East Spencer, Rockwell, Granite Quarry, and the corridors between Salisbury and those cities only to the extent necessary to provide service to those cities.

c. For all other cities or joint agencies offering communications service, the service area is the area designated in the map filed as part of the initial notice of franchise with the Secretary of State as of January 1, 2011.

(d) The exemptions provided in this section do not exempt a city or joint agency from laws and rules of general applicability to governmental services, including nondiscriminatory obligations.

(e) In the event a city subject to the exemption set forth in subsection (c) of this section provides communications service to a customer outside the limits set forth in that subsection, the city shall have thirty days from the date of notice or discovery to cease providing service to the customer without loss of the exemption.

"**§ 160A-340.3. Notice; public hearing.**

A city or joint agency that proposes to provide communications service shall hold not fewer than two public hearings, which shall be held not less than 30 days apart, for the purpose of gathering information and comment. Notice of the hearings shall be published at least once a

week for four consecutive weeks in the predominant newspaper of general circulation in the area in which the city is located. The notice shall also be provided to the North Carolina Utilities Commission, which shall post the notice on its Web site, and to all companies that have requested service of the notices from the city clerk. The city shall deposit the notice in the U.S. mail to companies that have requested notice at least 45 days prior to the hearing subject to the notice. Private communications service providers shall be permitted to participate fully in the public hearings by presenting testimony and documentation relevant to their service offerings and the city's plans. Any feasibility study, business plan, or public survey conducted or prepared by the city in connection with the proposed communications service project is a public record as defined by G.S. 132-1 and shall be made available to the public prior to the public hearings required by this section. This section does not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto.

"**§ 160A-340.4. Financing.**

(a) A city or joint agency subject to the provisions of G.S. 160A-340.1 shall not enter into a contract under G.S. 160A-19 or G.S. 160A-20 to purchase or to finance the purchase of property for use in a communications network or to finance the construction of fixtures or improvements for use in a communications network unless it complies with subsection (b) of this section. The provisions of this section shall not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto.

(b) A city shall not incur debt for the purpose of constructing a communications system without first holding a special election under G.S. 163-287 on the question of whether the city may provide communications service. If a majority of the votes cast in the special election are for the city providing communications service, the city may incur the debt for the service. If a majority of the votes cast in the special election are against the city providing communications service, the city shall not incur the debt. However, nothing in this section shall prohibit a city from revising its plan to offer communications service and calling another special election on the question prior to providing or offering to provide the service. A special election required under Chapter 159 of the General Statutes as a condition to the issuance of bonds shall satisfy the requirements of this section.

"**§ 160A-340.5. Taxes; payments in lieu of taxes.**

(a) A communications network owned or operated by a city or joint agency shall be exempt from property taxes. However, each city possessing an ownership share of a communications network and a joint agency owning a communications network shall, in lieu of property taxes, pay to any county authorized to levy property taxes the amount which would be assessed as taxes on real and personal property if the communications network were otherwise subject to valuation and assessment. Any payments in lieu of taxes shall be due and shall bear interest, if unpaid, as in the case of taxes on other property.

(b) A city-owned communications service provider shall pay to the State, on an annual basis, an amount in lieu of taxes that would otherwise be due the State if the communications service was provided by a private communications service provider, including State income, franchise, vehicle, motor fuel, and other similar taxes. The amount of the payment in lieu of taxes shall be set annually by the Department of Revenue and shall approximate the taxes that would be due if the communications service was undertaken by a private communications service provider. A city-owned communications provider must provide information requested by the Secretary of Revenue necessary for calculation of the assessment. The Department must inform each city-owned communications provider of the amount of the assessment by January 1 of each year. The assessment is due by March 15 of each year. If the assessment is unpaid, the State may withhold the amount due, including interest on late payments, from distributions otherwise due the city under G.S. 105-164.44I.

(c) A city-owned communications service provider or a joint agency that provides communications service shall not be eligible for a refund under G.S. 105-164.14(c) for sales and use taxes paid on purchases of tangible personal property and services related to the provision of communications service, except to the extent a private communications service provider would be exempt from taxation.

"**§ 160A-340.6. Public-private partnerships for communications service.**

(a) Prior to undertaking to construct a communications network for the provision of communications service, a city shall first solicit proposals from private business in accordance with the procedures of this section.

(b) The city shall issue requests for proposals that specifies the nature and scope of the requested communications service, the area in which it is to be provided, any specifications and performance standards, and information as to the city's proposed participation in providing equipment, infrastructure, or other aspects of the service. The city may prescribe the form and content of proposals, and may require that proposals contain sufficiently detailed information to allow for an objective evaluation of proposals using the factors stated in subsection (d) of this section. Each proposal shall at minimum contain all of the following:

(1) Information regarding the proposer's experience and qualifications to perform the requirements of the proposal.

(2) Information demonstrating the proposer's ability to secure financing needed to perform the requirements of the proposal.

(3) Information demonstrating the proposer's ability to provide staffing, implement work tasks, and carry out all other responsibilities necessary to perform the requirements of the proposal.

(4) Information clearly identifying and specifying all elements of cost of the proposal for the term of the proposed contract, including the cost of the purchase or lease of equipment and supplies, design, installation, operation, management, and maintenance of any system, and any proposed services.

(5) Any other information the city determines has a material bearing on its ability to evaluate the proposal.

(c) The city shall provide notice that it is requesting proposals in accordance with this subsection. The notice shall state the time and place where plans and specifications for the proposed service may be obtained and the time and place for opening proposals. Any notice given under this subsection shall reserve to the city the right to reject any or all proposals. Notice of request for proposals shall be given by all of the following methods:

(1) By mailing a notice of request for proposals to each firm that has obtained a license or permit to use the public rights-of-way in the city to provide a communications service within the city by depositing such notices in the U.S. mail at least 30 days prior to the date specified for the opening of proposals. In identifying firms, the city may rely upon lists provided by the Office of the Secretary of State and the North Carolina Utilities Commission.

(2) By posting a notice of request for proposals on the city's web site at least 30 days before the time specified for the opening of proposals.

(3) By publishing a notice of request for proposals in a newspaper of general circulation in the county in which the city is predominantly located at least 30 days before the time specified for the opening of proposals.

(d) In evaluating proposals, the city may consider any relevant factors, including system design, system reliability, operational experience, operational costs, compatibility with existing systems and equipment, and emerging technology. The city may negotiate aspects of any proposal with any responsible proposer with regard to these factors to determine which

proposal is the most responsive. A determination of most responsive proposer by the city shall be final.

(e) The city may negotiate a contract with the most responsive proposer for the performance of communications services specified in the request for proposals. All contracts entered into pursuant to this section shall be approved and awarded by the governing body of the city.

(f) If the city is unable to successfully negotiate the terms of a contract with the most responsive proposer with 60 days of the opening of the proposals, the city may proceed to negotiate with the firm determined to be the next most responsive proposer if such a proposer exists. If the city is unable to successfully negotiate the terms of a contract with the next most responsive proposer within 60 days, it may proceed under this Article to provide communications services.

(g) All proposals shall be sealed and shall be opened in public."

SECTION 1.(b) G.S. 105-164.14 is amended by adding a new subsection to read:

"(d2) A city subject to the provisions of G.S. 160A-340.5 is not allowed a refund of sales and use taxes paid by it under this Article for purchases related to the provision of communications services as defined in Article 16A of Chapter 160A."

SECTION 1.(c) Subsection (b) of this section is effective when it becomes law and applies to sales made on or after that date.

SECTION 2.(a) G.S. 62-3(23) is amended by adding the following new sub-subdivision to read:

"l. The term "public utility" shall include a city or a joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes that provides service as defined in G.S. 62-3(23)a.6. and is subject to the provisions of G.S. 160A-340.1."

SECTION 2.(b) This section shall not be construed to change the regulatory nature of or requirements applicable to any particular service currently regulated by the Commission under Chapter 62 of the General Statutes.

SECTION 3. Subchapter IV of Chapter 159 of the General Statutes is amended by adding a new Article to read as follows:

"Article 9A.

"Borrowing by Cities for Competitive Purposes.

"**§ 159-175.10. Additional requirements for review of city financing application; communications service.**

The Commission shall apply additional requirements to an application for financing by a city or a joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes for the construction, operation, expansion, or repair of a communications system or other infrastructure for the purpose of offering communications service, as that term is defined in G.S. 160A-340(2), that is or will be competitive with communications service offered by a private communications service provider. This section does not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto, but does apply to the expansion of such existing network. The additional requirements are the following:

(1) Prior to submitting an application to the Commission, a city or joint agency shall comply with the provisions of G.S. 160A-340.3 requiring at least two public hearings on the proposed communications service project and notice of the hearings to private communications service providers who have requested notice.

(2) At the same time the application is submitted to the Commission, the city or joint agency shall serve a copy of the application on each person that provides competitive communications service within the city's jurisdictional

boundaries or in areas adjacent to the city. No hearing on the application shall be heard by the Commission until at least 60 days after the application is submitted to the Commission.

(3) Upon the request of a communications service provider, the Commission shall accept written and oral comments from competitive private communications service providers in connection with any hearing or other review of the application.

(4) In considering the probable net revenues of the proposed communications service project, the Commission shall consider and make written findings on the reasonableness of the city or joint agency's revenue projections in light of the current and projected competitive environment for the services to be provided, taking into consideration the potential impact of technological innovation and change on the proposed service offerings and the level of demonstrated community support for the project.

(5) The city or joint agency making the application to the Commission shall bear the burden of persuasion with respect to subdivisions (1) through (4) of this section."

SECTION 4. G.S. 159-81(3) is amended by adding a new sub-subdivision to read:

"q. Cable television systems."

SECTION 5. Sections 2, 3, and 4 of this act do not apply to a city or joint agency providing communications service as of January 1, 2011, provided the city or joint agency limits the provision of communications service as provided in G.S. 160A-340.2(c). In the event a city subject to the exemption set forth in this section provides communications service to a customer outside the limits set forth in G.S. 160A-340(c), the city shall have thirty days from the date of notice or discovery to cease providing service to the customer without loss of the exemption.

SECTION 6. Any city that is designated as a public utility under Chapter 62 of the General Statutes when this act becomes law shall not be subject to the provisions of this act with respect to any of its operations that are authorized by that Chapter.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 8. Except as otherwise provided, this act is effective when it becomes law and applies to the provision of communications service by a city or joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes on and after that date.

HOUSE BILL 129:
Level Playing Field/Local Gov't Competition

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	April 27, 2011
Introduced by:	Reps. Avila, Howard, Carney, Wainwright	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Third Edition H129-CSTD-21		

SUMMARY: ***House Bill 129 would create new requirements for cities and joint agencies that operate a communications service that is offered to the public for a fee. The PCS that was before the Committee on April 13, 2001, expanded the service area boundary for MI-Connection and made clarifying and conforming changes. <u>This PCS makes those changes and the following two additional changes:</u>***

- **<u>Amends the referendum requirement for financing. A city must hold a referendum prior to financing a communications system. The question posed in the referendum will be whether or not the city may offer the communications service. In the 3rd edition of the bill, the question posed in the referendum would have been whether the city could incur the debt.</u>**
- **<u>A city that is exempt from Sections 2, 3, and 4 of the bill and is subject to a service area boundary in the new G.S. 160A-340.2(c) will have 30 days from discovery or notice of providing service outside of the boundary to cease providing service outside the boundary without losing the exemption.</u>**

All of the changes made in the PCS are provided in the bill analysis section below.

[As introduced, this bill was identical to S87, as introduced by Sen. Apodaca, which is currently in Senate Judiciary I.]

CURRENT LAW: Under G.S. 160A-311, cities are authorized to operate and finance a number of public enterprises, including cable television systems. A North Carolina Court of Appeals case, *BellSouth Telecommunications, Inc. v. City of Laurinburg*, 168 N.C. App. 75, 606 S.E. 2d 721 (2005), interprets the statutory authority to operate a cable television system to include operation of a fiber optic network. Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson (Greenlight), and Mooresville and Davidson (MiConnection) currently offer cable and internet service as a public enterprise.

The cities that currently operate cable and internet systems financed their systems through the installment purchase contract method authorized by G.S. 160A-20. This financing mechanism is commonly known as certificates of participation. Under this financing method, a city enters into an installment contract secured by a security interest in the system that is constructed. Unlike the issuance of general obligation bonds, installment purchase financing is not subject to a vote of the people. The Local Government Commission must approve a local unit's use of certificates of participation and the unit must give notice and hold a public hearing before it can enter into certificates of participation involving real property.

BILL ANALYSIS: House Bill 129 would create a new Article 16A in Chapter 160A of the General Statutes. The new Article would provide the following:

Communications Service Definition: The bill defines "communications service" as the provision of cable, video programming, telecommunications, broadband, or high-speed Internet access service to the public for a fee. "City-owned communications service provider" includes cities that offer the service through an interlocal agreement or joint agency. Data sharing between governmental entities and service offered to the public for free are not included in the definition of "communications service" and therefore, not subject to the limitations in the bill. The PCS provides that the sharing of voice service between government entities is also excluded from the definition. The PCS also clarifies that the sharing of data and voice between governmental entities must be for *internal* governmental purposes.

High-speed Internet Access Service Definition: The bill defined "High-speed internet access service" as service with transmission speeds consistent with basic broadband service as defined by the FCC. The PCS clarifies the service can be equal to or greater than the FCC requirements. The PCS also clarifies the reference is to the FCC requirements for broadband tier 1 service for broadband data gathering and reporting.

Requirements for City-owned Communications Providers: The bill would require city-owned communications service providers to comply with all of the following:

- All State, local, and federal laws and regulations that a private company providing the same service would be subject to.
- Establish separate enterprise funds for the communications service. Conduct annual audits of the communications service. The annual audit conducted under G.S. 159-34 satisfies this requirement.
- Limit the provision of service to the jurisdictional boundaries of the city.
- Prohibit the use of the city's authority to require individuals or developments to subscribe to the communications service.
- Provide nondiscriminatory access to other service providers to the city's rights-of-way, poles, or conduits.
- Prohibit advertisements of the city-owned communications service on PEG channels of competing providers if the channel is required to be carried on the system of another service provider. Prohibit the use of funds not allocated to the communications service for advertisement.
- Prohibit the subsidization of the communications service with other revenue.
- The service must not be priced below the cost of providing the service. The cost of providing the service must include the cost of capital components that would be equal to the cost of capital components a private provider would incur and an amount equal to all taxes a private provider would pay.
- Remit to its General Fund an amount equal to all the taxes and fees a private provider would pay if the private provider supplied the service..

Cities that choose to sell or discontinue a city-owned communications service would not be required to hold a referendum prior to sale or discontinuous of the service.

Exemptions: The following are exempt from the certain provisions in Section 1 of the bill:

- A city that provides communications services, including intergovernmental data or voice sharing, within its jurisdictional boundaries for the city's internal governmental purposes is exempt from the provider requirements, limitations on installment purchase contract financing and referendum requirement, requirements of payments in lieu of taxes, and public-private partnership requirements. The PCS conforms the exemption for internal governmental purposes with the language used in the definition for "communications service."
- The provision of communications services in an area that has been established by order of the Utilities Commission to be an "unserved area" are exempt from the provider requirements, limitations on installment purchase contract financing and referendum requirement, and requirements of payments in lieu of taxes. For the purposes of this determination, unserved area is an area in which 50% of the households have no access to high-speed internet, or only access to high-speed internet from a satellite provider. The PCS clarifies that the unserved areas will be determined by census block.
- Cities that are offering communications service as of January 1, 2011 are exempt from all of the provisions in the bill, including all of the provisions in Section 1, provided the city limits the provision of service to any one or more of the following:
    - Persons within the corporate limits of the city providing the service. The PCS clarifies that the corporate limits include areas in the corporate limits as of April 1, 2011, and any later annexed areas.
    - Existing customers of the service as of April 1, 2011, provided that contracts outside the service area is subject to public bidding upon expiration.
    - The following service areas:
        - For MI-Connection – the PCS expands the service area to the combined areas of the city of Cornelius; the town of Troutman; the town of Huntersville; the unincorporated areas of Mecklenburg County north of a line beginning at Highway 16 along the west boundary of the county, extending eastward along Highway 16, continuing east along Interstate 485, and continuing eastward to the eastern boundary of the county along Eastfield Road; and the unincorporated areas of Iredell County south of Interstate 40, excluding Statesville and the extraterritorial jurisdiction of Statesville.
        - For the city of Salisbury – the cities of Salisbury, Spencer, East Spencer, Rockwell, Granite Quarry, and the corridors between those cities to the extent necessary to serve those cities.
        - For all other cities and joint agencies – the area designated in the map filed with the notice of franchise.

The PCS makes the following two clarifications to the exemptions:

- The exemptions do not exempt a city or joint agency from laws of general applicability, including nondiscrimination requirements.
- A city that is subject to a service area boundary will have 30 days from discovery or notice of providing service outside of the boundary to cease providing service outside the boundary without losing the exemption.

Public Hearings: Prior to offering communications services, cities would be required to hold at least 2 public hearings for comment on the service. The cities are required to provide notice for the hearings in the local newspaper and with the Utilities Commission. Private communications providers must be allowed to participate in the hearings. Feasibility studies, business plans, and public surveys for the communications service are deemed public records and must be available to the public prior to the hearings. The public hearing requirement does not apply to the repair or upgrade of an existing service.

Financing: Cities and joint agencies would be prohibited from incurring debt for a communications system unless it holds a special election. Cities and joint agencies are also prohibited from using installment purchase contracts and certificates of participation to finance a communications network unless it holds a holds a special election. The question posed in the referendum will be whether or not the city may offer the communications service. In the 3rd edition of the bill, the question posed in the referendum would have been whether the city could incur the debt. The prohibition on certificates of participation and the referendum requirement would not apply to repairs or improvements of an existing system.

Taxes, Payments in Lieu of Taxes: Cities and joint agencies operating a communications service would be required to make the following payments in lieu of taxes:

- To the applicable county, a payment of the amount of property taxes that would be due if the communications system was subject to the property tax.
- To the State, an amount set by the Department of Revenue that approximates the amount of income, franchise, vehicle, motor fuel and other taxes that would be due if the communications system was subject to these taxes. Cities subject to this provision must provide information to the Department of Revenue necessary for the calculation of the payment. The PCS also provides that the amount of the assessment is set by January 1 of each year, and due by March 15 of each year.
- Cites and joint agencies would not receive a sales tax refund for purchases related to the provision of the communications service.

Public-Private Partnerships for Communications Service: Cities would be required to solicit proposals from private providers before constructing a communications network. Cities must issue request for proposals that requires proposals to have sufficient information to make an objective evaluation of the proposals. The city must provide notice of the request for proposals. The city may consider any relevant factors, including system design, system reliability, operational experience, operational costs, compatibility with existing systems and equipment, and emerging technology. If the city in unable to negotiate terms with the 2 most responsive proposers, the city may proceed with offering communications service.

Designation as Public Utility: Cities and joint agencies that provide telephone service would be included in the term "public utility" as defined by Chapter 62 of the General Statutes. Telephone service provided by these entities would be subject to oversight by the Utilities Commission. This section does not expand the regulatory authority of the Utilities Commission in regards to telephone service.

Additional Financing Requirements: For review by the Local Government Commission (LGC) of an application for financing the construction, operation, expansion, or repair of a communications system by a city or joint agency, the following would apply:

- The public hearings required by the bill must be held before an application for financing may be submitted.

- A copy of the application must be given to private communications providers that serve the city and areas adjacent to the city. The LGC must accept written and oral comments from private providers as a part of the application review.
- The LGC must consider and make written findings regarding the reasonableness of the revenue projections of the service in light of the current and projected competitive environment, the impact of innovation, and the level of community support for the project.

Revenue Bonds: Cities may issue revenue bonds to provide a cable television system. Although a referendum is not normally required for revenue bonds, cities that offer communications service as defined in G.S. 160A-340.1 would be subject to G.S. 160A-340.4(b) which requires a city to hold a referendum before incurring debt to construct a communications system.

Additional Exemption for Cities Currently Offering Service: Section 5 of the bill exempts cities and joint agencies providing communications service as of January 1, 2011, provided the city or joint agency limits the provision of service to the service area outlined on page 3, of this summary from the following additional sections of the bill:

- Designation as public utility (Section 2 of the Bill).
- Additional financing requirements (Section 3 of the Bill).
- Ability to use revenue bonds for cable systems (Section 4 of the Bill).

The PCS clarifies that a city exempt from Sections 2, 3, and 4 of the bill and is subject to a service area boundary in G.S. 160A-340.2(c) will have 30 days from discovery or notice of providing service outside of the boundary to cease providing service outside the boundary without losing the exemption.

EFFECTIVE DATE: This act is effective when it becomes law and applies to the provision of communications services by cities or joint agencies on or after that date.

H129-SMTD-33(CSTD-21) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: April 26, 2011

TO: Senate Finance

FROM: Sandra Johnson
Fiscal Research Division

RE: House Bill 129 (Proposed Committee Substitute)

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES					
Current Municipal Broadband Systems Estimate Adverse Financial Implications					
Payment in Lieu of Taxes Estimated at $18.98 per Subscriber for Future Systems					
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue; North Carolina Department of State Treasurer, Local Government Commission

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: House Bill (HB) 129 implements new regulatory, public information, and financial requirements for cities and joint agencies providing communication services to the public for a fee. Four cities/joint agencies, Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson

(Greenlight), and Mooresville-Davidson (MI Connection), currently offer municipal broadband services that could fall within the purview of HB 129. The bill specifically exempts these groups by exempting entities providing telecom services prior to January 1, 2011 from a majority of the provisions set forth in the bill. The main limitation of existing municipal broadband companies applies to their service areas.

Cities offering communications service as of January 1, 2011 are exempt from all of the provisions in the bill provided that the city limits services to any one or more of the following:

- Persons within the corporate limits of the city providing the service.
- Existing customers of the service as of April 1, 2011, provided that contracts outside the service area is subject to public bidding upon expiration.
- For MI-Connection – the PCS expands the service area to the combined areas of the city of Cornelius; the town of Troutman; the town of Huntersville; the unincorporated areas of Mecklenburg County north of a line beginning at Highway 16 along the west boundary of the county, extending eastward along Highway 16, continuing east along Interstate 485, and continuing eastward to the eastern boundary of the county along Eastfield Road; and the unincorporated areas of Iredell County south of Interstate 40, excluding Statesville and the extraterritorial jurisdiction of Statesville.
- For the city of Salisbury – the cities of Salisbury, Spencer, East Spencer, Rockwell, Granite Quarry, and the corridors between those cities to the extent necessary to serve those cities.
- For all other cities and joint agencies – the area designated in the map filed with the notice of franchise.

The new regulations set forth in HB 129 require that future municipal broadband systems:

- Comply with all State, local and federal laws and regulations adhered to by private communication companies.
- Establish separate enterprise funds for the communications service, and conduct annual audits.
- Limit the communication services to the jurisdictional boundaries of the city.
- Eliminate the practice of requiring individuals or developments subscribe to municipal broadband services.
- Provide other service providers with access to the city's rights-of-way, conduits, and other distribution facilities.
- Prohibit advertisements for municipal broadband on the public, education, and government (PEG) channels of competing providers.
- Limit the revenue used to finance communication services to the income generated from the service.
- Price municipal communication services a rate equal to the cost of providing the service. The price should include adjustments for capital costs and taxes incurred in the private sector.

The new public information standards set forth in HB 129 require that municipal broadband companies:

- Hold two public hearings prior to offering services.
- Provide notice for the public hearings in local newspaper and with the Utilities Commission.
- Provide the public with all feasibility studies, business plans, and surveys prior to the hearings.
- Allow private communications providers to participate in the hearing.

The new financial standards set forth in HB 129 require that municipal broadband companies:

- Eliminate the practice of using certificates of participation to finance the construction of a system.
- Make payments in lieu of property taxes to the county/counties in which the services are contained.
- Remit to the State payments in lieu of taxes (PiLoTs), an amount set by the Department of Revenue equivalent to the income, franchise, vehicle, motor fuel, and other taxes due if operating as a private enterprise.

ASSUMPTIONS AND METHODOLOGY: Should HB 129 be enacted, future municipal broadband companies operating in North Carolina will be required to make payments in lieu of taxes (PiLoTs) of approximately $202,000 annually. The $202,000 estimate represents the average state taxes paid per customer ($18.98) as calculated by North Carolina's private telecommunication companies multiplied by the average number of subscribers currently served by municipal broadband projects, 10,694 subscribers. The estimate utilizes information provided by the North Carolina Department of State Treasurer Local Government Commission and North Carolina Cable Telecommunications Association. According to the Association, private telecommunication providers pay $18.84 per subscriber in state and local taxes. Table 1 provides a breakdown of the estimated taxes paid by revenue type.

Table 1: Payment in Lieu of Taxes for Public Entities Providing Communication Services

Tax	Description	Estimated Tax Revenue per Subscriber
Sales and Use Tax	Governmental entities would no longer be eligible to receive sales and use tax refunds under G.S. 105-164.14(c) for tangible personal property utilized in providing communication services.	$2.07
Corporate Income Tax	Income generated from providing communication services would no longer be eligible for the income tax exemption for governmental units provided under G.S. 105-103.11, but subject to the 6.9% corporate income tax as described in G.S. 105-103.3.	$2.91
Franchise Tax	G.S. 105-122 levies a franchise/privilege tax on corporations at a rate of $1.50 per $1,000 on one of three bases: 1) the profits apportioned to the State, 2) 55% of the value of real property owned in the state and subject to local property tax, 3) the book value of real and tangible personal property less any debt used to acquire real property in the state.	$2.21
Property Tax	Government entities would be required to remit taxes on real property (buildings, land, etc.) used in conjunction with providing communication services.	$11.79
Total Tax Due Per Subscriber		**$18.98**
Source: North Carolina Cable Telecommunications Association; Time Warner Cable		

The four municipal broadband enterprises operating as of January 1, 2011: 1) Morganton (CoMPAS Cable TV), 2) Salisbury (Fibrant), 3) Wilson (Greenlight), and 4) Mooresville-Davidson (MI Connection), collectively serve a region covering 42,761 households. Table 2 provides a snapshot of the regions in which these systems operate, years of operation, number of households served, as well as income and assets for the 2010 fiscal year.

According to representatives from the North Carolina Department of State Treasurer Local Government Commission and the Greenlight and Fibrant municipal broadband systems, the boundaries set forth in the PCS weaken the financial viability of both broadband systems. Greenlight and Fibrant's financial plan estimated service to a larger area than described in the HB 129 PCS. Data limitations hinder the quantification of how the newly described service boundaries will impact the financial viability of Greenlight and Fibrant.

As illustrated by Table 2, Morganton's municipal broadband system, CoMPAS, is the oldest municipal system. CoMPAS operated at a net profit during the 2010 fiscal year. CoMPAS began providing telecommunication services in 1992, financing construction through debt and revenue from other utility services. The city upgraded the system in 2004 using funding provided through low interest debt called certificates of participation (COPs). Morganton made its final COPs payment in December 2010 and expects to generate roughly one million dollars of annual net income in future years.

Table 2. Financial and Customer Data on Existing Municipal Broadband Providers, 2010

Provider	City Detail	Years in Operation	Certificates of Participation ($ In Millions)	Households in Service Area, 2010	2010 Net Income/ (Loss) ($ In Millions)	Assets ($ In Millions)	
						Real Property (Buildings and Land)	Tangible Personal Property
Greenlight (1)	Wilson, Wilson County, NC	2.8 years	31.80	19,799	(1.37)	0.93	8.47
Fibrant (2)	Salisbury, Rowan County, NC	3 months	29.10	7,562	(0.45)	4.59	
MI Connection (3)	Mooresville-Davidson	3.1 years	79.65	9,000 (actual); 13,489 (projected)	(5.60)	0.65	0.701

Continued on next page.

Table 2. Financial and Customer Data on Existing Municipal Broadband Providers, 2010							
Provider	City Detail	Years in Operation	Certificates of Participation ($ In Millions)	Households in Service Area, 2010	2010 Net Income/ (Loss) ($ In Millions)	Assets ($ In Millions)	
						Real Property (Buildings and Land)	Tangible Personal Property
CoMPAS (4)	Morganton, Burke County, NC	Began in 1992 (financed through utility system revenue), system upgrade occurred in 2004	7.32	6,400	0.2	N/A	N/A
Total			**$147.87**	**42,761**	**$ (7.22)**		

SOURCES OF DATA:

(1) Numbers represent information gathered through the North Carolina Department of State Treasurer Local Government Commission, City of Wilson Certificates of Participation Application, and City of Wilson, "Comprehensive Annual Financial Report for Fiscal Year Ending June 30, 2010." Details can be found in the Supplemental Statement of Net Assets for Enterprise Funds, Broadband section. Available at: http://www.wilsonnc.org/attachments/pages/556/CAFR%202010%20-%20Supplementary%20Financial%20Information-Proprietary.pdf.

(2) Numbers represent information gathered through the North Carolina Department of State Treasurer Local Government Commission, City of Salisbury Certificates of Participation Application, and City of Salisbury, "Comprehensive Annual Financial Report for Fiscal Year Ending June 30, 2010." Available at: http://www.ci.salisbury.nc.us/finance/audit/2010/Supplemental.pdf

(3) Numbers represent information gathered from the City of Mooresville, Certificates of Participation Application, and MI Connection, "Comprehensive Annual Financial Report for Fiscal Year Ending June 30, 2010." All documents provided by the North Carolina Department of State Treasurer Local Government Commission.

(4) Numbers represent data collected through conversations with Bill Harkins (CoMPAS General Manager) and through the North Carolina Department of State Treasurer Local Government Commission, City of Morganton Certificates of Participation Application, and City of Morganton, "Comprehensive Annual Financial Report for Fiscal Year Ending June 30, 2010." All documents provided by the North Carolina Department of State Treasurer Local Government Commission.

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H129-ATD-59 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H129-CSTD-21

Date April 27 ,2011

Senator Brock

moves to amend the bill on page 4, lines 33 through 36, by rewriting the lines to read:

"b. For the city of Salisbury, the service area is the municipalities of Salisbury, Spencer, East Spencer, Granite Quarry, Rockwell, Faith, Cleveland, China Grove, Landis and the corridors between those cities. The service area also includes the economic development sites, public safety facilities, governmental facilities, and educational schools and colleges located outside the municipalities and the corridors between the municipalities and these sites, facilities, schools, and colleges only after the service for these sites, facilities, schools, and colleges has been open for public bids under the procedures of Article 8 of Chapter 143. The corridors between Salisbury and these municipalities and these sites, facilities, schools, and colleges includes only the area necessary to provide service to these municipalities and these sites, facilities, schools, and colleges. The elected bodies of Spencer, East Spencer, Granite Quarry, Rockwell, Faith, Cleveland, China Grove, and Landis shall vote to approve the service extension into each respective municipality before Salisbury can provide service to that municipality. The Rowan County Board of County Commissioners shall vote to approve service extension to any governmental economic development site, governmental facility, school, or college owned by Rowan County. The Rowan Salisbury School Board shall also vote to approve service extension to schools. ".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H129-ATD-59 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H129-ATD-39 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H129-CSTD-21

Date 4-27 ,2011

Senator Kinnaird

moves to amend the bill on page 3, lines 9 through 12, by rewriting the lines to read:

"(7) Shall not subsidize the provision of communications service with funds from any other public enterprise unless the communications service is directly related to or included in the services by the other public enterprises.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 3
(to be filled in by Principal Clerk)

H129-ATD-52 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
H129-CSTD-21

Date April 27 ,2011

Senator Newton

moves to amend the bill on page 4, line 37, by rewriting the line to read:

"c. For the city of Wilson, the service area is the area included in Wilson County and the area included in all counties contiguous to Wilson County.

d. For all other cities or joint agencies offering communications service,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

H129-ATD-42 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H129-CSTD-21

Date April 27 ,2011

Senator Meredith

moves to amend the bill on page 4, lines 40 and 41, by inserting between the lines:
"(d) The provisions of G.S. 160A-340.1, 160A-340.3, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to the City of Fayetteville, provided the City limits the provision of communications service to persons within the boundaries of Cumberland County.";

and by relettering the subsections in that section;

and on page 8, lines 26 and 27, by inserting between the lines:
"**SECTION 6.** Sections 2, 3, and 4 of this act do not apply to the City of Fayetteville, provided the City limits the provision of communications service to persons within the boundaries of Cumberland County.";

and by renumbering the remaining sections of the bill.

SIGNED W. A. Meredith
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 5
(to be filled in by Principal Clerk)

H129-ATD-41 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
H129-CSTD-21

Date April 27 ,2011

Senator Atwater

moves to amend the bill on page 3, line 47, through page 4, line 9, by rewriting the lines to read:

"(b) The provisions of G.S. 160A-340.1, 160A-340.4, and 160A-340.5 do not apply to the provision of communications service in an unserved area. A city seeking to provide communications service in an unserved area shall petition the North Carolina Utilities Commission for a determination that an area is unserved. The petition shall identify with specificity the geographic area for which the designation is sought. Any private communications service provider, or any other interested party, may, within a time established by order of the Commission, which time shall be no fewer than 30 days, file with the Commission an objection to the designation on the grounds that one or more areas designated in the petition is not an unserved area. For purposes of this subsection, the term "unserved area" means a geographical area where the average household density per square mile is equal to or less than 30.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 6
(to be filled in by Principal Clerk)

H129-ATD-58 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H129-CSTD-21

Date April 27 ,2011

Senator Apodaca

moves to amend the bill on page 4, line 37, by rewriting the line to read:

"c. For the city of Wilson, the service area is the county limits of Wilson County, including the incorporated areas within the County.

d. For all other cities or joint agencies offering communications service,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 129 DATE April 07, 2011

S. B. No. _____ Amendment No. 7

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE amendment ATD-59

Rep.)
)
Sen.)

amendment

1 moves to amend the ~~bill~~ on page 1, line 14

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the phrase "colleges." and substituting

4 the phrase "colleges, and shall not be wider

5 than 300 feet.".

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17

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19

SIGNED Pamela McCollett

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 4-27 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

	Page Name	Hometown	Sponsoring Senator
	Blake Scruggs	Chapel Hill	Atwater
2	Marques McPhail	Goldsboro	Pate
3	Drew Connery	Charlotte	Rucho
4	Zac Johnson	Silver City	Alexander
5	Prathna Raval	Fayetteville	Mansfield
6	Nora Stanchfield	Concord	Hartsell
7			
8			
9			

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allen Page	Freedom Works
Steve Carter	" "
Kathy Hartkopf	" "
George Alsip	" " " " "
JOHN BARE	SALISBURY, N.C.
David Baker	NCDOR
Ma Tatten	Buck Bruce
Bill Haigh	Verizon wireless
Mary Bacon	Windstream
Jeff Shipp	Star Telephone

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazia	MF&S
Bill Rowe	NC Justice Center
Dana Fenton	City of Charlotte
Susan Kluttz	Mayor of SALISBURY
[illegible]	Public Affairs Planning Atty & Lobbyist

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J Goodman	NC Chamber
Connie Wilson	NCCTA
[illegible]	Kaylon Law Firm
Bill Scobbin	TSS
Kelli Kolcun	WCLM
CS Hollis	TSS
Doug Miskuv	PSG
Khisten Laster	FSP
Doug Dars	Salisbury
Kathy Hawkins	Duke Energy
Tom Fetzer	Fetzer Strategic

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PHIL BERGER, JR	DA-17A
HERB CRENSHAW	ATT
Stan Pace	Frontier
DAVID BARNES	PS
Angie Bailey	The e-NC Authority
Wendy Kelly	Policy Group
Rick Zechini	Progress Energy
Vance Holloman	DST
Michael Crowell	City of Salisbury
Jack Cozort	Wilson
GRANT GOINS	WKSON
Paul Stam	NCBA
[illegible]	Rogers Group NC

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dove Treme	Salisbury
Angel Sams	NSS
Theresa Kostrzena	NSS

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kate Fetzer	Fetzer Strategy Group

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Ikezi	E-NC
Rachelle Mace	Wilkes Times
CHARLIE WELCH	W-S, N.C. F/W
LaRelle Allsip	Freedom Works
Mildred Smith	Freedom Works
Ramona D. Timm	Freedom Works
E A Timm	Freedom Works
Roy Loflin	Freedom Works
Jack Gibson	
Mary Copeland	Freedom Works
Henry Ed Copeland	Freedom Works

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Biser	Brooks Pierce
Brittan Allen	Allen Law Offices, PLLC
Dwight Allen	Allen Law Offices, PLLC
[signature] Robertson	TWC
[signature]	NCCTH
[signature]	TWC
[signature] Joshua W. Stanley	TWC

SENATE FINANCE COMMITTEE
Tuesday, May 3, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 3, 2011 in room 544 of the Legislative Office Building. Taajae' Bailey and Lizzy Stroman of Raleigh served as pages. Twenty-three members of the committee were present. Senator Rucho presided as chair.

S.B. 201 – Alamance/Orange Boundary

Senator Gunn was recognized to explain the bill. The bill would establish the common boundary between Alamance County and Orange County after the 2010/2011 resurveys of the transitioned properties and would amend S.L. 2010-61, which enabled changes in the historic boundary line. Senator Brown moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 200 – Alamance/Orange 9% Boundary

Senator Gunn explained the bill which would authorize Alamance County and Orange County to recommend the location of 9% of the common boundary between the two counties subsequent to the 2010/2011 resurvey of the historic common boundary line as described in the 1849 survey establishing Alamance County. Senator Harrington moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 215 – State Treasurer's Investments

Senator Hise was recognized to explain the bill. Senator Meredith moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would make changes to the State Treasurer's investment authority. Shawn Wischmeier, the State Treasurer's Chief Investment Officer, was recognized to answer questions. Senator Harrington was recognized to offer an amendment which revised the how certain investment managers may invest assets. Cindy Avrette, a staff attorney with the Research Division, was recognized to answer questions. Senator Tillman moved to adopt the amendment and the motion carried. Senator Dannelly moved to adopt the PCS as amended and the motion carried. A copy of the PCS, the summary, and the amendment is attached.

S.B. 321 – Surplus Lines/Premium Tax

Senator Hise was recognized to explain the bill, which makes changes to the law governing surplus lines insurers to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010. It also authorizes the Commissioner of Insurance to enter into interstate agreements and compacts to prevent the loss of state tax revenue resulting from the federal Act. Senator Hartsell was recognized to offer amendment which directs the Revenue Laws Study Committee to study the potential impact of the State's

entrance into a nonadmitted insurance multistate agreement. Cindy Avrette was recognized to explain the amendment and answer questions. Senator Hartsell moved to adopt the amendment and the motion carried. He moved to adopt the bill as amended and the motion carried. A copy of the bill, the summary, the fiscal note and the amendment is attached.

S.B. 247 – Eliminate 529 Means Test

Senator Hartsell was recognized to explain the bill. It would permanently remove the income limitations from the income tax deduction for contributions made to the Parental Savings Trust Fund, North Carolina's Nations College Savings Program. Under current law, the deduction is not limited by an income threshold; however, applicable for taxable years beginning on and after January 1, 2012, there will be an income limitation on a taxpayer's ability to claim this deduction. Senator Clary moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

S.B. 407 – Trusts and Estate Planning Changes

Senator Hartsell was recognized to explain the bill. It would amend the laws governing trusts, estate planning, and trust companies. The bill provides that the annual license fee for trust licenses is set by statute and is $500. Previously, the fee was set by rule of the State Banking Commission in an amount not to exceed $500. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 1:20 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Tuesday, May 3, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 200	Alamance/Orange 9% Boundary.	Sen. Kinnaird Sen. Gunn
SB 201	Alamance/Orange Boundary.	Sen. Kinnaird Sen. Gunn
SB 215	State Treasurer's Investments.-AB	Sen. Brunstetter Sen. Hise Sen. Apodaca
SB 247	Eliminate Means Test From 529 Deduction.	Sen. Hartsell
SB 321	Surplus Lines/Premium Tax.-AB	Sen. Apodaca
SB 407	Trusts and Estate Planning Changes.	Sen. Hartsell
SB 532	ESC/Jobs Reform.	Sen. Clary Sen. Rucho

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, May 03, 2011

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

FAVORABLE

S.B. **200** Alamance/Orange 9% Boundary.
Sequential Referral: None
Recommended Referral: None

S.B.(CS #1) **201** Alamance/Orange Boundary.
Sequential Referral: None
Recommended Referral: None

S.B. **247** Eliminate Means Test From 529 Deduction.
Sequential Referral: None
Recommended Referral: None

S.B.(CS #1) **407** Trusts and Estate Planning Changes.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **215** State Treasurer's Investments.-AB
Draft Number: 85194
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **321** Surplus Lines/Premium Tax.-AB
Draft Number: 85192
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 6

Committee Clerk Comments:

S 2

SENATE BILL 201*

State and Local Government Committee Substitute Adopted 4/14/11

Short Title: Alamance/Orange Boundary. (Local)

Sponsors:

Referred to:

March 7, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE COMMON BOUNDARY BETWEEN ALAMANCE COUNTY AND ORANGE COUNTY SUBSEQUENT TO THE 2010/2011 RESURVEYS OF THE TRANSITIONED PROPERTIES, AS AUTHORIZED BY THE NORTH CAROLINA GENERAL ASSEMBLY BY SESSION LAW 2010-61 ENABLING THE CHANGES IN THE HISTORIC ORANGE COUNTY/ALAMANCE COUNTY BOUNDARY LINE AS DESCRIBED IN THE 1849 SURVEY ESTABLISHING ALAMANCE COUNTY, AND TO AMEND SOME SECTIONS OF SESSION LAW 2010-61.

The General Assembly of North Carolina enacts:

SECTION 1. The historic boundary line forming Alamance County from Orange County was described and surveyed in 1849. In the subsequent 160 years, this line became uncertain, resulting in unintentional modifications to the boundary line affecting taxation, school attendance, zoning maps, and elections within and among Alamance County, Orange County, and the Town of Mebane, North Carolina. Pursuant to G.S. 153A-18, entitled "Uncertain or Disputed Boundary," both county commissions passed resolutions (Alamance County, December 17, 2007, and Orange County, January 18, 2008) to request that North Carolina Geodetic Survey (NCGS) perform a preliminary resurvey and present a proposed map for consideration by both counties.

SECTION 2. The Alamance County Board of Commissioners agreed by vote on April 21, 2008, and Orange County on May 20, 2008, to approve authorizing NCGS to conduct the preliminary survey and the placing of monuments by NCGS consistent with their research to form a boundary baseline. On July 8, 2010, the North Carolina General Assembly enacted S.L. 2010-61, which enabled Alamance County and Orange County to transition properties between the two counties for the purpose of recommending to the North Carolina General Assembly a mutually agreed upon boundary line between the two counties.

SECTION 3. Section 3 of S.L. 2010-61 reads as rewritten:

"**SECTION 3.** In the 160 years since the initial survey of the Alamance County/Orange County boundary line, Alamance and Orange Counties have entered into multiple taxing agreements that have resulted in properties being taxed in one county by the adjoining county. Other situations have arisen in which children of one county attend school in the adjoining county and voters in one county have voted in the adjoining county. The General Assembly recognizes the difficulties in addressing these issues and authorizes Alamance County and Orange County to maintain the current taxing, elections, education, and any other recognized government functions in place until July 1, ~~2011.~~ 2012."

SECTION 4. Section 4 of S.L. 2010-61 reads as rewritten:

"**SECTION 4.(a)** ~~On and after July 1, 2011, all papers, documents, and instruments required or permitted to be filed or registered that involve residents and property located in~~

~~areas affected by the resurvey of the boundary line that previously may have been recorded in the adjoining counties shall be recorded in the county to which the property has been annexed.~~ Except as otherwise provided in this act, on and after January 1, 2012, all papers, documents, and instruments required or permitted to be filed or registered, involving residents and property in areas affected by the resurvey of the boundary line, that previously may have been recorded in the adjoining counties shall be recorded in the county to which the property has been reassigned by this act.

"**SECTION 4.(b)** All public records related to residents and property located in areas affected by the resurvey of the boundary line that were filed or recorded prior to July 1, 2011, in the adjoining counties shall remain in those respective adjoining counties where filed or recorded, and such records shall be valid public records as to the property and persons involved, even though they are recorded in an adjoining county which is a county where the property is no longer located as evidenced by the 2008 North Carolina Geodetic Survey and the subsequent partial resurvey pursuant to Section 7 of this act.

~~"SECTION 4.(c) On and after July 1, 2011, all real and personal property located in areas affected by the resurvey of the boundary line that was subject to ad valorem taxation on January 1, 2011, shall be subject to ad valorem taxes in the county to which the property is annexed for the fiscal year beginning July 1, 2011, to the same extent as it would have been had it been correctly recognized by the tax departments of each county on January 1, 2011, except as hereinafter provided with respect to classified registered motor vehicles. On July 1, 2011, the tax administrators of the adjoining counties shall transfer to the respective county tax assessors the ad valorem tax listings and valuations for all real and personal property subject to ad valorem taxation in areas affected by the resurvey of the boundary line, except classified motor vehicles that were registered in the adjoining counties prior to July 1, 2011. For the fiscal year that begins July 1, 2011, all real and personal property located in areas affected by the resurvey of the boundary line that was subject to ad valorem taxation in that area on January 1, 2011, shall be assessed and taxed as follows:~~

~~(1) The ad valorem property taxes assessed on all classified registered motor vehicles registered or listed in adjoining counties between January 1, 2011, and June 30, 2011, shall be collected by the appropriate adjoining county tax collector, and all such taxes shall be retained by that adjoining county. The taxes on all classified registered motor vehicles registered after June 30, 2011, shall be assessed and collected by the county tax department in the county to which the real property wherein the classified registered motor vehicles are situated has been annexed.~~

~~(2) The values established by the particular adjoining county tax administrator on all personal property other than classified registered motor vehicles shall be used by the county tax assessor without adjustment in computing taxes due for the fiscal year beginning July 1, 2011. All such taxes shall be assessed and collected by the appropriate county tax department.~~

~~(3) For the interim time period between the annexation of properties into their respective counties and until such time as the next regularly scheduled revaluation period, Alamance County and Orange County may select either of two methods of valuating the property annexed into their respective county by this act. The selection of either method by a county shall not give any individual or entity grounds for challenging such temporary valuation. Such methods are delineated as follows:~~

~~a. The values established by the adjoining counties' tax administrators on all real property formerly taxed in their respective county shall be adjusted by the appropriate county tax assessor by applying the difference between one hundred percent (100%) of such values and~~

~~the appropriate county median ratio, as established by the Sales Assessment Ratio Study compiled by the North Carolina Department of Revenue as of January 1, 2012. The taxes determined by applying this method will be collected and retained by the appropriate county tax collector. The value of such property shall then be revalued according to the regularly scheduled revaluation period for each county.~~

~~b. The values established by the adjoining counties' tax administrators on all real property formerly taxed in their respective county shall be adopted by the appropriate county tax assessor upon the transition of property to the adjoining county. The valuation of such property shall then be revalued according to the regularly scheduled revaluation period for each county.~~

~~(4) Beginning January 1, 2012, all property in areas affected by the resurvey of the boundary line that is subject to ad valorem taxation shall be listed, assessed, and taxed by the appropriate county tax administrator in the same manner as is prescribed by law for all other property located within each county.~~

~~(5) The final tax values of property subject to ad valorem taxation in areas affected by the resurvey of the boundary line as of January 1, 2011, shall be determined by the adjoining county tax administrator. Appeals to the North Carolina Property Tax Commission or to the courts by property owners of properties affected by the boundary line change shall be defended by both counties, and both counties shall be responsible for their costs and expenses, including attorneys' fees, incurred in connection with such appeals.~~

~~(6) Any unpaid taxes or tax liens for the fiscal year ending June 30, 2011, or for prior years on property subject to taxation in areas affected by the resurvey of the boundary line shall continue to be valid and enforceable by the respective adjoining county, including (i) the foreclosure remedies provided for in G.S. 105-374 and G.S. 105-375 and (ii) the remedies of attachment and garnishment provided for in G.S. 105-366 through G.S. 105-368. The Alamance County and Orange County tax administrators shall supply one another with a list of unpaid taxes as of July 1, 2011. Any such taxes collected by either county shall be promptly paid to the appropriate adjoining county, including accrued interest. The provisions of G.S. 105-352(d) shall not apply to: those areas in an adjoining county previously taxed by either county outside the areas affected by the resurvey of the boundary line that shall forthwith be properly listed and taxed in the county to which they have been annexed; and those areas within each county that were in the past improperly listed and taxed by the adjoining county due to uncertainty as to the exact location of the true historic Alamance County/Orange County boundary line. Under the discovery process, each county may waive any interest and penalties accrued for tax years 2006-2011 in its sole discretion.~~

"**SECTION 4.(c)** On and after January 1, 2012, all real and personal property in areas affected by the resurvey of the boundary line which was subject to ad valorem taxation on January 1, 2012, shall be subject to ad valorem taxes in the county to which the property is reassigned for the fiscal year beginning July 1, 2012, to the same extent as it would have been had it been correctly recognized by the tax departments of each county on March 1, 2012, except as hereinafter provided with respect to classified registered motor vehicles. On July 1, 2011, the adjoining county tax administrators shall transfer to the respective county tax

assessors the ad valorem tax listings and valuations for all real and personal property subject to ad valorem taxation in areas affected by the resurvey of the boundary line except classified motor vehicles which were registered in the adjoining counties prior to July 1, 2011. For the fiscal year which begins July 1, 2011, all real and personal property in areas affected by the resurvey of the boundary line which was subject to ad valorem taxation in that area on January 1, 2012, shall be assessed and taxed as follows:

(1) The ad valorem property taxes assessed on all classified registered motor vehicles registered or listed in adjoining counties between January 1, 2011, and March 1, 2012, shall be collected by the appropriate adjoining county tax collector, and all such taxes shall be retained by that adjoining county. The taxes on all classified registered motor vehicles registered after March 1, 2012, shall be assessed and collected by the county tax department in the county to which the real property wherein the classified registered motor vehicles are situated has been reassigned.

(2) The values established by the particular adjoining county tax administrator on all personal property other than classified registered motor vehicles shall be used by each county tax assessor without adjustment in computing taxes due for the fiscal year beginning July 1, 2012. All such taxes shall be assessed and collected by the appropriate county tax department.

(3) For the interim time period between the reassignment of properties into their respective counties and until such time as the next regularly scheduled revaluation period, Alamance County and Orange County may select either of two methods of valuating the property reassigned into their respective counties by this act. The selection of either method by a county shall not give any individual or entity grounds for challenging such temporary valuation. Such methods are delineated as follows:

a. The values established by the adjoining county tax administrators on all real property formerly taxed in their county shall be adjusted by the appropriate county tax assessor by applying the difference between one hundred percent (100%) of such values and the appropriate county median ratio, as established by the Sales Assessment Ratio Study compiled by the North Carolina Department of Revenue as of January 1, 2009. The taxes determined by applying this method will be collected and retained by the appropriate county tax collector. The value of such property shall then be revalued according to the regularly scheduled revaluation period for each county.

b. The values established by the adjoining county tax administrators on all real property formerly taxed in their county shall be adopted by the appropriate county tax assessor upon the transition of property to the adjoining county. The valuation of such property shall then be revalued according to the regularly scheduled revaluation period for each county.

(4) Beginning January 1, 2013, all property in areas affected by the resurvey of the boundary line which is subject to ad valorem taxation, shall be listed, assessed, and taxed by the appropriate county tax administrator in the same manner as is prescribed by law for all other property located within each county.

(5) The final tax values of property subject to ad valorem taxation in areas affected by the resurvey of the boundary line as of January 1, 2013, shall be determined by the adjoining county tax administrator. Appeals to the North

Carolina Property Tax Commission or to the courts by property owners of properties affected by the boundary line change shall be defended by both counties, and both counties shall be responsible for their costs and expenses, including attorneys' fees, incurred in connection with such appeals.

(6) Any unpaid taxes or tax liens for the fiscal year ending June 30, 2012, or for prior years on property subject to taxation in areas affected by the resurvey of the boundary line shall continue to be valid and enforceable by the respective adjoining county, including the foreclosure remedies provided for in G.S. 105-374 and G.S. 105-375 and the remedies of attachment and garnishment provided for in G.S. 105-366 through G.S. 105-368. The Alamance County and Orange County Tax Administrators shall supply one another with a list of unpaid taxes for properties in areas of the boundary line affected by the resurveys for the tax year 2011 on or before July 1, 2012. Any such taxes collected by either county shall be promptly paid to the appropriate adjoining county, including accrued interest. The provisions of G.S. 105-352(d) shall not apply to (i) those areas in the adjoining county previously taxed by either county outside the areas affected by the resurvey of the boundary line that shall forthwith be properly listed and taxed in the county to which they have been reassigned by this act and (ii) those areas within each county that were in the past improperly listed and taxed by the adjoining counties due to uncertainty as to the exact location of the true historic Alamance County/Orange County boundary line.

"**SECTION 4.(d)** No cause of action, including criminal actions, involving persons or property located in areas affected by the resurvey of the boundary line that is pending on July 1, ~~2011,~~ 2012, shall be abated, and such actions shall continue in the appropriate adjoining county. In no event shall a defense to a criminal act be maintained where such defense alleges a lack of jurisdiction due to any act or failure to act related to the adjustment of the boundary line by this act, regardless of when such criminal act is alleged to have been committed.

"**SECTION 4.(e)** The board of elections of each adjoining county shall, effective July 1, ~~2011,~~ 2012, transfer the voter registration records pertaining to persons residing in areas affected by the resurvey of the boundary line and located in either county to the adjoining county's board of elections, and thereafter the registered voters so transferred shall be validly registered to vote in that adjoining county.

"**SECTION 4.(f)** The Jury Commission of each adjoining county shall revise its jury lists to add to or eliminate therefrom those persons subject to jury duty who reside in areas affected by the resurvey of the boundary line, said revised jury lists to be effective July 1, ~~2011.~~2012.

"**SECTION 4.(g)** The areas affected by the resurvey of the boundary line and located in each county shall be transferred into the appropriate superior court district, district court district, and prosecutorial district. The areas affected by the resurvey of the boundary line shall remain in the same congressional district, the same State House of Representatives district, and the same State Senate district.

"**SECTION 4.(h)** Any cause of action relating to taxation as it is currently exercised by the counties along or near the Alamance County/Orange County boundary, or any other cause of action related in any way to the Alamance County/Orange County boundary or properties affected by changes in the boundary, is stayed, and no new cause of action relating to these matters shall be commenced until ratification of the official line by the North Carolina General Assembly. Thereafter, causes of action related to the taxation of property shall be defended as described in subdivision (5) of Section 4(c) of this act."

SECTION 5.(a) Any properties affected by S.L. 2010-61 or this act and which are subject to taxation under G.S. 105-274 and which were taxed by both the Alamance County

and Orange County taxing authorities on or after January 1, 2007, are hereby granted the following relief:

(1) Property owners of any such dually taxed properties may, pursuant to the terms of G.S. 105-381, demand refund and/or release of taxes paid to the county from which their property, or portion thereof, was transitioned.

(2) Any claim for relief pursuant to this section and under the terms of G.S. 105-381 may be made for taxes assessed January 1, 2007, through December 31, 2011. All such claims for relief must be made in writing to the county from which the affected property was transitioned on or before February 28, 2012. Should a claim for relief pursuant to this section not be made by February 28, 2012, such claim is waived, and no further relief shall be granted pursuant to this or any other act. Alamance County and Orange County shall not grant refunds or releases pursuant to this section for any claims made after February 28, 2012, and are released from all liability, and no court action shall be maintained for any such claims made for any act or failure to act pursuant to this section.

SECTION 5.(b) The provisions of this section shall apply only to properties transitioned or reassigned from one county to the other, in whole or in part, by the resurveys of individual qualifying properties pursuant to S.L. 2010-61 and this act.

SECTION 5.(c) For purposes of this section only, the term "property owner" shall include any builder or developer that paid property taxes on real property to both counties and subsequently sold said property or that as part of an escrow agreement in which the buyer of such property paid taxes to one county and the builder or developer who sold the property paid taxes on the same piece of property to the adjoining county.

SECTION 5.(d) The taxing authorities of Alamance County and Orange County shall notify property owners affected by this section of the terms of this section within 30 days after this act becomes law. Such notice shall be by United States mail at the mailing address to which any tax bills were previously submitted. No other notice is or shall be required.

SECTION 6. Section 6 of S.L. 2010-61 reads as rewritten:

"**SECTION 6.** Any child who was a resident of any area ~~annexed by this act on its date of ratification~~ reassigned by this act on its date of enactment and who was a student in the Orange County or Alamance County school system during the ~~2009-2010 or 2010-2011 school year~~ 2010-2011 or 2011-2012 school year, and the siblings of any such person, may attend school in the same school system as their siblings without necessity of a release or payment of tuition. ~~in the same school system previously attended without necessity of a release or payment of tuition.~~ Any such student, while attending the Orange County school system, shall be considered a resident of Orange County for all public school purposes, including transportation, athletics, and funding formulas. Any such student, while attending the Alamance County school system, shall be considered a resident of Alamance County for all public school purposes, including transportation, athletics, and funding formulas. Notice must be given to all affected school systems by the parent or guardian in order to exercise the privilege granted by this section."

SECTION 7. The establishment of a county boundary line is, pursuant to Section 1 of Article VII of the North Carolina Constitution, the responsibility of the General Assembly. Further, it is vital to the State of North Carolina and all affected local governments that county boundary lines be fixed and any uncertainty as to the location of county boundary lines be resolved. For this reason and in the interest of justice, neither Alamance County nor Orange County, nor any agent, employee, or appointed or elected official thereof, shall be liable to any individual, group, organization, for-profit or not-for-profit business entity of any kind, or governmental entity or agency of any type or kind, for any damages, costs, fees, or fines, and no court action shall be maintained against said counties, officials, employees, and agents for

any recommendation, act, failure to act, or conduct related to S.L. 2010-61 or this act and/or the adoption of a fixed boundary line separating the two counties. Except as set out in Section 5 of this act, and effective upon enactment of this act, Alamance County and Orange County and their officials, employees, and agents are released from all liability for any claims made, and no court action shall be maintained against said officials, employees, and agents for any act or failure to act pursuant to the terms of this act or S.L. 2010-61, and no further relief shall be granted or cause of action sustained except as provided herein.

SECTION 8. Section 8 of S.L. 2010-61 reads as rewritten:

"**SECTION 8.** Alamance County and Orange County shall cause areas of the boundary line to be resurveyed in areas where property owners have met the established administrative criteria to be assigned to a specific ~~county and in areas where for practical or other reasons the North Carolina Geodetic Survey line is not reasonable or is unduly burdensome.~~ county but shall not bear the cost of such resurveys. The costs of the resurveys shall be the responsibility of the transitioned properties' owners."

SECTION 9. Except as amended by this act, S.L. 2010-61 continues in full force and effect. In the case of any conflict between this act and S.L. 2010-61, this act controls to the extent of the conflict.

SECTION 10. Pursuant to Section 1 of Article VII of the North Carolina Constitution, any boundary line between Alamance County and Orange County previously surveyed, recognized, adopted, described, utilized, or ratified is modified as set forth herein upon ratification of this act.

SECTION 11. Pursuant to Section 1 of Article VII of the North Carolina Constitution, the official boundary line between Alamance County and Orange County, as described and approved by the Alamance County Board of Commissioners at its regular meeting December 6, 2010, and the Orange County Board of Commissioners at its regular meeting December 14, 2010, is hereby formally recognized and adopted by the North Carolina General Assembly. The nine percent (9%) portion of the boundary line not described and approved by the county commissioners shall be resurveyed pursuant to separate local legislation.

SECTION 12. Upon completion of the resurveys in compliance with this act, a complete description of the resurveyed line shall be filed in the office of the Register of Deeds of Alamance County, the office of the Register of Deeds of Orange County, and the Secretary of State, as provided in G.S. 153A-18(a).

SECTION 13. This act is effective when it becomes law.

SENATE BILL 201:
Alamance/Orange Boundary

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 3, 2011
Introduced by:	Sens. Gunn, Kinnaird	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 201 would establish the common boundary between Alamance County and Orange County after the 2010/2011 resurveys of the transitioned properties and would amend S.L. 2010-61, which enabled changes in the historic boundary line.

[As introduced, this bill was identical to H214, as introduced by Reps. Ingle, Bordsen, Insko, Faison, which is currently in House Government, if favorable, Finance.]

BILL ANALYSIS:

Section 1 notes that the historic boundary line forming Alamance County from Orange County was described and surveyed in 1849. In the subsequent 160 years, this line became uncertain, resulting in unintentional modifications to the boundary line affecting taxation, school attendance, zoning maps, and elections.

Section 2 notes that both boards of commissioners authorized the North Carolina Geodetic Survey (NCGS) to conduct a preliminary resurvey. Through the passage of S.L. 2010-61, the General Assembly enabled Alamance County and Orange County to transition properties between the two counties and to recommend a mutually agreed upon boundary line between the two counties.

Section 3 provides that Alamance County and Orange County may maintain their current taxing, elections, education, and other government functions until July 1, 2012 (was July 1, 2011).

Section 4 makes a number of changes to S.L. 2010-61. It extends the time by which papers and documents must be recorded in the county to which the property has been reassigned to January 1, 2012 (was July 1, 2011) and extends a number of other dates. It also prohibits defenses to criminal acts alleging a lack of jurisdiction based on adjustment of the boundary line.

Section 5.(a) provides certain relief for property owners which were taxed by both Alamance and Orange County taxing authorities. The owners may demand refund and/or release of taxes paid from the county from which their property was transitioned. Claims for relief may be made for taxes assessed from January 1, 2007, through December 31, 2011 if certain procedures are followed.

Section 5.(b) specifies that this section applies only to properties transitioned from one county to the other by resurveys of properties.

Section 5.(c) provides an expanded definition of "property owner" for this section only.

Section 5.(d) provides that taxing authorities of Orange and Alamance Counties must notify property owners affected by this section within 30 days after the act becomes law. The notice is to be sent by United States mail to the mailing address to which previous tax bills were sent.

Section 6 provides that if a child was a resident of any area reassigned by this act and that child was a student in Orange County or Alamance County during the 2010-2011 or 2011-2012 school year, then the child may attend school in the same system as their siblings.

Section 7 gives immunity to the counties, their agents, and elected or appointed officials from suits in connection with local bills related to the location of the boundary line.

ection 8 provides that Alamance and Orange Counties will not bear the costs of resurveys in areas where property owners have met the criteria to be assigned to a specific county; the costs are the responsibility of the transitioned property owners.

Section 9 clarifies that S.L. 2010-61 remains in effect, but that the present bill controls if there is a conflict.

Section 10 provides that pursuant to the North Carolina Constitution, any boundary line previously utilized is modified as provided in this act.

Section 11 provides that the boundary line approved by the commissioners of Alamance County and Orange County are adopted by the General Assembly. It further provides that the 9% portion of the boundary line, which was not approved by the county commissioners, must be resurveyed pursuant to another local bill (Senate Bill 200).

Section 12 provides when the resurveys have been finished, a complete description of the resurveyed land must be filed with the Registers of Deeds in Alamance and Orange Counties and with the Secretary of State.

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

S201-SMRB-36(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 200*

Short Title:	Alamance/Orange 9% Boundary.	(Local)
Sponsors:	Senators Gunn and Kinnaird.	
Referred to:	State and Local Government.	

March 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ALAMANCE COUNTY AND ORANGE COUNTY TO RECOMMEND THE LOCATION OF NINE PERCENT OF THE COMMON BOUNDARY BETWEEN ALAMANCE COUNTY AND ORANGE COUNTY SUBSEQUENT TO THE 2010/2011 RESURVEY OF THE HISTORIC ORANGE COUNTY/ALAMANCE COUNTY BOUNDARY LINE AS DESCRIBED IN THE 1849 SURVEY ESTABLISHING ALAMANCE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. The historic boundary line forming Alamance County from Orange County was described and surveyed in 1849. In the subsequent 160 years, this line became uncertain, resulting in unintentional modifications to the boundary line affecting taxation, school attendance, zoning maps, and elections within and among Alamance County, Orange County, and the Town of Mebane, North Carolina. Pursuant to G.S. 153A-18(a) entitled "Uncertain or Disputed Boundary," both county boards of commissioners passed resolutions (Alamance County, December 17, 2007, and Orange County, January 18, 2008) to request that North Carolina Geodetic Survey (NCGS) perform a preliminary resurvey and present a proposed map for consideration by both counties.

SECTION 2. The Alamance County Board of Commissioners agreed, by vote on April 21, 2008, and the Orange County Board of Commissioners on May 20, 2008, to approve authorizing NCGS to conduct the preliminary survey and the placing of monuments by NCGS consistent with their research to form a boundary baseline. On July 8, 2010, the North Carolina General Assembly enacted S.L. 2010-61, which enabled Alamance County and Orange County to transition properties between the two counties for the purpose of recommending to the North Carolina General Assembly a mutually agreed upon boundary line between the two counties.

SECTION 3. Following an extended process pursuant to the terms of S.L. 2010-61, Alamance County and Orange County have agreed upon and have recommended the General Assembly, through a separate local act, establish and adopt ninety-one percent (91%) of the boundary line separating Alamance County and Orange County.

SECTION 4. The Alamance County and Orange County Boards of Commissioners require further time to determine the most appropriate location of the final nine percent (9%) of the boundary line separating Alamance County and Orange County in order to make a final recommendation to the General Assembly. The Alamance County Board of Commissioners at its regular meeting December 6, 2010, and the Orange County Board of Commissioners at its regular meeting December 14, 2010, mutually agreed upon ninety-one percent (91%) of the boundary line. The remaining nine percent (9%) portion of the boundary line not described and approved by the county commissioners at their respective meetings December 6, 2010, and December 14, 2010, shall be resurveyed as set out in Section 5(b) of this act.

SECTION 5.(a) The Alamance County and Orange County Boards of Commissioners may review the remaining nine percent (9%) of the boundary separating the two counties and shall determine, in their discretion, the most appropriate location for a boundary line separating the two counties along the remaining nine percent (9%) of the boundary area. The Boards of Commissioners shall make the determination of the most appropriate location for a boundary line on or before October 31, 2011.

SECTION 5.(b) Alamance County and Orange County shall cause areas within the nine percent (9%) of the boundary area to be surveyed for purposes of locating a boundary line. The counties shall not be responsible for the costs of such surveys where owners of property located within the remaining nine percent (9%) of the boundary area request their property, or any portion thereof, be located within a specific county. All such surveys shall be completed by January 31, 2012. A lien in the form of a tax lien under Chapter 105 of the General Statutes may be placed on an owner's property to recover the costs of any surveys for which the counties have advanced funds, and said lien may be enforced under the laws available for the collection of taxes. A lien for this purpose may also be placed on any property involved in a transition in whole or in part from one county to the other pursuant to S.L. 2010-61 or any other local act regarding the establishment of the Alamance County/Orange County boundary line.

SECTION 5.(c) The Alamance County and Orange County Boards of Commissioners shall, prior to the reconvening of the 2011 Regular Session of the General Assembly in 2012, submit a recommendation in the form of a local bill for the location of a final boundary line along the remaining nine percent (9%) of the area separating the two counties.

SECTION 5.(d) All owners of property within the remaining nine percent (9%) of the boundary area shall be notified in writing via first class United States mail not less than 30 days prior to a public hearing being conducted

SECTION 5.(e) Any such owners of property shall have the right to address the Alamance County and Orange County Boards of Commissioners regarding the status of their property located within the nine percent (9%) area, as that status relates to the Alamance County/Orange County boundary, at any public regularly scheduled meeting at which public comment is traditionally accepted.

SECTION 6. The establishment of a county boundary line is, pursuant to Section 1 of Article VII of the North Carolina Constitution, the responsibility of the North Carolina General Assembly. Further, it is vital to the State of North Carolina and all affected local governments that county boundary lines be fixed and any uncertainty as to the location of county boundary lines be resolved. For this reason and in the interest of justice, neither Alamance County nor Orange County, nor any agent, employee, or appointed or elected official, shall be liable to any individual, group, organization, for-profit or not-for-profit business entity of any kind, of governmental entity or agency of any type or kind for any damages, costs, fees, or fines, and no court action shall be maintained against said counties, agents, employees, or officials for any recommendation, act, failure to act, or conduct related to S.L. 2010-61, any pending local bill which subsequently becomes law related to the location of the Alamance County/Orange County Boundary Line, this act, or the adoption of a fixed boundary line separating the two counties. Effective upon this act becoming law, Alamance County and Orange County, their officials, employees, and agents are released from all liability for any claims made, and no court action shall be maintained against said counties, officials, employees, and agents for any act or failure to act pursuant to the terms of this act or S.L. 2010-61, and no further relief shall be granted or cause of action sustained except as provided herein.

SECTION 7. Pending the establishment of a final boundary line separating Alamance County and Orange County, the two counties shall maintain, in the nine percent

(9%) boundary area, the currently recognized boundary line for all governmental purposes, including, but not limited to, taxation, elections, emergency services, zoning, and education.

SECTION 8. This act is effective when it becomes law.

SENATE BILL 200:
Alamance/Orange 9% Boundary

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 3, 2011
Introduced by:	Sens. Gunn, Kinnaird	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 200 would authorize Alamance County and Orange County to recommend the location of 9% of the common boundary between the two counties subsequent to the 2010/2011 resurvey of the historic common boundary line as described in the 1849 survey establishing Alamance County.

[As introduced, this bill was identical to H213, as introduced by Reps. Ingle, Bordsen, Insko, Faison, which is currently in House Government, if favorable, Finance.]

BILL ANALYSIS:

Section 1 notes that the historic boundary line forming Alamance County from Orange County was described and surveyed in 1849. In the subsequent 160 years, this line became uncertain, resulting in unintentional modifications to the boundary line affecting taxation, school attendance, zoning maps, and elections.

Section 2 notes that both boards of commissioners authorized the North Carolina Geodetic Survey (NCGS) to conduct a preliminary resurvey. Through the passage of S.L. 2010-61, the General Assembly enabled Alamance County and Orange County to transition properties between the two counties and to recommend a mutually agreed upon boundary line between the two counties.

Section 3 explains that the counties have agreed upon and have recommended that the General Assembly, through a separate local act, establish and adopt 91% of the boundary line separating the counties. Senate Bill 201 addresses this issue.

Section 4 notes that the boards need more time to determine the most appropriate location of the final 9% of the boundary line. The boards mutually agreed on 91% of the boundary line. The remaining 9% of the boundary line not described and approved by the county commissioners at their respective meetings must be resurveyed as set out in Section 5(b) of this act.

Section 5.(a) provides that the boards may review the remaining 9% of the boundary separating the counties and shall determine, in their discretion, the most appropriate location for a boundary line separating the two counties along the remaining 9% of the boundary area. The boards must make the determination of the most appropriate location for a boundary line on or before October 31, 2011.

Section 5.(b) requires Alamance County and Orange County to have areas within the 9% of the boundary area to be surveyed. The counties are not responsible for the costs of the surveys where owners of property located within the remaining nine percent (9%) of the boundary area request that their property be located within a specific county. All surveys must be completed by January 31, 2012. A tax lien may be placed on an owner's property to recover the costs of any surveys for which the counties have advanced funds, and the lien may be enforced under the laws available for the collection of taxes.

Section 5.(c) provides that the boards must, prior to the reconvening of the 2011 Regular Session of the General Assembly in 2012, submit a recommendation in the form of a local bill for the location of a final boundary line along the 9% of the area separating the two counties.

Section 5.(d) provides that all owners of property within the remaining 9% of the boundary area must be notified in writing via first class United States mail not less than 30 days prior to a public hearing being conducted.

Section 5.(e) provides that the property owners will have the right to address the Alamance County and Orange County Boards of Commissioners regarding the status of their property located within the 9% area at any regularly scheduled meeting at which public comment is accepted.

Section 6 gives immunity to the counties, their agents, employees, and elected or appointed officials from suits in connection with local bills related to the location of the boundary line. It also releases the same individuals from all liability for any claims made against them for any act or failure to act pursuant to the terms of this act or S.L. 2010-61.

Section 7 provides that pending the establishment of a final boundary line, the two counties must maintain, in the 9% boundary area, the currently recognized boundary line for all governmental purposes, including taxation, elections, emergency services, zoning, and education.

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

Brad Krehely, counsel to State and Local Government, substantially contributed to this summary.

S200-SMRB-35(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 215
Pensions & Retirement and Aging Committee Substitute Adopted 3/31/11
PROPOSED COMMITTEE SUBSTITUTE S215-CSRB-25 [v.1]

5/2/2011 5:24:54 PM

Short Title: State Treasurer's Investments.-AB (Public)

Sponsors:

Referred to:

March 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE STATE TREASURER INVESTMENT STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-69.2(b) reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such ~~funds, selecting from among the following:~~funds. The State Treasurer may invest the funds as provided in this subsection. If an investment was authorized by this subsection at the time the investment was made or contractually committed to be made, then none of the percentage or other limitation on investments set forth in this subsection shall be construed to require the State Treasurer to subsequently dispose of the investment or fail to honor any contractual commitments as a result of changes in market values, ratings, or other investment qualifications.

(1) ~~Any of the investments~~ Investments authorized by G.S. 147-69.1(c)(1)-(7).

(2) General obligations of other states of the United States.

(3) General obligations of cities, counties and special districts in North Carolina.

(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or outside the United States, including obligations that are convertible into equity securities, if the obligations bear one of the four highest ratings of at least one nationally recognized rating service when acquired.

(5) Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4).

(6a) In addition to the limitations and requirements with respect to the investments of the Retirement Systems set forth in this subsection, the State Treasurer shall select investments of the assets of the Retirement Systems such that investments made pursuant to subdivisions (b)(1) through (6) of this section shall at all times equal or exceed twenty percent (20%) of the market value of all invested assets of the Retirement Systems.

(6b) Investments pursuant to subdivisions (b)(1) through (6) of this section may be made directly by the State Treasurer or through contractual arrangements

in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by subdivisions (b)(1) through (6) of this section, provided for each indirect investment, the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

(6c) With respect to Retirement Systems' assets referred to in subdivision (b)(8), they may be invested in obligations and other debt securities, including debt securities convertible into other securities, that do not meet the requirements of any of subdivisions (b)(1) through (6) of this section nor subdivision (b)(7) of this section, provided such investments are made through investment companies registered under the Investment Company Act of 1940, individual, ~~common~~common, or collective trust funds of banks and trust companies, group trusts and limited partnerships, limited liability companies or other limited liability investment vehicles that invest primarily in investments authorized by this subdivision and through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by this subdivision, provided the investment manager for each investment pursuant to this subdivision has assets under management of at least one hundred million dollars ($100,000,000) and provided that the investments authorized under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

(7) With respect to Retirement Systems' assets referred to in subdivision (8) of this subsection, (i) insurance contracts that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, (v) investment companies registered under the Investment Company Act of 1940, and (vi) limited partnerships, limited liability companies, or other limited liability investment vehicles; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located within or outside the United States; and provided that the investments authorized by this subdivision shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems), and assets invested pursuant to subdivision (b2) of this section, they may be invested in equity securities traded on a public securities exchange or market organized and regulated pursuant to the laws of the jurisdiction of such exchange or market and issued by any company incorporated or otherwise created or located within or outside the United States; provided the investments meet the conditions of this subdivision. The

~~The~~ investments authorized for the Retirement Systems under this subdivision cannot exceed sixty-five percent (65%) of the market value of all invested assets of the Retirement Systems.

The assets authorized under this subdivision may be invested directly by the State Treasurer in any equity securities authorized by this subdivision for the primary purpose of approximating the movements of a nationally recognized and published market benchmark index. No more than one and one-half percent (11/2%) of the market value of the Retirement Systems' assets that may be invested directly under this subdivision can be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed eight percent (8%) of the issued and outstanding stock of that corporation.

So long as each investment manager has assets under management of at least one hundred million dollars ($100,000,000), the assets authorized under this subdivision ~~can~~ may also be invested through any of the following:

~~(i)~~a. ~~investment~~Investment companies registered under the Investment Company Act of ~~1940;~~1940.

~~(ii)~~b. ~~individual,~~Individual, common, or collective trust funds of banks and trust ~~companies;~~companies.

~~(iii)~~c. ~~group trusts, and~~Group trusts that invest primarily in investments authorized by this subdivision.

d. Limited partnerships, limited liability companies, or other limited liability investment vehicles that are not publicly traded and invest primarily in investments authorized by this subdivision. Investments under this sub-subdivision shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.

~~(iv)~~e. ~~contractual~~Contractual arrangements in which investment managers have full and complete discretion and authority to invest assets specified in such contractual ~~arrangements.~~arrangements in investments authorized by this subdivision.

~~The assets authorized under this subdivision can also be invested directly by the State Treasurer in any equity securities represented in the S&P 500 Index or that have been publicly announced to be included in the S&P 500 Index. No more than one and one-half percent (11/2%) of the market value of the Retirement Systems' assets that may be invested directly under this subdivision can be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed eight percent (8%) of the issued and outstanding stock of that corporation.~~

(9) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in interests in limited partnerships, limited liability companies, or other limited liability investment vehicles that are not publicly traded if the primary purpose of the limited partnership, limited liability company, or other limited liability investment vehicle is (i) to invest in ~~public or~~ private equity, or corporate buyout transactions, within or outside the United ~~States.~~States or (ii) to engage in other strategies not expressly authorized by any other subdivision of this subsection. The amount invested under this subdivision shall not exceed ~~five percent (5%)~~ ten percent (10%) of the market value of all invested assets of the Retirement Systems.

(9a) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in inflation-linked bonds, timberlands, commodities, and other assets that are acquired for the primary purpose of providing protection against risks associated with inflation,

provided such investments are made through investment companies registered under the Investment Company Act of 1940, individual, common or collective trust funds of banks and trust companies, group trusts and limited partnerships, limited liability companies or other limited liability investment vehicles that invest primarily in investments authorized by this subdivision and through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by this subdivision, provided the investment manager for each investment pursuant to this subdivision has assets under management of at least one hundred million dollars ($100,000,000) and provided that the investments authorized under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems. Notwithstanding anything in this subsection to the contrary, the investments authorized by this subdivision shall not be included in any subdivision other than this subdivision for purposes of the percentage investment limitations therein or otherwise.

(10) Recodified as part of subdivision (b)(9) by Session Laws 2000-160, s. 2.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than October 1, 2011. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision.

(12) With respect to assets of the Escheat Fund, in addition to those investments authorized by subdivisions (1) through (6) of this subsection, up to twenty percent (20%) of such assets may be invested in the investments authorized under subdivisions (7) through (9) of this subsection, notwithstanding the percentage limitations imposed on the Retirement Systems' investments under those subdivisions."

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

SENATE BILL 215:
State Treasurer's Investments.-AB

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 2, 2011
Introduced by:	Sens. Apodaca, Brunstetter, Hise	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to Second Edition S215-CSRB-25		

SUMMARY: Senate Bill 215[1] would make changes to the State Treasurer's investment authority. The PCS makes a couple of stylistic changes.

CURRENT LAW: The State Treasurer has the statutory responsibility of managing the State's investments. The types of investments the Treasurer may use are limited by statute. In regards to the investment of assets held by the North Carolina Retirement System[2], there are additional statutory directions and limitations:

- At least 20% of the market value of all invested assets of the Retirement System must be invested in fixed income assets.
- No more than 65% of the market value of all invested assets of the Retirement System may be invested in public equities.
- Up to 10% of the market value of all invested assets of the Retirement System may be invested in real estate.
- Up to 5% of the market value of all invested assets of the Retirement System may be invested in alternative investments. These investments are primarily private equities. This statutory limit was exceeded in September 2008 when the stock market plummeted, resulting in significantly reduced market value of all investment assets. The limit was exceeded by .13% as of December 31, 2010. The market value invested in alternative investments is currently below the cap; 4.96% as of March 31, 2011.
- In partial response to the exceeding of the statutory limit for alternative investments in 2008, the General Assembly approved two new asset allocations in S.L. 2009-283, the credit and inflation allocations. Up to 5% of the market value of all invested assets of the Retirement System may be invested in each of these two allocations. Subsequent to the creation of these two allocations, certain investment vehicles were reclassified from the alternatives allocation into the credit and inflation allocations, thus reducing the holdings percentage in alternative investments below the statutory limit.

The State Treasurer may manage the investments of the assets internally or externally through outside managers. Currently, the State Treasurer manages approximately 40% of the assets of the Retirement System internally. Although the State Treasurer may make equity investments internally[3], all of those investments are currently managed externally, partially due to the investment limitations imposed on the internal management of this asset allocation. Under current law, the State Treasurer may only invest in equity securities represented in the S&P 500 benchmark.

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[1] Senate Bill 215, as introduced, was identical to House Bill 318, introduced by Rep. McGee. House Bill 318 is in House Finance.

[2] The North Carolina Retirement System consists of the following retirement plans: Teachers' and State Employees', Consolidated Judicial, Firemen's and Rescue Workers, Local Governmental Employees, Legislative, and North Carolina National Guard.

[3] NCRS only manages investment grade fixed income internally.

BILL ANALYSIS: Senate Bill 215 is an agency bill requested by the State Treasurer. The bill would give the Treasurer greater flexibility in implementing its investment strategy of the assets in the Retirement System. The Treasurer's stated intent of the requested statutory changes is to achieve the same or slightly better returns at a meaningfully lower level of risk. The bill would make three primary changes allowing greater investment management flexibility:

Expand the Benchmark for Internal Management of Public Equities:

The State Treasurer's internal management of public equity securities is limited to those securities represented in the S&P 500 benchmark. The State Treasurer may manage these same public equity securities using broader indexes through external managers. The bill would amend G.S. 147-69.2(b)(8) to allow other, broader indexes to be utilized to manage equities internally.

Securities represented in the S&P 500 comprise only 32% of the global equity universe. The S&P 500 covers approximately 75% of the US equity market and focuses on large cap stocks. There exist other, broader indexes, such as the Russell 3000 index and the MSCI World ex US index. The Russell 3000 index covers approximately 42% of the global equity universe; it covers 98% of the US equity market and includes large cap, mid cap, and small cap stocks. The MSCI World ex US index covers approximately 39% of the global equity universe and consists of 23 developed market countries outside of the United States.

"Alternatives" Cap:

The current statutory cap on the alternative investment allocation is 5% of the total investment assets. Investments in this allocation exceeded the cap in September 2008 when the stock market plummeted and significantly reduced the market value of all investments. With the creation of the credit and inflation asset allocations in 2009, the State Treasurer reclassified certain investment instruments from the alternatives allocation into the credit and inflation allocations, thus reducing the holdings percentage in alternative investments below the statutory limit. However, the allocation subsequently exceeded the cap by .13% as of December 31, 2010, because the Treasurer had to invest additional cash in certain alternative investments in order to meet contractual obligations. The Treasurer has taken steps since that time to reduce the level of investments in this allocation. Currently, investments in the alternatives allocation represent 4.96% of the total investment assets.

The bill would amend G.S. 147-69.2(b)(9) to increase the cap from 5% of plan assets to 10%. The bill would also stipulate that if an investment is within the cap at the time it is made or contractually committed to be made, the Treasurer would not be required to dispose of the investment or fail to honor the contractual commitment as a result of changes in market values, ratings, or other investment qualifications.

Use of Hedge Funds in Public Equity Portfolio

The public equity portfolio represents 40% to 50% of the Retirement System's assets. The State Treasurer may utilize hedge funds for risk reduction in all parts of the portfolio that it makes sense to do so except for the public equity portfolio. The public equip asset allocation is the riskiest asset class in the plan due to its large allocations and high volatility of risks. The bill would amend G.S. 147-69.2(b)(8)d. to allow the State Treasurer to use hedge funds in the public equity portfolio, so long as its investment in them does not exceed 10% of the market value of all invested assets in the Retirement System.

EFFECTIVE DATE: Senate Bill 215 would become effective when it becomes law.

S215-SMRB-34(CSRB-25) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 215

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S215-ARB-28 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S215-CSRB-25

Date May 3 ,2011

Senator _____

moves to amend the bill on page 3, lines 13 through 24, by rewriting the lines to read:

"~~(i)~~a. ~~investment~~Investment companies registered under the Investment Company Act of 1940;~~(ii)~~individual, common, or collective trust funds of banks and trust ~~companies;(iii)~~ companies; and group ~~trusts, and~~ trusts that invest primarily in investments authorized by this subdivision.

b. Limited partnerships, limited liability companies, or other limited liability investment vehicles that are not publicly traded and invest primarily in investments authorized by this subdivision. Investments under this sub-subdivision shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.

~~(iv)~~c. ~~contractual~~Contractual arrangements in which investment managers".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE BILL 321
Insurance Committee Substitute Adopted 4/14/11

Short Title: Surplus Lines/Premium Tax.-AB (Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO CONFORM PROVISIONS OF NORTH CAROLINA SURPLUS LINES INSURANCE LAWS TO THE FEDERAL NONADMITTED AND REINSURANCE REFORM ACT OF 2010, TO STREAMLINE APPLICATIONS FOR COMMERCIAL PURCHASERS, TO PREVENT ANY LOSS OF PREMIUM TAX REVENUE TO THE STATE, AND TO CONFORM THE DEFINITION OF RISK RETENTION GROUP TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 58 of the General Statutes is amended by adding the following new sections to read:

"**§ 58-21-3. Cooperative or interstate agreements.**

(a) The Commissioner is authorized to enter into a cooperative agreement or interstate agreement or compact to do the following:

(1) Establish additional and alternative nationwide uniform eligibility requirements that shall be applicable to nonadmitted insurers domiciled in another state or territory of the United States.

(2) Facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of nonadmitted insurance, provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications, and share information among states relating to nonadmitted insurance premium taxes.

(b) The Commissioner is authorized to enter the NAIC Nonadmitted Insurance Multi-State Agreement or other compact or interstate agreement for the purpose of carrying out the Nonadmitted and Reinsurance Reform Act of 2010.

"**§ 58-21-4. Nonadmitted and Reinsurance Reform Act duties.**

(a) For the purposes of carrying out the provisions of the Nonadmitted and Reinsurance Reform Act of 2010, the Commissioner is authorized to utilize the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of an individual or an entity as a surplus lines producer and for renewal of such license.

(b) In order to assist in the performance of the Commissioner's duties, under the Nonadmitted and Reinsurance Reform Act of 2010, the Commissioner may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the Commissioner and the nongovernmental entity may deem to be appropriate."

SECTION 2. G.S. 58-21-10 reads as rewritten:

"**§ 58-21-10. Definitions.**

As used in this Article:

(1) "Admitted insurer" means an insurer licensed to ~~do an insurance business~~ engage in the business of insurance in this State.

(1a) "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(1b) "Affiliated group" means any group of entities that are all affiliated.

(2) "Capital", as used in the financial requirements of G.S. 58-21-20, means funds paid in for stock or other evidence of ownership.

(2a) "Control" means an entity that has "control" over another entity if either of the following occurs:

a. The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent (25%) or more of any class of voting securities of the other entity.

b. The entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(3) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under G.S. 58-21-20.

(4) "Export" means to place surplus lines insurance with a nonadmitted insurer.

(5) "Nonadmitted insurer" means an insurer not licensed to do an insurance business in this State. ~~This definition~~ "Nonadmitted insurer" includes insurance exchanges authorized under the laws of various states. "Nonadmitted insurer" does not include a risk retention group, as defined in G.S. 58-22-10(10).

(6) "Producing broker" means an agent or broker licensed under Article 33 of this Chapter who deals directly with the party seeking insurance and who may also be a surplus lines licensee.

(6a) "Reciprocal state" means a state that has enacted provisions substantially similar to the following:

a. G.S. 58-21-85, 58-21-95(5), 58-21-75(10), 58-21-35(7b), and 58-28-5(b).

b. The allocation schedule and reporting form contained in G.S. 58-21-85.

(7) "Surplus", as used in the financial requirements of G.S. 58-21-20, means funds over and above liabilities and capital of the company for the protection of policyholders.

(8) "Surplus lines insurance" means any insurance in this State of risks resident, located, or to be performed in this State, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, commercial aircraft insurance, wet marine and transportation insurance, insurance independently procured pursuant to G.S. 58-28-5, life and accident or health insurance, and annuities.

(9) "Surplus lines licensee" means a person licensed under G.S. 58-21-65 to place insurance on risks resident, located, or to be performed in this State with nonadmitted insurers eligible to accept such insurance.

(10) "Wet marine and transportation insurance" means:

a. Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

b. Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;

c. Insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and

d. Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters including transportation by land, water, or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment, or reshipment incident thereto."

SECTION 3. Article 21 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-21-11. Home state.**

(a) Except as provided in subsection (b) of this section, the term "home state" means, with respect to an insured, either of the following:

(1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence.

(2) If one hundred percent (100%) of the insured risk is located out of the state referred to in subdivision (1) of this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) Affiliated Groups. – If two or more insureds from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subsection (a) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under that insurance contract."

SECTION 4. G.S. 58-21-15 reads as rewritten:

"**§ 58-21-15. Placement of surplus lines insurance.**

~~Insurance may be procured through a surplus lines licensee from nonadmitted insurers if:~~Surplus lines may be placed by a surplus lines licensee if all of the following apply:

(1) Each insurer is an eligible surplus lines ~~insurer;~~insurer.

(1a) Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction.

(2) The full amount or kind of insurance cannot be obtained from insurers who are admitted to do business in this State. Such full amount or kind of insurance may be procured from eligible surplus lines insurers, provided that a diligent search is made among the insurers who are admitted to transact and are actually writing the particular kind and class of insurance in this ~~State; and~~State.

(3) All other requirements of this Article are met."

SECTION 5. Article 21 of Chapter 58 of the General Statutes is amended by adding the following new sections to read:

"**§ 58-21-16. Streamlined application for commercial purchasers.**

(a) A surplus lines licensee seeking to procure or place nonadmitted insurance in this State for an exempt commercial purchaser shall not be required to satisfy any requirement under G.S. 58-21-15 to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if all of the following apply:

(1) The licensee procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight.

(2) The exempt commercial purchaser has subsequently requested in writing the licensee to procure or place such insurance from a nonadmitted insurer.

(b) As used in this section, the following definitions apply:

(1) "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets all of the following requirements:

a. The person employs or retains a qualified risk manager to negotiate insurance coverage.

b. The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars ($100,000) in the immediately preceding 12 months.

c. The person meets at least one of the following criteria:

1. The person possesses a net worth in excess of twenty million dollars ($20,000,000), as such amount is adjusted pursuant to subsection (c) of this section.

2. The person generates annual revenues in excess of fifty million dollars ($50,000,000), as such amount is adjusted pursuant to subsection (c) of this section.

3. The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

4. The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars ($30,000,000), as such amount is adjusted pursuant to subsection (c) of this section.

5. The person is a municipality with a population in excess of 50,000 persons.

(2) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

a. Is an employee of, or third-party consultant retained by, the commercial policyholder.

b. Provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

c. Has one of the following:

1. A bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the Commissioner to demonstrate minimum competence in risk management and one of the following:

I. Three years of experience in risk financing, claims, administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance.

II. One of the following designations:

A. Chartered Property and Casualty Underwriter (CPCU) issued by the American Institute for CPCU/Insurance Institute of America.

B. Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America.

C. Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research.

D. RIMS Fellow (RF) issued by the Global Risk Management Institute.

E. A designation, certification, or license determined by the Commissioner to demonstrate minimum competency in risk management.

2. Seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and has any one of the designations specified in sub-sub-sub-sub-subdivisions A. through E. of sub-sub-sub-subdivision II. of this sub-subdivision.

3. Ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance.

4. A graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the Commissioner to demonstrate minimum competence in risk management.

(c) Effective on the fifth January 1 occurring after the date of the enactment of this section and each fifth January 1 occurring thereafter, the dollar amounts in sub-sub-subdivisions (b)(1)c.1. 2., 3., and 4. of this section shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor.

"**§ 58-21-17. Placement with alien insurers.**

Nothing in this Article prohibits a surplus lines licensee from placing surplus lines insurance with, or procuring surplus lines insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC."

SECTION 6. G.S. 58-21-20(a) reads as rewritten:

"(a) ~~No surplus lines licensee shall place any coverage with a nonadmitted insurer, unless at the time of placement, such nonadmitted insurer:~~A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer satisfies the following:

(1) Has established satisfactory evidence of good repute and financial ~~integrity; and~~integrity.

(2) Qualifies under one of the following subdivisions:

a. Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction, which equals the greater of either:

1. This State's minimum capital and surplus requirements under ~~G.S. 58-7-75, or~~G.S. 58-7-75.

2. Fifteen million dollars ~~($15,000,000),~~($15,000,000). ~~whichever is greater, except that nonadmitted insurers already qualified under this Article must have ten million dollars ($10,000,000) by December 31, 1991, twelve million five hundred thousand dollars ($12,500,000) by December 31, 1992, and fifteen million dollars ($15,000,000) by December 31, 1993. The~~

~~requirements of this sub-subdivision may be satisfied by an insurer possessing less than the commitment capital and surplus upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, and the insurer's record and reputation within the industry. In no event shall the Commissioner make an affirmative finding of acceptability when the insurer's capital and surplus is less than four million five hundred thousand dollars ($4,500,000).~~

~~In addition, an alien insurer qualifies under this subdivision if it complies with the capital and surplus requirements of this subdivision and maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than five million four hundred thousand dollars ($5,400,000) for the protection of all of its policyholders in the United States, and the trust fund consists of cash, securities, letters of credit, or of investment of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this State. The trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiration date which at no time shall be less than five years; or~~The requirements of this sub-subdivision may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. In no event shall the Commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars ($4,500,000).

b. In the case of any Lloyd's plans or other similar group of insurers, which consists of unincorporated individual insurers, or a combination of both unincorporated and incorporated insurers, maintains a trust fund in an amount of not less than one hundred million dollars ($100,000,000) as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and the trust shall likewise comply with the terms and conditions established in subdivision (2)a. of this section for alien ~~insurers; and~~insurers.

c. In the case of an "insurance exchange" created by the laws of individual states, maintain capital and surplus, or the substantial equivalent thereof, of not less than seventy-five million dollars ($75,000,000) in the aggregate. For insurance exchanges which maintain funds in an amount of not less than fifteen million dollars ($15,000,000) for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than five million dollars ($5,000,000). If the insurance exchange does

not maintain funds in an amount of not less than fifteen million dollars ($15,000,000) for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subdivision (2)a. of this section.

d. In the case of a group of incorporated insurers under common administration, which has continuously transacted an insurance business outside the United States for at least three years immediately before this time, and which submits to this State's authority to examine its books and records and bears the expense of the examination, and maintains an aggregate policyholders' surplus of not less than ten billion dollars ($10,000,000,000), and maintains in trust a surplus of not less than one hundred million dollars ($100,000,000) for the benefit of United States surplus lines policyholders of any member of the group, and each insurer maintains capital and surplus of not less than twenty-five million dollars ($25,000,000) per company.

(3) Has caused to be provided to the Commissioner a copy of its current annual statement certified by such insurer; such statement to be provided no more than two months, and for alien insurers six months, after the close of the period reported upon and that is either:

a. Filed with and approved by the regulatory authority in the domicile of the nonadmitted insurer; or

b. Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile; or

c. In the case of an insurance exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported."

SECTION 7. G.S. 58-21-35(a) reads as rewritten:

"**§ 58-21-35. Duty to file and retain reports.**

(a) Within 30 days after the placing of any surplus lines insurance, the surplus lines licensee shall file with the Commissioner a report in a format prescribed by the Commissioner regarding the insurance and including the following information:

(1) The name of the insured.

(2) The identity of the insurer or insurers.

(3) A description of the subject and location of the risk.

(4) The amount of premium charged for the insurance.

(5) The amount of premium tax for the insurance.

(6) The policy period.

(7) The policy number.

(7a) An acknowledged statement that the surplus lines licensee has complied with ~~G.S. 58-21-15.~~G.S. 58-21-15 or G.S. 58-21-16, whichever is applicable.

(8) The name, address, telephone number, facsimile telephone number, and electronic mail address of the licensee, as applicable.

(9) Any other relevant information the Commissioner may reasonably require.

(b) The licensee shall complete and retain a copy of the report in paper or electronic form as required by the Commissioner. The report required by this section and the quarterly report required by G.S. 58-21-80 shall be completed on a standardized form or forms prescribed by the Commissioner and are not public records under G.S. 132-1 or G.S. 58-2-100."

SECTION 8. G.S. 58-21-65(a) reads as rewritten:

"(a) ~~No~~ For insureds whose home state is this State, no agent or broker licensed by the Commissioner shall procure any contract of surplus lines insurance with any nonadmitted insurer, unless he possesses a current surplus lines insurance license issued by the Commissioner."

SECTION 9. G.S. 58-22-10(10) reads as rewritten:

"(10) "Risk retention group" means any corporation or other limited liability association:

a. Whose primary activity consists of assuming and spreading all or any portion of the liability exposure of its group members;

b. That is organized for the primary purpose of conducting the activity described under sub-subdivision a. of this subdivision;

c. That

(i) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance regulator of at least one state that it satisfied the capitalization requirements of such state; except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981 before the effective date of the Risk Retention Act of 1986;

d. That does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such person;

e. That

~~(i) Has as its members only persons who have an ownership interest in the group and that has as its owners only persons who are members who are provided insurance by the risk retention group; or~~

~~(ii) Has as its sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;~~

(i) Has as it owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) Has as its sole owner an organization that meets all of the following:

(I) Its members are only persons who comprise the membership of the risk retention group; and

(II) Its owners are only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

f. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are

exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

g. Whose activities do not include the provision of insurance other than:

(i) Liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

(ii) Reinsurance with respect to the similar or related liability exposure of any other risk retention group, or any ~~members~~ member of such other group, that is engaged in businesses or activities so that such group or member meets the requirement described in sub-subdivision f. of this subdivision from membership in the risk retention group that provides such reinsurance; and

h. The name of which includes the phrase "Risk Retention Group"."

SECTION 10. This act becomes effective June 1, 2011.

SENATE BILL 321:
Surplus Lines/Premium Tax.-AB

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 2, 2011
Introduced by:	Sen. Apodaca	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 321 makes changes to the law governing surplus lines insurers to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010 and to authorize the Commissioner of Insurance to enter into interstate agreements and compacts to prevent the loss of state tax revenue resulting from the federal Act.***

[As introduced, this bill was identical to H299, as introduced by Rep. Dockham, which is currently in House Finance. The proposed amendment would make the Senate version of the bill identical to the current House version of the bill.]

BACKGROUND: Surplus lines insurance coverage is coverage that is not available from insurers licensed in the State, referred to as admitted insurers. This coverage must instead be purchased from insurers who are not licensed in this State, referred to as non-admitted insurers.

The Nonadmitted and Reinsurance Reform Act (NRRA) was enacted by Congress as part of the Dodd-Frank Wall Street Reform and Protection Act, signed into law in July of 2010. The federal NRRA supersedes aspects of state law regulating surplus lines insurers, requiring the State to make changes to conform to the federal law.

Most notably, the NRRA provides that only the home state of the insured, i.e. the insured's principal place of business, is authorized to tax surplus lines transactions. This change could result in the loss of significant revenue to many states. The NRRA does allow states to enter into interstate compacts for the allocation of tax revenue to prevent this loss. The N.C. Department of Insurance estimates that N.C. may lose $10 to $12 million unless authority is given to the Commissioner to enter into such an agreement.

BILL ANALYSIS: **Section 1** of the bill authorizes the Commissioner of Insurance to enter into a cooperative or interstate agreement or compact to establish alternative nationwide eligibility requirements for nonadmitted insurers domiciled in other states and to facilitate the collection, allocation and disbursement of premium taxes among states. This section also gives the Commissioner the express authority to enter into the National Association of Insurance Commissioners (NAIC) Nonadmitted Insurance Multi-State Agreement or other compact for the purpose of carrying out the NRRA.

Section 1 adds a new section authorizing the Commissioner to participate in a national insurance producer database for the licensing of surplus lines insurers and to contract with nongovernmental entities to collect the appropriate licensing fees.

Section 2 adds definitions to conform state law to the federal NRRA.

Section 3 adds a new section defining "home state" as the principal place of business or principal residence of the insured, as required by the NRRA.

Section 4 amends current law to provide that a surplus lines insurer only be required to obtain authorization to write insurance in its domiciliary state, as provided in the NRRA.

Section 5 provides a streamlined process by which a surplus lines licensee, i.e. a broker or agent, may place surplus lines coverage for certain exempt commercial purchasers without conducting a search to determine whether the insurance can be obtained from admitted insurers. To comply with the new

procedure, the licensee must satisfy the following: (1) the licensee must disclose to the purchaser that the insurance may or may not be available from the admitted market; and (2) the exempt commercial purchaser must subsequently request in writing that the licensee place the insurance with a non-admitted insurer. This section also defines an "exempt commercial purchaser" for the purposes of the new statutory procedure.

Section 5 provides that nothing prohibits a licensee from procuring surplus lines insurance from a nonadmitted insurer outside of the United States, known as an "alien" insurer, listed on the NAIC Listing of Alien Insurers.

Section 6 conforms State eligibility criteria for surplus lines insurers to the NAIC Nonadmitted Insurance Model Act, as required by the federal NRRA.

Section 7 makes conforming changes.

Section 8 provides that a NC surplus lines license is required only for those agents or brokers doing business with insureds whose home state is NC. (Under NRRA, only an insured's home state may require a surplus lines broker to be licensed.)

Section 9 revises the definition of risk retention group to conform to the definition in federal law.

EFFECTIVE DATE: Senate Bill 321 becomes effective June 1, 2011.

AMENDMENT: The proposed amendment would specify that the Commissioner of Insurance could contract with nongovernmental entities to collect the appropriate licensing fees and surplus lines premium taxes and that the person with whom the Commissioner contracts may charge a reasonable fee for this service. The amendment would also direct the Revenue Laws Study Committee to study the potential revenue impact of this legislation. The Department of Insurance requested both provisions.

Tim Hovis, counsel to the Senate Insurance Committee, substantially contributed to this summary.

S321-SMRB-33(e2) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 321

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

S321-ARBf-27 [v.1]

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

Date _____,2011

Senator _____

moves to amend the bill on page 1, lines 33 through 35, by rewriting the lines to read:
"oversees, to perform any ministerial functions that the Commissioner and the nongovernmental entity may deem to be appropriate, including (i) the collection of fees related to producer licensing and (ii) the collection of the premium tax under G.S. 58-21-85. The NAIC or other entity with whom the Commissioner contracts may charge a reasonable fee to the insurer, insured, or other appropriate person for the functions performed.'";

And on page 1, lines 35 and 36, by inserting the following new section to read:

"**SECTION 1.2.** The Revenue Laws Study Committee shall, in cooperation with the Commissioner of Insurance, study the potential impact that would result from the State's entrance into a nonadmitted insurance multistate agreement or other compact or interstate agreement for the purpose of carrying out the Nonadmitted and Reinsurance Reform Act of 2010 in order to prevent the State from losing revenue after July 21, 2011, the effective date of the Nonadmitted and Reinsurance Reform Act. The Committee shall determine if entering into a compact or agreement would result in retention of surplus lines tax revenue for the State and, if so, which compact or agreement would result in the most retention of surplus lines tax revenue for the State and the most cost-efficient method of administering the collection and distribution of tax revenues. The Committee shall report its findings and recommendations, including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

S321-ARBF-27-V-1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 2, 2011

TO: Senator Apodaca

FROM: Michele Nelson and Tazra Mitchell
Fiscal Research Division

RE: SB 321, Second Edition

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:	**$10 to $12 Million Per Fiscal Year**				
EXPENDITURES:	***No Fiscal Impact***				
POSITIONS (cumulative):	***No Fiscal Impact***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: N.C. Department of Insurance

EFFECTIVE DATE: June 1, 2011

BILL SUMMARY:

Section 1 of the bill authorizes the North Carolina (N.C.) Commissioner of Insurance to enter into a cooperative or interstate agreement or compact to establish alternative nationwide eligibility requirements for nonadmitted insurers domiciled in other states and to facilitate the collection, allocation and disbursement of premium taxes among states. This section also gives the Commissioner the express authority to enter into the National Association of Insurance Commissioners (NAIC) Nonadmitted Insurance Multi-State Agreement or other compact for the purpose of carrying out the Nonadmitted and Reinsurance Reform Act (NRRA).

Section 1 adds a new section authorizing the Commissioner to participate in a national insurance producer database for the licensing of surplus lines insurers and to contract with nongovernmental entities to collect the appropriate licensing fees.

Section 2 adds definitions to conform state law to the federal NRRA.

Section 3 adds a new section defining "home state" as the principal place of business or principal residence of the insured, as required by the NRRA.

Section 4 amends current law to provide that a surplus lines insurer only be required to obtain authorization to write insurance in its domiciliary state, as provided in the NRRA.

Section 5 provides a streamlined process by which a surplus lines licensee, i.e. a broker or agent, may place surplus lines coverage for certain exempt commercial purchasers without conducting a search to determine whether the insurance can be obtained from admitted insurers. To comply with the new procedure, the licensee must satisfy the following: (1) the licensee must disclose to the purchaser that the insurance may or may not be available from the admitted market; and (2) the exempt commercial purchaser must subsequently request in writing that the licensee place the insurance with a non-admitted insurer. This section also defines an "exempt commercial purchaser" for the purposes of the new statutory procedure.

Section 5 provides that nothing prohibits a licensee from procuring surplus lines insurance from a nonadmitted insurer outside of the United States, known as an "alien" insurer, listed on the NAIC Listing of Alien Insurers.

Section 6 conforms State eligibility criteria for surplus lines insurers to the NAIC Nonadmitted Insurance Model Act, as required by the federal NRRA.

Section 7 makes conforming changes.

Section 8 provides that a N.C. surplus lines license is required only for those agents or brokers doing business with insureds whose home state is N.C. (Under the NRRA, only an insured's home state may require a surplus lines broker to be licensed.)

Section 9 revises the definition of risk retention group to conform to the definition in federal law.

Source: Research Division (May 2, 2011)

BACKGROUND:

Surplus lines insurance coverage is coverage that is not available from insurers licensed in the State, referred to as admitted insurers. This coverage must instead be purchased from insurers who are not licensed in this State, referred to as nonadmitted insurers.

The NRRA was enacted by Congress as part of the Dodd-Frank Wall Street Reform and Protection Act, signed into law in July of 2010. The NRRA will become effective on July 21, 2011. The NRRA supersedes aspects of state law regulating surplus lines insurers, requiring the State to make changes to conform to the federal law.

Most notably, the NRRA provides that only the home state of the insured—i.e. the insured's principal place of business—is authorized to tax surplus lines transactions. This change could result in the loss of significant revenue to many states. The NRRA allows states to enter into interstate compacts for the allocation of tax revenue to prevent this loss.

Source: Research Division (May 2, 2011)

ASSUMPTIONS AND METHODOLOGY:

Revenue

The N.C. Department of Insurance (DOI) is not able to provide an exact amount of revenue that would be lost to N.C. as a result of the NRRA. With that said, DOI estimates that N.C. could lose $10 to $12 million unless authority is given to the Commissioner of Insurance to enter into a cooperative or interstate agreement or compact as outlined in Section 1 of Senate Bill 321. With the passage of SB 321, N.C. would not experience this loss in revenue.

DOI reports that their projections are based on a conservative approach because there is no existing data available to identify multistate risks. The North Carolina Surplus Lines Association currently generates $5 million annually from non-resident surplus lines brokers without a N.C. connection. DOI estimates that 70% to 80%—approximately $4 million—could be vulnerable. In addition, the business that large brokers handle through their N.C. affiliate offices may range from $6 million to $8 million. Overall, DOI estimates that N.C. may lose $10 to $12 million.

Surplus lines brokers will only have to pay licensing fees in their home state once the NRRA goes into effect. As a result, N.C. will also lose licensing fees from surplus lines brokers. DOI estimates that N.C. may lose up to $65,000 because of this change. Regardless of SB 321's implementation, DOI reports that there is no way for N.C. to recover these licensing fees after the effective date of the NRRA. Therefore, this expected $65,000 loss does not appear in the fiscal impact box on page 1 of this memo.

Expenditures

DOI estimates that there will be no fiscal impact on its current operations to administer Senate Bill 321.

SOURCES OF DATA: N.C. Department of Insurance.

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 321

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S321-ARBf-27 [v.1]

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

Date May 3 ,2011

Senator Hartsell

moves to amend the bill on page 1, lines 33 through 35, by rewriting the lines to read:
"oversees, to perform any ministerial functions that the Commissioner and the nongovernmental entity may deem to be appropriate, including (i) the collection of fees related to producer licensing and (ii) the collection of the premium tax under G.S. 58-21-85. The NAIC or other entity with whom the Commissioner contracts may charge a reasonable fee to the insurer, insured, or other appropriate person for the functions performed.'";

And on page 1, lines 35 and 36, by inserting the following new section to read:

"**SECTION 1.2.** The Revenue Laws Study Committee shall, in cooperation with the Commissioner of Insurance, study the potential impact that would result from the State's entrance into a nonadmitted insurance multistate agreement or other compact or interstate agreement for the purpose of carrying out the Nonadmitted and Reinsurance Reform Act of 2010 in order to prevent the State from losing revenue after July 21, 2011, the effective date of the Nonadmitted and Reinsurance Reform Act. The Committee shall determine if entering into a compact or agreement would result in retention of surplus lines tax revenue for the State and, if so, which compact or agreement would result in the most retention of surplus lines tax revenue for the State and the most cost-efficient method of administering the collection and distribution of tax revenues. The Committee shall report its findings and recommendations, including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

S321-ARBF-27-V-1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 247

Short Title:	Eliminate Means Test From 529 Deduction.	(Public)
Sponsors:	Senators Hartsell; Atwater and Rucho.	
Referred to:	Finance.	

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE INCOME THRESHOLD FOR CONTRIBUTIONS TO AN ACCOUNT IN THE PARENTAL SAVINGS TRUST FUND OF THE STATE EDUCATION ASSISTANCE AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 31.19(d) of S.L. 2007-323 is repealed.

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

SENATE BILL 247:
Eliminate Means Test From 529 Deduction

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 3, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 247 would permanently remove the income limitations from the income tax deduction for contributions made to the Parental Savings Trust Fund, North Carolina's National College Savings Program. Under current law, the deduction is not limited by an income threshold; however, applicable for taxable years beginning on and after January 1, 2012, there will be an income limitation on a taxpayer's ability to claim this deduction.

CURRENT LAW: In 1996, the General Assembly established the Parental Savings Trust Fund. The Fund is maintained by the State Education Assistance Authority, a political subdivision of the State, and is administered by the College Foundation of North Carolina as agent of the Authority. The Fund was established to enable qualified parents to save funds to meet the costs of the postsecondary education expenses of eligible students. Anyone may contribute to the Fund. Because the Fund meets the qualifications of a qualified tuition program under Section 529 of the Internal Revenue Code, distributions from the Fund are excludable from taxable income to the extent the distributions are used to pay for qualified higher education expenses. Interest earned on the Fund is also tax-exempt.

Every state offers a state Section 529 plan, and at least twenty-five states allow for a full or partial income tax deduction for contributions to the state's own plan. Effective for the 2006 taxable year, North Carolina began allowing an individual income tax deduction for contributions by a taxpayer to an account in the State's plan: the Parental Savings Trust Fund. The maximum amounts that may be deducted are $2,500 for an individual and $5,000 for a married couple filing jointly.[1] The Parental Savings Trust Fund deduction must be added back to taxable income if the amount withdrawn from the Fund was not used to pay for qualified higher education expenses of the designated beneficiary. An exception is made if the withdrawal was made due to the death or permanent disability of the beneficiary.

BILL ANALYSIS: As enacted in 2006, the income tax deduction for contributions made to the Parental Savings Trust Fund was only allowed to taxpayers whose adjusted gross income did not exceed a stated statutory amount. The income limitations of the deduction were the same income limitations a taxpayer must meet to qualify for the higher personal exemption amount and the $100 tax credit for each dependent child: $100,000 for married filing jointly; $80,000 for head of household; $60,000 for single; and $50,000 for married filing separately. The General Assembly removed the income limitations for taxable years 2007 through 2011. **Senate Bill 247** would remove the sunset on the removal of the limitations, meaning that the deduction would not have an income threshold.

Since the removal of the income limitations in 2007, the number of new accounts and the total number of contributions to the Parental Savings Trust Fund have increased considerably. Before the

[1] The maximum amounts have increased over time as follows: for the 2006 taxable year the maximum amounts were $750 and $1,500; for the 2007 taxable year the maximum amounts were $2,000 and $4,000; and for taxable years beginning on or after 2008, the maximum amounts are $2,500 and $5,000.

enactment of the deduction in 2006, the Program averaged 224 new accounts per month with an average contribution amount of $160. After the enactment of the deduction with the income limitations, the Program averaged 748 new accounts per month with an average contribution amount of $254. Since the sunset of the income limitations, the Program has averaged 1,327 new accounts per month with an average contribution amount of $239. Eighty-three percent (83%) of the Program's participants voluntary disclose their income level. Of those 83% account holders, 73% are below the $100,000 means test for married filing jointly and 62% are below the means test for heads of household. The average account size for all 87,397 accounts in the Program as of March 31, 2011, is $8,659.[2]

EFFECTIVE DATE: Senate Bill 247 would become effective when it becomes law.

S247-SMRB-37(e1) v1

[2] Information provided by the College Foundation of North Carolina, North Carolina's National College Savings Program.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 247 (First Edition)

SHORT TITLE: Eliminate Means Test From 529 Deduction

SPONSOR(S): Senators Hartsell, Atwater, and Rucho

FISCAL IMPACT					
	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES: ($ millions)	-.6	-1.3	-1.3	-1.3	-1.3
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Dept. of Revenue					
EFFECTIVE DATE: Effective when it becomes law					

BILL SUMMARY: Senate Bill 247 eliminates the income threshold for the tax deduction for contributions to an account in the Parental Savings Trust Fund of the State Educational Assistance Authority (NC-529 Plan.) The threshold was eliminated by SL 2007-323 but was scheduled to be reinstated for taxable years beginning on or after January 1, 2012.

ASSUMPTIONS AND METHODOLOGY: Fiscal Research reviewed 2008 tax return data on the NC-529 plan and identified the total amount of deduction by filing status and by federal adjusted gross income that would be impacted by the elimination of the threshold. These amounts were multiplied by the approximate effective tax rate by filing status to estimate the tax year impact. Adjustments were made to convert the estimated tax year impact to the State's fiscal year.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jonathan Tart

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official Fiscal Research Division Publication

DATE: May 2, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 2

SENATE BILL 407
Judiciary I Committee Substitute Adopted 4/11/11

Short Title: Trusts and Estate Planning Changes. (Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING TRUSTS, ESTATE PLANNING, AND TRUST COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32-55 reads as rewritten:

"**§ 32-55. Notice.**

(a) If the terms of the trust do not specify the trustee's compensation, the trustee may, in the trustee's discretion, give written notice to all qualified beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year. ~~The notice shall contain a statement that the qualified beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.~~

(b) In lieu of giving written notice of each proposed payment of compensation under subsection (a) of this section, the trustee may give written notice to all qualified beneficiaries of the amount of compensation to be paid to the trustee on a periodic basis or of the method of computation of the compensation. The trustee shall not be required to give additional notice to the qualified beneficiaries unless the amount to be paid to the trustee on a periodic basis or the method of computation of the compensation changes.

(c) If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the beneficiary. If a representative of a qualified beneficiary is not available without court order, notice shall be deemed given under this section if there is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15) a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described; and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(c1) The notice provided for in this section shall contain a statement that the qualified beneficiaries or their representatives to whom the notice is given have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.

(d) The provisions of G.S. 36C-1-109 regarding notices to persons under Chapter 36C of the General Statutes shall apply for purposes of notices under this Article."

SECTION 2. G.S. 36C-5-505 is amended by adding a new subsection to read:

"(c) Subject to Article 3A of Chapter 39 of the General Statutes, for purposes of this section, if the settlor is a beneficiary of the following trusts after the death of the settlor's spouse, the property of the trusts shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor:

(1) An irrevocable intervivos marital trust that is treated as a general power of appointment trust described in section 2523(e) of the Internal Revenue Code.
(2) An irrevocable intervivos marital trust that is treated as qualified terminable interest property under section 2523(f) of the Internal Revenue Code.
(3) An irrevocable intervivos trust of which the settlor's spouse is the sole beneficiary during the lifetime of the settlor's spouse but which does not qualify for the federal gift tax marital deduction.
(4) Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described in subdivision (1), (2), or (3) of this subsection.

For purposes of this subsection, the settlor is a beneficiary whether so named under the initial trust instrument or through the exercise of a limited or general power of appointment."

SECTION 3. G.S. 36C-7-704 reads as rewritten:

"**§ 36C-7-704. Vacancy in trusteeship; appointment of successor.**

(a) A vacancy in a trusteeship occurs if:
(1) A person designated as trustee rejects the trusteeship;
(2) A person designated as trustee cannot be identified or does not exist;
(3) A trustee resigns;
(4) A trustee is disqualified or removed;
(5) A trustee dies; or
(6) A general guardian, guardian of the estate, or guardian of the person is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:
(1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;
(2) By a person appointed by unanimous agreement of the qualified beneficiaries; or
(3) By a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:
(1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;
(2) By a person selected by majority agreement of the qualified beneficiaries, if the trust is a split-interest charitable trust;
(2a) By a person selected by majority agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or
(3) By a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

(f) A successor trustee shall succeed to all the rights, powers, and privileges, and is subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee, unless a contrary intent appears from the governing instrument or unless the order appointing the successor trustee provides otherwise. A successor trustee shall be vested with the title to property of the former trustee."

SECTION 4. G.S. 36C-8-816 reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(26) On termination of the trust, exercise ~~the~~ all of the powers otherwise exercisable by the trustee during the administration of the trust, including, without limitation, the trustee's investment powers, the power to sell assets, and the powers set forth in subdivision (22) of this section, and exercise the additional powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;

...."

SECTION 5. G.S. 28A-8-1(b) reads as rewritten:

"(b) No bond shall be required of:

...

(5) A personal representative that is a ~~national banking association having its principal place of business in this State or a State bank acting pursuant to~~ trust institution licensed under G.S. 53-159;

...."

SECTION 6. G.S. 53-43 reads as rewritten:

"**§ 53-43. General powers.**

In addition to the powers conferred by law upon private corporations, banks shall have the power:

...

(6) ~~Maintain~~ To maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure, under rules and regulations of the State Banking Commission, all such deposits in the name of the trust department whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as ~~may be eligible for the investment of the sinking funds of the State of North Carolina, equal in market value to such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five per centum (125%) of such deposits.~~ are required by G.S. 53-163.1 for such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits, and shall be kept separate and apart from other assets of the trust department. Until all of such deposits shall have been accounted for to the trust department or to the individual fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When fiduciary funds are deposited by the trust department in the commercial department of the bank, the deposit thereof shall not be deemed to constitute a use of such funds in the general business of the bank and the bank in such instance shall not be liable for interest on such funds. To the extent and in the amount such deposits may be insured by the Federal Deposit Insurance Corporation, the amount of security required for such deposits by this section may be reduced.

The Banking Commission shall have power to make such rules and regulations as it may deem necessary for the enforcement of the provisions of the preceding paragraph, and such authority shall exist and is hereby conferred under the general authority heretofore conferred upon said Commission as well as by this paragraph.

...."

SECTION 7. Article 14 of Chapter 53 of the General Statutes reads as rewritten:

"Article 14.

"~~Banks~~ Trust Institutions Acting in a Fiduciary Capacity.

"Part 1. General Provisions.

"**§ 53-158.10. Definitions.**

For purposes of this Article, the following definitions apply:

(1) "Depository institution" has the same meaning as set forth in the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811, et seq.

(2) "Hazardous condition" has the same meaning as set forth in G.S. 53-301(a)(23).

(3) "Trust institution" has the same meaning as set forth in G.S. 53-301(a)(52).

"**§ 53-159. ~~Bank~~Trust institution may act as fiduciary.**

Any ~~bank~~ trust institution licensed by the Commissioner of Banks, where such powers or privileges are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or administrator or act in another fiduciary capacity in this State without giving any bond; and the clerks of the superior courts, or other officers charged with the duty or clothed with the power of making such appointments, are authorized to appoint such ~~bank~~ trust institution to any such office.

"**§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing corporation.**

Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any ~~bank or trust company~~ trust institution holding securities in a fiduciary capacity or as a custodian or agent is authorized to deposit or arrange for the deposit of such securities ~~in a clearing corporation~~ with a securities intermediary as defined in G.S. 25-8-102. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such ~~clearing corporation~~ securities intermediary with any other such securities deposited in such ~~clearing corporation~~ securities intermediary by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such ~~bank or trust company~~ trust institution acting as a fiduciary or as a custodian or managing agent shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such ~~clearing corporation~~ securities intermediary without physical delivery of certificates representing such securities. A ~~bank or trust company~~ trust institution so depositing securities pursuant to this section shall be subject to such rules as, in the case of State-chartered institutions, the State Banking Commission and, in the case of ~~national banking associations, the Comptroller of the Currency~~ other institutions, their regulators may from time to time issue. A ~~bank or trust company~~ trust institution acting as custodian or agent for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such ~~bank or trust company~~ trust institution in such ~~clearing corporation~~ securities intermediary for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such ~~clearing corporation~~ securities intermediary for its account as such fiduciary. This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any ~~bank or trust company~~ trust institution holding securities as a fiduciary or as a custodian or managing agent acting on May 15, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not such fiduciary, custodian or agent owns capital stock of such ~~clearing corporation~~ securities intermediary. The fiduciary shall personally be liable for any loss to the trust resulting from an act of such nominee in connection with such securities so deposited.

"**§ 53-160. License to do business.**

Before any such ~~bank or trust company~~ trust institution is authorized to act in any fiduciary capacity without bond, it must be licensed by the Commissioner of Banks of the State. For such license the licensee, for the purpose of defraying necessary expenses of the Commissioner of Banks and the Commissioner's ~~agents in supervising and examining the licensee,~~ agents, shall pay to the Commissioner of Banks an annual license fee ~~not to exceed~~ of five hundred dollars ($500.00). ~~($500.00) as required by rule of the State Banking Commission. A national bank which has been granted trust powers by the Comptroller of the Currency or his duly authorized agent shall be annually licensed as required in this section and shall be granted a certificate of solvency which will meet the provisions of G.S. 53-162 without examination by the Commissioner of Banks as required in G.S. 53-161.~~

"§ 53-161. Examination in connection with license as to solvency.

The Commissioner of Banks ~~shall examine into the solvency of such bank, and shall, if he deem it necessary,~~ may, at the expense of the ~~bank,~~ trust institution, make or cause to be made an examination ~~at its home office of its assets and liabilities. Examinations of trust institutions other than banks shall be as provided in Article 24 of this Chapter.~~ of any trust institution, other than a federally chartered trust institution, that applies for or is licensed by the Commissioner of Banks. The Commissioner of Banks may refuse to issue a license to a trust institution that it finds to be in a hazardous condition.

~~"§ 53-162. Certificate of solvency.~~

~~After any bank has been licensed by the Commissioner of Banks, a certificate issued by the Commissioner of Banks, showing the bank to be solvent to an amount not less than one hundred thousand dollars ($100,000), shall authorize such bank to act in a fiduciary capacity without bond. There shall be no charge for the seal of this certificate.~~

"§ 53-163. Clerk of superior court notified of license and revocation.

The Commissioner of Banks, upon granting license to any ~~such bank or trust company,~~ trust institution, shall immediately notify the clerk of the superior court of each county in the State that the ~~bank or trust company~~ trust institution has been licensed under this Article, and, whenever the Commissioner of Banks is satisfied that any ~~bank or trust company~~trust institution licensed by the Commissioner ~~has become insolvent, or is in imminent danger of insolvency,~~ is in a hazardous condition, the Commissioner shall revoke the license granted to that ~~bank~~ trust institution and notify the clerk of the superior court of each county in the State of the revocation. ~~After such notification, the right of any such bank or trust company to act in a fiduciary capacity shall cease.~~

"§ 53-163.1. Funds held by a ~~corporation exercising fiduciary powers~~ trust institution awaiting investment or distribution.

(a) Funds held in a fiduciary capacity by a ~~bank, trust company, savings and loan association, or other corporation authorized to exercise the powers of a fiduciary,~~ trust institution awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. A ~~corporation acting in a fiduciary capacity~~ trust institution has complied with this requirement if such funds awaiting investment or distribution in excess of one thousand dollars ($1,000) are invested or distributed within 30 days of receipt or accumulation thereof.

(b) Funds held in a fiduciary capacity by a ~~bank,~~ depository institution, awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be deposited in the commercial or savings or other department of the ~~bank,~~ depository institution, provided that it shall first set aside under control of the trust department as collateral security, ~~such securities as may be found~~ the classes of securities listed in ~~G.S. 142-34~~ G.S. 159-30(c) as being eligible for the investment ~~of the sinking funds of the State of North Carolina~~ of funds by local governments and public authorities equal in market value of such deposited funds, or readily marketable commercial bonds having not less than a

recognized "A" rating equal to one hundred and twenty-five percent (125%) of the funds so deposited.

The securities so deposited or securities substituted therefor as collateral in the trust department by the commercial or savings or other department (as well as the deposit of cash in the commercial or savings or other department by the trust department) shall be held pursuant to the provisions of G.S. 53-43(6).

If such funds are deposited in a ~~bank~~ depository institution insured under the provisions of the Federal Deposit Insurance ~~Corporation,~~ Act, the above collateral security will be required only for that portion of uninvested balances of each trust which are not fully insured under the provisions of that ~~corporation.~~act.

(c) Funds held in a fiduciary capacity by a ~~corporate fiduciary~~ trust institution awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be invested in short-term, trust-quality investment vehicles, through the medium of a collective investment fund or otherwise.

(d) In addition to any other compensation to which it may be entitled under ~~G.S. 28A-23-3, 34-12, 35A-1269,~~ statutes governing the compensation of personal representatives, guardians, or other fiduciaries, or under any other authority, a ~~corporation acting in a fiduciary capacity~~trust institution shall be allowed to charge a fee for the temporary investment of funds held awaiting investment or distribution, which fee may be calculated upon the amount of such funds actually invested and upon the income produced thereby. The fee authorized by this subsection shall not exceed twelve percent (12%) of the income produced by such investment. A ~~corporation acting in a fiduciary capacity~~ trust institution has complied with its duty to disclose fees and practices in connection with the investment of fiduciary funds awaiting investment or distribution if the ~~corporation's~~ trust institution's periodic account statements set forth the method of computing such fees.

"§ 53-163.2. Investments in securities by ~~banks or trust companies.~~ trust institutions.

Unless the governing instrument, court order, or a statute specifically directs otherwise, a ~~bank or trust company~~ trust institution serving as trustee, guardian, agent, or in any other fiduciary capacity may invest in any security authorized by this Chapter even if such fiduciary or an affiliate thereof participates or has participated as a member of a syndicate underwriting such security, if:

(1) The fiduciary does not purchase the security from itself or its affiliate; and

(2) The fiduciary does not purchase the security from another syndicate member or an affiliate, pursuant to an implied or express agreement between the fiduciary or its affiliate and a selling member or its affiliate, to purchase all or part of each other's underwriting commitments.

"Part 2. Uniform Common Trust Fund Act.

"§ 53-163.5. Establishment of common trust funds.

(a) Any ~~bank or trust company~~ trust institution duly authorized to act as a fiduciary in this State may establish and maintain one or more common trust funds for the collective investment of funds held in a fiduciary capacity by such ~~bank or trust company~~ trust institution hereafter referred to as the "maintaining ~~bank".~~ institution." The maintaining ~~bank~~ institution may include for the purposes of collective investment in such common trust fund or funds established and maintained by it, funds held in a fiduciary capacity by any other ~~bank or trust company~~ trust institution duly authorized to act as a ~~fiduciary,~~ fiduciary with which it is affiliated, wherever located, which other ~~bank or trust company~~ trust institution is hereinafter referred to as the "participating ~~bank".~~ institution."

~~Provided, however, that the relationship between the maintaining bank and the participating bank is (i) the maintaining bank owns, controls or is affiliated with the participating bank or (ii) a bank holding company owns, controls or is affiliated with both the maintaining bank and the participating bank.~~

(b) For the purposes of this section, a ~~bank or trust company~~ maintaining institution shall be considered to be ~~owned, controlled or~~ affiliated ~~if twenty five percent (25%) or more of any class of its voting stock is owned by a bank or bank holding company or if twenty five percent (25%) or more of any class of its voting stock is owned by one person or no more than 10 persons who are the same person or persons who own twenty five percent (25%) or more of any class of the voting stock of the maintaining bank.~~ with a participating institution if it controls, is controlled by, or is under common control with the participating institution, as control is determined under the federal Bank Holding Company Act of 1956 or by rule, order, or declaratory ruling of the Commissioner of Banks.

(c) Such common trust funds may include a fund composed solely of funds held under an agency agreement in which the ~~bank or trust company~~ trust institution assumes investment discretion and assumes fiduciary responsibility.

(d) Such ~~bank or trust company~~ trust institution may invest the funds held by it in any fiduciary capacity in one or more common trust funds, provided that (i) such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship or amendment thereof, and (ii) the ~~bank~~ trust institution has no interest in the assets of the common trust fund other than as a fiduciary.

"§ 53-163.6. Court accountings.

Unless ordered by a court of competent jurisdiction the ~~bank or trust company~~ trust institution operating such common trust fund or funds shall not be required to render a court accounting with regard to such fund or funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish. This section shall not affect the duties of the trustees of the participating trusts under the common trust fund to render accounts of their several trusts.

"§ 53-163.7. Supervision by State Banking Commission.

All common trust funds established under the provisions of this Part shall be subject to the rules and regulations of the State Banking Commission.

"§ 53-163.8. Uniformity of interpretation.

This Part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

"§ 53-163.9. Short title.

This Part may be cited as the Uniform Common Trust Fund Act."

SECTION 8. G.S. 53-301(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, or when the context clearly indicates that a different meaning is intended, the following definitions shall apply throughout this Article:

...

(6a) "Board of directors" means the governing body of a company.

...

(15a) "Director" means a member of the board of directors.

...

(45) "State trust company" means a ~~corporation~~ company organized under the provisions of this Article and a trust company previously organized under other provisions of Chapter 53 of the General Statutes to operate only as a trust company and not as a commercial bank."

SECTION 9. G.S. 53-331(a) reads as rewritten:

"(a) Subject to the other provisions of this Part, one or more persons may organize and charter a State trust company, which may be ~~incorporated~~ established in the manner described in this Part and in no other way."

SECTION 10. G.S. 53-332 reads as rewritten:

"§ 53-332. Articles of incorporation of State trust company.

(a) The articles of incorporation of a State trust company shall be signed and acknowledged by or on behalf of each organizer and shall contain:

(1) The information required to be set forth in G.S. 55-2-02(a) and, except for telephone information, G.S. 53-311(c); and

(2) Any provision consistent with G.S. 55-2-02(b) and other applicable law that the organizers elect to set forth in the articles of incorporation for the regulation of the internal affairs of the State trust company.

(b) The Commissioner may allow a State trust company to be organized as a company other than a corporation, and, in such case, references in this Article to provisions of Chapter 55 of the General Statutes shall refer to analogous provisions of law governing the formation and operation of that State trust company."

SECTION 11. G.S. 53-335(b) reads as rewritten:

"(b) If the Commissioner orders that the proposed State trust company may be formed, the Commissioner shall issue a State trust company charter and a certification to the Secretary of State permitting the ~~incorporation~~ establishment of the State trust company. The Commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter."

SECTION 12. G.S. 53-352(a) reads as rewritten:

"(a) All corporate powers of a State trust company shall be exercised under the authority of, and the business and affairs of a State trust company shall be managed under the direction of, ~~its~~ a board of directors. Without the approval of the Commissioner, the board shall consist of not less than five directors. ~~The shareholders of a State trust company, at any shareholders' meeting, may authorize not more than two additional directorships which may be left unfilled and to be filled in the discretion of the directors of the State trust company during the interval between shareholders' meetings.~~ Except as specifically provided otherwise in this section, the number, election, term, and classification of the directors of a State trust company shall be governed by the provisions of Chapter 55 of the General Statutes."

SECTION 13. G.S. 53-363(b) reads as rewritten:

"(b) A private trust company engaging in trust business in this State shall comply with all provisions of this Article applicable to a State trust company unless expressly exempted from a provision of this Article by the Commissioner pursuant to this section or prior to the enactment of this Article. However, notwithstanding G.S. 53-352(a), the holders of the equity securities of a private trust company may by unanimous agreement limit the authority of its board of directors; restrict, enlarge, or modify the rights or duties of particular directors; or allocate to an individual or group other than the board of directors some or all of the duties of a board of directors. A private trust company shall notify the Commissioner of the adoption of any agreement affecting the authority of the board of directors within 48 hours and shall provide such information as the Commissioner requests about the agreement. To the extent that an individual or group other than the board of directors is vested with the authority of the board of directors under this section, that individual or group shall be deemed to be acting as the board of directors in the exercise of that authority for all purposes of this Chapter."

SECTION 14. G.S. 53-363(c) reads as rewritten:

"(c) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of G.S. 53-333(b), 53-337(a), 53-339, 53-340, 53-341, 53-342, 53-345, 53-346, and 53-394(b). The Commissioner may grant the exemption request in whole or in part. The Commissioner also may issue rules, orders, or declaratory rulings granting exemptions to all private trust companies, or to private trust companies that meet specified conditions."

SECTION 15. This act becomes effective October 1, 2011, and applies to all trusts created before, on, or after that date.

SENATE BILL 407:
Trusts and Estate Planning Changes

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 3, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: Senate Bill 407 amends the laws governing trusts, estate planning, and trust companies. The bill provides that the annual license fee for trust licenses is set by statute and is $500.00 Previously, the fee was set by rule of the State Banking Commission in an amount not to exceed $500.00.

CURRENT LAW AND BACKGROUND: Article 36C of the North Carolina General Statutes is the North Carolina Uniform Trust Code, and Article 6 of Chapter 32 deals with compensation of trustees and other fiduciaries. Article 14 of Chapter 53 governs banks acting in fiduciary capacity. These statutes are part of a complex, highly specialized area of the law.

BILL ANALYSIS:

Sections 1-4 of the bill clarify North Carolina statutes governing trustees and other fiduciaries.

Section 1 amends G.S. 32-55 to clarify the application of the requirement that the notice to the qualified beneficiaries contain a statement that the qualified beneficiaries have 20 days from the date notice is given to file a proceeding for review of the reasonableness of the trustee's compensation with the clerk of superior court. The purpose of the changes is to clarify that the notice applies to any notice under G.S. 32-55 and not just the written notice in subsection (a). The change also clarifies that this requirement applies to notices given to representatives of qualified beneficiaries under a disability.

Section 2 provides that, after the death of the settlor's spouse, certain trust property will be deemed to have been contributed by the settlor's spouse and not the settlor if the settlor is the beneficiary of any of the following trusts:

- An irrevocable intervivos marital trust that is treated as a general power of appointment trust.
- An irrevocable intervivos marital trust that is treated as qualified terminable interest property.
- An irrevocable intervivos trust of which the settlor's spouse is the sole beneficiary during the lifetime of the settlor's spouse but which does not qualify for the federal gift tax marital deduction.
- Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described above.

For purposes of these provisions, the settlor is a beneficiary whether named in the initial trust instrument or through the exercise of a limited or general power of appointment.

Section 3 clarifies that a successor trustee will be vested with the title to property of the former trustee.

Section 4 provides that one of the specific powers of the trustee is, upon termination of the trust, to exercise all of the powers otherwise exercisable by the trustee during the administration of the trust.

Sections 5 through 14 revise statutes governing corporate trustees.

Section 5 clarifies that a bond is not required for a personal representative that is a licensed trust institution.

Section 6 defines acceptable collateral for a bank to post when the trust department invests in deposits of its own bank.

Section 7 makes a number of changes to Article 14 of Chapter 53, the older statute dealing with trust departments, to conform with Article 24 of Chapter 53.

- Enacts a new section (G.S. 53-158.10) to include definitions for "Depository institution," "Hazardous condition," and "Trust institution".
- Replaces "bank" with "trust institution" throughout the Article.
- Deletes the term "clearing corporation" and substitutes the term "securities intermediary."
- Sets a statutory fee for trust licenses at $500.00. (G.S. 53-160).
- Deletes references to "solvency" and allows the Commissioner of Banks (Commissioner) to examine any trust institution, other than a federally chartered trust institution, that applies for or is licensed by the Commissioner; allows the Commissioner to refuse to issue a license to a trust institution in a "hazardous condition." (G.S. 53-160, 161).
- Deletes G.S. 53-162 which required that the Commissioner issue a "certificate of solvency" in connection with giving a trust institution a license to serve without bond.
- Amends G.S. 53-163.5 to clarify the description of affiliated institutions.

The remaining sections conform the statutes to current practice, allow the Commissioner of Banks to permit trust companies to be organized as LLCs, and allow the Commissioner to permit private trust companies to conform with IRS regulations.

Section 8 adds definitions for "Board of directors" and "Director."

Sections 9 and 10 delete the term "incorporated" and substitute the term "established" to facilitate organization as LLCs. Section 10 also authorizes the Commissioner to allow a State trust company to be organized as a company other than a corporation (such as an LLC).

Section 11 deletes the term "incorporation" and substitutes the term "establishment."

Section 12 deletes language which previously allowed shareholders of a State trust company to authorize not more than two additional directorships which could have been left unfilled and could have been filled in the discretion of the directors during the interval between shareholders' meetings.

Section 13 allows private trust companies, which operate for the benefit of one family, to comport with IRS private rulings requiring these companies to delegate governing authority to avoid unfavorable tax treatment. Section 13 provides that the holders of the equity securities of a private trust company may, by unanimous agreement, do all of the following:

- Limit the authority of the board of directors.
- Restrict, enlarge, or modify the rights or duties of particular directors.
- Allocate to an individual or group, other than the board of directors, some of all of the duties of a board of directors.

A private trust company must notify the Commissioner of the adoption of any agreement affecting the board of directors within 48 hours and must provide information that the Commissioner requests about the agreement. If an individual or group other than the board of directors is vested with authority of the board of directors, then that individual or group is deemed to be acting as the board when exercising that authority.

Section 14 allows the Commissioner to permit a private trust company to be exempted from general laws relating to business corporations.

EFFECTIVE DATE: This act becomes effective October 1, 2011, and applies to all trusts created before, on, or after that date.

Brad Krehely, counsel to Senate J I, substantially contributed to this summary.

S407-SMTD-35(e2) v3

Hartsell-Rucho

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 5-3 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

	Page Name (TAj)	Hometown	Sponsoring Senator
1	Taejae' Bailey	Raleigh	Blue
2	Izzy Stroman	Raleigh	Berger
4			
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Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 3, 2011

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
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W. Gardner Culpepper	MDLC & Assoc.
Rebecca Lefevre	NCASA
John Roberts	Orange County
Mitch Leonard	SEANC
David Starling	NCDST
SHARON WISCHMEIER	NCDST
Craig Demko	NCDST
[illegible]	DST
Bill Scoggin	TSS
Richard O'Brien	PFPNC
David Anders	PFPNC

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 3, 2011

Name of Committee — **Date**

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Bill Rowe	NC Justice Center
Alexandra Sirota	NC Justice Center
Kathy Hawkins	Duke Energy
Lynn Holmes	ESC
Debra Dew	"
Kay Emanuel	Legislative Reporting Services
Bob Mack	NCDOI
Rose Williams	NCDOI
Ha Nguyen	NCCOB

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 3, 2011

Name of Committee — **Date**

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McNair Chestnut	For the Cozy!
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A Solari	DST
R Kay Ln	Kay Ln Law Firm
Betty Doster	OUC Charlotte
Bailie Morlidge	Adams Outdoor
Tony Adams	NCOAA
Aaron Clayton	Farmers Outdoor
Linda Bu	NCAE

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 3, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gene Ainsworth	A & A

SENATE FINANCE COMMITTEE
Wednesday, May 4, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 4, 2011 in room 544 of the Legislative Office Building. Hunter Rinehart of Indian Trail and Elizabeth Stroman of Raleigh served as pages. Twenty-five members of the committee were present. Senator Hartsell presided as chair.

S.B. 19 – Union Fire Fees

Senator Tucker was recognized to explain the bill, which repeals the sunset on Union County's authorization to impose specified fees for fire protections services provided in fee-based fire protection districts. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 431 – Fontana Dam

Senator Davis explained the bill which would incorporate the community around Fontana Dam in Graham County as a municipality. Jeannie Stewart, Fontana Resort's general manager, was recognized to speak in favor of the bill. Senator Brock moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 345 – Encourage Invest to Retain Article 3A Installment

Senator Allran and Senator Garrou were recognized to explain the bill. It would retain and encourage investment in economically distressed times to remain eligible to take an installment of a credit earned under the Bill Lee Act. Keith Crisco, Department of Commerce's Secretary, was recognized to speak in favor of the bill. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill, the summary, and the fiscal note is attached.

S.B. 629 – Privilege Tax for Unregulated Utilities

Senator Bingham was recognized to explain the bill. Senator Meredith moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS imposes a franchise or privilege tax on unregulated electric power and water companies. There was no further discussion on the PCS. A copy of the PCS is attached.

S.B. 577 – AOC/Custody & Availability of Court Records

Senator Hartsell was recognized to explain the bill, which clarifies that the Administrative Office of the Courts (AOC) is a custodian of court records. It also clarifies that those court records are public record and should be available upon request to a third party upon payment of a reasonable amount to cover reproduction costs.

Hardy Lewis, a Raleigh attorney representing Court Ventures, spoke in favor of the bill since it answers who is the custodian of AOC records in conjunction with North Carolina public records law. Callen Bryan, a Mecklenburg attorney for Background Investigation, spoke in favor of the bill. He thought that AOC records are electronic so costs should be minimal. Jon Burton from Lexis Nexis said that his company relies on bulk records and current client base/volume does not work with AOC's guidelines. Jamie Crabtree with CoreLogic relies on databases for business and the AOC is causing delays with criminal background checks. John Smith, the AOC's director, spoke in opposition to the bill, outlining a pending legal case. He said that the current database is so large with victims' names and other information that would become available and could lead to unintended consequences. The AOC is wrestling with how to deal with about 1,000 expunctions. If the database was public, those expunctions would be negated and noncriminals will be sourced as criminals since criminal records checks might not be kept up to date by legal search companies. Senator Hartsell pointed out that these records are not a simple matter and that he has concerns about the current version of the bill, but the issue needs to be addressed. A copy of the bill is attached.

The meeting adjourned at 1:59 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, May 04, 2011

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

FAVORABLE

S.B.	**19**	Union Fire Fee Sunset Repealed.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**345**	Encourage Invest to Retain Art 3A Installment.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**431**	Fontana Dam Incorporated.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 19

Short Title:	Union Fire Fee Sunset Repealed.	(Local)
Sponsors:	Senator Tucker.	
Referred to:	State and Local Government.	

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET ON FIRE PROTECTION FEES IN UNION COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2010-84 is repealed.

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

SENATE BILL 19:
Union Fire Fee Sunset Repealed

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 4, 2011
Introduced by:	Sen. Tucker	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 19 repeals the sunset on Union County's authorization to impose specified fees for fire protection services provided in fee-based fire protection districts.

[As introduced, this bill was identical to H97, as introduced by Reps. Horn, Burr, which is currently in House Finance.]

CURRENT LAW: S.L. 1991-883 authorized Union County to create fire protection districts funded by fees rather than by taxes. The act provides fees may not exceed the cost of providing fire protection services within the district and may be imposed on owners of all real property benefiting from the availability of fire protection. The Union County fire protection fees originally established in 1991 were:

- $50 per year for a single family dwelling, manufactured home, or duplex.
- $75 per year for a triplex.
- $100 per year for any other multiple-family dwelling.
- $10 per year for animal or horticultural operations.
- $50 per year for other commercial facilities with structures encompassing less than 5,000 square feet.
- $100 per year for other commercial facilities with structures exceeding 5,000 square feet.
- $50 per year on any other class of property.

S.L. 2010-84 permitted Union County to increase its fire protection fees in excess of the limits set by 1991 local act, but the increase may not exceed twice the amount of the maximum fee amounts for each class of property. The board of county commissioners is authorized effectuate the increase by including the increased amounts in its budget ordinance adopted under Article 3 of Chapter 159 of the General Statutes. Under that Article, the board must hold a public hearing before adopting the budget ordinance.

S.L. 2010-84 also provided that Union County's fee-based fire protection district authority, not just the fee increases authorized by that act, would expire on July 1, 2012.

BILL ANALYSIS: Senate Bill 19 repeals the sunset on S.L. 2010-84. By repealing the sunset, Union County would maintain its current authority to assess fees for fire protection up to twice the amount of the maximum fee amounts for each class of property set out in the 1991 legislation.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: This bill is a request of the Union County Board of Commissioners. According to the resolution they passed, the sunset provision limits the county's flexibility in funding fire protection services and cause additional strain on property taxpayers through the imposition of ad valorem taxes as the only alternative revenue source for funding fire protection services. There are 18 fire departments throughout the county, five of which impose a fire tax and the remainder of which charge the annual fire fee.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SENATE BILL 431*

Short Title:	Fontana Dam Incorporated.	(Local)
Sponsors:	Senators Davis; Apodaca and Rabon.	
Referred to:	Finance.	

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF FONTANA DAM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Fontana Dam is enacted to read:

"CHARTER OF THE TOWN OF FONTANA DAM.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Fontana Dam are a body corporate and politic under the name 'Town of Fontana Dam.' The Town of Fontana Dam has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Fontana Dam are as follows:

A tract of land located at Fontana Village in the Yellow Creek Township of Graham County, State of North Carolina, approximately 1.25 miles southwest of Fontana Dam, and more particularly described as follows: BEGINNING at a metal marker (Coordinates: N 646,225; E 559,660) on the west side of Fontana Village at a common corner of the land of the United States of America (Tennessee Valley Authority), the land of the Whiting Manufacturing Company and the land previously transferred in fee by the Tennessee Valley Authority to the United States Department of Agriculture under the designation of Tract XTFR-4. From the initial point with the boundary line of the land in custody of the Tennessee Valley Authority, N 67-32 E 2,818 feet passing a metal marker at 552 feet and a metal marker at the east edge of a road at 1,193 feet to a metal marker; thence, N 25-15 E 2,429 feet passing a metal marker at 1,831 feet to a metal marker; thence, N 77-06 E 1,603 feet crossing State Highway 28 at approximately 65 feet to a metal marker; thence, S 45-31 E 1,480 feet to a metal marker; thence, S 22-32 E 846 feet recrossing State Highway 28 at approximately 775 feet to a metal marker; thence, S 56-26 W 3,594 feet to a metal marker; thence, S 85-25 W 602 feet to a metal marker; thence, S 77-16 W 1,470 feet to a metal marker; thence, due south, 303 feet to a metal marker; thence, N 89-28 W 1,504 feet to a metal marker; thence, N 03-26 W 836 feet to the point of BEGINNING, containing 288.5 acres, more or less.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Fontana Dam is the Mayor and the Town Council, which shall have four members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 2011 provided for by Section 4.2 of this Charter, Tammy Dees is appointed Mayor and Tim Gamble, Craig Litz, Vanessa Litz, and Debbie Rich are appointed council members of the Town of Fontana Dam, and they shall possess and exercise the powers granted to the Mayor

and governing body until their successors are elected or appointed and qualified pursuant to this Charter. The temporary officers shall elect a person to serve as Interim Mayor Pro Tempore. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial election is held in 2011.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council, and they shall serve for a term of two years or until their successors are elected and qualified.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Town shall elect the Mayor, who shall serve for a term of two years or until the Mayor's successor is elected and qualified. The Mayor shall attend and preside over meetings of the Town Council, shall advise the Town Council from time to time as to matters involving the Town of Fontana Dam, and shall have the right to vote as a member of the Town Council on all matters before the Town Council but shall have no right to break a tie vote in which the Mayor has participated. In the case of a vacancy in the office of Mayor, the remaining members of the Town Council shall choose from their own number a successor for the unexpired term.

"Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The Mayor Pro Tempore shall be elected from among the members of the Town Council at the organizational meeting after the initial election in 2011 and shall serve for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of the Town Council present may elect a temporary chair to preside in the absence. The Mayor Pro Tempore shall have the right to vote on all matters before the Town Council and shall be considered a member of the Town Council for all purposes.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, with the first regular municipal election to be held on November 8, 2011.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE V. ORGANIZATION AND ADMINISTRATION.

"Section 5.1. **Form of Government.** The Town shall operate under the council-manager form of government as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties as required by law or as directed by the Town Council. The Town Attorney shall serve at the pleasure of the Town Council.

"Section 5.3. **Town Clerk.** The Town Council shall appoint a Town Clerk who shall perform duties as required by law or as directed by the Town Council. The Town Clerk shall serve at the pleasure of the Town Council.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Town Council shall be required to change the ad valorem tax rate from the rate established during the prior fiscal year.

"Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2011, the citizens and property in the Town of Fontana Dam shall be subject to municipal taxes levied for the year beginning July 1, 2011, and for that purpose the Town shall obtain from Graham County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2011.

"Section 6.3. **Budget.** The Town may adopt a budget ordinance for fiscal year 2011-2012 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2011-2012, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2011. If the effective date of the incorporation is prior to July 1, 2011, the Town may adopt a budget ordinance for fiscal year 2010-2011 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the act insofar as practical. No ad valorem taxes may be levied for the 2010-2011 fiscal year.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Fontana Dam is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town."

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

SENATE BILL 431:
Fontana Dam Incorporated

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 4, 2011
Introduced by:	Sen. Davis	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 431 would incorporate the community around Fontana Dam in Graham County as a municipality.

CURRENT LAW: Municipalities may be created by the General Assembly, with powers and duties it deems advisable, pursuant to Article VII, Section 1 of the North Carolina Constitution." Rule 42.3(b) of the Senate Rules requires that a legislative proposal proposing incorporation must have attached to its bill jacket a report of the Joint Municipal Incorporations Commission prior to a favorable report by a committee of the Senate. Article 20 of Chapter 120 of the General Statutes creates the Joint Municipal Incorporation Commission and sets forth the criteria for review of a proposed incorporation. Under Article 20, people seeking to incorporate an area may petition the General Assembly to do so by collecting the signatures of 15% of the registered voters in the area proposed to be incorporated, and submitting the petition to the Commission. The Commission is required to make a recommendation to the General Assembly concerning the proposed incorporation. The Commission is prohibited from making a favorable recommendation if the proposed municipality fails to meet certain criteria, including the following:

- **Distance from existing municipality.** This criterion elaborates on the constitutional distance provisions.
- **Population and population density.** The Commission may not recommend favorably if the proposed municipality has a permanent population below 100 and a population density below 250 per square mile.
- **Level of development.** The Commission may not recommend favorably unless 40% of the area is developed (residential, commercial, industrial, institutional, or governmental) or dedicated to open space.
- **Reasonable tax rate.** The Commission may not recommend favorably unless it finds the proposed municipality can provide services at a reasonable tax rate.

Failure to get a favorable recommendation from the Commission does not prevent the General Assembly from incorporating a municipality. In the past 10 years, six petitions have failed to get a favorable recommendation, and incorporation occurred anyway. In most of those cases, the Commission found that the area seeking to be incorporated did not meet the criterion of 40% development. In the same years, eight failed petitions resulted in no incorporation.

BILL ANALYSIS: Senate Bill 431 would incorporate roughly 288.5 acres near the Tennessee Valley Authority's Fontana Dam as the Town of Fontana Dam. The territory is described in the bill. The area is located more than 25 miles from the nearest incorporated town.

The town would follow the council-manager form of government. It would elect a mayor and four Town Council members every 2 years, beginning in 2011. It would use the nonpartisan plurality election method. The charter enacted in the bill would give the town the usual taxing, budgetary, and ordinance-making powers municipalities usually have.

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

BACKGROUND: The Joint Legislative Commission on Municipal Incorporations considered the petition for incorporation of Fontana Dam on March 16, 2009. The Commission's report noted that the petition failed to meet the standards required for a favorable recommendation, specifically the standards of population and population density. The petition said Fontana Dam has 25 to 30 people with 25 people per half square mile, and the standard is 100 people with 250 people per square mile. Based on this determination, the Commission voted not to recommend its incorporation.

As part of the petition process, the people seeking incorporation submitted a letter to the Commission stating the reasons supporting their request. The letter is contained in the Commission's report. The letter sets forth the following reasons for the request for incorporation:

- The area sought to be incorporated already has the basic infrastructure of a town. It is an organized and developed community comprised of businesses, residences, and recreational areas.
- The community has several miles of common roads and streets used by the residents and the community.
- The community maintains its own electrical system for the entire area.
- The community has constructed and maintains its own sewage plant and disposal system and waters system for the residents, visitors, businesses, and government controlled areas.
- The community provides solid waste pick-up, public boating access areas, and marina.
- The community provides these services to Fontana Dam and visitor center, which is located in close proximity to the community.
- The Fontana Village Resort, which is open to the general public and has over 100,000 visitors annually, is in the community and will provide a substantial tax base for the community.
- The community current finances these services. Incorporation would enable the community to institute a tax system to finance them and provide a means to more accurately disperse the costs on a pro rata basis to the residents and business located in the community. The community does not believe it will be able to continue to sustain the costs of these services without the ability to institute a tax system. Also, incorporation would enable the community to access federal and state grants and funding.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 345

Short Title:	Encourage Invest to Retain Art 3A Installment.	(Public)
Sponsors:	Senators Garrou and Allran.	
Referred to:	Finance.	

March 15, 2011

A BILL TO BE ENTITLED

AN ACT TO RETAIN AND ENCOURAGE INVESTMENT IN ECONOMICALLY DISTRESSED TIMES TO REMAIN ELIGIBLE TO TAKE AN INSTALLMENT OF A CREDIT EARNED UNDER THE BILL LEE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.12A(c) reads as rewritten:

"(c) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. ~~If, in~~In one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, if (i) the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than ~~200,~~200 and (ii) the taxpayer has failed, within two years of the date the employment fell below 200, to invest at the property at least twice the value of the remaining installments of the credit, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 345 (First Edition)

SHORT TITLE: Encourage Invest to Retain Art 3A Installment.

SPONSOR(S): Senators Garrou and Allran

FISCAL IMPACT ($millions)

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

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES:					
General Fund	**-0.4**	**-0.4**	**-0.4**	**-0.4**	**-0.4**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue

EFFECTIVE DATE: Taxable years beginning on or after January 1, 2009

BILL SUMMARY: The William Lee Act is a package of tax credits designed to benefit new and expanding businesses. It includes a tax credit for "substantial investment in other property" that is available to taxpayers that meet certain eligibility requirements. One of these requirements is that a taxpayer has to create 200 jobs within two years of the time the qualifying property is placed in service. Additionally, a taxpayer must invest at least $10 million in real property within a three year period. The credit is equal to 30% of the real property investment. The credit is taken in seven equal installments beginning the year after the property is placed in service. If an installment cannot be used because it exceeds 50% of the taxpayer's tax liability for the year, each installment may be carried forward for 20 years.

The credit expires if during one of the seven years in which an installment accrues, the total number employed by the taxpayer falls below 200. Expiration means that the taxpayer cannot take any remaining installments of the credit. The taxpayer is not required to forfeit installments of credits that accrued in previous years. The proposal would modify the expiration provision. The taxpayer would not be required to maintain 200 employees to take remaining credit installments if the taxpayer makes an investment equal to or greater than twice the amount of the remaining installments at the facility within two years of the employment level falling below 200.

ASSUMPTIONS AND METHODOLOGY:
Fiscal Research is aware of one taxpayer that would be impacted by the legislation. The bill would allow the taxpayer to remain eligible to take five remaining credit installments of $424,000 each. Without the bill, the taxpayer would become ineligible for the installments and their tax liability would increase. Although the amount of timing and amount of credits taken each year will vary depending on when returns are filed and tax liability, the fiscal impact is estimated to be approximately $400,000 annually for five years beginning in FY 2010-11.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 3, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 629
PROPOSED COMMITTEE SUBSTITUTE S629-CSTM-2 [v.3]

5/4/2011 11:15:03 AM

Short Title: Privilege Tax for Unregulated Utilities. (Public)

Sponsors:

Referred to:

April 19, 2011

A BILL TO BE ENTITLED

AN ACT IMPOSING A FRANCHISE OR PRIVILEGE TAX ON UNREGULATED UTILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-116.2. Franchise or privilege tax on unregulated electric power and water companies.**

(a) Tax. – An annual franchise or privilege tax is imposed on the following companies if the company is not subject to the tax imposed by G.S. 105-116(a) because the company is not regulated by the North Carolina Utilities Commission:

(1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power for either commercial or domestic use or consumption with gross taxable receipts equal to or exceeding six million dollars ($6,000,000).

(2) A water company engaged in the sale of water delivered by or through main lines or pipes for either commercial or domestic use or consumption with gross taxable receipts equal to or exceeding six million dollars ($6,000,000).

(b) The tax on an electric power company is six percent (6%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. The tax on a water company is six percent (6%) of the company's taxable gross receipts from the sale of water delivered by or through main lines or pipes. A company's taxable gross receipts are its gross receipts from business inside the State, including all power generated inside the State regardless of the location of the user and all water placed into pipes inside the State. A company that engages in more than one business taxed under this section shall pay tax on each business. A company that sells electricity or water on a wholesale basis is considered selling electricity or water for commercial use or consumption.

(c) Report and Payment. – The tax imposed by this section is payable quarterly or monthly as specified in this subsection. A return is due quarterly. A water company must pay tax quarterly when filing a return. An electric power company must pay tax in accordance with the schedule and requirements that apply to payments of sales and use tax under G.S. 105-164.16 and must file a return quarterly. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return. A taxpayer must submit a return on a form provided by the Secretary. The return must include the

taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section. A taxpayer must report its gross receipts on an accrual basis. A return must contain the following information:

(1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) of this section that are purchased from others engaged in business in this State and the name of each vendor.

(3) For an electric power company, the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a) of this section.

(d) The tax imposed by this section does not apply to a company that makes an annual payment to the State in lieu of annual franchise or privilege tax."

SECTION 2. The General Assembly finds that unregulated utilities were not being taxed under G.S. 105-116(a); that this bill equalizes the taxation of regulated and unregulated utilities; that unregulated utilities received a tax benefit under S.L. 2001-476 and this bill recaptures that tax benefit; and the General Assembly does not intend for this bill to affect the operation and interpretation of G.S. 105-116(a).

SECTION 3. This act becomes effective for taxable years beginning on or after January 1, 2012. This act is effective when it becomes law.

SENATE BILL 577*

Short Title:	AOC/Custody & Availability of Ct Records.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Finance.	

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE ADMINISTRATIVE OFFICE OF THE COURTS IS A CUSTODIAN OF COURT RECORDS, TO CLARIFY THAT THOSE COURT RECORDS ARE A PUBLIC RECORD AND ARE AVAILABLE UPON REQUEST TO A THIRD PARTY UPON PAYMENT OF A REASONABLE AMOUNT TO COVER REPRODUCTION COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-109(d) reads as rewritten:

"(d) In order to facilitate public access to court records, except where public access is prohibited by law, the Director may enter into one or more nonexclusive contracts ~~under reasonable cost recovery terms~~ with third parties to provide remote electronic access to the records by the public. The records shall be provided to any third party who remits to the State Treasurer a sum that compensates the State for the actual cost of reproducing the records pursuant to G.S. 132-6.2. Payment of the sum shall be the sole requirement imposed upon the third party seeking records. ~~Costs recovered pursuant to this subsection shall be remitted to the State Treasurer to be held~~ The sums remitted to the State Treasurer pursuant to this subsection shall be held in the Court Information Technology Fund established in G.S. 7A-343.2. Nothing in this subsection shall be construed to supersede the provisions and requirement of G.S. 132-1."

SECTION 2. G.S. 7A-109 is amended by adding a new subsection to read:

"(f) Any collection of court records maintained under this section is a public record and shall be provided by the Director in its entirety upon request, absent express statutory exemptions, pursuant to G.S. 132-1. The Director shall be considered a custodian of such records for purposes pursuant to G.S. 132-1."

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

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 5-4 **TIME:** 1 PM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Elizabeth Stroman	Raleigh	P. Berger
2 Hunter Rinehart	Indian Trail	T. Tucker
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 4, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
W. Gardner Culpepper	DLC + Assoc.
Will Culpepper	MVA
Camera Hardy	Electric Cities of NC
Rebecca Madigan	Performance Marketing Assoc.
C Harris	Citizen/visitor, Cary, NC
Bo Heath	McGuire Woods
Karl Knapp	NCLM
Mildred Spearman	AOC
John Cooper	Compass NC
Andy Ball	Town of Boone
Lynne Mason	Town of Boone

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 4, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Pennie Brantz	Town of Boone
Warren Turner	Ashe City Councilman
John V Small	AOC
Gregg Stahl	NCAOC
LEE LLOYD	NCID
JOHN BUSSIAN	NC Press Assn
David Heinen	NC Center for Nonprofits
THOM ILES	JOHN DEERE
Allison Waller	Nelson Mullins
Mitch Leonard	SEANC
John Pleasants	NCASA

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 4, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer G. Roe	Commissioner Town of Oriental 502 South Ave Oriental
Gene Ainsworth	A&A
Rita Harris	NC Commerce
Keith Crisco	NC Commerce
Jarret Burr	UNC Charlotte
Dave Craven	UNC Charlotte
Megan Smith	UNC Charlotte
Betty Doster	UNC Charlotte

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 4, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Callan H. Bryan	Vandiver & Bryan, PLLC 18809 W. Catawba Ave, Ste 102, Cornelius NC 28031
Michael Hunsee	NC DOR
Lennie Collins	NC DOR
Deborah Barbo	WLR
John Barbo	WLR
[illegible]	Family Outdoor Advertising
Bailie Worlidge	Adams Outdoor
Tony Adams	NCOAA
Kay Emanuel	Legislative Reporting Services
Tim Cole	Fontana Village Resort
CRAIG A. LAY	FONTANA VILLAGE RESORT
Chip Killian	Nelson Mullins
Deanne Stewart	Fontana Dam
Mike Stewart	Fontana Dam

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 4, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Flynn	CDIA
Jon Burton	LexisNexis
Tiffany Willis	Hirease, Inc
Jamie Crabtree	CoreLogic
Marie Moore	PDWI FirstPoint
[illegible]	Background Investigation Bureau, Inc.
Sebastian Debnel	CriminalRecordCheck.com
[illegible]	NLS
Hardy Lewis	AHA
[illegible]	MWC
[illegible]	AMRS

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 4, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Robinson	NCRLA
Amy Ellen	NCPA
Mike Moore	NCEHA
Heather Barnett	Williams Mullen
Doug Heron	Williams Mullen
ANGIE HARRIS	Williams Mullen
David M Gowan	NC Realtors
Jerry Leppard	NC Sand Vets
Cathy Thomas	NCAR
Lisa Martin	NC Home Builders

SENATE FINANCE COMMITTEE
Wednesday, May 11, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 11, 2011 in room 544 of the Legislative Office Building. Keana Phelps and Tiffany Palin of Creswell served as pages. Twenty-three members of the committee were present. Senator Hartsell presided as chair.

S.B. 183 – Selective Vegetation Removal/State Highways

Senator Brown was recognized to explain the bill. Senator Rabon moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would amend the State's Outdoor Advertising Control Act by establishing statutory standards for selective vegetation removal within the tights-of-way of the State highway system, increasing the fee for a selective vegetation removal permit, establishing standards for the issuance or denial of a selected vegetation removal permit, and establishing process for appeals of selective vegetation removal permits decisions. It also provides vegetation in the newly expanded removal zone that meets the following criteria is not eligible for removal if the vegetation was planted for a federal beautification or environmental project or in conjunction with a noise barrier; and if the vegetation was planted after the erection of the sign but before May 1, 2011. Paul Meyer, an attorney with the League of Municipalities, addressed concerns about the replanting funds and local government input. Dana Fenton, City of Charlotte, spoke in opposition to the bill since local tree ordinances will be eliminated. Frank Gray, a lobbyist with the Restaurant and Lodging Association, spoke in favor of the bill. Molly Duggins, State Director of the Sierra Club, spoke in opposition. Tony Adams, NC Outdoor Advertising Association Executive Director, spoke in favor of the bill. Heather Fennell, a staff attorney with the Research Division, and John Nance, legal counsel for the Department of Transportation, were recognized to answer questions. Senator Brown requested that the bill be held until a fiscal note could be produced. A copy of the PCS and the summary is attached.

S.B. 489 – Commerce Tracks Job Creation/Public Database

Senator Rucho was recognized to explain the bill and Senator Purcell moved to adopt the PCS for discussion. The motion carried. The PCS modifies the information the Department of Commerce must provide on the economic development grant programs offered by the State to better enable the Legislature to evaluate their effectiveness at creating jobs. The PCS also expands the duties of the Revenue Laws Study Committee to include the analysis and assessment of the State's economic development grant programs as well as its statutory tax incentives. Senator Walters moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 576 – Changes to Fees for Teacher Certification

Senator Hartsell was recognized to explain the bill. Senator Newton moved to adopt the PCS and the motion carried. The PCS would permit the State Board of Education to set higher fees for teacher certification and administration changes, would make the fees nonrefundable, and would require the implementation of an online licensure management system. The fee for 'all other applications" may be increased to up to $125. The fees must be adopted by rule as established by the Administrative Procedures Act. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS, the summary, the fiscal note and a handout from the State Board of Education is attached.

The meeting adjourned at 2:06 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Wednesday, May 11, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 183	Selective Vegetation Removal/State Highways.	Sen. Brown
SB 489	Commerce Tracks Job Creation/Public Database.	Sen. Rucho
SB 576	Changes to Fees for Teacher Certification.	Sen. Hartsell
		Sen. Preston
		Sen. Tillman

Adjournment

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	May 11, 2011	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 183	Selective Vegetation Removal/State Highways .	Senator Brown
SB 489	Commerce Tracks Job Creation/Public Database.	Senator Rucho
SB 576	Changes to Fees for Teacher Certification.	Senator Hartsell Senator Preston Senator Tillman

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
. Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Thursday, May 12, 2011

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

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

S.B. **489** Commerce Tracks Job Creation/Public Database.

Draft Number:	35249
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **576** Changes to Fees for Teacher Certification.

Draft Number:	35248
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:
S489 – Sen. Rucho
S576 – Sen. Hartsell

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, May 11, 2011

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **125** NC School of Biotechnology and Agriscience.

Draft Number:	35247
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:
S125 – Sen. Brown or Sen. Hartsell

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Thursday, May 12, 2011

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

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

S.B. **489** Commerce Tracks Job Creation/Public Database.

Draft Number:	35249
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1; BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **576** Changes to Fees for Teacher Certification.

Draft Number:	35248
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:
S489 – Sen. Rucho
S576 – Sen. Hartsell

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 183
Transportation Committee Substitute Adopted 4/28/11
PROPOSED COMMITTEE SUBSTITUTE S183-CSTD-32 [v.2]

5/10/2011 6:47:00 PM

Short Title: Selective Vegetation Removal/State Highways. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CERTAIN STATUTORY STANDARDS FOR SELECTIVE VEGETATION REMOVAL WITHIN THE RIGHTS-OF-WAY OF THE STATE HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18.7 reads as rewritten:

"**§ 136-18.7. Fees.**

The fee for a selective vegetation removal permit issued pursuant to ~~G.S. 136-18(5), (7), and (9) is two hundred dollars ($200.00).~~G.S. 136-93, 136-133.1, and 136-133.4 is four hundred dollars ($400.00) per permitted site and is nonrefundable."

SECTION 2. G.S. 136-93 reads as rewritten:

"**§ 136-93. Openings, structures, pipes, trees, and issuance of permits.**

(a) No opening or other interference whatsoever shall be made in any State road or highway other than streets not maintained by the Department of Transportation in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the Department of Transportation or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No State road or State highway, other than streets not maintained by the Department of Transportation in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, ~~and no tree or shrub in or on any State road or State highway shall be planted, trimmed, or removed,~~ and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Department of Transportation or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Department of Transportation or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done. The Department of Transportation, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the State of North Carolina, in such an amount as may be deemed sufficient by the Department of Transportation or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any person making any opening in a State road or State highway, or placing any structure thereon,

or changing or removing any structure thereon without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or otherwise violating the provisions of this section, shall be guilty of a Class 1 misdemeanor: Provided, this section shall not apply to railroad crossings. The railroads shall keep up said crossings as now provided by law.

(b) Except as provided in G.S. 136-133.1(f), no vegetation, including any tree, shrub, or underbrush, in or on any right-of-way of a State road or State highway shall be planted, cut, trimmed, pruned, or removed without a written selective vegetation removal permit issued pursuant to G.S. 136-133.2 and in accordance with the rules of the Department. Requests for a permit for selective vegetation cutting, thinning, pruning, or removal shall be made by the owner of an outdoor advertising sign or the owner of a business facility to the appropriate person in the Division of Highways office on a form prescribed by the Department. For purposes of this section, G.S. 136-133.1, 136-133.2, and 136-133.4, the phrase "outdoor advertising" shall mean the outdoor advertising expressly permitted under G.S. 136-129(a)(4) or G.S. 136-129(a)(5). These provisions shall not be used to provide visibility to on-premise signs.

(c) For outdoor advertising, vegetation cut or removal limits shall be restricted to a maximum selective vegetation cut or removal zone for each sign face pursuant to the provisions of G.S. 136-133.1.

(d) If the application for vegetation cutting, thinning, pruning, or removal is for a site located within the corporate limits of a municipality, the municipality shall be given 30 days to review and provide nonbinding comments on the application if the municipality has previously advised the Department in writing of the desire to review such applications and the name of the local official to whom notice of such application should be directed. Local governments are prohibited from regulating vegetation cutting, trimming, pruning, or removal within the limits of interstate or primary highway rights-of-way by any permittee or other person authorized by the Department, including anyone authorized under G.S. 136-133.1(f)."

SECTION 3. Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-93.2. Monetary value of trees.**

The monetary value for existing trees removed and eligible for reimbursement to the Department as provided in G.S. 136-93 or G.S. 136-133.1 from State rights-of-way shall be determined on an annual basis by the Department. In determining the value of existing trees removed, the average cost per caliper inch shall be based on the lower value of either the average wholesale commercial nursery prices for hardwood and conifer plants, times a 2.5 multiplier for installation and warranty or the average cost per caliper inch for tree planting contracts let by the Department in the previous calendar year. The values shall be determined and published by the Department no later than December 15 of each year. The values established pursuant to this section shall be used in calculating the monetary value of trees removed from State rights-of-way beginning January 1 of each year. If the Department fails to publish changes in values by December 15, then the values existing on December 15 shall be applicable to existing trees removed and eligible for reimbursement for the following year."

SECTION 4. G.S. 136-133 reads as rewritten:

"**§ 136-133. Permits required.**

(a) No person shall erect or maintain any outdoor advertising within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by rules adopted by the Department of Transportation. The permit shall be valid until revoked for

nonconformance with this Article or rules adopted by the Department of Transportation. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules adopted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Department of Transportation shall have the authority to charge permit fees to defray the costs of administering the permit procedures under this Article. The fees for directional signs as set forth in G.S. 136-129(1) and G.S. 136-129.1(1) shall not exceed a forty dollar ($40.00) initial fee and a thirty dollar ($30.00) annual renewal fee. The fees for outdoor advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed a ~~one hundred twenty dollar ($120.00) initial fee and a sixty dollar ($60.00) annual renewal fee.~~one hundred fifty dollar ($150.00) initial fee and a ninety dollar ($90.00) annual renewal fee. Thirty dollars ($30.00) of each initial and annual fee collected pursuant to this section shall be used by the Department for highway beautification projects. No additional funds from the Highway Trust Fund shall be used for the purposes of vegetation replacement under the provisions of this subsection.

(b) If outdoor advertising is under construction and the Department of Transportation determines that a permit has not been issued for the outdoor advertising, the Department may require that all work on the outdoor advertising cease until the owner of the outdoor advertising shows that the outdoor advertising does not violate this section. The stopwork order shall be prominently posted on the outdoor advertising structure, and no further notice of the stopwork order is required. The failure of an owner of outdoor advertising to comply immediately with the stopwork order shall subject the outdoor advertising to removal by the Department of Transportation or its agents. Outdoor advertising is under construction when it is in any phase of construction prior to the attachment and display of the advertising message in final position for viewing by the traveling public. The cost of removing outdoor advertising by the Department of Transportation or its agents pursuant to this section shall be assessed against the owner of the unpermitted outdoor advertising by the Department of Transportation. No stopwork order may be issued when the Department of Transportation process agent has been served with a court order allowing the sign to be constructed.

(c) No electrical utility permit shall be denied to an outdoor advertising sign described in G.S. 136-129(4) and G.S. 136-129(5) for which a permit has been issued by the Department, is valid, and is otherwise compliant with technical utility standards."

SECTION 5. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

(a) The owner of an outdoor advertising sign permitted under G.S. 136-129(a)(4) or G.S. 136-129(a)(5) who obtains a selective vegetation removal permit, and the owner's designees, may cut, thin, prune, or remove vegetation in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4. The maximum cut or removal zone for vegetation for each sign face shall be determined as follows:

(1) The point located on the edge of the right-of-way that is the closest point to the centerline of the sign face shall be point A.

(2) The point located 200 feet down the right-of-way line in the direction of the sign viewing zone shall be point B.

(3) The point on the edge of the pavement of the travel way, including acceleration and deceleration ramps, that is the closest to the centerline of the sign shall be point C.

(4) The point 50 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point D.

(5) The point 380 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E; provided, however, the

following shall apply within the corporal limits and territorial jurisdiction of any city, as defined in Chapter 160A of the General Statutes:

a. On interstates or other routes with fully controlled access, the point 340 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.

b. On highways other than interstates and other routes with fully controlled access, the point 250 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.

(6) Lines drawn from point A to point D and from point B to point E shall define the limits of the vegetation cut or removal area.

(b) Vegetation permitted to be cut, thinned, pruned, or removed shall be defined as any tree, shrub, or underbrush within the zone created by points A, B, D, and E. Any existing tree that was in existence at the time that an outdoor advertising structure was erected shall only be eligible for removal in accordance with subsections (c) and (d) of this section. Native dogwoods and native redbuds shall be preserved. For the purposes of this section, an existing tree is defined as a tree that had a diameter of four inches or greater as measured six inches from the ground at the time that the outdoor advertising structure was erected. An outdoor advertising sign is considered erected when the sign is completely constructed with a sign face.

(c) The applicant for a selective vegetation removal permit shall submit to the Department a site plan locating thereon any trees existing at the time that the outdoor advertising sign was erected, as defined in subsection (b) of this section, that are requested to be cut, thinned, pruned, or removed, and noting their species and total caliper inches. The applicant shall also tag, with highly visible material or flagging, any tree that is, at the time of the application for a selective vegetation removal permit, greater than four inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The selective vegetation removal request may be investigated on-site by Department personnel and a representative of the applicant. In the event that the Department disputes the accuracy of the existing tree information on the site plan noted above, the Department shall notify the applicant in writing and may request the following:

(1) A tree survey.

(2) That the applicant amends the site plan.

(3) That the applicant deletes the trees in dispute from the desired cutting.

If a notice of disputed tree information is received from the Department, the applicant can either employ the services of a North Carolina licensed landscape architect or certified arborist to perform a tree survey, amend the site plan, or notify the Department in writing that any or all of the disputed trees are deleted from the application. If the applicant selects a tree survey, the landscape architect or certified arborist will submit a report under seal that contains a tree inventory of existing trees in the removal zone for the outdoor advertising structure and include the age of any tree that existed at the time that the sign was erected. The report will categorize tree species and include a site map of sufficient detail and dimensions. A tree survey will not be required for subsequent applications to cut, thin, prune, or remove trees at the same site for trees that have been previously permitted. Any dispute relating to whether or not the tree existed at the time the outdoor advertising sign was erected shall be conclusively resolved by information in the report from the licensed landscape architect or certified arborist.

(d) Trees existing at the time the outdoor advertising sign was erected may only be removed within the zone created in subsection (a) of this section if the applicant satisfies one of the following two options selected by the applicant: (i) reimbursement to the Department pursuant to G.S. 136-93.2 or (ii) trees that existed at the time of the erection of the sign may be removed if the applicant agrees to remove two nonconforming outdoor advertising signs for each sign at which removal of existing trees is requested. The surrendered nonconforming signs

must be fully disassembled before any removal of existing trees is permitted and shall not be eligible for future outdoor advertising permits in perpetuity.

(e) Tree branches within a highway right-of-way that encroach into the zone created by points A, C, and D may be cut or pruned. Except as provided in subsection (f) of this section, no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut, trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising and within the limits of the highway right-of-way for the purpose of enhancing the visibility of outdoor advertising unless permitted to do so by the Department in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4.

(f) Notwithstanding any law to the contrary, the owner of an outdoor advertising sign defined by subsection (a) of this section or the owner's designees may, working only from the private property side of the fence, without charge and without obtaining a selective vegetation removal permit, cut, trim, prune, or remove any tree or other vegetation except for native dogwoods or native redbuds that is (i) less than four inches in diameter at the height of the controlled access fence, (ii) located within 200 feet on either side of the existing sign location as defined by point A and point B in G.S. 136-133.1(a)(1) and (2), and (iii) a distance of three feet from a controlled access fence within the limits of the highway right-of-way. The activities permitted by this subsection must be performed from the private property owner side of the controlled access fence and with the consent of the owner of the land that is used to access said fence.

(g) The Department may revoke an outdoor advertising permit for the unlawful destruction or illegal cutting of vegetation within the right-of-way of any State-owned or State-maintained highway only if both of the following conditions are met:

(1) The unlawful destruction or illegal cutting occurred within 500 feet of either side of the corresponding sign location measured along the edge of pavement of the main-travel way of the nearest controlled route and was willfully caused by one or more of the following:
   a. The sign owner.
   b. The permit holder.
   c. The lessee or advertiser employing the sign.
   d. The owner of the property upon which the sign is located.
   e. Any employees, agents, or assigns of persons listed in sub-subdivisions a. through d. of this subdivision, including, but not limited to, independent contractors hired by the permit holder/sign owner, the lessee/agents or advertiser employing the sign, or the owner of the property upon which the sign is located.

(2) There is substantial, material evidence that the unlawful destruction or illegal cutting of vegetation would create, increase, or improve a view to the outdoor advertising sign for passing motorists from the main-traveled way of the nearest controlled route."

SECTION 6. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-133.2. Issuance or denial of a selective vegetation removal permit.**

(a) Except as provided in G.S. 136-133.1(f), permits to remove vegetation may be granted for outdoor advertising locations that have been permitted for at least two years prior to the date of application. The Department shall approve or deny an application submitted pursuant to this section, including the fee required by G.S. 136-18.7 and all required documentation, within 30 days of the receipt of an application for a selective vegetation removal permit. If written notice of approval or denial is not given to the applicant within the 30-day period, then the application shall be deemed approved. If the application is denied, the Department shall advise the applicant, in writing, by registered or certified mail, return receipt

requested, addressed to the party to be noticed, and delivering to the addressee, the reasons for the denial.

(b) The application shall be denied by the Department if any of the following apply:

(1) The application is for the opening of a view to an outdoor advertising sign which has been declared illegal, is currently the subject of litigation, or the outdoor advertising sign owner has received written notification of an investigation by the Department for impermissible activity.

(2) The application is for the opening of a view to an outdoor advertising sign that was obscured from view at the time of erection of the sign.

(3) Removal of vegetation will adversely affect the safety of the traveling public.

(4) Trees, shrubs, or other vegetation of any sort that are requested to be cut, thinned, pruned, or removed were planted in accordance with a local, State, or federal beautification or environmental project but only to the extent that such planting was done prior to the erection of the outdoor advertising sign the visibility of which is sought to be enhanced. Any beautification or environmental projects that were planted after the erection of the outdoor advertising sign, but before May 1, 2011, and that were planted beyond 250 feet as measured down the edge of the pavement of the travel way from point C, as defined in G.S. 136-133.1(a)(3) shall not be eligible for removal.

(5) Trees, shrubs, or other vegetation of any sort that are requested to be cut, thinned, pruned, or removed were planted in conjunction with a designed noise barrier but only to the extent that such planting was done prior to the erection of the outdoor advertising sign the visibility of which is sought to be enhanced. Any plantings done in conjunction with a designed noise barrier that were planted after the erection of the outdoor advertising sign but before May 1, 2011, that were planted beyond 250 feet as measured town the edge of the pavement of the travel way from point C, as defined in G.S. 136-133.1(a)(3) shall not be eligible for removal.

(6) The applicant, or the applicant's designee, has not performed satisfactory work authorized by previous permits issued under the provisions of this section. The Department may not deny an application for a permit if the work authorized by previous permits issued pursuant to this section was performed by a landscape architect or certified arborist.

(7) The selective vegetation removal, cutting, or pruning involves opening of a view to a junkyard.

(8) Unlawful destruction or illegal cutting of vegetation as defined in G.S. 136-133.1(g) has occurred within five years preceding the date of filing an application with the Department for a selective vegetation removal permit."

SECTION 7. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-133.3. Appeals of selective vegetation removal permit decisions.**

(a) An applicant for a selective vegetation removal permit issued pursuant to G.S. 136-133.2 may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal pursuant to the provisions of this section.

(b) Within 30 days of service of the Department's decision to deny or condition a selective vegetation removal permit issued pursuant to G.S. 136-133.4, the applicant shall submit a written appeal to the Secretary of Transportation setting forth with particularity the facts and arguments upon which the appeal is based. The appeal shall be sent to the Secretary

by registered or certified mail, return receipt requested, addressed to the Secretary, and delivering to the addressee, with a copy to the Department official who issued the decision.

(c) Upon receipt of the written appeal, the Secretary of Transportation shall review the written appeal and the Department's decision, as well as any available documents, exhibits, or other evidence bearing on the appeal, and shall render the agency's final decision, supported by findings of fact and conclusions of law. The final agency decision shall be served upon the appealing party by registered or certified mail, return receipt requested, addressed to the applicant, and delivering to the addressee, within 90 days after the Secretary receives the written appeal. A copy of the agency's final decision shall also be delivered to the Department official who issued the initial decision.

(d) A person aggrieved by a decision made pursuant to this section may seek judicial review of the final agency decision pursuant to G.S. 136-134.1."

SECTION 8. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-133.4. Selective vegetation removal permits.**

(a) Selected vegetation within the approved limits shall be cut, thinned, pruned, or removed by the permittee or the permittee's agent in accordance with accepted International Society of Arboriculture (ISA) standards.

(b) Permits are valid for a period of one year. The permittee may cut, thin, prune, or remove vegetation more than one time per year. A 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way.

(c) The permittee, or the permittee's agent, shall not impede the flow of traffic on any highway while performing vegetation removal authorized by a permit. Access to the work site on controlled access highways must be gained without using the main travel way of the highway. The Department shall determine the traffic control signage that may be required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department. The permittee, or the permittee's agent, shall wear safety vests that conform to OSHA standards while performing the work.

(d) Any damage to vegetation designated to remain at the site, to highway fences, signs, paved areas, or other facilities shall be repaired or replaced by the permittee to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent. All trimmings, laps, and debris shall be removed from the right-of-way and disposed of in areas provided by the permittee. No burning or burying of trimmings, laps, or debris shall be permitted on the highway right-of-way. When chipping is used to dispose of trimmings, chips may be neatly spread on a right-of-way at locations which the Department determines will not be harmful to the environment or affect traffic safety.

(e) Willful failure to substantially comply with all the requirements specified in the selective vegetation removal permit, unless otherwise mutually resolved by the Department and the permittee, shall result in a five-year moratorium for vegetation removal at the site, a summary revocation of the outdoor advertising permit if such willful failure meets the standards in G.S. 136-133.1(g), payment of Department investigative costs, and forfeiture of any applicable performance bond as determined by the Secretary. The moratorium shall begin upon execution of a settlement agreement or entry of a final disposition in the case."

SECTION 9. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-133.5. Denial of a permit for proposed outdoor advertising.**

(a) When a district engineer determines that a proposed outdoor advertising structure would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act, the district engineer shall refuse to issue a permit for that proposed outdoor advertising structure.

(b) When a violation of the Outdoor Advertising Control Act has been discovered, the district engineer shall notify the permit applicant by registered or certified mail, return receipt requested, addressed to the party to be noticed, and delivering to the addressee, in writing, the reason for the denial and the statutes or rules forming the basis for the denial and include a copy of the Act.

(c) The Department shall not issue permits for new outdoor advertising signs at a sign location for a period of five years where the unlawful destruction or illegal cutting of vegetation has occurred within 500 feet on either side of the proposed sign location and as measured along the edge of pavement of the main travel way of the nearest controlled route. For the purposes of this section, unlawful destruction or illegal cutting is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-owned or maintained rights-of-way by anyone other than the Department or its authorized agents, or without written permission of the Department.

(d) Before a permit is denied pursuant to subsection (c) of this section, the Department shall reveal some evidence that the unlawful destruction or illegal cutting would create, increase, or improve a view to a proposed outdoor advertising sign from the main-traveled way of the nearest controlled route.

(e) The five-year period shall begin on the date the Department executes a settlement agreement or final disposition of the case is entered.

(f) Subject to subsection (d) of this section, the five-year prohibition period for a new sign permit shall apply to all sign locations, including the following:

(1) Sign locations where the unlawful destruction or illegal cutting of vegetation occurs prior to the time the location becomes a conforming location.

(2) Sign locations where a revocation of an existing permit has been upheld and a sign has been removed.

(3) Sign locations where the unlawful destruction or illegal cutting occurs prior to receipt of an outdoor advertising permit.

(4) Sign locations where the unlawful destruction or illegal cutting occurs following receipt of an outdoor advertising permit application, but prior to the issuance of the permit by the Department.

(g) The Department shall not issue permits for new outdoor advertising signs at a sign location where existing trees, if they were to reach the average mature size for that species, would make the proposed sign faces, when erected, not completely visible from the viewing zone. "Existing trees" are those trees that at the time of the permit application are four inches or greater in diameter as measured six inches from the ground. "Viewing zone" means the area which is 500 feet as measured along the edge of the main-traveled way of the controlled route on each side of the proposed sign structure which will have a sign face.

(h) An outdoor advertising permit requested pursuant to G.S. 136-129(a)(4) shall not be issued to a location if the zoning to commercial or industrial zones was adopted within one year prior to the filing of the permit application and is not part of comprehensive zoning or constitutes spot zoning, which, for purposes of this subsection, shall be defined as zoning designed primarily for the purpose of permitting outdoor advertising signs and in an area which would not normally permit outdoor advertising. Zoning shall not be considered "primarily for the purpose of permitting outdoor advertising signs" if the zoning would permit more than one principal commercial or industrial use, other than outdoor advertising, and the size of the land being zoned can practically support such commercial or industrial uses.

(i) Outdoor advertising permits shall not be issued to a location for a period of 12 months prior to the proposed letting of a new construction contract that may affect the spacing or location requirements for an outdoor advertising structure until the project is completed. The prohibition authorized by this subsection shall not extend for a period longer than 18 months.

Priority in spacing shall be given by the Department to the first submitted application for an outdoor advertising permit at the location.

(j) Outdoor advertising permits shall not be issued for a location on a North Carolina or United States route designated as a scenic byway."

SECTION 10. This act becomes October 1, 2011, and applies to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date.

SENATE BILL 183:
Selective Vegetation Removal/State Highways

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 11, 2011
Introduced by:	Sen. Brown	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S183-CSTD-32		

SUMMARY: ***The PCS to Senate Bill 183 would amend the State's Outdoor Advertising Control Act by establishing statutory standards for selective vegetation removal within the rights-of-way of the State highway system, increasing the fee for a selective vegetation removal permit, establishing standards for the issuance or denial of a selected vegetation removal permit, and establishing a process for appeals of selective vegetation removal permit decisions. The bill would become effective October 1, 2011 and apply to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date. The PCS provides vegetation in the newly expanded removal zone that meets the following criteria is not eligible for removal:***

- ***The vegetation was planted for a federal beautification or environmental project, or in conjunction with a noise barrier.***
- ***The vegetation was planted after the erection of the sign but before May 1, 2011.***

CURRENT LAW: The Outdoor Advertising Control Act is set out in Article 11 of Chapter 136 of the General Statutes. The Act is intended to control the erection and maintenance of outdoor advertising devices in order to "preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and devices." G.S. 136-18 grants the Department of Transportation (DOT) the authority to *"employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways".* Pursuant to its rulemaking authority, the Department has established a Selective Vegetation Removal Policy that is set out in the North Carolina Administrative Code. The policy provides for selective thinning, pruning, replacement, relocation, or removal of vegetation within highway rights of way for the purpose of opening views to office, institutional, commercial and industrial facilities and legally erected forms of outdoor advertising which are located directly adjacent to State highway rights of way. When removal of vegetation is allowed, it must be performed by the permittee in compliance with the policy and at no cost to the Department of Transportation. Under G.S. 136-18.7, the fee for a selective vegetation removal permit is $200.

BILL ANALYSIS: The PCS to Senate Bill 183 would establish statutory standards for selective vegetation removal within the rights-of-way of the State highway system. Many of the provisions in the bill are substantially similar to existing provisions of the North Carolina Administrative Code.

Section 1 of the bill would increase the fee for a selective vegetation removal permit from $200 to $400 for each permitted site. The fee would be nonrefundable.

Section 2 of the bill prohibits the removal of vegetation in or on any right of way of a State road or State highway without a written selective vegetation removal permit issued pursuant to provisions in the bill and in accordance with DOT rules. Requests for a permit would be made to the appropriate person in the Division of Highways office, on a form prescribed by DOT. Permits may be requested by the owner of an outdoor advertising sign or the owner of a business facility. If the permit application is for a site

ocated within a municipality, the municipality would have 30 days to review and comment on the pplication provided it has advised DOT in writing of its desire to review such applications and has identified the name of the local official who should receive notice. Local governments would be prohibited from regulating the removal of vegetation as authorized by DOT.

Section 3 of the bill establishes a standard for determining the monetary value of trees removed from State rights-of-way. Values would be determined and published by DOT annually by December 15, for use in the following calendar year.

Section 4 of the bill would amend the law concerning permits for the erection or maintenance of outdoor advertising. The bill increases the initial fee from $120 to $150, and the annual renewal fee is increased from $60 to $90. The bill provides that $30 of each initial and annual fee is to be used by DOT for highway beautification projects. No electrical utility permit may be denied to an outdoor advertising sign for which a permit has been issued by DOT, so long as the permit is valid and otherwise compliant with technical utility standards.

Section 5 of the bill establishes standards for the cutting or removal of vegetation pursuant to a selective vegetation removal permit issued to the owner of an outdoor advertising sign. The bill prescribes a maximum cut or removal zone for each sign face; the maximum zone varies depending upon whether the site is within the corporal limits and territorial jurisdiction of a municipality and whether the highway is an interstate or other route with fully controlled access. The permit applicant must submit a site plan to DOT, and DOT may conduct an on-site investigation. The bill sets out a procedure for resolving disputes concerning the accuracy of information on the site plan. Trees existing at the time the outdoor advertising sign was erected may only be removed if the applicant reimburses DOT for the established value of the trees or if the applicant agrees to remove two nonconforming signs for each sign at which the removal of trees is requested. Under specified conditions, a selective vegetation removal permit is not required for activities conducted from the private property side of a controlled access fence and with the consent of the landowner. In certain instances, DOT would have the authority to revoke an outdoor advertising permit for the unlawful destruction or illegal cutting of vegetation within highway right-of-way.

Section 6 of the bill establishes standards for the issuance or denial of a selected vegetation removal permit. DOT would be required to approve or deny a permit within 30 day of receipt of the application; if no decision is conveyed in writing within the 30 day period, the application is deemed to be approved. Denial must be made in writing, by registered or certified mail, and must include reason for the denial. The bill requires that an application be denied when certain conditions apply.

Section 7 establishes a process for appeals of selective vegetation removal permit decisions. An applicant would have 30 days in which to submit a written appeal, by registered or certified mail to the Secretary of Transportation, setting forth the facts and arguments upon which the appeal is based. The agency would be required to render a final decision within 90 days of receiving the written appeal. The bill provides that the aggrieved party may seek judicial review of the final agency decision.

Section 8 requires that vegetation cutting or removal be done in accordance with accepted International Society of Arboriculture (ISA) standards. Selective vegetation removal permits would be valid for a period of 1 year and cutting or removal may occur more than one time during that year. The permittee must give a 48-hour notice to DOT before entering the right-of-way. Other terms and conditions are established concerning impeding the flow of traffic, access to the work site, traffic control signage, adherence to safety standards, property damage, and debris removal. Willful failure to comply with requirements specified in the permit could result in a 5-year moratorium for vegetation removal at the site or a summary revocation of the outdoor advertising permit.

Section 9 establishes a procedure and standards for denial of a permit for proposed outdoor advertising. A district engineer would be required to refuse to issue a permit for a proposed outdoor advertising structure that would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act. The applicant would be notified of the denial and the basis for the denial by registered or certified mail. In the case of a sign located at a site where the 5-year moratorium is in effect for the unlawful destruction or cutting of vegetation, before denying the permit DOT would be required to reveal some evidence that the unlawful acts would create, increase, or improve a view to an outdoor advertising sign.

The bill would prohibit DOT from issuing permits for new outdoor advertising signs at a location where existing trees, if they were to reach mature height, would make the proposed sign faces not completely visible from the viewing zone. An outdoor advertising permit in an area zoned industrial or commercial under authority of State law could not be issued if the zoning was adopted within one year prior to the filing of the permit application and is not part of comprehensive zoning or represents spot zoning for the purpose of permitting outdoor advertising signs in an area that would not normally permit such signs. Outdoor advertising permits would also not be issued for certain locations where new construction contracts may affect spacing or location requirements for an outdoor advertising structure. Priority in spacing would be granted to the first submitted application for a permit at the location. DOT would also deny permits for locations on a State or US scenic byway.

EFFECTIVE DATE: The bill would become effective October 1, 2011 and apply to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date.

Brenda J Carter, counsel to Senate Transportation, substantially contributed to this summary.

S183-SMTD-50(CSTD-32) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 489
PROPOSED COMMITTEE SUBSTITUTE S489-CSRB-33 [v.8]

5/11/2011 12:36:08 PM

Short Title: Effectiveness of Job Creation Programs. (Public)

Sponsors:

Referred to:

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO BETTER ENABLE LEGISLATIVE EVALUATION AND ONGOING ASSESSMENT OF THE STATE'S ECONOMIC DEVELOPMENT PROGRAMS AND THEIR IMPACT ON JOB CREATION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143B-437.07 reads as rewritten:

"**§ 143B-437.07. Economic development grant reporting.**

(a) Report. – The Department of Commerce must publish on or before March 1 of each year the ~~following information,~~ information required by this subsection, itemized by business entity, ~~for all grant programs administered by the Department that disbursed or awarded grant monies to businesses during the previous calendar year:~~for each business or joint private venture to which the State has, in whole or in part, granted one or more economic development incentives during the previous five calendar years. The Department must provide the General Assembly with updated supplemental information consistent with this subsection on a quarterly basis in the form and manner requested by the General Assembly. The information in the report must include all of the following:

~~(1) The amount of grant monies awarded during the previous year.~~

~~(2) The amount of grant monies disbursed during the previous year.~~

~~(3) The amount of grant monies that were disbursed in earlier years to business entities that received grant monies during the previous year.~~

~~(4) The amount of potential future liability under the grant program.~~

~~(5) The number, type, and wage level of jobs created or retained during the previous year as a result of a grant.~~

~~(6) A description of any other financial assistance received during the previous year from all economic development incentive programs administered by the Department.~~

~~(7) Any amount recaptured from the business entity during the previous year for failure to comply with the grant agreement or applicable law.~~

(1) A unique project identification number and a unique descriptor or title.

(2) The date of the award agreement.

(3) The name, mailing address, telephone number, and Web site of the business recipient, or recipients if a joint venture, and the physical location of the site receiving the incentive. If the physical location of the site is undecided, then the name of the county in which the site will be located.

(4) The development tier designation of the county in which the site is located on the date the incentive is awarded.
(5) The NAICS six-digit code and NAICS category of business receiving the incentive. The term 'NAICS' has the same meaning as defined in G.S. 105-164.3.
(6) The sources and dollar value of eligible State incentives by program name.
(7) The sources and dollar value of local government funds provided by any locality and the nature of the local funding. Examples of the nature of local funding include cash, fee-waivers, in-kind services, and donation of land, buildings, or other assets.
(8) The intended use of the incentive by any category or categories to which State law restricts or limits uses of incentive funds. If the use of the incentive funds is not restricted, then the intended purpose of the funds.
(9) The amount of incentive monies disbursed taken during the period.
(10) The amount of potential future liability under the applicable incentive program.
(11) The number, type, and wage level of jobs required to be created or retained to receive a disbursement of incentive monies.
(12) The actual full-time equivalent jobs employed by the recipient during the period.
(13) The projected cost per job created or retained, including State and local funds.
(14) Any amount recaptured from the business entity during the period for failure to satisfy the terms of the grant agreement.

(b) Online Posting. – The Department of Commerce must post on its Internet Web site a summary of the report compiled in subsection (a) of this section. The summary report must include the information required by subdivisions (2), (9), (11), and (12) of subsection (a) of this section.

(c) Economic Development Incentive. – An economic development incentive includes any grant program administered by the Department of Commerce that disburses or awards monies to businesses. Examples of these grant programs include the Job Development Investment Grant Program, the Job Maintenance and Capital Development Fund, One North Carolina Fund, and the Industrial Development Fund, including the Utility Account. The State also incents economic development through the use of tax expenditures in the form of tax credits and refunds. The Department of Revenue must report annually on these statutory economic development incentives, as required under G.S. 105-256. "

SECTION 1.(b) Notwithstanding G.S. 143B-437.07, as amended by this act, the Department of Commerce is not required to include information in its annual report relating to economic development incentives provided by local governments prior to July 1, 2011.

SECTION 2.(a) The title of Article 12L of Chapter 120 of the General Statutes reads as rewritten:

"Article 12L.

~~Revenue Laws~~Finance and Economic Development Study Committee."

SECTION 2.(b) G.S. 120-70.105 reads as rewritten:

"**§ 120-70.105. Creation and membership of the ~~Revenue Laws~~ Finance and Economic Development Study Committee.**

(a) Membership. – The ~~Revenue Laws~~ Finance and Economic Development Study Committee is established. The Committee consists of ~~16~~ 20 members as follows:

(1) ~~Eight~~ Ten members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) ~~Eight~~ Ten members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. – Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

SECTION 2.(c) G.S. 120-70.106 reads as rewritten:

"**§ 120-70.106. Purpose and powers of Committee.**

(a) The ~~Revenue Laws~~Finance and Economic Development Study Committee may:

(1) Study the revenue laws of North Carolina and the administration of those laws.

(2) Review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable.

(3) Call upon the Department of Revenue to cooperate with it in the study of the revenue laws.

(4) Analyze the economic development programs supported by the State and the effectiveness of those programs.

(5) Assess the performance of economic development programs, according to criteria established by the Committee, and the entities that implement those programs.

(6) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the State's revenue ~~laws.~~laws and economic development programs.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum review by the Committee of all revenue law and economic development matters in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. When a recommendation of the Committee, if enacted, would result in an increase or decrease in State revenues, the report of the Committee must include an estimate of the amount of the increase or decrease.

~~(c) The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by S.L. 2006-151, has on the issues listed in this section to determine if any changes to the law are needed:~~

~~(1) Competition in video programming services.~~

~~(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.~~

~~(3) The deployment of broadband in the State.~~

~~The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly.~~"

SECTION 2.(d) G.S. 120-70.107 reads as rewritten:

"**§ 120-70.107. Organization of Committee.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the ~~Revenue Laws~~ Finance and Economic Development Study Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is ~~nine~~ 11 members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The Committee shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

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

SENATE BILL 489:
Effectiveness of Job Creation Programs

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 11, 2011
Introduced by:	Sen. Rucho	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S489-CSRB-33		Committee Counsel

SUMMARY: ***The proposed Senate committee substitute for Senate Bill 489 modifies the information the Department of Commerce must provide on the economic development grant programs offered by the State to better enable the Legislature to evaluate their effectiveness at creating jobs. The PCS also expands the duties of an existing interim study committee to include the analysis and assessment of the State's economic development grant programs as well as its statutory tax incentives.***

CURRENT LAW: The Department of Commerce compiles an annual report for the grant programs it administers that disburses or awards grant monies to businesses. The Department of Revenue reports annually on the statutory tax credits and tax refunds related to economic development.

BILL ANALYSIS: One of the recommendations in the report from the UNC Center for Competitive Economies to the General Assembly in 2009 was the need for greater legislative oversight of the State's economic development programs and goals. The report encouraged the General Assembly to define its economic goals and measurements and to continuously assess the State's progress towards those goals. The PCS for Senate Bill 489 provides two new tools to help the General Assembly accomplish this ecommendation:

- It modifies the existing reporting requirement to include information that is not currently readily available, such as the number of actual jobs created or retained by an economic development grant and the applicable local incentives provided. The original bill would have provided an online, searchable database. The PCS accomplishes the goals of the original bill with no additional expenditure.
- It expands the duties of the Revenue Laws Study Committee to include the assessment and analysis of the State's economic development programs. This Committee currently assesses the State's statutory tax credits and tax refunds for economic development. The membership of the Committee is largely comprised of legislative members that are knowledgeable in the area of economic development programs. And the Committee is one of long-standing. To better enable the Committee to address its added responsibilities, the PCS would expand the number of members on the committee from 16 to 20.

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

S489-SMRB-47(CSRB-33) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 576
Education/Higher Education Committee Substitute Adopted 4/27/11
PROPOSED COMMITTEE SUBSTITUTE S576-CSRBf-34 [v.3]

5/11/2011 12:24:12 PM

Short Title: Changes to Fees for Teacher Certification. (Public)

Sponsors:

Referred to:

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FEES FOR TEACHER CERTIFICATION AND ADMINISTRATIVE CHANGES TO CERTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-296(a2) reads as rewritten:

"(a2) The State Board of Education ~~shall impose the following schedule of fees for teacher certification and administrative changes~~may adopt rules, as provided in Chapter 150B of the General Statutes, establishing a fee schedule for licensure services. The fee is payable at the time a teacher certification or administrative change application is submitted; the fee is nonrefundable. The State Board must periodically review the fee schedule to ensure that the revenues generated from the fees do not exceed the actual costs of providing the licensure services. If the State Board finds that the fees imposed by this subsection exceed the costs of providing licensure services, it must reduce the fees accordingly.

The State Board must provide an online licensure management system that will allow a person to submit applications electronically. The fee schedule adopted by the State Board may provide a lower fee amount for applications submitted electronically if the State Board determines that electronic applications are less costly to process. The fee schedule must provide online service for name changes, address changes, and electronic copies at no charge to the user.

The fees adopted by the State Board may not exceed the following amounts:

(1) Application for demographic or administrative changes to a certificate, ~~$30.00.~~up to $45.00.

(2) Application for a duplicate certificate or for copies of documents in the certification files, ~~$30.00.~~up to $45.00.

(3) Application for a renewal, extension, addition, upgrade, and variation to a certificate, ~~$55.00.~~up to $80.00.

(4) Initial application for New, In-State Approved Program Graduate, ~~$55.00.~~up to $80.00.

(4a) In-state certificate review, up to $80.00.

(5) Initial application for Out-of-State certificate, ~~$85.00.~~up to $125.00.

(5a) Verification of North Carolina certificate for another state, up to $80.00.

(6) All other applications, ~~$85.00.~~up to $125.00.

~~The applicant must pay the fee at the time the application is submitted.~~"

SECTION 2. This act becomes effective July 1, 2012.

SENATE BILL 576:
Changes to Fees for Teacher Certification

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 10, 2011
Introduced by:	Sens. Hartsell, Tillman, Preston	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S576-CSTD-31		

SUMMARY: ***SB 576 would permit the State Board of Education to set higher fees for teacher certification and administration changes, would make the fees nonrefundable, and would require the implementation of an online licensure management system. The fees must be adopted by rule as established by the Administrative Procedures Act. The PCS allows the fee for "all other applications" to be increased up to $125.***

CURRENT LAW: G.S. 115C-296 places the State Board of Education (State Board) in control of teacher certification. The State Board is authorized to charge fees for teacher certification and administrative changes as listed under "current fee" in the chart below.

BILL ANALYSIS: SB 576 would allow the State Board to adopt fees up to a certain amount for teacher certification and administrative changes based on the following schedule, and would create 2 new fees.

Application	Current Fee	New Fee
Demographic or administrative changes to a certificate.	$30	Up to $45
Duplicate certificate or copies of documents in certification files.	$30	Up to $45
Renewal, extension, additional, upgrade, and variation to a certificate.	$55	Up to $80
Initial application for new, in-State approved program graduate.	$55	Up to $80
Initial application for out-of-state certificate.	$85	Up to $125
In-State certificate review.	Not specified	Up to $80
Verification of NC certificate for another state.	Not specified	Up to $80
All other applications.	$85	Up to $125

The fees would be adopted by rule following the process established in the Administrative Procedures Act. Fees would be nonrefundable.

The State Board would be required to implement an online licensure management system to permit electronic submissions for teacher certification and administration changes. If online applications are able to be processed at less cost, the State Board must adopt lower fees for online applications.

EFFECTIVE DATE: SB 576 would become effective July 1, 2011.

Kara McCraw, counsel to Senate Education, substantially contributed to this summary.

S576-SMTD-48(CSTD-31) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 9, 2011

TO: Senator Hartsell

FROM: Kristopher Nordstrom
Fiscal Research Division

RE: Senate Bill 576 (Second Edition)

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Revenues:	$315,420	$630,840	$630,840	$630,840	$630,840
Expenditures:	($111,120)	($351,968)	($360,277)	($395,834)	($377,650)
NET IMPACT:	**$204,300**	**$278,872**	**$270,563**	**$235,006**	**$253,190**
POSITIONS (cumulative):	**1.0**	**1.0**	**1.0**	**1.0**	**1.0**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Public Instruction (DPI) and local education agencies (LEAs)

EFFECTIVE DATE: July 1, 2011

BILL SUMMARY:
S576 amends GS 115C-296(a2) to direct the State Board of Education (SBE) to adopt new fees related to teacher certification. The changes in fees are summarized in the table below:

S576 – Summary of Fee Changes

Type of Licensure Action	Existing Fee	Fee Proposed by S576
Application for demographic or administrative changes to a certificate	$30	up to $45
Application for a duplicate certificate or for copies of documents in the certification files	$30	up to $45
Application for a renewal, extension, addition, upgrade, and variation to a certificate	$55	up to $80
Initial application for New, In-State Approved Program Graduate	$55	up to $80
Initial application for Out-of-State certificate	$85	up to $125
In-State certificate review	$55	up to $80
Verification of North Carolina certificate for another state	$0	up to $80
All other applications	$85	up to $125

The PCS to S576v2 simply amends the fee for "all other applications" from "up to $85" to "up to $125."

S576 further amends GS 115C-296(a2) to note that fees are nonrefundable.

Finally, S576 requires the SBE to implement an online licensure management system to allow electronic submission of teacher certification and administrative change applications. The SBE shall adopt lower fees for online applications if the Department of Public Instruction (DPI) can process those applications at a lower cost.

ASSUMPTIONS AND METHODOLOGY:
S576 will impact the DPI budget in two ways:

1. Increased DPI receipts: the increase in licensure fees is expected to increase the agency's revenues
2. Increased operational costs: the requirement that SBE implement an online licensure management system will cause the agency to incur certain additional costs.

Increased DPI Receipts
DPI anticipates that the fee-generating licensure actions are expected to remain constant over the next five years. Once fully implemented, the new fee structure is anticipated to generate an additional $630,840 of receipts to the agency per year.

S576 – Summary of Fee Changes

Type of Licensure Action	Existing Fee	Fee Proposed by S576
Application for demographic or administrative changes to a certificate	$30	up to $45
Application for a duplicate certificate or for copies of documents in the certification files	$30	up to $45
Application for a renewal, extension, addition, upgrade, and variation to a certificate	$55	up to $80
Initial application for New, In-State Approved Program Graduate	$55	up to $80
Initial application for Out-of-State certificate	$85	up to $125
In-State certificate review	$55	up to $80
Verification of North Carolina certificate for another state	$0	up to $80
All other applications	$85	up to $125

The PCS to S576v2 simply amends the fee for "all other applications" from "up to $85" to "up to $125."

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S576 – Increased DPI Receipts

Type of License	Estimated Number	Old Rate	New Rate	Revenue Increase
Application for demographic or administrative changes to a certificate	40	$30	$45	$600
Application for a duplicate certificate or for copies of documents in the certification files	670	$30	$45	$10,050
Application for a renewal, extension, addition, upgrade, and variation to a certificate	11,144	$55	$80	$278,600
Initial application for New, In-State Approved Program Graduate	5,020	$55	$80	$125,500
Initial application for Out-of-State certificate	3,734	$85	$125	$149,360
In-State certificate review	10	$55	$80	$250
Verification of North Carolina certificate for another state	15	$0	$80	$1,200
All other applications	1,632	$85	$125	$65,280
Total	**22,265**			**$630,840**

DPI anticipates implanting the new fee schedule effective January 1, 2012, once the new online licensure management system is operational. As a result, anticipated revenue increase for fiscal year 2011-12 is $315,420, or half of the anticipated increase of future years.

Increased Operational Costs

DPI will incur additional operational costs related to maintaining the online licensure management system. Increased expenses include:

- Yearly maintenance: payments to either the North Carolina Office of Information Technology Services, or to the vendor of the licensure management system to maintain the system and provide help desk functions.
- Hardware refresh: certain hardware is expected to need replacement in the 2014-15 fiscal year.
- IT support staff: an additional position to provide in-house support for the system and build functionality to respond to any changes in fee structure.
- Hosting costs: the costs associated with hosting the system on a server.

The table below estimates the increase in operational costs over the next five fiscal years. Yearly maintenance, IT support staff, and hosting costs are anticipated to increase 3% per year.

S576 – Increased DPI Operating Costs

Operating Cost	2011-12	2012-13	2013-14	2014-15	2015-16
Yearly maintenance	-	($192,848)	($196,383)	($200,024)	($203,775)
Hardware refresh	-	-	-	($27,000)	-
IT Support Staff	($48,000)	($96,000)	($98,880)	($101,846)	($104,902)
Hosting costs	($63,120)	($63,120)	($65,014)	($66,964)	($68,973)
Total	**($111,120)**	**($351,968)**	**($360,277)**	**($395,834)**	**($377,650)**

Total Fiscal Impact

The total fiscal impact is found by summing the increased revenues with the operating costs.

S576 – Total Fiscal Impact

	2011-12	2012-13	2013-14	2014-15	2015-16
Increased Revenue	$315,420	$630,840	$630,840	$630,840	$630,840
Operating Costs	($111,120)	($351,968)	($360,277)	($395,834)	($377,650)
Total	**$204,300**	**$278,872**	**$270,563**	**$235,006**	**$253,190**

LEA Impact

The online licensure management system is expected to reduce time spent on licensure issues at the LEA level. According to information provided by DPI, the new system is likely to reduce an average of 10 hours of work each month for LEA central office staff.

The reduction in work load on LEA central office staff is not included in the fiscal impact as there is no corresponding budget reduction.

SOURCES OF DATA: Department of Public Instruction

TECHNICAL CONSIDERATIONS: None

S576 – Increased DPI Operating Costs

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SOURCES OF DATA: Department of Public Instruction

TECHNICAL CONSIDERATIONS: None

Explanation of Senate Bill 576

1Q - Why is the Licensure fee modification necessary?

1A - The current licensure fee structure has not been adjusted since October 1998. Given the increase in the operational costs over the past 12 ½ years, Licensure cannot continue to absorb the increased costs and operate at the current level without an increase to fees.

2Q - What would happen if there were no fee increase?

2A - Without the approval of the fee increase, beginning in 2013/2014 Licensure would begin to incur more costs than the projected receipts would be able to cover. Licensure would only be able to provide the current level of service to teachers, LEAs and other respective shareholders such as IHEs, parents, and the citizens at large through the 2012/2013 fiscal year.

3Q - Why is a new Licensure System needed?

3A – Currently teachers and the school districts have limited to no access to the status of a license, and the average time to process a request is 25 business days. The new system would offer them the ability to access their information at no charge, at any time, from any computer or smart phone; to print copies of their license; to make administrative changes such as name, address, contact information, and to print their licensure file information at no charge. Under the current processes they have to submit a formal request for this, pay for it, and wait 25 business days.

4Q – What is the cost for a new Licensure System and how would it be funded?

4A – The initial costs to implement a new system are projected at approximately $1M. The implementation costs would be covered by state funds that have already been identified, and would be at no charge to the teachers. The annual maintenance costs would be approximately 336K. The maintenance costs would be covered by Licensure receipts. This includes the proposed licensure fee increase, in conjunction with reductions in licensure staff and other operational costs once the system is implemented.

PAGES ATTENDING

COMMITTEE: Finance ROOM: 544

DATE: 5-11 TIME: 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Keona Phelps	Cresswell	Senator Stan White
2 Tiffany Palin	Cresswell	Senator Stan White
3		
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 11, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Murray Jones	RAI
Gene Ainsworth	A&A
Jake Cashion	NC chamber
John Jefferson	NCEOA
Amy Bason	NCACC
Kevin Leonard	NCACC
Kate Fetzer	FSP
Kay Emanuel	Legislative Reporting Service
Paul Hickman	Fairway Outdoor Advertising
Barbie Mashburn	Adams Outdoor
Jamie Mackey	Lamar Outdoor

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 11, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Robbie Moore	Riley Out door
Aaron Guyton	Fairway Outdoor Advertising
Ann McLeod	SBE
Tony Price	DPI
Susan Rugg	DPI
Tony Adams	NCOAA
Kathryn Westcott	AGC/NC
Betsy Bailey	PENC
Emily Grimm	MWC
Keri Burke	MWC
Lou. Anna Harris	LAHA

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 11, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Beasley	SEANC
	SEANC
	SEANC
W-Ann C Reyn	CSS
	NCSBA
Katherine Joyce	NCASA
W. Gardner Pulpit	DLC & Assoc.
	NCPA
Elizabeth Robinson	NCRMA
	City of Charlotte

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 11, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Cameron Hanley	ElectriCities of NC
JoAnn Bowdon	Visitor
Monique Martin	Visitor
Beau Memory	NCSEA
Jon Nance	NCDOT
Julie White	NCMMA
Paul Meyer	NCLM
[illegible]	Alliance
Molly Diggs	Sierra Club
Will Morgan	Sierra
Dan Conrad	NCCN

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 11, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kelly McElwee	NCCN
Katie Stanley	Commerce
BRUCE THOMPSON	PARKER POE
Rick Zechini	Progress Energy
Heather Barrett	Williams Mullen
Clifton Dowell	The Insider

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 11, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Ed Consultant

SENATE FINANCE COMMITTEE
Tuesday, May 12, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 12, 2011 in room 544 of the Legislative Office Building. Keana Phelps and Tiffany Palin of Creswell served as pages. Twenty-six members of the committee were present. Senator Rucho presided as chair.

S.B. 426 – Modify/Clarify Public Finance Laws

Senator Clodfelter was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS makes changes to the bond statutes designed to improve their efficiency and it extends the sunset on the ability of cities and counties to issue special assessments for critical infrastructure needs from July 1, 2013, until July 1, 2016. The PCS removes two sections from the original bill that were more substantive in nature. Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the bill and answer questions. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 576 – Changes to Fees for Teacher Certification

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would permit the State Board of Education to set higher fees for teacher certification and administration changes, would make the fees nonrefundable, and would require the implementation of an online licensure management system. The fee for "all other applications" may be increased to up to $125. The fees must be adopted by rule as established by the Administrative Procedures Act. Ann McColl, the State Board of Education's legislative director, and Chris Nordstrom, a fiscal analyst with the Fiscal Research Division, were recognized to answer questions. Senator Hartsell requested that the bill be displaced from the agenda to draft a clarifying amendment. A copy of the PCS, the summary, and the fiscal note is attached.

S.B. 125 – NC School of Biotechnology and Agriscience

Senator Hartsell and Senator Brown were recognized to explain the bill. Senator Hartsell moved to adopt the PCS for discussion and the motion carried. The PCS would establish a method for local boards of education to jointly establish regional schools, clarifies that regional schools are secondary schools, allows regional schools to adopt the early college model through the cooperative, innovative high school program, clarifies tuition for community colleges and UNC constituent institutions for regional school students is waived only if there is a written agreement between the regional school and the constituent university or community college. Senator Meredith moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

S.B. 749 – Modify Weight Limits for Farm Operations

Senator Rabon was recognized to explain the bill which would exempt certain farm trailers from registration, restates the requirement that specified property hauling vehicles be registered for the maximum weight allowed: and increases the single and tandem axle weight limits for vehicles transporting specified products. Heather Fennell, a staff attorney with the Research Division, was recognized to answer questions. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 1:46 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, May 10, 2011

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

FAVORABLE

S.B.(CS #1) **749** Modify Weight Limits for Farm Operations.
Sequential Referral: None
Recommended Referral: None

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

S.B. **426** Modify/Clarify Public Finance Statutes.
Draft Number: 35243
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

S749 – Sen. Rabon
S426 – Sen. Clodfelter

Senate Finance Committee
Tuesday, May 10, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 125	NC School of Biotechnology and Agriscience.	Sen. Hartsell Sen. Brown
SB 426	Modify/Clarify Public Finance Statutes.	Sen. Clodfelter
SB 576	Changes to Fees for Teacher Certification.	Sen. Hartsell Sen. Preston Sen. Tillman
SB 749	Modify Weight Limits for Farm Operations.	Sen. Rouzer Sen. Tucker Sen. Rabon

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 426
PROPOSED COMMITTEE SUBSTITUTE S426-CSRBx-32 [v.2]

Short Title: Modify/Clarify Public Finance Statutes. (Public)

Sponsors:

Referred to:

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFICATIONS AND MODIFICATIONS TO THE PUBLIC FINANCE STATUTES OF NORTH CAROLINA FOR THE IMPROVEMENT OF VARIOUS FINANCING STRUCTURES AND THE TERMS AND PROVISIONS OF THE FINANCING STRUCTURES AND TO EXTEND THE SUNSET ON SPECIAL ASSESSMENTS FOR CRITICAL INFRASTRUCTURE NEEDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-28(a) reads as rewritten:

"(a) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project or a grant project authorized by a project ordinance unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this ~~subsection.~~ subsection unless the obligation or a document related to the obligation has been approved by the Local Government Commission, in which case, no certificate shall be required. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the governing board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

_____

(Signature of finance officer)."

Certificates in the form prescribed by G.S. 153-130 or 160-411 as those sections read on June 30, 1973, or by G.S. 159-28(b) as that section read on June 30, 1975, are sufficient until supplies of forms in existence on June 30, 1975, are exhausted.

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection."

SECTION 2. G.S. 159-54 reads as rewritten:

"**§ 159-54. The bond order.**

After or at the same time the application is filed ~~and accepted for submission to~~ with the Commission, a bond order shall be introduced before the governing board of the issuing unit. The bond order shall state:

(1) Briefly and generally and without specification of location or material of construction, the purpose for which the bonds are to be issued, but not more than one purpose may be stated. For funding or refunding bonds a brief description of the debt, judgment, or obligation to be funded or refunded shall be sufficient.

(2) The maximum aggregate principal amount of the bonds.

(3) That taxes will be levied in an amount sufficient to pay the principal and interest of the bonds.

(4) The extent, if any, to which utility or enterprise revenues are, or may be, pledged to payment of interest on and principal of the bonds pursuant to G.S. 159-47.

(5) That a sworn statement of debt has been filed with the clerk and is open to public inspection.

(6) If the bonds are to be approved by the voters, that the bond order will take effect when approved by the voters.

(7) If the bonds are issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5), that the bond order will take effect upon its adoption. If the bonds are to be issued pursuant to G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), or (d) and are not to be submitted to the voters, that the bond order will take effect 30 days after its publication following adoption, unless it is petitioned to a vote of the people as provided in G.S. 159-60, and that in that event the order will take effect when approved by the voters.

When the bond order is introduced, the board shall fix the time and place for a public hearing thereon."

SECTION 3. G.S. 159-88(a) reads as rewritten:

"(a) At any time after an application is filed with the Commission ~~approves an application~~ for the issuance of revenue bonds, (i) in the case of the State, the Council of State and (ii) in the case of a municipality, the governing board of the municipality may adopt a revenue bond order pursuant to this Article."

SECTION 4. Section 5 of S.L. 2008-165 reads as rewritten:

"**SECTION 5.** This act is effective when it becomes law. Sections 2 and 3 of this act expire ~~July 1, 2013.~~ July 1, 2016. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect the other provisions or applications of this act that can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 426:
Modify/Clarify Public Finance Statutes

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 10, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S426-CSRBx-32		Committee Counsel

SUMMARY: ***The proposed Senate committee substitute for Senate Bill 426 makes changes to the bond statutes designed to improve their efficiency and it extends the sunset on the ability of cities and counties to issue special assessments for critical infrastructure needs from July 1, 2013, until July 1, 2016. The PCS removes two sections from the original bill that were more substantive in nature.***

CHANGES IN BOND LAW: Under the Local Government Budget and Fiscal Control Act, an obligation may not be incurred by a city or county unless there has been an approved appropriation authorizing the payment of the obligation. For an obligation evidenced by a contract, an agreement, or a purchase order, the finance officer must have a certificate attached to the appropriate instrument stating the instrument has been preaudited to assure that the obligation is an approved appropriation. An obligation incurred in violation of this requirement is invalid and may not be enforced. **Section 1 of the PCS** would eliminate the need for the preaudit certificate if the document has been approved by the Local Government Commission. The LGC approves all contractual obligations related to the financing of capital projects. These would include bond purchase agreements[1], credit facilities, repayment agreements, remarketing agreements, interest swap agreements, and installment purchase contracts.[2]

Under the Local Government Bond Act, the governing body of a local government unit initiates the general obligation bond process when it authorizes the filing of an application to issue general obligation bonds with the Local Government Commission. This authorization takes place in a formal meeting. After the LGC has received and acknowledged receipt of the application requesting approval to issue GO bonds, the governing body must introduce a bond order, which also takes place in a formal meeting. The bond order is the formal resolution which specifies the details of the bonds being put to a vote: the purpose of the bond, the amount of the bond, the source of revenues for repayment of the bond, etc. The law then requires other meetings after the bond order is introduced, such as a public hearing. **Section 2 of the PCS** would allow the governing body to adopt the bond order at the same meeting in which it initiates the bond process. It does not eliminate the requirement of public notice of intent or the publication of notice of hearing on the bond order.

Under the State and Local Government Revenue Bond Act, a bond order may not be adopted until after the Local Government Commission approves the application for the issuance of the revenue bonds. **Section 3 of the PCS** would remove this restriction. The current restriction means that the LGC is approving the issuance of bonds before the bond order has been finalized by the governing body.

SPECIAL ASSESSMENTS FOR CRITICAL INFRASTRUCTURE NEEDS: In 2008, the General Assembly enacted legislation authorizing counties and cities to use assessments as a financing tool for long-term capital projects. The legislation enabled counties and cities to pay for a project for which an assessment is imposed solely with revenue bonds to be paid from the assessments or from a combination of financing sources that include revenue bonds, general obligation bonds, and general revenue. The

[1] Bond purchase agreements would include GO bonds, revenue bonds, and special obligation bonds.

[2] Installment purchase contracts may also be known as financing agreements, lease-purchase agreements, capital leases, certificates of participation, and limited obligation bonds.

legislation provided that the authority would expire on July 1, 2013. **Section 4 of the PCS** would extend the sunset until July 1, 2016.

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

S426-SMRB-46(CSRBx-32) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 576
Education/Higher Education Committee Substitute Adopted 4/27/11
PROPOSED COMMITTEE SUBSTITUTE S576-CSTD-31 [v.1]

5/9/2011 3:41:33 PM

Short Title: Changes to Fees for Teacher Certification. (Public)

Sponsors:

Referred to:

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FEES FOR TEACHER CERTIFICATION AND ADMINISTRATIVE CHANGES TO CERTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-296(a2) reads as rewritten:

"(a2) The State Board of Education shall ~~impose the following schedule of~~ adopt fees for teacher certification and administrative ~~changes:~~changes in a rule following the procedures established by the Administrative Procedure Act in accordance with the following schedule:

(1) Application for demographic or administrative changes to a certificate, ~~$30.00.~~up to $45.00.

(2) Application for a duplicate certificate or for copies of documents in the certification files, ~~$30.00.~~up to $45.00.

(3) Application for a renewal, extension, addition, upgrade, and variation to a certificate, ~~$55.00.~~up to $80.00.

(4) Initial application for New, In-State Approved Program Graduate, ~~$55.00.~~up to $80.00.

(5) Initial application for Out-of-State certificate, ~~$85.00.~~up to $125.00.

(5a) In-State certificate review, up to $80.00.

(5b) Verification of North Carolina certificate for another state, up to $80.00.

(6) All other applications, ~~$85.00.~~up to $125.00.

The applicant must pay the fee at the time the application is submitted. The fee is nonrefundable.

The State Board shall implement an online licensure management system to permit persons to submit teacher certification and administration change applications electronically. If the Department of Public Instruction is able to process online applications at less cost, the State Board shall adopt lower fees for online applications."

SECTION 2. This act becomes effective July 1, 2011.

SENATE BILL 576:
Changes to Fees for Teacher Certification

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 10, 2011
Introduced by:	Sens. Hartsell, Tillman, Preston	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S576-CSTD-31		

SUMMARY: ***SB 576 would permit the State Board of Education to set higher fees for teacher certification and administration changes, would make the fees nonrefundable, and would require the implementation of an online licensure management system. The fees must be adopted by rule as established by the Administrative Procedures Act. The PCS allows the fee for "all other applications" to be increased up to $125.***

CURRENT LAW: G.S. 115C-296 places the State Board of Education (State Board) in control of teacher certification. The State Board is authorized to charge fees for teacher certification and administrative changes as listed under "current fee" in the chart below.

BILL ANALYSIS: SB 576 would allow the State Board to adopt fees up to a certain amount for teacher certification and administrative changes based on the following schedule, and would create 2 new fees.

Application	Current Fee	New Fee
Demographic or administrative changes to a certificate.	$30	Up to $45
Duplicate certificate or copies of documents in certification files.	$30	Up to $45
Renewal, extension, additional, upgrade, and variation to a certificate.	$55	Up to $80
Initial application for new, in-State approved program graduate.	$55	Up to $80
Initial application for out-of-state certificate.	$85	Up to $125
In-State certificate review.	Not specified	Up to $80
Verification of NC certificate for another state.	Not specified	Up to $80
All other applications.	$85	Up to $125

The fees would be adopted by rule following the process established in the Administrative Procedures Act. Fees would be nonrefundable.

The State Board would be required to implement an online licensure management system to permit electronic submissions for teacher certification and administration changes. If online applications are able to be processed at less cost, the State Board must adopt lower fees for online applications.

EFFECTIVE DATE: SB 576 would become effective July 1, 2011.

Kara McCraw, counsel to Senate Education, substantially contributed to this summary.

S576-SMTD-48(CSTD-31) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 9, 2011

TO: Senator Hartsell

FROM: Kristopher Nordstrom
Fiscal Research Division

RE: Senate Bill 576 (Second Edition)

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Revenues:	$315,420	$630,840	$630,840	$630,840	$630,840
Expenditures:	($111,120)	($351,968)	($360,277)	($395,834)	($377,650)
NET IMPACT:	**$204,300**	**$278,872**	**$270,563**	**$235,006**	**$253,190**
POSITIONS (cumulative):	**1.0**	**1.0**	**1.0**	**1.0**	**1.0**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Public Instruction (DPI) and local education agencies (LEAs)

EFFECTIVE DATE: July 1, 2011

BILL SUMMARY:
S576 amends GS 115C-296(a2) to direct the State Board of Education (SBE) to adopt new fees related to teacher certification. The changes in fees are summarized in the table below:

S576 – Summary of Fee Changes

Type of Licensure Action	Existing Fee	Fee Proposed by S576
Application for demographic or administrative changes to a certificate	$30	up to $45
Application for a duplicate certificate or for copies of documents in the certification files	$30	up to $45
Application for a renewal, extension, addition, upgrade, and variation to a certificate	$55	up to $80
Initial application for New, In-State Approved Program Graduate	$55	up to $80
Initial application for Out-of-State certificate	$85	up to $125
In-State certificate review	$55	up to $80
Verification of North Carolina certificate for another state	$0	up to $80
All other applications	$85	up to $125

The PCS to S576v2 simply amends the fee for "all other applications" from "up to $85" to "up to $125."

S576 further amends GS 115C-296(a2) to note that fees are nonrefundable.

Finally, S576 requires the SBE to implement an online licensure management system to allow electronic submission of teacher certification and administrative change applications. The SBE shall adopt lower fees for online applications if the Department of Public Instruction (DPI) can process those applications at a lower cost.

ASSUMPTIONS AND METHODOLOGY:
S576 will impact the DPI budget in two ways:

1. Increased DPI receipts: the increase in licensure fees is expected to increase the agency's revenues
2. Increased operational costs: the requirement that SBE implement an online licensure management system will cause the agency to incur certain additional costs.

Increased DPI Receipts
DPI anticipates that the fee-generating licensure actions are expected to remain constant over the next five years. Once fully implemented, the new fee structure is anticipated to generate an additional $630,840 of receipts to the agency per year.

S576 – Increased DPI Receipts

Type of License	Estimated Number	Old Rate	New Rate	Revenue Increase
Application for demographic or administrative changes to a certificate	40	$30	$45	$600
Application for a duplicate certificate or for copies of documents in the certification files	670	$30	$45	$10,050
Application for a renewal, extension, addition, upgrade, and variation to a certificate	11,144	$55	$80	$278,600
Initial application for New, In-State Approved Program Graduate	5,020	$55	$80	$125,500
Initial application for Out-of-State certificate	3,734	$85	$125	$149,360
In-State certificate review	10	$55	$80	$250
Verification of North Carolina certificate for another state	15	$0	$80	$1,200
All other applications	1,632	$85	$125	$65,280
Total	**22,265**			**$630,840**

DPI anticipates implanting the new fee schedule effective January 1, 2012, once the new online licensure management system is operational. As a result, anticipated revenue increase for fiscal year 2011-12 is $315,420, or half of the anticipated increase of future years.

Increased Operational Costs

DPI will incur additional operational costs related to maintaining the online licensure management system. Increased expenses include:

- Yearly maintenance: payments to either the North Carolina Office of Information Technology Services, or to the vendor of the licensure management system to maintain the system and provide help desk functions.
- Hardware refresh: certain hardware is expected to need replacement in the 2014-15 fiscal year.
- IT support staff: an additional position to provide in-house support for the system and build functionality to respond to any changes in fee structure.
- Hosting costs: the costs associated with hosting the system on a server.

The table below estimates the increase in operational costs over the next five fiscal years. Yearly maintenance, IT support staff, and hosting costs are anticipated to increase 3% per year.

S576 – Increased DPI Operating Costs

Operating Cost	2011-12	2012-13	2013-14	2014-15	2015-16
Yearly maintenance	-	($192,848)	($196,383)	($200,024)	($203,775)
Hardware refresh	-	-	-	($27,000)	-
IT Support Staff	($48,000)	($96,000)	($98,880)	($101,846)	($104,902)
Hosting costs	($63,120)	($63,120)	($65,014)	($66,964)	($68,973)
Total	**($111,120)**	**($351,968)**	**($360,277)**	**($395,834)**	**($377,650)**

Total Fiscal Impact

The total fiscal impact is found by summing the increased revenues with the operating costs.

S576 – Total Fiscal Impact

	2011-12	2012-13	2013-14	2014-15	2015-16
Increased Revenue	$315,420	$630,840	$630,840	$630,840	$630,840
Operating Costs	($111,120)	($351,968)	($360,277)	($395,834)	($377,650)
Total	**$204,300**	**$278,872**	**$270,563**	**$235,006**	**$253,190**

LEA Impact

The online licensure management system is expected to reduce time spent on licensure issues at the LEA level. According to information provided by DPI, the new system is likely to reduce an average of 10 hours of work each month for LEA central office staff.

The reduction in work load on LEA central office staff is not included in the fiscal impact as there is no corresponding budget reduction.

SOURCES OF DATA: Department of Public Instruction

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 125*
Corrected Copy 3/1/11
Commerce Committee Substitute Adopted 4/26/11
PROPOSED COMMITTEE SUBSTITUTE S125-CSTC-12 [v.4]

5/9/2011 2:30:43 PM

Short Title: Regional Schools. (Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO PERMIT LOCAL BOARDS OF EDUCATION TO JOINTLY ESTABLISH REGIONAL SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 10. Regional Schools.

"**§ 115C-238.56A. Purpose.**

(a) The purpose of this Part is to authorize local boards of education to jointly establish a regional school to serve enrolled students in two or more local school administrative units that will expand student opportunities for educational success through high quality instructional programming. Regional schools may include partnerships with other education partners, including institutions of higher education and private businesses or organizations, and shall foster, encourage, and promote the development of knowledge and skills in career clusters of critical importance to the region.

(b) Except as otherwise provided in this Part, a regional school is exempt from statutes and rules applicable to a local board of education or local school administrative unit.

"**§ 115C-238.56B. Definitions.**

The following definitions apply in this Part:

(1) First generation student. – A student who has no parent who has completed a two- or four-year degree.

(2) Participating units. – A local school administrative unit whose local board of education has adopted a resolution to create a regional school that has been approved by the State Board of Education.

(3) Principal. – The principal of a regional school.

(4) Regional school. – A school created pursuant to G.S. 115C-238.56C which includes all of grades nine through twelve and may include grades seven and eight.

(5) Regional school board of directors or board of directors. – The governing board of a regional school appointed pursuant to G.S. 115C-238.56D.

"**§ 115C-238.56C. Creation of regional school.**

(a) Resolution to Create a Regional School. – Any two or more local boards of education may create a regional school as provided in this Part. In order to create a regional school, each local board of education shall adopt a resolution stating its intent to create the regional school, which shall include the following:

(1) Name of the regional school.

(2) Names of all other local boards of education known to that local board of education adopting resolutions to create the regional school.

(3) Identification of one of the named local school administrative units to serve as the finance agent for the regional school.

(4) Identification of one of the named local school administrative units to provide, to the extent practicable, school food services to the regional school, if needed.

The local board of education shall develop a plan to provide transportation to the students domiciled in the district.

(b) Recognition of Regional School. – Each local board of education that adopts a resolution as provided in this section shall file a copy of the resolution with the State Board of Education. Upon receipt of resolutions from all local boards of education identified in each resolution for a named regional school, the State Board of Education shall approve the creation of the regional school.

(c) Expansion of Regional School. – A local board of education may adopt a resolution stating its intent to join an existing regional school, which shall include the name of the regional school and the names of all other local boards of education which have previously adopted resolutions to create the regional school. The local board of education shall file a copy of the resolution with the State Board of Education. Following receipt of the petition and after receiving comment from the regional school board of directors, the State Board of Education may approve the expansion of the regional school.

"**§ 115C-238.56D. Regional school boards of directors; appointment; terms of office.**

(a) Appointment. – A board of directors for a regional school shall consist of the following members. Appointed members of the board of directors shall be selected for their interest in and commitment to the importance of public education to regional economic development and to the purposes of the regional school.

(1) Local boards of education. – Each participating unit shall appoint one member to the board of directors from among the membership of the local board of education. Members appointed by local boards of education shall serve terms of four years.

(2) Local superintendents. – The local superintendent of the local school administrative unit identified as the finance agent for the regional school shall serve as an ex officio member of the board of directors. One additional superintendent shall be selected from among the superintendents of the participating units by those superintendents. The additional superintendent shall serve an initial term of two years. Subsequent appointments shall serve a term of four years.

(3) Economic development region. – The Economic Development Regional Partnership for the economic development region in which the regional school is located shall appoint three members as representatives of the business community. At least one of the appointees shall be a resident of the county in which the regional school is located. The appointees shall serve an initial term of two years. Subsequent appointees shall serve a term of four years.

(4) Parent Advisory Council. – The Parent Advisory Council established by G.S. 115C-238.56J shall appoint a member to the board of directors from

among the Council membership. The member appointed by the Council shall serve a term of four years or until the child of the parent no longer attends the regional school.

(5) Higher education partners. – Any institution of higher education partner may appoint a representative of the institution of higher education to serve as an ex officio member of the board of directors.

(b) Vacancies. – Whenever an appointed member of the board of directors shall fail for any reason other than ill health or service in the interest of the State or nation to be present at three successive regular meetings of the board of directors, his or her place as a member of the board of directors shall be deemed vacant. Any member of the board of directors may be removed from office by the appointing authority for misfeasance, malfeasance, or nonfeasance in office. All vacancies shall be filled by the appointing authority for the remainder of the term of office.

"**§ 115C-238.56E. Board of directors; meetings; rules of procedure; officers.**

(a) The board of directors shall meet at least four times a year and may hold special meetings at any time at the call of the chair or upon petition addressed to the chair by a majority of the members of the board of directors. All meetings of the board of directors shall be subject to the requirements of Article 33C of Chapter 143 of the General Statutes.

(b) The board of directors shall elect a chair and a vice-chair from among its members, who shall serve a two-year term.

(c) All members of the board of directors shall be voting members except for the chair, who may vote only on matters to break a tie.

(d) The board of directors shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(e) Members of the board of directors shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions.

"**§ 115C-238.56F. Board of directors; corporate powers.**

(a) The board of directors of the regional school shall be known and distinguished by the name of 'The _____ Regional School Board of Directors' and shall continue as a body politic and corporate and by that name shall have perpetual succession and a common seal. It shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for the use of the regional school, and to apply to same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, or the profits thereof, shall be applied to and for the use and purpose of establishing and endowing the regional school, and shall have power to receive donations from any source whatsoever, to be devoted exclusively to the purposes of the maintenance of the regional school, or according to the terms of the donation.

(b) The board of directors shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the devisor does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions; and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue.

"**§ 115C-238.56G. Board of directors; powers and duties.**

The board of directors shall have the following powers and duties:

(1) Academic program. –

a. The board of directors shall establish the standard course of study for the regional school. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade. The board of directors shall design its programs to meet at least the student performance standards adopted by the State Board of Education and the student performance standards contained in this Chapter.

b. The board of directors shall conduct student assessments required by the State Board of Education.

c. The board of directors shall provide the opportunity to earn or obtain credit toward degrees from a community college subject to Chapter 115D of the General Statutes or a constituent institution of The University of North Carolina.

d. The board of directors shall adopt a school calendar consisting of a minimum of 180 days of instruction covering at least nine calendar months.

(2) Standards of performance and conduct. – The board of directors shall establish policies and standards for academic performance, attendance, and conduct for students of the regional school. The policies of the board of directors shall comply with Article 27 of this Chapter.

(3) School attendance. – Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the regional school and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time that the regional school shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the regional school. Any person who aids or abets a student's unlawful absence from the regional school shall, upon conviction, be guilty of a Class 1 misdemeanor. The principal shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the board of directors, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.

(4) Reporting. – The board of directors shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.

(5) Assessment results. – The board of directors shall provide data to the participating unit in which a student is domiciled on the performance of that student on any testing required by the State Board of Education.

(6) Education of children with disabilities. – The board of directors shall require compliance with laws and policies relating to the education of children with disabilities.

(7) Health and safety. – The board of directors shall require that the regional school meet the same health and safety standards required of a local school administrative unit.

(8) Driving eligibility certificates. – The board of directors shall apply the rules and policies established by the State Board of Education for issuance of driving eligibility certificates.

(9) Purchasing and contracts. – The board of directors shall comply with the purchasing and contract statutes and regulations applicable to local school administrative units.

(10) Exemption from the Administrative Procedures Act. – The board of directors shall be exempt from Chapter 150B of the General Statutes, except final decisions of the board of directors in a contested case shall be subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.

"**§ 115C-238.56H. Student admissions and assignment.**

(a) Residency Requirement. – A student shall be domiciled in a participating unit to be eligible to attend the regional school. A student's eligibility to remain enrolled in the regional school shall terminate at the end of any school year during which a student ceases to satisfy the residency requirements.

(b) Participating Unit Allotments. – The number of student seats in the freshman class of the regional school shall be assigned proportionate to the total student population of the participating units, as determined by the participating unit's final average daily membership in the preceding school year. If fewer students residing in a participating unit elect to attend the regional school than available allotted seats, the remaining seats shall be divided proportionally among the other participating units.

(c) Admissions Criteria. – The board of directors shall establish criteria, standards, and procedures for admission of students. The admission criteria may give priority to first generation students and shall include the following:

(1) Demonstrated academic achievement.

(2) Demonstrated student interest in attendance.

(3) Documented parental support for student attendance.

(d) Lottery. – If the number of eligible students meeting the board of directors' admission criteria exceeds the seats available through the participating unit allotment, students shall be accepted by lot.

"**§ 115C-238.56I. Employees.**

The board of directors shall appoint all certified and noncertified staff.

(1) Principal. – The board of directors shall employ and contract with a principal for a term not to exceed three years. The principal shall meet the requirements for certification set out in G.S. 115C-284, unless waived by the State Board of Education upon submission of a request by the board of directors. The principal shall be responsible for school operations and shall exercise those duties and powers delegated by the board of directors.

(2) Teachers. – The board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school. At least fifty percent (50%) of teachers employed by the board of directors shall hold teacher certificates, unless waived by the State Board of Education upon submission of a request by the board of directors.

(3) Career status. – Employees of the board of directors shall not be eligible for career status. If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at the regional school, the local school administrative unit shall grant the leave for one year. For the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under

this subdivision. A teacher who has career status under G.S. 115C-325 prior to receiving a leave of absence to teach at the regional school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the regional school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers, and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

(4) Noncertified staff. – The board of directors also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services.

(5) Employment dismissal. – An employee of the board of directors is not an employee of the local school administrative unit in which the regional school is located. The board of directors may discharge certified and noncertified employees according to the terms of the employment contract.

(6) Employee benefits. – Employees of the board of directors shall participate in the Teachers' and State Employees' Retirement System and the State Health Plan on the same terms as employees employed by local boards of education.

(7) Exemptions. – Employees of the board of directors shall be exempt from Chapter 126 of the General Statutes, except Articles 6 and 7.

"**§ 115C-238.56J. Parent Advisory Council; purpose; appointments.**

(a) Purpose. – There shall be a Parent Advisory Council to serve as a resource and provide input to the board of directors as to the operation of a regional school. The board of directors shall consult the Parent Advisory Council when considering changes to the regional school's operations that may significantly impact students attending the regional school.

(b) Appointment. – Each local board of education of the participating units shall appoint two members to the Parent Advisory Council for a term of four years or until the member's child no longer attends the regional school. Appointees shall be parents or guardians of students attending the regional school and shall, to the extent possible, reflect the demographic composition of the participating units.

"**§ 115C-238.56K. State and local funds.**

(a) The State Board of Education shall allocate to a regional school:

(1) An amount equal to the average per pupil allocation for average daily membership from the participating unit allotments for each child attending the regional school, except for the allocation for children with disabilities and for the allocation for children with limited English proficiency.

(2) An additional amount for each child attending the regional school who is a child with disabilities. In the event a child with disabilities leaves the regional school and enrolls in a public school during the first 60 school days in the school year, the regional school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with disabilities enrolls in the regional school during the first 60 school days in the school year, the State Board shall allocate to the regional school the pro rata amount of additional funds for children with disabilities.

(3) An additional amount for children with limited English proficiency attending the regional school, based on a formula adopted by the State Board.

(b) The State Board shall allow for annual adjustments to the amount allocated to the regional school based on its enrollment growth in school years subsequent to the initial year of operation.

(c) For each child who enrolls in the regional school, the participating unit in which the child resides shall transfer to the regional school an amount equal to the per pupil amount of all money appropriated to the local current expense fund for the participating unit for the fiscal year. The amount transferred under this subsection that consists of revenue derived from supplemental taxes shall be transferred only if the child enrolled in the regional school resides in that tax district.

"**§ 115C-238.56L. Finance and budget.**

(a) The local school administrative unit identified as the finance agent by resolution pursuant to G.S. 115C-238.56C shall be the finance agent for the Board and shall have all the rights, duties, and obligations for receipt, accounting, and dispersing funds for the board of directors, including all the rights, duties, and obligations specified in Article 31 of this Chapter, which powers shall be exercised by the identified local school administrative unit for and on behalf of the board of directors. The board of directors shall provide reasonable compensation to the local school administrative unit for this service.

(b) No later than 10 days after the money is appropriated to the local current expense fund, each local board of education of a participating unit shall transfer to the board of directors the amount required under G.S. 115C-238.56K(c) for each child enrolled in the school who resides in that participating unit. Once it has received funds from the local board of education, the board of directors shall be under no obligation to return the funds.

"**§ 115C-238.56M. Participating units.**

(a) Transportation. – Participating units shall develop a plan to provide transportation to the students domiciled in the district.

(b) Food Service. – The local school administrative unit identified by resolution shall provide, to the extent practicable, school food services to the regional school. For purposes of federal funding through the National School Lunch Program or other federally supported food service programs, the local school administrative unit identified by resolution shall be permitted to include eligible students enrolled in the regional school. Other participating units shall not include students enrolled in the regional school for purposes of federally supported food service programs.

"**§ 115C-238.56N. Criminal history record checks.**

(a) As used in this section:

(1) 'Criminal history' means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative, and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28,

Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) 'School personnel' means any of the following:

a. Member of the board of directors.

b. Employee of the regional school.

c. Independent contractor or employee of an independent contractor of the regional school if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local, or other funds, who has significant access to students or who has responsibility for the fiscal management of the regional school.

(b) The board of directors shall adopt a policy on whether and under what circumstances school personnel shall be required to be checked for a criminal history. The board of directors shall apply its policy uniformly in requiring school personnel to be checked for a criminal history. The board of directors may grant conditional approval of an application while the board of directors is checking a person's criminal history and making a decision based on the results of the check.

The board of directors shall not require school personnel to pay for the criminal history record check authorized under this section.

(c) The board of directors shall require the person to be checked by the Department of Justice (i) to be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the board of directors or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) to sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The board of directors shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Justice shall provide to the board of directors the criminal history from the State and National Repositories of Criminal Histories of any school personnel for which the board of directors requires a criminal history record check.

The board of directors shall not require school personnel to pay for the fingerprints authorized under this section.

(d) The board of directors shall review the criminal history it receives on an individual. The board of directors shall determine whether the results of the review indicate that the individual (i) poses a threat to the physical safety of students or personnel or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The board of directors shall make written findings with regard to how it used the information when making employment decisions and

decisions with regard to independent contractors. The board of directors may delegate any of the duties in this subsection to the principal.

(e) The board of directors, or the principal if designated by the board of directors, shall provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the board of directors through the checking of the criminal history or by the State Board of Education in accordance with this section is privileged information and is not a public record but is for the exclusive use of the board of directors or the State Board of Education. The board of directors or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of the board of directors, or its employees, or the State Board of Education, or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(h) Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

SECTION 2. G.S. 114-19.2 reads as rewritten:

"**§ 114-19.2. Criminal record checks of school personnel.**

(a) The Department of Justice may provide a criminal record check to the local board of education of a person who is employed in a public school in that local school district or of a person who has applied for employment in a public school in that local school district, if the employee or applicant consents to the record check. The Department may also provide a criminal record check of school personnel as defined in G.S. 115C-332 by fingerprint card to the local board of education from National Repositories of Criminal Histories, in accordance with G.S. 115C-332. The information shall be kept confidential by the local board of education as provided in Article 21A of Chapter 115C of the General Statutes.

(a1) The Department of Justice may provide a criminal history record check to the board of directors of a regional school of a person who is employed at a regional school or of a person who has applied for employment at a regional school, if the employee or applicant consents to the record check. The Department may also provide a criminal history record check of school personnel as defined in G.S. 115C-238.56N by fingerprint card to the board of directors of the regional school from the National Repositories of Criminal Histories, in accordance with G.S. 115C-238.56N. The information shall be kept confidential by the board of directors of the regional school as provided in G.S. 115C-238.56N.

(b) The Department of Justice may provide a criminal record check to the employer of a person who is employed in a nonpublic school or of a person who has applied for employment in a nonpublic school, if the employee or applicant consents to the record check. For purposes of this subsection, the term nonpublic school is one that is subject to the provisions of Article 39 of Chapter 115C of the General Statutes, but does not include a home school as defined in that Article.

(c) The Department of Justice shall charge a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(c1) The Department of Justice may provide a criminal record check to the schools within the Department of Health and Human Services of a person who is employed, applies for employment, or applies to be selected as a volunteer, if the employee or applicant consents to the record check. The Department of Health and Human Services shall keep all information pursuant to this subsection confidential, as provided in Article 7 of Chapter 126 of the General Statutes.

(d) The Department of Justice shall adopt rules to implement this section."

SECTION 3. G.S. 115B-2(a) reads as rewritten:

"**§ 115B-2. Tuition waiver authorized.**

(a) The constituent institutions of The University of North Carolina and the community colleges as defined in G.S. 115D-2(2) shall permit the following persons to attend classes for credit or noncredit purposes without the required payment of tuition:

(1) Repealed by Session Laws 2009-451, s. 8.11(a), effective July 1, 2009.

(2) Any person who is the survivor of a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker killed as a direct result of a traumatic injury sustained in the line of duty.

(3) The spouse of a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker who is permanently and totally disabled as a direct result of a traumatic injury sustained in the line of duty.

(4) Any child, if the child is at least 17 years old but not yet 24 years old, whose parent is a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker who is permanently and totally disabled as a direct result of a traumatic injury sustained in the line of duty. However, a child's eligibility for a waiver of tuition under this Chapter shall not exceed: (i) 54 months, if the child is seeking a baccalaureate degree, or (ii) if the child is not seeking a baccalaureate degree, the number of months required to complete the educational program to which the child is applying.

(5) Any child, if the child (i) is at least 17 years old but not yet 24 years old, (ii) is a ward of North Carolina or was a ward of the State at the time the child reached the age of 18, (iii) is a resident of the State; and (iv) is eligible for services under the Chaffee Education and Training Vouchers Program; but the waiver shall only be to the extent that there is any tuition still payable after receipt of other financial aid received by the student.

(6) Any child enrolled in a regional school established pursuant to Part 10 of Article 16 of Chapter 115C of the General Statutes who enrolls in classes at a constituent institution or community college which has a written agreement with the regional school."

SECTION 4. G.S. 115C-238.50A reads as rewritten:

"**§ 115C-238.50A. Definitions.**

The following definitions apply in this Part:

(1) Constituent institution. – A constituent institution as defined in G.S. 116-2(4).

(2) Education partner. – An education partner as provided in G.S. 115C-238.52.

(3) Governing board. – The State Board of Education, the State Board of Community Colleges, the Board of Governors of The University of North Carolina, or the Board of the North Carolina Independent Colleges and Universities.

(3a) Local board of education. – A local board as defined in G.S. 115C-5(5) or a regional school board of directors as defined in G.S. 115C-238.56B(5).

(4) Local board of trustees. – The board of trustees of a community college, constituent institution of The University of North Carolina, or private college located in North Carolina."

SECTION 5. G.S. 126-5(c1) reads as rewritten:

"(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.

(2) Officers and employees of the Judicial Department.

(3) Officers and employees of the General Assembly.

(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.

(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in the Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in the Lieutenant Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(8) Instructional and research staff, physicians, and dentists of The University of North Carolina, including the faculty of the North Carolina School of Science and Mathematics.

(8a) Employees of a regional school established pursuant to Part 10 of Article 16 of Chapter 115C of the General Statutes.

(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.

(9a) Employees of the North Carolina Cooperative Extension Service of North Carolina State University who are employed in county operations and who are not exempt pursuant to subdivision (8) or (9) of this subsection.

(10) Repealed by Session Laws 1991, c. 84, s. 1.

(11) Repealed by Session Laws 2006-66, s. 9.11(z), effective July 1, 2007.

(12), (13) Repealed by Session Laws 2001-474, s. 15, effective November 29, 2001.

(14) Employees of the North Carolina State Ports Authority.

(15) Employees of the North Carolina Global TransPark Authority.

(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.

(17) Repealed by Session Laws 2004-129, s. 37, effective July 1, 2004.

(18) Employees of the Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.

(19) Employees of the Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.

(20) Repealed by Session Laws 2008-134, s. 73(d), effective July 28, 2008.

(21) Employees of the Clean Water Management Trust Fund.

(22) Employees of the North Carolina Turnpike Authority.

(23) The Executive Administrator and the Deputy Executive Administrator of the State Health Plan for Teachers and State Employees.
(24) Employees of the State Health Plan for Teachers and State Employees as designated by law or by the Executive Administrator of the Plan.
(25) The North Carolina State Lottery Director and employees of the North Carolina State Lottery.
(26) The Executive Director, associate and assistant directors, and instructional staff of the North Carolina Teacher Academy.
(27) The Chief Administrative Law Judge of the Office of Administrative Hearings.
(28) The Executive Director and the Assistant Director of the U.S.S. North Carolina Battleship Commission.
(29) The Executive Director, Deputy Director, all other directors, assistant and associate directors, and center fellows of the North Carolina Center for the Advancement of Teaching."

SECTION 6. This act is effective when it becomes law.

SENATE BILL 125: Regional Schools

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 10, 2011
Introduced by:	Sens. Brown, Hartsell	**Prepared by:**	Heather Fennell
Analysis of:	PCS to Third Edition S125-CSTC-12		Committee Counsel

SUMMARY: ***Senate Bill 125 would establish a method for local boards of education to jointly establish regional schools. The PCS makes the following changes:***

- ***Clarifies that regional schools are secondary schools.***
- ***Allows regional schools to adopt the early college model through the cooperative, innovative high school program.***
- ***Clarifies tuition for community colleges and UNC constituent institution for regional school students is waived only if there is a written agreement between the regional school and the constituent university or community college.***

[As introduced, this bill was identical to H264, as introduced by Rep. Glazier, which is currently in House Education.]

BILL ANALYSIS: Senate Bill 125 would establish a method for local boards of education to jointly establish regional schools to promote knowledge and skills in career clusters important in the region where the school is established.

Section 1 of the bill would include the following provisions:

Creation of regional schools. Any two or more local boards of education may create a regional school. Each board of education must pass a resolution that provides the name of the regional school, the other local boards adopting resolutions to create the regional school, identification of the local administrative unit that will serve as the finance agent for the school, and the name of the local school administrative agent that will provide food services to the school. The local school board may develop a plan to provide transportation to the school.

Once the resolutions are adopted, the State Board of Education must approved the creation of the school. Once the regional schools are established, local boards of education may adopt a resolution to expand the regional school.

Governance. A board of directors would be appointed for each regional school. Each board would be made up of the following members:

- One member from each local board of education for the participating local school administrative units.
- Two superintendents – one from the local school administrative unit that serves as the finance agent for the regional school, and one additional superintendent selected from the other participating units.
- Three representatives of the Economic Development Regional Partnership for the economic development region where the school is located.
- One member of the Parental Advisory Council (also established in this bill).

- A representative of an institution of higher learning partnered with the regional school.

The Board would establish the course of study for the School, in accordance with student performance standards required by law and adopted by the State Board of Education; establish policies and standards for academic performance, attendance and conduct; comply with reporting requirements established by the State Board in the Uniform Education Reporting System; provide data on required testing; require compliance with laws and policies on education of children with disabilities; require the School to meet health and safety standards; apply rules and policies for issuance of driving eligibility certificates; and comply with purchase and contract statutes and regulations.

Admissions. Only students domiciled in a participating unit would be eligible to attend. The number of students from each participating administrative unit would be proportionate to the total student population of respective units. The Board would establish admission criteria, but the criteria would have to give priority to first generation students (a student who has no parent that has completed a 2 or 4 year degree) and would have to include demonstrated academic achievement, student interest in attendance, and parental support for attendance. If the number of eligible students exceeds the seats available, students would be accepted by lot.

Employees. The Board would employ and contract with a principal, teachers, and other staff. The principal would have to meet requirements for certification, unless waived by the State Board of Education. At least 50% of teachers would have to hold teacher certificates, unless waived by the State Board of Education. Employees of the Board would not be employees of the local school administrative unit and would be able to be discharged according to the terms of the employment contract.

Parental Advisory Council. A Parental Advisory Council is established to serve as a resource to the Board. Each local board of education of the participating units would appoint two members who are parents or guardians of students attending the School, and, to the extent possible, reflect the demographic composition of the participating unit. The Board would be required to consult with the Council when considering changes to the School's operations that may significantly impact students.

Funding. For each child that enrolls in the School, the State and local funds that would be allocated to the participating unit on a per pupil basis for that student would be allocated to the School. Additional amounts for children with disabilities and children with limited English proficiency would be allocated.

Transportation and food service. A participating unit must develop a plan to provide transportation to students living in the district. The local school administrative unit identified in the initial resolution would be required to provide food services to the School, to the extent practicable.

Criminal history record checks. The Board would be authorized to do criminal history checks on school personnel and would be required to adopt a policy on whether and under what circumstances to do criminal history checks on school personnel.

Tuition waiver. Tuition for students attending the School would be waived for coursework at North Carolina community colleges and UNC constituent institutions provided the regional school and the constituent university or community college has a written agreement with the regional school.

Sections 4 allows regional schools to adopt the early college model through the cooperative, innovative high school program.

Section 5 makes conforming changes to existing statutes.

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

Wendy Graf Ray, counsel to Senate Commerce, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 10, 2011

TO: Senator Harry Brown
Senator Fletcher Hartsell
Senator Bob Rucho

FROM: Brian Matteson
Andrea Poole
Sarah Stone
Fiscal Research Division

RE: S 125 v4: Regional Schools

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	-	-	-	-	-
EXPENDITURES	**unable to be determined**				
POSITIONS (cumulative):	**N/A**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Public Instruction, State Board of Education, Local Education Agencies, North Carolina Community College System, and the University of North Carolina

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: This bill establishes a method for local boards of education to jointly establish regional public schools in grades 7-12. The schools can include partnerships with institutions of higher education and private businesses or organizations.

The newly established school will be governed by a board of directors that is composed of members from each participating school district (LEA), representatives of the Economic Development Regional Partnership for the economic development region where the school is located and a representative of a partnering institution of higher education. The board of directors will assume many of the roles usually undertaken by an LEA's board of education and superintendent, such as creation of a course of study, school staffing, enforcing student accountability and discipline standards and meeting all State reporting requirements.

Participating students are required to be domiciled in one of the participating school districts, with assignment of student seats first established based on the proportionate total student population of the districts. Any seats not claimed by students from a participating district may be divided proportionately amongst students domiciled in the other participating districts. If there is greater demand for seats than is available through the seat allotment, an admissions lottery will be administered by the regional school's board of directors.

Funding for the schools will be allocated in much the same manner that funds are currently distributed to charter schools. State funds are to be allocated to the school for each participating student based on the average per pupil funding allotment in the LEA in which the student resides. Local funds are also to be distributed on an average per-pupil funding allotment basis as well. Only one of the participating LEAs may serve as the fiscal agent for the school.

Additionally, as amended, G.S. 115C-238.56G will require the boards of directors of the regional schools to provide students the opportunity to earn or obtain credit towards degrees from a community college subject to Chapter 115D of the General Statutes or a constituent institution of the University of North Carolina. Section 3 of this bill amends G.S. 115B-2(a) to add regional school students to the list of persons who may attend classes at the constituent institutions of the University of North Carolina and the community colleges for credit or noncredit purposes without the required payment of tuition.

ASSUMPTIONS AND METHODOLOGY:

North Carolina Public Schools

As mentioned above, the funding structure for the public regional schools is similar to that of North Carolina public charter schools. G.S. 115C-238.29H includes virtually the same exact language as is included in the new G.S. 115C-238.56K that will be created by this bill. The regional school(s) will receive State funds on behalf of participating students on the basis of the average per-pupil allocation provided for students in the district in which the students are domiciled, with the exception of the Children with Disabilities and Limited English Proficiency allotments. In other words, if a student from Yancey County attends a regional school located in Madison County, the school will receive the average per-pupil allocation provided on behalf of students in Yancey County Schools.

Children with Disabilities and Limited English Proficiency funding eligibility for a regional school will be determined and administered by the State Board of Education. The bill does not expand funding for regional schools and only transfers State funds between public schools. As such, there is no State public schools funding impact, regardless of however many schools are ultimately created.

Similarly, local funding is to be distributed on an average per-pupil basis, representing no net change in local expenditures for public schools as a result of this bill. The board of the regional school will be responsible for compensating the school district that serves as fiscal agent for the school, but funding for these services will be supported out of the State and local funding provided for the school and will not require an additional appropriation.

NC Community College System and University of North Carolina System
As noted earlier, Senate Bill 125 amends G.S. 115B-2(a) to permit children enrolled in regional schools to attend classes in the UNC System and NC Community College System (for credit or noncredit purposes) without the required payment of tuition. The number of students who would choose to enroll in courses as a result of this bill and the number of courses they would take cannot be estimated, therefore, it is not possible to estimate the impact to the budget of either system. Following is an estimate of the potential cost per full-time equivalent (FTE) or full-time student in each system.

North Carolina Community College System
G.S. 115D-5(b) provides tuition waivers to certain high school students for curriculum (credit) courses. Typically, the colleges limit high school students to courses relating to mathematics, science, or technology because S.L. 2010-31, Sec. 7.24, prohibits institutes of higher education from earning State reimbursement for high school students for other types of classes (with an exemption for Early and Middle College High Schools).

S.B. 125 does not change these statutes. However, it permits regional high school students to enroll in continuing education (noncredit) courses. Without a specific appropriation, these students would be incorporated as a part of regular enrollment growth, and funded through formula funding. Under the funding formula used by the community college system, total requirements for continuing education FTE ($4,474) are made up of State appropriations ($3,790) and student receipts ($684). Because these students will not generate receipts, the fiscal impact to the State would equal $4,474 per continuing education full-time equivalent (FTE). If it is the intention to add these schools to the list of exemptions noted above in Section 7.24 of S.L. 2010-31 (permitting non-mathematics, science, and technology courses to be reimbursed), then an additional fiscal impact of $4,994 per curriculum FTE would be expected.

The University of North Carolina
In the University System, tuition receipts are retained by the individual schools. Tuition rates vary by campus; according to UNC-General Administration, the average undergraduate tuition rate for FY 2010-11 is $3,065. Therefore, under this legislation, the system would forego an average of $3,065 per full-time student in tuition receipts.

In addition, while institutes of higher education are limited in the types of courses that may earn budget FTE, as noted earlier, it is possible that some of the credit hours delivered under this bill would constitute "fundable student credit hours" under the University's enrollment growth funding model. If so, the University's annual budget request for enrollment growth funding would increase. The enrollment growth funding formula does not calculate a per-student allotment, but instead calculates a total request based on the growth in student credit hours. As an approximation of the potential financial impact, it is noted that the total average General Fund appropriation per student in the system is $12,868 per full-time student.

North Carolina Department of Justice
The bill also includes an option in the new G.S. 115C-238.56N for criminal record checks to be administered to all personnel at a regional school. The fiscal implications of that option are summarized as follows:

Revenue

The Department of Justice (DOJ) reports that a fee of $38 is charged to perform each criminal background check. Of this fee, $22 is forward to the Federal Bureau of Investigation (FBI) for a check of federal databases, and the remaining $16 is retained by DOJ. Of this $16, $14 goes to a check of NC databases and $2 is used for the processing cost associated with the request.

According to DOJ, the Department does not have the ability to project which regional schools would chose to expand to a broader scope. Therefore, the number of requests cannot be determined with the information provided. However, any additional background checks will result in an increase in receipts for DOJ.

Expenditures

The proposed changes in the bill may increase the workload and number of background checks the SBI may have to review and process. However, the bill makes no changes to 114-19.2 (c) which allows DOJ to charge a reasonable fee to recover their costs. Because this fee mechanism remains intact, the Department does not project that the proposed legislation will have a material fiscal impact on the SBI or DOJ.

SOURCES OF DATA: NC Community College System, UNC-General Administration, NC Department of Justice

TECHNICAL CONSIDERATIONS: As noted above, per S.L. 2010-31, Section 7.24(h) institutes of higher education may only earn budget FTE for courses provided to high school students in mathematics, science, and technology. If it is the intent of this bill to permit regional school students to take courses in other areas, as is currently permitted for Early and Middle College High Schools, this exception will need to be explicitly stated.

Additionally, as noted in the bill summary, this bill requires boards of directors of regional schools to provide students the opportunity to earn credit toward degrees. However, G.S. 115B-2(a)

provides for the waiver of tuition for both credit and noncredit courses. If it is the intent to only provide tuition waivers for credit courses, that would need to be explicitly stated.

SENATE BILL 749
Transportation Committee Substitute Adopted 4/28/11

Short Title: Modify Weight Limits for Farm Operations. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR INCREASED TRANSPORTATION EFFICIENCY FOR BRINGING AGRICULTURAL PRODUCTS TO A MARKETPLACE BY MODIFYING THE TYPES OF ITEMS THAT MAY BE TRANSPORTED BY A FARMER WITHOUT HAVING TO PAY A REGISTRATION FEE FOR A TRAILER OR SEMITRAILER; TO MODIFY THE REGISTRATION REQUIREMENTS FOR PROPERTY HAULING VEHICLES TO ENSURE THEY ARE REGISTERED FOR THE MAXIMUM WEIGHT ALLOWABLE FOR THE VEHICLE BEING OPERATED; AND TO MODIFY THE EXCEPTIONS TO THE MAXIMUM WEIGHT ALLOWED ON LIGHT ROADS FOR A PERSON TRANSPORTING AGRICULTURAL PRODUCTS AND RESIDUALS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-51(6) reads as rewritten:

"(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginned cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, potatoes, all vegetables, fruits, greenhouse and nursery plants and flowers, Christmas trees, livestock, live poultry, animal waste, herbicides, fungicides, seeds, fertilizers or chemicals purchased or owned by the farmer or tenant for personal use in implementing husbandry, irrigation pipes, loaders, or equipment owned by the farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term "transporting" as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith."

SECTION 2. G.S. 20-88 is amended by adding a new subsection to read:

"(m) Any vehicle weighing greater than the limits found in G.S. 20-118(b), as authorized by G.S. 20-118(c)(12), (c)(14), and (c)(15), must be registered for the maximum weight allowed for the vehicle configuration as listed in G.S. 20-118(b). A vehicle driven in violation of this subsection is subject to the axle group penalties set in G.S. 20-118(e). The penalties apply to the amount by which the vehicle's maximum gross weight as listed in G.S. 20-118(b) exceeds its declared weight."

SECTION 3. G.S. 20-118(c) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to either one of the two nearest highways that is not a light-traffic road. If that vehicle's

point of origin is a non-light-traffic road and that road is blocked by light-traffic roads from all directions and is not contiguous with other non-light-traffic roads, then the road at point of origin is treated as a light-traffic road for purposes of this subdivision:

a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.

b. ~~Meats~~ Meats, live poultry, or agricultural crop products transported from a farm to a processing plant or ~~first~~ market.

c. Forest products originating and transported from a farm or from woodlands to ~~first~~ market without interruption or delay for further packaging or processing after initiating transport.

d. Livestock or live poultry transported from their point of origin to a processing plant or ~~first~~ market.

e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.

f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms "recyclable material" and "processing" have the same meaning as in G.S. 130A-290(a).

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

h. Treated sludge collected from a wastewater treatment facility.

i. Apples when transported from the orchard to the first processing or packing point.

j. Trees grown as Christmas trees from the field, farm, stand, or ~~grove~~ grove, and other forest products, including chips and bark, to ~~first~~ a processing point.

k. Water, fertilizer, herbicides, fungicides, seeds, fuel, and animal waste transported to or from a farm by a farm vehicle as defined in G.S. 20-37.16(e)(3).

...

(12) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions set out below:

a. Is ~~hauling agricultural crops from the farm where the crop is grown to any market~~transporting an item listed in sub-subdivisions(c)(5)b., d., i., j., or k. within 150 miles of ~~that~~ the farm.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

b1. Does not operate on an interstate highway or exceed any posted bridge weight limits during transportation or hauling of agricultural products.

c. Does not exceed a single-axle weight of ~~22,000~~26,000 pounds, a tandem-axle weight of ~~42,000~~44,000 pounds, or a gross weight of 90,000 pounds.

~~d. Is registered pursuant to G.S. 20-88 for the maximum weight allowed for the vehicle configuration as listed in subsection (b) of this section.~~

...

(14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling aggregates from a distribution yard or a State-permitted production site located within a North Carolina county contiguous to the North Carolina State border to a destination in another state adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.

b. Does not operate on an interstate highway or exceed any posted bridge weight limits.

c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.

d. Repealed by Session Laws 2001-487, s. 10, effective December 16, 2001.

~~e. Is registered pursuant to G.S. 20-88 for the maximum weight allowed for the vehicle configuration as listed in subsection (b) of this section.~~

(15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree bark from any site; is hauling raw logs to first market; is transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings from a site that does not have a certified scale for weighing the vehicle; or is hauling animal waste products from the animal waste storage site to a farm or field.

b. Does not operate on an interstate highway, a posted light-traffic road, except as provided by subdivision (c)(5) of this section, or exceed any posted bridge weight limits.

c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.

d. Does not exceed a single-axle weight of more than ~~22,000~~26,000 pounds and a tandem-axle weight of more than ~~42,000~~44,000 pounds.

~~e. Is registered pursuant to G.S. 20-88 for the maximum weight allowed for the vehicle configuration as listed in subsection (b) of this section.~~"

SECTION 4. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

SENATE BILL 749:
Modify Weight Limits for Farm Operations

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 10, 2011
Introduced by:	Sens. Rabon, Tucker, Rouzer	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 749 exempts certain farm trailers from registration, restates the requirement that specified property hauling vehicles be registered for the maximum weight allowed; and increases the single and tandem axle weight limits for vehicles transporting specified products.

CURRENT LAW: G.S. 20-51(6) includes several exceptions to the requirement that vehicles be registered if they use the highways of the State.

G.S. 20-88 sets out the registration fees for property hauling vehicles.

G.S. 20-118 sets out the weight limits applicable to vehicles using the highways of the State.

BILL ANALYSIS:

Section 1 of House Bill 749 amends G.S. 20-51, which lists the exceptions to the requirement that a vehicle be registered, to exempt any trailer or semi-trailer used by a farmer, his tenant, agent, or employee in transporting livestock, live poultry, animal waste, herbicides, fungicide, or seeds from the requirement of registration.

Section 2 of the bill amends G.S. 20-88, (which sets out the fees for property-hauling vehicles) to restate that any vehicle weighing greater than the usual weight limits set in G.S. 20-118(b) (due to a weight limit exception pursuant to G.S. 20-118 (c)(12), (14), or (15) for agricultural crops, aggregates, wood residuals, including wood chips, sawdust, mulch, or tree bark, raw logs, bulk soil, bulk rock, sand, sand rock, asphalt millings, or animal waste), shall:

- Be registered for the maximum weight allowed for the vehicle configuration.
- If driven in violation of this provision, be subject to the axle group penalties set in G.S. 20-118(e), and that the penalties apply to the amount by which the vehicle's maximum gross weight exceeds its declared weight.

Section 3 of the bill amends G.S. 20-118(c), exceptions to the State's weight limits, to:

- Authorize a light-traffic road weight exception for live poultry from a farm; and water, fertilizer, herbicides, fungicides, seeds, fuel, and animal waste to or from a farm by a farm vehicle.
- Authorize a single axle weight of 26,000 lbs. and tandem axle weight of 44,000 lbs. for vehicles transporting the following within 150 miles of the farm: meats or agricultural crop products transported from a farm to first market; livestock or poultry transported from their point of origin to a processing plant or first market; apples when transported from the orchard to the first processing or packing point; trees grown as Christmas trees from the field, farm, stand, or grove to first processing point; water, fertilizer, herbicides, fungicides, seeds, fuel, and animal waste transported to or from a farm by a farm vehicle.

- Authorize a single axle weight of 26,000 lbs. and a tandem axle weight of 44,000 lbs., for wood residuals, including wood chips, sawdust, mulch, or tree bark, raw logs, bulk soil, bulk rock, sand, sand rock, asphalt millings, or animal waste

EFFECTIVE DATE: This act becomes effective October 1, 2011, and applies to offenses committed on or after that date.

Giles Perry, counsel to Senate Transportation, substantially contributed to this summary.

S749-SMTD-44(e2) v5

PAGES ATTENDING

COMMITTEE: Finance ROOM: 544

DATE: 5-10 TIME: 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

	Page Name	Hometown	Sponsoring Senator
1	Keona Phelps	Creswell	Senator Stan White
2	Tiffany Palin	Creswell	White
3			
4			
5			
6			
7			
8			
9			
10			

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 10, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jon Nance	NCDOT
Rob Lamm	RLA
Aaron Guyton	NCOAA
Tony Adams	NCOAA
Kay Emanuel	Legislative Reporting Services
Jaime King	NCFL
Dianne Jones	Retired Res. Ct.
SUSAN BROOKS	IDS / SENTENCING SERVICES
CHUCK ALLEN	US Airways
Emily Grimm	MWC
Andrew Meehan	Capstrat

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 10, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mitch Leonard	SEANC
Katherine Joyce	NCASA
Doug Dickson	NCCPC
Will Culpepper	MVA
Henry Jones	Attorney - Raleigh
[illegible]	Sd Consultant
Gus McColl	SBE
Leanne Winner	NCSBA
[illegible]	NCSBA
[illegible]	NCPA
Tony Solari	DST

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 10, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Denning	NCNCP
Kathryn Westcott	ACEC/NC
	ASCE

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 10, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Susan Ruiz	DPI
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Mike McLaughlin	Lt. Gov's Office
Kelly Kuhlman	NCLM

SENATE FINANCE COMMITTEE
Tuesday, May 17, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 17, 2011 in room 544 of the Legislative Office Building. Amber Pritchard of Belmont, Michaela Percy of Cary, Alex Johnson of Charlotte, and Anthony Lucas of Salemburg served as pages. Twenty-six members of the committee were present. Senator Rucho presided as chair.

S.B. 426 – Modify Clarify Public Finance Laws

Senator Clodfelter was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS does two things: it makes changes to the bond statutes designed to improve their efficiency and it extends the sunset on the ability of cities and counties to issue special assessments for critical infrastructure needs from July 1, 2013, until July 1, 2016. Senator Brown moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 405 – Amend Irrigation Contractors' Licensing Laws

Senator Brown was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS creates a process by which the North Carolina Irrigation Contractors Licensing Board may issue a license to a nonresident individual or in the name of a domestic or foreign business entity. It requires the Board to suspend the license of a foreign entity that has a delinquent income tax debt, and allows the Board to suspend for 60 days the license of an individual who fails to obtain the required continuing education. It also modifies the fee structure by adding a $250 reinstatement fee and allows the Board to assess the costs (including attorneys' fees) of a proceeding against an applicant or a licensee. Senator Hartsell was recognized to offer an amendment which would remove a section involving tax delinquency of nonresident and foreign entities. He moved to adopt the amendment and the motion carried. Senator Jenkins moved to adopt the PCS as amended and the motion carried. A copy of the PCS, the summary, the fiscal note and the amendment is attached.

S.B. 537 – Increase in Rem Foreclosure Fee

Senator Hartsell was recognized to explain the bill which increases the administrative cost a taxing unit may impose for the in rem procedure of tax foreclosure from $50 to $250. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill, the summary, and the fiscal note is attached.

S.B. 670 – Revise Membership/Hearing Aid Fitters Board

Senator Hartsell explained the bill which authorizes a person who is licensed as an audiologist by the Board of Examiners for Speech and Language Pathologists and

Audiologists to fit or sell hearing aids without obtaining a license from the NC State Hearing Aid Dealers and Fitters Board. It also modifies the membership of the Board to reflect this change. Senator Hartsell offered an amendment which clarifies the implementation of changes in the membership of the Board. Senator Hartsell moved to adopt the amendment and the motion carried. Senator Newton moved for a favorable report and the motion carried. A copy of the bill, the summary, the fiscal note and the amendment is attached.

S.B. 685 - Modify Regulation of Proprietary Schools

Senator Apodaca was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS creates the State Board of Proprietary Schools in the NC Community Colleges System to oversee the licensing of proprietary schools in the State. Senator Apodaca offered an amendment to increase the membership of the State Board of Proprietary Schools. Heather Fennell, an attorney with the Research Division, was recognized to explain the amendment. Senator Apodaca moved to adopt the amendment and the motion carried. Kenan Briggs, Vice President of the Community Colleges, was recognized to answer questions. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS, the summary, the fiscal note and the amendment is attached.

The meeting adjourned at 1:29 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

Corrected: S183 – Selective Vegetation Removal and S382 – Required Withholding for Nonresidents have been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 17, 2011	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 405	Amend Irrigation Contractors' Licensing Laws.	Senator Hartsell Senator Brown
SB 426	Modify/Clarify Public Finance Statutes.	Senator Clodfelter
SB 537	Increase In Rem Foreclosure Fee.	Senator Hartsell
SB 670	Revise Membership/Hearing Aid Fitters Board.	Senator Hartsell
SB 685	Modify Regulation of Proprietary Schools.	Senator Apodaca
SB 730	Taxpayer Action if No DOR Determination.	Senator Clodfelter

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 17, 2011	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 183	Selective Vegetation Removal/State Highways .	Senator Brown
SB 382	Required Withholding For Nonresidents.	Senator Apodaca
SB 405	Amend Irrigation Contractors' Licensing Laws.	Senator Hartsell Senator Brown
SB 426	Modify/Clarify Public Finance Statutes.	Senator Clodfelter
SB 537	Increase In Rem Foreclosure Fee.	Senator Hartsell
SB 670	Revise Membership/Hearing Aid Fitters Board.	Senator Hartsell
SB 685	Modify Regulation of Proprietary Schools.	Senator Apodaca
SB 730	Taxpayer Action if No DOR Determination.	Senator Clodfelter

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, May 18, 2011

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **405** Amend Irrigation Contractors' Licensing Laws.

Draft Number:	15157
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **426** Modify/Clarify Public Finance Statutes.

Draft Number:	95089
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **685** Modify Regulation of Proprietary Schools.

Draft Number:	55303
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:
S405 – Sen. Brown or Sen. Hartsell
S426 – Sen. Clodfelter
S685 – Sen. Apodaca

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 426
Finance Committee Substitute Adopted 5/10/11
PROPOSED COMMITTEE SUBSTITUTE S426-CSRBx-35 [v.2]

5/16/2011 12:58:45 PM

Short Title: Modify/Clarify Public Finance Statutes. (Public)

Sponsors:

Referred to:

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFICATIONS AND MODIFICATIONS TO THE PUBLIC FINANCE STATUTES OF NORTH CAROLINA FOR THE IMPROVEMENT OF VARIOUS FINANCING STRUCTURES AND THE TERMS AND PROVISIONS OF THE FINANCING STRUCTURES AND TO REMOVE THE SUNSET ON SPECIAL ASSESSMENTS FOR CRITICAL INFRASTRUCTURE NEEDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-28(a) reads as rewritten:

"(a) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project or a grant project authorized by a project ordinance unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this ~~subsection.~~ subsection unless the obligation or a document related to the obligation has been approved by the Local Government Commission, in which case no certificate shall be required. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the governing board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

_____

(Signature of finance officer)."

Certificates in the form prescribed by G.S. 153-130 or 160-411 as those sections read on June 30, 1973, or by G.S. 159-28(b) as that section read on June 30, 1975, are sufficient until supplies of forms in existence on June 30, 1975, are exhausted.

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection."

SECTION 2. G.S. 159-54 reads as rewritten:

"**§ 159-54. The bond order.**

After or at the same time the application is filed ~~and accepted for submission to~~ with the Commission, a bond order shall be introduced before the governing board of the issuing unit. The bond order shall state:

(1) Briefly and generally and without specification of location or material of construction, the purpose for which the bonds are to be issued, but not more than one purpose may be stated. For funding or refunding bonds a brief description of the debt, judgment, or obligation to be funded or refunded shall be sufficient.

(2) The maximum aggregate principal amount of the bonds.

(3) That taxes will be levied in an amount sufficient to pay the principal and interest of the bonds.

(4) The extent, if any, to which utility or enterprise revenues are, or may be, pledged to payment of interest on and principal of the bonds pursuant to G.S. 159-47.

(5) That a sworn statement of debt has been filed with the clerk and is open to public inspection.

(6) If the bonds are to be approved by the voters, that the bond order will take effect when approved by the voters.

(7) If the bonds are issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5), that the bond order will take effect upon its adoption. If the bonds are to be issued pursuant to G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), or (d) and are not to be submitted to the voters, that the bond order will take effect 30 days after its publication following adoption, unless it is petitioned to a vote of the people as provided in G.S. 159-60, and that in that event the order will take effect when approved by the voters.

When the bond order is introduced, the board shall fix the time and place for a public hearing thereon."

SECTION 3. G.S. 159-88(a) reads as rewritten:

"(a) At any time after an application is filed with the Commission ~~approves an application~~ for the issuance of revenue bonds, (i) in the case of the State, the Council of State and (ii) in the case of a municipality, the governing board of the municipality may adopt a revenue bond order pursuant to this Article."

SECTION 4.(a) Section 5 of S.L. 2008-165 reads as rewritten:

"**SECTION 5.** This act is effective when it becomes law. ~~Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration.~~"

SECTION 4.(b) G.S. 153A-210.1 reads as rewritten:

"Article 9A.

Special Assessments for Critical Infrastructure Needs.

§ 153A-210.1. ~~Purpose.~~Purpose and sunset.

(a) Purpose. – This Article enables counties that face increased demands for infrastructure improvements as a result of rapid growth and development to issue revenue bonds payable from special assessments imposed under this Article on benefited property. This Article supplements the authority counties have in Article 9 of this Chapter. The provisions of Article 9 of this Chapter apply to this Article, to the extent they do not conflict with this Article.

(b) Sunset. – This Article expires July 1, 2016. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this Article prior to its expiration."

SECTION 4.(c) G.S. 160A-239.1 reads as rewritten:

"Article 10A.

Special Assessments for Critical Infrastructure Needs.

§ 160A-239.1. ~~Purpose.~~Purpose and sunset.

(a) Purpose. – This Article enables cities that face increased demands for infrastructure improvements as a result of rapid growth and development to issue revenue bonds payable from special assessments imposed under this Article on benefited property. This Article supplements the authority cities have in Article 10 of this Chapter. The provisions of Article 10 of this Chapter apply to this Article, to the extent they do not conflict with this Article.

(b) Sunset. – This Article expires July 1, 2016. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this Article prior to its expiration."

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect the other provisions or applications of this act that can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 426:
Modify/Clarify Public Finance Statutes

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 16, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to Second Edition S426-CSRBx-35		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 426 does two things: it makes changes to the bond statutes designed to improve their efficiency and it extends the sunset on the ability of cities and counties to issue special assessments for critical infrastructure needs from July 1, 2013, until July 1, 2016.***

BILL ANALYSIS: Senate Finance heard Senate Bill 426 at its meeting last Tuesday, May 10th, and gave the PCS for it a favorable report. The PCS before the Committee is substantively the same as the one favorably considered last week. The only change is that the PCS puts the sunset of the *Special Assessments for Critical Infrastructure Needs* into the statute as opposed to amending the effective date section of a prior session law.

In 2008, the General Assembly enacted legislation authorizing counties and cities to use assessments as a financing tool for long-term capital projects. The legislation enabled counties and cities to pay for a project for which an assessment is imposed solely with revenue bonds to be paid from the assessments or from a combination of financing sources that include revenue bonds, general obligation bonds, and general revenue. The legislation provided that the authority to use assessments for this purpose would expire on July 1, 2013.

The PCS for Senate Bill 426 originally considered removing the sunset. At the request of the Treasurer's Office, the PCS adopted by the Committee at its meeting last week extended the sunset for three years as opposed to removing it. However, inadvertently, the Committee report contained the PCS removing the sunset. The PCS before the Committee removes the sunset from the 2008 session law and amends Article 9A of Chapter 153A (counties) and Article 10A of Chapter 160A (cities) to place the extended expiration date of July 1, 2016, in the respective Articles authorizing *Special Assessments for Critical Infrastructure Needs.*

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 405
Commerce Committee Substitute Adopted 4/28/11
PROPOSED COMMITTEE SUBSTITUTE S405-CSTD-35 [v.1]

5/16/2011 4:19:20 PM

Short Title: Amend Irrigation Contractors' Licensing Laws. (Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89G-1 is amended by adding a new subdivision to read:

"**§ 89G-1. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Irrigation Contractors' Licensing Board.

(1a) Business entity. – A person that is not an individual.

(1b) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(1c) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

(1d) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(1e) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.

(1f) Foreign partnership. – One of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(2) Irrigation construction or irrigation contracting. – The act of providing services as an irrigation contractor for compensation or other consideration.

(3) Irrigation contractor. – Any person who, for compensation or other consideration, constructs, installs, expands, services, or repairs irrigation systems.

(4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves, control wiring of 30 volts or less, and associated components installed for the delivery and application of water for the purpose of irrigation that are downstream of a well, pond or other surface water, potable water or

groundwater source, or grey water source and downstream of a backflow prevention assembly. Surface water, potable water or groundwater sources, water taps, utility piping, water service lines, water meters, backflow prevention assemblies, stormwater systems that service only the interior of a structure, and sanitary drainage systems are not part of an irrigation system.

(4a) Nonresident individual. – An individual who is not a resident of this State.

(5) Person. – An individual, firm, partnership, association, corporation, or other legal entity."

SECTION 2. G.S. 89G-3 reads as rewritten:

"**§ 89G-3. Exemptions.**

The provisions in this Chapter shall not apply to:

(1) Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public ~~property.~~property and using its own employees.

(2) Any property owner who performs irrigation construction or irrigation contracting work on his or her own property.

(3) A landscape architect registered under Chapter 89A of the General Statutes.

(4) A professional engineer licensed under Chapter 89C of the General Statutes.

(5) Any irrigation construction or irrigation contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than two thousand five hundred dollars ($2,500).

(6) Any person performing irrigation construction or irrigation contracting work for temporary irrigation to establish vegetative cover for erosion control.

(7) Any person performing irrigation construction or irrigation contracting work to control dust on commercial construction sites or mining operations.

(8) Any person performing irrigation construction or irrigation contracting work for use in agricultural production, farming, or ranching, including land application of animal wastewater.

(9) Any person performing irrigation construction or irrigation contracting work for use in commercial sod production.

(10) Any person performing irrigation construction or irrigation contracting work for use in the commercial production of horticultural crops, including nursery and greenhouse operators.

(11) A general contractor licensed under Article 1 of Chapter 87 of the General ~~Statutes.~~Statutes who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor when the contractor uses the contractor's own employees to perform irrigation construction or irrigation contracting work. A public utilities contractor exempted by this subdivision may perform only the activities described in G.S. 87-10(b)(3)a.

(12) A wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes who performs only the construction of or repair to a wastewater dispersal system.

~~(13) A public utility contractor licensed under Article 1 of Chapter 87 of the General Statutes.~~

(14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, or maintenance of water mains, water taps, service lines, water meters, or backflow prevention assemblies supplying water for irrigation systems; or repairs to an irrigation system.

(15) Any person performing irrigation construction or irrigation contracting work for a golf course.

(16) Any ~~person~~full-time employee of a homeowners association maintaining or repairing an irrigation system owned by the homeowners association of a planned community and located within the planned community's common elements as defined in G.S. 47F-1-103."

SECTION 3. G.S. 89G-5(11) reads as rewritten:

"**§ 89G-5. Powers and duties.**

The Board shall have the following powers and duties:

...

(11) To require licensees to file and maintain an adequate surety ~~bond.~~bond or letter of credit.

...."

SECTION 4. Chapter 89G of the General Statutes is amended by adding the following new sections to read:

"**§ 89G-6.1. Licensing of business entities, nonresident individuals, and foreign entities.**

(a) The Board may issue a license in the name of a business entity if the business entity pays the license fee required by G.S. 89G-10 and one of the following applies:

(1) For a corporation, one or more officers or full-time employees empowered to act for the corporation are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(2) For a limited liability, one or more managers or executives as defined in G.S. 57C-1-03 or full-time employees are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(3) For a partnership, one or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(4) For a business entity using an assumed name or designated trade name, the owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(b) The Board may issue a license to a nonresident individual who meets the requirements for licensure under this Chapter. A nonresident individual licensed under this Chapter may qualify as the licensed individual under subdivisions (1), (2), and (3) of subsection (a) of this section.

(c) The Board may issue a license in the name of a foreign entity if the following apply:

(1) For a foreign corporation, the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes and complies with the requirements of subdivision (a)(1) of this section.

(2) For a foreign limited liability company, the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes and complies with the requirements of subdivision (a)(2) of this section.

(3) For a foreign partnership, the partnership complies with the requirements of subdivision (a)(3) of this section.

(d) When the Board issues a license to a business entity or a foreign entity under this section, the Board shall indicate on the license the name and license number of the individual licensee required under subsection (a) of this section.

(e) The individual licensee required under subsection (a) of this section shall exercise direct supervision over a contract by a business entity or a foreign entity for irrigation construction or irrigation contracting until the contract is completed.

(f) An individual licensed under this Chapter may not execute a contract for irrigation construction or irrigation contracting on behalf of a business entity or a foreign entity unless the business entity or foreign entity is licensed under this section.

(g) All of the following shall apply if the individual licensee required under subsection (a) of this section ceases to be an officer, full-time employee, manager, executive, general partner, or owner of the business entity or foreign entity licensed under this section:

(1) The business entity or foreign entity shall provide written notice to the Board pursuant to rules adopted by the Board.

(2) The business entity or foreign entity must satisfy the requirements of subsection (a) of this section within 90 days of the effective date of the notice required under subdivision (1) of this subsection.

The Board shall suspend the license of a business entity or foreign entity licensed under this section that fails after 90 days to satisfy the requirements of subsection (a) of this section.

"**§ 89G-6.2. Tax delinquency of nonresident and foreign entities.**

(a) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual or foreign entity licensed by the Board. The information to be provided under this subsection shall be in a form required by the Secretary of Revenue.

(b) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue shall notify the Board of the delinquency. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that (i) the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement."

SECTION 5. G.S. 89G-9 reads as rewritten:

"**§ 89G-9. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before December 31 of each year. Any person who desires to continue to practice irrigation contracting or irrigation construction shall apply for license renewal and shall submit the required fees. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration, if: (i) the applicant pays the required renewal fee and late renewal fee; (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of irrigation construction or contracting after notice of revocation; and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require a licensee to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, ~~a~~ an individual licensee shall meet continuing education requirements set by the Board. Each individual licensee shall complete 10 continuing education units per year. ~~Failure to obtain continuing education units shall result in the forfeiture of a license.~~

(c) The Board shall suspend an individual licensee's license for 60 days for failure to obtain continuing education units required by subsection (b) of this section. The Board shall suspend a business entity's or a foreign entity's license for 60 days for failure by the individual licensee required under G.S. 89G-6.1(a) to obtain continuing education units required by subsection (b) of this section. Upon completion of the required continuing education and

payment of the reinstatement fee, the Board shall reinstate the license. Failure by an individual licensee to meet the education requirements, to request a reinstatement of the license, or to pay the reinstatement fee within the time provided shall result in the forfeiture of the license. Upon forfeiture, ~~a person~~an individual shall be required to submit a new application and retake the examination as provided in this Chapter."

SECTION 6. G.S. 89G-10(a) reads as rewritten:

"(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	$100.00
(2)	Examination fee	200.00
(3)	~~License~~ Individual license fee and individual license renewal fee	100.00
(3a)	Business entity or foreign entity license fee and business entity or foreign entity license renewal fee	100.00
(4)	Late renewal fee	50.00
(5)	License by reciprocity	250.00
(6)	~~Corporate license~~Reinstatement fee	~~100.00~~250.00
(7)	Duplicate license	25.00."

SECTION 7. G.S. 89G-11 reads as rewritten:

"**§ 89G-11. Disciplinary action.**

(a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant:

(1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) Practices or attempts to practice irrigation construction or contracting by fraudulent misrepresentation.

(3) Commits an act of gross malpractice or incompetence as determined by the Board.

(4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an irrigation contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

(b) The Board may assess costs, including attorneys' fees, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter."

SECTION 8. The Revisor of Statutes shall change the phrase "irrigation construction or contracting" to "irrigation construction or irrigation contracting" wherever it appears in Chapter 89G of the General Statutes.

SECTION 9. This act becomes effective October 1, 2011.

SENATE BILL 405:
Amend Irrigation Contractors' Licensing Laws

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 17, 2011
Introduced by:	Sens. Hartsell, Brown	**Prepared by:**	Heather Fennell
Analysis of:	PCS to Second Edition S405-CSTD-35		Committee Counsel

SUMMARY: ***Senate Bill 405 creates a process by which the North Carolina Irrigation Contractors' Licensing Board may issue a license to a nonresident individual or in the name of a domestic or foreign business entity. It requires the Board to suspend the license of a foreign entity that has a delinquent income tax debt, and allows the Board to suspend for 60 days the license of an individual who fails to obtain the required continuing education. The bill also modifies the fee structure by adding a $250 reinstatement fee and allows the Board to assess the costs (including attorneys' fees) of a proceeding against an applicant or a licensee. The PCS corrects internal cross references in the bill.***

CURRENT LAW: Chapter 89C of the General Statutes provides for the licensing and regulation of irrigation contractors. It prohibits any person from engaging in the practice of irrigation construction or contracting, using the designation "irrigation contractor," or advertising using any title or description that implies licensure as an irrigation contractor unless the person is licensed as an irrigation contractor by the North Carolina Irrigation Contractors' Licensing Board ("Board").

The following persons or entities are exempt from the licensing requirements:

- Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public property.
- Any property owner who performs irrigation construction or contracting work on his or her own property.
- Any person performing irrigation construction or contracting work:
    - For temporary irrigation to establish vegetative cover for erosion control.
    - To control dust on commercial construction sites or mining operations.
    - For use in agricultural production, farming, or ranching, including land application of animal wastewater.
    - For use in commercial sod production.
    - For use in the commercial production of horticultural crops, including nursery and greenhouse operators.
- Any person performing irrigation construction or contracting work for a golf course.
- Any person maintaining or repairing an irrigation system installed prior to January 1, 2009 and owned by the homeowners association of a planned community and located within the planned community's common elements.
- Irrigation construction or contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than $2,500.

The Board has the authority to examine and determine the qualifications and fitness of applicants for licensure and to take disciplinary action for violations of the law. In addition to taking any actions permitted under this act, the Board may assess a civil penalty not to exceed $2,000 for each violation. The Board must establish a schedule of civil penalties for violations of this act and rules adopted by the

Board. The Board is also authorized to adopt and publish a code of professional conduct and practice for all licensees.

An applicant for licensure must meet all of the following qualifications:

- Must be at least 18 years of age.
- Must be of good moral character as determined by the Board.
- Must have at least three years of experience in irrigation construction or contracting or the educational equivalent. Two years of educational training in irrigation construction or contracting are equivalent to one year of experience.
- Must file and maintain with the Board a $10,000 corporate surety bond or irrevocable letter of credit.
- Must pass an examination administered by the Board, which at a minimum must test the applicant's understanding of proper methods of irrigation construction and installation, efficiency of water use and conservation in the practice of irrigation construction and contracting, and basic business skills.

Annual license renewal is on or before December 31 of each year. As a condition of license renewal, each licensee must complete 10 continuing education units per year. Failure to obtain continuing education units will result in forfeiture of the license.

BILL ANALYSIS:

Section 1 adds a number of new definitions to G.S. 89G-1 related to domestic and foreign legal entities that are not individuals.

Section 2 clarifies that the licensure exemption for any federal, State or political subdivision performing irritation construction or contracting on public property only applies if the work is done by employees of those entities. The bill also clarifies the exemption for general contractors and public utilities contractors licensed under Article 1 of Chapter 87.

Section 3 makes a conforming change to the powers and duties of the Board. The requirement that an applicant file a bond or letter of credit with the Board already exists in G.S. 89G-6(a).

Section 4 creates two new sections. **G.S. 89G-6.1** specifies the requirements for issuing a license in the name of a business entity that is a corporation, a limited liability company, a partnership or a business entity doing business under an assumed or trade name. Generally speaking, the Board may issue a license in the name of one of these business entities provided the business entity pays the license fee, has one or more licensed individuals associated with the entity and only those licensed individuals execute contracts for irrigation construction or irrigation contracting on behalf of the business entity. The individual licensee must directly supervise the contract and may not execute a contract on behalf of a business entity that is not licensed by the Board. The Board may issue a license to an individual who is not a resident of this State if the individual otherwise meets the licensing requirements of the Chapter, and that individual may qualify as the individual licensee required for a business entity to be licensed. Finally, the Board may issue a license in the name of a foreign corporation or foreign limited liability company provided the foreign entity is properly registered with the Secretary of State and otherwise meets the licensure qualifications for a domestic business entity. Similar provisions apply to licensing foreign partnerships. If the licensed individual ceases to be associated with the business entity, the business entity must notify the Board in writing and has 90 days from the date of notification to obtain another individual licensee. The Board must suspend the license of the business entity if it does not comply with these requirements.

G.S. 89G-6.2 requires the Board provide the Secretary of Revenue with information related to nonresident individuals and foreign entities licensed by the Board. If the Secretary notifies the Board that a nonresident individual or a foreign entity owes a delinquent income tax debt, the Board shall not renew that person's license unless the Secretary notifies the Board that the debt is paid or is being paid under an installment agreement.

Section 5 allows a 60-day grace period during which a licensed individual may obtain the required continuing education credits without forfeiture of the license.

Section 6 creates a $250 reinstatement fee.

Section 7 allows the Board to assess the costs, including attorneys' fee, of a proceeding against an applicant or a licensee.

EFFECTIVE DATE: This act becomes effective October 1, 2011.

Kory Goldsmith, counsel to Senate Commerce, substantially contributed to this summary.

S405-SMTD-54(CSTD-35) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 405 (Second Edition)

SHORT TITLE: Amend Irrigation Contractors' Licensing Laws.

SPONSOR(S): Senators Hartsell and Brown

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	**SEE ASSUMPTIONS AND METHODOLOGY**				
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Irrigation Contractors' Licensing Board

EFFECTIVE DATE: This act becomes effective October 1, 2011.

BILL SUMMARY:

Senate Bill 405 amends GS 89G-1 by adding new definitions to the statute. It amends GS 89G-3 (providing exemptions from the provisions of GS Chapter 89G, Irrigation Contractors) to clarify that the exemption applies to a general contractor classified under GS 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor using the contractor's own employees to perform work. It limits exempted public utilities contractors to persons performing only the activities described in GS 87-10(b)(3)a. The bill clarifies that the licensure exemption for any federal, state or local government performing irrigation construction or contracting work on public property only applies if the work is done by employees of those entities. It clarifies the term "irrigation construction or irrigation contracting" throughout, and directs the Revisor of Statutes to make conforming statutory changes as necessary.

The bill amends GS 89G-5(11) to clarify that the NC Irrigation Contractors' Licensing Board (Board) has the power to require licensees to file and maintain an adequate surety bond or letter of credit. It amends GS 89G-9(a) to clarify that any person who desires to continue to practice irrigation contracting or irrigation construction must apply for license renewal and submit the

required fees. It amends GS 89G-9(b), allowing the Board to suspend a licensee's license for 30 days (rather than lose) for failure to obtain continuing education units, with reinstatement after fee payment. The bill specifies that failure to request reinstatement and pay the fee will result in license forfeiture. It amends GS 89G-10(a) by decreasing the reinstatement fee to $250 (previously $500).

It enacts new GS 89G-6.1 to allow the Board to issue a license in the name of a corporation, limited liability company, partnership, or in an assumed or designated trade name if the respective conditions are met. The bill enacts new GS 89G-6.2 to allow the Board to issue a license to a nonresident individual or a foreign entity that meets all licensure requirements. It enacts GS 89G-9(c) to increase the length of mandatory license suspension from 30 to 60 days for failure to obtain required continuing education units. It enacts new GS 89G-11(b), allowing the Board to assess costs for disciplinary proceedings against an applicant or licensee.

ASSUMPTIONS AND METHODOLOGY:

The North Carolina Irrigation Contractors' Licensing Board was unable to estimate the number of licensees who pay a reinstatement fee annually. That fee amount would decrease from $500 to $250 under Senate Bill 405. They did state that this would impact a small number of the 900 individual licensees, therefore, yielding a minimal negative impact on revenues.

SOURCES OF DATA: North Carolina Irrigation Contractors' Licensing Board

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 17, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 405

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S405-ATD-86 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S405-CSTD-35

Date May 17 ,2011

Senator Hartsell

moves to amend the bill on page 4, lines 20 through 30, by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 537

Short Title:	Increase In Rem Foreclosure Fee.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Finance.	

April 12, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE IN REM FORECLOSURE FEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-375 reads as rewritten:

"**§ 105-375. In rem method of foreclosure.**

...

(c) Notice to Taxpayer and Others. –

(1) Notice required. – The tax collector filing the certificate provided for in subsection (b) of this section, shall, at least 30 days prior to docketing the judgment, send notice of the tax lien foreclosure to the taxpayer, as defined in G.S. 105-273(17), at the taxpayer's last known address, and to all lienholders of record who have a lien against the taxpayer (including any liens referred to in the conveyance of the property to the taxpayer).

(2) Contents of notice. – All notice required by this subsection shall state that a judgment will be docketed and the proposed date of the docketing, that execution will be issued as provided by law, a brief description of the real property affected, and that the lien may be satisfied prior to judgment being entered.

(3) Service of notice. – The notice required by this subsection shall be sent to the taxpayer by registered or certified mail, return receipt requested.

(4) Additional efforts may be required. – If within 10 days following the mailing of the notice, a return receipt has not been received by the tax collector indicating receipt of the notice, then the tax collector shall do both of the following:

a. Make reasonable efforts to locate and notify the taxpayer and all lienholders of record prior to the docketing of the judgment and the issuance of the execution. Reasonable efforts may include posting the notice in a conspicuous place on the property, or, if the property has an address to which mail may be delivered, mailing the notice by first-class mail to the attention of the occupant.

b. Have a notice published in a newspaper of general circulation in the county once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the taxpayer that a judgment will be docketed against the taxpayer.

(5) Costs of notice added to lien. – All costs of mailing and publication, plus a charge of two hundred fifty dollars ~~($50.00)~~($250.00) to defray administrative costs, shall be added to the amount of taxes that are a lien on

the real property and shall be paid by the taxpayer to the taxing unit at the time the taxes are collected or the property is sold.

...."

SECTION 2. This act becomes effective July 1, 2011, and applies to in rem foreclosure proceedings commenced on or after that date.

SENATE BILL 537:
Increase In Rem Foreclosure Fee

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 17, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 537[1] would increase the administrative cost a taxing unit may impose for the in rem procedure of tax foreclosure from $50 to $250.

CURRENT LAW: There are two different tax foreclosure procedures a taxing unit may pursue to enforce a lien on real property for delinquent taxes[2]: the mortgage style procedure[3] which involves a standard civil action filed in State court and the in rem procedure[4] which is an expedited procedure that permits a taxing unit to docket a judgment against the property in state court and proceed with a foreclosure sale within three months to two years after the judgment is docketed. In a mortgage style procedure, the costs of the action may be added to the amount of the taxes due; these costs may include a reasonable attorney's fee. In an in rem procedure, the costs of mailing and publication plus a $50 charge to defray administrative expenses may be added to the amount of taxes due; if an attorney is used, the attorney fee is paid by the taxing unit and may not be added to the judgment as part of the costs of the action.[5]

BILL ANALYSIS: Senate Bill 537 would increase the amount of the charge for administrative costs that may be added to the tax due as part of the costs of the action in an in rem foreclosure proceeding for delinquent tax due. The current administrative cost of $50 has not been increased since it was first allowed in 1987. Senate Bill 537 would increase the amount of the charge to $250. Much of the administrative time required for an in rem foreclosure is spent researching the property's chain of title.

EFFECTIVE DATE: The bill would become effective July 1, 2011, and apply to in rem foreclosure proceedings commenced on or after that date.

S537-SMRB-50(e1) v1

[1] Senate Bill 537 is identical to House Bill 449, introduced by Rep. Setzer. House Bill 449 is currently in House Finance.
[2] Taxes become delinquent when interest begins to accrue on January 6 of the year in which the taxes were levied.
[3] G.S. 105-374.
[4] G.S. 105-375.
[5] G.S. 105-375(j).

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 17, 2011

TO: Senators Rucho and Hartsell

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 537 (First Edition)

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
Local Governments:	***Increase in recovery of administrative costs related to in rem foreclosures***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments; NC Dept. of Revenue

EFFECTIVE DATE: Effective for in rem foreclosures on or after July 1, 2011.

BILL SUMMARY:
Senate Bill 537 would increase the amount of the charge for the administrative costs that may be added to the tax due as part of the costs of the action in an in rem foreclosure proceeding for delinquent tax due. The current administrative cost of $50 has not been increased since it was first allowed in 1987. Senate Bill 537 would increase the amount of the charge to $250. Much of the administrative time required for an in rem foreclosure is spent researching the property's chain of title.

Source: Committee Counsel Summary

ASSUMPTIONS AND METHODOLOGY:
Although no data is available on the number of in rem foreclosure proceedings in the state, this method of foreclosure has become more common in recent years. The $50 fee that is currently charged is not adequate to recover administrative costs to the taxing unit, particularly when a clear chain of title has to be established. The $250 fee would more closely reflect the actual administrative costs associated with in rem foreclosures.

SOURCES OF DATA: NC Association of Assessing Officers; UNC School of Government

TECHNICAL CONSIDERATIONS: None

SENATE BILL 670
Health Care Committee Substitute Adopted 5/12/11

Short Title: Revise Membership/Hearing Aid Fitters Board. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT RELATING TO HEARING AID FITTING AND DISPENSING BY CERTAIN LICENSED AUDIOLOGISTS AND REVISING THE MEMBERSHIP ON THE NORTH CAROLINA STATE HEARING AID DEALERS AND FITTERS BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93D-2 reads as rewritten:

"**§ 93D-2. Fitting and selling without license unlawful.**

It shall be unlawful for any person to fit or sell hearing aids unless ~~he~~the person has first obtained a license from the North Carolina State Hearing Aid Dealers and Fitters ~~Board~~Board, or obtained a license under Article 22 of Chapter 90 of the General Statutes and possesses a doctoral degree in audiology (AuD), or is an apprentice working under the supervision of ~~a board licensee.~~either such licensee and is registered in accordance with G.S. 93D-9."

SECTION 2. G.S. 93D-3(a) reads as rewritten:

"(a) There is hereby created a board whose duty it shall be to carry out the purposes and enforce the provisions of this Chapter, and which shall be known as the "North Carolina State Hearing Aid Dealers and Fitters Board." The Board shall be composed of seven members. Four members who have been actively engaged in the fitting and selling of hearing aids for three years pursuant to licensure under this Chapter shall be appointed by the Governor. These initial appointments are for the following terms: one for one year, one for two years, one for three years and one for four years. All appointments made on or after July 1, 1981, shall be for terms of three years.

One member shall be appointed by the Governor who shall be a physician practicing in North Carolina, preferably specializing in the field of otolaryngology. All appointments shall be for terms of three years.

One member, who shall be a person with hearing loss, shall be appointed by the Governor to represent the interest of hearing aid consumers.~~from a list of two audiologists residing in North Carolina, which list shall be compiled by the North Carolina Speech and Hearing Association. This initial appointment shall be for a term of three years.~~ All appointments made on or after July 1, 1981, shall be for a term of three years.

One member shall be appointed by the Governor to represent the interest of the public at large. This member shall have no ties to the hearing aid business nor shall he be an audiologist. The Governor shall appoint the public member not later than July 1, 1981, to serve a term of three years.

All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1981, shall serve more than two complete consecutive terms.

Vacancies on the Board shall be filled by appointment of the Governor. Appointees shall serve the unexpired term of their predecessor in office and must be appointed from the same category as their predecessor in office. The members of the Board, before entering their duties, shall respectively take all oaths taken and prescribed for other State officers, in the manner provided by law, which oaths shall be filed in the office of the Secretary of State, and the Board shall have a common seal."

SECTION 3. G.S. 93D-3(c)(14) reads as rewritten:

"(14) Have the power to set and collect fees in accordance with Chapter 150B of the General Statutes for the items listed in this subdivision and for other items for which this Chapter gives the Board the authority to set a fee:

a. For a continuing education make-up class provided by the Board, a fee not to exceed fifty dollars ($50.00) per person for each day of instruction. The Board may not offer a make-up class that is longer than two days;

b. For a license examination preparation course provided by the Board, a fee not to exceed fifty dollars ($50.00) per person for each day of instruction. The Board may not offer an examination preparation course that is longer than three days;

c. For approval of a continuing education program provider, a fee not to exceed forty dollars ($40.00);

d. For verifying and recording attendance at a continuing education program not provided by the Board, a fee not to exceed fifteen dollars ($15.00) per licensee per program;

e. For providing a voluntary two-day apprentice training workshop, a fee not to exceed one hundred dollars ($100.00) per person, and for providing a three-day voluntary apprentice training workshop, a fee not to exceed one hundred fifty dollars ($150.00) per person;

f. For administering an examination, a fee of three hundred dollars ~~($300.00); and~~($300.00);

g. For the registration of persons not licensed under this Chapter providing supervision of apprentices registered under G.S. 93D-9, a fee of one hundred fifty dollars ($150.00) per annum; and".

SECTION 4. G.S. 93D-5(a) reads as rewritten:

"(a) Except as provided in G.S. 93D-2, no~~No~~ person shall begin the fitting and selling of hearing aids in this State unless the person has been issued a license by the Board or is an apprentice working under the supervision of a ~~licensee.~~person authorized to fit and sell hearing aids in this State. Except as hereinafter provided, each applicant for a license shall pay a fee set by the Board, not to exceed two hundred fifty dollars ($250.00), which fee may be prorated by the Board, and shall show to the satisfaction of the Board that the applicant:

(1) Is a person of good moral character.

(2) Is 18 years of age or older.

(3) Has an education equivalent to a four-year course in an accredited high school.

(4) Repealed by Session Laws 2007-406, s. 3, effective August 21, 2007."

SECTION 5. G.S. 93D-9 reads as rewritten:

"**§ 93D-9. Registration of apprentices.**

(a) Any person age 17 or older may apply to the Board for registration as an apprentice. Each applicant must be sponsored by a ~~hearing aid dealer and fitter licensed by the Board.~~person authorized to fit and sell hearing aids in this State.

(b) Upon receiving an application accompanied by a fee in an amount set by the Board, not to exceed one hundred dollars ($100.00), the Board may register the applicant as an

apprentice, which shall entitle the applicant to fit and sell hearing aids under the supervision of ~~a holder of a regular license.~~a person authorized to fit and sell hearing aids in this State.

(c) No applicant shall be registered as an apprentice by the Board under this section unless the applicant shows to the satisfaction of the Board that the applicant is or will be supervised and trained by a ~~hearing aid fitter and seller who holds a license.~~ person authorized to fit and sell hearing aids in this State.

(d) If a person 18 years of age or older who is registered as an apprentice under this section does not take the next succeeding examination given after a minimum of one full year of apprenticeship, the person's apprentice registration shall not be renewed, except for good cause shown to the satisfaction of the Board.

(e) If a person who is registered as an apprentice takes and fails to pass the next succeeding examination given after one full year of apprenticeship, the Board may renew the apprenticeship license for a period of time to end 30 days after the results of the examination given next after the date of renewal of said registration. The fee for renewal of apprenticeship registration shall be set by the Board at an amount not to exceed one hundred fifty dollars ($150.00).

(f) The Board shall adopt rules implementing initial and renewal registration of apprentices."

SECTION 6. The terms of the two audiologist members currently serving on the North Carolina State Hearing Aid Dealers and Fitters Board (Board) shall expire on the effective date of this act. Vacancies on the Board pursuant to this section shall be filled in accordance with G.S. 93D-3.

SECTION 7. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 670

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

S670-ARB-29 [v.2]

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

Date _____,2011

Senator Hartsell

moves to amend the bill on page 3, lines 19 through 22, by rewriting the lines to read:

"**SECTION 6.** The term of the member currently serving on the North Carolina State Hearing Aid Dealers and Fitters Board who was appointed by the Governor from a list of audiologists compiled by the North Carolina Speech and Hearing Association expires on the effective date of this act. The Governor must appoint a person to fill this vacancy on the Board who represents the interest of hearing aid consumers, in accordance with G.S. 93D-3, as amended by this act.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 670:
Revise Membership/Hearing Aid Fitters Board

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 16, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 670 authorizes a person who is licensed as an audiologist by the Board of Examiners for Speech and Language Pathologists and Audiologists to fit or sell hearing aids without obtaining a license from the North Carolina State Hearing Aid Dealers and Fitters Board. It also modifies the membership of the Board to reflect this change. The AMENDMENT clarifies the implementation of this change in the membership of the Board.***

CURRENT LAW: It is unlawful for a person to fit or sell hearing aids without being licensed to do so by the North Carolina State Hearing Aid Dealers and Fitters Board.

In addition to this Board, there exists the Board of Examiners for Speech and Language Pathologists and Audiologists. This Board licenses speech pathologists and audiologists independently. The be licensed as an audiologist, a person must possess a doctoral degree in audiology, have 1,800 hours of supervised professional experience, and pass a Board-approved exam.

The licensing chapter for audiologists, Article 22 of Chapter 90 of the General Statutes, specifically provides that its licensing requirements do not apply to a person licensed by the North Carolina State Hearing Aid Dealers and Fitters Board and it more specifically provides that nothing in the Article may be construed to prevent a person licensed by the Hearing Aid Dealers and Fitters Board from the practice of fitting and selling hearing aids. The licensing chapter for hearing aid dealers and fitters, Chapter 93D of the General Statutes, does not contain a similar provision.

BILL ANALYSIS: Senate Bill 670 would provide that a person who is licensed as an audiologist by the Board of Examiners for Speech and Language Pathologists and Audiologists may fit and sell hearing aids without being licensed by the North Carolina State Hearing Aid Dealers and Fitters Board. It would also make the following conforming changes throughout the licensure chapter for hearing aid dealers and fitters consistent with this exemption:

- It would allow a person to serve as an apprentice under the supervision of a licensed audiologist.
- It would require an audiologist that supervises an apprentice to register with the Hearing Aid Dealers and Fitters Board and pay a registration fee of $100 a year unless the audiologist is a licensee of the Board.
- It would change the membership of the Board. Under the current law, one member of the seven member board must be an audiologist recommended by the North Carolina Speech and Hearing Association. The bill would replace this appointment with one that would represent the interest of hearing aid consumers. The appointee must be a person with a hearing loss.

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

AMENDMENT: To effectuate the change in the Board's membership, Section 6 of the bill intends to replace the current audiologist on the Board that is recommended by the North Carolina Speech and Hearing Association with a member with a hearing loss. The amendment clarifies this intent.

Shawn Parker, counsel to the Senate Health Care Committee, substantially contributed to this summary.

S670-SMRB-49(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 670 (Second Edition)

SHORT TITLE: Revise Membership/Hearing Aid Fitters Board.

SPONSOR(S): Senator Hartsell

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES					
NC State Hearing Aid Dealers and Fitters Board	($53,000)	($54,875)	($56,900)	($58,950)	($60,975)
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina State Hearing Aid Dealers and Fitters Board

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

BILL SUMMARY:

Senate Bill 670 amends GS 93D-3 to delete the requirement that one member of the board be an audiologist appointed from a list of nominees from the NC Speech and Hearing Association, and it requires that four members of the board be actively engaged in fitting and selling hearing aids and be licensed under GS Chapter 93D. The bill specifies that the terms of the two members on the board who are audiologists expire on the date the bill becomes law.

Senate Bill 670 amends GS 93D-2 to allow a person with a license under Article 22 of GS Chapter 90 and a doctoral degree in audiology to fit or sell hearing aids. It provides the same authorization to an apprentice working under such licensee (or those licensed by the North Carolina State Hearing Aid Dealers and Fitters Board) who is registered in accordance with GS 93D-9. The bill amends GS 93D-3(c)(14) to authorize the Board to set a fee of $150 a year for the registration of persons not licensed under GS Chapter 93D providing supervision of apprentices registered under

GS 93D-9. The bill amends GS 93D-3(a) to require one member of the Board be a person with hearing loss.

ASSUMPTIONS AND METHODOLOGY:

According to the North Carolina State Hearing Aid Dealers and Fitters Board, approximately 200 of their 560 members possess a doctoral degree in audiology (AuD) and licensure in speech and language pathology or audiology. Under Senate Bill 670, these 200 members would no longer need to be licensed by the North Carolina State Hearing Aid Dealers and Fitters Board to fit or sell hearing aids.

If all 200 current members who possess a doctoral degree in audiology (AuD) and licensure in speech and language pathology or audiology chose not to be licensed by the North Carolina State Hearing Aid Dealers and Fitters Board, the Board's revenue would decrease by $53,000 for FY11-12. The revenue figure is derived by multiplying the $250.00 license renewal fee plus the $15.00 continuing education reporting fee by the 200 current members who could possibly not renew their license. This amount has been grown by the North Carolina Health Services Employment growth rate.

SOURCES OF DATA: North Carolina State Hearing Aid Dealers and Fitters Board; Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

Official Fiscal Research Division Publication

DATE: May 17, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 670

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S670-ARB-29 [v.2]

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

Date May 17 ,2011

Senator Hartsell

moves to amend the bill on page 3, lines 19 through 22, by rewriting the lines to read:

"**SECTION 6.** The term of the member currently serving on the North Carolina State Hearing Aid Dealers and Fitters Board who was appointed by the Governor from a list of audiologists compiled by the North Carolina Speech and Hearing Association expires on the effective date of this act. The Governor must appoint a person to fill this vacancy on the Board who represents the interest of hearing aid consumers, in accordance with G.S. 93D-3, as amended by this act.".

SIGNED ~~_____~~ Hutchins Hartsell
Amendment Sponsor

SIGNED R A Rucho
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE BILL 685
Education/Higher Education Committee Substitute Adopted 5/11/11

Short Title: Modify Regulation of Proprietary Schools. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO THE REGULATION OF PROPRIETARY SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 115D of the General Statutes is amended by adding three new sections to read:

"**§ 115D-89.1. State Board of Proprietary Schools.**

(a) The State Board of Proprietary Schools is established in the North Carolina Community Colleges System Office.

(b) The State Board of Proprietary Schools shall consist of seven members as follows:

(1) The President of the North Carolina Community College System or the President's designee.

(2) Two members appointed by the Governor.

(3) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be the owner or director of a proprietary school licensed in the State with less than 100 total annual enrollment of students and one the owner or director of a proprietary school or group of proprietary schools licensed in the State with more than 750 total annual enrollment of students.

(4) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be the owner or director of a proprietary school licensed in the State with between 100 and 750 total annual enrollment of students and one the owner or director of a proprietary school licensed in the State.

The appointing authorities shall appoint members who have a demonstrated history of experience in proprietary or public postsecondary education, an understanding of standards of quality in postsecondary education, and leadership beyond a particular institution.

(c) No member of the General Assembly, spouse of a member of the General Assembly, or officer or employee of the State shall be eligible to serve on the State Board of Proprietary Schools.

(d) One initial member appointed by each appointing authority shall be appointed for a term ending December 30, 2014; the other member shall be appointed for a term ending December 30, 2017. Subsequent appointments shall be for six-year terms beginning on January 1. No person shall be appointed or elected to more than two consecutive six-year terms.

Vacancies in appointments made by the Governor shall be filled by the Governor. Vacancies in the appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The State Board of Proprietary Schools may declare vacant the office of a member who does not attend three consecutive scheduled meetings without justifiable excuse. The Chair of the State Board of Proprietary Schools shall notify the appropriate appointing authority of any such vacancy.

(f) The State Board of Proprietary Schools shall elect from its membership a chair and such other officers as it may deem necessary. Officers shall serve for a term of two years.

(g) The State Board of Proprietary Schools shall meet at stated times established by the State Board of Proprietary Schools but not less frequently than four times a year. Special meetings of the State Board of Proprietary Schools may be set at any regular meeting or may be called by the chair. A majority of the qualified members of the State Board of Proprietary Schools shall constitute a quorum for the transaction of business.

"**§ 115D-89.2. Office of Proprietary Schools; staff.**

The Office of Proprietary Schools shall be the principal administrative unit under the direction of the State Board of Proprietary Schools. Unless specified in G.S. 115D-89.3, the State Board of Proprietary Schools has authority to recommend for adoption and to administer all policies, regulations, and standards which it deems necessary for the operation of the Office of Proprietary Schools.

The State Board of Proprietary Schools shall hire an executive director of the Office of Proprietary Schools, who shall serve as chief administrative officer of the Office of Proprietary Schools, or contract with an outside consultant to serve as the executive director. The compensation of this position shall be fixed by the State Board of Proprietary Schools from funds provided by fees deposited in the Commercial Education Fund.

The State Board of Proprietary Schools may hire other employees as it deems necessary to carry out the provisions of this Article. The compensation of the staff members hired by the State Board of Proprietary Schools shall be fixed by the State Board of Proprietary Schools upon recommendation of the Executive Director of the Office of Proprietary Schools. The Executive Director shall provide an annual projected operating budget to the State Board of Proprietary Schools at a time each year designated by the State Board of Proprietary Schools. The budget will be approved by the State Board of Proprietary Schools from funds provided by fees deposited in the Commercial Education Fund.

"**§ 115D-89.3. State Board of Proprietary Schools and State Board of Community Colleges; licensing authority and coordination of responsibilities to administer Article.**

The State Board of Community Colleges, having the authority under G.S. 115D-89 to grant and issue licenses to proprietary schools by and through the State Board of Proprietary Schools, shall receive written recommendation from the State Board of Proprietary Schools concerning applicants for licenses and annual renewal applications for licenses. The State Board of Proprietary Schools shall prepare and have approved by the State Board of Community Colleges a certificate of license that reflects the recommendation of the State Board of Proprietary Schools and approval by the State Board of Community Colleges. The State Board of Community Colleges shall also receive from the State Board of Proprietary Schools and have authority concerning proposed changes to the General Statutes and rules affecting proprietary schools. The State Board of Community Colleges shall receive a written report annually from the State Board of Proprietary Schools to include the number of schools receiving initial licenses during the previous year, a list of currently licensed proprietary schools, school closures during the previous year, including a complete report of actions concerning any catastrophic closures, complaints received and resulting decisions or actions, total fees received, and balances of the Commercial Education Fund and the Student Protection Fund. The State Board of Proprietary Schools shall provide the State Board of Community Colleges with any information requested."

SECTION 2. G.S. 115D-88(4c) reads as rewritten:

"(4c) Classes or schools that the State Board, acting by and through the ~~President of the Community College System,~~ State Board of Proprietary Schools determines are avocational, recreational, self-improvement, or continuing education for already trained and occupationally qualified individuals."

SECTION 3. G.S. 115D-89 reads as rewritten:

"**§ 115D-89. State Board of Community Colleges to administer Article; issuance of diplomas by schools; investigation and inspection; rules.**

(a) The State Board of Community Colleges, acting by and through the ~~President of the Community College System,~~ State Board of Proprietary Schools, shall have authority to administer and enforce this Article and to grant and issue licenses to proprietary schools whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the State and which have met the standards set forth by the Board, including but not limited to course offerings, adequate facilities, financial stability, competent personnel and legitimate operating practices.

(b) Any such proprietary school may by and with the approval of the State Board of Community Colleges issue certificates and diplomas.

(c) The State Board, acting by and through the ~~President of the Community College System,~~ State Board of Proprietary Schools, shall formulate the criteria and the standards evolved thereunder for the approval of such schools or educational institutions, provide for adequate investigations of all schools applying for a license and issue licenses to those applicants meeting the standards fixed by the State Board, maintain a list of schools approved under the provisions of this Article which list shall be available for the information of the public, and provide for periodic inspection of all schools licensed under the provisions of this Article. Through periodic reports required of licensed schools and by inspections made by authorized representatives of the State Board of Community Colleges, the State Board of Community Colleges shall have general supervision over proprietary schools in the State, the object of said supervision being to protect the health, safety and welfare of the public by having the proprietary schools maintain adequate, safe and sanitary school quarters, sufficient and proper facilities and equipment, sufficient and qualified teaching and administrative staff, and satisfactory programs of operation and instruction, and to have the school carry out its advertised promises and contracts made with its students and patrons. To this end the State Board of Community Colleges is authorized to issue such rules not inconsistent with the provisions of this Article as are necessary to administer the provisions of this Article.

The State Board, acting by and through the ~~President of the Community College System,~~ State Board of Proprietary Schools, may request any occupational licensing or approving board or agency in this State to adopt rules requiring the approval of that board or agency for a course of study. Under these rules, the board or agency shall pass on the adequacy of equipment, curricula, and instructional personnel. The State Board of Community Colleges may deny approval to a course of study that is not approved by such board or agency."

SECTION 4. G.S. 115D-90 reads as rewritten:

"**§ 115D-90. License required; application for license; school bulletins; requirements for issuance of license; license restricted to courses indicated; supplementary applications.**

(a) No person shall operate, conduct or maintain or offer to operate in this State a proprietary school unless a license is first secured from the State Board of Community Colleges granted in accordance with the provisions of this Article and the rules adopted by the Board under the authority of G.S. 115D-89. The license, when issued, shall constitute the formal acceptance by the Board of the educational programs and facilities of each school approved.

(b) Application for a license shall be filed in the manner and upon the forms prescribed and furnished by the ~~President of the Community College System~~ State Board of Proprietary Schools for that purpose. Such application shall be signed by the applicant and properly

verified and shall contain such of the following information as may apply to the particular school for which a license is sought:

(1) The title or name of the school or classes, together with the name and address of the owners and of the controlling officers thereof.
(2) The general field of instruction.
(3) The place or places where such instruction will be given.
(4) A specific listing of the equipment available for instruction in each field.
(5) The qualifications of instructors and supervisors.
(6) Financial resources available to equip and to maintain the school or classes.
(7) Such additional information as the State Board, acting by and through the ~~President of the Community College System,~~ State Board of Proprietary Schools, may deem necessary to enable it to determine the adequacy of the program of instruction and matters pertaining thereto. Each application shall be accompanied by a copy of the current bulletin or catalog of the school which shall be in published form and certified by an authorized official of the school as being current, true, and correct in content and policy. The school bulletin shall contain the following information:
    a. Identifying data, such as volume number and date of publication.
    b. Names of the institution and its governing body, officials and faculty.
    c. A calendar of the institution showing legal holidays, beginning and ending date of each quarter, term or semester, and other important dates.
    d. Institution's policy and regulations relative to leave, absences, class cuts, make-up work, tardiness and interruptions for unsatisfactory attendance.
    e. Institution's policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course.
    f. Institution's policy and regulations relative to standards of progress required of the student by the institution. This policy will define the grading system of the institution; the minimum grades considered satisfactory; conditions for interruption for unsatisfactory grades or progress and description of the probationary period, if any, allowed by the institution; and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student.
    g. Institution's policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.
    h. Detailed schedule for fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges.
    i. Policy and regulations of the institution relative to the refund of the unused portion of tuition, fees and other charges in the event the student does not enter the course or withdraws or is discontinued therefrom. The policy and regulations shall provide for, at a minimum, a full refund if a student withdraws before the first day of class or the school cancels the class and a seventy-five percent (75%) refund if the student withdraws within the first twenty-five percent (25%) of the period of enrollment for which the student was charged.
    j. A description of the available space, facilities and equipment.

k. A course outline for each course for which approval is requested, showing:
1. Subjects or units in the course,
2. Type of skill to be learned, and
3. Approximate (i) time; (ii) clock hours, and (iii) credit hours or credit hours equivalent, as appropriate, to be spent on each subject or unit.

l. Policy and regulations of the institution relative to granting credit for previous educational training.

(c) After due investigation and consideration on the part of the State Board, acting by and through the ~~President of the Community College System.~~State Board of Proprietary Schools, as provided herein, a license shall be granted to the applicant when it is shown to the satisfaction of ~~said~~ the State Board that said applicant, school, programs of study or courses are found to have met the following criteria:

(1) The courses, curriculum and instruction are consistent in quality, content and length with similar courses in public schools and other private schools in the State, with recognized accepted standards.

(2) There is in the institution adequate space, equipment, instructional material and instructor personnel to provide training of good quality.

(3) Education and experience qualifications of director, administrators and instructors are adequate.

(4) The institution maintains a written record of the previous education and training of the student.

(5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to absences, grading policy and rules of operation and conduct will be furnished the student upon enrollment.

(6) Upon completion of training, the student is given a certificate or diploma by the institution indicating the approved course or subjects and indicating that training was satisfactorily completed.

(7) Adequate records as prescribed by the State Board of Community Colleges, acting by and through the ~~President of the Community College System,~~ State Board of Proprietary Schools, are kept to show attendance and progress or grades and satisfactory standards relating to attendance, progress and conduct are enforced.

(8) The school complies with all local, city, county, municipal, State and federal regulations, such as fire codes, building and sanitation codes. The State Board of Community Colleges may require such evidence of compliance as is deemed necessary.

(9) The school is financially sound and capable of fulfilling its commitments for training.

(10) The school does not exceed its enrollment limitation as established by the State Board of Community Colleges.

(11) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission or intimation.

(12) The school's administrators, directors, owners and instructors are of good reputation and character.

(13) Such additional criteria as may be deemed necessary by the State ~~Board.~~Board of Community Colleges.

(d) Any license issued shall be restricted to the programs of instruction or courses or subjects specifically indicated in the application for a license. The holder of a license shall present a supplementary application as may be directed by the ~~President of the Community~~

~~College System~~ State Board of Proprietary Schools for approval of additional programs of instruction, courses, or subjects, in which it is desired to offer instruction during the effective period of the license."

SECTION 5. G.S. 115D-91 reads as rewritten:

"**§ 115D-91. Duration and renewal of licenses; notice of change of ownership, administration, etc.; license not transferable.**

(a) All licenses issued shall expire on ~~June 30 next following the date of issuance.~~June 30.

(b) Unless a duration is otherwise prescribed by the State Board of Community Colleges, licenses shall be renewable annually on July 1 if all of the following conditions are met:

(1) An application for the renewal of the license has been filed in the form and manner prescribed by the State Board, acting by and through the ~~President of the Community College System.~~ State Board of Proprietary Schools.

(2) The renewal fee has been paid.

(3) The school and its courses, facilities, faculty and all other operations are found to meet the criteria set forth in the requirements for a school to secure an original license.

(c) After a license is granted to any school by the State Board of Community Colleges on the basis of its application, it shall be the responsibility of said school to notify immediately ~~said~~ the State Board of any changes in the ownership, administration, location, faculty, the instructional program or other changes as may affect significantly the course of instruction offered.

(d) In the event of the sale of such school, the license already granted to the original owner or operators thereof shall not be transferable to the new ownership or operators. Provided, however, the ~~President of the Community College System~~ State Board of Proprietary Schools may issue a 90-day, temporary operating license to a school upon its sale if the school held a valid, current license prior to the sale, and if the ~~President~~ State Board of Proprietary Schools finds that the school is likely to qualify after the sale for a license under this Article."

SECTION 6. G.S. 115D-92 reads as rewritten:

"**§ 115D-92. Authority to establish fees; Commercial Education Fund established; refund of fees.**

The ~~State Board of Community Colleges~~ State Board of Proprietary Schools shall establish reasonable fees for licenses, renewals, and approvals granted, and for inspections performed pursuant to this ~~Article.~~Article in accordance with Article 2A of Chapter 150B of the General Statutes.

The fees and licenses collected under this section shall be placed in a special fund to be designated the "Commercial Education Fund" and shall be used under the supervision and direction of the ~~State Board of Community Colleges~~ State Board of Proprietary Schools for the administration of this Article. No license fee shall be refunded in the event the application is rejected or the license suspended or revoked."

SECTION 7. G.S. 115D-93 reads as rewritten:

"**§ 115D-93. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds.**

(a) A refusal to issue, refusal to renew, suspension of, or revocation of a license under this section shall be made in accordance with Chapter 150B of the General Statutes.

(b) A decision under this section to refuse to grant, refuse to renew, suspend, or revoke a license is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.

(c) The State Board, acting by and through the ~~President of the Community College System,~~ State Board of Proprietary Schools, shall have the power to refuse to issue or renew

any such license and to suspend or revoke any such license theretofore issued in case it finds one or more of the following:

(1) That the applicant for or holder of such a license has violated any of the provisions of this Article or any of the rules promulgated thereunder.

(2) That the applicant for or holder of such a license has knowingly presented to the State Board of Community Colleges false or misleading information relating to approval or license.

(3) That the applicant for or holder of such a license has failed or refused to permit authorized representatives of the State Board of Community Colleges to inspect the school, or has refused to make available to them at any time upon request full information pertaining to matters within the purview of the State Board of Community Colleges under the provisions of this Article.

(4) That the applicant for or holder of such a license has perpetrated or committed fraud or deceit in advertising the school or in presenting to the prospective students written or oral information relating to the school, to employment opportunities, or to opportunities for enrollment in other institutions upon completion of the instruction offered in the school.

(5) That the applicant or licensee has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court.

(6) That the applicant or licensee has failed to provide or maintain premises, equipment or conditions which are adequate, safe and sanitary, in accordance with such standards of the State of North Carolina or any of its political subdivisions, as are applicable to such premises and equipment.

(7) That the licensee is employing teachers, supervisors or administrators who have not been approved by the State Board, acting by and through the ~~President of the Community College System.~~ State Board of Proprietary Schools.

(8) That the licensee has failed to provide and maintain adequate premises, equipment, materials or supplies, or has exceeded the maximum enrollment for which the school or class was licensed.

(9) That the licensee has failed to provide and maintain adequate standards of instruction or an adequate and qualified administrative, supervisory or teaching staff.

(10) That the applicant for or a holder of a license has failed to provide a required bond or bond alternative.

(11) That the applicant for or holder of a license has failed to pay assessments into the Student Protection Fund."

SECTION 8. G.S. 115D-95(b) reads as rewritten:

"(b) Amount. – An applicant for a license must file a bond with the North Carolina State Board of Community Colleges executed by the applicant as a principal and by a bonding company authorized to do business in this State. The bond must be payable to the State Board of Community Colleges, must be conditioned on fulfillment of the school's obligations, and must remain in effect until cancelled by the bonding company. The bonding company may cancel the bond upon 30 days' notice to the State Board of Community Colleges.

The application must set out calculations made by the applicant to determine the amount of bond required with the application. The required amount is determined as follows:

(1) Initial licensure. – For an applicant for initial licensure of a school, the bond amount is the amount determined by the State Board that is adequate to provide indemnification to any student, or the student's parent or guardian who has suffered a loss of tuition, fees, or any other instructional-related

expenses paid to the school. A bond amount shall be at least twenty-five thousand dollars ($25,000).

(2) First four renewals. – For a school that has been licensed for one year but less than six years, the bond shall be in an amount equal to the greatest amount of unearned paid tuition in the school's possession at anytime during the prior fiscal year. The bond amount shall be evaluated by the school quarterly and reported to the State Board or its representative. A quarterly evaluation requiring an increase of five percent (5%) or more in the amount of the bond held by the school shall require an immediate increase in the bond amount. Bond amounts also shall be evaluated pursuant to this subdivision and the rules of the State Board of Community Colleges and State Board of Proprietary Schools at the time of the school's annual license renewal and increased if necessary regardless of the amount of the change.

(3) Schools in operation more than five years. – A guaranty bond shall be required for license renewal for a school that has been continuously licensed to operate for more than five years in the State, as follows:

a. If the balance of the Student Protection Fund in G.S. 115D-95.1 is below the catastrophic loss amount, the school shall file a guaranty bond in an amount equal to the maximum amount of prepaid tuition held by the school during the prior fiscal year multiplied by the percentage amount the fund is deficient.

b. If the school held prepaid tuition in excess of the Student Protection Fund catastrophic loss amount during the prior fiscal year, in addition to any bond amount required by sub-subdivision a. of this subdivision, the school shall file a guaranty bond for the difference between the prepaid tuition amount held in the previous fiscal year and the Fund catastrophic loss amount."

SECTION 9. G.S. 115D-95.1 reads as rewritten:

"**§ 115D-95.1. Student Protection Fund.**

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

(1) "Catastrophic loss amount" means the amount of funds required to protect prepaid student tuition in case of a large-scale event that would draw against the Student Protection Fund. The amount is one million dollars ($1,000,000).

(2) "Fund cap amount" means the catastrophic loss amount plus a reserve amount. The amount is one million five hundred thousand dollars ($1,500,000).

(b) Student Protection Fund. – The Student Protection Fund is established in the Department of State Treasurer as a statewide fee-supported fund. Interest accruing to the Fund is credited to the Fund. The State Board of ~~Community Colleges~~ Proprietary Schools administers the Fund. The purpose of the Fund is to compensate students enrolled in a proprietary school licensed under this Article who have suffered a loss of tuition, fees, or any other instructional-related expenses paid to the school by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment if the school ceases to operate for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure.

(c) Student Protection Fund Advisory Committee. ~~The President of the North Carolina Community College System shall appoint a Student Protection Fund Advisory Committee. Members of the Committee shall be appointed for terms of three years.~~ The State Board of Proprietary Schools shall serve as the Student Protection Advisory Committee. The Committee shall advise the State Board of Community Colleges on matters related to the Fund,

including, but not limited to, the adjustment of the catastrophic loss amount and Fund cap amount.

~~The Committee shall consist of seven members as follows:~~

~~(1) Three professional staff members of the Community Colleges System Office.~~

~~(2) An owner/director of a proprietary school with less than 100 students, or the owner/director's designee.~~

~~(3) An owner/director of a proprietary school with between 100 and 750 students, or the owner/director's designee.~~

~~(4) An owner/director of a proprietary school or group of proprietary schools with more than 750 students, or the owner/director's designee.~~

~~(5) An owner/director of a proprietary school appointed at large, or the owner/director's designee.~~

(d) Initial Payment. – Prior to its first year of operation in the State, each proprietary school shall pay an initial amount of one thousand two hundred fifty dollars ($1,250) into the Fund.

(e) Annual Revenue Payment. – Each proprietary school operating in the State shall pay annually into the Fund an amount based on its annual gross tuition revenue generated in the State as follows:

Annual Gross Tuition Revenue	Amount of Assessment
$1.00 – $25,000	$200.00
$25,001 – $50,000	$250.00
$50,001 – $100,000	$300.00
$100,001 – $200,000	$400.00
$200,001 – $300,000	$500.00
$300,001 – $400,000	$600.00
$400,001 – $500,000	$700.00
$500,001 – $750,000	$1,000
$750,001 – $1,000,000	$1,250
$1,000,001 – $1,500,000	$1,500
$1,500,001 – $2,000,000	$2,000
Greater than $2,000,000	$2,000 plus one-twentieth of one percent (.05%) of annual gross tuition revenue over $2,000,000.

(f) Suspension of Payments. – If the Student Protection Fund balance is equal to or exceeds the Fund cap amount, the State Board of ~~Community Colleges~~ Proprietary Schools shall suspend payments into the Fund for schools that have been continuously licensed in the State for more than eight years. The State Board of Proprietary Schools shall require schools to resume payments into the Fund if the balance of the Fund is less than the catastrophic loss amount.

(g) Catastrophic Assessments. – If claims against the Student Protection Fund exceed the catastrophic loss amount, the State Board of ~~Community Colleges~~ Proprietary Schools may assess additional fees to the extent necessary to compensate students qualified for repayment under the Fund. The amount of the catastrophic assessment shall not exceed one-half of the amount of the annual revenue payment required by subsection (e) of this section. If the amount of the catastrophic assessment will be insufficient to cover qualified claims, the State Board shall develop a method of allocating funds among claims.

(h) Payment Required for Proprietary School Licensure. – The full and timely payment into the Fund pursuant to this section is a condition of licensure.

(i) Payments Nonrefundable. – No payment to the Student Protection Fund shall be refunded in the event that a school's license application is rejected or a school's license is suspended or revoked.

(j) Student Repayment. – A student, or the student's parent or guardian, who has suffered a loss of tuition, fees, or any other instructional-related expenses paid to a proprietary school licensed under this Article by reason of the school ceasing to operate for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure, may qualify for repayments under the Student Protection Fund. The State Board of Community Colleges first must issue repayment from the bonds issued under G.S. 115D-95. If the Student Protection Fund is insufficient to cover the qualified claims, the State Board must develop a method of allocating funds among claims.

(k) Rules. – The State Board of ~~Community Colleges~~Proprietary Schools shall adopt rules for the implementation of this section."

SECTION 10. Effective July 1, 2011, two positions in the Community Colleges System Office of Proprietary Schools shall be terminated.

SECTION 11. Appointments to the State Board of Proprietary Schools shall be made within 30 days after the effective date of this act.

SECTION 12. Sections 1 through 9 of this act become effective January 1, 2012. Section 10 of this act becomes effective July 1, 2011. The remainder of this act is effective when it becomes law.

SENATE BILL 685:
Modify Regulation of Proprietary Schools

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 17, 2011
Introduced by:	Sen. Apodaca	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 685 would create the State Board of Proprietary Schools in the North Carolina Community Colleges System to oversee the licensing of proprietary schools in the State.***

CURRENT LAW: The State Board of Community Colleges (State Board) acting by and through the President of the Community College System has the authority to administer and enforce provisions regarding proprietary schools and issue licenses to proprietary schools.

BILL ANALYSIS:

Section 1: The State Board of Proprietary Schools (SBPS) would be created within the North Carolina Community College System.

Membership: The SBPS would have 7 members including the following:

- The President of the North Carolina Community College System or the President's designee.
- 2 members appointed by the Governor.
- 2 members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate. One appointee must be the owner or director of a proprietary school with less than 100 students, and one appointee must be the owner or director of a proprietary school with more than 750 students.
- 2 members appointed by the General Assembly upon the recommendation of the Speaker of the House. One appointee must be the owner or director of a proprietary school with between 100 and 750 students, and one appointee must be the owner or director of a proprietary school.

The appointing authorities would be required to appoint members with a demonstrated history of experience in proprietary or public postsecondary education, an understanding of standards of quality in postsecondary education, and leadership beyond a particular institution. The members would serve staggered 6 year terms and may not serve more than 2 consecutive 6 year terms.

Office and Staff: The Office of the SBPS would be the principal administrative unit under the SBPS. The SBPS would have the authority to recommend for adoption and to administer all policies, regulations, and standards it deems necessary for the operation of the Office of the SBPS. An executive director may be hired or there may be a contract with an outside consultant to serve as the executive director. Compensation would be from funds provided by fee from the Commercial Education Fund. Other employees maybe hired as deemed necessary. The executive director would be required to provide an annual projected operating budget to the SBPS which would have to approve the budget from funds provided by fees deposited in the Commercial Education Fund.

Authority and Responsibilities: The SBPS would provide the State Board with written recommendations concerning applicants for licenses and annual renewal applications for licenses. It would also have to prepare a certificate of license for approval by the State Board that reflects the SBPS's recommendation. The SBPS shall be required to report annually to the State Board on the

number of schools receiving initial licenses during the previous year; a list of currently licensed proprietary schools; school closures including catastrophic closures; complaints received and resulting actions; total fees received, and balances of the Commercial Education and Student Protection Funds.

Sections 2-9: These sections would make conforming changes in the Article on Proprietary Schools. The SBPS would be given the authority to establish reasonable fees for licenses, renewals, and approvals granted and for inspections in accordance with Chapter 150B of the General Statutes. Both the Commercial Education Fund and the Student Protection Fund would be administered by the SBPS with the SBPS serving as the Student Protection Advisory Committee. The State Board would continue to hold any bonds executed by a proprietary school.

Sections 10-11: The two positions in the Community System Office of Proprietary Schools would be terminated effective July 1, 2011. Appointments to the SBPS would have to be made within 30 days after the effective date of the act.

EFFECTIVE DATE: Sections 1-9 of the bill would become effective January 1, 2012. Section 10 would become effective July 1, 2011 and the remainder of the bill would become effective when it becomes law.

Drupti Chauhan, counsel to Senate Education, substantially contributed to this summary.

S685-SMTD-51(e2) v3

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 16, 2011

TO: Senators Rucho, Hartsell, and Apodaca

FROM: Andrea Poole
Fiscal Research Division

RE: Senate Bill 685 (Version 2)

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
General Fund					
REVENUES:	0	0	0	0	0
EXPENDITURES:	$(107,142)	$(114,563)	$(122,459)	$(129,028)	$(134,584)
POSITIONS (cumulative):	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)
Commercial Education Fund					
REVENUES:					
EXPENDITURES:	No estimate available. See Assumptions and Methodology.				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Community College System

EFFECTIVE DATE: Sections 1-9 are effective January 1, 2012. Section 10 is effective July 1, 2011. The remainder of this act is effective when it becomes law.

BILL SUMMARY:

Currently, the State Board of Community Colleges, acting by and through the President of the Community College System, has the authority to administer and enforce provisions regarding proprietary schools and to issue licenses to proprietary schools. Section 1 of Senate Bill 685 will create the State Board of Proprietary Schools (SBPS) in the North Carolina Community Colleges System (NCCCS) to oversee the licensing of proprietary schools in the State. It further creates the Office of the State Board of Proprietary Schools, which will be the principal administrative unit under SBPS. The SBPS will have the authority to higher an executive director and staff, or to contract these functions to an outside consultant. Compensation and operating expenses will be supported from funds provided from fees paid to the Commercial Education Fund, as established in G.S. 115D-92. The SBPS will provide the State Board of Community Colleges with written recommendations concerning applicants for licenses and annual renewal applications for licenses, as well as reporting annually to the State board.

Sections 2-9 of the bill make conforming change in the Article on Proprietary schools.

Section 10 directs that, effective July 1, 2011, two positions in the Community Colleges System Office of Proprietary Schools shall be terminated.

Section 11 directs that appointments to the SBPS be made within 30 days of the effective date of this act.

ASSUMPTIONS AND METHODOLOGY:

General Fund

Currently, the Proprietary Schools office within the NC Community Colleges System Office has three positions. Two of these three positions are currently receipt supported, and the third is supported by the General Fund. According to the Community Colleges System Office, if this bill were to become law, the General Fund position and one receipt supported position would be eliminated, shifting the proprietary school program entirely to receipt support. Savings to the General Fund from the elimination of the position would be $107,142 and 1 position in FY 2011-12. The table below shows the net savings from FY 2011-12 to FY 2015-16.

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Positions	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)
Salaries and Benefits	$ (101,492)	$ (108,740)	$ (116,463)	$ (122,883)	$ (128,286)
Operating	$ (5,650)	$ (5,822)	$ (5,996)	$ (6,145)	$ (6,298)
Total	$ (107,142)	$ (114,563)	$ (122,459)	$ (129,028)	$ (134,584)

Commercial Education Fund

It is not possible to estimate the impact to the Commercial Education Fund. The budget of the SBPS and the Office of Proprietary schools would be supported by funds provided by fees deposited in the fund. The impact to the fund would come from the cost of operations of the newly created SBPC and any changes in staffing costs.

At a minimum, the establishment of the SBPC is estimated to increase requirements to the Fund by $7,331 in FY 2012-13 (SBPC's first full year of operations), assuming standard subsistence and travel reimbursement amounts for each of the seven members for a minimum of four meetings per year. However, it is not possible to estimate the changes in staffing costs. Currently, two of the three positions are funded from Fund receipts (total of $135,903). This bill would eliminate one of these positions, effective July 1, 2011. However, the bill grants the SBPC the authority to hire additional staff or contract out staff functions entirely.

SOURCES OF DATA: Summary of Senate Bill 685, Research Division of the NC General Assembly; Community Colleges System Office; Moody's economy.com.

TECHNICAL CONSIDERATIONS: House Bill 200, Version 4 (Appropriations Act of 2011) shifts the one General-Fund-supported position to receipt support, and takes a corresponding reduction in the General Fund budget. If this reduction were to become law, there would be no impact of this bill to the General Fund.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 685

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S685-ATD-80 [v.1]

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

Date May 17 ,2011

Senator Apodaca

moves to amend the bill on page 1, line 30 by rewriting the line to read:
"Proprietary Schools as appointed members.";

and on page 6, line 33, by rewriting the line to read:
"The ~~State Board of Community Colleges~~ State Board of Proprietary Schools, as provided in G.S. 115D-89.3, shall establish".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

PAGES ATTENDING

Hartsell

COMMITTEE: Finance ROOM: 544

DATE: 5-17 TIME: 1 PM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

	Page Name	Hometown	Sponsoring Senator
1	~~Amber~~ Pritchard	Belmont	Harrington
2	Micaela Percy	Cary	Berger, P.
3	Alex Johnson	Charlotte	Hartsell
4	Anthony Lucas	Salemburg	Jackson
5			
6			
7	Sgt At Arms DONNA BLAKE		
8	Steve Wilson		
9	Billy Fritscher		
10	RON SPANN		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 11, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Barnes	PS
Dan Fenton	City of Charlotte
Mark Newbold	CMPA
Ph Happer	Lobbyist
Ken Bowers	NCCCS
Steve Sawicki	NC Grassroots
Dave Shultz	- Candidate Advocate
Bill Sparrow Jr	Redhill Landscape
Jamy Bentley	GIC
Theresa Turner	NCACC

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 11, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Angie Hamm	WM
BJ Miller	MCHS
Britt Gunn	NCBA
Sam Taylor IV	NCBIO
Cody Thomas	NCAR
Jessi Hayes	NCHBA
Lisa Martin	NCHBA
John Harris	NCGA
Michael James	NCGA
Tom Cors	TNC
Rob Lamm	RL & A

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 11, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tony Adams	NCSAA
Aaron Gayton	NCDAD
Kevin Leonard	NCACC
Becki Gray	JLF
Kellie Sloppy	JLF
Michael Hamson	DOR
MIKE WATERS	NCRPA
Elizabeth Bise	Brooks Pierce
JOHN PETERSON	CAPSTRAT
Bill Wilkes	DOR
Ashley Cates	IAC

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 11, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Victor Galloway	Self
W.L. BUZZ CAYTON NOEL P. CAYTON	BEAUFORT PATRIOT TEA PARTY
Brent Troxell	NCACC
Barbi Merkel	Adams Outdoor Adv
Donna A. Lacy	Beaufort Patriot T-Party
Lillian Phillips	Beaufort Patriot T Party
Kay Emanuel	Legislative Reporting Service
Kristin Szaforanski	JLF
Erin McBrayer	JLF
London Nobles	JLF
Jonathan W. Martin	JLF

SENATE FINANCE COMMITTEE
Wednesday, May 18, 2011 at 1:00 PM
Room 545, Legislative Office Building

MINUTES

The Senate Finance Committee convened at 1:00 PM on May 18, 2011 in room 544 of the Legislative Office Building. Twenty-nine members of the committee were present. Jordan Scott of Salemburg, Micaela Percy of Cary, Shelby Hairr of Lillington, and Amber Pritchard of Belmont served as pages. Senator Hartsell presided as chair.

S.B. 183 – Selective Vegetation Removal

Senator Brown was recognized to explain the bill. Senator Tillman moved to adopt the proposed committee substitute (PCS) and the motion carried. The PCS amends the State's Outdoor Advertising Control Act by establishing statutory standards for selective vegetation removal within the rights-of-way of the State highway system, increasing the fee for a selective vegetation removal permit, establishing standards for the issuance or denial of a selected vegetation removal permit, and establishing a process for appeals of selective vegetation removal permit decisions. The bill becomes effective October 1, 2011 and applies to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date. The PCS makes clarifying changes and provides that vegetation in the newly expanded removal zone that meets the following criteria is not eligible for removal: vegetation that was planted for a federal beautification or environmental project, or in conjunction with a noise barrier; and vegetation planted after the erection of the sign but before May 1, 2011. Heather Fennell, a staff attorney with the Research Division, was recognized to answer questions. Tony Adams, presenting the NC Outdoor Advertising Association, was recognized to speak in favor of the bill. Senator Stein was recognized to amend the bill. The amendment involved site plans and responsibility for vegetation replanting, but Senator Brown opposed the amendment. Senator Stein withdrew the amendment. Amna Cameron, an analyst from Fiscal Research Senator, was recognized to explain the fiscal note. John Nance, Chief Engineer at NC Department of Transportation, was recognized to answer questions. Senator Harrington moved for a favorable report and the motion carried. A copy of the PCS, the summary, the amendment and the fiscal note is attached.

S.B. 382 – Required Withholding for Nonresidents

Senator Apodaca was recognized to explain the bill. The bill requires buyers who purchase real estate and associated tangible personal property in North Carolina from a nonresident to withhold from the compensation paid to the nonresident seller the amount of state income tax that is payable by the nonresident. Senator Apodaca offered a technical amendment and moved for its adoption. The motion carried. Alan Woodard, NC Department of Revenue, was recognized to answer questions. Cindy Avrette, an attorney with the Research Division, was recognized to answer questions.

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

S.B. 730 – Taxpayer Action if No DOR Determination

Senator Clodfelter was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS provides that a taxpayer may seek a court order compelling the issuance of a final determination by the Department of Revenue if the Department fails to issue the determination within the required time. The bill requires the order to specify a deadline by which the Department must issue the notice. It also authorizes the court to order the Department to grant a taxpayer's refund or to remove a proposed assessment if the Department fails to issue the notice by the deadline. Trina Griffin, an attorney with the Research Division, was recognized to answer questions. Senator Dannelly moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 1:54 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Thursday, May 19, 2011

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

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

S.B. **382** Required Withholding For Nonresidents.

Draft Number:	85204
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **730** Taxpayer Action if No DOR Determination.

Draft Number:	55305
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **183** Selective Vegetation Removal/State Highways .

Draft Number:	15159
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:
S382 – Sen. Apodaca
S730 – Sen. Clodfelter
S183 – Sen. Brown

Senate Finance Committee
Wednesday, May 18, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 183	Selective Vegetation Removal/State Highways	Sen. Brown
SB 382	Required Withholding For Nonresidents.	Sen. Apodaca
SB 730	Taxpayer Action if No DOR Determination.	Sen. Clodfelter

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 183
Transportation Committee Substitute Adopted 4/28/11
PROPOSED COMMITTEE SUBSTITUTE S183-CSTD-34 [v.2]

5/17/2011 5:24:12 PM

Short Title: Selective Vegetation Removal/State Highways. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CERTAIN STATUTORY STANDARDS FOR SELECTIVE VEGETATION REMOVAL WITHIN THE RIGHTS-OF-WAY OF THE STATE HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18.7 reads as rewritten:

"**§ 136-18.7. Fees.**

The fee for a selective vegetation removal permit issued pursuant to ~~G.S. 136-18(5), (7), and (9) is two hundred dollars ($200.00).~~G.S. 136-93, 136-133.1, and 136-133.4 is four hundred dollars ($400.00) per permitted site and is nonrefundable."

SECTION 2. G.S. 136-93 reads as rewritten:

"**§ 136-93. Openings, structures, pipes, trees, and issuance of permits.**

(a) No opening or other interference whatsoever shall be made in any State road or highway other than streets not maintained by the Department of Transportation in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the Department of Transportation or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No State road or State highway, other than streets not maintained by the Department of Transportation in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, ~~and no tree or shrub in or on any State road or State highway shall be planted, trimmed, or removed,~~ and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Department of Transportation or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Department of Transportation or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done. The Department of Transportation, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the State of North Carolina, in such an amount as may be deemed sufficient by the Department of Transportation or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any person making any opening in a State road or State highway, or placing any structure thereon,

or changing or removing any structure thereon without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or otherwise violating the provisions of this section, shall be guilty of a Class 1 misdemeanor: Provided, this section shall not apply to railroad crossings. The railroads shall keep up said crossings as now provided by law.

(b) Except as provided in G.S. 136-133.1(f), no vegetation, including any tree, shrub, or underbrush, in or on any right-of-way of a State road or State highway shall be planted, cut, trimmed, pruned, or removed without a written selective vegetation removal permit issued pursuant to G.S. 136-133.2 and in accordance with the rules of the Department. Requests for a permit for selective vegetation cutting, thinning, pruning, or removal shall be made by the owner of an outdoor advertising sign or the owner of a business facility to the appropriate person in the Division of Highways office on a form prescribed by the Department. For purposes of this section, G.S. 136-133.1, 136-133.2, and 136-133.4, the phrase "outdoor advertising" shall mean the outdoor advertising expressly permitted under G.S. 136-129(a)(4) or G.S. 136-129(a)(5). These provisions shall not be used to provide visibility to on-premise signs.

(c) For outdoor advertising, vegetation cut or removal limits shall be restricted to a maximum selective vegetation cut or removal zone for each sign face pursuant to the provisions of G.S. 136-133.1.

(d) If the application for vegetation cutting, thinning, pruning, or removal is for a site located within the corporate limits of a municipality, the municipality shall be given 30 days to review and provide nonbinding comments on the application if the municipality has previously advised the Department in writing of the desire to review such applications and the name of the local official to whom notice of such application should be directed. Local governments are prohibited from regulating vegetation cutting, trimming, pruning, or removal within the limits of interstate or primary highway rights-of-way by any permittee or other person authorized by the Department, including anyone authorized under G.S. 136-133.1(f)."

SECTION 3. Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-93.2. Monetary value of trees.**

The monetary value for existing trees removed and eligible for reimbursement to the Department as provided in G.S. 136-93 or G.S. 136-133.1 from State rights-of-way shall be determined on an annual basis by the Department. In determining the value of existing trees removed, the average cost per caliper inch shall be based on the lower value of either the average wholesale commercial nursery prices for hardwood and conifer plants, times a 2.5 multiplier for installation and warranty or the average cost per caliper inch for tree planting contracts let by the Department in the previous calendar year. The values shall be determined and published by the Department no later than December 15 of each year. The values established pursuant to this section shall be used in calculating the monetary value of trees removed from State rights-of-way beginning January 1 of each year. If the Department fails to publish changes in values by December 15, then the values existing on December 15 shall be applicable to existing trees removed and eligible for reimbursement for the following year."

SECTION 4. G.S. 136-133 reads as rewritten:

"**§ 136-133. Permits required.**

(a) No person shall erect or maintain any outdoor advertising within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by rules adopted by the Department of Transportation. The permit shall be valid until revoked for

nonconformance with this Article or rules adopted by the Department of Transportation. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules adopted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Department of Transportation shall have the authority to charge permit fees to defray the costs of administering the permit procedures under this Article. The fees for directional signs as set forth in G.S. 136-129(1) and G.S. 136-129.1(1) shall not exceed a forty dollar ($40.00) initial fee and a thirty dollar ($30.00) annual renewal fee. The fees for outdoor advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed a ~~one hundred twenty dollar ($120.00) initial fee and a sixty dollar ($60.00) annual renewal fee.~~one hundred fifty dollar ($150.00) initial fee and a ninety dollar ($90.00) annual renewal fee. Thirty dollars ($30.00) of each initial and annual fee collected pursuant to this section shall be used by the Department for highway beautification projects. No additional funds from the Highway Trust Fund shall be used for the purposes of vegetation replacement under the provisions of this subsection.

(b) If outdoor advertising is under construction and the Department of Transportation determines that a permit has not been issued for the outdoor advertising, the Department may require that all work on the outdoor advertising cease until the owner of the outdoor advertising shows that the outdoor advertising does not violate this section. The stopwork order shall be prominently posted on the outdoor advertising structure, and no further notice of the stopwork order is required. The failure of an owner of outdoor advertising to comply immediately with the stopwork order shall subject the outdoor advertising to removal by the Department of Transportation or its agents. Outdoor advertising is under construction when it is in any phase of construction prior to the attachment and display of the advertising message in final position for viewing by the traveling public. The cost of removing outdoor advertising by the Department of Transportation or its agents pursuant to this section shall be assessed against the owner of the unpermitted outdoor advertising by the Department of Transportation. No stopwork order may be issued when the Department of Transportation process agent has been served with a court order allowing the sign to be constructed.

(c) No electrical utility permit shall be denied to an outdoor advertising sign described in G.S. 136-129(4) and G.S. 136-129(5) for which a permit has been issued by the Department, is valid, and is otherwise compliant with technical utility standards."

SECTION 5. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

(a) The owner of an outdoor advertising sign permitted under G.S. 136-129(a)(4) or G.S. 136-129(a)(5) who obtains a selective vegetation removal permit, and the owner's designees, may cut, thin, prune, or remove vegetation in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4. The maximum cut or removal zone for vegetation for each sign face shall be determined as follows:

(1) The point located on the edge of the right-of-way that is the closest point to the centerline of the sign face shall be point A.

(2) The point located 200 feet down the right-of-way line in the direction of the sign viewing zone shall be point B.

(3) The point on the edge of the pavement of the travel way, including acceleration and deceleration ramps, that is the closest to the centerline of the sign shall be point C.

(4) The point 50 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point D.

(5) The point 380 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E; provided, however, the

following shall apply within the corporal limits and territorial jurisdiction of any city, as defined in Chapter 160A of the General Statutes:

a. On interstates or other routes with fully controlled access, the point 340 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.

b. On highways other than interstates and other routes with fully controlled access, the point 250 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.

(6) Lines drawn from point A to point D and from point B to point E shall define the limits of the vegetation cut or removal area.

(b) Vegetation permitted to be cut, thinned, pruned, or removed shall be defined as any tree, shrub, or underbrush within the zone created by points A, B, D, and E. Any existing tree that was in existence at the time that an outdoor advertising structure was erected shall only be eligible for removal in accordance with subsections (c) and (d) of this section. Native dogwoods and native redbuds shall be preserved. For the purposes of this section, an existing tree is defined as a tree that had a diameter of four inches or greater as measured six inches from the ground at the time that the outdoor advertising structure was erected. An outdoor advertising sign is considered erected when the sign is completely constructed with a sign face.

(c) The applicant for a selective vegetation removal permit shall submit to the Department a site plan locating thereon any trees existing at the time that the outdoor advertising sign was erected, as defined in subsection (b) of this section, that are requested to be cut, thinned, pruned, or removed, and noting their species and total caliper inches. The applicant shall also tag, with highly visible material or flagging, any tree that is, at the time of the application for a selective vegetation removal permit, greater than four inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The selective vegetation removal request may be investigated on-site by Department personnel and a representative of the applicant. In the event that the Department disputes the accuracy of the existing tree information on the site plan noted above, the Department shall notify the applicant in writing and may request the following:

(1) A tree survey.

(2) That the applicant amends the site plan.

(3) That the applicant deletes the trees in dispute from the desired cutting.

If a notice of disputed tree information is received from the Department, the applicant can either employ the services of a North Carolina licensed landscape architect or certified arborist to perform a tree survey, amend the site plan, or notify the Department in writing that any or all of the disputed trees are deleted from the application. If the applicant selects a tree survey, the landscape architect or certified arborist will submit a report under seal that contains a tree inventory of existing trees in the removal zone for the outdoor advertising structure and include the age of any tree that existed at the time that the sign was erected. The report will categorize tree species and include a site map of sufficient detail and dimensions. A tree survey will not be required for subsequent applications to cut, thin, prune, or remove trees at the same site for trees that have been previously permitted. Any dispute relating to whether or not the tree existed at the time the outdoor advertising sign was erected shall be conclusively resolved by information in the report from the licensed landscape architect or certified arborist.

(d) Trees existing at the time the outdoor advertising sign was erected may only be removed within the zone created in subsection (a) of this section if the applicant satisfies one of the following two options selected by the applicant: (i) reimbursement to the Department pursuant to G.S. 136-93.2 or (ii) trees that existed at the time of the erection of the sign may be removed if the applicant agrees to remove two nonconforming outdoor advertising signs for each sign at which removal of existing trees is requested. The surrendered nonconforming signs

must be fully disassembled before any removal of existing trees is permitted and shall not be eligible for future outdoor advertising permits in perpetuity.

(e) Tree branches within a highway right-of-way that encroach into the zone created by points A, C, and D may be cut or pruned. Except as provided in subsection (f) of this section, no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut, trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising and within the limits of the highway right-of-way for the purpose of enhancing the visibility of outdoor advertising unless permitted to do so by the Department in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4.

(f) Notwithstanding any law to the contrary, the owner of an outdoor advertising sign defined by subsection (a) of this section or the owner's designees may, working only from the private property side of the fence, without charge and without obtaining a selective vegetation removal permit, cut, trim, prune, or remove any tree or other vegetation except for native dogwoods or native redbuds that is (i) less than four inches in diameter at the height of the controlled access fence, (ii) located within 200 feet on either side of the existing sign location as defined by point A and point B in G.S. 136-133.1(a)(1) and (2), and (iii) a distance of three feet from a controlled access fence within the limits of the highway right-of-way. The activities permitted by this subsection must be performed from the private property owner side of the controlled access fence and with the consent of the owner of the land that is used to access said fence.

(g) The Department may revoke an outdoor advertising permit for the unlawful destruction or illegal cutting of vegetation within the right-of-way of any State-owned or State-maintained highway only if both of the following conditions are met:

(1) The unlawful destruction or illegal cutting occurred within 500 feet of either side of the corresponding sign location measured along the edge of pavement of the main-travel way of the nearest controlled route and was willfully caused by one or more of the following:

a. The sign owner.

b. The permit holder.

c. The lessee or advertiser employing the sign.

d. The owner of the property upon which the sign is located.

e. Any employees, agents, or assigns of persons listed in sub-subdivisions a. through d. of this subdivision, including, but not limited to, independent contractors hired by the permit holder/sign owner, the lessee/agents or advertiser employing the sign, or the owner of the property upon which the sign is located.

(2) There is substantial, material evidence that the unlawful destruction or illegal cutting of vegetation would create, increase, or improve a view to the outdoor advertising sign for passing motorists from the main-traveled way of the nearest controlled route."

SECTION 6. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-133.2. Issuance or denial of a selective vegetation removal permit.**

(a) Except as provided in G.S. 136-133.1(f), permits to remove vegetation may be granted for outdoor advertising locations that have been permitted for at least two years prior to the date of application. The Department shall approve or deny an application submitted pursuant to this section, including the fee required by G.S. 136-18.7 and all required documentation, within 30 days of the receipt of an application for a selective vegetation removal permit. If written notice of approval or denial is not given to the applicant within the 30-day period, then the application shall be deemed approved. If the application is denied, the Department shall advise the applicant, in writing, by registered or certified mail, return receipt

requested, addressed to the party to be noticed, and delivering to the addressee, the reasons for the denial.

(b) The application shall be denied by the Department if any of the following apply:

(1) The application is for the opening of a view to an outdoor advertising sign which has been declared illegal, is currently the subject of litigation, or the outdoor advertising sign owner has received written notification of an investigation by the Department for impermissible activity.

(2) The application is for the opening of a view to an outdoor advertising sign that was obscured from view at the time of erection of the sign.

(3) Removal of vegetation will adversely affect the safety of the traveling public.

(4) Trees, shrubs, or other vegetation of any sort that are requested to be cut, thinned, pruned, or removed were planted in accordance with a local, State, or federal beautification or environmental project but only to the extent that such planting was done prior to the erection of the outdoor advertising sign the visibility of which is sought to be enhanced. Any beautification or environmental projects that were planted after the erection of the outdoor advertising sign, but before May 1, 2011, and that were planted beyond 250 feet as measured down the edge of the pavement of the travel way from point C, as defined in G.S. 136-133.1(a)(3) shall not be eligible for removal.

(5) Trees, shrubs, or other vegetation of any sort that are requested to be cut, thinned, pruned, or removed were planted in conjunction with a designed noise barrier but only to the extent that such planting was done prior to the erection of the outdoor advertising sign the visibility of which is sought to be enhanced. Any plantings done in conjunction with a designed noise barrier that were planted after the erection of the outdoor advertising sign but before May 1, 2011, that were planted beyond 250 feet as measured town the edge of the pavement of the travel way from point C, as defined in G.S. 136-133.1(a)(3) shall not be eligible for removal.

(6) The applicant, or the applicant's designee, has not performed satisfactory work authorized by previous permits issued under the provisions of this section. The Department may not deny an application for a permit if the work authorized by previous permits issued pursuant to this section was performed by a landscape architect or certified arborist.

(7) The selective vegetation removal, cutting, or pruning involves opening of a view to a junkyard.

(8) Unlawful destruction or illegal cutting of vegetation as defined in G.S. 136-133.1(g) has occurred within five years preceding the date of filing an application with the Department for a selective vegetation removal permit."

SECTION 7. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-133.3. Appeals of selective vegetation removal permit decisions.**

(a) An applicant for a selective vegetation removal permit issued pursuant to G.S. 136-133.2 may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal pursuant to the provisions of this section.

(b) Within 30 days of service of the Department's decision to deny or condition a selective vegetation removal permit issued pursuant to G.S. 136-133.4, the applicant shall submit a written appeal to the Secretary of Transportation setting forth with particularity the facts and arguments upon which the appeal is based. The appeal shall be sent to the Secretary

by registered or certified mail, return receipt requested, addressed to the Secretary, and delivering to the addressee, with a copy to the Department official who issued the decision.

(c) Upon receipt of the written appeal, the Secretary of Transportation shall review the written appeal and the Department's decision, as well as any available documents, exhibits, or other evidence bearing on the appeal, and shall render the agency's final decision, supported by findings of fact and conclusions of law. The final agency decision shall be served upon the appealing party by registered or certified mail, return receipt requested, addressed to the applicant, and delivering to the addressee, within 90 days after the Secretary receives the written appeal. A copy of the agency's final decision shall also be delivered to the Department official who issued the initial decision.

(d) A person aggrieved by a decision made pursuant to this section may seek judicial review of the final agency decision pursuant to G.S. 136-134.1."

SECTION 8. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-133.4. Selective vegetation removal permits.**

(a) Selected vegetation within the approved limits shall be cut, thinned, pruned, or removed by the permittee or the permittee's agent in accordance with accepted International Society of Arboriculture (ISA) standards.

(b) Permits are valid for a period of one year. The permittee may cut, thin, prune, or remove vegetation more than one time per year. A 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way.

(c) The permittee, or the permittee's agent, shall not impede the flow of traffic on any highway -while performing vegetation removal authorized by a permit. Access to the work site on controlled access highways must be gained without using the main travel way of the highway. The Department shall determine the traffic control signage that may be required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department. The permittee, or the permittee's agent, shall wear safety vests that conform to OSHA standards while performing the work.

(d) Any damage to vegetation designated to remain at the site, to highway fences, signs, paved areas, or other facilities shall be repaired or replaced by the permittee to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent. All trimmings, laps, and debris shall be removed from the right-of-way and disposed of in areas provided by the permittee. No burning or burying of trimmings, laps, or debris shall be permitted on the highway right-of-way. When chipping is used to dispose of trimmings, chips may be neatly spread on a right-of-way at locations which the Department determines will not be harmful to the environment or affect traffic safety.

(e) Willful failure to substantially comply with all the requirements specified in the selective vegetation removal permit, unless otherwise mutually resolved by the Department and the permittee, shall result in a five-year moratorium for vegetation removal at the site, a summary revocation of the outdoor advertising permit if such willful failure meets the standards in G.S. 136-133.1(g), payment of Department investigative costs, and forfeiture of any applicable performance bond as determined by the Secretary. The moratorium shall begin upon execution of a settlement agreement or entry of a final disposition in the case."

SECTION 9. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-133.5. Denial of a permit for proposed outdoor advertising.**

(a) When a district engineer determines that a proposed outdoor advertising structure would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act, the district engineer shall refuse to issue a permit for that proposed outdoor advertising structure.

(b) When a violation of the Outdoor Advertising Control Act has been discovered, the district engineer shall notify the permit applicant by registered or certified mail, return receipt requested, addressed to the party to be noticed, and delivering to the addressee, in writing, the reason for the denial and the statutes or rules forming the basis for the denial and include a copy of the Act.

(c) The Department shall not issue permits for new outdoor advertising signs at a sign location for a period of five years where the unlawful destruction or illegal cutting of vegetation has occurred within 500 feet on either side of the proposed sign location and as measured along the edge of pavement of the main travel way of the nearest controlled route. For the purposes of this section, unlawful destruction or illegal cutting is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-owned or maintained rights-of-way by anyone other than the Department or its authorized agents, or without written permission of the Department. Before a permit is denied pursuant to this subsection, the Department shall reveal some evidence that the unlawful destruction or illegal cutting would create, increase, or improve a view to a proposed outdoor advertising sign from the main-traveled way of the nearest controlled route. The five-year period shall begin on the date the Department executes a settlement agreement or final disposition of the case is entered. The five-year prohibition period for a new sign permit shall apply to all sign locations, including the following:

(1) Sign locations where the unlawful destruction or illegal cutting of vegetation occurs prior to the time the location becomes a conforming location.

(2) Sign locations where a revocation of an existing permit has been upheld and a sign has been removed.

(3) Sign locations where the unlawful destruction or illegal cutting occurs prior to receipt of an outdoor advertising permit.

(4) Sign locations where the unlawful destruction or illegal cutting occurs following receipt of an outdoor advertising permit application, but prior to the issuance of the permit by the Department.

(d) The Department shall not issue permits for new outdoor advertising signs at a sign location where existing trees, if they were to reach the average mature size for that species, would make the proposed sign faces, when erected, not completely visible from the viewing zone. "Existing trees" are those trees that at the time of the permit application are four inches or greater in diameter as measured six inches from the ground. "Viewing zone" means the area which is 500 feet as measured along the edge of the main-traveled way of the controlled route on each side of the proposed sign structure which will have a sign face.

(e) An outdoor advertising permit requested pursuant to G.S. 136-129(a)(4) shall not be issued to a location if the zoning to commercial or industrial zones was adopted within one year prior to the filing of the permit application and is not part of comprehensive zoning or constitutes spot zoning, which, for purposes of this subsection, shall be defined as zoning designed primarily for the purpose of permitting outdoor advertising signs and in an area which would not normally permit outdoor advertising. Zoning shall not be considered "primarily for the purpose of permitting outdoor advertising signs" if the zoning would permit more than one principal commercial or industrial use, other than outdoor advertising, and the size of the land being zoned can practically support such commercial or industrial uses.

(f) Outdoor advertising permits shall not be issued to a location for a period of 12 months prior to the proposed letting of a new construction contract that may affect the spacing or location requirements for an outdoor advertising structure until the project is completed. The prohibition authorized by this subsection shall not extend for a period longer than 18 months. Priority in spacing shall be given by the Department to the first submitted application for an outdoor advertising permit at the location.

(g) Outdoor advertising permits shall not be issued for a location on a North Carolina or United States route designated as a scenic byway."

SECTION 10. This act becomes October 1, 2011, and applies to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date.

SENATE BILL 183:
Selective Vegetation Removal/State Highways

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 18, 2011
Introduced by:	Sen. Brown	**Prepared by:**	Heather Fennell
Analysis of:	PCS to Second Edition S183-CSTD-34		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 183 would amend the State's Outdoor Advertising Control Act by establishing statutory standards for selective vegetation removal within the rights-of-way of the State highway system, increasing the fee for a selective vegetation removal permit, establishing standards for the issuance or denial of a selected vegetation removal permit, and establishing a process for appeals of selective vegetation removal permit decisions. The bill would become effective October 1, 2011 and apply to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date. The PCS makes clarifying changes and provides vegetation in the newly expanded removal zone that meets the following criteria is not eligible for removal:***

- ***The vegetation was planted for a federal beautification or environmental project, or in conjunction with a noise barrier.***
- ***The vegetation was planted after the erection of the sign but before May 1, 2011.***

CURRENT LAW: The Outdoor Advertising Control Act is set out in Article 11 of Chapter 136 of the General Statutes. The Act is intended to control the erection and maintenance of outdoor advertising devices in order to "preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and devices." G.S. 136-18 grants the Department of Transportation (DOT) the authority to *"employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways".* Pursuant to its rulemaking authority, the Department has established a Selective Vegetation Removal Policy that is set out in the North Carolina Administrative Code. The policy provides for selective thinning, pruning, replacement, relocation, or removal of vegetation within highway rights of way for the purpose of opening views to office, institutional, commercial and industrial facilities and legally erected forms of outdoor advertising which are located directly adjacent to State highway rights of way. When removal of vegetation is allowed, it must be performed by the permittee in compliance with the policy and at no cost to the Department of Transportation. Under G.S. 136-18.7, the fee for a selective vegetation removal permit is $200.

BILL ANALYSIS: The PCS to Senate Bill 183 would establish statutory standards for selective vegetation removal within the rights-of-way of the State highway system. Many of the provisions in the bill are substantially similar to existing provisions of the North Carolina Administrative Code.

Section 1 of the bill would increase the fee for a selective vegetation removal permit from $200 to $400 for each permitted site. The fee would be nonrefundable.

Section 2 of the bill prohibits the removal of vegetation in or on any right of way of a State road or State highway without a written selective vegetation removal permit issued pursuant to provisions in the bill and in accordance with DOT rules. Requests for a permit would be made to the appropriate person in the Division of Highways office, on a form prescribed by DOT. Permits may be requested by the owner of an outdoor advertising sign or the owner of a business facility. If the permit application is for a site

located within a municipality, the municipality would have 30 days to review and comment on the application provided it has advised DOT in writing of its desire to review such applications and has identified the name of the local official who should receive notice. Local governments would be prohibited from regulating the removal of vegetation as authorized by DOT.

Section 3 of the bill establishes a standard for determining the monetary value of trees removed from State rights-of-way. Values would be determined and published by DOT annually by December 15, for use in the following calendar year.

Section 4 of the bill would amend the law concerning permits for the erection or maintenance of outdoor advertising. The bill increases the initial fee from $120 to $150, and the annual renewal fee is increased from $60 to $90. The bill provides that $30 of each initial and annual fee is to be used by DOT for highway beautification projects. No electrical utility permit may be denied to an outdoor advertising sign for which a permit has been issued by DOT, so long as the permit is valid and otherwise compliant with technical utility standards.

Section 5 of the bill establishes standards for the cutting or removal of vegetation pursuant to a selective vegetation removal permit issued to the owner of an outdoor advertising sign. The bill prescribes a maximum cut or removal zone for each sign face; the maximum zone varies depending upon whether the site is within the corporal limits and territorial jurisdiction of a municipality and whether the highway is an interstate or other route with fully controlled access. The permit applicant must submit a site plan to DOT, and DOT may conduct an on-site investigation. The bill sets out a procedure for resolving disputes concerning the accuracy of information on the site plan. Trees existing at the time the outdoor advertising sign was erected may only be removed if the applicant reimburses DOT for the established value of the trees or if the applicant agrees to remove two nonconforming signs for each sign at which the removal of trees is requested. Under specified conditions, a selective vegetation removal permit is not required for activities conducted from the private property side of a controlled access fence and with the consent of the landowner. In certain instances, DOT would have the authority to revoke an outdoor advertising permit for the unlawful destruction or illegal cutting of vegetation within highway right-of-way.

Section 6 of the bill establishes standards for the issuance or denial of a selected vegetation removal permit. DOT would be required to approve or deny a permit within 30 day of receipt of the application; if no decision is conveyed in writing within the 30 day period, the application is deemed to be approved. Denial must be made in writing, by registered or certified mail, and must include reason for the denial. The bill requires that an application be denied when certain conditions apply.

Section 7 establishes a process for appeals of selective vegetation removal permit decisions. An applicant would have 30 days in which to submit a written appeal, by registered or certified mail to the Secretary of Transportation, setting forth the facts and arguments upon which the appeal is based. The agency would be required to render a final decision within 90 days of receiving the written appeal. The bill provides that the aggrieved party may seek judicial review of the final agency decision.

Section 8 requires that vegetation cutting or removal be done in accordance with accepted International Society of Arboriculture (ISA) standards. Selective vegetation removal permits would be valid for a period of 1 year and cutting or removal may occur more than one time during that year. The permittee must give a 48-hour notice to DOT before entering the right-of-way. Other terms and conditions are established concerning impeding the flow of traffic, access to the work site, traffic control signage, adherence to safety standards, property damage, and debris removal. Willful failure to comply with requirements specified in the permit could result in a 5-year moratorium for vegetation removal at the site or a summary revocation of the outdoor advertising permit.

Section 9 establishes a procedure and standards for denial of a permit for proposed outdoor advertising. A district engineer would be required to refuse to issue a permit for a proposed outdoor advertising structure that would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act. The applicant would be notified of the denial and the basis for the denial by registered or certified mail. In the case of a sign located at a site where the 5-year moratorium is in effect for the unlawful destruction or cutting of vegetation, before denying the permit DOT would be required to reveal some evidence that the unlawful acts would create, increase, or improve a view to an outdoor advertising sign.

The bill would prohibit DOT from issuing permits for new outdoor advertising signs at a location where existing trees, if they were to reach mature height, would make the proposed sign faces not completely visible from the viewing zone. An outdoor advertising permit in an area zoned industrial or commercial under authority of State law could not be issued if the zoning was adopted within one year prior to the filing of the permit application and is not part of comprehensive zoning or represents spot zoning for the purpose of permitting outdoor advertising signs in an area that would not normally permit such signs. Outdoor advertising permits would also not be issued for certain locations where new construction contracts may affect spacing or location requirements for an outdoor advertising structure. Priority in spacing would be granted to the first submitted application for a permit at the location. DOT would also deny permits for locations on a State or US scenic byway.

EFFECTIVE DATE: The bill would become effective October 1, 2011 and apply to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date.

Brenda J Carter, counsel to Senate Transportation, substantially contributed to this summary.

S183-SMTD-52(CSTD-34) v2

Withdrawn

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 183

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S183-ATD-83 [v.4]

Comm. Sub. [YES]
Amends Title [NO]
S183-CSTD-34

Date May 18 ,2011

Senator Stein

moves to amend the bill on page 5, lines 40 and 41, by inserting between the lines:

"(h) The applicant for a selective vegetation permit shall submit to the Department a site plan for replanting vegetation around the outdoor advertising structure. The Department shall develop rules, in consultation with local government representatives, to establish standards for replanting that include standards to determine which sites must be replanted, and the types of plants and trees that must be replanted. The applicant for a selective vegetation removal permit shall replant the area around the outdoor advertising structure for which vegetation is removed in accordance with the rules adopted by the Department.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED X

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 183 (Second Edition)

SHORT TITLE: Selective Vegetation Removal/State Highways.

SPONSOR(S): Senator Brown

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
Highway Fund	Ranges from $300,600 - $808,800	Ranges from $400,800 - $1,078,400	Ranges from $400,800 - $1,078,400	Ranges from $400,800 - $1,078,400	Ranges from $400,800 - $1,078,400
EXPENDITURES					
Highway Fund	Ranges from $146,212 – $417,216	Ranges from $190,051 - $551,388	Ranges from $190,051 - $551,388	Ranges from $190,051 - $551,388	Ranges from $190,051 - $551,388
Judicial Branch	*See Assumptions and Methodology*				
POSITIONS (cumulative):	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Judicial Branch

EFFECTIVE DATE: October 1, 2011

BILL SUMMARY:

This bill raises the fee for a vegetation removal permit from $200 to $400 per site and specifies that the fee is nonrefundable. It prohibits, except as specified in new G.S. 136-133.1(f), planting, cutting, trimming, removing, or pruning any tree, shrub, or underbrush in or on any right-of-way of a state road or highway without a written selective vegetation removal permit issued under proposed G.S. 136-133.2 and in accordance with the rules of the Department of Transportation (DOT). It requires that the owner of an outdoor advertising sign or of a business facility make the request for a permit for selective vegetation removal to the appropriate roadside environmental engineer in the Division of Highways office on a form required by the DOT. It provides that a

permit may not be issued to provide visibility to on-premise signs and provides that if the site is inside city limits, the municipality has 30 days to review and provide nonbinding comments on the application if the municipality has met certain requirements. The bill prohibits local governments from regulating removal of vegetation within the limits of interstate or primary highway rights-of-way by any permit holder or anyone otherwise authorized by the DOT.

This bill raises the fees for outdoor advertising structures to $150 for the initial fee and $90 for the annual renewal, with $30 of each fee to be used for highway beautification. It prohibits denial of electrical utility permits to an outdoor advertising sign for which a valid permit has been issued.

This bill enacts new G.S. 136-133.1 to specify the zone around billboards in which clearing is allowed. Defines an existing tree as one that is four inches or greater in diameter as measured six inches from the ground at the time that the outdoor advertising structure was erected. It provides limitations as to when existing trees may be removed; an exception to permit the owner of an outdoor advertising sign or the owner's designee to clear vegetation without a permit providing that the owner or owner's designee is working only from the private property side of a controlled access fence with the landowner's consent; and requires that native dogwoods and native rosebuds be preserved. The bill requires the applicant for a selective vegetation removal permit to submit a site plan showing any existing trees that the applicant is requesting to cut, thin, prune, or remove. It includes additional requirements that the applicant provide data identifying the species and size of the trees in the site plan and provides circumstances under which the DOT may revoke an advertising permit for the removal or modification of vegetation.

This bill enacts new G.S. 136-133.2 to provide that permits to remove vegetation may only be granted for outdoor advertising locations that have been permitted for at least two years and at the discretion of the DOT. It requires the application for a permit to be decided within 30 days, with the DOT to specify in writing the reasons for denial and sets out permissible bases for denial. It enacts new G.S. 136-133.3 to provide the procedure for appeal of the DOT's denial of a permit for selective vegetation removal to the Secretary of Transportation, and provides for judicial review of a final agency decision.

It enacts new G.S. 136-133.4 and G.S. 136-133.5 to specify standards for clearing around billboards, methods of clearing and responsibility for damage. It provides that a willful failure to substantially comply with all the requirements specified in the selective vegetation removal permit results in (1) a five-year moratorium on clearing, (2) revocation of a billboard permit for violation of standards, (3) payment of investigative costs, and (4) forfeiture of applicable performance bond. G.S. 136-133.5 provides additional criteria for denial of a permit for proposed outdoor advertising.

The act is effective October 1, 2011, and applies to permits, applications, or renewals submitted on or after that date and to offenses occurring on or after that date.

ASSUMPTIONS AND METHODOLOGY:

Outdoor Advertising Structure Fees:
Fiscal Research estimates the additional $30 for the new outdoor advertising structure fee and the renewal permit will increase revenues to the Highway Fund between $181,800 - $363,600 in FY 2012 and between $242,400 - $484,800 in each year of the next four fiscal years. The FY 2012 figures are annualized to take into account the bill's effective date. As shown in Figures 1 and 2, the total number of billboards and associated revenues has declined in each of past five fiscal years. It is assumed the number of structures will increase if the cutting distance is increased. It is not known but possible that the economic downturn has led to less advertising. It is possible that the number of permits will increase by more than 100 percent if the number of billboards is strongly correlated with an economic recovery. No inflation factor has been built in to this analysis. All increased revenues must be used for highway beautification projects. Therefore, these funds do not offset the costs incurred by DOT.

Figure 1: Number of Outdoor Advertising Structures

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
New Structures	1	112	181	149	89
Renewals	8,883	8,497	8,133	8,062	7,991
Total	8,884	8,609	8,314	8,211	8,080

Figure 2: Outdoor Advertising Structure Revenues

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenue from New Structures	$ 120	$ 13,440	$ 21,720	$ 17,880	$ 10,680
Revenue from Renewals	$ 532,980	$ 509,820	$ 487,980	$ 483,720	$ 479,460
Total	$ 533,100	$ 523,260	$ 509,700	$ 501,600	$ 490,140

Selective Vegetation Removal Permit (SVR) Fees:
Fiscal Research estimates the additional $200 fee for the SVR permit will increase revenues to the Highway Fund between $118,800 - $445,200 in FY 2012 and between $158,400- $593,600 in each year of the next four fiscal years. The FY 2012 figures are annualized to take into account the bill's effective date. As shown in Figure 3, the total number of SVR permits and associated revenues has grown in three of the last four years, growing by an average of three percent over the five-year period. It is assumed the number of permits may increase significantly if the cutting distance is increased.

Figure 3: Selective Vegetation Removal (SVR) Permits and Revenues

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
SVR Permits Issued	235	241	268	317	305
Revenues	$47,000	$48,200	$53,600	$63,400	$61,000

DOT estimates the number of permit requests may increase to 2000, or 25% of the total number of billboards. Fiscal Research uses a range to determine the impact. The lower range is based on a 100 percent increase in the number of permits per billboard issued in 2010. This figure is based on the change in the number of permits issued in 2001, after cutting distances were last shifted. DOT issued 305 permits in 2001 compared to 126 permits issued in the prior year. Currently, 20 percent of permit holders, or 61 permits issued in FY 2010, were for multiple cuttings. This bill changes the permit to an annual permit, not a per cut permit. As shown in Figure 4, the base figure used in this analysis for the lower range is 264 permits issued. The lower range of the estimate uses an additional 264 permits as the number that may be requested. Fiscal Research sets the upper range at 20 percent of all billboards in the State, or 1616 total requests. The costs associated with this increase may be used to offset the costs incurred by DOT.

Figure 4: Fiscal Impact from SVR Permits

	Base Number of Permits	Number of New Permits	Total Number of Permits	Revenues
Low Estimate	264	264	528	$158,400
High Estimate	264	1352	1616	$593,600

DOT Costs:
DOT is expected to incur direct costs associated with implementing Section 2(d) and Section 5 of this bill. Section 2(d) includes the process of reviewing municipal comments for SVR permits. This process is expected to take 24 hours of an engineer's time in each division each year. At an average rate of $43.74 per hour, the cost absorbed by DOT totals $14,696. Section 5 includes the process to verify, monitor, and enforce the SVR permits. DOT estimates it will take three hours of an engineer's time and six hours of an engineer technician's time for each permit. Using the range developed to estimate the total number of expected SVR permits, costs to DOT will range from $175,355 - $536,692, annualized. The cost in the first year will be $131,516 - $402,520. This analysis assumes an engineer's time equals $43.74 per hour and an engineering technician's time equals $28.45 per hour. Additional costs for equipment and materials are included.

DOT currently produces a report to determine the monetary value of trees, required in Section 3 of this bill. Therefore, no additional costs are included.

DOT may incur additional costs to implement Section 4 of this bill. However, as there is no requirement to replant these areas, no fiscal impact is included. Costs to mitigate the site cannot be estimated.

Annual Asset Loss:
DOT estimates the annual roadside buffer tree loss will be $2,880,000 annually.

Judicial Branch:
According to the Administrative Office of the Courts (AOC), data received from Fiscal Research and the Department of Transportation (DOT) staff show that, in the last five years, there has been an average of 252 new permits issued per year and an average of two appeals per year (appealed to Superior Court). It is possible that the number of new permits issued will increase under this bill, perhaps as high as 1,500 per year, which, using the same ratio as the previous five years' data,

would result in up to a yearly average of 12 appeals. The exact number of appeals potentially arising from this bill cannot be determined.

AOC estimates that each appeal may take two full days of a Superior Court bench trial to resolve. Because the bill states that all requests for judicial review shall be filed with the Wake County Clerk of Superior Court, all workload impact arising from this bill would occur in Superior Court District 10 (Wake County). These cases would require court time and resources, impacting Superior Court Judges and Deputy Clerks, and Court Reporters. The monetary value of two days of these in-court resources is $3,010. Therefore, the estimated range of two to 12 cases per year would result in a fiscal impact of $6,020 to $36,120.

Overall, in FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Department of Transportation, Administrative Office of the Courts

TECHNICAL CONSIDERATIONS:

1. G.S. 136-133.5(f) may need to reference subsection (e) rather than subsection (d).
2. Statutes do not indicate whether to place the proceeds from these two fees in the Highway Fund or Highway Trust Fund. DOT allocates the fees to the Highway Fund.
3. The costs associated with replanting come from the Highway Fund. G.S. 136-133(a) states that no Highway Trust Fund monies can be spent for replanting, however, only Highway Fund monies are currently used for this purpose.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Amna Cameron, Sarah Stone

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 18, 2011

Official Fiscal Research Division Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE BILL 382

Short Title:	Required Withholding for Nonresidents.	(Public)
Sponsors:	Senators Apodaca; and Hise.	
Referred to:	Finance.	

March 22, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE WITHHOLDING OF INCOME TAXES FROM SALES OF REAL PROPERTY AND ASSOCIATED TANGIBLE PERSONAL PROPERTY BY NONRESIDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-163.1 reads as rewritten:

"**§ 105-163.1. Definitions.**

The following definitions apply in this Article:

(1) Buyer. – A person who pays compensation to a nonresident individual or nonresident entity for the purchase of real property and associated personal property in this State.

(1a) Compensation. – Consideration a payer or buyer pays to any of the following:

a. A nonresident individual or nonresident entity for personal services performed in this State.

b. An ITIN holder who is a contractor and not an employee for services performed in this State.

c. A nonresident individual or nonresident entity for the purchase of real property and associated tangible personal property located in this State.

...

(14) Withholding agent. – An employer, a pension payer, a buyer, or a payer."

SECTION 2. Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.3A. Buyers must withhold taxes from certain nonresident sellers of real property.**

(a) Requirement. – Every buyer who purchases real estate and associated tangible personal property from either a nonresident individual or nonresident entity must deduct and withhold from compensation paid to the nonresident seller the State income taxes payable by the nonresident seller due to the sale as provided in this section. The taxes a buyer withholds are held in trust for the Secretary. The amount of taxes to be withheld is the least of the following:

(1) Four percent (4%) of the amount realized on the sale as determined under section 1001 of the Code.

(2) The applicable percentage of the gain required to be recognized on the sale under the Code, if the nonresident seller provides the buyer with an affidavit

signed under penalty of perjury swearing or affirming to the amount of gain required to be recognized under the Code from the sale. The applicable percentage is the highest marginal tax rate that could be applied to the nonresident seller based on whether the nonresident seller is taxed as a corporation or an individual.

(3) The entire net proceeds payable to the nonresident seller.

(b) Installment Sales. – In the case of any sale otherwise subject to this section that qualifies as an installment sale within the meaning of section 453(b) of the Code, the provisions of subsection (a) of this section shall be separately applied to each principal payment to be made under the terms of the installment sale agreement between the parties. In determining the amounts to be withheld under this subsection, the amount realized on the sale shall be considered to be the principal payment, and the gain required to be recognized under the Code shall be considered to be the same proportion of each principal payment as the gain required to be recognized under the Code bears to the amount realized on the sale overall.

(c) Exemptions. – The withholding requirement does not apply to the purchase of the following:

(1) Real property and any associated tangible personal property sold by one of the following types of entity that is not subject to tax under Article 4 of this Chapter:

a. A unit of federal, State, or local government.

b. A nonprofit.

c. An insurance company.

(2) Real property that is a principal residence of the nonresident seller within the meaning of section 121 of the Code and any associated tangible personal property.

(3) Real property transferred pursuant to a foreclosure of a mortgage deed of trust or other lien instrument or pursuant to a deed in lieu of foreclosure.

(d) Return and Statement. – A buyer must file a return with the Secretary on a form prescribed by the Secretary and in the manner prescribed by the Secretary. The buyer must pay the withheld taxes to the Secretary on or before the 15th day of the month following the month in which the sale takes place. A buyer required to deduct and withhold from a nonresident seller's compensation under this section must provide the seller a written statement of the information contained in the return by the due date of the return. The following information is required on the return:

(1) The buyer's name and address.

(2) The seller's name, address, and taxpayer identification number.

(3) The total amount realized on the sale.

(4) The total amount of gain recognized if the seller provides an affidavit under subdivision (a)(2) of this section.

(5) The entire net proceeds paid to the nonresident seller.

(6) The total amount deducted and withheld under this section.

(e) Buyer May Repay Amounts Withheld Improperly. – A buyer may refund to a person any amount the buyer withheld improperly from the person under this section if the refund is made before the end of the calendar year, before the buyer furnishes the person the statement required by subsection (d) of this section, and before the buyer submits the payment and return to the Secretary. An amount is withheld improperly if it is withheld from a payment to a person who is not a nonresident individual or nonresident entity, if it is withheld from a payment that is not compensation, or if it is in excess of the amount required to be withheld under this section.

(f) Records. – A buyer may rely on an affidavit provided by the seller that states that withholding is not required under this section because the seller is not a nonresident individual or nonresident entity. The affidavit must be made under penalty of perjury."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2011.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 382

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

S382-ARB-30 [v.1]

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

Date _____,2011

Senator Apodaca

moves to amend the bill on page 2, line 18, by deleting the word "entity" and substituting the word "entities";

and on page 3, lines 4 and 5, by rewriting the lines to read:

"**SECTION 3.** This act becomes effective January 1, 2012, and applies to sales made on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 382 (First Edition)

SHORT TITLE: Required Withholding for Nonresidents.

SPONSOR(S): Senators Apodaca and Hise

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES: ($Millions)	5.5	5.5	5.5	5.5	5.5

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Taxable years beginning on or after January 1, 2011

BILL SUMMARY: Senate Bill 382 requires buyers who purchase real estate and associated tangible personal property located in North Carolina from a nonresident individual or nonresident entity to withhold from the compensation paid to the nonresident seller the amount of state income tax that is payable by the nonresident. The bill provides that the amount of taxes to be withheld is the lesser of the following:

1. 4% of the amount realized on the sale.
2. The highest applicable marginal tax rate that could be applied to the gain required to be recognized under the Internal Revenue Code based on whether the nonresident seller is taxed as a corporation or an individual.
3. The entire net proceeds payable to the nonresident seller.

The bill provides guidelines regarding certain types of sales and transfers of real property and associated tangible personal property that are exempt from the withholding requirement.

The bill requires the buyer to file a return with the Secretary of Revenue and pay the withheld taxes to the Secretary on or before the 15th day of the month following the month in which the sale takes place. It specifies information to be included on the return and requires the buyer to provide the nonresident seller with a written statement of the information contained in the return. It also provides that a buyer may refund to the seller amounts that were improperly withheld and specifies criteria to determine when an amount is improperly withheld by the buyer.

ASSUMPTIONS AND METHODOLOGY: Fiscal Research reviewed data from the Department of Revenue for Brunswick County showing assessments made during FY 2010-11 related to land sales by nonresidents as a result of special compliance projects undertaken there. The Department estimates that sales in Brunswick County represent 3% of the value of all land sales by nonresidents in North Carolina. The data for Brunswick County was extrapolated to a statewide number to provide an estimate of the total amount of tax to be withheld under the bill proposal. This estimate was shared down to account for revenue generated as a result of the Department's existing compliance initiatives to arrive at the estimated fiscal impact.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jonathan Tart

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 17, 2011

Official
Fiscal Research Division
Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 382

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S382-ARB-30 [v.1]

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

Date May 18 ,2011

Senator Apodaca

moves to amend the bill on page 2, line 18, by deleting the word "entity" and substituting the word "entities";

and on page 3, lines 4 and 5, by rewriting the lines to read:

"**SECTION 3.** This act becomes effective January 1, 2012, and applies to sales made on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 730
PROPOSED COMMITTEE SUBSTITUTE S730-CSSV-17 [v.1]

5/17/2011 12:17:41 PM

Short Title: Taxpayer Action if No DOR Determination. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT FAILURE BY THE DEPARTMENT OF REVENUE TO ISSUE A FINAL DETERMINATION WITHIN THE REQUIRED TIME IS GROUNDS FOR A TAXPAYER TO SEEK A COURT ORDER COMPELLING THE ISSUANCE OF THE FINAL DETERMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-241.14(c) reads as rewritten:

"(c) Time Limit. – The process set out in G.S. 105-241.13 for reviewing and attempting to resolve a proposed denial of a refund or a proposed assessment must conclude, and a final determination must be issued within nine months after the date the taxpayer files a request for review. The Department and the taxpayer may extend this time limit by mutual agreement. Failure to issue a notice of final determination within the required time does not affect the validity of a proposed denial of a refund or proposed ~~assessment.~~ assessment, but it is grounds under G.S. 150B-44 for a taxpayer to seek a court order compelling the Department to issue a notice of final determination."

SECTION 2.

"**§ 150B-44. Right to judicial intervention when agency action or decision unreasonably delayed.**

(a) Court Order. – Unreasonable delay on the part of any agency or administrative law judge in taking any required action ~~shall be~~ is justification for any person whose rights, duties, or privileges are adversely affected by ~~such~~ the delay to seek a court order compelling action by the agency or administrative law judge. The venue for obtaining a court order to compel the Department of Revenue to issue a notice of final determination is the Superior Court of Wake County. An order compelling the Department of Revenue to issue a notice of final determination must specify the date by which the Department must issue the notice. If the Department fails to issue the notice by the specified date, the court may order the Department to grant the refund or remove the proposed assessment.

(b) Time Limits. – An agency that is subject to Article 3 of this Chapter and is not a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 60 days from the day it receives the official record in a contested case from the

Office of Administrative Hearings or 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge. The Board of Trustees of the North Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this section."

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

SENATE BILL 730:
Taxpayer Action if No DOR Determination

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 18, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Trina Griffin
Analysis of:	PCS to First Edition S730-CSSV-17		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 730 provides that a taxpayer may seek a court order compelling the issuance of a final determination by the Department of Revenue if the Department fails to issue the determination within the required time. The bill would require the order to specify a deadline by which the Department must issue the notice. The bill would also authorize the court to order the Department to grant a taxpayer's refund or to remove a proposed assessment if the Department fails to issue the notice by the deadline.***

CURRENT LAW: Article 9 of Chapter 105 sets out the procedures under which a taxpayer may contest a proposed assessment or a proposed denial of a refund by the Department of Revenue.

Review. – A taxpayer who objects to a proposed denial of a refund or a proposed assessment may, within 45 days from the notice, file a request for review by the Department. The Departmental review is a two-step process consisting of an initial review followed by an informal conference. If the review results in the Department granting the refund or removing the assessment, the matter ends there. If the review does not resolve the dispute, the Department may request additional information from the taxpayer and must schedule a conference with the taxpayer.

Conference. –The conference is an informal process in which the Department and the taxpayer attempt to resolve the matter. If the Department and the taxpayer are unable to resolve the matter at conference, the Department must issue a final determination.

Final Determination. – A final determination represents the Department's decision regarding a proposed denial of a refund or a proposed assessment. It must be issued within nine months after the date the taxpayer filed a request for review, unless the Department and the taxpayer have mutually agreed to an extension. Once issued at the conclusion of the Departmental review process, it triggers the taxpayer's ability to seek further review. The final determination must state the basis for the determination and inform the taxpayer of the procedure for contesting it.

Contested Case Hearing. – A taxpayer who disagrees with the Department's final determination may file a petition for a contested case hearing with the Office of Administrative Hearings (OAH). The petition must be filed within 60 days from when notice of the agency decision is given. A taxpayer may proceed with a case at OAH only after the Department has issued a final determination.

Court Order Under Chapter 150B. – G.S. 150B-44 allows a person whose rights have been adversely affected by unreasonable delay on the part of any agency or administrative law judge (ALJ) to seek a court order compelling action by the agency or ALJ. While this provision could be interpreted to apply to any unreasonable delay by an agency, the statute speaks specifically to situations where an agency has failed to render a final decision in a timely manner after ALJ has issued a recommended decision in a contested case.

BILL ANALYSIS: The PCS for Senate Bill 730 provides that if the Department of Revenue fails to issue a notice of final determination within the required time, it is grounds under the Administrative Procedure Act for a taxpayer to seek a court order compelling the Department to issue the notice. The taxpayer must file the proceeding in Superior Court in Wake County. This is consistent with the existing venue provision for judicial review of a final decision in a contested tax case. The bill would further require that any order compelling the Department to issue a notice of final determination specify a date by which the notice must be issued. If the Department fails to issue the notice by the specified date, the court may order the Department to grant the refund or remove the assessment.

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

S730-SMSV-47(CSSV-17) v1

PAGES ATTENDING

COMMITTEE: Finance ROOM: 544

DATE: 5-18 TIME: 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Jordan Scott	Salemburg	Jackson
2 Micaela Percy	Cary	Berger, P.
3 Shelby Hair	Lillington	Blake
4 Amber Pritchard	Belmont	Harrington
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 18, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Davia Fenton	City of Charlotte
Gretchen Kelly	FHC
Warren Stancil	Interstate Outdoor
Jamie Machut	Lamar Outdoor
Robbie Moore	Riley Outdoor
Paul Hickman	Fairway Outdoor Advertising
Aaron Compton	Fairway Outdoor Advertising
Lennie Collins	DOR
Molly Diggs	Sierra Cain
[illegible]	CAPA
Tom Dixon	NCDOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 18, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Canaan Huie	NC DOR
Mary-Katherine Hudson	Maynead, Inc
Alan Woodard	NCDOT
David McSwain	NC Realtors
Lisa Martin	NC HBA
Jessi Hayes	NCHBA
Ray Emanuel	Legislative Reporting Services
Butch Gunnells	NC Beverage Assoc
JOE LANIER	NELSON MULLINS
Barbi Mulvihill	Adams Outdoor
Blake Precythe	SEANC

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 18, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Donny Hunter	NCACCT
John Harris	NCGA
Michael James	NCGA
Gary Harris	NC Petroleum & Convenience Mkts
Paul Hodgson	In Flow Inc
Terry Gibson	NCDOT
Jim Morrill	Charlotte Obs.
Bill Sloggin	DRS
Daniel Baum	Troutman Sanders
Bo Heath	McGuire Woods
Heather Barnett	Williams Mullen

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 18, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Co Downs	The Insider
Cady Thomas	NCAR
L C Rogers	CSS
[illegible]	[illegible]
Preston Howard	MCIC
Doug Hieron	Williams Mullen
J Goodman	NC Chamber
Ken Melton	K.M.A.
Andrew Tarw	Senate Staff
Durwood Laughton	VS

2011

SENATE
FINANCE

MINUTES

SENATE FINANCE COMMITTEE
Tuesday, May 24, 2011 at 2:45 PM
Room 545, Legislative Office Building

MINUTES

The Senate Finance Committee met at 2:45 PM on May 24, 2011 in room 544 of the Legislative Office Building. Thirty-two members of the committee were present. Rachel Terrie of Gastonia and André Elliott of Goldsboro served as pages. Senator Rucho presided as chair.

H.B. 200 – Appropriations Act of 2011

Senator Hartsell moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS contains a finance package that reduces the individual income tax rates by ¼% and allows a $50,000 tax deduction for small business income for two years, 2012 and 2013. The House budget, H.B. 200 (v4), reserved $635 million for the finance committee for the 2011-2013 biennium; this PCS uses that reserve and eliminates four tax expenditures to create the necessary availability of $671.1 million. This tax relief is in addition to the $1.3 billion in expiring tax revenue. Mark Bondo, an analyst with the Fiscal Research Division, was recognized to discuss education fees. He directed the members to Section 30.7. – UNC Non-General Fund Capital Projects which outlines the UNC System fees. Andrea Poole, an analyst with the Fiscal Research Division, was recognized to explain Section 7.22. – Funds for Children with Disabilities and Section 31.2. – Education/State Board Authority to Establish GED Testing Fees. Lanier McRae, an analyst with the Fiscal Research Division, discussed transportation fees portion of the budget. Doug Holbrook, an analyst with the Fiscal Research Division, was recognized to explain Justice and Public Safety fees. Senator Newton was recognized to offer a clarifying amendment and moved for its adoption. The motion carried. Senator Brown was recognized to offer an amendment that assists in local costs of misdemeanor confinement. He moved for its adoption and the motion carried. Michelle Nelson, an analyst with the Fiscal Research Division, was recognized to explain General Government fees. Carla Shaunessy, an analyst with the Fiscal Research Division, was recognized to the Information Technology sections of the bill. Bryce Ball, an analyst with the Fiscal Research Division, was recognized to explain the driver's education portion of the bill and Amna Cameron, an analyst with the Fiscal Research Division, was recognized to explain tolls. Rodney Bizzell, an analyst with the Fiscal Research Division, was recognized to answer fee questions. The total fees for the 2011-2012 fiscal year are $103.9 million and for the 2012-2013 fiscal year are $106 million. Barry Boardman, Fiscal Research, was recognized to discuss the Job Creation Plan. Cindy Avrette, an attorney with the Research Division, was recognized to answer questions. Senator Brock was recognized to offer a technical corrections amendment and moved for its adoption. The motion carried. Senator Brock then offered an amendment to remove a fee sunset. He moved for the amendment's adoption and the motion carried. Senator Hartsell offered an amendment and Jonathan Tart, an analyst with the Fiscal Research Division, was recognized to explain it. The amendment allows taxpayers to get a benefit from amortization and depreciation. Senator Hartsell moved for the adoption of the amendment and the motion carried. Senator Apodaca moved for a favorable report

as amended with a referral to the Senate Appropriations Committee. The motion carried. A copy of the PCS, the summary, the money report, the five amendments, the job creation plan chart, and fees by subject chart is attached.

The meeting adjourned at 4:28 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

CORRECTED REPORT

Wednesday, May 25, 2011

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL AS AMENDED

H.B.(CS #2) **200** Appropriations Act of 2011.

Draft Number:	30341
Sequential Referral:	Appropriations/Base Budget
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 200
Committee Substitute Favorable 4/26/11
Committee Substitute #2 Favorable 4/28/11
Fourth Edition Engrossed 5/4/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H200-PCS30341-LExf-13

Short Title: Appropriations Act of 2011. (Public)

Sponsors:

Referred to:

March 2, 2011

A BILL TO BE ENTITLED

AN ACT TO SPUR THE CREATION OF PRIVATE SECTOR JOBS; REORGANIZE AND REFORM STATE GOVERNMENT; MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS AND INSTITUTIONS; AND TO ENACT BUDGET RELATED AMENDMENTS.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

TITLE

SECTION 1.1. This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2011."

INTRODUCTION

SECTION 1.2. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the State Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the fiscal biennium ending June 30, 2013, according to the following schedule:

Current Operations – General Fund	**2011-2012**	**2012-2013**
EDUCATION		
Community Colleges System Office	$ 982,305,416	$ 982,305,416
Department of Public Instruction	7,226,755,942	7,191,532,300

University of North Carolina – Board of Governors		
Appalachian State University	145,615,228	145,732,585
East Carolina University		
Academic Affairs	247,883,972	247,883,972
Health Affairs	65,196,439	65,196,439
Elizabeth City State University	38,394,847	38,567,166
Fayetteville State University	56,968,000	56,968,000
NC A&T State University	105,413,397	105,852,346
NC Central University	94,413,933	94,413,933
NC State University		
Academic Affairs	434,600,291	434,714,473
Agricultural Research	59,239,461	59,239,461
Agricultural Extension	43,539,609	43,539,609
UNC-Asheville	41,984,728	41,984,728
UNC-Chapel Hill		
Academic Affairs	309,582,768	312,944,304
Health Affairs	219,507,009	222,570,732
AHEC	49,747,851	49,747,851
UNC-Charlotte	216,916,678	217,932,821
UNC-Greensboro	173,205,364	173,205,364
UNC-Pembroke	61,700,446	62,443,695
UNC-School of the Arts	27,849,173	27,849,173
UNC-Wilmington	105,967,837	107,163,413
Western Carolina University	90,758,068	91,236,972
Winston-Salem State University	76,496,951	76,496,950
General Administration	38,186,863	27,628,722
University Institution Programs	(395,719,732)	(398,078,528)
Related Educational Programs	85,679,060	115,272,420
UNC Financial Aid Private Colleges	91,426,688	62,286,250
NC School of Science & Math	18,937,535	18,937,535
UNC Hospitals	25,000,000	25,000,000
Total University of North Carolina – Board of Governors	$ 2,528,492,464	$ 2,526,730,386
HEALTH AND HUMAN SERVICES		
Department of Health and Human Services		
Division of Central Management and Support	$ 45,011,380	$ 39,411,990
Division of Aging and Adult Services	35,359,667	35,359,667
Division of Services for Blind/Deaf/Hard of Hearing	7,198,149	7,181,925
Division of Child Development	266,102,933	266,102,933
Division of Health Service Regulation	16,133,031	16,133,031
Division of Medical Assistance	2,928,301,996	2,904,589,504
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	648,478,227	673,478,227
NC Health Choice	79,452,317	83,717,865
Division of Public Health	186,876,812	153,972,401
Division of Social Services	184,286,652	184,286,652
Division of Vocational Rehabilitation	37,125,788	37,528,128
Total Health and Human Services	$ 4,434,326,952	$ 4,401,762,323
NATURAL AND ECONOMIC RESOURCES		
Department of Agriculture and Consumer Services	$ 71,484,049	$ 68,177,845
Department of Commerce		
Commerce	48,426,722	31,232,429

Commerce State-Aid	27,201,984	27,041,395
NC Biotechnology Center	16,576,615	16,576,615
Rural Economic Development Center	39,244,692	39,244,692
Department of Environment and Natural Resources	167,763,360	162,750,956
DENR Clean Water Management Trust Fund	12,500,000	12,500,000
Department of Labor	15,836,887	15,836,887
Wildlife Resources Commission	16,000,000	15,221,179
JUSTICE AND PUBLIC SAFETY		
Department of Correction	$ 1,337,816,346	$ 1,348,410,793
Department of Crime Control and Public Safety	247,927,627	270,204,922
Judicial Department	436,243,082	432,464,141
Judicial Department – Indigent Defense	111,732,877	111,160,465
Department of Justice	52,330,297	24,537,108
Department of Juvenile Justice and Delinquency Prevention	135,593,692	131,140,565
GENERAL GOVERNMENT		
Department of Administration	$ 62,232,817	$ 64,136,947
Department of State Auditor	11,857,574	10,676,035
Office of State Controller	28,368,957	28,368,957
Department of Cultural Resources		
Cultural Resources	60,994,609	58,256,841
Roanoke Island Commission	1,203,491	0
State Board of Elections	5,186,603	5,126,603
General Assembly	53,259,495	50,104,208
Office of the Governor		
Office of the Governor	4,887,061	4,887,061
Office of State Budget and Management	5,848,663	5,848,663
OSBM – Reserve for Special Appropriations	1,940,612	440,612
Housing Finance Agency	10,673,051	10,673,051
Department of Insurance		
Insurance	36,393,921	36,393,921
Insurance – Volunteer Safety Workers' Compensation	2,294,000	2,623,654
Office of Lieutenant Governor	775,245	775,245
Office of Administrative Hearings	4,983,871	4,983,871
Department of Revenue	78,199,538	78,199,538
Department of Secretary of State	10,654,563	10,654,563

Department of State Treasurer		
State Treasurer	6,657,031	6,621,750
State Treasurer – Retirement for Fire and Rescue Squad Workers	17,812,114	17,812,114
RESERVES, ADJUSTMENTS, AND DEBT SERVICE		
Contingency and Emergency Fund	$ 5,000,000	$ 5,000,000
State Retirement System Contribution	297,400,000	404,200,000
Judicial Retirement System Contribution	7,900,000	9,000,000
Firemen's & Rescue Squad Workers' Pension Fund	5,800,000	6,900,000
National Guard Pension Fund	263,000	523,000
State Health Plan	7,119,541	102,151,104
Information Technology Fund	4,458,142	6,158,142
Reserve for Job Development Investment Grants (JDIG)	15,400,000	27,400,000
Continuation Review Reserve	0	22,982,380
Comprehensive Review of Compensation Plans	2,000,000	0
Salary Adjustment and Performance Pay Reserve	0	328,000,000
Severance Expenditure Reserve	75,000,000	0
Automated Fraud Detection Development	1,000,000	7,000,000
Controller – Fraud Detection Development	500,000	500,000
Debt Service		
General Debt Service	688,957,188	759,984,974
Federal Reimbursement	1,616,380	1,616,380
TOTAL CURRENT OPERATIONS – GENERAL FUND	**$ 19,425,196,471**	**$ 19,886,830,031**

GENERAL FUND AVAILABILITY STATEMENT

SECTION 2.2.(a) The General Fund availability used in developing the 2011-2013 biennial budget is shown below.

	FY 2011-2012	FY 2012-2013
Unappropriated Balance Remaining	$ 0	$ 72,311,073
Ending Unreserved Fund Balance for FY 2009-2010	236,902,394	0
Anticipated Reversions for FY 2010-2011 – S.L. 2011-15 (S.B. 109)	537,740,799	0
Anticipated Overcollections from FY 2010-2011	180,800,000	0
Repayment of Medicaid Receipts in FY 2010-2011	(125,000,000)	0
Statutory Earmarks:		
Savings Reserve Account	(202,994,340)	0
Repairs and Renovations Reserve Account	(202,994,339)	0
Beginning Unreserved Fund Balance	**$ 424,454,514**	**$ 72,311,073**

Revenues Based on Existing Tax Structure	**$ 18,129,800,000**	**$ 19,181,900,000**
Nontax Revenues		
Investment Income	$ 59,400,000	$ 76,700,000
Judicial Fees	217,800,000	217,800,000
Disproportionate Share	100,000,000	100,000,000
Insurance	71,400,000	73,500,000
Other Nontax Revenues	182,500,000	182,500,000
Highway Trust Fund/Use Tax Reimbursement Transfer	41,500,000	27,600,000
Highway Fund Transfer	20,230,000	24,080,000
Subtotal Nontax Revenues	**$ 692,830,000**	**$ 702,180,000**
Total General Fund Availability	**$ 19,247,084,514**	**$ 19,956,391,073**
Adjustments to Availability: 2011 Session		
Loss of Estate Tax Revenue	$ (57,100,000)	$ (72,200,000)
Private Sector Job Creation Package	(186,400,000)	(485,300,000)
Repeal Deduction for Sale of a Manufactured Home Community to Manufactured Homeowners	100,000	100,000
Repeal Deduction for Severance Wages	16,000,000	16,400,000
Repeal Credit for Recycling Oyster Shells	100,000	100,000
Repeal Energy Star Tax Holiday	1,900,000	2,000,000
Repeal Sales Tax Exemption for Nutritional Supplements Sold by Chiropractors	300,000	400,000
Repeal Wildlife Resources Commission Sales Tax Earmark	22,970,000	23,920,000
Suspend Corporate Income Tax Earmark (Public School Construction)	0	74,750,000
Increase in Judicial Fees	60,986,955	60,986,955
Increase Investment Company Notice Filing Fee	1,600,000	1,600,000
Increase Parking Fees for Visitors	550,000	550,000
Loss of Revenue from the Town of Butner	(1,213,235)	(1,213,235)
Transfer from E-Commerce Reserve Fund	4,483,526	0
Divert Funds from Parks & Recreation Trust Fund	4,217,500	0
Divert Funds from Recreational/Natural Heritage Trust Fund	4,500,000	0
Transfer from Highway Fund for State Highway Patrol	193,585,434	189,859,507
Transfer from Highway Trust Fund for School Bus Replacement	35,223,642	0
Transfer from Mercury Prevention Pollution Fund	125,000	0
Transfer from Commerce – Enterprise Fund	250,000	0
Divert Funds from Scrap Tire Disposal Account	1,134,495	0
Divert Funds from White Goods Management Account	1,131,342	0
Diversion of Golden LEAF Funds	67,563,760	67,563,760
Tobacco Trust Fund Master Settlement Agreement Funds	8,334,360	8,790,386
Health and Wellness Trust Fund Master Settlement Agreement Funds	16,334,360	16,790,386
Transfer Health and Wellness Trust Funds to Public Health	32,904,411	0
Department of Revenue – Accounts Receivable Program	15,000,000	15,000,000
Medicaid Disproportionate Share Receipts	15,000,000	15,000,000
Adjust Transfer from Insurance Regulatory Fund	(742,348)	(742,348)
Adjust Transfer from Treasurer's Office	(3,881,172)	(3,916,453)
Subtotal Adjustments to Availability: 2011 Session	**$ 254,958,030**	**$ (69,561,042)**
Revised General Fund Availability	**$ 19,502,042,544**	**$ 19,886,830,031**
Less General Fund Appropriations	**$ (19,429,731,471)**	**$ (19,886,830,031)**

Unappropriated Balance Remaining	**$ 72,311,073**	**$ 0**

SECTION 2.2.(b) Notwithstanding the provisions of G.S. 105-187.9(b)(1) and G.S. 105-187.9(b)(2), the sum to be transferred from the Highway Trust Fund under those subdivisions for the 2011-2012 fiscal year is forty-one million five hundred thousand dollars ($41,500,000) and for the 2012-2013 fiscal year is twenty-seven million six hundred thousand dollars ($27,600,000).

SECTION 2.2.(c) Notwithstanding the provisions of G.S. 115C-546.1, the Secretary of Revenue shall transfer the corporate income tax funds specified in G.S. 115C-546.1(b) to the State Controller for deposit in Nontax Budget Code 19978 (Intrastate Transfers) during the 2012-2013 fiscal year to offset continued operations of the State's public schools.

SECTION 2.2.(d) Notwithstanding any other provision of law to the contrary, effective July 1, 2011, the following amounts shall be transferred to the State Controller to be deposited in Nontax Budget Code 19878 (Intrastate Transfers) or the appropriate budget code as determined by the State Controller. These funds shall be used to support the General Fund appropriations as specified in this act for the 2011-2012 fiscal year.

Budget Code	Fund Code	Description	Amount
24100	2514	E-Commerce Reserve	$ 4,483,526
54600	5881	Commerce Enterprise Fund	250,000
24300	2119	Mercury Prevention Pollution Fund	125,000

SECTION 2.2.(e) Pursuant to Section 2(b) of S.L. 1999-2, the fifty percent (50%) of the 2011-2012 and the 2012-2013 annual installment payments to the North Carolina State Specific Account that would have been transferred to The Golden L.E.A.F. (Long-Term Economic Advancement Foundation), Inc., are transferred to the General Fund.

SECTION 2.2.(f) Notwithstanding the provisions of G.S. 105-187.19(b), effective for taxes levied during the 2011-2012 fiscal year, the Secretary of Revenue shall credit to the General Fund the sum of one million one hundred thirty-four thousand four hundred ninety-five dollars ($1,134,495) from the net tax proceeds that G.S. 105-187.19(b) directs the Secretary to credit to the Scrap Tire Disposal Account.

SECTION 2.2.(g) Notwithstanding the provisions of G.S. 105-187.24, effective for taxes levied during the 2011-2012 fiscal year, the Secretary of Revenue shall credit to the General Fund the sum of one million one hundred thirty-one thousand three hundred forty-two dollars ($1,131,342) from the net tax proceeds that G.S. 105-187.24 directs the Secretary to credit to the White Goods Management Account.

SECTION 2.2.(h) Notwithstanding the provisions of G.S. 105-228.30(b) and G.S. 113-44.15, effective for taxes levied during the 2011-2012 fiscal year, the Secretary of Revenue shall credit the sum of four million two hundred seventeen thousand five hundred dollars ($4,217,500) to the General Fund of the net tax proceeds that G.S. 105-228.30(b) directs the Secretary to credit to the Parks and Recreation Trust Fund.

SECTION 2.2.(i) Notwithstanding the provisions of G.S. 105-228.30(b) and G.S. 113-77.9, effective for taxes levied during the 2011-2012 fiscal year, the Secretary of Revenue shall credit the sum of four million five hundred thousand dollars ($4,500,000) to the General Fund of the net tax proceeds that G.S. 105-228.30(b) directs the Secretary to credit to the Natural Heritage Trust Fund.

SECTION 2.2.(j) Of the funds available in the year-end 2010-2011 fiscal year fund balance, the Director of the Budget may use up to one hundred twenty-five million dollars ($125,000,000) to repay the federal Centers for Medicare and Medicaid Services for excess Medicaid funds drawn down during the 2009-2010 fiscal year. The Director of the Budget shall report the amount of funds used under this section no later than 30 days after payment to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division.

SECTION 2.2.(k) Notwithstanding the provisions of G.S. 143C-4-3, the State Controller shall transfer only two hundred two million nine hundred ninety-four thousand three hundred thirty-nine dollars ($202,994,339) from the unreserved fund balance to the Repairs and

Renovations Reserve Account on June 30, 2011. This subsection becomes effective June 30, 2011.

SECTION 2.2.(l) Funds transferred under this section to the Repairs and Renovations Reserve Account are appropriated for the 2011-2012 fiscal year to be used in accordance with G.S. 143C-4-3.

SECTION 2.2.(m) Notwithstanding G.S. 143C-4-2, the State Controller shall transfer only two hundred two million nine hundred ninety-four thousand three hundred thirty-nine dollars ($202,994,339) from the unreserved fund balance to the Savings Reserve Account on June 30, 2011. This is not an "appropriation made by law," as that phrase is used in Section 7(1) of Article V of the North Carolina Constitution. This subsection becomes effective June 30, 2011.

PART III. CURRENT OPERATIONS/HIGHWAY FUND

CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

SECTION 3.1. Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the fiscal biennium ending June 30, 2013, according to the following schedule:

Current Operations – Highway Fund	**2011-2012**	**2012-2013**
Department of Transportation		
Administration	$ 85,412,594	$ 85,412,594
Division of Highways		
Administration	34,836,793	34,836,793
Construction	87,232,806	86,339,067
Maintenance	1,202,416,068	1,253,761,275
Planning and Research	4,055,402	4,055,402
OSHA Program	372,792	372,792
Ferry Operations	33,689,589	41,038,132
State Aid		
Municipalities	89,373,921	90,187,224
Public Transportation	69,801,308	69,801,308
Airports	18,401,413	22,311,031
Railroads	21,701,153	21,701,153
Governor's Highway Safety	273,093	273,093
Division of Motor Vehicles	90,142,238	43,004,042
Other State Agencies, Reserves, Transfers	296,240,830	366,066,094
Capital Improvements	15,250,000	15,000,000
Total	**$ 2,049,200,000**	**$ 2,134,160,000**

HIGHWAY FUND AVAILABILITY STATEMENT

SECTION 3.2. The Highway Fund availability used in developing the 2011-2013 fiscal biennial budget is shown below:

Highway Fund Availability Statement	**2011-2012**	**2012-2013**
Unappropriated Balance from Previous Year	$ 24,000,000	$ 0
Beginning Credit Balance	0	0
Estimated Revenue	2,025,200,000	2,134,160,000
Total Highway Fund Availability	$ 2,049,200,000	$ 2,134,160,000
Unappropriated Balance	$ 0	$ 0

PART IV. HIGHWAY TRUST FUND APPROPRIATIONS

HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 4.1. Appropriations from the State Highway Trust Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the fiscal biennium ending June 30, 2013, according to the following schedule:

Current Operations – Highway Trust Fund	**2011-2012**	**2012-2013**
Intrastate	$ 460,823,529	$ 487,503,034
Aid to Municipalities	51,216,036	54,043,432
Secondary Roads	36,155,667	41,820,944
Urban Loops	275,761,364	237,407,986
Program Administration	44,774,400	47,107,200
Turnpike Authority	49,000,000	49,000,000
Transfer to General Fund	76,720,918	27,595,861
Transfer to Highway Fund	400,000	0
Debt Service	79,231,728	81,481,543
Mobility Fund	41,326,358	60,950,000
GRAND TOTAL CURRENT OPERATIONS	**$ 1,115,410,000**	**$ 1,086,910,000**

HIGHWAY TRUST FUND AVAILABILITY STATEMENT

SECTION 4.2. The Highway Trust Fund availability used in developing the 2011-2013 fiscal biennial budget is shown below:

Highway Trust Fund Availability	**2011-2012**	**2012-2013**
Unappropriated Balance	$ 75,000,000	$ 0
Estimated Revenue	1,040,410,000	1,086,910,000
Total Highway Trust Fund Availability	**$ 1,115,410,000**	**$ 1,086,910,000**

PART V. OTHER APPROPRIATIONS

APPROPRIATION OF OTHER FUNDS

SECTION 5.1.(a) State funds, as defined in G.S. 143C-1-1(d)(25), are appropriated as provided in G.S. 143C-1-2 for the 2011-2013 fiscal biennium, with the adjustments made to the continuation budget as reflected in the Governor's Recommended Budget and Budget Support Document, as follows:

(1) For all budget codes listed in "The State of North Carolina Governor's Recommended Budget, 2011-2013" and in the Budget Support Document, cash balances and receipts are appropriated up to the amounts specified, as adjusted by the General Assembly, for the 2011-2012 fiscal year and the 2012-2013 fiscal year. Funds may be expended only for the programs, purposes, objects, and line items or as otherwise authorized by the General Assembly. Expansion budget funds listed in those documents are appropriated only as otherwise provided in this act.

(2) Notwithstanding the provisions of subdivision (1) of this subsection:

a. Any receipts that are required to be used to pay debt service requirements for various outstanding bond issues and certificates of participation are appropriated up to the actual amounts received for the 2011-2012 fiscal year and the 2012-2013 fiscal year and shall be used only to pay debt service requirements.

b. Other funds, cash balances, and receipts of funds that meet the definition issued by the Governmental Accounting Standards Board of a trust or agency fund are appropriated for and in the amounts

required to meet the legal requirements of the trust agreement for the 2011-2012 fiscal year and the 2012-2013 fiscal year.

SECTION 5.1.(b) Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by the State Budget Act. Overrealized receipts are appropriated up to the amounts necessary to implement this subsection.

SECTION 5.1.(c) In addition to the consultation and reporting requirements set out in G.S. 143C-6-4, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division within 30 days after the end of each quarter on any overrealized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount overrealized, the amount authorized for expenditure, and the rationale for expenditure.

SECTION 5.1.(d) Notwithstanding subsections (a) and (b) of this section, there is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year.

OTHER RECEIPTS FROM PENDING GRANT AWARDS

SECTION 5.2.(a) Notwithstanding G.S. 143C-6-4, State agencies may, with approval of the Director of the Budget and after consultation with the Joint Legislative Commission on Governmental Operations, spend funds received from grants awarded subsequent to the enactment of this act.

SECTION 5.2.(b) The Office of State Budget and Management shall work with the recipient State agencies to budget grant awards according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a time-limited basis. The Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to expending any funds received from grant awards. Funds received from such grants are hereby appropriated and shall be incorporated into the authorized budget of the recipient State agency.

SECTION 5.2.(c) Notwithstanding the provisions of this section, no State agency may accept a grant not anticipated in this act if acceptance of the grant would obligate the State to make future expenditures relating to the program receiving the grant or would otherwise result in a financial obligation as a consequence of accepting the grant funds.

SECTION 5.2.(d) Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may spend funds received from the following grants for the 2011-2012 fiscal year awarded subsequent to the enactment of this act for up to the specified amounts:

(1)	Child Nutrition Equipment Assistance	$815,762
(2)	Verizon Thinkfinity State Education Partnership	$ 40,000
(3)	State Abstinence Education Program	$1,585,347.

Neither the approval of the Director of the Budget nor consultation with the Joint Legislative Commission on Governmental Operations is required prior to the expenditure of these funds. The provisions of subsection (b) of this section do not apply to these funds.

CIVIL FORFEITURE FUNDS

SECTION 5.3. Appropriations. – Appropriations are made from the Civil Penalty and Forfeiture Fund for the fiscal biennium ending June 30, 2013, as follows:

	FY 2011-2012	FY 2012-2013
School Technology Fund	$ 18,000,000	$ 18,000,000
State Public School Fund	120,362,790	120,362,790
Total Appropriation	$ 138,362,790	$ 138,362,790

EDUCATION LOTTERY

SECTION 5.4.(a) Notwithstanding G.S. 18C-164, the revenue used to support appropriations made in this act is transferred from the State Lottery Fund in the amount of four

hundred twenty-four million nine hundred seventy-three thousand six hundred thirty dollars ($424,973,630) for the 2011-2012 fiscal year.

SECTION 5.4.(b) Notwithstanding G.S. 18C-164, the appropriations made from the Education Lottery Fund for the 2011-2012 fiscal year are as follows:

Teachers in Early Grades	$220,643,188
Prekindergarten Program	$ 63,135,709
Public School Building Capital Fund	$100,000,000
Scholarships for Needy Students	$ 30,450,000
UNC Need-Based Financial Aid	$ 10,744,733
Total Appropriation	$424,973,630

SECTION 5.4.(c) Notwithstanding G.S. 18C-164, the North Carolina State Lottery Commission shall not transfer funds to the Education Lottery Reserve Fund for the 2011-2012 fiscal year or the 2012-2013 fiscal year.

SECTION 5.4.(d) Notwithstanding G.S. 18C-164(c), G.S. 115C-546.2(d), or any other provision of law, funds appropriated in this section to the Public School Building Capital Fund for the 2011-2012 fiscal year shall be allocated to counties on the basis of average daily membership (ADM).

SECTION 5.4.(e) Notwithstanding G.S. 18C-164(c), Article 35A of Chapter 115C of the General Statutes, or any other provision of law, the funds appropriated in this section for UNC Need-Based Financial Aid shall be administered in accordance with the policy adopted by the Board of Governors of The University of North Carolina.

SECTION 5.4.(f) Notwithstanding G.S. 18C-164(f), if the actual net lottery revenues for the 2011-2012 fiscal year exceed the amounts appropriated in subsection (b) of this section, the excess net lottery revenues shall be allocated for school capital on the basis of average daily membership.

SECTION 5.4.(g) Funds appropriated in this section for scholarships for needy students shall be used only for students at the constituent institutions of The University of North Carolina and the constituent institutions of the Community College System.

PART VI. GENERAL PROVISIONS

CLARIFY CERTIFIED BUDGET

SECTION 6.1.(a) The purpose of this section is to clarify the distinction between changes to the budget enacted by the General Assembly in this act and changes made by the Director of the Budget pursuant to other authority.

SECTION 6.1.(b) For the 2011-2013 fiscal biennium, and notwithstanding the provisions of Chapter 143C of the General Statutes or any other provision of law, the certified budget for each State agency shall reflect only the total of all appropriations enacted for each State agency by the General Assembly in this act as modified by this act; therefore, the Director of the Budget shall modify the certified budget only to reflect the following actions and only to the extent that they are authorized by this act:

(1) The allocation of funds set out in reserves.

(2) Government reorganizations.

The Director of the Budget shall set out all other budget modifications in the authorized budget.

CONTINGENCY AND EMERGENCY FUND LIMITATION

SECTION 6.2. For the 2011-2013 fiscal biennium, and notwithstanding the provisions of G.S. 143C-4-4(b), funds appropriated to the Contingency and Emergency Fund may be used only for expenditures required (i) by a court or Industrial Commission order or (ii) to respond to events as authorized under G.S. 166A-5(1)a.9. of the North Carolina Emergency Management Act of 1977. These funds shall not be used for other statutorily authorized purposes or for any other contingencies and emergencies.

ESTABLISHING OR INCREASING FEES UNDER THIS ACT

SECTION 6.3.(a) Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee to the level authorized or anticipated in this act.

SECTION 6.3.(b) Notwithstanding G.S. 150B-21.1A(a), an agency may adopt an emergency rule in accordance with G.S. 150B-21.1A to establish or increase a fee as authorized

by this act if the adoption of a rule would otherwise be required under Article 2A of Chapter 150B of the General Statutes.

CONSULTATION REQUIRED BEFORE CREATION OF NEW FUNDS

SECTION 6.4. Notwithstanding G.S. 143C-1-3 or any other provision of law to the contrary, the Office of State Budget and Management and the Office of the State Controller shall consult with the Joint Legislative Commission on Governmental Operations prior to the establishment of a new fund as defined in G.S. 143C-1-3.

JUSTIFICATION/OPERATIONAL REVIEWS

SECTION 6.6.(a) It is the intent of the General Assembly to subject the operations of State government and the operations of nongovernmental entities receiving State funds to periodic Justification Reviews. The Reviews shall be conducted by the Fiscal Research Division and shall specifically address the following questions:

(1) Is the program or service fulfilling the letter and/or intent of its legislative mandate?
(2) Is that mandate still justified, either in its original form or some modified form?
(3) Does the program follow identified best practices to address its mandate?
(4) Is the program duplicative of other services provided by the public or private sectors?
(5) Is the program effective?
(6) Is the program efficient?
(7) Are there any other obstacles that might limit the program's ability to accomplish its mission?

SECTION 6.6.(b) For the fiscal year 2011-2012, the following programs or services shall be the subject of review:

(1) Lumberton Farmer's Market – Department of Agriculture and Consumer Services.
(2) DHHS postsecondary education programs.
(3) Environmental Rating Scales Contract.

SECTION 6.6.(c) By May 1, 2012, the Fiscal Research Division shall report its findings and recommendations to the Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate. The report shall:

(1) Provide a description of each program.
(2) Identify major policy issues that the General Assembly should address.
(3) Explore means to achieve program objectives more efficiently.
(4) Characterize the likely results of alternative funding levels and/or opportunities to save taxpayer dollars.
(5) Identify performance measures that have been established by the agency and the usefulness of those performance measures, as well as the agency's progress toward meeting their established measures.

CONTINUATION REVIEW OF CERTAIN FUNDS/PROGRAMS/DIVISIONS

SECTION 6.7.(a) It is the intent of the General Assembly to periodically and systematically review the funds, agencies, divisions, and programs financed by State government. This process is known as the Continuation Review Program. The Continuation Review Program is intended to assist the General Assembly in determining whether to continue, reduce, or eliminate funding for the State's funds, agencies, divisions, and programs subject to continuation review.

SECTION 6.7.(b) The Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate may review the funds, programs, and divisions listed in this section and shall determine whether to continue, reduce, or eliminate funding for the funds, programs, and divisions, subject to the Continuation Review Program. The Fiscal Research Division may issue instructions to the State departments and agencies subject to continuation review regarding the expected content and format of the reports required by this section. No later than December 1, 2011, the following agencies shall report to the Fiscal Research Division:

(1) Justice and Public Safety. – Family Court.
(2) Education. – Center for Public Television as provided by Section 9.1 of this act.
(3) Natural and Economic Resources. –
a. Commerce/Office of Science and Technology.
b. Wildlife Resources Commission/Conservation Education.
(4) Health and Human Services. – Division of Information Resource Management.
(5) General Government. – General Assembly Facility Services.
(6) Transportation. –
a. Division of Motor Vehicles Drivers License Program.
b. Visitor Centers Funding.

SECTION 6.7.(c) The continuation review reports required in this section shall include the following information:

(1) A description of the fund, agency, division, or program mission, goals, and objectives.
(2) The statutory objectives for the fund, agency, division, or program and the problem or need addressed.
(3) The extent to which the fund, agency, division, or program objectives have been achieved.
(4) The fund's, agency's, division's, or program's functions or programs performed without specific statutory authority.
(5) The performance measures for each fund, agency, division, or program and the process by which the performance measures determine efficiency and effectiveness.
(6) Recommendations for statutory, budgetary, or administrative changes needed to improve efficiency and effectiveness of services delivered to the public.
(7) The consequences of discontinuing funding.
(8) Recommendations for improving services or reducing costs or duplication.
(9) The identification of policy issues that should be brought to the attention of the General Assembly.
(10) Other information necessary to fully support the General Assembly's Continuation Review Program along with any information included in instructions from the Fiscal Research Division.

SECTION 6.7.(d) State departments and agencies identified in subsection (b) of this section shall submit a final report to the General Assembly by March 1, 2012.

UTILIZATION REVIEW/PUBLIC SCHOOL AND PUBLIC HEALTH NURSES

SECTION 6.9.(a) Beginning July 1, 2011, the Fiscal Research Division, in consultation with the Department of Public Instruction and the Department of Health and Human Services, shall review all publicly (federal and State) funded public school nurse positions assigned within or connected to those respective organizations in order to determine the most effective and cost-efficient ways to provide needed nursing service to public school students. The review shall identify specific areas where overlaps of service provision may exist. The review shall focus on ways to maximize existing nursing resources and to change prospectively the manner in which local school nurses are allocated to better address the needs of students in the public schools at reasonable cost. Specifically, the review shall examine at least all of the following:

(1) Feasibility of having the money all flow to local public health departments for management and administration purposes to align health-related activities with the local entity best equipped to manage.
(2) Feasibility of using a mix of licensed nurses, both registered nurses (RN) and licensed practical nurses (LPN), to provide health care services in the public schools.
(3) Feasibility of allowing a school nurse to be licensed as an LPN as long as the nurse works under the direct supervision of an RN.
(4) Development of a new allocation formula that considers:
a. Average daily membership.

b. Local match requirement.
c. A base amount for each local school administrative unit.

SECTION 6.9.(b) By May 1, 2012, the Fiscal Research Division shall report to the House and Senate Appropriations Committees.

GLOBAL TRANSPARK DEBT, REPORT, AND STUDY

SECTION 6.10.(a) G.S. 147-69.2(b)(11), as amended by Section 7 of S.L. 2005-144, Section 2 of S.L. 2005-201, Section 28.17 of S.L. 2005-276, Section 27.7 of S.L. 2007-323, and Section 25.2 of S.L. 2009-451, reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

...

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than October 1, ~~2011.~~ 2012. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision."

SECTION 6.10.(b) The Global TransPark Authority shall report to the Program Evaluation Division on its strategic, business, and financial plans. The report shall be made by no later than January 1, 2012, and shall include the Authority's proposed schedule to achieve financial self-sufficiency and proposed schedule to repay to the Escheat Fund the investment authorized under G.S. 147-69.2(b)(11) plus any accumulated interest, both of which totaled forty million sixty-seven thousand nine hundred eighteen dollars and twenty cents ($40,067,918.20) as of March 31, 2011.

SECTION 6.10.(c) The Program Evaluation Division of the General Assembly shall study the feasibility and implications of (i) transferring the entire Global TransPark Authority to another State agency and (ii) transferring functions of the Global TransPark Authority to other State agencies as part of a consolidation. The term "functions of the Global TransPark Authority" includes, but is not limited to, administration, planning, economic development and marketing, property management, and training center functions. The Program Evaluation Division shall report its findings and make a recommendation from this study to the Joint Legislative Program Evaluation Oversight Committee no later than May 1, 2012.

HEALTH AND WELLNESS TRUST FUND AND TOBACCO TRUST FUND/FUTURE MSA PAYMENTS

SECTION 6.11.(a) The Health and Wellness Trust Fund (HWTF) and Health and Wellness Trust Fund Commission are abolished, and Article 6C of Chapter 147 of the General Statutes is repealed.

SECTION 6.11.(b) Funds remaining in the Health and Wellness Trust Fund on June 30, 2011, shall be transferred to the Department of Health and Human Services and shall be carried forward to fiscal year 2011-2012 to be used by the Department for the following purposes:

(1) Up to the sum of twenty-two million dollars ($22,000,000) shall be used to administer grants associated with the following programs and initiatives:
a. Teen Tobacco Prevention.
b. ChecKmeds.
c. Medication Assistance Programs.
d. Obesity Prevention.

(2) The sum of ten million dollars ($10,000,000) shall be used to reduce the total savings required to be achieved for the Medicaid program by Community Care of North Carolina.

(3) The remainder shall be used to reduce the Medicaid Provider Rate cut.

SECTION 6.11.(c) G.S. 116-29.1(b)(1) reads as rewritten:

"(b) The General Assembly finds that it is imperative that the State provide a minimum of fifty million dollars ($50,000,000) each calendar year to the University Cancer Research Fund; therefore, effective July 1 of each calendar year:

(1) ~~Notwithstanding G.S. 143C-9-3, of~~Of the funds credited to ~~the Tobacco Trust Account,~~Budget Code 69430 in the Department of State Treasurer, the sum of eight million dollars ($8,000,000) is transferred from ~~the Tobacco Trust Account~~Budget Code 69430 to the University Cancer Research Fund and appropriated for this purpose.

...."

SECTION 6.11.(d) Section 6 of S.L. 1999-2 reads as rewritten:

"Section 6. It is the intent of the General Assembly that the funds under the Master Settlement Agreement, which is incorporated into the Consent Decree, be allocated as follows:

(1) Fifty percent (50%) to the nonprofit corporation as provided by the Consent Decree.

(2) ~~Twenty-five percent (25%) to a trust fund to be established by the General Assembly~~Fifty percent (50%) shall be allocated as follows:

a. Debt service as authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-179 and S.L. 2004-124. As soon as practicable after the beginning of each fiscal year, the State Treasurer shall estimate and transfer to Budget Code 69430 the amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004.

b. The sum of eight million dollars ($8,000,000) is credited to Budget Code 69430 and shall be transferred to the University Cancer Research Fund in accordance with G.S. 116-29.1.

c. The balance remaining to be credited to the State General Fund to be used for the following purposes:

1. ~~for the~~The benefit of tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related ~~businesses, with this trust fund to be governed by a board of trustees representing these interests.~~businesses. To carry out this purpose, ~~this trust fund~~funds may provide direct and indirect financial ~~assistance, in accordance with criteria established by the trustees of the trust fund and~~assistance, to the extent allowed by law, to (i) indemnify tobacco producers, allotment holders, and persons engaged in tobacco-related businesses from the adverse economic effects of the Master Settlement Agreement, (ii) compensate tobacco producers and allotment holders for the economic loss resulting from lost quota, and (iii) revitalize tobacco dependent communities.

2. The benefit of health to fund programs and initiatives that include research, education, prevention, and treatment of health problems in North Carolina and to increase the capacity of communities to respond to the public's health needs through programs such as Health Choice and the State's Medicaid program.

~~(3) Twenty-five percent (25%) to a trust fund to be established by the General Assembly for the benefit of health, with this trust fund to be governed by a board of trustees comprised of a broad representation of health interests.~~"

SECTION 6.11.(e) The funds allocated in subdivision (2)a. of Section 6 of S.L. 1999-2, as rewritten by subsection (d) of this section, are appropriated from the General Fund for fiscal years 2011-2012 and 2012-2013 and shall be expended in accordance with the provisions of subdivision (2)a. of Section 6 of S.L. 1999-2, as amended by subsection (d) of this section.

SECTION 6.11.(f) Notwithstanding the provisions of G.S. 143-717(i), the administrative costs of the Tobacco Trust Fund shall not exceed six hundred twenty-five thousand dollars ($625,000) for fiscal year 2011-2012 and fiscal year 2012-2013.

SECTION 6.11.(g) Subsection (a) of this section shall be effective 60 days after this act becomes law or on October 1, 2011, whichever occurs first. Subsection (b) of this section becomes effective on June 30, 2011.

CONSOLIDATION OF AIR SERVICES AND CENTRALIZATION OF AIR MANAGEMENT/STATE-OWNED PASSENGER AND NON-PASSENGER VEHICLES

SECTION 6.13.(a) The State Motor Fleet project in the Work Plan of the Program Evaluation Division approved April 5, 2011, by the Joint Legislative Program Evaluation Oversight Committee is amended as described in this section.

SECTION 6.13.(b) The Program Evaluation Division shall evaluate the consolidation of air services provided by the Department of Transportation, the State Bureau of Investigation, and the University of North Carolina Passenger Mission and shall recommend the most appropriate agency to house the consolidated services. Other air services may be examined for consolidation by the Program Evaluation Division. The study shall evaluate savings through consolidation, including potential savings from the following:

(1) Reduction in aircraft.
(2) Reduction in personnel.
(3) Reduction in State facilities.
(4) An improved level of service.
(5) The potential sale of the DOT Beechcraft B200 aircraft tail number N3NC and if so when the sale should take place.

SECTION 6.13.(c) The Program Evaluation Division shall study the formation of an Aviation Management Authority, as recommended by the Program Evaluation Division's April 2010 Report "Selling 25 Underutilized Aircraft May Yield Up to $8.1 Million and Save $1.5 Million Annually."

SECTION 6.13.(d) The Program Evaluation Division shall study all passenger and non-passenger vehicles owned and operated by all State government departments, institutions, and entities. The study shall include motor fleet fees and associated cash balances, mechanic operations, the use and purpose of assigned vehicles, and State fueling stations and associated fees.

SECTION 6.13.(e) The Program Evaluation Division shall report its findings and recommendations from the State Motor Fleet project described under this section to the Joint Legislative Program Evaluation Oversight Committee no later than May 1, 2012.

TORNADO ASSISTANCE

SECTION 6.14. The General Assembly finds that on April 16, 2011, heavy thunderstorms and powerful tornadoes swept through this State, with 18 counties sustaining the most extensive damage. Those counties are Bertie, Bladen, Craven, Cumberland, Currituck, Greene, Halifax, Harnett, Hertford, Hoke, Johnston, Lee, Onslow, Pitt, Robeson, Sampson, Wake, and Wilson Counties. It is the intent of the General Assembly to provide State matching funds to help mitigate losses, rebuild infrastructure, and aid affected citizens and businesses.

PART VI-A. INFORMATION TECHNOLOGY

INFORMATION TECHNOLOGY FUND/AVAILABILITY

SECTION 6A.1.(a) The availability used to support appropriations made in this act from the Information Technology Fund established in G.S. 147-33.72H is as follows:

	FY 2011-2012	FY 2012-2013
Appropriation from General Fund	$4,458,142	$6,158,142
Interest	$ 25,000	$ 25,000
IT Fund Balance June 30	$ 792,000	$ 0
Total Funds Available	**$5,275,142**	**$6,183,142**

Appropriations are made from the Information Technology Fund for the 2011-2013 fiscal biennium as follows:

	FY 2011-2012	FY 2012-2013
Information Technology Operations		
Center for Geographic Information and Analysis	$ 599,347	$ 599,347
Enterprise Security Risk Management	$ 864,148	$ 864,148
Enterprise Project Management Office	$1,473,285	$1,473,285
Architecture and Engineering	$ 581,986	$ 581,986
Criminal Justice Information Network	$ 166,422	$ 166,422
Statewide IT Procurement	$ 0	$ 0
State Web site	$ 100,000	$ 0
ITS Overhead Reduction	($91,486)	($91,486)
Subtotal Information Technology Operations	$3,693,702	$3,593,702
Information Technology Projects		
State Portal	$ 0	$ 0
IT Consolidation	$ 776,440	$ 784,440
Transfer to OSC for E-Forms	$ 500,000	$ 500,000
Subtotal Information Technology Projects	$1,276,440	$1,284,440
Data Integration License Funding Transfer to State Agencies	$ 200,000	$1,200,000
Position Transfer to Office of State Budget and Management	$ 105,000	$ 105,000
Total	**$5,275,142**	**$6,183,142**

SECTION 6A.1.(b) By September 1 of each year, data integration funding in the Information Technology Fund for that State fiscal year shall be transferred to State agencies in proportion to their use of data integration licenses at that point in time. The State Chief Information Officer shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division by September 2 of each year on the status of the transfer.

Any licensing requirements after the 2011-2013 fiscal biennium shall be the responsibility of the participating agency. For the 2012-2013 fiscal year, the State Chief Information Officer shall provide funding in the amount of one million two hundred thousand dollars ($1,200,000) to offset data integration licensing costs and shall charge agencies based on license usage for license costs in excess of one million two hundred thousand dollars ($1,200,000). The State Chief Information Officer shall notify affected agencies of this requirement by September 1, 2011. The State Chief Information Officer shall ensure that agencies choosing to participate after that date are notified prior to agreeing to participate in the data integration license agreement. The State Chief Information Officer shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division by September 2, 2011, on agency notification of their responsibility to fund any data integration license requirements after the 2011-2013 fiscal biennium.

SECTION 6A.1.(c) Unless a change is approved by the State Chief Information Officer after consultation with the Office of State Budget and Management, funds appropriated to the Information Technology Fund shall be spent only as specified in this section. Changes shall not result in any degradation to the operation or project for which the funds were originally appropriated.

Any changes to the specified uses shall be approved in writing by the State Chief Information Officer and shall immediately be reported to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on General Government, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on General Government and Information Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. This report shall include detailed reasons for the changes in use and shall explain why each change does not have any potential impact on the operation or project for which the funding was originally appropriated.

SECTION 6A.1.(d) The Office of the State Controller shall coordinate with the Office of the State Chief Information Officer to identify four positions in the Office of the State Chief Information Officer that shall be used, effective August 1, 2011, to support planning and

implementation of an automated fraud detection capability and an e-forms/digital signature project.

SECTION 6A.1.(e) This section is effective when it becomes law.

INFORMATION TECHNOLOGY OPERATIONS

SECTION 6A.2.(a) Information Technology Internal Service Fund Budget. – Notwithstanding G.S. 147-33.88, the Office of Information Technology Services shall develop an annual budget for review and approval by the Office of State Budget and Management in accordance with a schedule prescribed by the Director of the Office of State Budget and Management. The approved Information Technology Internal Service Fund budget shall be included in the Governor's budget recommendations to the General Assembly.

The Office of State Budget and Management shall ensure that State agencies have an opportunity to adjust their budgets based on any rate changes proposed by the Office of Information Technology Services and approved by the Office of State Budget and Management.

Any uses of the Internal Service Fund not specifically related to the operation of the Office of Information Technology Services shall immediately be reported to the Office of State Budget and Management and the Fiscal Research Division with an explanation as to why it was necessary to use the Fund.

SECTION 6A.2.(b) Enterprise Projects. – The State Chief Information Officer shall consult the respective State agency chief information officer and obtain approval from the Office of State Budget and Management prior to the initiation of any enterprise project or contract. State agency requirements shall be incorporated into any enterprise agreement signed by the State Chief Information Officer or his or her representative. Enterprise projects shall not exceed the participating State agencies' ability to financially support the contracts.

SECTION 6A.2.(c) The State Chief Information Officer shall not enter into any information technology contracts without obtaining written agreements from participating State agencies regarding the apportionment of the contract cost. State agencies agreeing to participate in a contract shall:

(1) Ensure that sufficient funds are budgeted to support their agreed shares of enterprise agreements throughout the life of the contract or project.

(2) Transfer the agreed-upon funds to the Information Technology Internal Service Fund in sufficient time for the Office of Information Technology Services to meet vendor contract requirements.

The State Chief Information Officer shall ensure that enterprise project and contract costs are allocated to participating agencies in an equitable manner.

SECTION 6A.2.(d) Agency Projects. – Prior to initiation, any information technology project, or any segment of a multipart project, costing more than two hundred fifty thousand dollars ($250,000) shall be included in the agency's most recent information technology plan and shall be approved by the General Assembly.

SECTION 6A.2.(e) Three-Year Contracts. – Notwithstanding the cash management provisions of G.S. 147-86.11, the Office of Information Technology Services may procure information technology goods and services for periods of up to a total of three years where the terms of the procurement contract require payment of all, or a portion, of the contract price at the beginning of the contract agreement. All of the following conditions shall be met before payment for these agreements may be disbursed:

(1) Any advance payment can be accomplished within the Information Technology Internal Service Fund budget.

(2) The State Controller receives conclusive evidence that the proposed agreement would be more cost-effective than a multiyear agreement that complies with G.S. 147-86.11.

(3) The procurement complies in all other aspects with applicable statutes and rules.

(4) The proposed agreement contains contract terms that protect the financial interest of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by any other reasonable means that have legally binding effect.

The Office of State Budget and Management shall ensure the savings from any authorized agreement shall be included in the Information Technology Internal Service Fund

rate calculations before the Office of State Budget and Management annually approves proposed rates. Any savings resulting from the agreements shall be returned to agencies included in the contract in the form of reduced rates. The Office of Information Technology Services shall submit a quarterly written report to the Office of State Budget and Management on any State agency budget impacts resulting from multiyear contracts. Under no circumstances shall multiyear contracts result in rate increases for participating agencies. The Office of Information Technology Services shall submit a quarterly written report of any authorizations granted under this section to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division of the North Carolina General Assembly.

SECTION 6A.2.(f) Information Technology Hosting. – State agencies developing and implementing information technology projects/applications shall use the State infrastructure to host their projects. An exception to this requirement may be granted only if approved by both the State Chief Information Officer on the basis of technology requirements and by the Office of State Budget and Management based on cost savings, subject to consultation with the Joint Legislative Commission on Governmental Operations and a report to the Joint Legislative Oversight Committee on Information Technology.

Projects/applications currently hosted outside the State infrastructure shall be returned to State infrastructure not later than the end of any current contract.

By October 1, 2011, the State Chief Information Officer shall report to the Joint Legislative Oversight Committee on Information Technology regarding projects currently hosted outside State infrastructure and a schedule to return those projects to State infrastructure.

SECTION 6A.2.(g) Service Level Agreements. – Service level agreements developed with supported State agencies shall include metrics for the Office of Information Technology Services as well as the supported agencies. When the Office of Information Technology Services or an agency fails to meet metrics established by the service level agreement, a report shall be provided to the Office of State Budget and Management and the Fiscal Research Division of the General Assembly within 10 days, detailing the shortfall and providing a corrective action plan with a time line.

SECTION 6A.2.(h) The Office of Information Technology Services shall assist State agencies in identifying the least expensive source and best value for the purchase of IT goods and services and shall ensure that agencies receive every available discount when purchasing IT goods and services. When the best value and the least expensive sources are different, the Office of Information Technology Services shall report to the Office of State Budget and Management and the Fiscal Research Division on why the least expensive vendor was not the best value.

SECTION 6A.2.(i) Agency Billing and Payments. – The State CIO shall ensure that bills from the Office of Information Technology Services are easily understood and fully transparent. If a State agency fails to pay its IT Internal Service Fund bills within 30 days of receipt, the Office of State Budget and Management may transfer funds from the agency to cover the cost of the bill from that agency to the IT Internal Service Fund.

COORDINATION OF INFORMATION TECHNOLOGY REQUIREMENTS AND GEOGRAPHIC INFORMATION SYSTEM REQUIREMENTS

SECTION 6A.3. The State Chief Information Officer, through the Enterprise Project Management Office, shall develop a plan and adopt measures to avoid the duplication of information technology capabilities and resources across State agencies. When multiple agencies require the same or substantially similar information technology capability, the State Chief Information Officer shall designate one State agency as the lead to coordinate support and to manage that capability for all State agencies requiring the capability, with the State Chief Information Officer maintaining oversight of the effort. Further, the Enterprise Project Management Office shall:

(1) Review all ongoing and future technology projects to determine whether the capabilities required for each project, or the specific requirements comprising a component within a project, already exist in a planned, ongoing, or completed information technology project developed by another State agency. Information Technology Procurement shall work to develop contracts for information technology projects to allow the addition of other agencies' requirements within the terms of the existing contract.

(2) Identify existing projects that can best support a particular requirement for multiple agencies and work to transition agencies to those projects.
(3) When State agencies request approval for new projects, determine if the information technology project has transferable applicability to current or future capabilities required by another State agency.
(4) Upon identifying an existing information technology capability needed by a State agency, assist that agency in determining how best to access existing projects.
(5) Implement the State Chief Information Officer's plan to reduce duplication.
(6) Deny approval for new projects that duplicate existing capabilities within State agencies.
(7) Provide quarterly reports to the Fiscal Research Division of the General Assembly on progress toward eliminating duplication. The report shall include a list of duplicate projects across State agencies, both ongoing and legacy, and shall document explicit efforts to reduce the duplication. It shall specifically address progress during the quarter for which the report is being submitted. It shall also include a list of projects denied approval because of duplication, with a description of the measures taken to access an existing project with the same capabilities.

All State agencies shall coordinate any Geographic Information System (GIS) initiatives through the Center for Geographic Information and Analysis (CGIA) to ensure that they are not duplicating an existing function. The CGIA shall monitor and approve all new GIS-related information technology projects and expansion budget requests. By January 1 of each year, the CGIA shall make a written report to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division of the General Assembly on the results of these efforts.

CRIMINAL JUSTICE LAW ENFORCEMENT AUTOMATED DATA SERVICES (CJLEADS)

SECTION 6A.4.(a) The Office of the State Controller, in cooperation with the State Chief Information Officer, shall:

(1) Continue the implementation of the Criminal Justice Data Integration Pilot Program, which is now known as the Criminal Justice Law Enforcement Automated Data Services (CJLEADS), expanding it throughout the State of North Carolina;
(2) Review plans to transition CJLEADS to the Department of Justice, determining if that is still the best course of action, and identifying an alternative, if required;
(3) By October 1, 2011, provide a recommendation to the Joint Legislative Oversight Committee on Information Technology on the best alternative for managing and hosting CJLEADS, along with a time line for the transition; and
(4) Provide quarterly reports on the status of the Program to the Joint Legislative Oversight Committee on Information Technology beginning October 1, 2011.

SECTION 6A.4.(b) The Office of the State Controller shall administer CJLEADS with the assistance of a Leadership Council consisting of:

(1) The Attorney General;
(2) The Director of the Administrative Office of the Courts;
(3) The Secretary of the Department of Correction;
(4) The Secretary of Crime Control and Public Safety;
(5) The Secretary of the Department of Juvenile Justice and Delinquency Prevention;
(6) The Commissioner of Motor Vehicles, Department of Transportation;
(7) The President of the North Carolina Association of Chiefs of Police;
(8) The President of the North Carolina Sheriffs' Association, Inc.;
(9) A representative of the Federal Bureau of Investigation, who shall be a nonvoting member;
(10) The State Controller; and

(11) The State Chief Information Officer.

SECTION 6A.4.(c) Data that is not classified as a public record under G.S. 132-1 shall not be considered a public record when incorporated into the CJLEADS database.

SECTION 6A.4.(d) To maintain the confidentiality requirements attached to the information provided to CJLEADS by the various State and local agencies, each source agency providing data for CJLEADS shall be the sole custodian of the data for the purpose of any request for inspection or copies thereof under Chapter 132 of the General Statutes. CJLEADS shall only allow access to data from the source agencies in accordance with rules adopted by the respective source agencies.

SECTION 6A.4.(e) Agencies shall use existing resources to provide required support for CJLEADS.

SECTION 6A.4.(f) Section 6.10 of S.L. 2010-31 is repealed.

CONTINUING PILOT PROGRAM TO ALLOW PUBLIC-PRIVATE PARTNERSHIPS TO MEET DEPARTMENT OF REVENUE TECHNOLOGY NEEDS

SECTION 6A.5.(a) To speed the implementation of the Tax Information Management System (TIMS) and the additional components of the Planning and Design Project (PDP) through June 30, 2015, the Secretary of the Department of Revenue may enter into public-private arrangements where (i) the funding of the project under the arrangement comes from revenue generated by the project and (ii) the project is related to the implementation of TIMS and additional components of the PDP. As used in this section, the "additional components of the PDP" are Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services. All such arrangements shall terminate June 30, 2015.

Work under a public-private arrangement may be contracted by requests for proposals, modifications to existing contracts, and purchases using existing contract vehicles.

The Secretary of Revenue shall establish a measurement process to determine the increased revenue attributable to the public-private arrangements. To accomplish this, the Secretary shall consult subject matter experts outside the Department of Revenue, both within State government and from private industry. The measurement process shall include:

(1) Calculation of a revenue baseline against which the increased revenue attributable to the project is measured;

(2) Periodic evaluation to determine if the baseline needs to be modified based on significant measurable changes in the economic environment; and

(3) Monthly calculation of increased revenue attributable to contracts executed under this program.

Of funds generated from collections above the baseline established by subdivision (1) of this subsection, in both the General Fund, Highway Funds, and the State portion of the Unauthorized Substance Tax collections of the Special Revenue Fund, up to forty-five million five hundred thousand dollars ($45,500,000) may be authorized by the Office of State Budget and Management for the purchases related to the implementation of TIMS and the additional components of the PDP, including payment for services from non-State entities. The Department of Revenue may retain an additional six million six hundred forty-six thousand five hundred fifty-seven dollars ($6,646,557) from benefits generated for the General Fund since the beginning of the public-private partnership. These funds shall be used as payment of internal costs for the fiscal biennium, and such funds are hereby appropriated for this purpose.

If the Department of Revenue finds that it cannot generate additional benefits totaling forty-five million five hundred thousand dollars ($45,500,000) through June 30, 2015, or that total costs exceed the total available appropriations and earned benefits, then the Department shall do all of the following: (i) immediately notify the Chairs of the House of Representatives and Senate Appropriations Committees and the Fiscal Research Division, (ii) identify any obligations to vendors, (iii) identify options for meeting obligations to vendors, and (iv) provide costs associated with each option. The Department shall ensure that this notification is made in sufficient time to allow the General Assembly to properly evaluate the options presented.

SECTION 6A.5.(b) Notwithstanding G.S. 114-2.3, the Department of Revenue shall engage the services of private counsel with the pertinent information technology and computer law expertise to review requests for proposals, and to negotiate and review contracts associated with TIMS and the additional components of the Planning and Design Project (PDP)

(Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services).

SECTION 6A.5.(c) There is established within the Department of Revenue the Oversight Committee for reviewing and approving the benefits measurement methodology and calculation process. The Oversight Committee shall review and approve in writing all contracts, including change orders, amendments to contracts, and addendums to contracts, before they are executed under this section. This shall include (i) details of each public-private contract, (ii) the benefits from each contract, and (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including the measurement process established for the Secretary of Revenue. The Oversight Committee shall approve all of the fund transfers for this project. Within five days of entering into a contract, the Department shall provide copies of each contract and all associated information to the Joint Legislative Oversight Committee on Information Technology, the Chairs of the House of Representatives and Senate Committees on Appropriations, and the Fiscal Research Division.

The members of the Committee shall include the following:

(1) The State Budget Director;
(2) The Secretary of the Department of Revenue;
(3) The State Chief Information Officer;
(4) Two persons appointed by the Governor;
(5) One member of the general public having expertise in information technology appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
(6) One member of the general public having expertise in economic and revenue forecasting appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate.

The State Budget Director shall serve as chair of the Committee. The Committee shall set its meeting schedule and adopt its rules of operation by majority vote. A majority of the members constitutes a quorum. Vacancies shall be filled by the appointing authority. Administrative support staff shall be provided by the Department of Revenue. Members of the Committee shall receive reimbursements for subsistence and travel expenses as provided by Chapter 138 of the General Statutes. The Committee shall terminate on June 30, 2015.

The Department shall provide copies of the minutes of each meeting and all associated information to the Joint Legislative Oversight Committee on Information Technology, the Chairs of the House of Representatives and Senate Committees on Appropriations, and the Fiscal Research Division.

SECTION 6A.5.(d) Beginning August 1, 2011, and quarterly thereafter, the Department of Revenue shall submit detailed written reports to the Chairs of the House of Representatives and Senate Committees on Appropriations, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office. The report shall include (i) details of each public-private contract, (ii) the benefits from each contract, (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including cost savings and the acceleration of the project time line, (iv) and any issues associated with the operation of the public-private partnership.

SECTION 6A.5.(e) In addition to the oversight provided by the Oversight Committee established in subsection (c) of this section, the TIMS project shall be subject to existing Information Technology project oversight legislation and the TIMS project management shall comply with all statutory requirements and other requirements established by the State Chief Information Officer and the Office of State Budget and Management for information technology projects. The State Chief Information Officer and the Office of State Budget and Management shall immediately report any failure to do so to the Joint Legislative Oversight Committee on Information Technology, the Chairs of the House of Representatives and Senate Committees on Appropriations, and the Fiscal Research Division.

SECTION 6A.5.(f) Section 6.20 of S.L. 2009-451, as rewritten by Section 2.3 of S.L. 2010-123, is repealed.

INFORMATION TECHNOLOGY PERSONAL SERVICES CONTRACT REQUIREMENTS

SECTION 6A.6.(a) Effective for the 2011-2013 fiscal biennium, and notwithstanding any provision of law to the contrary:

(1) No contract for information technology personal services, or providing personnel to perform information technology functions, may be established or renewed without the express written approval of the Statewide Information Technology Procurement Office.

(2) Before any State agency, department, or institution may renew a contract position for information technology personnel, the State agency must report to the Statewide Information Technology Procurement Office, the Office of State Budget and Management, the Office of State Personnel, the Office of Information Technology Services, and to the Fiscal Research Division. The report shall explain:

a. The proposed duration of the contract position. If the contract is for more than 12 months, why recruitment of a State employee is not feasible.

b. Whether the contract position requires unique skills for which the State has a short-term need.

c. Whether the position is required for a specific information technology project and if the position will be terminated upon completion of the project.

d. The specific work products and completion time lines for the contract position.

(3) All contract positions requiring information technology skills are subject to the provisions of this section. The Office of State Budget and Management may immediately terminate the funding for any information technology contractor position that is filled without following defined procedures.

(4) All information technology personnel contracts shall be competitive and shall be subject to competition each time they expire. Exceptions must be approved by the Office of Information Technology Services, the Office of State Personnel, and the Office of State Budget and Management. Approved exceptions must immediately be reported to the Fiscal Research.

(5) Agencies shall make every effort to convert SAP and Curam contractors supporting permanent requirements to State employees. Beginning October 1, 2011, agencies shall submit written quarterly reports to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division documenting their progress in converting these contractors to State employment.

Contract positions subject to this section shall be reviewed and approved by the Statewide Information Technology Procurement Office and shall be entered into the project portfolio management tool.

The Statewide Information Technology Procurement Office shall determine the market rate for the type of contract required, as well as to determine the comparable cost for a State employee. Agencies may not exceed the market rate determined by the Statewide Information Technology Procurement Office. After the Statewide Information Technology Procurement Office provides cost data, the Office of State Budget and Management must approve funding for the position.

SECTION 6A.6.(b) Whenever a State agency, department, or institution determines that only a contractor can fill a position and the position is required to perform an ongoing function within the agency, the head of the State agency must develop and implement a plan to hire or train a qualified State employee to fill the position within 12 months. Within 60 days of hiring the contractor, this plan shall be forwarded to the Office of State Budget and Management, the Office of State Personnel, the Office of Information Technology Services, and the Fiscal Research Division.

SECTION 6A.6.(c) Beginning August 1, 2011, and monthly thereafter, each State agency, department, and institution employing information technology personal services contractors, or contract personnel performing information technology functions, shall provide a detailed report on those contracts to the Office of State Budget and Management, the Office of State Personnel, the Office of Information Technology Services, the Joint Legislative Oversight

Committee on Information Technology, and the Fiscal Research Division of the General Assembly. Each State agency's report shall include at least the following:

(1) For each contracted information technology position:
  a. The title of the position, a brief synopsis of the essential functions of the position, and how long the position has existed.
  b. The name of the individual filling the position and the vendor company, if any, that regularly employs that individual.
  c. The type of contract, start date, and termination date.
  d. The length of time that the individual filling the contracted position has been employed by the State as a contractor in any position.
  e. The contracted position salary or hourly rate, the number of hours per year, and the total annualized cost of the contracted position.
  f. The salary and benefits cost for a State employee performing the same function.
  g. The purchase order number for the position.
  h. Whether the position can be converted to a State employee position. This determination will be certified by the State Information Technology Purchasing Office.
  i. When the agency anticipates converting the position to a State employee.

(2) The total annual cost for information technology contractors and the total annual salary and benefits cost for filling the contract positions with State employees.

(3) A determination of whether the information technology functions performed by the contractor can be performed by State employees.

(4) All information required by this subsection related to information technology contractors regardless of the contracting source.

SECTION 6A.6.(d) Each State agency shall provide a detailed explanation of any differences between the agency report required by subsection (b) of this section and the Information Technology Expenditures Report published annually by the Office of the State Controller. This report of differences shall be due 30 days after the publication of the Office of the State Controller's report and shall be submitted to the Office of State Budget and Management, the Fiscal Research Division, and the Joint Legislative Oversight Committee on Information Technology.

SECTION 6A.6.(e) This section does not apply to The University of North Carolina and its constituent institutions.

STATE INFORMATION TECHNOLOGY CONSOLIDATION

SECTION 6A.7.(a) By November 1, 2011, the State Chief Information Officer (State CIO), in conjunction with the Office of State Budget and Management (OSBM), shall develop a detailed plan for consolidating the information technology infrastructure and applications of all State agencies, departments, and institutions in the executive branch. Information technology infrastructure includes personal computers, hosting and network environments, the help desk, call centers, and information technology security. Applications include enterprise software, on-demand software, and customized software. At a minimum, the consolidation plan shall include the following:

(1) Defined targets and priorities with a detailed time line for the implementation of consolidation.

(2) The costs of consolidation by fiscal year and by agency.

(3) The anticipated savings to result from consolidation and a time line for actual achievement of those savings.

(4) Technical, policy, or other issues associated with achieving a timely and effective consolidation.

(5) A process to transfer all information technology hardware and software funding to the Office of the State CIO.

(6) Creation of a project management organization to manage all information technology projects.

(7) Review of agency, Office of Information Technology Services, and Office of the State CIO to identify redundant personnel positions.

When setting consolidation targets, the State CIO shall give high priority to infrastructure issues that pose significant risk to agency operations or data, that provide opportunities for immediate cost savings, and where a statewide approach would minimize disruption of services. In carrying out the consolidation, the Office of Information Technology Services shall utilize the authority set out in G.S. 147-33.83.

SECTION 6A.7.(b) Beginning July 1, 2011, the State CIO shall plan and implement an enterprise level grants management system. Similar systems currently under development may be suspended by the State CIO with funding reprogrammed to support development of the enterprise level grants management system.

In coordination with the State CIO, the Department of Health and Human Services shall develop a plan to implement a single case management system throughout that Department, beginning in the 2012-2013 fiscal year, and shall report to the Joint Legislative Oversight Committee on Information Technology by February 1, 2012, on its initiatives to implement the system. The report shall include a detailed time line for completion and an explanation of the costs associated with case management consolidation.

SECTION 6A.7.(c) Beginning September 1, 2011, and quarterly thereafter, the Office of State Budget and Management, in conjunction with the State CIO, shall provide written reports to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division relating to State information technology consolidation.

ITS/INTERNAL SERVICE FUND RATE ESTABLISHMENT/CASH MANAGEMENT

SECTION 6A.8.(a) For each year of the 2011-2013 fiscal biennium, receipts for the Information Technology Internal Service Fund shall not exceed one hundred ninety million dollars ($190,000,000), excluding a 60-day balance for contingencies. Rates established by the Office of State Budget and Management (OSBM) to support the IT Internal Service Fund shall be based on this required fund limit. Established rates shall be adjusted within 30 days in the event the fund exceeds the prescribed limit. In the event that an increase in receipts for the IT Internal Service Fund is required, the Office of Information Technology Services may implement the increase after consultation with the Joint Legislative Commission on Governmental Operations.

SECTION 6A.8.(b) Rates shall be set to support a specific service for which an agency is being charged. Overhead charges to agencies must be consistently applied and must not exceed industry standards. Rate increases shall require approval of the OSBM. Rate reductions shall be immediately implemented following notification of the OSBM.

SECTION 6A.8.(c) Beginning October 1, 2011, the State Chief Information Officer shall submit a quarterly report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on collections for, expenditures from, and the balance of the IT Internal Service Fund. The report shall include all expenditures made from the fund to support the Office of Information Technology Services and the activities of the State Chief Information Officer.

INFORMATION TECHNOLOGY PRIVATIZATION

SECTION 6A.9.(a) Any privatization of any grouping of information technology services, or "towers," identified in the Infrastructure Study and Assessment (INSA) shall require prior approval from the General Assembly. Funding to support any outsourcing of any of these towers shall be specifically appropriated by the General Assembly for that purpose, to include any use of Information Technology Internal Service Fund receipts.

SECTION 6A.9.(b) Before privatizing any major information technology function during the 2011-2013 fiscal biennium, the State Chief Information Officer shall do all of the following:

(1) Develop a detailed plan for implementing any privatization initiative to include the following:
   a. A governance and accountability structure for the privatization effort.
   b. Detailed time line with milestones.
   c. Any costs necessary to accomplish outsourcing with funding sources identified.
   d. Estimated monthly cost for each participating agency for the first five years of privatization.

e. Risks associated with privatization, measures being taken to mitigate those risks, and any costs associated with the mitigation measures.
f. Any security issues associated with outsourcing each application impacted by the outsourcing, with a detailed plan to mitigate those issues.
g. A list of State employees to be terminated with information on their job description and how long they have been employed by the State, a schedule of when the terminations are to occur, the cost of terminating each employee, and plans to assist each terminated employee.

The State Chief Information Officer shall consult the Joint Legislative Commission on Governmental Operations and report to the Joint Legislative Oversight Committee on Information Technology on the completed plan prior to any implementation of privatization.

(2) Have a detailed plan in place, to include associated costs and sources of funding, to return the function to State control in the event privatization fails to provide anticipated cost-savings or required service levels.
(3) Privatize only those individual functions where verifiable market data shows that privatization will result in cost-savings to the State and there is no data identifying alternatives that generate greater savings, ensuring that agencies receive at a minimum the same level of service and functionality as the level prior to privatization.
(4) Document and certify any anticipated savings resulting from privatization by individual function.
(5) Ensure full disclosure of any privatization decisions that combine multiple services or towers into a single contract, including the costs associated with each specific service or tower included in the contract.
(6) Ensure that any changes are made across the entire executive branch.
(7) Consult the Joint Legislative Commission on Governmental Operations and report to the Joint Legislative Oversight Committee on Information Technology regarding the plan for funding any requirements formerly covered by the receipts from the privatized function.

SECTION 6A.9.(c) After privatizing any major information technology function, the State Chief Information Officer shall do all of the following:

(1) Report quarterly on the results of the privatization, including a detailed comparison of projected savings to actual cost, data on whether or not the vendor is meeting service level agreements, and an explanation of the reasons for any deficiency or difference.
(2) Immediately notify the Joint Legislative Commission on Governmental Operations of any outsourcing effort that does not meet projected savings or required service levels for two quarters in a row or during any two quarters of a fiscal year, and develop a corrective action plan.
(3) Terminate any contract where privatization fails to achieve projected savings or meet service levels over a period of 12 months.

STATE PORTAL IMPLEMENTATION AND OPERATION

SECTION 6A.10.(a) The Department of Administration may implement and operate a statewide electronic enterprise portal to increase the convenience of members of the public in conducting online transactions with, and obtaining information from, State government and to facilitate their interactions and communications with government agencies. The portal shall be hosted on State information technology infrastructure.

SECTION 6A.10.(b) Prior to any development or implementation of a State portal, the Department of Administration shall provide all of the following to the General Assembly:

(1) A detailed plan for development and implementation of the portal, to include a list of applications being considered for implementation during the 2011-2013 and 2013-2015 biennia, including:
a. A description of how the portal is to be implemented, to include the use of outside vendors, with detailed information on their

participation and the potential cost to the State, businesses, and anyone doing business with the State.

b. A list of potential services and a time line for implementing each service.

c. Detailed information on the anticipated cost of ownership of the portal and any services proposed for implementation during the period, to include the amount of any payments received by vendors supporting the project.

(2) A funding model for the implementation that does not increase the cost of services for anyone doing business with the State or reduce the receipts or other funding currently available to State agencies or included in appropriations for the 2011-2013 biennium.

(3) If the portal is outsourced, a detailed, fully executable plan to return portal operations to the State, with associated costs.

(4) Identification of internal resources that could potentially be used to develop and implement a State portal.

SECTION 6A.10.(c) All portal services requiring fees shall be approved by the General Assembly, and all funding for the portal, to include fees, shall be appropriated by the General Assembly. Any fees or other charges collected under this section for the State portal or any supporting functions shall be:

(1) Subject to approval by the General Assembly.

(2) Deposited in the General Fund, or in the Highway Fund for fees collected from the Department of Transportation.

The portal shall not increase fees or impose a new fee for services already provided online or through any automated means.

SECTION 6A.10.(d) Participation by State agencies in the portal shall be voluntary.

SECTION 6A.10.(e) There shall be a convenient, free alternative for any online service provided.

SECTION 6A.10.(f) The State portal project shall meet all requirements for project management established by the State Chief Information Officer. Nothing in this section shall exempt the State portal project from the laws governing State information technology and purchasing.

SECTION 6A.10.(g) Notwithstanding G.S. 114-2.3, the Department of Administration shall engage the services of private counsel with the pertinent information technology and computer law expertise to negotiate and review contracts associated with the State portal.

SECTION 6A.10.(h) Each quarter, beginning October 1, 2011, the Department of Administration shall provide detailed information to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on General Government, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on General Government and Information Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management on the total amount of each fee and any other charge collected by the vendor for each service provided, the amount of funding collected by the State for each service and for each participating agency, and any other costs associated with operating the portal.

SECTION 6A.10.(i) Committee Established. – There is established in the Department of Administration the Portal Project Review Committee, which shall review services and applications proposed for inclusion in the State portal.

SECTION 6A.10.(j) Membership. – The Committee shall be composed of seven members as follows:

(1) Two members appointed by the Governor.

(2) Two members appointed by General Assembly, as recommended by the Speaker of the House of Representatives.

(3) Two members appointed by the General Assembly, as recommended by the President Pro Tempore of the Senate.

(4) The State Controller shall be designated as the Chair.

SECTION 6A.10.(k) Vacancies. – Any vacancy on the Committee shall be filled by the appointing authority.

SECTION 6A.10.(l) Expenses of Members. – Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 6A.10.(m) Staff. – Adequate staff shall be provided to the Committee by the Department of Administration.

SECTION 6A.10.(n) Cooperation. – The Committee may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

SECTION 6A.10.(o) Meeting Location. – The Committee shall hold public meetings at various locations around the State for each proposed service or application to allow interested parties and participating agencies to comment on proposed services in order to promote greater public participation in its deliberations. The Department of Administration shall grant adequate meeting space to the Committee in the State Administration Building or other State office facility as needed.

SECTION 6A.10.(p) Approval Authority. – The Committee shall have approval authority for services and applications not requiring a fee or imposing any cost on any State or local agency or anyone doing business with the State. For services or applications supported by fees, the Committee shall make recommendations to the next regular session of the General Assembly on the feasibility of developing and implementing these services or applications.

TRANSFER CRIMINAL JUSTICE INFORMATION NETWORK TO THE OFFICE OF THE STATE CHIEF INFORMATION OFFICER

SECTION 6A.11.(a) The Criminal Justice Information Network (CJIN), as provided in Article 69 of Chapter 143 of the General Statutes, is hereby transferred to the Office of the State Chief Information Officer. The transfer shall have all the elements of a Type II transfer, as defined in G.S. 143A-6.

SECTION 6A.11.(b) G.S. 143-661(a) reads as rewritten:

"(a) The Criminal Justice Information Network Governing Board is established within the ~~Department of Crime Control and Public Safety,~~ Office of the State Chief Information Officer to operate the State's Criminal Justice Information Network, the purpose of which shall be to provide the governmental and technical information systems infrastructure necessary for accomplishing State and local governmental public safety and justice functions in the most effective manner by appropriately and efficiently sharing criminal justice and juvenile justice information among law enforcement, judicial, and corrections agencies. The Board is established within the ~~Department of Crime Control and Public Safety~~ Office of the State Chief Information Officer, for organizational and budgetary purposes only and the Board shall exercise all of its statutory powers in this Article independent of control by the ~~Department of Crime Control and Public Safety.~~Office of the State Chief Information Officer."

SECTION 6A.11.(c) G.S. 143-664(b) reads as rewritten:

"(b) ~~Pending permanent staffing, the Department~~ The staff of the Criminal Justice Information Network shall provide the Board with professional and clerical ~~staff~~ support and any additional support the Board needs to fulfill its mandate. The ~~Board may meet in an area provided by the Department of Crime Control and Public Safety and the~~ Board's staff shall use space provided by the ~~Department.~~Office of the State Chief Information Officer."

INTEGRATED BUDGET INFORMATION SYSTEM

SECTION 6A.12.(a) The Office of State Budget and Management (OSBM) shall create a detailed, comprehensive plan for the development and implementation of the Integrated Budget Information System (IBIS). By August 1, 2011, the IBIS plan shall be submitted to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division. The plan must include at least the following:

(1) A detailed description of the system with a list of the functions.
(2) A projected time line for completion with detailed milestones.
(3) Total cost of the project, including five years of operations and maintenance costs.
(4) Projected costs for the project each month, including how the funding is to be spent.

(5) Funds identified to support the project from its inception, with the amounts and sources of funding.
(6) Personnel involved in the project, their position and responsibilities, their qualifications, the amount of time each devotes to the project, and their cost, including both State employees and contract personnel.
(7) Number and cost of personnel required to operate the system after its completion.
(8) Total number of hours required to complete the project.
(9) Outside vendors supporting the project, their functions, and their total cost.
(10) Implementation plan, to include a time line for fielding it to participating agencies.
(11) A training plan with a time line.
(12) Any risks to the project, with a strategy to mitigate those risks.

SECTION 6A.12.(b) Beginning August 1, 2011, on the first day of each month, the Office of State Budget and Management shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on the status of IBIS. The monthly reports shall be signed by the project sponsor, who shall verify in writing that the information contained in the report is current, complete, and accurate. The monthly report shall include the following:

(1) Project status, to include any issues identified by the Enterprise Project Management Office.
(2) Comparison of project status to the time line, with an explanation of any differences.
(3) Detailed descriptions of milestones to be completed that month and the following month.
(4) Any changes in project cost.
(5) Actual expenditures to date and during that month.
(6) Any variances from projected expenditures and the reasons for the variance.
(7) Any potential funding shortfalls and their impact.
(8) Total hours worked each month and cumulative total hours.
(9) Any variance between projected and actual hours and the reason.
(10) Any issues identified during the month, with a corrective action plan and a time line for resolving them.
(11) Impact of any issues identified on the project schedule.
(12) Impact of any issues identified on project cost.
(13) Any changes to the project.
(14) Any change requests submitted to project vendors and their cost.

SECTION 6A.12.(c) The State Chief Information Officer shall immediately suspend the project if OSBM fails to provide a monthly report required by subsection (b) of this section in a timely manner until such time as the report is submitted.

SECTION 6A.12.(d) If OSBM fails to submit reports to the Enterprise Project Management Office for inclusion in the project portfolio management tool on time, the State CIO shall immediately suspend the project until the information is completed in the tool.

USE OF MOBILE ELECTRONIC COMMUNICATIONS DEVICES

SECTION 6A.14.(a) Every executive branch agency within State government shall develop a policy to limit the issuance and use of mobile electronic devices to the minimum required to carry out the agency's mission. By September 1, 2011, each agency shall provide a copy of its policy to the Chairs of the Appropriations Committee and the Appropriations Subcommittee on General Government of the House of Representatives, the Chairs of the Appropriations/Base Budget Committee and the Appropriations Committee on General Government and Information Technology of the Senate, the Chairs of the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management.

State-issued mobile electronic devices shall be used only for State business. Agencies shall limit the issuance of cell phones, smart phones, and any other mobile electronic devices to employees for whom access to a mobile electronic device is a critical requirement for job performance. The device issued and the plan selected shall be the minimum required to support the employees' work requirements. This shall include considering the use of pagers in

lieu of a more sophisticated device. The requirement for each mobile electronic device issued shall be documented in a written justification that shall be maintained by the agency and reviewed annually. All State agency heads, in consultation with the Office of Information Technology Services and the Office of State Budget and Management, shall document and review all authorized cell phone, smart phone, and other mobile electronic communications device procurement, and related phone, data, Internet, and other usage plans for and by their employees. Agencies shall conduct periodic audits of mobile device usage to ensure that State employees and contractors are complying with agency policies and State requirements for their use.

Beginning October 1, 2011, each agency shall report quarterly to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on General Government, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on General Government and Information Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management on the following:

(1) Any changes to agency policies on the use of mobile devices.
(2) The number and types of new devices issued since the last report.
(3) The total number of mobile devices issued by the agency.
(4) The total cost of mobile devices issued by the agency.
(5) The number of each type of mobile device issued, with the total cost for each type.

SECTION 6A.14.(b) This section does not apply to the legislative branch or the judicial branch of State government.

USE OF DMV INSPECTION PROGRAM ACCOUNT FUND

SECTION 6A.15. G.S. 20-183.7(d) reads as rewritten:

"(d) Inspection Program Account. – The Inspection Program Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to fund the vehicle inspection and maintenance ~~program.~~program and to fund replacement of the State Titling and Registration System and the State Automated Driver License System."

STATEWIDE INFORMATION TECHNOLOGY PROCUREMENT

SECTION 6A.16. Statewide Information Technology Procurement shall be funded through fees charged to agencies using Statewide Information Technology Procurement services. The Office of the State Chief Information Officer shall provide a fee schedule to allow cost recovery to the Office of State Budget and Management.

If agencies fail to pay for services within 30 days of billing, the Office of State Budget and Management shall transfer the unpaid amount to the State Information Technology Procurement Office.

REPLACEMENT OF THE STATE TITLING AND REGISTRATION SYSTEM (STARS) AND THE STATE AUTOMATED DRIVER LICENSE SYSTEM (SADLS)

SECTION 6A.17.(a) The Department of Transportation Division of Motor Vehicles shall begin the replacement of the State Titling and Registration System (STARS) and the State Automated Driver License System (SADLS). By October 1, 2011, the Department shall develop a plan and associated time line for accomplishing the replacement of both systems. The Department shall determine the cost for the replacement of each system and then develop a strategy for funding each. This strategy may include, but is not limited to, funding from statutory sources and bulk data fees. Priority for replacement and for funding shall be to STARS, but the Department may make the decision to concurrently initiate the replacements if sufficient funding can be identified to cover the costs for both during the time frames for each. By October 1, 2011, the Department shall provide the plan and funding strategy to the Joint Legislative Oversight Committee on Information Technology, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division.

SECTION 6A.17.(b) Beginning October 1, 2011, and quarterly thereafter until the systems replacement projects are complete, the Department shall report to the Joint Legislative Oversight Committee on Information Technology, the Joint Legislative Transportation

Oversight Committee, and the Fiscal Research Division on the status of the systems replacement. The report shall include the following for each replacement project:

(1) Current status of the replacement projects.
(2) Any changes in the scope of either project and associated change requests.
(3) Any changes in cost for each project.
(4) Changes in status since the previous report.
(5) Costs during the previous quarter.
(6) Funding sources and uses during the previous quarter.
(7) Anticipated funding and expenditures by quarter for the next two years.
(8) Any issues associated with the system development and identified solutions.

SECTION 6A.17.(c) The Office of the State Chief Information Officer (SCIO) and the Office of Information Technology Services (ITS) shall ensure that the Department receives all required support and that the replacements are not delayed as a result of any action on the part of either office. Requirements for project review and approval shall be expedited. If the Department does not receive project approvals within two weeks after submitting required data, approval shall be automatic. If the SCIO or ITS determines it is necessary to delay or suspend the project based on technical or funding issues, either office may request committee review as defined in G.S. 147-33.72D. This review must be completed within five days.

ENTERPRISE ELECTRONIC FORMS AND DIGITAL SIGNATURES

SECTION 6A.18.(a) Under the direction of the State Controller, the State shall plan, develop, and implement a coordinated enterprise electronic forms and digital signatures capability. In developing this capability, the State Controller shall determine the cost of converting forms to an electronic format, determine priorities for converting forms, and establish milestones for completing this conversion.

The State Controller shall integrate executive branch agencies already in the process of developing electronic forms and digital signatures projects. Before beginning this effort, the State Controller shall determine specific agency requirements and incorporate their requirements into its planning efforts.

SECTION 6A.18.(b) Beginning October 1, 2011, the State Controller shall present quarterly reports on the status of the project to the Joint Legislative Oversight Committee on Information Technology.

EVALUATION OF STATE INFORMATION TECHNOLOGY OPERATIONS

SECTION 6A.19.(a) The General Assembly shall conduct a detailed, comprehensive evaluation of information technology operations, infrastructure, systems, ongoing projects, and applications within State government. This evaluation shall include, but is not limited to, the following:

(1) Documentation of the information technology organization and function within State government and individual agencies.
(2) Development of a complete inventory of information technology assets and resources within the State.
(3) Documentation and review of agencies' information technology operations.
(4) Documentation of actual agency information technology costs.
(5) Identification and documentation of the costs associated with specific information technology projects and support.
(6) Identification and documentation of funding sources.
(7) Identification and documentation of common requirements for information technology infrastructure, systems, projects, or applications.

The General Assembly may enter into any contracts necessary to facilitate completion of this evaluation.

SECTION 6A.19.(b) The chairs of the Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate shall establish a project team to develop an evaluation plan/methodology and manage the day-to-day operation of the evaluation.

SECTION 6A.19.(c) The project team shall develop a detailed schedule prior to the initiation of the evaluation. The schedule shall provide for the evaluation to be conducted in phases. The initial phase shall include all agencies within the executive branch, both Cabinet

and Council of State agencies. The scope of subsequent phases shall be determined by the project team during or immediately following the initial phase.

SECTION 6A.19.(d) Agencies shall provide all requested support for evaluation requirements and deliver accurate, complete, and timely data as required to facilitate the evaluation. The agency head shall verify, in writing, the accuracy, completeness, and timeliness of the data. If any support or data provided by an agency does not meet study standards, the agency's information technology functions shall automatically be subject to a continuation review the next fiscal year.

In instances where an immediate change may create opportunities for savings or efficiencies are identified, the project team may recommend implementation of the change prior to completion of the evaluation.

SECTION 6A.19.(e) The General Assembly shall establish an advisory committee that includes business and information technology subject matter experts to provide advice and assistance during the evaluation. The State Controller shall serve as Chairman of the committee.

The President Pro Tempore of the Senate shall appoint five members to the advisory committee, to include an executive from an information technology company, an executive from a Cabinet agency, a Council of State agency Chief Information Officer, a Cabinet agency Chief Financial Officer, and a representative from the Office of Information Technology Services. The Speaker of the House of Representatives shall appoint five members, to include an executive with a private industry management consulting background, an executive from a Council of State agency, a Cabinet agency Chief Information Officer, a Council of State agency Chief Financial Officer, and a representative from the Office of State Budget and Management.

Staff to the committee shall be provided by the General Assembly and shall include analysts and attorneys with a thorough knowledge of information technology operations within the State.

SECTION 6A.19.(f) The Joint Legislative Oversight Committee on Information Technology shall monitor the progress of the evaluation.

Beginning October 1, 2011, the project team shall provide quarterly reports to the chairs of the Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate, the chairs of the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division.

SECTION 6A.19.(g) Of the funds appropriated to the General Assembly in Section 2.1 of this act, the sum of two million dollars ($2,000,000) for the 2011-2012 fiscal year and the sum of three million dollars ($3,000,000) for the 2012-2013 fiscal year shall be used to implement this section.

COMPREHENSIVE ENTERPRISE-LEVEL DATA INTEGRATION CAPABILITY

SECTION 6A.20.(a) The Office of the State Controller (OSC) shall continue the development of a comprehensive enterprise-level data integration capability, providing broad access to and analysis of information across State government. As part of this development effort, by October 1, 2011, OSC shall update the BEACON Strategic Plan for Data Integration and shall provide the updated plan to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division of the General Assembly. The priority of effort for data integration shall be the Criminal Justice Law Enforcement Automated Data System (CJLEADS).

The strategic plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal or State law shall be limited to appropriate and authorized persons. OSC shall also develop, document, and enforce security requirements for data integration initiatives, to include establishing and monitoring security standards for vendors supporting development and implementation efforts.

SECTION 6A.20.(b) There is created a Data Integration Steering Committee that shall have responsibility for overseeing all data integration efforts in the State. This Committee shall assume all of the BEACON Project Steering Committee roles and responsibilities for oversight of data integration projects. This Committee shall be chaired by the State Controller and shall include the following six voting members:

(1) One member appointed by the Governor with an information technology background and experience.

(2) One member appointed by the Governor with a background in law enforcement.
(3) One member appointed by the President Pro Tempore of the Senate with a background in government accounting.
(4) One member appointed by the President Pro Tempore of the Senate with government operations experience.
(5) One member appointed by the Speaker of the House of Representatives with a background in information technology.
(6) One member appointed by the Speaker of the House of Representatives with a background in business management.

Members shall not have any association with potential vendors.

The Director of the Office of State Budget and Management, the State Chief Information Officer, the State Treasurer, and the State Auditor shall serve as advisory members.

The Committee shall be housed in and supported by the Office of the State Controller.

SECTION 6A.20.(c) As part of the State's continuing effort to develop a comprehensive enterprise-level data integration capability, the Office of the State Controller shall develop an enterprise process to detect fraud, waste, and improper payments across State agencies. State agencies shall fully support and participate in OSC's efforts to develop an automated fraud detection system.

In support of the automated fraud detection effort, the OSC shall:

(1) Develop a detailed long-range plan to implement an automated fraud detection system within State agencies.
(2) Determine costs, to include vendor costs, for the effort for five years, beginning July 1, 2011.
(3) Coordinate with State agencies to determine interest in participating in the project and to identify potential applications that can be included in an initial request for proposal.
(4) Establish priorities for developing and implementing potential applications.
(5) Evaluate savings resulting from each effort.
(6) Coordinate efforts with the State's data integration vendor to begin the implementation process.
(7) Establish a pilot to begin the implementation process and to identify and resolve issues associated with expansion of the initiative.
(8) Coordinate with participating agencies to ensure that each has the resources and processes necessary to follow up on incidents of fraud identified by the vendor.
(9) Provide recommendations to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division of the General Assembly on potential future initiatives and the cost and savings associated with each.

SECTION 6A.20.(d) Beginning October 1, 2011, the OSC shall provide quarterly reports to the chairs of the Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division of the General Assembly. These reports shall include the following:

(1) Incidents, types, and amounts of fraud identified, by agency.
(2) The amount actually recovered as a result of fraud identification, by agency.
(3) Agency procedural changes resulting from fraud identification and the time line for implementing each.
(4) State costs for fraud detection for the previous quarter.
(5) Payments to the vendor for the previous quarter.
(6) Anticipated costs and vendor payments for each of the next two years from the date of the report.

SECTION 6A.20.(e) The Office of the State Controller is authorized to enter into an enterprise automated fraud detection contract for eight million dollars ($8,000,000) for a two-year contract period and shall limit payments to the following payment schedule:

(1) December 2011–$1,000,000.
(2) July 2012–$3,000,000.
(3) December 2012–$3,000,000.
(4) June 2013–$1,000,000.

To maximize cost reductions and savings, the Office of the State Controller shall enter into the agreement no later than September 1, 2011. To ensure this is a Public-Private Partnership, the Office of the State Controller shall ensure that the chosen vendor shall contribute resources valued at least five million dollars ($5,000,000) during each of fiscal year 2011-2012 and fiscal year 2012-2013 for the project's success.

SECTION 6A.20.(f) Of the funds appropriated from the General Fund to the Office of the State Controller, the sum of one million five hundred thousand dollars ($1,500,000) for the 2011-2012 fiscal year and the sum of seven million five hundred thousand dollars ($7,500,000) for the 2012-2013 fiscal year shall be used to support the enterprise process to detect fraud, waste, and improper payments across State agencies in each year of the biennium. Of these funds, five hundred thousand dollars ($500,000) each year shall be used by the Office of the State Controller to support the initiative. The remainder may be used to fund payments to the vendor.

PART VII. PUBLIC SCHOOLS

EDUCATION REFORM IN NORTH CAROLINA

SECTION 7.1.(a) It is a priority of the General Assembly that high school graduates enter the workforce or higher education fully prepared. To implement this priority, the Joint Education Oversight Committee shall study (i) literacy and (ii) ways to reduce the need for remedial or developmental education in the State's higher education institutions so that students and the State do not pay repeatedly for the same education. The Committee shall report to the 2012 Regular Session of the 2011 General Assembly with a comprehensive plan, including implementation dates and schedules, that addresses the following items:

(1) Implementation of a third grade literacy policy, including the advisability of a program for third grade reading specialists modeled on Florida's reading specialist program.
(2) Ways to hold high schools accountable for the higher education performance of their students, including requiring funding for developmental education to come from high schools.
(3) The most cost-effective way to provide remedial education in higher education, including funding summer term developmental courses at community colleges based on successful course completions, focusing remediation at the community colleges, and redirecting university appropriations for remedial education to the community colleges.

SECTION 7.1.(b) In all cases, any program implemented needs to be structured so that ongoing, evaluable performance and outcome data is available.

SECTION 7.1.(c) Funds appropriated to implement this section may be used by the Committee to hire one or more external consultants to complete these studies.

CAREER AND COLLEGE PROMISE

SECTION 7.1A.(a) The State Board of Education and the North Carolina Community College System shall establish the Career and College Promise program. The purpose of Career and College Promise is to offer structured opportunities for qualified high school students to dually enroll in community college courses that provide pathways consistent with subsection (b) of this section that lead to a certificate, diploma, or degree as well as provide entry-level jobs skills. Academic credits earned through Career and College Promise shall enable students who continue into postsecondary education after graduating from high school to complete a postsecondary credential in less time than would normally be required. All existing high school transition programs, including Huskins, Concurrent Enrollment, Cooperative and Innovative High Schools, Learn and Earn, and Learn and Earn Online shall be consolidated and replaced by Career and College Promise.

SECTION 7.1A.(b) North Carolina community colleges, subject to approval by the State Board of Community Colleges, may offer the following Career and College pathways

aligned with the K-12 curriculum and career and college ready standards adopted by the State Board of Education:

(1) A Career Technical Education Pathway, leading to a certificate or diploma aligned with one or more high school Tech Prep Career Clusters.

(2) A College Transfer Pathway, leading to a college transfer certificate requiring the successful completion of eight college transfer courses, including English and mathematics.

(3) A cooperative innovative high schools program approved under Part 9 of Article 16 of Chapter 115C of the General Statutes.

SECTION 7.1A.(c) Constituent institutions of The University of North Carolina System, subject to approval by the Board of Governors of The University of North Carolina, may offer as a Career and College pathway a cooperative innovative high schools program approved under Part 9 of Article 16 of Chapter 115C of the General Statutes. The pathway must align with the K-12 curriculum and career and college ready standards adopted by the State Board of Education.

SECTION 7.1A.(d) The North Carolina Community College System and the Department of Public Instruction shall jointly develop and implement a program accountability plan to evaluate short-term and long-term outcomes for Career and College Promise. Outcomes to be measured shall include the following items:

(1) The impact of dual enrollment on high school completion.

(2) The academic achievement and performance of dually enrolled high school students.

(3) The number of students who successfully complete college certificates while dually enrolled.

(4) The impact of dual enrollment and certificate completion on enrollment in college.

(5) The persistence and completion rates of students who continue into college programs after high school graduation.

(6) The academic achievement and performance of students who continue into colleges programs after high school graduation.

SECTION 7.1A.(e) Community colleges shall generate budget FTE for instruction provided through Career and College Promise. The Community Colleges System Office shall report to the Joint Education Oversight Committee or, if the General Assembly is in session, to the House and Senate Education Committees no later than February 1 regarding the number and cost of high school FTE served as a result of the Career and College Promise program created by this section.

SECTION 7.1A.(f) G.S. 115D-1.1 and G.S. 115D-1.2 are repealed.

SECTION 7.1A.(g) G.S. 115D-41 reads as rewritten:

"**§ 115D-41. Restrictions on contracts with local school administrative units; use of community college facilities by public school students pursuant to cooperative programs.**

(a) Community college contracts with local school administrative units shall not be used by these agencies to supplant funding for a public school high school teacher providing courses offered pursuant to G.S. 115D-20(4) who is already employed by the local school administrative unit. ~~However, if a community college contracts with a local school administrative unit for a public high school teacher to teach a college level course, the community college shall not generate budget FTE for that course. Its reimbursement in this case shall be limited to the direct instructional costs contained in the contract, plus fifteen percent (15%) for administrative costs.~~ In no event shall a community college contract with a local school administrative unit to provide high school level courses.

...."

SECTION 7.1A.(h) G.S. 115D-20 reads as rewritten:

"**§ 115D-20. Powers and duties of trustees.**

The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Community Colleges. The powers and duties of trustees shall include the following:

...

(4) To apply the standards and requirements for admission and graduation of students and other standards established by the State Board of Community Colleges. ~~Provided, notwithstanding~~Notwithstanding any law or administrative rule to the contrary, ~~local administrative boards and local school boards may establish cooperative programs in the areas they serve to provide for college courses to be offered to qualified high school students with college credits to be awarded to those high school students upon the successful completion of the courses. Provided, further, that during~~local community colleges are permitted to offer the following programs:

a. Subject to the approval of the State Board of Community Colleges, local community colleges may collaborate with local school administrative units to offer courses through the following programs:

1. Cooperative innovative high school programs as provided by Part 9 of Article 16 of Chapter 115C of the General Statutes.
2. Academic transition pathways for qualified high school students that lead to a career technical education certificate or diploma.
3. College transfer certificates requiring the successful completion of eight college transfer courses, including English and mathematics.

b. During the summer quarter, persons less than 16 years old may be permitted to take noncredit courses on a self-supporting basis, subject to rules of the State Board of Community Colleges. ~~Provided, further, that high~~

c. High school students may be permitted to take noncredit courses in safe driving on a self-supporting basis during the academic year or the summer.

...."

SECTION 7.1A.(i) The North Carolina Community College System, University of North Carolina General Administration, and the North Carolina Independent Colleges and Universities shall develop a plan for articulation of a college transfer certificate to all UNC institutions and participating independent colleges and universities. North Carolina Independent Colleges and Universities, Inc., shall also be included in the development of the plan if it chooses to participate. College transfer certificates shall require the successful completion of eight college transfer courses, including English and mathematics, and will be available to high school students under this section, as well as community college students.

SECTION 7.1A.(j) Part 9 of Article 16 of Chapter 115C of the General Statutes reads as rewritten:

"Part 9. Cooperative Innovative High School Programs.

"§ 115C-238.50. Purpose.

(a) The purpose of this Part is to authorize local boards of education to jointly establish with one or more boards of trustees cooperative innovative programs in high schools and colleges or universities that will expand students' opportunities for educational success through high quality instructional programming. These cooperative innovative high school programs shall ~~target:~~target any of the following groups:

(1) High school students who are at risk of dropping out of school before attaining a high school ~~diploma; or~~diploma.

(2) High school students with parents who did not continue education beyond high school.

~~(2)~~(3) High school students who would benefit from accelerated academic instruction.

(b) All the cooperative innovative high school programs established under this Part shall:

(1) Enable students to concurrently obtain a high school diploma and begin or complete an associate degree program, master a certificate or vocational program, or earn up to two years of college credit within five years.

(1a) Prepare students adequately for future learning in the workforce or in an institution of higher education.

~~(2) Expand students' educational opportunities within the public school system.~~

~~(3) Be centered on the core academic standards represented by the college preparatory or tech prep program of study as defined by the State Board of Education.~~

(4) Encourage the cooperative or shared use of resources, personnel, and facilities between public schools and colleges or universities, or both.

~~(5) Integrate and emphasize both academic and technical skills necessary for students to be successful in a more demanding and changing workplace.~~

(6) Emphasize parental involvement and provide consistent counseling, advising, and parent conferencing so that parents and students can make responsible decisions regarding course taking and can track the students' academic progress and success.

~~(7) Be held accountable for meeting measurable student achievement results.~~

~~(8) Encourage the use of different and innovative teaching methods.~~

~~(9) Establish joint institutional responsibility and accountability for support of students and their success.~~

~~(10) Effectively utilize existing funding sources for high school, college, university, and vocational programs and actively pursue new funding from other sources.~~

(11) Develop methods for early identification of potential participating students in the middle grades and through high ~~school.~~school and provide outreach to those students to promote academic preparation and awareness of the cooperative innovative high school programs.

~~(12) Reduce the percentage of students needing remedial courses upon their initial entry from high school into a college or university.~~

~~(c) Programs developed under this Part that target students who are at risk of dropping out of high school before attaining a high school diploma shall:~~

~~(1) Provide these students with the opportunity to graduate from high school possessing the core academic skills needed for postsecondary education and high-skilled employment.~~

~~(2) Enable students to complete a technical or academic program in a field that is in high demand and has high wages.~~

~~(3) Set and achieve goals that significantly reduce dropout rates and raise high school and college retention, certification, and degree completion rates.~~

~~(4) Enable students who complete these programs to pass employer exams, if applicable.~~

~~(d) Cooperative innovative high school programs that offer accelerated learning programs shall:~~

~~(1) Provide a flexible, customized program of instruction for students who would benefit from accelerated, higher level coursework or early graduation from high school.~~

~~(2) Enable students to obtain a high school diploma in less than four years, to begin or complete an associate degree program, to master a certificate or vocational program, or to earn up to two years of college credit.~~

~~(3) Offer a college preparatory academic core and in-depth studies in a career or technical field that will lead to advanced programs or employment opportunities in engineering, health sciences, or teaching.~~

~~(e) Cooperative innovative high school programs may include the creation of a school within a school, a technical high school, a high school or technical center located on the campus of a college or university, or a five-year career academy operating as part of an existing high school.~~

(f) Students are eligible to attend these programs as early as ninth grade.

"§ 115C-238.50A. Definitions.

The following definitions apply in this Part:

(1) Constituent institution. – A constituent institution as defined in G.S. 116-2(4).

(2) Education partner. – An education partner as provided in G.S. 115C-238.52.

(3) Governing board. – The State Board of Education, the State Board of Community Colleges, the Board of Governors of The University of North

Carolina, or the Board of the North Carolina Independent Colleges and Universities.

(4) Local board of trustees. – The board of trustees of a community college, constituent institution of The University of North Carolina, or private college located in North Carolina.

(5) Cooperative innovative high school. – A high school that meets the following criteria:

a. It has no more than 100 students per grade level.

b. It partners with an institution of higher education to enable students to concurrently obtain a high school diploma and begin or complete an associate degree program, master a certificate or vocational program, or earn up to two years of college credit within five years.

c. It is located on the campus of the institution of higher education, unless the governing board specifically waives the requirement through adoption of a formal resolution.

"§ 115C-238.51. Application process.

(a) A local board of education and at least one local board of trustees shall jointly apply to establish a cooperative innovative high school program under this Part.

...

(e) No additional State funds shall be provided to approved programs unless appropriated by the General Assembly.

...

"§ 115C-238.54. Funds for programs.

(a) The Department of Public Instruction shall assign a school code for each program that is approved under this ~~Part, with the exception of a five-year career academy operating as part of an existing high school, which shall continue to use the existing school code. All positions and other State and federal allotments that are generated for this program shall be assigned to that school code.~~ Part. Notwithstanding G.S. 115C-105.25, once ~~funds are assigned to that school code,~~ the program has been assigned a school code, the local board of education may use these funds for the program and may transfer these funds between funding allotment categories.

~~(a1) A five-year career academy operating as part of an existing high school shall maintain records to identify and evaluate students enrolled in the five-year career academy program distinct from the general school population.~~

...."

SECTION 7.1A.(k) Cooperative innovative high schools approved by the State Board of Education prior to July 1, 2011, shall meet the requirements of G.S. 115C-238.50A(5) as enacted by subsection (j) of this section no later than July 1, 2014. Any cooperative innovative high school which fails to meet the requirements by that date shall no longer be authorized as a cooperative innovative high school.

SECTION 7.1A.(l) Subsection (e) of this section takes effect January 1, 2013, and is repealed effective June 30, 2015. The remainder of this section becomes effective January 1, 2012.

CLASS SIZE REDUCTION FOR GRADES 1-3

SECTION 7.1B. The General Assembly finds that educational research has shown that small classes of 15 or fewer students result in marked improvement in learning in grades 1-3, as measured by standardized tests in reading and mathematics, that the advantages gained from being in small classes have been shown to have a lasting benefit into the later years of students' lives, and that these studies have shown that small classes have a particularly beneficial effect on the academic achievement of children from disadvantaged backgrounds. The General Assembly further finds that larger class sizes allow less time to develop relationships with students, colleagues, and parents, and prevent the implementation of new and more dynamic and individualized teaching strategies and techniques. Therefore, it is the intent of the General Assembly to reduce class size in grades 1 through 3 to a class size allotment not exceeding 1:15 as funds become available.

FUNDS FOR CHILDREN WITH DISABILITIES

SECTION 7.2. The State Board of Education shall allocate additional funds for children with disabilities on the basis of three thousand five hundred eighty-five dollars and eighty-eight cents ($3,585.88) per child. Each local school administrative unit shall receive funds for the lesser of (i) all children who are identified as children with disabilities or (ii) twelve and five-tenths percent (12.5%) of its 2011-2012 allocated average daily membership in the local school administrative unit. The dollar amounts allocated under this section for children with disabilities shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve children with disabilities.

FUNDS FOR ACADEMICALLY GIFTED CHILDREN

SECTION 7.3. The State Board of Education shall allocate additional funds for academically or intellectually gifted children on the basis of one thousand one hundred ninety-two dollars and ninety cents ($1,192.90) per child for fiscal year 2011-2012 and one thousand one hundred ninety-two dollars and ninety cents ($1,192.90) per child for fiscal year 2012-2013. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2011-2012 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The dollar amounts allocated under this section for academically or intellectually gifted children shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve academically or intellectually gifted children.

USE OF SUPPLEMENTAL FUNDING IN LOW-WEALTH COUNTIES

SECTION 7.4.(a) Use of Funds for Supplemental Funding. – All funds received pursuant to this section shall be used only (i) to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, school computer technicians, instructional supplies and equipment, staff development, and textbooks and (ii) for salary supplements for instructional personnel and instructional support personnel. Local boards of education are encouraged to use at least twenty-five percent (25%) of the funds received pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II in grades 4 and 7.

SECTION 7.4.(b) Definitions. – As used in this section, the following definitions apply:

(1) "Anticipated county property tax revenue availability" means the county-adjusted property tax base multiplied by the effective State average tax rate.

(2) "Anticipated total county revenue availability" means the sum of the following:
   a. Anticipated county property tax revenue availability.
   b. Local sales and use taxes received by the county that are levied under Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of Chapter 105 of the General Statutes.
   c. Sales tax hold harmless reimbursement received by the county under G.S. 105-521.
   d. Fines and forfeitures deposited in the county school fund for the most recent year for which data are available.

(3) "Anticipated total county revenue availability per student" means the anticipated total county revenue availability for the county divided by the average daily membership of the county.

(4) "Anticipated State average revenue availability per student" means the sum of all anticipated total county revenue availability divided by the average daily membership for the State.

(5) "Average daily membership" means average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education. If a county contains only part of a local school administrative unit, the average daily membership of that county includes all students who reside within the county and attend that local school administrative unit.

(6) "County-adjusted property tax base" shall be computed as follows:
  a. Subtract the present-use value of agricultural land, horticultural land, and forestland in the county, as defined in G.S. 105-277.2, from the total assessed real property valuation of the county.
  b. Adjust the resulting amount by multiplying by a weighted average of the three most recent annual sales assessment ratio studies.
  c. Add to the resulting amount the following:
    1. Present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2.
    2. Value of property of public service companies, determined in accordance with Article 23 of Chapter 105 of the General Statutes.
    3. Personal property value for the county.

(7) "County-adjusted property tax base per square mile" means the county-adjusted property tax base divided by the number of square miles of land area in the county.

(8) "County wealth as a percentage of State average wealth" shall be computed as follows:
  a. Compute the percentage that the county per capita income is of the State per capita income and weight the resulting percentage by a factor of five-tenths.
  b. Compute the percentage that the anticipated total county revenue availability per student is of the anticipated State average revenue availability per student and weight the resulting percentage by a factor of four-tenths.
  c. Compute the percentage that the county-adjusted property tax base per square mile is of the State-adjusted property tax base per square mile and weight the resulting percentage by a factor of one-tenth.
  d. Add the three weighted percentages to derive the county wealth as a percentage of the State average wealth.

(9) "Effective county tax rate" means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.

(10) "Effective State average tax rate" means the average of effective county tax rates for all counties.

(11) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(12) "Per capita income" means the average for the most recent three years for which data are available of the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis, including any reported modifications for prior years as outlined in the most recent report.

(13) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(14) "State average current expense appropriations per student" means the most recent State total of county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(15) "State average adjusted property tax base per square mile" means the sum of the county-adjusted property tax bases for all counties divided by the number of square miles of land area in the State.

(16) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

(17) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If

real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

SECTION 7.4.(c) Eligibility for Funds. – Except as provided in subsection (g) of this section, the State Board of Education shall allocate these funds to local school administrative units located in whole or in part in counties in which the county wealth as a percentage of the State average wealth is less than one hundred percent (100%).

SECTION 7.4.(d) Allocation of Funds. – Except as provided in subsection (f) of this section, the amount received per average daily membership for a county shall be the difference between the State average current expense appropriations per student and the current expense appropriations per student that the county could provide given the county's wealth and an average effort to fund public schools. (To derive the current expense appropriations per student that the county could be able to provide given the county's wealth and an average effort to fund public schools, multiply the county's wealth as a percentage of State average wealth by the State average current expense appropriations per student.) The funds for the local school administrative units located in whole or in part in the county shall be allocated to each local school administrative unit located in whole or in part in the county based on the average daily membership of the county's students in the school units. If the funds appropriated for supplemental funding are not adequate to fund the formula fully, each local school administrative unit shall receive a pro rata share of the funds appropriated for supplemental funding.

SECTION 7.4.(e) Formula for Distribution of Supplemental Funding Pursuant to This Section Only. – The formula in this section is solely a basis for distribution of supplemental funding for low-wealth counties and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for low-wealth counties.

SECTION 7.4.(f) Minimum Effort Required. – Counties that had effective tax rates in the 1996-1997 fiscal year that were above the State average effective tax rate but that had effective rates below the State average in the 1997-1998 fiscal year or thereafter shall receive reduced funding under this section. This reduction in funding shall be determined by subtracting the amount that the county would have received pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws from the amount that the county would have received if qualified for full funding and multiplying the difference by ten percent (10%). This method of calculating reduced funding shall apply one time only. This method of calculating reduced funding shall not apply in cases in which the effective tax rate fell below the statewide average effective tax rate as a result of a reduction in the actual property tax rate. In these cases, the minimum effort required shall be calculated in accordance with Section 17.1(g) of Chapter 507 of the 1995 Session Laws. If the county documents that it has increased the per student appropriation to the school current expense fund in the current fiscal year, the State Board of Education shall include this additional per pupil appropriation when calculating minimum effort pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

SECTION 7.4.(g) Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2011-2013 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if the following apply:

(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and

(2) The county cannot show (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section. The State Board of Education shall adopt rules to implement this section.

SECTION 7.4.(h) Reports. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2012, if it determines that counties have supplanted funds.

SECTION 7.4.(i) Department of Revenue Reports. – The Department of Revenue shall provide to the Department of Public Instruction a preliminary report for the current fiscal year of the assessed value of the property tax base for each county prior to March 1 of each year and a final report prior to May 1 of each year. The reports shall include for each county the annual sales assessment ratio and the taxable values of (i) total real property, (ii) the portion of total real property represented by the present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2, (iii) property of public service companies determined in accordance with Article 23 of Chapter 105 of the General Statutes, and (iv) personal property.

LITIGATION RESERVE FUNDS

SECTION 7.5. The State Board of Education may expend up to five hundred thousand dollars ($500,000) each year for the 2011-2012 and 2012-2013 fiscal years from unexpended funds for certified employees' salaries to pay expenses related to litigation.

UNIFORM EDUCATION REPORTING SYSTEM (UERS) FUNDS

SECTION 7.6.(a) Funds appropriated for the Uniform Education Reporting System shall not revert at the end of the 2010-2011 fiscal year.

SECTION 7.6.(b) This section becomes effective June 30, 2011.

FOCUSED EDUCATION REFORM PROGRAM FUNDS DO NOT REVERT

SECTION 7.7.(a) Funds appropriated for the Focused Education Reform Pilot Program that are unexpended and unencumbered at the end of the 2010-2011 fiscal year shall not revert but shall remain available for expenditure for that purpose through the 2011-2012 fiscal year.

SECTION 7.7.(b) This section becomes effective June 30, 2011.

DISADVANTAGED STUDENT SUPPLEMENTAL FUNDING (DSSF)

SECTION 7.8.(a) Funds appropriated for disadvantaged student supplemental funding shall be used, consistent with the policies and procedures adopted by the State Board of Education, only to:

(1) Provide instructional positions or instructional support positions and/or professional development;
(2) Provide intensive in-school and/or after-school remediation;
(3) Purchase diagnostic software and progress-monitoring tools; and
(4) Provide funds for teacher bonuses and supplements. The State Board of Education shall set a maximum percentage of the funds that may be used for this purpose.

The State Board of Education may require districts receiving funding under the Disadvantaged Student Supplemental Fund to purchase the Education Value Added Assessment System in order to provide in-depth analysis of student performance and help identify strategies for improving student achievement. This data shall be used exclusively for instructional and curriculum decisions made in the best interest of children and for professional development for their teachers and administrators.

SECTION 7.8.(b) Funds appropriated to a local school administrative unit for disadvantaged student supplemental funding shall be allotted based on (i) the local school administrative unit's eligible DSSF population and (ii) the difference between a teacher-to-student ratio of 1:21 and the following teacher-to-student ratios:

(1) For counties with wealth greater than ninety percent (90%) of the statewide average, a ratio of 1:19.9.
(2) For counties with wealth not less than eighty percent (80%) and not greater than ninety percent (90%) of the statewide average, a ratio of 1:19.4.
(3) For counties with wealth less than eighty percent (80%) of the statewide average, a ratio of 1:19.1.
(4) For LEAs receiving DSSF funds in 2005-2006, a ratio of 1:16. These LEAs shall receive no less than the DSSF amount allotted in 2006-2007.

For the purpose of this subsection, wealth shall be calculated under the low-wealth supplemental formula.

SECTION 7.8.(c) If a local school administrative unit's wealth increases to a level that adversely affects the unit's DSSF allotment ratio, the DSSF allotment for that unit shall be maintained at the prior year level for one additional fiscal year.

TUITION CHARGE FOR GOVERNOR'S SCHOOL

SECTION 7.9. G.S. 115C-12(36) reads as rewritten:

"(36) Duty to Charge Tuition for the Governor's School of North Carolina. – The State Board of Education ~~shall~~ may implement a ~~five hundred dollar ($500.00)~~ tuition charge for students attending the Governor's School of North ~~Carolina.~~Carolina to cover the costs of the School."

SCHOOL CONNECTIVITY INITIATIVE FUNDS

SECTION 7.10.(a) Section 7.9(b) of S.L. 2010-31 reads as rewritten:

"**SECTION 7.9.(b)** Up to three hundred fifty thousand dollars ($350,000) of the funds for the School Connectivity Initiative may be used for ~~this and subsequent fiscal years~~ the 2010-2011 fiscal year by the Office of the Governor for education innovation and the education E-learning portal. These funds may be used to provide services to coordinate e-learning activities across all education agencies and to support the operating of the E-learning portal."

SECTION 7.10.(b) Section 7.6(a) of S.L. 2008-107, as rewritten by Section 7.12(b) of S.L. 2009-451, reads as rewritten:

"**SECTION 7.6.(a)** Up to three hundred thousand dollars ($300,000) may be transferred annually through June 30, ~~2013,~~ 2011, to the Friday Institute at North Carolina State University to evaluate the effectiveness of using technology and its impact on 21st Century Teaching and Learning outcomes approved by the State Board of Education. The Friday Institute shall report annually to the State Board of Education on the evaluation results."

SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING

SECTION 7.12.(a) Eligibility. – All county school administrative units with an average daily membership less than the maximum small school system average daily membership shall be eligible for small school system supplemental funding. For the 2011-2012 and 2012-2013 fiscal years, the maximum small school system average daily membership shall be 3,200 students.

SECTION 7.12.(b) Allotment. – Each eligible county school administrative unit shall receive a dollar allotment equal to the product of the following:

(1) A per student funding factor, equal to the product of the following:
   a. One, minus the local school administrative unit's average daily membership divided by the maximum small school system average daily membership.
   b. The maximum small school system dollars per student.
(2) The average daily membership of the eligible county school administrative unit.

For the 2011-2012 and 2012-2013 fiscal years, the maximum small school system dollars per student shall be two thousand dollars ($2,000).

SECTION 7.12.(c) Phase-Out Provisions. –

(1) If a local school administrative unit becomes ineligible for funding under this formula, funding for that unit shall be phased out over a five-year period. Funding for such local administrative units shall be reduced in equal increments in each of the five years after the local administrative unit becomes ineligible. Funding shall be eliminated in the fifth fiscal year after the local administrative unit becomes ineligible.
(2) Allotments for eligible local school administrative units shall not be reduced by more than twenty percent (20%) in any fiscal year.

ELIMINATION OF REPORTING REQUIREMENTS

SECTION 7.13.(a) G.S. 115C-12(25) reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(25) Duty to Report to Joint Legislative Education Oversight Committee. – Upon the request of the Joint Legislative Education Oversight Committee, the State Board shall examine and evaluate issues, programs, policies, and fiscal information, and shall make reports to that Committee. Furthermore, beginning October 15, 1997, and annually thereafter, the State Board shall submit reports to that Committee regarding the continued implementation of Chapter 716 of the 1995 Session Laws, 1996 Regular Session. Each report shall include information regarding the composition and activity of assistance teams, schools that received incentive awards, schools identified as low-performing, ~~school improvement plans found to significantly improve student performance,~~ personnel actions taken in low-performing schools, and recommendations for additional legislation to improve student performance and increase local flexibility."

SECTION 7.13.(b) G.S. 115C-47(38) is repealed.

SECTION 7.13.(c) G.S. 115C-84.2(a)(1) reads as rewritten:

"(1) **(See notes)** A minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. ~~Local boards may approve school improvement plans that include days with varying amounts of instructional time.~~ If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather."

SECTION 7.13.(d) G.S. 115C-84.2(a)(5) reads as rewritten:

"(5) The remaining days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes. ~~Before consulting with the local board, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled.~~ Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. In order to make up days for school closing because of inclement weather, the local board may designate any of the days in this subdivision as additional make-up days to be scheduled after the last day of student attendance."

SECTION 7.13.(e) G.S. 115C-98(b2) reads as rewritten:

"(b2) Local boards of education ~~may:~~

~~(1)~~ ~~Select,~~ may select, procure, and use textbooks that have not been adopted by the State Board of Education for use throughout the local school administrative unit for selected grade levels and ~~courses; and~~courses.

~~(2) Approve school improvement plans developed under G.S. 115C-105.27 that include provisions for using textbooks that have not been adopted by the State Board of Education for selected grade levels and courses.~~

All textbook contracts made under this subsection shall include a clause granting to the local board of education the license to produce braille, large print, and audiocassette tape copies of the textbooks for use in the local school administrative unit."

SECTION 7.13.(f) G.S. 115C-105.20(b)(5) is repealed.

SECTION 7.13.(g) G.S. 115C-105.25 reads as rewritten:

"**§ 115C-105.25. Budget flexibility.**

...

(b) Subject to the following limitations, local boards of education may transfer and may approve transfers of funds between funding allotment categories:

(1) ~~In accordance with a school improvement plan accepted under G.S. 115C-105.27,~~ State funds allocated for teacher assistants may be transferred only for personnel (i) to serve students only in kindergarten through third grade, ~~or~~ (ii) to serve students primarily in kindergarten through third grade when the personnel are assigned to an elementary school to serve the whole school ~~school. Funds allocated for teacher assistants may be transferred to reduce class size~~ or (iii) to reduce the student-teacher ratio in kindergarten through third grade so long as the affected teacher assistant positions are not ~~filled when the plan is amended or approved by the building-level staff entitled to vote on the plan or the affected teacher assistant positions are not expected to be filled on the date the plan is to be implemented.~~ filled. Any State funds appropriated for teacher assistants that were converted to certificated teachers before July 1, 1995, in accordance with Section 1 of Chapter 986 of the 1991 Session Laws, as rewritten by Chapter 103 of the 1993 Session Laws, may continue to be used for certificated teachers.

(2) ~~In accordance with a school improvement plan accepted under G.S. 115C-105.27, (i)~~ State funds allocated for classroom materials/instructional supplies/equipment may be transferred only for the purchase of ~~textbooks; (ii)~~ textbooks. State funds allocated for textbooks may be transferred only for the purchase of instructional supplies, instructional equipment, or other classroom ~~materials; and (iii)~~materials. State funds allocated for noninstructional support personnel may be transferred only for teacher positions.

...

(8) Funds allocated for academically or intellectually gifted students may be used only (i) for academically or intellectually gifted students; (ii) to implement the plan developed under G.S. 115C-150.7; or (iii) in accordance with an accepted school improvement plan, for any purpose so long as that school demonstrates it is providing appropriate services to academically or intellectually gifted students assigned to that school in accordance with the local plan developed under G.S. 115C-150.7.

...."

SECTION 7.13.(h) G.S. 115C-105.26 reads as rewritten:

"**§ 115C-105.26. Waivers of State laws, rules, or policies.**

(a) ~~When included as part of a school improvement plan accepted under G.S. 115C-105.27, local~~ Local boards of education shall submit requests for waivers of State laws, rules, or policies to the State Board of Education. A request for a waiver shall (i) identify the school making the request, (ii) identify the State laws, rules, or policies that inhibit the school's ability to improve student performance, (iii) set out with specificity the circumstances under which the waiver may be used, and (iv) explain how the requested waiver will permit the school to improve student performance. Except as provided in subsection (c) of this section, the State Board shall grant waivers only for the specific schools for which they are requested and shall be used only under the specific circumstances for which they are requested.

(b) ~~When requested as part of a school improvement plan, the~~ The State Board of Education may grant waivers of:

(1) State laws pertaining to class size and teacher certification; and

(2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and G.S. 115C-325, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System.

...."

SECTION 7.13.(i) G.S. 115C-105.27 is repealed.

SECTION 7.13.(j) G.S. 115C-105.30 is repealed.

SECTION 7.13.(k) G.S. 115C-105.31(b)(3) is repealed.

SECTION 7.13.(l) G.S. 115C-105.32 is repealed.

SECTION 7.13.(m) G.S. 115C-105.33 reads as rewritten:

"**§ 115C-105.33. Safe and orderly schools.**

A ~~school improvement team or a~~ parent organization at a school may ask the local board of education to provide assistance in promoting or restoring safety and an orderly learning environment at a school. The ~~school improvement team or~~ parent organization shall file a copy of this request with the State Board. If the local board fails to provide adequate assistance to the school, then the ~~school improvement team or~~ parent organization may ask the State Board to provide an assistance team to the school.

The State Board may provide an assistance team, established under G.S. 115C-105.38, to a school in order to promote or restore safety and an orderly learning environment at that school if one of the following applies:

(1) The local board of education or superintendent requests that the State Board provide an assistance team to a school and the State Board determines that the school needs assistance.

(2) The State Board determines within 10 days after its receipt of the request for assistance from a ~~school improvement team or~~ parent organization of a school that the school needs assistance and that the local board has failed to provide adequate assistance to that school.

If an assistance team is assigned to a school under this section, the team shall spend a sufficient amount of time at the school to assess the problems at the school, assist school personnel with resolving those problems, and work with school personnel and others to develop a long-term plan for restoring and maintaining safety and an orderly learning environment at the school. The assistance team also shall make recommendations to the local board of education and the superintendent on actions the board and the superintendent should consider taking to resolve problems at the school. These recommendations shall be in writing and are public records. If an assistance team is assigned to a school under this section, the powers given to the State Board and the assistance team under G.S. 115C-105.38 and G.S. 115C-105.39 shall apply as if the school had been identified as low-performing under this Article."

SECTION 7.13.(n) G.S. 115C-105.37A(a) reads as rewritten:

"(a) Definition of Continually Low-Performing Schools. – A continually low-performing school is a school that has received State-mandated assistance and has been designated by the State Board as low performing for at least two of three consecutive years. ~~If the State Board identifies a school as continually low performing:~~

~~(1) The school improvement team at that school shall review its school improvement plan to ensure consistency with the plan adopted pursuant to G.S. 115C-105.38(b)(3), and~~

~~(2) The plan must be reviewed and approved by the State Board of Education.~~"

SECTION 7.13.(o) G.S. 115C-105.38(b)(6) reads as rewritten:

"(6) Report, as appropriate, to the local board of education, the community, and the State Board on the school's progress. ~~If an assistance team determines that an accepted school improvement plan developed under G.S. 115C-105.27 is impeding student performance at a school, the team may recommend to the local board that it vacate the relevant portions of that plan and direct the school to revise those portions.~~"

SECTION 7.13.(p) G.S. 115C-105.47(b)(13) is repealed.

SECTION 7.13.(q) G.S. 115C-174.12(a)(3) reads as rewritten:

"(3) No school shall participate in more than two field tests at any one grade level during a school year ~~unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.~~ without the approval of the principal of the school."

SECTION 7.13.(r) G.S. 115C-238.31(a) reads as rewritten:

"(a) Local school administrative units are encouraged to implement extended services programs that will expand students' opportunities for educational success through high-quality, integrated access to instructional programming during nonschool hours. ~~Extended services programs may be incorporated into school improvement plans developed in accordance with G.S. 115C-105.27.~~ Calendar alternatives include, but are not limited to, after-school hours, before-school hours, evening school, Saturday school, summer school, and year-round school.

Instructional programming may include, but is not limited to, tutoring, direct instruction, enrichment activities, study skills, and reinforcement projects."

SECTION 7.13.(s) G.S. 115C-288(h) reads as rewritten:

"(h) To Make Available School ~~Budgets and School Improvement Plans.~~ Budgets. – The principal shall maintain a copy of the school's current ~~budget and school improvement plan, including any amendments to the plan,~~ budget and shall allow parents of children in the school and other interested persons to review and obtain such documents in accordance with Chapter 132 of the General Statutes."

SECTION 7.13.(t) G.S. 115C-288(l) is repealed.

SECTION 7.13.(u) G.S. 143B-146.6(b)(6) reads as rewritten:

"(6) Report, as appropriate, to the Secretary, the State Board, and the parents on the school's progress. ~~If an assistance team determines that an accepted school improvement plan developed under G.S. 143B-146.12 is impeding student performance at a school, the team may recommend to the Secretary that he vacate the relevant portions of that plan and direct the school to revise those portions.~~"

SECTION 7.13.(v) G.S. 143B-146.12 is repealed.

SECTION 7.13.(w) G.S. 115C-47(32a) reads as rewritten:

"(32a) To Establish Alternative Learning Programs and Develop Policies and Guidelines. – Each local board of education shall establish at least one alternative learning program and shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to long term suspension or expulsion. In developing these guidelines, local boards shall consider the State Board's standards developed under G.S. 115C-12(24). ~~Upon adoption of policies and guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47.~~

The General Assembly urges local boards to adopt policies that prohibit superintendents from assigning to any alternative learning program any professional public school employee who has received within the last three years a rating on a formal evaluation that is less than above standard.

Notwithstanding this subdivision, each local board shall adopt policies based on the State Board's standards developed under G.S. 115C-12(24). These policies shall apply to any new alternative learning program or alternative school that is implemented beginning with the 2006-2007 school year. Local boards of education are encouraged to apply these standards to alternative learning programs and alternative schools implemented before the 2006-2007 school year.

Local boards shall assess on a regular basis whether the unit's alternative schools and alternative learning programs comply with the State Board's standards developed under G.S. 115C-12(24) and whether they incorporate best practices for improving student academic performance and reducing disruptive behavior, are staffed with professional public school employees who are well trained and provided with appropriate staff development, are organized to provide coordinated services, and provide students with high quality and rigorous academic instruction."

SECTION 7.13.(x) G.S. 115C-105.27(b)(2) reads as rewritten:

"(2) Shall include a plan to address school safety and discipline ~~concerns in accordance with the safe school plan developed under Article 8C of this Chapter;~~concerns."

SECTION 7.13.(y) G.S. 115C-105.46 reads as rewritten:

"**§ 115C-105.46. State Board of Education responsibilities.**

In order to implement this Article, the State Board of Education:

~~(1) Shall adopt guidelines for developing local plans under G.S. 115C-105.47.~~

~~(2) Shall provide, in cooperation with the Board of Governors of The University of North Carolina, ongoing technical assistance to the local school administrative units in the development, implementation, and evaluation of their local plans under G.S. 115C-105.47.~~

~~(3) May require a local board of education to withhold the salary of any administrator or other employee of a local school administrative unit who delays or refuses to prepare and implement local safe school plans in accordance with G.S. 115C-105.47.~~

~~(4) May revoke the certificate of the superintendent, pursuant to G.S. 115C-274(e), for failure to fulfill the superintendent's duties under a local safe school plan.~~

(5) Shall adopt policies that define who is an at-risk student."

SECTION 7.13.(z) G.S. 115C-105.47 is repealed.

SECTION 7.13.(aa) G.S. 115C-102.6C is repealed.

SECTION 7.13.(bb) G.S. 115C-102.6D(d) is repealed.

SECTION 7.13.(cc) G.S. 115C-102.7 reads as rewritten:

"**§ 115C-102.7. Monitoring and evaluation of State and local school system technology plans; reports.**

(a) The Department of Public Instruction shall monitor and evaluate the development and implementation of the State ~~and local school system technology plans.~~ technology plan. The evaluation shall consider the effects of technology on student learning, the effects of technology on students' workforce readiness, the effects of technology on teacher productivity, and the cost-effectiveness of the technology.

(a1) Repealed by Session Laws 1997-18, s. 15(k).

(b) Repealed by Session Laws 2009-451, s. 7.31, effective July 1, 2009.

~~(c) The Department of Public Instruction shall randomly check local school system technology plans to ensure that local school administrative units are implementing their plans as approved. The Department shall report to the State Board of Education on which local school administrative units are not complying with their plans. The report shall include the reasons these local school administrative units are out of compliance and a recommended plan of action to support each of these local school administrative units in carrying out their plans.~~"

SECTION 7.13.(dd) Section 7.61(b) of S.L. 2005-276, as rewritten by Section 7.22(d) of S.L. 2010-31, is repealed.

SECTION 7.13.(ee) G.S. 115C-105.41 is repealed.

SECTION 7.13.(ff) The State Board of Education shall not require more than five semester hours or seven and one-half units of renewal credits in order to renew a North Carolina Standard Professional 2 professional educator's license.

SCHOOL BUILDING ADMINISTRATION

SECTION 7.14.(a) A school with less than 100 students in final average daily membership is not entitled to 12 months of employment for a principal.

SECTION 7.14.(b) Local school administrative units may transfer funds for school building administration for any purpose, not otherwise prohibited by the State Board of Education's ABC transfer policy, by submitting an ABC Transfer Form to the Department of Public Instruction. For funds related to principal positions, the salary transferred shall be based on the first step of the principal III salary schedule. For funds related to assistant principal months of employment, the salary transferred shall be based on the first step of the assistant principal salary schedule. No local school administrative unit shall convert certified position allotments to dollars in order to hire the same type of position.

SECTION 7.14.(c) Subsection (a) of this section applies only to schools created after July 1, 2011.

ELIMINATION OF TEACHERS FOR GEOGRAPHICALLY ISOLATED SCHOOLS

SECTION 7.16. Section 7.26 of S.L. 2009-451 is repealed.

SCHOOL CALENDAR PILOT PROGRAM

SECTION 7.17. The State Board of Education shall establish a school calendar pilot program in the Wilkes County Schools, the Montgomery County Schools, and the Stanly County Schools. The purpose of the pilot program is to determine whether and to what extent a

local school administrative unit can save money during this extreme fiscal crisis by consolidating the school calendar.

Notwithstanding G.S. 115C-84.2(a)(1), the school calendar for the 2011-2012 calendar year for the pilot school systems shall include a minimum of 185 days or 1,025 hours of instruction covering at least nine calendar months. Notwithstanding G.S. 115C-84.2(d), the opening date for students in pilot school systems may be before August 25.

If the local board of education in a pilot school system adds instructional hours to previously scheduled days under this section, the local school administrative unit is deemed to have a minimum of 185 days of instruction, and teachers employed for a 10-month term are deemed to have been employed for the days being made up and shall be compensated as if they had worked the days being made up.

The State Board of Education shall report to the Joint Legislative Education Oversight Committee by March 15, 2012, on the administration of the pilot program, cost savings realized by it, and its impact on student achievement.

BUDGET REDUCTIONS/DEPARTMENT OF PUBLIC INSTRUCTION

SECTION 7.19.(a) Notwithstanding G.S. 143C-6-4 or Section 7.14 of S.L. 2009-451, the Department of Public Instruction may, after consultation with the Office of State Budget and Management and the Fiscal Research Division, reorganize if necessary to implement the budget reductions set out in this act. This consultation shall occur prior to requesting budgetary and personnel changes through the budget revision process. The Department shall provide a current organization chart in the consultation process. The Department shall report to the Joint Legislative Commission on Governmental Operations on any reorganization.

SECTION 7.19.(b) The Department of Public Instruction shall not increase the number of State-funded positions in any Department of Public Instruction divisions identified for reductions in this act.

SECTION 7.19.(c) In implementing budget reductions under this act, the Department of Public Instruction shall make no reduction in funding or positions for the Positive Behavioral Support program.

LEA BUDGET ADJUSTMENT

SECTION 7.20.(a) Within 14 days of the date this act becomes law, the State Board of Education shall notify each local school administrative unit and charter school of the amount the unit or charter school must reduce from the State General Fund appropriations. The State Board shall determine the amount of the reduction for each unit and charter school on the basis of average daily membership.

SECTION 7.20.(b) Each unit or charter school shall report to the Department of Public Instruction on the flexibility budget reductions it has identified for the unit within 30 days of the date this act becomes law.

LEA BUDGETARY FLEXIBILITY

SECTION 7.21.(a) For fiscal years 2011-2012 and 2012-2013, the State Board of Education is authorized to extend its emergency rules, in accordance with G.S. 150B-21.1A, granting maximum flexibility to local school administrative units regarding the expenditure of State funds. These rules shall not be subject to the limitations on transfers of funds between funding allotment categories set out in G.S. 115C-105.25. These rules shall not permit the transfer of funds into central office administration.

SECTION 7.21.(b) For fiscal years 2011-2012 and 2012-2013, local school administrative units shall make every effort to reduce spending whenever and wherever such budget reductions are appropriate with the goal of protecting direct classroom services, such as classroom teachers. In making reductions, local school administrative units shall first consider reductions to central office administration and other administrative functions. Notwithstanding G.S. 115C-301 or any other law, local school administrative units shall have the maximum flexibility to use allotted teacher positions to maximize student achievement in grades 4-12. Class size requirements in grades K-3 shall remain unchanged.

NORTH CAROLINA VIRTUAL PUBLIC SCHOOLS

SECTION 7.22.(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

SECTION 7.22.(b) The Director of NCVPS shall ensure that students residing in rural and low-wealth county local school administrative units have access to e-learning course offerings in order to expand available instructional opportunities. E-learning instructional opportunities shall include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

SECTION 7.22.(c) Section 7.4 of S.L. 2010-31 is repealed.

SECTION 7.22.(d) The State Board of Education shall take the following steps to implement an allotment formula for NCVPS beginning with the 2011-2012 school year:

(1) Project NCVPS student enrollment by semester and year-long course types for each local school administrative unit and charter school.

(2) Establish a per course teacher payment structure for the instructional costs of NCVPS. In establishing this payment structure, the Board shall consider the following:

a. The payment structure is based on a total compensation analysis to ensure NCVPS teacher pay has parity with similar programs. The total compensation analysis shall take into account salaries, benefits, and work effort to ensure valid comparisons between occupations.

b. The effects any change in NCVPS teacher payments may have on the attraction and retention of NCVPS teachers.

(3) Develop a per student fee structure for in-State students that is based on the per course teacher pay structure. The fee structure for in-State students shall ensure that the projected cost for local school administrative units and charter schools equals the projected instructional cost for NCVPS courses.

(4) Multiply the per course fees for in-State students by the projected enrollment by course type to determine the total instructional cost for each local school administrative unit and charter school.

(5) Transfer a dollar amount equal to seventy-five percent (75%) of the local school administrative unit's or charter school's projected instructional cost from the classroom teacher allotment to NCVPS.

(6) No later than February 21 of each year, calculate the actual instructional cost for each local school administrative unit and charter school based upon actual NCVPS enrollment as of that date.

(7) Subtract the amount transferred pursuant to subdivision (5) of this subsection from the actual instructional cost for each unit or charter school and transfer the remaining dollar amount owed, up to a maximum of one hundred percent (100%) of the projected cost.

(8) Develop and implement a policy regarding returning funds to local school administrative units and charter schools in cases where the amount transferred pursuant to subdivision (5) of this subsection exceeds the actual instructional costs.

NCVPS shall use funds transferred to it to provide the NCVPS program at no cost to all students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

SECTION 7.22.(e) In establishing the fee structure and payment structure for NCVPS, the State Board shall consider recommendations from the eLearning Commission and the NCVPS Advisory Board.

SECTION 7.22.(f) The State Board shall establish a separate per student tuition for out-of-state students, home-schooled students, and private school students, which shall be adjusted upward from the in-State student fee structure by an amount determined appropriate by the State Board.

SECTION 7.22.(g) NCVPS shall develop a revenue-generating plan for the sale of courses to out-of-state educational entities. NCVPS shall submit its plan to the State Board by September 1, 2011.

SECTION 7.22.(h) Beginning in 2011, the Director of NCVPS shall submit an annual report on NCVPS to the State Board of Education no later than December 1 of each year. The report shall use data from the previous fiscal year and shall include statistics on

actual versus projected costs to local school administrative units and charter schools, student enrollment, virtual teacher salaries, and measures of academic achievement.

The Director of NCVPS shall continue to ensure the following:

(1) Course quality standards are established and met.

(2) All e-learning opportunities other than virtual charter schools offered by State-funded entities to public school students are consolidated under the NCVPS program, eliminating course duplication.

(3) All courses offered through NCVPS are aligned to the North Carolina Standard Course of Study.

SECTION 7.22.(i) The State Board of Education shall reduce each local school administrative unit's or charter school's classroom teacher allotment, or other allotment, as determined by the State Board of Education, on the basis of ADM in grades 6-12 to provide the sum of two million eight hundred sixty-six thousand nine hundred twenty-three dollars ($2,866,923) for the State-level operations and administration of NCVPS for the 2011-2012 fiscal year. The allotment reduction for State-level operations and administration shall continue in future fiscal years and be adjusted annually based upon the percentage growth in NCVPS enrollment, ensuring the expansion of services due to increased virtual student enrollment.

SECTION 7.22.(j) For fiscal year 2011-2012, the State Board of Education shall reduce each local school administrative unit's or charter school's classroom teacher allotment, or other allotment, as determined by the State Board of Education, on the basis of ADM in grades 6-12 to provide the sum of two million dollars ($2,000,000) in order to create an NCVPS enrollment reserve. The NCVPS enrollment reserve shall be used to cover the NCVPS instructional costs of local school administrative units or charter schools with enrollments exceeding projected NCVPS enrollment.

Beginning in fiscal year 2012-2013, and annually thereafter, the State Board of Education shall reduce each local school administrative unit's or charter school's classroom teacher allotment, or other allotment, as determined by the State Board of Education, on the basis of ADM in grades 6-12 an amount that is the difference between two million dollars ($2,000,000) and the balance of the NCVPS enrollment reserve.

Amounts available in the NCVPS enrollment reserve shall not revert.

SECTION 7.22.(k) The State Board shall use only funds provided through the North Carolina Virtual Public Schools Allotment Formula and the NCVPS enrollment reserve as set forth in this section to fund instructional costs of NCVPS.

PERFORMANCE-BASED REDUCTIONS IN FORCE

SECTION 7.23.(a) Local school administrative units shall adopt a Reduction in Force policy that includes the following criteria:

(1) In determining which positions shall be subject to a reduction in force, a local school administrative unit shall consider the following:

a. Structural considerations, such as identifying positions, departments, courses, programs, operations, and other areas where there are (i) less essential, duplicative, or excess personnel; (ii) job responsibility and/or position inefficiencies; (iii) opportunities for combined work functions; and/or (iv) decreased student or other demands for curriculum, programs, operations, or other services.

b. Organizational considerations, such as anticipated organizational needs of the school system and program/school enrollment.

(2) In determining which employees in similar positions shall be subject to a reduction in force, a local school administrative unit shall consider work performance.

Each local school administrative unit shall have this policy in place on or before July 15, 2011.

SECTION 7.23.(b) G.S. 115C-325(e)(2) reads as rewritten:

"(2) Reduction in Force. – Before recommending to a board the dismissal or demotion of the career employee pursuant to G.S. 115C-325(e)(1)l., the superintendent shall give written notice to the career employee by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal or demotion is justified. The notice shall include a

statement to the effect that if the career employee within 15 days after receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by the board. Within the 15-day period after receipt of the notice, the career employee may file with the superintendent a written request for a hearing before the board within 10 days. If the career employee requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j3) shall be followed. If no request is made within the 15-day period, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal. Provisions of this section which permit a hearing by a case manager shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1)l.

When a career employee is dismissed pursuant to G.S. 115C-325(e)(1)l. above, his name shall be placed on a list of available career employees to be maintained by the board. ~~Career employees whose names are placed on such a list shall have a priority on all positions in which they acquired career status and for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the local school administrative unit offers the dismissed career employee a position for which he is certified and he refuses it, his name shall be removed from the priority list.~~"

TEACHING FELLOWS ADMINISTRATIVE REDUCTION

SECTION 7.24. G.S. 115C-363.23A(f) reads as rewritten:

"**§ 115C-363.23A. Teaching Fellows Program established; administration.**

...

(f) All funds appropriated to or otherwise received by the Teaching Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a revolving fund. This revolving fund shall be used for scholarship loans granted under the Teaching Fellows Program. With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used for campus and summer program support, and costs related to disbursement of awards and collection of loan repayments.

The Public School Forum, as administrator for the Teaching Fellows Program, may use up to ~~eight hundred ten thousand dollars ($810,000)~~six hundred thousand dollars ($600,000) annually from the fund balance for costs associated with administration of the Teaching Fellows Program."

RESIDENTIAL SCHOOLS

SECTION 7.25.(a) The General Assembly finds that the operation of the Eastern North Carolina School for the Deaf, the Governor Morehead School for the Blind, and the North Carolina School for the Deaf (collectively, the "residential schools") no longer meets the needs of the populations they serve in an efficient and effective manner, and that current levels of utilization of the residential schools can be accommodated with two schools. No later than January 15, 2012, the Department shall report to the Joint Legislative Education Oversight Committee of the General Assembly the residential school it has decided to close and the Department's plan for consolidating the programs with those at the two remaining schools. The Department shall base its choice of the residential school to be closed on the following considerations:

(1) Minimization of impact on services to deaf and blind students currently served by the residential schools.

(2) Minimization of costs of modifications at the two remaining residential schools to accommodate students from the closed school.

(3) Maximization of funds generated or net savings to the State from costs avoided due to the closure of one residential school and the sale or transfer to other State agencies of the school campus and other physical assets.

Effective July 1, 2012, the Department of Public Instruction shall carry out the closure and consolidation described in its report.

SECTION 7.25.(b) The Department of Public Instruction shall ensure that the residential and instructional schedules for the residential schools that were in effect before February 8, 2010, shall remain in effect unless the General Assembly approves a material change to the instructional week. Residential students shall have the opportunity to arrive at their respective schools on the evening of the day before commencement of academic instruction for the week. The Department shall also maintain summer school programming at the residential schools in substantially the same manner as in prior years and shall make no material changes to summer school programming without the approval of the General Assembly.

SECTION 7.25.(c) The Department of Public Instruction may create a principal position at each residential school not currently assigned a principal position from funds appropriated in this act for the residential schools.

SECTION 7.25.(d) The position of superintendent for the residential schools within the Department of Public Instruction is eliminated. The Department shall designate one of the directors of the residential schools to serve as the superintendent for the residential schools. Of funds previously appropriated to the Department for the position of superintendent for the residential schools, the sum of twenty thousand dollars ($20,000) shall be used to supplement the salary of the director who also serves as superintendent of residential schools. The remaining funds shall be used to offset other reductions to the residential schools made in this act.

SECTION 7.25.(e) G.S. 115C-325(p) reads as rewritten:

"(p) Section Applicable to Certain Institutions. – Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services, Public Instruction, Correction, or Juvenile Justice and Delinquency Prevention regardless of the age of the students."

DEPARTMENT OF PUBLIC INSTRUCTION RECEIPTS

SECTION 7.27. Notwithstanding G.S. 143C-6-4(b)(3), the Department of Public Instruction may realign receipts among the following General Fund purpose codes on a recurring basis through the budget certification process for the sole purpose of correctly aligning the certified budget with the appropriate purpose or programs as defined in G.S. 143C-1-1(d)(23): 1000, 1100, 1300, 1330, 1430, 1500, 1600, 1640, and 1660.

SCHOOL BUS PURCHASES

SECTION 7.28.(a) G.S. 115C-249 reads as rewritten:

"§ 115C-249. Purchase and maintenance of school buses, materials and supplies.

...

~~(c) Any funds appropriated from time to time by the General Assembly for the purchase of school buses or service vehicles shall be allocated by the State Board of Education to the respective local boards of education in accordance with the requirements of such boards as determined by the State Board of Education, and thereupon shall be paid over to the respective local boards of education in accordance with such allocation.~~

(d) The title to any ~~additional or replacement~~ school bus or service vehicle purchased pursuant to the provisions of this section, shall be taken in the name of the board of education of such local school administrative unit, and such bus shall in all respects be maintained and operated pursuant to the provisions of this ~~Article in the same manner as any other public school bus.~~Article.

(e) It shall be the duty of the county board of education to provide adequate buildings and equipment for the storage and maintenance of all school buses and service vehicles owned or operated by the board of education of any local school administrative unit in such county. It shall be the duty of the tax-levying authorities of such county to provide in its capital outlay budget for the construction or acquisition of such buildings and equipment as may be required for this purpose.

~~(f) In the event of the damage or destruction of any school bus or service vehicle by fire, collision, or otherwise, the board of education of the local school administrative unit which shall own or operate such bus or service vehicle may apply to the State Board of Education for funds with which to replace it. If the State Board of Education finds that such bus or service vehicle has been destroyed or damaged to the extent that it cannot be made suitable for further use, and if the State Board of Education finds that the replacement of such bus or service vehicle is necessary in order to enable such local school administrative unit to operate properly its school bus transportation system, the State Board of Education shall allot to the board of education of such local school administrative unit from the funds now held by the State Board of Education for the replacement of school buses or service vehicles, or from funds hereafter appropriated by the General Assembly for that purpose, a sum sufficient to purchase a new school bus or service vehicle to be used as a replacement for such damaged or destroyed bus or service vehicle and upon such allocation such sum shall be paid over to or for the account of the board of education of such local school administrative unit for such purpose.~~

(g) Repealed by Session Laws 2003-147, s. 3, effective for a local school administrative unit when the unit is certified as being E-Procurement compliant, or April 1, 2004, whichever occurs first.

~~(h) Appropriations by the General Assembly for the purchase of public school buses shall not revert to the General Fund. Any unexpended portion of those appropriations shall at the end of each fiscal year be transferred to a reserve account and be held, together with any other funds appropriated for the purpose, for the purchase of public school buses.~~"

SECTION 7.28.(b) G.S. 115C-426(f)(4) reads as rewritten:

"(f) The capital outlay fund shall include appropriations for:

...

(4) The acquisition of school ~~buses as additions to the fleet.~~buses.

...."

SECTION 7.28.(c) During the 2011-2012 fiscal year, local boards of education shall use allotments for replacement school buses only for purchases during that fiscal year or for 2011-2012 fiscal year payments for purchase financing contracts entered into during prior years, and shall not use the funds to enter into a purchase financing contract that will require State funding in future fiscal years.

SECTION 7.28.(d) Subsections (a) and (b) of this section take effect July 1, 2012.

INCREASE NUMBER OF INSTRUCTIONAL DAYS

SECTION 7.29. G.S. 115C-84.2 reads as rewritten:

"**§ 115C-84.2. School calendar.**

(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) **(See notes)** A minimum of ~~180~~185 days and ~~1,000~~1,025 hours of instruction covering at least nine calendar months. The local board shall designate when the ~~180~~185 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

(1a) Repealed by Session Laws 2004-180, s. 1, effective August 9, 2004.

(2) A minimum of 10 annual vacation leave days.

(3) The same or an equivalent number of legal holidays occurring within the school calendar as those designated by the State Personnel Commission for State employees.

~~(4) Five days, as designated by the local board, for use as teacher workdays. These days shall be protected to allow teachers to complete instructional and classroom administrative duties. The local school administrative unit shall~~

~~not impose any additional tasks on these days. The local board shall schedule one of these days at the beginning of the school year and one at the end of each academic quarter.~~

(5) The remaining days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes. Before consulting with the local board, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled. Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. In order to make up days for school closing because of inclement weather, the local board may designate any of the days in this subdivision as additional make-up days to be scheduled after the last day of student attendance.

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards shall designate at least ~~seven~~ two days scheduled under ~~subdivisions (4) and~~ subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave. Local boards may designate the remaining days scheduled in ~~subdivisions (4) and~~ subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave, but local boards shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on any of these days. A teacher may elect to waive this notice requirement for one or more of these days.

(b) Limitations. – The following limitations apply when developing the school calendar:

(1) The total number of teacher workdays for teachers employed for a 10 month term shall not exceed 195 days.

(2) The calendar shall include at least 42 consecutive days when teacher attendance is not required unless: (i) the school is a year-round school; or (ii) the teacher is employed for a term in excess of 10 months. At the request of the local board of education or of the principal of a school, a teacher may elect to work on one of the 42 days when teacher attendance is not required in lieu of another scheduled workday.

(3) School shall not be held on Sundays.

(4) Veterans Day shall be a holiday for all public school personnel and for all students enrolled in the public schools.

(c) Emergency Conditions. – During any period of emergency in any section of the State where emergency conditions make it necessary, the State Board of Education may order general, and if necessary, extended recesses or adjournment of the public schools.

(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall not be before August 25, and the closing date for students shall not be after June 10. On a showing of good cause, the State Board of Education may waive this requirement to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means either that:

(1) schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations; or

(2) schools in any local school administrative unit in a county have been closed for all or part of eight days per year during any four of the last 10 years because of severe weather conditions. For purposes of this subdivision, a school shall be deemed to be closed for part of a day if it is closed for two or more hours.

The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar.

(e) Nothing in this section prohibits a local board of education from offering supplemental or additional educational programs or activities outside the calendar adopted under this section."

TESTING PROGRAM

SECTION 7.30.(a) G.S. 115C-174.11 reads as rewritten:

"§ 115C-174.11. Components of the testing program.

(a) Assessment Instruments for First and Second Grades. – The State Board of Education shall adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests except as required as a condition of receiving federal grants.

(b) Repealed by Session Laws 2009-451, s. 7.20(c), effective July 1, 2009.

(c) Annual Testing Program.

(1) The State Board of Education shall adopt the tests for grades three through 12 that are required by federal law or as a condition of a federal grant. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies for grades nine through 12. Students who do not pass the tests adopted for eighth grade shall be provided remedial instruction in the ninth grade.

(2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states.

(3) The State Board of Education shall continue to participate in the development of the Common Core State Standards in conjunction with the consortium of other states, review all national assessments developed by both multistate consortia, and implement the assessments that the State Board deems most appropriate to assess student achievement on the Common Core State Standards.

(4) To the extent funds are made available, the State Board shall plan for and require the administration of the ACT test for all students in the eleventh grade unless the student has already taken a comparable test and scored at or above a level set by the State Board.

(d) Except as provided in ~~subdivision (2) of~~ subsection (c) of this section, the State Board of Education shall not require the public schools to administer any standardized tests except for those required by federal law or as a condition of a federal grant.

The State Board of Education shall adopt and provide to local school administrative units all tests required by federal law or as a condition of a federal grant."

SECTION 7.30.(b) Article 10A of Chapter 115C of the General Statutes is amended by adding two new Parts to read:

"Part 4. Student Diagnostic Tests.

"**§ 115C-174.20. Tools for student learning.**

To the extent funds are made available for this purpose, the State Board shall plan for and require the administration of diagnostic tests in the eighth and tenth grades that align to the ACT test in order to help diagnose student learning and provide for students an indication of whether they are on track to be remediation-free at a community college or university.

"Part 5. Career Readiness.

"**§ 115C-174.25. WorkKeys.**

To the extent funds are made available for this purpose, the State Board shall plan for and require local school administrative units to make available the appropriate WorkKeys tests for all students who complete the second level of vocational/career courses."

SECTION 7.30.(c) This section applies beginning with the 2011-2012 school year.

FUND ONE LEA PER COUNTY

SECTION 7.31.(a) Notwithstanding any other provision of law, the State Board of Education shall allot State funds on the basis of only one local school administrative unit per county beginning with the 2012-2013 fiscal year. For the 2011-2012 fiscal year, the State Board shall reduce funds allotted to city school administrative units from formulas that allot funds on a per local school administrative unit basis. For the 2012-2013 fiscal year, the State Board shall change formulas that allot funds on a per local school administrative unit basis to formulas that allot funds on a per county basis. If the amount previously allotted per local school administrative unit was graduated on the basis of average daily membership, the amount allotted per county shall be graduated on the basis of the total average daily membership of all units located in the county.

If a city school administrative unit is located in more than one county, the State Board of Education shall include in each county's average daily membership the average daily membership of the county's students in the city school administrative unit.

If a county contains more than one local school administrative unit, the State Board shall divide the amount allotted on a per county basis between the units on the basis of average daily membership.

SECTION 7.31.(b) This section does not apply to allotments to the Nash-Rocky Mount School Administrative Unit, the Edgecombe County School Administrative Unit, the Cleveland County School Administrative Unit, or the Gaston County School Administrative Unit.

PART VIII. COMMUNITY COLLEGES

REORGANIZATION OF THE COMMUNITY COLLEGES SYSTEM OFFICE

SECTION 8.1.(a) Notwithstanding any other provision of law, and consistent with the authority granted in G.S. 115D-3, the President of the North Carolina Community College System may reorganize the System Office in accordance with recommendations and plans submitted to and approved by the State Board of Community Colleges.

SECTION 8.1.(b) This section expires June 30, 2012.

REPEAL OBSOLETE REPORTING REQUIREMENTS

SECTION 8.2.(a) G.S. 115D-4.1(e) reads as rewritten:

"(e) The State Board of Community Colleges shall develop appropriate criteria and standards to regulate the operation of college transfer programs. ~~The criteria and standards shall require all college transfer programs to continue to meet the accreditation standards of the Southern Association of Colleges and Schools.~~

~~The State Board of Community Colleges shall report annually to the General Assembly on compliance of the community colleges with these criteria and standards.~~"

SECTION 8.2.(b) G.S. 115D-5(j) reads as rewritten:

"(j) The State Board of Community Colleges shall use its Board Reserve Fund for feasibility studies, pilot projects, start-up of new programs, and innovative ideas. ~~The State Board shall report to the Joint Legislative Education Oversight Committee on expenditures from the State Board Reserve Fund on January 15 and June 15 each year.~~"

IMPLEMENT ALTERNATIVE FORMULA MODEL

SECTION 8.3.(a) The State Board of Community Colleges shall consolidate the Health Sciences Allotment, the Technical Education Allotment, and the Special High Cost Allotment for Heavy Equipment with formula funds to support curriculum instruction.

SECTION 8.3.(b) The State Board of Community Colleges shall allocate formula funds appropriated to support curriculum instruction and the occupational education component of continuing education through a formula that provides an instructional base allocation to all colleges and allocates remaining funds on a weighted full-time equivalent (FTE) basis. In determining the appropriate weighting, the State Board of Community Colleges shall weigh curriculum courses in high-cost areas such as health care, technical education, and lab-based science courses more heavily than other curriculum courses. The State Board of Community Colleges shall also weigh continuing education courses that lead to a third-party credential or certification and courses providing an industry-designed curriculum more heavily than other occupational extension courses.

USE OF OVERREALIZED RECEIPTS TO SUPPORT ENROLLMENT GROWTH RESERVE RATHER THAN EQUIPMENT RESERVE

SECTION 8.4. G.S. 115D-31(e) reads as rewritten:

"(e) If receipts for community college tuition and fees exceed the amount certified in General Fund Codes at the end of a fiscal year, the State Board of Community Colleges shall transfer the amount of receipts and fees above those budgeted to the ~~Equipment Reserve Fund~~ Enrollment Growth Reserve. Funds in the Enrollment Growth Reserve shall not revert to the General Fund and shall remain available to the State Board until expended. The State Board may allocate funds in this reserve to colleges experiencing an enrollment increase greater than five percent (5%) of budgeted enrollment levels."

BASIC SKILLS PLUS

SECTION 8.5.(a) Notwithstanding any other provision of law, the State Board may authorize a local community college to use up to twenty percent (20%) of the State Literacy Funds allocated to it to provide employability skills, job-specific occupational and technical skills, and developmental education instruction to students concurrently enrolled in a community college course leading to a high school diploma or equivalent certificate.

SECTION 8.5.(b) Notwithstanding any other provision of law, if a community college is authorized by the State Board to provide employability skills, job-specific occupational or technical skills, or developmental education instruction to students concurrently enrolled in a community college course leading to a high school diploma or equivalent certificate, the college may waive the tuition and registration fees associated with this instruction.

CARRYFORWARD OF COLLEGE INFORMATION SYSTEM FUNDS

SECTION 8.6. Of the funds appropriated to the Community Colleges System Office for the 2011-2013 fiscal biennium for the College Information System, up to one million two hundred fifty thousand dollars ($1,250,000) shall not revert at the end of each fiscal year but shall remain available until expended. These funds may be used only to purchase periodic system upgrades.

EQUIPMENT FUNDING

SECTION 8.8. For the 2011-2013 fiscal biennium, community colleges may expend regular equipment allocations on equipment, repairs and renovations of existing facilities, and new construction. Colleges must match funds expended on new construction on an equal matching-fund basis in accordance with G.S. 115D-31. Notwithstanding any other provision of law, community colleges are not required to match funds expended on repairs and renovations of existing facilities.

Colleges must have capital improvement projects approved by the State Board of Community Colleges and any required matching funds identified by June 30, 2013.

CLARIFICATION REGARDING EQUIPMENT TITLED TO STATE BOARD

SECTION 8.9. G.S. 115D-15(a) reads as rewritten:

"(a) The board of trustees of any institution organized under this Chapter may, with the prior approval of the North Carolina Community Colleges System Office, convey a

right-of-way or easement for highway construction or for utility installations or modifications. When in the opinion of the board of trustees the use of any other real property owned or held by the board of trustees is unnecessary or undesirable for the purposes of the institution, the board of trustees, subject to prior approval of the State Board of Community Colleges, may sell, exchange, or lease the property. The board of trustees may dispose of any personal property owned or held by the board of trustees without approval of the State Board of Community Colleges. Personal property titled to the State Board of Community Colleges consistent with G.S. 115D-14 and G.S. 115D-58.5 may be transferred to another community college at no cost and without the approval of the Department of Administration, Division of Surplus Property.

Article 12 of Chapter 160A of the General Statutes shall apply to the disposal or sale of any real or personal property under this subsection. Personal property also may be disposed of under procedures adopted by the North Carolina Department of Administration. The proceeds of any sale or lease shall be used for capital outlay purposes, except as provided in subsection (b) of this section."

NO STATE FUNDS FOR INTERCOLLEGIATE ATHLETICS

SECTION 8.10. Article 3 of Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-42.1. Funds for an intercollegiate athletics program.**

No State funds, student tuition receipts, or student aid funds shall be used to create, support, maintain, or operate an intercollegiate athletics program at a community college."

COMMUNITY COLLEGE TUITION WAIVERS

SECTION 8.12.(a) G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds. The State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees ~~for:~~for the following:

(1) Persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent ~~certificate;~~certificate.

(2) ~~Training courses for~~ Courses requested by the following entities that support the organizations' training needs and are on a specialized course list approved by the State Board of Community Colleges:

a. ~~(i) volunteer firemen,~~Volunteer fire departments.

b. ~~(ii) local fire department personnel,~~ Municipal, county, or State fire departments.

c. ~~(iii) volunteer rescue and lifesaving department personnel,~~Volunteer EMS or rescue and lifesaving departments.

d. ~~(iv) local rescue and lifesaving department personnel,~~ Municipal, county, or State EMS or rescue and lifesaving departments.

e. ~~(v) Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, (vi) municipal, county, or State law enforcement officers,~~Municipal, county, or State law enforcement agencies.

f. ~~(vii) all full-time custodial employees of the Department of Correction, and~~ The Department of Correction for the training of full-time custodial employees and employees of the Department's Division of Community Corrections required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission.

g. ~~(viii) employees of the Department's Division of Community Corrections and employees of the~~ The Department of Juvenile Justice and Delinquency Prevention for the training of employees required to

be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards ~~Commission;~~Commission.

~~(3) Patients in State alcoholic rehabilitation centers;~~

(4) Trainees enrolled in courses conducted under the Customized Training ~~Program;~~Program.

~~(5) Clients of sheltered workshops;~~

~~(6) Clients of adult developmental activity programs;~~

~~(7) Students in Health and Human Services Development Programs;~~

~~(8) Juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction;~~

~~(9) Members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes;~~

(10) Elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation ~~(CPR);~~(CPR).

(11) Up to six hours of credit instruction and one course of noncredit instruction per academic semester for senior citizens age 65 or older who are qualified as legal residents of North ~~Carolina;~~Carolina.

(12) All curriculum courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this ~~section;~~section.

(13) Human resources development courses for any individual who (i) is unemployed; (ii) has received notification of a pending layoff; (iii) is working and is eligible for the Federal Earned Income Tax Credit (FEITC); or (iv) is working and earning wages at or below two hundred percent (200%) of the federal poverty ~~guidelines; and~~guidelines.

~~(14) Prison inmates.~~

The State Board of Community Colleges shall not waive tuition and registration fees for other individuals."

SECTION 8.12.(b) G.S. 115D-5 is amended by adding a new subsection to read:

"(b1) The State Board of Community Colleges shall not waive tuition and registration fees for community college faculty or staff members. Community colleges may, however, use State or local funds to pay tuition and registration fees for one course per semester for full-time community college faculty or staff members employed for a nine-, ten-, eleven-, or twelve-month term."

SECTION 8.12.(c) The Community Colleges System Office shall transfer funds appropriated for curriculum and continuing education instruction to the Department of Correction. The Department of Correction shall use these funds to pay tuition and fees for prisoners.

The amount transferred shall be calculated by multiplying the number of curriculum and continuing education FTE served in prisons in the 2010-2011 fiscal year by the per capita budgeted receipts for curriculum and continuing education.

This subsection is projected to result in a reduction of up to forty-three percent (43%) in the number of curriculum and continuing education courses provided to prisoners.

SECTION 8.12.(d) G.S. 115D-39(a1) reads as rewritten:

"(a1) In addition, ~~any~~ federal law enforcement ~~officer~~ officers, firefighters, EMS personnel, and rescue and lifesaving personnel whose permanent duty station is within North Carolina shall also be eligible for the State resident community college tuition rate for ~~law enforcement training courses.~~courses that support their organizations' training needs and are approved for this purpose by the State Board of Community Colleges."

FUNDING FOR MULTICAMPUS CENTERS

SECTION 8.13. G.S. 115D-5(o) reads as rewritten:

"(o) The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall

report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by December 1 of each year.

All multicampus centers approved by the State Board of Community Colleges shall receive funding under the same formula. The State Board of Community Colleges shall not approve any additional multicampus centers without identified recurring sources of funding."

STUDY COMMUNITY COLLEGE PERFORMANCE MEASURES

SECTION 8.14. The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee by March 1, 2012, on a revised set of accountability measures and performance standards by which to evaluate and measure student progress and student success, including measures of graduation rates and course completions. The report shall include a plan to incorporate these revised accountability measures and performance standards into regular formula funding. These revised accountability measures and performance standards shall also be the basis for the allocation of performance funding, in accordance with G.S. 115D-31.3(g) and (h).

COMMUNITY COLLEGE AUDITS

SECTION 8.15. Article 4A of Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-58.16. Audits.**

(a) Each community college shall be audited a minimum of once every two years. Community colleges may use State funds to contract with the State Auditor or with a certified public accountant to perform the audits. The colleges shall submit the results of the audits to the State Board of Community Colleges.

The State Board of Community Colleges shall ensure that all colleges are audited in accordance with this section.

(b) Notwithstanding the provisions of Chapter 143D of the General Statutes, a community college shall not be subject to the EAGLE program administered by the Office of the State Controller unless (i) there is a finding of internal control problems in the most recent financial audit of the college or (ii) the State Board of Community Colleges determines that a college should be subject to the program."

ENROLLMENT GROWTH

SECTION 8.16.(a) It is the intent of the General Assembly to ensure that there is an increase in funding for community college technology and equipment when enrollment increases; therefore, the continuation budget requirements proposed by the Director of the Budget in accordance with G.S. 143C-3-5 to fund the community college enrollment growth shall include adjustments necessary to fund additional equipment FTE at the prior year's rate.

SECTION 8.16.(b) Beginning with any adjustments to the 2011-2012 fiscal year budget, and annually thereafter, the State Board of Community Colleges' requests for funding enrollment growth shall provide a detailed description of the costs of educating community college students. This request shall be based on the current year's enrollment, listed by college and aggregated for the system as a whole.

SECTION 8.16.(c) Enrollment requests shall include the following information for each community college:

(1) The budgeted enrollment for the current year, divided between the categories of instruction: curriculum, continuing education, and Basic Skills.

(2) The budgeted enrollment for the current year, divided between tiers of instruction, as set forth in Section 8.3 of this act.

(3) The actual enrollment for the two years prior to the current year.

(4) A five-year enrollment projection at each community college by category and tier of instruction.

(5) The projected requirements and anticipated tuition receipts for the growth in regular-term enrollment.

(6) The costs per FTE in each category and tier of instruction, to include the following component parts:

a. Instructional costs, including faculty salaries and other costs.

b. Student support services and other college administrative costs.

EXEMPT COMMUNITY COLLEGES FROM APA

SECTION 8.18.(a) G.S. 150B-1(d)(14) and (19) are repealed.

SECTION 8.18.(b) G.S. 150B-1 is amended by adding a new subsection to read:

"(g) Exemption for the Community Colleges System Office. – Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to the Community Colleges System Office."

SECTION 8.18.(c) This act is effective when it becomes law.

CAPITAL IMPROVEMENTS AT COMMUNITY COLLEGES

SECTION 8.19.(a) G.S. 115D-9 reads as rewritten:

"**§ 115D-9. Powers of State Board regarding certain fee negotiations, contracts, and capital improvements.**

(a) The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of Community Colleges and the Governor. The expenditure of State funds at any institution herein authorized to be approved by the State Board under G.S. 115D-4 shall be subject to the terms of the State Budget Act unless specifically otherwise provided in this Chapter.

(b) Notwithstanding G.S. 143-341(3), the State Board of Community Colleges may, with respect to design, construction, repair, or renovation of buildings, utilities, and other ~~State or non-State-funded~~ State-funded property developments of the North Carolina Community College System requiring the estimated expenditure of public money of ~~one million dollars ($1,000,000)~~ four million dollars ($4,000,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of the North Carolina Community College System and its community colleges to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Use existing plans and specifications for construction projects, where feasible. Prior to designing a project, the State Board shall consult with the Department of Administration on the availability of existing plans and specifications and the feasibility of using them for a project.

(c) The State Board may delegate its authority under subsection (b) of this section to a community college if the community college is qualified under guidelines adopted by the State Board and approved by the State Building Commission and the Director of the Budget.

(d) The North Carolina Community College System shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(e) A contract may not be divided for the purpose of evading the monetary limit under this section.

(f) Notwithstanding any other provision of this Chapter, the Department of Administration shall not be the awarding authority for contracts awarded under subsections (b) or (c) of this section.

(g) The State Board shall annually report to the State Building Commission the following:

(1) A list of projects governed by this section.

(2) The estimated cost of each project along with the actual cost.

(3) The name of each person awarded a contract under this section.

(4) Whether the person or business awarded a contract under this section meets the definition of "minority business" or "minority person" as defined in G.S. 143-128.2(g).

(h) The provisions of G.S. 143-341(3) shall not apply to a capital improvement project funded with non-State funds if the State Board of Community Colleges determines that the college has the expertise necessary to manage the project unless the assistance of the Office of State Construction is requested."

SECTION 8.19.(b) This section is effective when it becomes law and applies to projects initiated on or after that date.

ADDITIONAL FLEXIBILITY WITH REGARD TO COMMUNITY COLLEGE INVESTMENTS

SECTION 8.20.(a) G.S. 115D-58.6 reads as rewritten:

"**§ 115D-58.6. Investment of idle cash.**

(a) Definitions. – As used in this section the following definitions apply:

(1) "Cash balance" means the amount equal to all moneys received into institutional fund accounts minus all expenses and withdrawals from those accounts in an official depository of the institution as designated by the local board of trustees consistent with G.S. 115D-58.7.

(2) "Official depository" means one or more banks, savings and loan associations, or trust companies in North Carolina that a community college board of trustees has designated consistent with G.S. 115D-58.7.

(a1) Deposits. – The institution may deposit at interest ~~or invest~~ all or part of the cash balance of any fund in an official depository of the institution. ~~The institution shall manage investments subject to whatever restrictions and directions the board of trustees may impose. The institution shall have the power to purchase, sell, and exchange securities on behalf of the board of trustees. The investment program shall be so managed that investments and deposits can be converted into cash when needed.~~Moneys may be deposited at interest in any official depository of the institution in the form of certificates of deposit or such other forms of time deposits as may be approved for county governments. In addition, moneys may be deposited in the form of certificates of deposit as provided for a local government or public authority in G.S. 159-30(b1). Investment deposits shall be secured as provided in G.S. 159-31(b).

~~(b) Moneys may be deposited at interest in any bank, savings and loan association or trust company in this State in the form of certificates of deposit or such other forms of time deposits as may be approved for county governments. In addition, moneys may be deposited in the form of certificates of deposit as provided for a local government or public authority in G.S. 159-30(b1). Investment deposits shall be secured as provided in G.S. 159-31(b).~~

~~(c)~~(b) Investments. – The institution may invest all or part of the cash balance of any fund in an official depository of the institution. The institution shall manage investments subject to whatever restrictions and directions the board of trustees may impose. The institution shall have the power to purchase, sell, and exchange securities on behalf of the board of trustees. The investment program shall be so managed that investments and deposits can be converted into cash when needed.

(1) Moneys ~~may~~ shall only be invested in the form of investments pursuant to G.S. 159-30(c) to county governments ~~and no others.~~or in any form of investment established or managed by an investment advisor who is registered and in good standing with either the Securities and Exchange Commission or the North Carolina Secretary of State, Securities Division, and is a member of the Securities Investor Protection Corporation. Money in endowment funds may be invested pursuant to G.S. 147-69.2. Provided, however, the institution may elect to deposit at interest any local funds with the State Treasurer for investment as special trust funds pursuant to the provisions of G.S. 147-69.3, and the interest thereon shall accrue to the institution as local funds.

~~(d) Investment~~

(2) The investment securities listed in G.S. 159-30(c) may be bought, sold, and traded by private negotiation, and the institutions may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program from local funds. The institution shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

~~(e)~~(c) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

~~(f)~~(d) Registered securities acquired for investment may be released from registration and transferred by signature of the official designated by the board of ~~trustees."~~trustees.

(e) The Board of Trustees shall appoint an Investment Committee which shall consist of a minimum of three people who have sufficient financial background to review and evaluate investment options. These individuals should have experience in institutional or retail investment management with knowledge of fixed income and public equities. This committee shall make recommendations to the Board on those investment options, as well as monitor the performance of investments once made.

(f) The Board of Trustees shall discharge their duties with respect to the management and investment of college funds as follows:

(1) Investment decisions shall be solely in the interest of the college and the students, faculty, and staff of the college.

(2) The investments shall be for the exclusive purpose of providing an adequate return to the college.

(3) Investments shall be made with the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose.

(4) Investment decisions shall be made impartially, taking into account the best interest of the college, with special attention to conflicts of interest or potential conflicts of interest.

(5) Investments shall incur only costs that are appropriate and reasonable."

SECTION 8.20.(b) G.S. 147-69.2 is amended by adding a new subdivision to read:

"(20) Institutional funds of the colleges of the North Carolina Community College System."

PART IX. UNIVERSITIES

CENTER FOR PUBLIC TELEVISION CONTINUATION REVIEW

SECTION 9.1.(a) A continuation review of the Center for Public Television shall be prepared jointly by The University of North Carolina General Administration and The University of North Carolina Center for Public Television. The review shall be submitted to the House of Representatives and Senate Appropriations Subcommittees on Education no later than March 31, 2012. The written report shall include the information listed in subsection (b) of this section.

SECTION 9.1.(b) The continuation review required by this section shall include all of the following information:

(1) A description of the services provided by the Center for Public Television and its mission, goals, and objectives.

(2) The program's statutory objectives and the problem or need addressed.

(3) The extent to which the program's objectives have been achieved.

(4) The program's functions or programs performed without specific statutory authority.

(5) The program's performance measures and the process by which the performance measures determine efficiency and effectiveness.

(6) Recommendations for statutory, budgetary, or administrative changes needed to improve efficiency and effectiveness of services delivered to the public.

(7) The consequences of discontinuing funding.

(8) Recommendations for improving services or reducing costs or duplication.

(9) The identification of policy issues that should be brought to the attention of the General Assembly.

(10) Any other information necessary to fully support the General Assembly's Continuation Review Program, along with any information included in instructions from the Fiscal Research Division.

UNIVERSITY CANCER RESEARCH FUND REPORTING REQUIREMENT

SECTION 9.4. G.S. 116-29.1 is amended by adding a new subsection to read:

"(g) Report. – By November 1 of each year, the Cancer Research Fund Committee shall provide to the Joint Legislative Education Oversight Committee and to the Office of State

Budget and Management an annual financial report which shall include the following components:

(1) Accounting of expenditures of State funds related to strategic initiatives, development of infrastructure, and ongoing administrative functions.

(2) Accounting of expenditures of extramural funds related to strategic initiatives, development of infrastructure, and ongoing administrative functions.

(3) Measures of impact to the State's economy in the creation of jobs, intellectual property, and start-up companies.

(4) Other performance measures directly related to the investment of State funds.

(5) Accounting of any fund balances retained by the Fund, along with information about any restrictions on the use of these funds."

UNC BOARD OF GOVERNORS REVIEW OF FACULTY RECRUITMENT AND RETENTION

SECTION 9.5. The Board of Governors of The University of North Carolina shall review its current policies regarding financial incentives to retain faculty. The review shall focus on the prioritization of recruitment and retention funds and the identification of key metrics to measure overall program effectiveness. The Board of Governors shall report its findings and recommendations for changes to the policies, if any, to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division by April 1, 2012.

UNC MANAGEMENT FLEXIBILITY REDUCTION

SECTION 9.6.(a) The management flexibility reduction for The University of North Carolina shall not be allocated by the Board of Governors to the constituent institutions and affiliated entities using an across-the-board method but in a manner that recognizes the importance of the academic mission and differences among The University of North Carolina entities.

Before taking reductions in instructional budgets, the Board of Governors and the campuses of the constituent institutions shall consider all of the following:

(1) Reducing State funding for centers and institutes, speaker series, and other nonacademic activities.

(2) Faculty workload adjustments.

(3) Restructuring of research activities.

(4) Implementing cost-saving span of control measures.

(5) Reducing the number of senior and middle management positions.

(6) Eliminating low-performing, redundant, or low-enrollment programs.

(7) Protecting direct classroom services, including faculty members and adjunct professors.

The Board of Governors and the campuses of the constituent institutions also shall review the institutional trust funds and the special funds held by or on behalf of The University of North Carolina and its constituent institutions to determine whether there are monies available in those funds that can be used to assist with operating costs.

In addition, the campuses of the constituent institutions also shall require their faculty to have a teaching workload equal to the national average in their Carnegie classification.

When implementing personnel reductions, the Board of Governors and the campuses shall make every effort to abolish vacant positions first.

SECTION 9.6.(b) In allocating the management flexibility reduction, State funds shall not be reduced in either fiscal year of the biennium by more than fifteen percent (15%) from the Governor's Recommended Continuation Budget for the 2011-2013 fiscal biennium for any of the following:

(1) Hickory Metro Higher Education Center.

(2) Joint Graduate School of Nanoscience and Nanoengineering at North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro.

(3) The North Carolina Research Campus.

(4) Agricultural Extension.
(5) Agricultural Research.
(6) University of North Carolina School of the Arts.
(7) North Carolina Judicial College of the UNC School of Government.

SECTION 9.6.(c) In allocating the management flexibility reduction, no reduction in State funds shall be allocated in either fiscal year of the 2011-2013 biennium to any of the following:

(1) Center for Turfgrass Environmental Research and Education at North Carolina State University.
(2) Need-Based Financial Aid.
(3) Aid to Private Colleges.

ADVISORY COMMISSION ON MILITARY AFFAIRS/MODIFY MEMBERSHIP

SECTION 9.6A. G.S. 127C-2 reads as rewritten:

"**§ 127C-2. Membership.**

(a) The North Carolina Advisory Commission on Military Affairs shall consist of 21 voting members, who shall serve on the Executive Committee, and ~~15~~17 nonvoting, ex officio members who shall serve by reason of their positions.

(b) The Executive Committee shall be appointed as follows:
(1) Three members appointed by the Speaker of the House of Representatives, one of whom shall be a member of a recognized veterans' organization.
(2) Three members appointed by the President Pro Tempore of the Senate, one of whom shall be a member of a recognized veterans' organization.
(3) Fifteen members appointed by the Governor, consisting of:
a. Three representatives from the Jacksonville community.
b. Three representatives from the Havelock community.
c. Three representatives from the Goldsboro community.
d. Three representatives from the Fayetteville community.
e. Three public members from across the State.

(c) The following members, or their designee, shall serve ex officio:
(1) The Lieutenant Governor.
(1a) Secretary of Crime Control and Public Safety.
(2) Secretary of Commerce.
(2a) The Secretary of Transportation.
(2b) The Secretary of the Department of Environment and Natural Resources.
(3) Commanding General 18th Airborne Corps, Fort Bragg.
(4) Commanding General Marine Corps Base, Camp Lejeune.
(5) Commanding General Marine Corps Air Station, Cherry Point.
(6) Commander 4th FW, Seymour Johnson Air Force Base.
(7) Commander 43rd Airlift Wing, Pope Air Force Base.
(8) Commander of the U.S. Coast Guard Support Center, Elizabeth City.
(9) Adjutant General of the North Carolina National Guard.
(10) The Executive Director of the North Carolina League of Municipalities.
(11) The Executive Director of the North Carolina Association of County Commissioners.
(12) The Assistant Secretary for Veterans Affairs, Department of Administration.
(13) The President of The University of North Carolina.
(14) The President of the North Carolina Community College System.

(d) The Governor shall designate one member of the Executive Committee appointed pursuant to subsection (b) of this section to serve as chair. The Executive Committee shall elect four persons from amongst its membership to serve as vice-chairs.

(e) The terms of the members of the Executive Committee shall be as follows:
(1) The members initially appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall serve terms ending on December 31, 2003.
(2) Seven of the members appointed by the Governor shall serve initial terms ending on December 31, 2002.
(3) Eight of the members appointed by the Governor shall serve initial terms ending on December 31, 2003.

Thereafter, all members shall serve two-year terms."

CLARIFICATION/GENERAL FUND APPROPRIATIONS CARRIED FORWARD BY UNC SHALL NOT BE USED FOR CAPITAL IMPROVEMENTS

SECTION 9.6B. G.S. 116-30.3 is amended by adding a new subsection to read:

"(f) No funds carried forward pursuant to this section shall be used for a capital improvement as defined in G.S. 143C-1-1."

ALLOW CHANCELLORS OF CONSTITUENT INSTITUTIONS TO APPROVE CERTAIN REPAIR AND MAINTENANCE PROJECTS AND FUND THOSE WITH AVAILABLE OPERATING FUNDS

SECTION 9.6C. G.S. 116-13.1 reads as rewritten:

"**§ 116-13.1. Capital facilities; ~~reports.~~reports; chancellors may authorize certain repair, renovation, and maintenance projects.**

(a) The General Assembly finds that although The University of North Carolina is one of the State's most valuable assets, the current facilities of the University have been allowed to deteriorate due to decades of neglect and have unfortunately fallen into a state of disrepair because of inadequate attention to maintenance. It is the intent of the General Assembly to reverse this trend and to provide a mechanism to assure that the University's capital assets are adequately maintained. The General Assembly commits to responsible stewardship of these assets to protect their value over the years, as follows:

(1) The Board of Governors of The University of North Carolina shall require each constituent and affiliated institution to monitor the condition of its facilities and their needs or repair and renovation, and to assure that all necessary maintenance is carried out within funds available.

(2) The Board of Governors shall report annually to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee on the condition of the University's capital facilities, the repair, renovation, and maintenance projects being undertaken, and all needs for additional funding to maintain the facilities.

(3) It is the intent of the General Assembly to assure that adequate oversight, funding, and accountability are continually provided so that the capital facilities of the University are properly maintained to preserve the level of excellence the citizens of this State deserve. To this end, the Joint Legislative Education Oversight Committee shall report to the General Assembly annually its recommendations for legislative changes to implement this policy.

(b) Equity in University Improvements. – The Board of Governors of The University of North Carolina shall continue to study and monitor any inequities in funding for capital improvements and facilities needs which may still exist on North Carolina's Public Historically Black Colleges and Universities and North Carolina's Historically American Indian University, the University of North Carolina at Pembroke, beyond the funding of the projects provided for in this act, and shall report annually to the Joint Legislative Commission on Governmental Operations on any remaining inequities found, including recommendations as to how those inequities should be addressed.

(c) Approval of Certain Repair and Maintenance Projects. – Notwithstanding G.S. 143C-8-7, the chancellor of a constituent institution may approve the expenditure of available operating funds in an amount not to exceed one million dollars ($1,000,000) per project for repairs to institution facilities, renovations to institution facilities, maintenance of those facilities, and related equipment purchases. Funds contractually obligated to an approved project shall not revert at the end of the fiscal year and will remain available to fund the completion of the project. Projects approved pursuant to this subsection shall in all other respects accord with applicable laws governing capital improvement projects."

AUTHORIZE BOARD OF GOVERNORS TO PERMIT NORTH CAROLINA STATE UNIVERSITY TO SELF-PERFORM ENERGY CONSERVATION MEASURES AND TO AUTHORIZE ENERGY SAVINGS REALIZED BY NORTH CAROLINA STATE UNIVERSITY TO BE USED AS A SOURCE OF REPAYMENT FOR CERTAIN DEBTS

SECTION 9.6D.(a) Article 3B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-64.17L. Board of Governors may authorize energy conservation measures at constituent institutions.**

(a) Authority. – Notwithstanding the provisions of this Part to the contrary, the Board of Governors of The University of North Carolina may authorize any constituent institution listed in subsection (e) of this section to implement an energy conservation measure without entering into a guaranteed energy savings contract if both of the following conditions are met:

(1) The Board of Governors finds that the energy savings resulting from the implementation of the energy conservation measure shall, according to the energy savings analysis received pursuant to G.S. 143-64.17M(a), equal or exceed the total cost of implementing the measure. If the proposed implementation will be financed with debt, then the energy savings analysis must project sufficient energy savings to pay the debt service on any bonds to be issued. As used in this subdivision, the term 'total cost' shall have the same meaning as it does in G.S. 143-64.17B(d).

(2) The energy conservation measure is for an existing building or utility system.

(b) Scope of Authority. – In implementing an energy conservation measure pursuant to subsection (a) of this section, the Board of Governors may undertake or authorize any constituent institution listed in subsection (e) of this section to undertake any action that (i) could be required of a qualified provider under a guaranteed energy savings contract or (ii) is otherwise permissible under this Part.

(c) Projects Consisting of Multiple Energy Conservation Measures. – The Board of Governors may authorize the implementation of multiple energy conservation measures simultaneously as part of a single project. When doing so, the findings required by subsection (a) of this section may be made with respect to the project as a whole and need not be made with respect to individual energy conservation measures. Similarly, the analyses required by G.S. 143-64.17M may be conducted for the project as a whole instead of for individual energy conservation measures.

(d) Continuing Applicability of Part to Contracts. – If the Board of Governors or a constituent institution implements an energy conservation measure through a guaranteed energy savings contract, that contract shall accord in all respects with the requirements of this Part.

(e) The Board of Governors may authorize North Carolina State University to implement an energy conservation measure without entering into a guaranteed energy savings contract pursuant to this section."

SECTION 9.6D.(b) Article 3B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-64.17M. Energy savings analysis required prior to implementation; post-implementation analyses required.**

(a) Energy Savings Analysis Required Prior to Implementation. – Prior to implementing an energy conservation measure pursuant to G.S. 143-64.17L, an energy savings analysis shall be performed to validate the economic assumptions that purportedly support the implementation of the measure. This analysis shall be performed by a third party selected by the constituent institution and shall include an energy consumption analysis to develop a baseline of previous costs of all utilities' energy consumption for the institution on the assumption that the energy conservation measure was not undertaken. The completed analysis shall be submitted to The University of North Carolina General Administration and to the State Energy Office.

(b) Post-Implementation Analyses Required. – A constituent institution that implements an energy conservation measure pursuant to G.S. 143-64.17L shall retain a third party to perform an annual measurement and verification of energy savings resulting from the energy conservation measure as compared to the baseline of previous costs set forth in the energy savings analysis required by subsection (a) of this section. The third party shall annually provide a reconciliation statement based upon the results of a preagreed upon measurement, monitoring, and verification protocol which shall disclose any shortfall or surplus between the estimated energy usage and operational savings set forth in the energy savings analysis required by subsection (a) of this section and actual, not stipulated, energy usage and operational savings incurred during a given year.

If a reconciliation statement reveals a shortfall in energy savings for a particular year, the constituent institution shall be responsible for and shall pay the shortfall. However, the institution shall not be held responsible for losses due to natural disasters or other emergencies. Any surplus shall be retained by the institution and may be used in the same manner as any other energy savings."

SECTION 9.6D.(c) G.S. 116-30.3B(b) reads as rewritten:

"(b) It is the intent of the General Assembly that appropriations to the Board of Governors on behalf of a constituent institution not be reduced as a result of the institution's realization of energy savings. Instead, the General Assembly intends that the amount of appropriations be determined as if no energy savings had been realized. The Director of the Budget shall not decrease the recommended continuation budget requirements for utilities for constituent institutions by the amount of energy savings realized from implementing energy conservation measures, including savings achieved through a guaranteed energy savings contract."

SECTION 9.6D.(d) G.S. 143-64.17F(b) reads as rewritten:

"(b) The Department of Administration, in consultation with the Department of Commerce through the State Energy Office, shall adopt rules for: (i) agency evaluation of guaranteed energy savings contracts; (ii) establishing time periods for consideration of guaranteed energy savings contracts by the Office of State Budget and Management, the Office of the State Treasurer, and the Council of State, and (iii) setting measurements and verification criteria, including review, audit, and precertification. Prior to adopting any rules pursuant to this section, the Department shall consult with and obtain approval of those rules from the State Treasurer. The rules adopted pursuant to this subsection shall not apply to energy conservation measures implemented pursuant to G.S. 143-64.17L."

SECTION 9.6D.(e) G.S. 143-64.17H reads as rewritten:

"**§ 143-64.17H. Report on guaranteed energy savings contracts entered into by State governmental units.**

A State governmental unit that enters into a guaranteed energy savings contract or implements an energy conservation measure pursuant to G.S. 143-64.17L must report either (i) the contract and the terms of the ~~contract~~ contract or (ii) the implementation of the measure to the State Energy Office of the Department of Commerce within 30 days of the date the contract is entered ~~into.~~ into or the measure is implemented. In addition, within 60 days after each annual anniversary date of a guaranteed energy savings contract, the State governmental unit must report the status of the contract to the State Energy Office, including any details required by the State Energy Office. The State Energy Office shall compile the information for each fiscal year and report it to the Joint Legislative Commission on Governmental Operations and to the Local Government Commission annually by December 1. In compiling the information, the State Energy Office shall include information on the energy savings expected to be realized from a contract or implementation and shall evaluate whether expected savings have in fact been realized."

SECTION 9.6D.(f) G.S. 142-63 reads as rewritten:

"**§ 142-63. Authorization of financing contract.**

Subject to the terms and conditions set forth in this Article, (i) a State governmental unit that is implementing an energy conservation measure pursuant to G.S. 143-64.17L and financing it pursuant to this Article, (ii) a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or ~~G.S. 143-64.17B or~~ G.S. 143-64.17B, or (iii) the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate outstanding amount payable by the State under financing contracts entered pursuant to this Article shall not exceed five hundred million dollars ($500,000,000) at any one time."

SECTION 9.6D.(g) G.S. 142-64(a) reads as rewritten:

"**§ 142-64. Procedure for incurrence or issuance of financing contract.**

(a) When a State governmental unit (i) is implementing an energy conservation measure pursuant to G.S. 143-64.17L and financing it pursuant to this Article or (ii) has solicited a guaranteed energy conservation measure, the State governmental unit shall request that the State Treasurer approve the State governmental unit's entering into a financing contract to finance the cost of the energy conservation measure. In connection with the request, the State governmental unit shall provide to the State Treasurer any information the State Treasurer

requests in order to evaluate the request. In the event that the State Treasurer determines that financing efficiencies will be realized through the combining of financing contracts, then the State Treasurer is authorized to execute and deliver, for and on behalf of the State of North Carolina, subject to the terms and conditions set forth in this Article, a financing contract for the purpose of financing the cost of the multiple energy conservation measures."

SECTION 9.6D.(h) G.S. 116D-22(3) reads as rewritten:

"(3) Obligated resources. – Any sources of income or receipts of the Board of Governors or the institution at which a special obligation bond project is or will be located that are designated by the Board as the security and source of payment for bonds issued under this Article to finance a special obligation bond project, including, without limitation, any of the following:

a. Rents, charges, or fees to be derived by the Board of Governors or the institution from any activities conducted at the institution.

b. Earnings on the investment of the endowment fund of the institution at which a special obligation project will be located, to the extent that the use of the earnings will not violate any lawful condition placed by the donor upon the part of the endowment fund that generates the investment earnings.

c. Funds to be received under a contract or a grant agreement, including "overhead costs reimbursement" under a grant agreement, entered into by the Board of Governors or the institution to the extent the use of the funds is not restricted by the terms of the contract or grant agreement or the use of the funds as provided in this Article does not violate the restriction.

d. Funds appropriated from the General Fund to the Board of Governors on behalf of a constituent institution for utilities of the institution that constitute energy savings as that term is defined in G.S. 143-64.17.

~~Obligated~~ Except as provided in sub-subdivision d. of this subdivision, obligated resources do not include funds appropriated to the Board of Governors or the institution from the General Fund by the General Assembly from funds derived from general tax and other revenues of the State, and obligated resources do not include tuition payment by students."

AMEND REGULATION OF UNC INSTITUTIONAL TRUST FUNDS AND FUNDS OF UNC HEALTH CARE SYSTEM

SECTION 9.6E.(a) G.S. 116-36.1 reads as rewritten:

"**§ 116-36.1. Regulation of institutional trust funds.**

(a) The Board is responsible for the custody and management of the trust funds of the University of North Carolina and of each institution. The Board shall adopt uniform policies and procedures applicable to the deposit, investment, and administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the president, to the respective chancellors of the institutions when such delegation is necessary or prudent to enable the institution to function in a proper and expeditious manner.

(b) Trust funds ~~shall be deposited with the State Treasurer who shall hold them in trust in separate accounts in the name of the University of North Carolina and of each institution. The cash balances of these accounts may be pooled for investment purposes, but investment earnings shall be credited pro rata to each participating account. For purposes of distribution of investment earnings, all trust funds of an institution shall be deemed a single account.~~

~~(c) Moneys deposited with the State Treasurer in trust fund accounts pursuant to this section,~~ and investment earnings thereon, are available for expenditure by each institution without further authorization from the General Assembly.

(d) Trust funds are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the State Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143C-8-8 and G.S. 143C-8-9.

(e) Each institution shall submit such reports or other information concerning its trust fund accounts as may be required by the ~~Director of the Budget.~~Board.

(f) Trust funds or the investment income therefrom shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes is appropriated and shall be used to supplement State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(g) As used in this section, "trust funds" means:

(1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;

(2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;

(3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;

(4) Moneys collected by an institution to support extracurricular activities of students of the institution;

(5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;

(6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;

(7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider;

(8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection ~~(g)~~ as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency;

(9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs;

(10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o.;

(11) Moneys deposited to the State Education Assistance Authority Fund pursuant to G.S. 116-209.3.

(h) ~~Notwithstanding the provisions of subsection (b) of this section, the Board may designate as the official depository of the funds identified in subsection (g)(7) of this section one or more banks or trust companies in this State. The amount of funds on deposit in an official depository shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of public deposits generally. The available cash balance of funds deposited pursuant to this subsection shall be invested in interest-bearing deposits and investments so that the rate of return equals that realized from the investment of State funds generally.~~ The Board may authorize, through the President, that the chancellors may deposit or invest each institution's available trust fund cash balances in interest-bearing accounts and other investments as may be authorized by the Board in the exercise of its sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries.

(i) The cash balances on hand as of June 30, 1978, and all future receipts accruing thereafter, of funds identified in this section are hereby appropriated to the use of the University of North Carolina and its constituent institutions."

SECTION 9.6E.(b) G.S. 116-37(e) reads as rewritten:

"(e) Finances. – The University of North Carolina Health Care System shall be subject to the provisions of the State Budget Act, except for trust funds as provided in G.S. 116-36.1 and G.S. 116-37.2. The Chief Executive Officer, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. All operating funds of the University of North Carolina Health Care System may be budgeted and disbursed through special fund codes, maintaining separate auditable accounts for the University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill. All receipts of the University of North Carolina Health Care System may be deposited directly to the special fund codes, and except for General Fund appropriations, all receipts of the University of North Carolina Hospitals at Chapel Hill may be invested pursuant to ~~G.S. 147-69.2(b3).~~ G.S. 116-37.2(h).General Fund appropriations for support of the University of North Carolina Hospitals at Chapel Hill shall be budgeted in a General Fund code under a single purpose, "Contribution to University of North Carolina Hospitals at Chapel Hill Operations" and be transferable to a special fund operating code as receipts."

SECTION 9.6E.(c) G.S. 116-37.2 reads as rewritten:

"**§ 116-37.2. Regulation of University of North Carolina Hospitals at Chapel Hill Funds.**

(a) As used in this section, "funds" means:

(1) Moneys, or the proceeds of other forms of property, received by the University of North Carolina Hospitals at Chapel Hill as gifts, devises, or bequests.

(2) Moneys received by the University of North Carolina Hospitals at Chapel Hill pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof.

(3) Moneys received by the University of North Carolina Hospitals at Chapel Hill pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the University of North Carolina Hospitals at Chapel Hill undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training, or public service programs.

(4) Moneys received from or for the operation by the University of North Carolina Hospitals at Chapel Hill of any of its self-supporting auxiliary enterprises, including the Liability Insurance Trust Fund.

(5) Moneys received by the University of North Carolina Hospitals at Chapel Hill in respect to fees and other payments for services it renders in its hospital and/or clinical operations.

(5a) Moneys received by the University of North Carolina Hospitals at Chapel Hill in respect to borrowings for capital equipment or construction projects to further services it renders in either or both of its hospital or clinical operations.

(6) The net proceeds from the disposition effected pursuant to Article 7 of Chapter 146 of the General Statutes of any interest in real property owned by or under the supervision and control of the University of North Carolina Hospitals at Chapel Hill if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection, except the net proceeds from the disposition of an interest in real property first acquired by the University of North Hospitals at Chapel Hill through expenditure of moneys received as a grant from a State agency.

(b) The Board of Directors of the University of North Carolina Health Care System, as established in G.S. 116-37(b), is responsible for the custody and management of the funds of the University of North Carolina Hospitals at Chapel Hill. The Board shall adopt uniform policies and procedures applicable to the deposit, investment, and administration of these funds, which shall assure that the receipt and expenditure of such funds is properly authorized

and that the funds are appropriately accounted for. The Board may delegate authority, through the Chief Executive Officer of the University of North Carolina Health Care System to the President of the University of North Carolina Hospitals at Chapel Hill, when such delegation is necessary or prudent to enable the University of North Carolina Hospitals at Chapel Hill to function in a proper and expeditious manner.

(c) Funds under this section ~~shall be deposited with the State Treasurer who shall hold them in trust in the name of the University of North Carolina Hospitals at Chapel Hill.~~

~~(d)~~ ~~Funds deposited with the State Treasurer in an account pursuant to this section,~~ and investment earnings ~~thereon,~~ thereon are available for expenditure by the University of North Carolina Hospitals at Chapel Hill without further authorization from the General Assembly.

(e) Funds under this section are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the ~~Executive~~ State Budget Act except for capital improvements projects, which shall be authorized and executed in accordance with ~~G.S. 143-18.1.~~G.S. 143C-8-8 and G.S. 143C-8-9.

(f) The University of North Carolina Hospitals at Chapel Hill shall submit such reports or other information concerning its fund accounts under this section as may be required by the ~~Director of the Budget.~~Board of Directors of the University of North Carolina Health Care System.

(g) Funds under this section, or the investment income therefrom, shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes shall be used to supplement State appropriations to the end that the University of North Carolina Hospitals at Chapel Hill may improve and increase their functions, may enlarge their areas of service, and may become more useful to a greater number of people.

(h) ~~Notwithstanding the provisions of subsection (c) of this section, the Board may designate as the official depository of the funds identified in subdivisions (a)(4), (a)(5), and (a)(6) of this section one or more banks or trust companies in this State for any investments authorized by G.S. 147-69.2(b3).~~The Board of Directors of the University of North Carolina Health Care System may deposit or invest the funds under this section in interest-bearing accounts and other investments in the exercise of its sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries."

UNC/INSTITUTIONAL EXPENDITURE BENCHMARKS

SECTION 9.6F.(a) G.S. 116-31.10 reads as rewritten:

"§ 116-31.10. Powers of Board regarding certain purchasing contracts.

(a) Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than five hundred thousand dollars ($500,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

(b) Each institution with an expenditure benchmark greater than two hundred fifty thousand dollars ($250,000) shall comply with this subsection for any purchase greater than ~~two hundred fifty thousand dollars ($250,000)~~the institution's benchmark set by the Board but not greater than five hundred thousand dollars ($500,000). This institution shall submit to the Division of Purchase and Contract for that Division's approval or other action deemed necessary by the Division a copy of all offers received and the institution's recommendation of award or other action. Notice of the Division's decision shall be sent to that institution. The institution shall then proceed with the award of contract or other action recommended by the Division."

SECTION 9.6F.(b) This section becomes effective October 1, 2011.

UNC ASSUME RESPONSIBILITY FOR QUALITY ACCEPTANCE INSPECTION PROCESS

SECTION 9.6G.(a) G.S. 143-60 reads as rewritten:

"§ 143-60. Rules covering certain purposes.

The Secretary of Administration may adopt, modify, or abrogate rules covering the following purposes, in addition to those authorized elsewhere in this Article:

(1) Requiring reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.

(2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.

(3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made in compliance with specifications. However, the provisions of this subdivision shall not apply to the constituent institutions of The University of North Carolina. The President of The University of North Carolina shall issue regulations or guidelines for the conducting of quality inspections by constituent institutions to ensure that deliveries have been made in compliance with specifications.

(4) Prescribing the manner in which purchases shall be made in emergencies.

(5) Providing for such other matters as may be necessary to give effect to foregoing rules and provisions of this Article.

(6) Prescribing the manner in which passenger vehicles shall be purchased.

Further, the Secretary of Administration may prescribe appropriate procedures necessary to enable the State, its institutions and agencies, to obtain materials surplus or otherwise available from federal, State or local governments or their disposal agencies."

SECTION 9.6G.(b) This section becomes effective October 1, 2011.

NCSU MAY SELL TIMBER

SECTION 9.6H. Part 1 of Article 3A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-64.06. North Carolina State University may sell timber.**

Notwithstanding any provision of this Part or Chapter 146 of the General Statutes, the Board of Trustees of North Carolina State University may cause to be severed and sold or transferred timber from any unimproved timberlands owned by or allocated to the University without involvement by the State Surplus Property Agency and without being required to pay any service charge or surcharge to the State Surplus Property Agency. Any such severance shall be reported to the Council of State through the State Property Office. The Board of Trustees may delegate the authority set out above to responsible University officials. The proceeds of any sales or transfers under this section shall be used to support the management of, and programming costs associated with, forest properties owned, allocated, or managed by North Carolina State University."

USE OF ESCHEAT FUND FOR NEED-BASED FINANCIAL AID PROGRAMS

SECTION 9.8.(a) There is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of thirty-two million one hundred twenty-two thousand two hundred forty-two dollars ($32,122,242) for the 2011-2012 fiscal year and the sum of thirty-two million one hundred twenty-two thousand two hundred forty-two dollars ($32,122,242) for the 2012-2013 fiscal year to be used for The University of North Carolina Need-Based Financial Aid Program.

SECTION 9.8.(b) In addition to the appropriation in subsection (a) of this section, there is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of ninety-five million two hundred thirty-one thousand nine hundred twelve dollars ($95,231,912) for the 2011-2012 fiscal year to be used for The University of North Carolina Need-Based Financial Aid Program.

SECTION 9.8.(c) There is appropriated from the Escheat Fund income to the State Board of Community Colleges the sum of sixteen million five hundred thousand dollars ($16,500,000) for the 2011-2012 fiscal year and the sum of sixteen million five hundred thousand dollars ($16,500,000) for the 2012-2013 fiscal year to be used for community college grants.

SECTION 9.8.(d) There is appropriated from the Escheat Fund income to the Department of Administration, Division of Veterans Affairs, the sum of six million five

hundred twenty thousand nine hundred sixty-four dollars ($6,520,964) for the 2011-2012 fiscal year and the sum of six million five hundred twenty thousand nine hundred sixty-four dollars ($6,520,964) for the 2012-2013 fiscal year to be used for need-based student financial aid.

SECTION 9.8.(e) The funds appropriated by this section shall be allocated by the State Educational Assistance Authority (SEAA) for need-based student financial aid in accordance with G.S. 116B-7. If the interest income generated from the Escheat Fund is less than the amounts referenced in this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum required in G.S. 116B-6(f). If any funds appropriated under this section remain uncommitted for need-based financial aid as of the end of a fiscal year, the funds shall be returned to the Escheat Fund, but only to the extent the funds exceed the amount of the Escheat Fund income for that fiscal year.

SECTION 9.8.(f) The State Education Assistance Authority shall perform all of the administrative functions necessary to implement this program of financial aid. The SEAA shall conduct periodic evaluations of expenditures of the scholarship programs to determine if allocations are utilized to ensure access to institutions of higher learning and to meet the goals of the respective programs. SEAA may make recommendations for redistribution of funds to The University of North Carolina, Department of Administration, and the President of the Community College System regarding their respective scholarship programs, who then may authorize redistribution of unutilized funds for a particular fiscal year.

SECTION 9.8.(g) The Office of State Budget and Management shall transfer the cash balance of the community college grant program remaining in Budget Code 66801, Fund 6102, to the Escheat Fund.

UNC NEED-BASED FINANCIAL AID PROGRAM FUNDING SCHEDULE

SECTION 9.9.(a) Of the funds appropriated by this act for the 2011-2012 fiscal year for The University of North Carolina Need-Based Financial Aid Program, the sum of fifty-nine million eight hundred fifty-nine thousand five hundred sixty-two dollars ($59,859,562) shall not be used for expenditures in the 2011-2012 fiscal year but shall be carried forward and held in reserve by the State Education Assistance Authority. The funds carried forward and held in reserve pursuant to this subsection may be disbursed by the State Education Assistance Authority after July 1, 2012, for need-based student financial aid in the 2012-2013 academic year in accordance with G.S. 116B-7.

SECTION 9.9.(b) Of the funds appropriated by this act for the 2012-2013 fiscal year for The University of North Carolina Need-Based Financial Aid Program, the sum of fifty-nine million eight hundred fifty-nine thousand five hundred sixty-two dollars ($59,859,562) shall not be used for expenditures in the 2012-2013 fiscal year but shall be carried forward and held in reserve by the State Education Assistance Authority. The funds carried forward and held in reserve pursuant to this subsection may be disbursed by the State Education Assistance Authority after July 1, 2013, for need-based student financial aid in the 2013-2014 academic year in accordance with G.S. 116B-7.

CONSOLIDATE ASSETS OF MILLENNIUM TEACHING SCHOLARSHIP LOAN PROGRAM AND PROSPECTIVE TEACHERS SCHOLARSHIP LOAN FUND/ GIVE PRIORITY FOR SCHOLARSHIP LOANS FOR PROSPECTIVE TEACHERS TO CERTAIN FORMER TEACHER ASSISTANTS

SECTION 9.10.(a) Effective January 1, 2012, the Millennium Teaching Scholarship Loan Program is abolished.

SECTION 9.10.(b) All financial obligations to any student awarded a scholarship loan from the Millennium Teaching Scholarship Loan Program before January 1, 2012, shall be fulfilled with funds from the Scholarship Loan Fund for Prospective Teachers established under G.S. 116-209.33, provided the student remains eligible under the provisions of the Millennium Teaching Scholarship Loan Program. All contractual agreements between a student awarded a scholarship loan from the Millennium Teaching Scholarship Loan Program before January 1, 2012, and the State Education Assistance Authority regarding the loan remain enforceable.

SECTION 9.10.(c) The assets and liabilities for the Millennium Teaching Scholarship Loan Program shall be transferred as follows:

(1) Five hundred thousand dollars ($500,000) shall be transferred to the Escheat Fund on July 1, 2011.

(2) The remaining balance of the assets and liabilities shall be transferred to the Scholarship Loan Fund for Prospective Teachers established under G.S. 116-209.33 on January 1, 2012.

SECTION 9.10.(d) Notwithstanding the provisions of G.S. 116-209.33 or any other provision of law, when awarding scholarship loans under G.S. 116-209.33, the State Education Assistance Authority shall give priority to any applicant who qualifies for a scholarship loan under G.S. 116-209.33 if the applicant was formerly employed as a teacher assistant at a public school in North Carolina but lost his or her teacher assistant position in the State public school system as a result of a reduction in force.

LIMIT CERTAIN FINANCIAL AID GRANTS TO THE TRADITIONAL TIME PERIOD REQUIRED TO EARN A BACCALAUREATE DEGREE

SECTION 9.11.(a) Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-25.1. Limit receipt of The University of North Carolina need-based financial aid grants to traditional time period required to earn baccalaureate degree.**

(a) Except as otherwise provided by this section, a student shall not receive a grant from The University of North Carolina Need-Based Financial Aid Program for more than nine full-time academic semesters, or its equivalent if enrolled part-time, unless the student is enrolled in a program officially designated by the Board of Governors as a five-year degree program. If a student is enrolled in such a five-year degree program, then the student shall not receive a need-based grant from The University of North Carolina Need-Based Financial Aid Program for more than 11 full-time academic semesters or its equivalent if enrolled part-time.

(b) Upon application by a student, the student may receive a grant for one additional part-time or full-time academic semester as appropriate, if the student demonstrates that any of the following have substantially disrupted or interrupted the student's pursuit of a degree: (i) a military service obligation, (ii) serious medical debilitation, (iii) a short-term or long-term disability, or (iv) other extraordinary hardship, including inability to enroll in the appropriate courses due to reduced course offerings. The Board of Governors shall establish the appropriate procedures to implement the additional semester extension provided by this subsection."

SECTION 9.11.(b) The Fiscal Research Division, in cooperation with The University of North Carolina, the North Carolina Community College System, the North Carolina Independent Colleges and Universities, Inc., and the State Education Assistance Authority shall study how to track and document the receipt of The University of North Carolina need-based grants, North Carolina Community College need-based grants, and the private institutions of higher education need-based scholarships by students who enroll in both public and private institutions of higher education while pursuing a baccalaureate or associate degree so that no student receives a combination of these grants or scholarships that exceeds a cumulative total of nine full-time academic semesters or 11 full-time academic semesters as appropriate. In addition, the study shall (i) consider the need to grant a waiver to the limit imposed on receipt of need-based grants or scholarships for those students who encounter legitimate disruptions or interruptions of the academic pursuit of a degree and (ii) determine the appropriate criteria and procedure for extending the eligibility to receive those types of financial aid for an additional period of time. The study shall also examine any potential impact on college completion rates.

The Fiscal Research Division shall report its findings and recommendations, including any legislative recommendations, by March 1, 2012, to the Joint Legislative Education Oversight Committee and to the Education Appropriation Subcommittees of the House of Representatives and the Senate.

SECTION 9.11.(c) Subsection (a) of this section is effective for the 2012-2013 academic year and each subsequent fiscal year.

ACADEMIC COMMON MARKET

SECTION 9.12.(a) Notwithstanding G.S. 116-43.10, the Board of Governors of The University of North Carolina shall not participate in the Academic Common Market for the purpose of accepting new students for the 2012-2013 academic year, and no new students shall

be allowed to enroll through the Academic Common Market program into The University of North Carolina graduate programs for the 2012-2013 academic year.

SECTION 9.12.(b) This section does not affect a student enrolled in The University of North Carolina System under the Academic Common Market program prior to the 2012-2013 academic year; that student may continue to pay in-State tuition as long as the student is enrolled in that graduate program.

ELIMINATE PRIVATE MEDICAL SCHOOL AID

SECTION 9.14. G.S. 116-21.6 is repealed.

TRANSFER NORTH CAROLINA ARBORETUM RESPONSIBILITIES TO WESTERN CAROLINA

SECTION 9.15.(a) G.S. 116-242 reads as rewritten:

"**§ 116-242. Administration of Arboretum; acceptance of gifts and grants.**

The Arboretum shall be administered by The University of North Carolina and through the Board of Directors established in G.S. 116-243. State funds for the administration of the Arboretum shall be appropriated to The University of North Carolina ~~for the University of North Carolina at Asheville. The~~ for Western Carolina University to administer on behalf of the arboretum. The North Carolina Arboretum and The University of North Carolina may receive gifts and grants to be used for development or operation of the Arboretum."

SECTION 9.15.(b) G.S. 116-243 reads as rewritten:

"**§ 116-243. Board of directors established; appointments.**

A board of directors to govern the operation of the Arboretum is established, to be appointed as follows:

(1) Two by the Governor, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.

(2) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the President Pro Tempore of the Senate, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.

(3) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the Speaker of the House of Representatives, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.

(4) The President of The University of North Carolina or the President's designee to serve ex officio.

(4a) Two by the President of The University of North Carolina. Members shall be appointed for four-year terms, except that the initial terms shall be as provided otherwise by law.

~~(5) The chancellors, chief executive officers, or their designees of the following institutions of higher education: North Carolina State University, Western Carolina University, The University of North Carolina at Asheville, Mars Hill College, and Warren Wilson College, to serve ex officio.~~

~~(6) The President of Western North Carolina Arboretum, Inc., to serve ex officio.~~

(7) ~~Six~~ Eight by the Board of Governors of The University of North Carolina, ~~initially, three for one-year terms, and three for three-year terms. Successors shall be appointed for four-year terms. One shall be an active grower of nursery stock, and one other shall represent the State's garden clubs.~~ Members shall be appointed for four-year terms, except that the initial terms shall be as otherwise provided by law.

(8) The executive director of the Arboretum ~~and the Executive Vice President of Western North Carolina Development Association~~ shall serve ex officio as ~~nonvoting members of the board of directors.~~ a nonvoting member of the Board of Directors.

(9) The President of The North Carolina Arboretum Society, Inc., to serve ex officio.

All appointed members may serve two full four-year terms following the initial appointment and then may not be reappointed until they have been absent for at least one year.

Members serve until their successors have been appointed. Appointees to fill vacancies serve for the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Initial terms begin ~~July 1, 1986.~~July 1, 2011.

The ~~chairman of the board of directors~~ Chair of the Board of Directors shall be elected biennially by majority vote of the directors.

The ~~executive director~~ Executive Director of the Arboretum shall report to the ~~board of directors.~~President of The University of North Carolina or the President's designee and to the Board of Directors."

SECTION 9.15.(c) G.S. 116-244 reads as rewritten:

"**§ 116-244. Duties of board of directors.**

The ~~board of directors~~ Board of Directors of the Arboretum has the following duties and responsibilities:

(1) Development of the policies and procedures concerning the use of the land and facilities being developed as part of the Western North Carolina Arboretum, Inc.;
(2) Approval of plans for any buildings to be constructed on the facility;
(3) Maintenance and upkeep of buildings and all properties;
(4) Approval of permanent appointments to the staff of the Arboretum;
(5) Recommendations to the General Administration of candidates for ~~executive director~~ Executive Director of the Arboretum;
(6) Recommendations to the General Administration for necessary termination of the ~~executive director~~ Executive Director or other personnel of the Arboretum;
(7) Ensurance of appropriate liaison between the Arboretum and the U. S. Forest Service, the National Park Service,~~the Western North Carolina Arboretum, Inc.,~~The North Carolina Arboretum Society, Inc., Bent Creek Institute, Inc., Centers for Environmental and Climatic Interaction, Inc., NOAA Cooperative Institute for Climate and Satellites, and other scientific and economic development agencies and organizations of interest to and involved in the work at the Arboretum;
(8) Development of various policies and directives, including the duties of the ~~executive director,~~ Executive Director, to be prepared jointly by the members of the ~~board of directors and the executive director;~~Board of Directors and the Executive Director;
(9) Approval of annual expenditures and budget requests to be submitted to ~~the Board of Governors.~~The University of North Carolina General Administration.

The ~~board of directors~~ Board of Directors shall meet at least twice a year, and more frequently on the call of the ~~chairman~~ Chair or at the request of at least 10 members of the ~~board.~~ Board. Meetings shall be held at the Arboretum, ~~the University of North Carolina at Asheville, or Western Carolina University.~~any campus of a constituent institution of The University of North Carolina, or at other public locations in support of the Arboretum mission and purposes."

SECTION 9.15.(d) Effective July 1, 2011, the President of The University of North Carolina shall appoint one member pursuant to G.S. 116-243(4a) as enacted by subsection (b) of this section to serve an initial term of two years to end July 1, 2013, and one member to serve an initial term of four years to end July 1, 2015; successors shall be appointed to four-year terms as provided by G.S. 116-243. Effective July 1, 2011, the Board of Governors of The University of North Carolina shall appoint one of the new members to be added to Board of Directors pursuant to G.S. 116-243(7) as amended by subsection (b) of this section to serve an initial term of two years to end July 1, 2013, and the other new member to be added to serve an initial term of four years to end July 1, 2015; successors shall be appointed to four year terms as provided by G.S. 116-243.

SPECIAL RESPONSIBILITY CONSTITUENT INSTITUTION AUDITS

SECTION 9.16. Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-30.8. Special responsibility constituent institutions: annual audit by State Auditor or certified public accountant.**

Each special responsibility constituent institution shall be audited annually. The Chancellor of the special responsibility constituent institution may use State funds to contract with the State Auditor or with a certified public accountant to perform the audit. The audit shall be provided to the Chancellor and Board of Trustees of the special responsibility institution, the Board of Governors of The University of North Carolina, and the State Auditor. The audit shall also be included in the State's Comprehensive Annual Financial Report (CAFR).

The Board of Governors of The University of North Carolina shall ensure that all special responsibility constituent institutions are audited in accordance with this section."

NEED-BASED SCHOLARSHIPS FOR STUDENTS ATTENDING PRIVATE INSTITUTIONS OF HIGHER EDUCATION

SECTION 9.18.(a) Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 34.

"Need-Based Scholarships for Students Attending Private Institutions of Higher Education.

"**§ 116-80. Definitions.**

The following definitions apply to this Article:

(1) Academic year. – A period of time in which a student is expected to complete the equivalent of at least two semesters' or three quarters' academic work.

(2) Authority. – The State Education Assistance Authority created by Article 23 of Chapter 116 of the General Statutes.

(3) Eligible private postsecondary institution. – A school that is any of the following:

a. A nonprofit postsecondary educational institution with a main permanent campus located in this State that is not owned or operated by the State of North Carolina or by an agency or political subdivision of the State or by any combination thereof that satisfies all of the following:

1. Is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of the Association or by the New England Association of Schools and Colleges through its Commission on Institutions of Higher Education.

2. Awards a postsecondary degree as defined in G.S. 116-15.

b. A postsecondary institution owned or operated by a hospital authority as defined in G.S. 131E-16(14) or school of nursing affiliated with a nonprofit postsecondary educational institution as defined in sub-subdivision a. of this subsection.

(4) Main permanent campus. – A campus owned by the eligible private postsecondary institution that provides permanent on-premises housing, food services, and classrooms with full-time faculty members and administration that engages in postsecondary degree activity as defined in G.S. 116-15.

(5) Matriculated status. – Being recognized as a student in a defined program of study leading to a degree, diploma, or certificate at an eligible private postsecondary institution.

(6) Scholarship. – A scholarship for education awarded under this Article.

(7) Title IV. – Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070, et seq.

"**§ 116-81. Eligibility requirements for scholarships.**

In order to be eligible to receive a scholarship under this Article, a student seeking a degree, diploma, or certificate at an eligible private postsecondary institution must meet all of the following requirements:

(1) Only needy North Carolina students are eligible to receive scholarships. For purposes of this subsection, "needy North Carolina students" are those eligible students whose expected family contribution under the federal methodology does not exceed five thousand dollars ($5,000).

(2) The student must meet all other eligibility requirements for the federal Pell Grant, with the exception of the expected family contribution.

(3) The student must qualify as a legal resident of North Carolina and as a resident for tuition purposes in accordance with definitions of residency that may from time to time be adopted by the Board of Governors and published in the residency manual of the Board of Governors.

(4) The student must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status at an eligible private postsecondary institution.

(5) In order to continue to be eligible for a scholarship for the student's second and subsequent academic years, the student must meet achievement standards by maintaining satisfactory academic progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the eligible private postsecondary institution in which the student is enrolled.

(6) A student shall not receive a scholarship under this Article for more than four full academic years.

"**§ 116-82. Scholarship amounts; amounts dependent on availability of funds.**

(a) Subject to the sum appropriated by the General Assembly for an academic year to be awarded as scholarships under this Article, a scholarship awarded under this Article to a student at an eligible private postsecondary institution shall be based upon the enrollment status and expected family contribution of the student and shall not exceed four thousand dollars ($4,000) per academic year, including any federal Pell Grant, to be used for the costs of attendance as defined for federal Title IV programs.

(b) Subject to the maximum amounts provided in this section, the Authority shall have the power to determine the actual scholarship amounts disbursed to students in any given year based on the sum appropriated for purposes of this Article by the General Assembly for that academic year and any unexpended funds that may be available pursuant to G.S. 116-83. If the sum appropriated is not sufficient to fully fund the scholarships to the maximum amount, all scholarships shall be reduced equally, to the extent practicable, so that every eligible applicant shall receive a proportionate scholarship amount.

(c) The minimum award of a scholarship under this Article shall be one hundred dollars ($100.00).

"**§ 116-83. Administration; unexpended scholarship funds do not revert.**

(a) The scholarships provided for in this Article shall be administered by the Authority under rules adopted by the Authority in accordance with the provisions of this Article.

(b) The Authority may use up to one and one-half percent (1.5%) of the funds appropriated for scholarships under this Article for administrative purposes.

(c) Scholarship funds unexpended shall remain available for future scholarships to be awarded under this Article."

SECTION 9.18.(b) G.S. 115C-499.1(3) reads as rewritten:

"**§ 115C-499.1. Definitions.**

The following definitions apply to this Article:

...

(3) Eligible postsecondary institution. – A school that is:

a. A constituent institution of The University of North Carolina as defined in G.S. 116-2(4); or

b. A community college as defined in ~~G.S. 115D-2(2);~~G.S. 115D-2(2).

~~c. A nonprofit postsecondary institution as defined in G.S. 116-22(1) or G.S. 116-43.5(a)(1); or~~

~~d. A postsecondary institution owned or operated by a hospital authority as defined in G.S. 131E-16(14) or school of nursing affiliated with a nonprofit postsecondary institution as defined in G.S. 116-22(1).~~

...."

SECTION 9.18.(c) G.S. 116-19, 116-20, 116-21, 116-21.1, 116-21.2, 116-21.3, 116-21.4, 116-22, and 116-43.5 are repealed.

SECTION 9.18.(d) The State Education Assistance Authority shall report no later than June 1, 2013, to the Joint Legislative Education Oversight Committee regarding the

implementation of this section. The report shall contain, for the 2012-2013 academic year, the amount of scholarship and grant money disbursed, the number of students eligible for the funds, the number of eligible students receiving the funds, and a breakdown of the eligible private postsecondary institutions that received the funds.

SECTION 9.18.(e) G.S. 90-332.1(a)(4a) reads as rewritten:

"(a) It is not the intent of this Article to regulate members of other regulated professions who do counseling in the normal course of the practice of their profession. Accordingly, this Article does not apply to:

...

(4a) Any person counseling within the scope of employment at: (i) a local community college as defined in G.S. 115D-2(2); (ii) a public higher education institution as defined in G.S. 116-2(4); or (iii) ~~a private higher education institution as defined in G.S. 116-22(1).~~ a nonprofit postsecondary educational institution as described in G.S. 116-80 that is not a seminary, Bible school, Bible college, or similar religious institution."

SECTION 9.18.(f) G.S. 105-278.4(a) reads as rewritten:

"(a) Buildings. – Buildings, the land they actually occupy, and additional land reasonably necessary for the convenient use of any such building shall be exempted from taxation if all of the following requirements are met:

(1) Owned by either of the following:

a. An educational institution; or

b. A nonprofit entity for the sole benefit of a constituent or affiliated institution of The University of North Carolina, ~~an institution as defined in G.S. 116-22,~~ a nonprofit postsecondary educational institution as described in G.S. 116-80 that is not a seminary, Bible school, Bible college, or similar religious institution, a North Carolina community college, or a combination of these;

...."

SECTION 9.18.(g) G.S. 116-11(10a) reads as rewritten:

"(10a) The Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with ~~private higher education institutions defined in G.S. 116-22(1),~~ nonprofit postsecondary educational institutions shall plan a system to provide an exchange of information among the public schools and institutions of higher education to be implemented no later than June 30, 1995. As used in this section, "institutions of higher education" shall ~~mean~~ mean (i) public higher education institutions defined in G.S. 116-143.1(a)(3), and ~~those private higher education institutions defined in G.S. 116-22(1)~~ (ii) those nonprofit postsecondary educational institutions as described in G.S. 116-80 that are not seminaries, Bible schools, Bible colleges, or similar religious institutions and that choose to participate in the information exchange. The information shall include:

a. The number of high school graduates who apply to, are admitted to, and enroll in institutions of higher education;

b. College performance of high school graduates for the year immediately following high school graduation including each student's: need for remedial coursework at the institution of higher education that the student attends; performance in standard freshmen courses; and continued enrollment in a subsequent year in the same or another institution of higher education in the State;

c. The progress of students from one institution of higher education to another; and

d. Consistent and uniform public school course information including course code, name, and description.

The Department of Public Instruction shall generate and the local school administrative units shall use standardized transcripts in an automated format for applicants to higher education institutions. The standardized transcript shall include grade point average, class rank, end-of-course test scores, and uniform course information including course code, name, units earned toward graduation, and credits earned for admission from an

institution of higher education. The grade point average and class rank shall be calculated by a standard method to be devised by the institutions of higher education.

The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1993, and annually thereafter."

SECTION 9.18.(h) G.S. 143-49(6) reads as rewritten:

"(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are ~~defined as "institutions" in G.S. 116-22(1),~~ described as nonprofit postsecondary educational institutions in G.S. 116-80 that are not seminaries, Bible schools, Bible colleges, or similar religious institutions and to counties, cities, towns, local school administrative units, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract."

SECTION 9.18.(i) Subsections (a), (d), and (i) of this section become effective July 1, 2011. Article 34 of Chapter 116 of the General Statutes, as enacted by subsection (a) of this section, applies to the 2012-2013 academic year and each subsequent academic year, except that the rule-making authority for the State Education Assistance Authority under G.S. 116-83(a) becomes effective immediately on July 1, 2011. Subsections (b), (c), (e), (f), (g), and (h) of this section become effective July 1, 2012.

CONSTITUENT INSTITUTIONS MAY PURCHASE MOTOR VEHICLES INDEPENDENT OF MOTOR FLEET MANAGEMENT

SECTION 9.19. G.S. 143-341(8)i.3. reads as rewritten:

"**§ 143-341. Powers and duties of Department.**

The Department of Administration has the following powers and duties:

...

(8) General Services:

...

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

...

3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway ~~Patrol or~~ Patrol, the State Bureau of ~~Investigation~~ Investigation, or the constituent institutions of The University of North Carolina which are used primarily for law-enforcement purposes, and except those motor

vehicles under the ownership, custody or control of the Department of Crime Control and Public Safety for Butner Public Safety which are used primarily for law-enforcement, fire, or emergency purposes."

PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHILD CARE SUBSIDY RATES

SECTION 10.1.(a) The maximum gross annual income for initial eligibility, adjusted biennially, for subsidized child care services shall be seventy-five percent (75%) of the State median income, adjusted for family size.

SECTION 10.1.(b) Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%
4-5	9%
6 or more	8%.

SECTION 10.1.(c) Payments for the purchase of child care services for low-income children shall be in accordance with the following requirements:

(1) Religious-sponsored child care facilities operating pursuant to G.S. 110-106 and licensed child care centers and homes that meet the minimum licensing standards that are participating in the subsidized child care program shall be paid the one-star county market rate or the rate they charge privately paying parents, whichever is lower, unless prohibited by Section 10.7(g) of this act.

(2) Licensed child care centers and homes with two or more stars shall receive the market rate for that rated license level for that age group or the rate they charge privately paying parents, whichever is lower, unless prohibited by Section 10.7(g) of this act.

(3) Nonlicensed homes shall receive fifty percent (50%) of the county market rate or the rate they charge privately paying parents, whichever is lower.

(4) No payments shall be made for transportation services or registration fees charged by child care facilities.

(5) Payments for subsidized child care services for postsecondary education shall be limited to a maximum of 20 months of enrollment.

(6) The Department of Health and Human Services shall implement necessary rule changes to restructure services, including, but not limited to, targeting benefits to employment.

SECTION 10.1.(d) Provisions of payment rates for child care providers in counties that do not have at least 50 children in each age group for center-based and home-based care are as follows:

(1) Except as applicable in subdivision (2) of this subsection, payment rates shall be set at the statewide or regional market rate for licensed child care centers and homes.

(2) If it can be demonstrated that the application of the statewide or regional market rate to a county with fewer than 50 children in each age group is lower than the county market rate and would inhibit the ability of the county to purchase child care for low-income children, then the county market rate may be applied.

SECTION 10.1.(e) A market rate shall be calculated for child care centers and homes at each rated license level for each county and for each age group or age category of enrollees and shall be representative of fees charged to parents for each age group of enrollees within the county. The Division of Child Development shall also calculate a statewide rate and regional market rates for each rated license level for each age category.

SECTION 10.1.(f) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes and facilities operated pursuant to G.S. 110-106 may participate in the program that provides for the purchase of care in child care facilities for minor children of needy families. Except as authorized by Section 10.7(g) of this act, no separate licensing requirements shall be used to select facilities to participate. In addition, child care facilities

shall be required to meet any additional applicable requirements of federal law or regulations. Child care arrangements exempt from State regulation pursuant to Article 7 of Chapter 110 of the General Statutes shall meet the requirements established by other State law and by the Social Services Commission.

County departments of social services or other local contracting agencies shall not use a provider's failure to comply with requirements in addition to those specified in this subsection as a condition for reducing the provider's subsidized child care rate.

SECTION 10.1.(g) Payment for subsidized child care services provided with Work First Block Grant funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.1.(h) Noncitizen families who reside in this State legally shall be eligible for child care subsidies if all other conditions of eligibility are met. If all other conditions of eligibility are met, noncitizen families who reside in this State illegally shall be eligible for child care subsidies only if at least one of the following conditions is met:

(1) The child for whom a child care subsidy is sought is receiving child protective services or foster care services.

(2) The child for whom a child care subsidy is sought is developmentally delayed or at risk of being developmentally delayed.

(3) The child for whom a child care subsidy is sought is a citizen of the United States.

CHILD CARE ALLOCATION FORMULA

SECTION 10.2.(a) The Department of Health and Human Services shall allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families. The mandatory thirty percent (30%) Smart Start subsidy allocation under G.S. 143B-168.15(g) shall constitute the base amount for each county's child care subsidy allocation. The Department of Health and Human Services shall use the following method when allocating federal and State child care funds, not including the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation:

(1) Funds shall be allocated to a county based upon the projected cost of serving children under age 11 in families with all parents working who earn less than seventy-five percent (75%) of the State median income.

(2) No county's allocation shall be less than ninety percent (90%) of its State fiscal year 2001-2002 initial child care subsidy allocation.

SECTION 10.2.(b) The Department of Health and Human Services may reallocate unused child care subsidy voucher funds in order to meet the child care needs of low-income families. Any reallocation of funds shall be based upon the expenditures of all child care subsidy voucher funding, including Smart Start funds, within a county.

SECTION 10.2.(c) Notwithstanding subsection (a) of this section, the Department of Health and Human Services shall allocate up to twenty million dollars ($20,000,000) in federal block grant funds and State funds appropriated for fiscal years 2011-2012 and 2012-2013 for child care services. These funds shall be allocated to prevent termination of child care services. Funds appropriated for specific purposes, including targeted market rate adjustments given in the past, may also be allocated by the Department separately from the allocation formula described in subsection (a) of this section.

CHILD CARE FUNDS MATCHING REQUIREMENT

SECTION 10.3. No local matching funds may be required by the Department of Health and Human Services as a condition of any locality's receiving its initial allocation of child care funds appropriated by this act unless federal law requires a match. If the Department reallocates additional funds above twenty-five thousand dollars ($25,000) to local purchasing agencies beyond their initial allocation, local purchasing agencies must provide a twenty percent (20%) local match to receive the reallocated funds. Matching requirements shall not apply when funds are allocated because of a disaster as defined in G.S. 166A-4(1).

CHILD CARE REVOLVING LOAN

SECTION 10.4. Notwithstanding any law to the contrary, funds budgeted for the Child Care Revolving Loan Fund may be transferred to and invested by the financial institution contracted to operate the Fund. The principal and any income to the Fund may be used to make

loans, reduce loan interest to borrowers, serve as collateral for borrowers, pay the contractor's cost of operating the Fund, or pay the Department's cost of administering the program.

EXPIRATION OF EARLY EDUCATION CERTIFICATION REQUIREMENT

SECTION 10.4A. Section 2 of S.L. 2010-178 reads as rewritten:

"**SECTION 2.** This act is effective when it becomes ~~law.~~law and expires July 1, 2011."

EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES ENHANCEMENTS

SECTION 10.5.(a) Effective July 1, 2011, the North Carolina Partnership for Children, Inc., is dissolved, and the Department of Health and Human Services, Division of Child Development, shall administer the local partnerships' funding. The Division of Child Development shall do the following:

(1) Develop a plan to allocate the North Carolina Partnership for Children, Inc., funds to local partnerships.
(2) Establish guidelines for the use of funds.
(3) Review and approve local partnerships' plans for use of funds.
(4) Create a reporting and evaluation system regarding use of the funds.

The Department shall report on the plan to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than December 1, 2011.

SECTION 10.5.(a1) G.S. 120-123(69) reads as rewritten:

"**§ 120-123. Service by members of the General Assembly on certain boards and commissions.**

No member of the General Assembly may serve on any of the following boards or commissions:

...

(69) ~~The North Carolina Partnership for children, Inc.,~~Any local partnerships established pursuant to Part 10B of Article 3 of Chapter 143B of the General ~~Statutes, and all local partnerships established pursuant to this Part.~~ Statutes.

...."

SECTION 10.5.(b) G.S. 143B-168.11 reads as rewritten:

"**§ 143B-168.11. Early childhood initiatives; purpose; definitions.**

(a) The purpose of this Part is to establish a framework whereby the General Assembly, upon consultation with the Governor, may support through financial and other ~~means, the North Carolina Partnership for Children, Inc. and comparable~~ means local partnerships, which have as their missions the development of a comprehensive, long-range strategic plan for early childhood development and the provision, through public and private means, of high-quality early childhood education and development services for children and families. It is the intent of the General Assembly that communities be given the maximum flexibility and discretion practicable in developing their plans while remaining subject to the approval of the ~~North Carolina Partnership~~Department of Health and Human Services, Division of Child Development, and accountable to the ~~North Carolina Partnership~~Division and to the General Assembly for their plans and for the programmatic and fiscal integrity of the programs and services provided to implement them.

(b) The following definitions apply in this Part:

~~(1) Board of Directors. – The Board of Directors of the North Carolina Partnership for Children, Inc.~~
(2) Department. – The Department of Health and Human Services.
(2a) Division. – The Division of Child Development within the Department of Health and Human Services.
~~(2a)~~(2b) Early Childhood. – Birth through five years of age.
(3) Local Partnership. – A county or regional private, nonprofit 501(c)(3) organization established to coordinate a local demonstration project, to provide ongoing analyses of their local needs that must be met to ensure that the developmental needs of children are met in order to prepare them to begin school healthy and ready to succeed, and, in consultation with the ~~North Carolina Partnership~~Division and subject to the approval of the ~~North Carolina Partnership,~~Division, to provide programs and services to meet

these needs under this Part, while remaining accountable for the programmatic and fiscal integrity of their programs and services to the ~~North Carolina Partnership.~~Division.

~~(4) North Carolina Partnership. – The North Carolina Partnership for Children, Inc.~~

(5) Secretary. – The Secretary of Health and Human Services."

SECTION 10.5.(c) G.S. 143B-168.12 reads as rewritten:

"**§ 143B-168.12. ~~North Carolina Partnership for Children, Inc.; conditions.~~Conditions for receipt of State funds.**

(a) In order to receive State funds, the following conditions shall be met:

~~(1) The North Carolina Partnership shall have a Board of Directors consisting of the following 26 members:~~

~~a. The Secretary of Health and Human Services, ex officio, or the Secretary's designee;~~

~~b. Repealed by Session Laws 1997, c. 443, s. 11A.105.~~

~~c. The Superintendent of Public Instruction, ex officio, or the Superintendent's designee;~~

~~d. The President of the Community Colleges System, ex officio, or the President's designee;~~

~~e. Three members of the public, including one child care provider, one other who is a parent, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate;~~

~~f. Three members of the public, including one who is a parent, one other who is a representative of the faith community, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives;~~

~~g. Twelve members, appointed by the Governor. Three of these 12 members shall be members of the party other than the Governor's party, appointed by the Governor. Seven of these 12 members shall be appointed as follows: one who is a child care provider, one other who is a pediatrician, one other who is a health care provider, one other who is a parent, one other who is a member of the business community, one other who is a member representing a philanthropic agency, and one other who is an early childhood educator;~~

~~h. Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.~~

~~h1. The Chair of the North Carolina Partnership Board shall be appointed by the Governor;~~

~~i. Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.~~

~~j. One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the Senate;~~

~~k. One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the House of Representatives;~~

~~l. One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the Senate;~~

~~m. One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the House of Representatives; and~~

~~n. The Director of the More at Four Pre-Kindergarten Program, or the Director's designee.~~

~~All members appointed to succeed the initial members and members appointed thereafter shall be appointed for three year terms. Members may succeed themselves.~~

~~All appointed board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the North Carolina Partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the North Carolina Partnership regarding the disbursement of funds.~~

~~All ex officio members are voting members. Each ex officio member may be represented by a designee. These designees shall be voting members. No members of the General Assembly shall serve as members.~~

~~The North Carolina Partnership may establish a nominating committee and, in making their recommendations of members to be appointed by the General Assembly or by the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Majority Leader of the Senate, the Majority Leader of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, and the Governor shall consult with and consider the recommendations of this nominating committee.~~

~~The North Carolina Partnership may establish a policy on members' attendance, which policy shall include provisions for reporting absences of at least three meetings immediately to the appropriate appointing authority.~~

~~Members who miss more than three consecutive meetings without excuse or members who vacate their membership shall be replaced by the appropriate appointing authority, and the replacing member shall serve either until the General Assembly and the Governor can appoint a successor or until the replaced member's term expires, whichever is earlier.~~

~~The North Carolina Partnership shall establish a policy on membership of the local boards. No member of the General Assembly shall serve as a member of a local board. Within these requirements for local board membership, the North Carolina Partnership shall allow local partnerships that are regional to have flexibility in the composition of their boards so that all counties in the region have adequate representation.~~

~~All appointed local board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the partnership regarding the disbursement of funds.~~

(2) The ~~North Carolina Partnership and the~~ local partnerships shall agree to adopt procedures for ~~its~~ their operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department. The procedures may provide for the confidentiality of personnel files comparable to Article 7 of Chapter 126 of the General Statutes.

(3) The ~~North Carolina Partnership~~Division shall oversee the development and implementation of the local demonstration projects as they are selected and shall approve the ongoing plans, programs, and services developed and implemented by the local partnerships and hold the local partnerships accountable for the financial and programmatic integrity of the programs and services. The ~~North Carolina Partnership~~Division may contract ~~at the State level~~on behalf of local partnerships to obtain services or resources when the ~~North Carolina Partnership~~Division determines it would be more efficient to do so.

In the event that the ~~North Carolina Partnership~~Division determines that a local partnership is not fulfilling its mandate to provide programs and services designed to meet the developmental needs of children in order to prepare them to begin school healthy and ready to succeed and is not being accountable for the programmatic and fiscal integrity of its programs and services, the ~~North Carolina Partnership~~Division may suspend all funds to

the partnership until the partnership demonstrates that these defects are corrected. Further, at its discretion, the ~~North Carolina Partnership~~Division may assume the managerial responsibilities for the partnership's programs and services until the ~~North Carolina Partnership~~Division determines that it is appropriate to return the programs and services to the local partnership.

(4) The ~~North Carolina Partnership~~Division shall develop and implement a comprehensive standard fiscal accountability plan to ensure the fiscal integrity and accountability of State funds ~~appropriated to it and~~allocated to the local partnerships. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. The ~~North Carolina Partnership~~Division may contract with outside firms to develop and implement the standard fiscal accountability plan. All local partnerships shall be required to participate in the standard fiscal accountability plan developed and adopted by the ~~North Carolina Partnership~~Division pursuant to this subdivision.

(5) The ~~North Carolina Partnership~~Division shall develop a regional accounting and contract management system which incorporates features of the required standard fiscal accountability plan described in subdivision (4) of ~~subsection (a) of this section.~~this subsection. All local partnerships shall participate in the regional accounting and contract management system.

(6) The ~~North Carolina Partnership~~Division shall develop a formula for allocating direct services funds appropriated for this purpose to local partnerships.

(7) The ~~North Carolina Partnership~~Division may adjust its allocations by up to ten percent (10%) on the basis of local partnerships' performance assessments. In determining whether to adjust its allocations to local partnerships, the ~~North Carolina Partnership~~Division shall consider whether the local partnerships are meeting the outcome goals and objectives of the ~~North Carolina Partnership~~Division and the goals and objectives set forth by the local partnerships in their approved annual program plans.

The ~~North Carolina Partnership~~Division may use additional factors to determine whether to adjust the local partnerships' allocations. These additional factors shall be developed with input from the local partnerships and shall be communicated to the local partnerships when the additional factors are selected. These additional factors may include board involvement, family and community outreach, collaboration among public and private service agencies, and family involvement.

On the basis of performance assessments, local partnerships annually shall be rated "superior", "satisfactory", or "needs improvement".

The ~~North Carolina Partnership~~Division may contract with outside firms to conduct the performance assessments of local partnerships.

(8) The ~~North Carolina Partnership~~Division shall establish a local partnership advisory committee comprised of 15 members. Eight of the members shall be chosen from ~~past board chairs or~~ duly elected officers currently serving on local partnerships' board of directors at the time of appointment and shall serve three-year terms. Seven of the members shall be staff of local partnerships. Members shall be chosen by the ~~Chair of the North Carolina Partnership~~Secretary from a pool of candidates nominated by their respective boards of directors. The local partnership advisory committee shall serve in an advisory capacity to the ~~North Carolina Partnership~~Division and shall establish a schedule of regular meetings. Members shall be chosen from local partnerships on a rotating basis. The advisory committee shall annually elect a chair from among its members.

(9) Repealed by Session Laws 2001-424, s. 21.75(h), effective July 1, 2001.

~~(b) The North Carolina Partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the North Carolina Partnership.~~

(c) The ~~North Carolina Partnership~~Division shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and ~~North Carolina Partnership,~~Division, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars ($100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be subject to the requirements of G.S. 143C-6-22. Organizations subject to G.S. 159-34 shall be exempt from this requirement.

(d) The ~~North Carolina Partnership for Children, Inc.,~~Division shall make a report no later than December 1 of each year to the General Assembly that shall include the following:

(1) A description of the program and significant services and initiatives.
(2) A history of Smart Start funding and the previous fiscal year's expenditures.
(3) The number of children served by type of service.
(4) The type and quantity of services provided.
(5) The results of the previous year's evaluations of the Initiatives or related programs and services.
(6) A description of significant policy and program changes.
(7) Any recommendations for legislative action.

(e) The ~~North Carolina Partnership~~ Division shall develop guidelines for local partnerships to follow in selecting capital projects to fund. The guidelines shall include assessing the community needs in relation to the quantity of child care centers, assessing the cost of purchasing or constructing new facilities as opposed to renovating existing facilities, and prioritizing capital needs such as construction, renovations, and playground equipment and other amenities.

(f) The ~~North Carolina Partnership for Children, Inc.,~~Division shall establish uniform guidelines and a reporting format for local partnerships to document the qualifying expenses occurring at the contractor level. Local partnerships shall monitor qualifying expenses to ensure they have occurred and meet the requirements prescribed in this subsection."

SECTION 10.5.(d) G.S. 143B-168.13 reads as rewritten:

"**§ 143B-168.13. Implementation of program; duties of ~~Department~~ Division and Secretary.**

(a) The ~~Department~~ Division shall:

(1) Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.
(1a) Develop and conduct a statewide needs and resource assessment every third year, beginning in the 1997-98 fiscal year. This needs assessment shall be conducted in cooperation ~~with the North Carolina Partnership and~~ with the local partnerships. This needs assessment shall include a statewide assessment of capital needs. The data and findings of this needs assessment shall form the basis for annual program plans developed by local partnerships and approved by the ~~North Carolina Partnership.~~Division.
(2) Recodified as (a)(1a) by Session Laws 1998-212, s. 12.37B(a).
(2a) Repealed by Session Laws 1998-212, s. 12.37B(l), effective October 30, 1998.
(3) Provide technical and administrative ~~assitance~~ assistance to local partnerships, particularly during the first year after they are selected under this Part to receive State funds. The ~~Department,~~Division, at any time, may authorize ~~the North Carolina Partnership or~~ a governmental or public entity to do the contracting for one or more local partnerships. After a local partnership's first year, the ~~Department~~ Division may allow the partnership to contract for itself.
(4) ~~Adopt, in cooperation with the North Carolina Partnership,~~Adopt any rules necessary to implement this Part, including rules to ensure that State leave policy is not applied to ~~the North Carolina Partnership and~~ the local partnerships. In order to allow local partnerships to focus on the development of long-range plans in their initial year of funding, the ~~Department~~ Division may adopt rules that limit the categories of direct services for young children and their families for which funds are made available during the initial year.

(5) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 24.29(c).
(6) Annually update its funding ~~formula, in collaboration with the North Carolina Partnership for Children, Inc.,~~formula using the most recent data available. These amounts shall serve as the basis for determining "full funding" amounts for each local partnership.

(b) Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998."

SECTION 10.5.(e) G.S. 143B-168.14 reads as rewritten:

"**§ 143B-168.14. Local partnerships; conditions.**

(a) In order to receive State funds, the following conditions shall be met:
(1) Each local partnership shall develop a comprehensive, collaborative, long-range plan of services to children and families in the service-delivery area. No existing local, private, nonprofit 501(c)(3) organization, other than one established on or after July 1, 1993, and that meets the guidelines for local partnerships as established under this Part, shall be eligible to apply to serve as the local partnership for the purpose of this Part. The ~~Board of the North Carolina Partnership~~Division may authorize exceptions to this eligibility requirement.
(2) Each local partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department. The procedures may provide for the confidentiality of personnel files comparable to Article 7 of Chapter 126 of the General Statutes.
(3) Each local partnership shall adopt procedures to ensure that all personnel who provide services to young children and their families under this Part know and understand their responsibility to report suspected child abuse, neglect, or dependency, as defined in G.S. 7B-101.
(4) Each local partnership shall participate in the uniform, standard fiscal accountability plan developed and adopted by the ~~North Carolina Partnership.~~Division.

(b) Each local partnership shall be subject to audit and review by the ~~North Carolina Partnership.~~Division. The ~~North Carolina Partnership~~Division shall contract for annual financial and compliance audits of local partnerships that are rated "needs improvement" in performance assessments authorized in G.S. 143B-168.12(a)(7). Local partnerships that are rated "superior" or "satisfactory" in performance assessments authorized in G.S. 143B-168.12(a)(7) shall undergo biennial financial and compliance audits as contracted for by the ~~North Carolina Partnership.~~Division. The ~~North Carolina Partnership~~Division shall provide the State Auditor with a copy of each audit conducted pursuant to this subsection."

SECTION 10.5.(f) G.S. 143B-168.15 reads as rewritten:

"**§ 143B-168.15. Use of State funds.**

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the funds allocated to local partnerships for direct services, seventy percent (70%) of the funds spent in each year shall be used in child care related activities and early childhood education programs that improve access to child care and early childhood education services, develop new child care and early childhood education services, and improve the quality of child care and early childhood education services in all settings.

(c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also

should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and providers. State funds designated to support direct services for children, families, and providers shall not be used for major capital expenses unless the ~~North Carolina Partnership~~Division approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be able to meet this priority need by using State or federal funds available to that local partnership. The funds approved for capital projects in any two consecutive fiscal years may not exceed ten percent (10%) of the total funds for direct services allocated to a local partnership in those two consecutive fiscal years.

(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county.

(f) Repealed by Session Laws 2001-424, s. 21.75(g), effective July 1, 2001.

(g) Not less than thirty percent (30%) of the funds spent in each year of each local partnership's direct services allocation shall be used to expand child care subsidies. To the extent practicable, these funds shall be used to enhance the affordability, availability, and quality of child care services as described in this section. The ~~North Carolina Partnership~~Division may increase this percentage requirement up to a maximum of fifty percent (50%) when, based upon a significant local waiting list for subsidized child care, the ~~North Carolina Partnership~~Division determines a higher percentage is justified.

(h) State funds allocated to local partnerships that are unexpended at the end of a fiscal year shall remain available to the ~~North Carolina Partnership for Children, Inc.,~~Division to reallocate to local partnerships."

SECTION 10.5.(g) Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than four percent (4%) of the total statewide allocation to all local partnerships. For purposes of this subsection, administrative costs shall include costs associated with partnership oversight, business and financial management, general accounting, human resources, budgeting, purchasing, contracting, and information systems management.

SECTION 10.5.(h) The Division of Child Development shall impose an annual salary cap limiting the amount of salary that an individual employee of a local partnership may be paid from State funds in accordance with the following schedule:

(1) For amounts received that are over ten million dollars ($10,000,000) annually in total State funds, the annual salary cap limitation is one hundred thousand dollars ($100,000).

(2) For amounts received that are over or equal to five million dollars ($5,000,000) but less than ten million dollars ($10,000,000) annually in total State funds, the annual salary cap limitation is ninety thousand dollars ($90,000).

(3) For amounts received that are over or equal to three million dollars ($3,000,000) but less than five million dollars ($5,000,000) annually in total State funds, the annual salary cap limitation is eighty thousand dollars ($80,000).

(4) For amounts received that are over or equal to one million dollars ($1,000,000) but less than three million dollars ($3,000,000) annually in total State funds, the annual salary cap limitation is seventy thousand dollars ($70,000).

(5) For amounts received that are less than one million dollars ($1,000,000) annually in total State funds, the annual salary cap limitation is sixty thousand dollars ($60,000).

Nothing in this subsection shall be construed to prohibit a local partnership from using non-State funds to supplement the salary of an individual employee employed by the local partnership.

SECTION 10.5.(i) Local partnerships shall use competitive bidding practices in contracting for goods and services on contract amounts as follows:

(1) For amounts of five thousand dollars ($5,000) or less, the procedures specified by a written policy to be developed by the Division of Child Development.

(2) For amounts greater than five thousand dollars ($5,000), but less than fifteen thousand dollars ($15,000), three written quotes.

(3) For amounts of fifteen thousand dollars ($15,000) or more, but less than forty thousand dollars ($40,000), a request for proposal process.

(4) For amounts of forty thousand dollars ($40,000) or more, a request for proposal process and advertising in a major newspaper.

SECTION 10.5.(j) All local partnerships shall, in the aggregate, be required to match one hundred percent (100%) of the total amount budgeted for the program in each fiscal year of the biennium. Of the funds the local partnerships are required to match, contributions of cash shall equal at least ten percent (10%) and in-kind donated resources shall equal no more than three percent (3%), for a total match requirement of thirteen percent (13%) for each fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with local partnerships also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

(1) Be verifiable from the contractor's records.

(2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.

(3) Not include expenses funded by State funds.

(4) Be supplemental to and not supplant preexisting resources for related program activities.

(5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives.

(6) Be otherwise allowable under federal or State law.

(7) Be required and described in the contractual agreements approved by the local partnership.

(8) Be reported to the local partnership by the contractor in the same manner as reimbursable expenses.

Failure to obtain a thirteen percent (13%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The Division of Child Development shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

SECTION 10.5.(k) The Department of Health and Human Services shall continue to implement the performance-based evaluation system.

SECTION 10.5.(l) The Department of Health and Human Services, Division of Child Development, shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2011-2012 and 2012-2013 shall be administered and distributed in the following manner:

(1) Capital expenditures are prohibited for fiscal years 2011-2012 and 2012-2013. For the purposes of this section, "capital expenditures" means expenditures for capital improvements as defined in G.S. 143C-1-1(d)(5).

(2) Expenditures of State funds for advertising and promotional activities are prohibited for fiscal years 2011-2012 and 2012-2013.

SECTION 10.5.(m) A county may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure pursuant to Article 7 of Chapter 110 of the General Statutes.

SECTION 10.5.(n) For fiscal years 2011-2012 and 2012-2013, the local partnerships shall spend at least seventy-two million dollars ($72,000,000) for child care subsidies, of which twenty million dollars ($20,000,000) is expected to be used to reduce the number of children on the waiting list for child care subsidy.

SECTION 10.5.(o) For fiscal years 2011-2012 and 2012-2013, local partnerships shall not spend any State funds on lobbying, marketing campaigns, advertising, or any associated materials. Local partnerships may spend any private funds the local partnerships receive on those activities.

SECTION 10.5.(p) Local partnership-funded activities shall include assisting child care facilities with (i) improving quality, including helping one- and two-star-rated facilities increase their star ratings and (ii) implementing prekindergarten programs. State funding for local partnerships shall also be used for evidence-based or evidence-informed programs for children from birth to five years of age that do the following:

(1) Increase children's literacy.
(2) Increase the parents' ability to raise healthy, successful children.
(3) Improve children's health.
(4) Assist four- and five-star-rated facilities in improving and maintaining quality.

SECTION 10.5.(q) The Legislative Research Commission is authorized to study the cost, quality, consumer education, and outcomes of the local partnerships' activities funded to (i) increase early literacy, (ii) measurably improve families' abilities to raise healthy, productive, and successful children, and (iii) increase access to preventative health care for children from birth to five years of age. The Legislative Research Commission shall evaluate and report on the following:

(1) The types of activities, goals, and intended outcomes of evidence-based early literacy activities that promote phonemic awareness, letter recognition, segmenting words into sounds, and decoding print text.
(2) The types of family support and health activities supported with local partnership funds.
(3) The goal and intended outcome of the family support and health activities.
(4) The numbers served and results of the family support and health activities.
(5) Study the match requirements and what constitutes the match requirements.
(6) Any other matter the Commission deems relevant to its charge.

SECTION 10.5.(r) On or before October 1, 2012, the Legislative Research Commission shall make a report of its findings and recommendations, including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

ADMINISTRATIVE ALLOWANCE FOR COUNTY DEPARTMENTS OF SOCIAL SERVICES

SECTION 10.6. The Division of Child Development of the Department of Health and Human Services shall fund the allowance that county departments of social services may use for administrative costs at four percent (4%) of the county's total child care subsidy funds allocated in the Child Care Development Fund Block Grant plan.

CONSOLIDATE MORE AT FOUR PROGRAM INTO DIVISION OF CHILD DEVELOPMENT

SECTION 10.7.(a) The Department of Public Instruction, Office of Early Learning, and the Department of Health and Human Services are directed to consolidate the More At Four program into the Division of Child Development. The Division of Child Development is renamed the Division of Child Development and Early Education (DCDEE). The DCDEE is directed to maintain the More At Four program's high programmatic standards.

The Department of Health and Human Services shall assume the functions of the regulation and monitoring system and payment and reimbursement system for the More At Four program.

All regulation and monitoring functions shall begin July 1, 2011. The More At Four program shall be designated as "prekindergarten" on the five-star rating scale. All references to "prekindergarten" in this section shall refer to the program previously titled the "More At Four" program. All references to "non-prekindergarten" shall refer to all four- and five-star rated facilities.

The Office of State Budget and Management shall transfer positions to the Department of Health and Human Services to assume the regulation, monitoring, and accounting functions within the Division of Child Development's Regulatory Services Section. This transfer shall have all the elements of a Type I transfer as defined in G.S. 143A-6. All funds transferred pursuant to this section shall be used for the funding of prekindergarten slots for four-year-olds and for the management of the program. The Department of Health and Human Services shall incorporate eight consultant positions into the regulation and accounting sections of DCDEE, eliminate the remaining positions, and use position elimination savings for the purpose of funding prekindergarten students. DCDEE may use funds from the transfer of the More At Four program for continuing the teacher mentoring program and contracting for the environmental rating scale assessments.

SECTION 10.7.(b) The Childcare Commission shall adopt rules for programmatic standards for regulation of prekindergarten classrooms. The Commission shall review and approve comprehensive, evidenced-based early childhood curricula with a reading component. These curricula shall be added to the currently approved "More At Four" curricula.

SECTION 10.7.(c) G.S. 143B-168.4(a) reads as rewritten:

"(a) The Child Care Commission of the Department of Health and Human Services shall consist of ~~15~~ 17 members. Seven of the members shall be appointed by the Governor and ~~eight~~ 10 by the General Assembly, ~~four~~ five upon the recommendation of the President Pro Tempore of the Senate, and ~~four~~ five upon the recommendation of the Speaker of the House of Representatives. Four of the members appointed by the Governor, two by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on the recommendation of the Speaker of the House of Representatives, shall be members of the public who are not employed in, or providing, child care and who have no financial interest in a child care facility. Two of the foregoing public members appointed by the Governor, one of the foregoing public members recommended by the President Pro Tempore of the Senate, and one of the foregoing public members recommended by the Speaker of the House of Representatives shall be parents of children receiving child care services. Of the remaining two public members appointed by the Governor, one shall be a pediatrician currently licensed to practice in North Carolina. Three of the members appointed by the Governor shall be child care providers, one of whom shall be affiliated with a for profit child care center, one of whom shall be affiliated with a for profit family child care home, and one of whom shall be affiliated with a nonprofit facility. Two of the members appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on recommendation of the Speaker of the House of Representatives, shall be child care providers, one affiliated with a for profit child care facility, and one affiliated with a nonprofit child care facility. The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two early childhood education specialists. None may be employees of the State."

SECTION 10.7.(d) The additional curricula approved and taught in prekindergarten classrooms shall also be taught in four- and five-star rated facilities in the non-prekindergarten four-year-old classrooms. The Child Care Commission shall increase standards in the four- and five-star-rated facilities for the purpose of placing an emphasis on early reading. The Commission shall require the four- and five-star-rated facilities to teach from the Commission's approved curricula. The Division of Child Development may use funds from the Child Care Development Fund Block Grant to assist with the purchase of curricula or adjust rates of reimbursements to cover increased costs.

SECTION 10.7.(e) The Division of Child Development and Early Education shall adopt a policy to encourage all prekindergarten classrooms to blend private pay families with prekindergarten subsidized children in the same manner that regular subsidy children are

blended with private pay children. The Division may implement a waiver or transition period for the public classrooms.

SECTION 10.7.(f) The prekindergarten program may continue to serve at-risk children identified through the existing "child find" methods in which at-risk children are currently served within the Division of Child Development. The Division of Child Development shall serve at-risk children regardless of income. However, the total number of at-risk children served shall constitute no more than twenty percent (20%) of the four-year-olds served within the prekindergarten program. Any age-eligible child who is a child of either of the following shall be eligible for the program: (i) an active duty member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was ordered to active duty by the proper authority within the last 18 months or is expected to be ordered within the next 18 months or (ii) a member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was injured or killed while serving on active duty. Eligibility determinations for prekindergarten participants may continue through local education agencies and local North Carolina Partnership for Children, Inc., partnerships.

SECTION 10.7.(g) The Division of Child Development and Early Education (DCDEE) shall adopt policies that improve the quality of childcare for subsidized children. The DCDEE shall phase in a new policy in which child care subsidies will be paid, to the extent possible, for child care in the higher quality centers and homes only. The DCDEE shall define higher quality, and subsidy funds shall not be paid for one- or two-star-rated facilities. For those counties with an inadequate number of three-, four-, and five-star-rated facilities, the DCDEE shall establish a transition period that allows the facilities to continue to receive subsidy funds while the facilities work on the increased star ratings. The DCDEE may allow exemptions in counties where there is an inadequate number of three-, four-, and five-star-rated facilities for nonstar-rated programs, such as religious programs.

SECTION 10.7.(h) The Division of Child Development and Early Education shall implement a parent co-payment requirement for prekindergarten classrooms the same as what is required of parents subject to regular child care subsidy payments. All at-risk children and age-eligible children of military personnel as described in subsection (g) of this section are exempt from the co-payment requirements of this subsection.

Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%
4-5	9%
6 or more	8%.

SECTION 10.7.(i) All prekindergarten classrooms regulated pursuant to this section shall be required to participate in the Subsidized Early Education for Kids (SEEK) accounting system to streamline the payment function for these classrooms with a goal of eliminating duplicative systems and streamlining the accounting and payment processes among the subsidy reimbursement systems. Prekindergarten funds transferred may be used to add these programs to SEEK.

SECTION 10.7.(j) Based on market analysis and within funds available, the Division of Child Development and Early Education shall establish reimbursement rates based on newly increased requirements of four- and five-star-rated facilities and the higher teacher standards within the prekindergarten class rooms, specifically More At Four teacher standards, when establishing the rates of reimbursements. Additionally, the prekindergarten curriculum day shall cover six and one-half to 10 hours daily and no less than 10 months per year. The public classrooms will have a one-year transition period to become licensed through the Division of Child Development and may continue to operate prekindergarten, formerly "More At Four," classrooms during the 2011-2012 fiscal year.

MENTAL HEALTH CHANGES

SECTION 10.8.(a) For the purpose of mitigating cash flow problems that many nonsingle-stream local management entities (LMEs) experience at the beginning of each fiscal year, the Department of Health and Human Services, Division of Mental Health,

Developmental Disabilities, and Substance Abuse Services, shall adjust the timing and method by which allocations of service dollars are distributed to each nonsingle-stream LME. To this end, the allocations shall be adjusted such that at the beginning of the fiscal year the Department shall distribute not less than one-twelfth of the LME's continuation allocation and subtract the amount of the adjusted distribution from the LME's total reimbursements for the fiscal year.

SECTION 10.8.(b) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of twenty-nine million one hundred twenty-one thousand six hundred forty-four dollars ($29,121,644) for the 2011-2012 fiscal year and the sum of twenty-nine million one hundred twenty-one thousand six hundred forty-four dollars ($29,121,644) for the 2012-2013 fiscal year shall be allocated for the purchase of local inpatient psychiatric beds or bed days. In addition, at the discretion of the Secretary of Health and Human Services, existing funds allocated to LMEs for community-based mental health, developmental disabilities, and substance abuse services may be used to purchase additional local inpatient psychiatric beds or bed days. These beds or bed days shall be distributed across the State in LME catchment areas and according to need as determined by the Department. The Department shall enter into contracts with the LMEs and community hospitals for the management of these beds or bed days. The Department shall work to ensure that these contracts are awarded equitably around all regions of the State. Local inpatient psychiatric beds or bed days shall be managed and controlled by the LME, including the determination of which local or State hospital the individual should be admitted to pursuant to an involuntary commitment order. Funds shall not be allocated to LMEs but shall be held in a statewide reserve at the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to pay for services authorized by the LMEs and billed by the hospitals through the LMEs. LMEs shall remit claims for payment to the Division within 15 working days of receipt of a clean claim from the hospital and shall pay the hospital within 30 working days of receipt of payment from the Division. If the Department determines (i) that an LME is not effectively managing the beds or bed days for which it has responsibility, as evidenced by beds or bed days in the local hospital not being utilized while demand for services at the State psychiatric hospitals has not reduced, or (ii) the LME has failed to comply with the prompt payment provisions of this subsection, the Department may contract with another LME to manage the beds or bed days, or, notwithstanding any other provision of law to the contrary, may pay the hospital directly. The Department shall develop reporting requirements for LMEs regarding the utilization of the beds or bed days. Funds appropriated in this section for the purchase of local inpatient psychiatric beds or bed days shall be used to purchase additional beds or bed days not currently funded by or through LMEs and shall not be used to supplant other funds available or otherwise appropriated for the purchase of psychiatric inpatient services under contract with community hospitals, including beds or bed days being purchased through Hospital Utilization Pilot funds appropriated in S.L. 2007-323. Not later than March 1, 2012, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on a uniform system for beds or bed days purchased (i) with local funds, (ii) from existing State appropriations, (iii) under the Hospital Utilization Pilot, and (iv) purchased using funds appropriated under this subsection.

SECTION 10.8.(c) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for mobile crisis teams, the sum of five million seven hundred thousand dollars ($5,700,000) shall be distributed to LMEs to support 30 mobile crisis teams. The new mobile crisis units shall be distributed over the State according to need as determined by the Department.

SECTION 10.8.(d) The Department of Health and Human Services may create a midyear process by which it can reallocate State service dollars away from LMEs that do not appear to be on track to spend the LMEs' full appropriation and toward LMEs that appear able to spend the additional funds.

MH/DD/SAS HEALTH CARE INFORMATION SYSTEM PROJECT

SECTION 10.9. Of the funds appropriated to the Department of Health and Human Services for the 2011-2013 fiscal biennium, the Department may use a portion of these funds to continue to develop and implement a health care information system for State institutions operated by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. G.S. 143C-6-5 does not apply to this section.

LME FUNDS FOR SUBSTANCE ABUSE SERVICES

SECTION 10.10.(a) Consistent with G.S. 122C-2, the General Assembly strongly encourages Local Management Entities (LMEs) to use a portion of the funds appropriated for substance abuse treatment services to support prevention and education activities.

SECTION 10.10.(b) An LME may use up to one percent (1%) of funds allocated to it for substance abuse treatment services to provide nominal incentives for consumers who achieve specified treatment benchmarks, in accordance with the federal substance abuse and mental health services administration best practice model entitled Contingency Management.

SECTION 10.10.(c) In providing treatment and services for adult offenders and increasing the number of Treatment Accountability for Safer Communities (TASC) case managers, local management entities shall consult with TASC to improve offender access to substance abuse treatment and match evidence-based interventions to individual needs at each stage of substance abuse treatment. Special emphasis should be placed on intermediate punishment offenders, community punishment offenders at risk for revocation, and Department of Correction releasees who have completed substance abuse treatment while in custody.

In addition to the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, to provide substance abuse services for adult offenders and to increase the number of TASC case managers, the Department shall allocate up to three hundred thousand dollars ($300,000) to TASC. These funds shall be allocated to TASC before funds are allocated to LMEs for mental health services, substance abuse services, and crisis services.

SECTION 10.10.(d) In providing drug treatment court services, LMEs shall consult with the local drug treatment court team and shall select a treatment provider that meets all provider qualification requirements and the drug treatment court's needs. A single treatment provider may be chosen for non-Medicaid-eligible participants only. A single provider may be chosen who can work with all of the non-Medicaid-eligible drug treatment court participants in a single group. During the 52-week drug treatment court program, participants shall receive an array of treatment and aftercare services that meets the participant's level of need, including step-down services that support continued recovery.

MH/DD/SAS COMMUNITY SERVICE FUNDS

SECTION 10.11.(a) The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (as used in this section "the Division") is directed to reduce the Community Service Fund by thirty million dollars ($30,000,000).

SECTION 10.11.(b) The Division is directed, through consultation with LME representatives and stakeholders, to develop a set of standardized covered benefits for recipients of LME Service Funds that shall become the only services paid for by community service funds through LMEs. These services shall be best practices for developmental disabilities, mental illness, and substance abuse.

SECTION 10.11.(c) Effective January 1, 2012, the Division shall implement a co-payment for all mental health, developmental disabilities, and substance abuse services based upon the Medicaid co-payment rates.

SECTION 10.11.(d) The Division is directed to reduce the Community Service Fund by twenty-five million dollars ($25,000,000) for the 2011-2012 fiscal year based on available fund balance reported by the LMEs' 2010 fiscal audit. The Division is directed to allocate the reduction among LMEs based on unreserved, undesignated fund balance totals, as of June 30, 2010. The LMEs are required to backfill the reduction in this subsection with fund balance availability and not further reduce services. LMEs are directed to spend their unreserved, undesignated fund balance on services, commensurate with the reduction directed by the Division pursuant to this subsection.

SECTION 10.11.(e) Quarterly reports shall be submitted to the Division by LMEs to ensure expenditures from fund balance occur at the level required by this law. Additionally, the Division shall review the designation of reserved or designated fund balance accounts to

determine whether accounts may be moved to unreserved, undesignated, in essence increasing the unreserved, undesignated fund balance available for purchase of services. If categories of funds are moved into the unreserved/undesignated categories, the affected LMEs are encouraged to spend these funds to minimize their share of the thirty million dollars ($30,000,000) in reductions to services as required in subsection (a) of this section.

SECTION 10.11.(f) The Department of Health and Human Services shall report to the House and Senate Appropriations Subcommittees by December 12, 2011, on the status of implementing this section.

CONSOLIDATION OF FORENSIC HEALTH CARE AT DOROTHEA DIX COMPLEX

SECTION 10.12. The Department of Health and Human Services, Division of State Operated Facilities, shall issue a Request for Proposal for the consolidation of forensic hospital care. The operation shall initially be located at the Dorothea Dix complex. The Secretary of Health and Human Services is authorized to proceed with contracting with a private entity if the Secretary can justify savings through the contract. The Secretary shall compare the Department's total cost to provide forensic care to proposals received and determine whether it is cost-effective to contract for this service. The Secretary may only proceed if the Secretary determines the Department will save money and ensure appropriate safety and quality of care for patients.

The Secretary shall report to the Joint Appropriations Subcommittee for Health and Human Services by October 30, 2011, with cost detail and savings identified from the proposals.

TRANSITION OF UTILIZATION MANAGEMENT OF COMMUNITY-BASED SERVICES TO LOCAL MANAGEMENT ENTITIES

SECTION 10.13. The Department of Health and Human Services shall collaborate with LMEs to enhance their administrative capabilities to assume utilization management responsibilities for the provision of community-based mental health, developmental disabilities, and substance abuse services. The Department may, with approval of the Office of State Budget and Management, use funds available to implement this section.

THIRD-PARTY BILLING FOR STATE FACILITIES

SECTION 10.14. G.S. 122C-55 reads as rewritten:

"**§ 122C-55. Exceptions; care and treatment.**

...

(g) Whenever there is reason to believe that the client is eligible for financial benefits through a governmental agency, a facility may disclose confidential information to State, local, or federal government agencies. Except as provided in ~~G.S. 122C-55(a3),~~ G.S. 122C-55(a3) and G.S. 122C-55(g1), disclosure is limited to that confidential information necessary to establish financial benefits for a client. ~~After~~ Except as provided in G.S. 122C-55(g1), after establishment of these benefits, the consent of the client or his legally responsible person is required for further release of confidential information under this subsection.

(g1) A facility may disclose confidential information for the purpose of collecting payment due the facility for the cost of care, treatment, or habilitation.

...."

COLLABORATION AMONG DEPARTMENTS OF ADMINISTRATION, HEALTH AND HUMAN SERVICES, JUVENILE JUSTICE AND DELINQUENCY PREVENTION, AND PUBLIC INSTRUCTION ON SCHOOL-BASED CHILD AND FAMILY TEAM INITIATIVE

SECTION 10.15.(a) School-Based Child and Family Team Initiative Established.

(1) Purpose and duties. – There is established the School-Based Child and Family Team Initiative. The purpose of the Initiative is to identify and coordinate appropriate community services and supports for children at risk of school failure or out-of-home placement in order to address the physical, social, legal, emotional, and developmental factors that affect academic performance. The Department of Health and Human Services, the Department of Public Instruction, the State Board of Education, the

Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and other State agencies that provide services for children shall share responsibility and accountability to improve outcomes for these children and their families. The Initiative shall be based on the following principles:

a. The development of a strong infrastructure of interagency collaboration.
b. One child, one team, one plan.
c. Individualized, strengths-based care.
d. Accountability.
e. Cultural competence.
f. Children at risk of school failure or out-of-home placement may enter the system through any participating agency.
g. Services shall be specified, delivered, and monitored through a unified Child and Family Plan that is outcome-oriented and evaluation-based.
h. Services shall be the most efficient in terms of cost and effectiveness and shall be delivered in the most natural settings possible.
i. Out-of-home placements for children shall be a last resort and shall include concrete plans to bring the children back to a stable permanent home, their schools, and their community.
j. Families and consumers shall be involved in decision making throughout service planning, delivery, and monitoring.

(2) Program goals and services. – In order to ensure that children receiving services are appropriately served, the affected State and local agencies shall do the following:

a. Increase capacity in the school setting to address the academic, health, mental health, social, and legal needs of children.
b. Ensure that children receiving services are screened initially to identify needs and assessed periodically to determine progress and sustained improvement in educational, health, safety, behavioral, and social outcomes.
c. Develop uniform screening mechanisms and a set of outcomes that are shared across affected agencies to measure children's progress in home, school, and community settings.
d. Promote practices that are known to be effective based upon research or national best practice standards.
e. Review services provided across affected State agencies to ensure that children's needs are met.
f. Eliminate cost-shifting and facilitate cost-sharing among governmental agencies with respect to service development, service delivery, and monitoring for participating children and their families.
g. Participate in a local memorandum of agreement signed annually by the participating superintendent of the local LEA, directors of the county departments of social services and health, director of the local management entity, the chief district court judge, and the chief district court counselor.

(3) Local level responsibilities. – In coordination with the North Carolina Child and Family Leadership Council (Council), established in subsection (b) of this section, the local board of education shall establish the School-Based Child and Family Team Initiative at designated schools and shall appoint the Child and Family Team Leaders, who shall be a school nurse and a school social worker. Each local management entity that has any selected schools in its catchment area shall appoint a Care Coordinator, and any department of social services that has a selected school in its catchment area shall appoint a Child and Family Teams Facilitator. The Care Coordinators and Child and Family Team Facilitators shall have as their sole responsibility working with the selected schools in their catchment areas and shall provide training to school-based personnel, as required. The Child and Family Team Leaders

shall identify and screen children who are potentially at risk of academic failure or out-of-home placement due to physical, social, legal, emotional, or developmental factors. Based on the screening results, responsibility for developing, convening, and implementing the Child and Family Team Initiative is as follows:

a. School personnel shall take the lead role for those children and their families whose primary unmet needs are related to academic achievement.

b. The local management entity shall take the lead role for those children and their families whose primary unmet needs are related to mental health, substance abuse, or developmental disabilities and who meet the criteria for the target population established by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

c. The local department of public health shall take the lead role for those children and their families whose primary unmet needs are health-related.

d. Local departments of social services shall take the lead for those children and their families whose primary unmet needs are related to child welfare, abuse, or neglect.

e. The chief district court counselor shall take the lead for those children and their families whose primary unmet needs are related to juvenile justice issues. A representative from each named or otherwise identified publicly supported children's agency shall participate as a member of the Team as needed. Team members shall coordinate, monitor, and assure the successful implementation of a unified Child and Family Plan.

(4) Reporting requirements. – School-Based Child and Family Team Leaders shall provide data to the Council for inclusion in their report to the North Carolina General Assembly. The report shall include the following:

a. The number of and other demographic information on children screened and assigned to a team and a description of the services needed by and provided to these children.

b. The number of and information about children assigned to a team who are placed in programs or facilities outside the child's home or outside the child's county and the average length of stay in residential treatment.

c. The amount and source of funds expended to implement the Initiative.

d. Information on how families and consumers are involved in decision making throughout service planning, delivery, and monitoring.

e. Other information as required by the Council to evaluate success in local programs and ensure appropriate outcomes.

f. Recommendations on needed improvements.

(5) Local advisory committee. – In each county with a participating school, the superintendent of the local LEA shall either identify an existing cross-agency collaborative or council or shall form a new group to serve as a local advisory committee to work with the Initiative. Newly formed committees shall be chaired by the superintendent and one other member of the committee to be elected by the committee. The local advisory committee shall include the directors of the county departments of social services and health; the directors of the local management entity; the chief district court judge; the chief district court counselor; the director of a school-based or school-linked health center, if a center is located within the catchment area of the School-Based Child and Family Team Initiative; and representatives of other agencies providing services to children, as designated by the Committee. The members of the Committee shall meet as needed to monitor and support the successful implementation of the School-Based Child and Family Team Initiative. The Local Child and Family Team Advisory

Committee may designate existing cross-agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

SECTION 10.15.(b) North Carolina Child and Family Leadership Council. –

(1) Leadership Council established; location. – There is established the North Carolina Child and Family Leadership Council (Council). The Council shall be located within the Department of Administration for organizational and budgetary purposes.

(2) Purpose. – The purpose of the Council is to review and advise the Governor in the development of the School-Based Child and Family Team Initiative and to ensure the active participation and collaboration in the Initiative by all State agencies and their local counterparts providing services to children in participating counties in order to increase the academic success of and reduce out-of-home and out-of-county placements of children at risk of academic failure.

(3) Membership. – The Superintendent of Public Instruction and the Secretary of Health and Human Services shall serve as cochairs of the Council. Council membership shall include the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chair of the State Board of Education, the Director of the Administrative Office of the Courts, and other members as appointed by the Governor.

(4) The Council shall do the following:

a. Sign an annual memorandum of agreement (MOA) among the named State agencies to define the purposes of the program and to ensure that program goals are accomplished.

b. Resolve State policy issues, as identified at the local level, which interfere with effective implementation of the School-Based Child and Family Team Initiative.

c. Direct the integration of resources, as needed, to meet goals and ensure that the Initiative promotes the most effective and efficient use of resources and eliminates duplication of effort.

d. Establish criteria for defining success in local programs and ensure appropriate outcomes.

e. Develop an evaluation process, based on expected outcomes, to ensure the goals and objectives of this Initiative are achieved.

f. Review progress made on integrating policies and resources across State agencies, reaching expected outcomes, and accomplishing other goals.

g. Report semiannually, on January 1 and July 1, on progress made and goals achieved to the Office of the Governor, the Joint Appropriations Committees and Subcommittees on Education, Justice and Public Safety, and Health and Human Services, and the Fiscal Research Division of the Legislative Services Office. The Council may designate existing cross-agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

SECTION 10.15.(c) Department of Health and Human Services. – The Secretary of the Department of Health and Human Services shall ensure that all agencies within the Department collaborate in the development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

SECTION 10.15.(d) Department of Juvenile Justice and Delinquency Prevention. – The Secretary of the Department of Juvenile Justice and Delinquency Prevention shall ensure that all agencies within the Department collaborate in the development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

SECTION 10.15.(e) Administrative Office of the Courts. – The Director of the Administrative Office of the Courts shall ensure that the Office collaborates in the development

and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful.

SECTION 10.15.(f) Department of Public Instruction. – The Superintendent of Public Instruction shall ensure that the Department collaborates in the development and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful.

DHHS POSITION ELIMINATIONS

SECTION 10.16. The Secretary of the Department of Health and Human Services is directed to eliminate 250 full-time equivalent positions that have been continuously vacant since July 1, 2010, in order to accomplish a total savings of seven million seven hundred seventy-one thousand nine hundred ninety-seven dollars ($7,771,997) in State funds. To the extent possible, the Secretary shall not eliminate positions assigned to the Division of State Operated Healthcare Facilities or the Division of Medical Assistance. In the event that eliminating 250 full-time equivalent positions that have been continuously vacant since July 1, 2010, does not achieve the savings specified in this section, the Secretary may eliminate other positions within the Department or achieve the designated savings through other administrative and operational reductions or efficiencies. By September 30, 2011, the Secretary shall submit a report to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the positions eliminated and any other reductions or efficiencies implemented in order to achieve the savings required by this section. The report shall include the total number of positions eliminated, savings generated by each eliminated position, the impact on any federal funds previously received for the eliminated positions, and any other reductions or efficiencies implemented to achieve the savings required by this section.

REDUCE FUNDING FOR NONPROFIT ORGANIZATIONS

SECTION 10.18. For fiscal years 2011-2012 and 2012-2013, the Department of Health and Human Services shall reduce the amount of funds allocated to nonprofit organizations by ten million dollars ($10,000,000) on a recurring basis. In achieving the reductions required by this section, the Department shall not reduce funds allocated to the North Carolina High School Athletic Association by more than ten percent (10%).

PROHIBIT USE OF ALL FUNDS FOR PLANNED PARENTHOOD ORGANIZATIONS

SECTION 10.19. For fiscal years 2011-2012 and 2012-2013, the Department of Health and Human Services may not provide State funds or other funds administered by the Department for contracts or grants to Planned Parenthood, Inc., and affiliated organizations.

LIABILITY INSURANCE

SECTION 10.20.(a) The Secretary of the Department of Health and Human Services, the Secretary of the Department of Environment and Natural Resources, and the Secretary of the Department of Correction may provide medical liability coverage not to exceed one million dollars ($1,000,000) per incident on behalf of employees of the Departments licensed to practice medicine or dentistry, on behalf of all licensed physicians who are faculty members of The University of North Carolina who work on contract for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for incidents that occur in Division programs, and on behalf of physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services. This coverage may include commercial insurance or self-insurance and shall cover these individuals for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment or training.

SECTION 10.20.(b) The coverage provided under this section shall not cover any individual for any act or omission that the individual knows or reasonably should know constitutes a violation of the applicable criminal laws of any state or the United States or that arises out of any sexual, fraudulent, criminal, or malicious act or out of any act amounting to willful or wanton negligence.

SECTION 10.20.(c) The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing contractual service to the Department of Health and Human Services, the Department of Environment and Natural Resources, or the Department of Correction, with the exception that coverage may include physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services and licensed physicians who are faculty members of The University of North Carolina who work for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

CHANGES TO COMMUNITY-FOCUSED ELIMINATING HEALTH DISPARITIES INITIATIVE

SECTION 10.21.(a) Funds appropriated in this act from the General Fund to the Department of Health and Human Services (Department) for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI) shall be used to provide a maximum of 12 grants-in-aid to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians as compared to the health status of white persons. These grants-in-aid shall focus on the use of measures to eliminate or reduce health disparities among minority populations in this State with respect to heart disease, stroke, diabetes, obesity, asthma, HIV/AIDS, and cancer. The Office of Minority Health shall coordinate and implement the grants-in-aid program authorized by this section.

SECTION 10.21.(b) In implementing the grants-in-aid program authorized by subsection (a) of this section, the Department shall ensure all of the following:

(1) The amount of any grant-in-aid is limited to three hundred thousand dollars ($300,000).

(2) Only community-based organizations, faith-based organizations, local health departments, hospitals, and CCNC networks located in urban and rural areas of the western, eastern, and Piedmont areas of this State are eligible to apply for these grants-in-aid. No more than four grants-in-aid shall be awarded to applicants located in any one of the three areas specified in this subdivision.

(3) Each eligible applicant shall be required to demonstrate substantial participation and involvement with all other categories of eligible applicants, in order to ensure an evidence-based medical home model that will affect change in health and geographic disparities.

(4) Eligible applicants shall select one or more of the following chronic illnesses or conditions specific to the applicant's geographic area as the basis for applying for a grant-in-aid under this section to affect change in the health status of African-Americans, Hispanics/Latinos, or American Indians:
   a. Heart Disease
   b. Stroke
   c. Diabetes
   d. Obesity
   e. Asthma
   f. HIV/AIDS
   g. Cancer

(5) The minimum duration of the grant period for any grant-in-aid is two years.

(6) The maximum duration of the grant period for any grant-in-aid is three years.

(7) If approved for a grant-in-aid, the grantee (i) shall not use more than eight percent (8%) of the grant funds for overhead costs and (ii) shall be required at the end of the grant period to demonstrate significant gains in addressing one or more of the health disparity focus areas identified in subsection (a) of this section.

(8) An independent panel with expertise in the delivery of services to minority populations, health disparities, chronic illnesses and conditions, and HIV/AIDS shall conduct the review of applications for grants-in-aid. The Department shall establish the independent panel required by this section.

SECTION 10.21.(c) The grants-in-aid awarded under this section shall be awarded in honor of the memory of the following recently deceased members of the General Assembly:

Bernard Allen, John Hall, Robert Holloman, Howard Hunter, Jeanne Lucas, Vernon Malone, William Martin, and Pete Cunningham. These funds shall be used for concerted efforts to address large gaps in health status among North Carolinians who are African-American, as well as disparities among other minority populations in North Carolina.

SECTION 10.21.(d) By October 1, 2012, and annually thereafter, the Department shall submit a report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on funds appropriated to the CFEHDI. The report shall include specific activities undertaken pursuant to subsection (a) of this section to address large gaps in health status among North Carolinians who are African-American and other minority populations in this State, and shall also address all of the following:

(1) Which community-based organizations, faith-based organizations, local health departments, hospitals, and CCNC networks received CFEHDI grants-in-aid.
(2) The amount of funding awarded to each grantee.
(3) Which of the minority populations were served by each grantee.
(4) Which community-based organizations, faith-based organizations, local health departments, hospitals, and CCNC networks were involved in fulfilling the goals and activities of each grant-in-aid awarded under this section and what activities were planned and implemented by the grantee to fulfill the community focus of the CFEHDI program.
(5) How the activities implemented by the grantee fulfilled the goal of reducing health disparities among minority populations, and the specific success in reducing particular incidences.

FUNDS FOR SCHOOL NURSES

SECTION 10.22.(a) All funds appropriated in this act for the School Nurse Funding Initiative shall be used to supplement and not supplant other State, local, or federal funds appropriated or allocated for this purpose. Communities shall maintain their current level of effort and funding for school nurses. These funds shall not be used to fund nurses for State agencies. These funds shall be distributed to local health departments according to a formula that includes all of the following:

(1) School nurse-to-student ratio.
(2) Percentage of students eligible for free or reduced meals.
(3) Percentage of children in poverty.
(4) Per capita income.
(5) Eligibility as a low-wealth county.
(6) Mortality rates for children between 1 and 19 years of age.
(7) Percentage of students with chronic illnesses.
(8) Percentage of county population consisting of minority persons.

SECTION 10.22.(b) The Division of Public Health shall ensure that school nurses funded with State funds (i) do not assist in any instructional or administrative duties associated with a school's curriculum and (ii) perform all of the following with respect to school health programs:

(1) Serve as the coordinator of the health services program and provide nursing care.
(2) Provide health education to students, staff, and parents.
(3) Identify health and safety concerns in the school environment and promote a nurturing school environment.
(4) Support healthy food services programs.
(5) Promote healthy physical education, sports policies, and practices.
(6) Provide health counseling, assess mental health needs, provide interventions, and refer students to appropriate school staff or community agencies.
(7) Promote community involvement in assuring a healthy school and serve as school liaison to a health advisory committee.
(8) Provide health education and counseling and promote healthy activities and a healthy environment for school staff.
(9) Be available to assist the county health department during a public health emergency.

REPLACEMENT OF RECEIPTS FOR CHILD DEVELOPMENT SERVICE AGENCIES

SECTION 10.23. Receipts earned by the Child Development Service Agencies (CDSAs) from any public or private third-party payer shall be budgeted on a recurring basis to replace reductions in State appropriations to CDSAs.

HEALTH INFORMATION TECHNOLOGY

SECTION 10.24.(a) The Department of Health and Human Services, in cooperation with the State Chief Information Officer, shall coordinate health information technology (HIT) policies and programs within the State of North Carolina. The Department's goal in coordinating State HIT policy and programs shall be to avoid duplication of efforts and to ensure that each State agency, public entity, and private entity that undertakes health information technology activities does so within the area of its greatest expertise and technical capability and in a manner that supports coordinated State and national goals, which shall include at least all of the following:

(1) Ensuring that patient health information is secure and protected, in accordance with applicable law.

(2) Improving health care quality, reducing medical errors, reducing health disparities, and advancing the delivery of patient-centered medical care.

(3) Providing appropriate information to guide medical decisions at the time and place of care.

(4) Ensuring meaningful public input into HIT infrastructure development.

(5) Improving the coordination of information among hospitals, laboratories, physicians' offices, and other entities through an effective infrastructure for the secure and authorized exchange of health care information.

(6) Improving public health services and facilitating early identification and rapid response to public health threats and emergencies, including bioterrorist events and infectious disease outbreaks.

(7) Facilitating health and clinical research.

(8) Promoting early detection, prevention, and management of chronic diseases.

SECTION 10.24.(b) The Department of Health and Human Services shall establish and direct a HIT management structure that is efficient and transparent and that is compatible with the Office of the National Health Coordinator for Information Technology (National Coordinator) governance mechanism. The HIT management structure shall be responsible for all of the following:

(1) Developing a State plan for implementing and ensuring compliance with national HIT standards and for the most efficient, effective, and widespread adoption of HIT.

(2) Ensuring that (i) specific populations are effectively integrated into the State plan, including aging populations, populations requiring mental health services, and populations utilizing the public health system; and (ii) unserved and underserved populations receive priority consideration for HIT support.

(3) Identifying all HIT stakeholders and soliciting feedback and participation from each stakeholder in the development of the State plan.

(4) Ensuring that existing HIT capabilities are considered and incorporated into the State plan.

(5) Identifying and eliminating conflicting HIT efforts where necessary.

(6) Identifying available resources for the implementation, operation, and maintenance of health information technology, including identifying resources and available opportunities for North Carolina institutions of higher education.

(7) Ensuring that potential State plan participants are aware of HIT policies and programs and the opportunity for improved health information technology.

(8) Monitoring HIT efforts and initiatives in other states and replicating successful efforts and initiatives in North Carolina.

(9) Monitoring the development of the National Coordinator's strategic plan and ensuring that all stakeholders are aware of and in compliance with its requirements.

(10) Monitoring the progress and recommendations of the HIT Policy and Standards Committee and ensuring that all stakeholders remain informed of the Committee's recommendations.

(11) Monitoring all studies and reports provided to the United States Congress and reporting to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on the impact of report recommendations on State efforts to implement coordinated HIT.

SECTION 10.24.(c) Beginning October 1, 2011, the Department of Health and Human Services shall provide quarterly written reports on the status of HIT efforts to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The reports due each January 1 and July 1 shall consist of updates to substantial initiatives or challenges that have occurred since the most recent comprehensive report. The reports due each October 1 and April 1 shall be comprehensive and shall include all of the following:

(1) Current status of federal HIT initiatives.

(2) Current status of State HIT efforts and initiatives among both public and private entities.

(3) A breakdown of current public and private funding sources and dollar amounts for State HIT initiatives.

(4) Department efforts to coordinate HIT initiatives within the State and any obstacles or impediments to coordination.

(5) HIT research efforts being conducted within the State and sources of funding for research efforts.

(6) Opportunities for stakeholders to participate in HIT funding and other efforts and initiatives during the next quarter.

(7) Issues associated with the implementation of HIT in North Carolina and recommended solutions to these issues.

FUNDS FOR STROKE PREVENTION

SECTION 10.25.(a) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Public Health, the sum of four hundred thousand dollars ($400,000) in nonrecurring funds for the 2011-2012 fiscal year and the sum of four hundred thousand dollars ($400,000) in nonrecurring funds for the 2012-2013 fiscal year is allocated to the Heart Disease and Stroke Prevention Branch for continuation of community education campaigns and communication strategies, in partnership with the American Heart Association/American Stroke Association, on stroke signs and symptoms and the importance of immediate response.

SECTION 10.25.(b) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Public Health, the sum of fifty thousand dollars ($50,000) in nonrecurring funds for the 2011-2012 fiscal year and the sum of fifty thousand dollars ($50,000) in nonrecurring funds for the 2012-2013 fiscal year is allocated for continued operations of the Stroke Advisory Council.

AIDS DRUG ASSISTANCE PROGRAM

SECTION 10.26. The Department of Health and Human Services (DHHS) shall work with the Department of Correction (DOC) to use DOC funds to purchase pharmaceuticals for the treatment of DOC inmates with HIV/AIDS in a manner that allows these funds to be accounted for as State matching funds in DHHS' drawdown of federal Ryan White funds.

MEN'S HEALTH

SECTION 10.26A. The Department of Health and Human Services, Division of Public Health, shall delegate to the Chronic Disease Prevention and Control Office the responsibility for ensuring attention to the prevention of disease and improvement in the quality of life for men over their entire lifespan. The Department shall develop strategies for achieving these goals, which shall include (i) developing a strategic plan to improve health care services,

(ii) building public health awareness, (iii) developing initiatives within existing programs, and (iv) pursuing federal and State funding for the screening, early detection, and treatment of prostate cancer and other diseases affecting men's health.

NC HEALTH CHOICE MEDICAL POLICY

SECTION 10.27. Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of NC Health Choice health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds one million dollars ($1,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed medical policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding one million dollars ($1,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. For medical policy changes exceeding one million dollars ($1,000,000) in total requirements for a given fiscal year that are required for compliance with federal law, the Department shall submit the proposed medical policy or policy interpretation change with a five-year fiscal analysis to the Office of State Budget and Management prior to implementing the change. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than one million dollars ($1,000,000).

COMMUNITY CARE OF NORTH CAROLINA

SECTION 10.28.(a) The Department of Health and Human Services (Department) shall submit a report annually from a qualified entity with proven experience in conducting actuarial and health care studies on the Medicaid cost-savings achieved by the CCNC networks, which shall include children, adults, and the aged, blind, and disabled, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.28.(b) The Department and the Division of Medical Assistance (DMA) shall enter into a three-party contract between North Carolina Community Care Networks, Inc., (NCCCN, Inc.) and each of the 14 participating local CCNC networks and shall require NCCCN, Inc., to provide standardized clinical and budgetary coordination, oversight, and reporting for a statewide Enhanced Primary Care Case Management System for Medicaid enrollees. The contracts shall require NCCCN, Inc., to build upon and expand the existing successful CCNC primary care case management model to include comprehensive statewide quantitative performance goals and deliverables which shall include all of the following areas: (i) service utilization management, (ii) budget analytics, (iii) budget forecasting methodologies, (iv) quality of care analytics, (v) participant access measures, and (vi) predictable cost containment methodologies.

SECTION 10.28.(c) NCCCN, Inc., shall report quarterly to the Department and to the Office of State Budget and Management (OSBM) on the development of the statewide Enhanced Primary Care Case Management System and its defined goals and deliverables as agreed upon in the contract. NCCCN, Inc., shall submit biannual reports to the Secretary of Health and Human Services, OSBM, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the progress and results of implementing the quantitative, analytical, utilization, quality, cost containment, and access goals and deliverables set out in the contract. NCCCN, Inc., shall conduct its own analysis of the CCNC system to identify any variations from the development plan for the Enhanced Primary Care Case Management System and its defined goals and deliverables set out in the contract between DMA and NCCCN, Inc. Upon identifying any variations, NCCCN, Inc., shall develop and implement a plan to address the variations. NCCCN, Inc., shall report the plan to DMA within 30 days after taking any action to implement the plan.

SECTION 10.28.(d) By January 1, 2012, the Department and OSBM shall assess the performance of NCCCN, Inc., and CCNC regarding the goals and deliverables established

in the contract. Based on this assessment, the Department and DMA shall expand, cancel, or alter the contract with NCCCN, Inc., and CCNC effective April 1, 2012. Expansion or alteration of the contract may reflect refinements based on clearly identified goals and deliverables in the areas of quality of care, participant access, cost containment, and service delivery.

SECTION 10.28.(e) By July 1, 2012, the Department, DMA, and NCCCN, Inc., shall finalize a comprehensive plan that establishes management methodologies which include all of the following: (i) quality of care measures, (ii) utilization measures, (iii) recipient access measures, (iv) performance incentive models in which past experience indicates a benefit from financial incentives, (v) accountable budget models, (vi) shared savings budget models, and (vii) budget forecasting analytics as agreed upon by the Department, DMA, and NCCCN, Inc. In the development of these methodologies, the Department, DMA, and NCCCN, Inc., shall consider options for shared risk. The Department and DMA shall provide assistance to NCCCN, Inc., in meeting the objectives of this section.

MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS) FUNDS/IMPLEMENTATION OF MMIS

SECTION 10.29.(a) By August 1, 2011, the Secretary of the Department of Health and Human Services shall provide detailed cost information on the replacement Medicaid Management Information System (MMIS) to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. This information shall include the following:

(1) The original total cost of MMIS, by year, to include five years of operations and maintenance.

(2) The current total cost of MMIS, to include five years of operations and maintenance.

(3) Detailed information on costs associated with each MMIS project, to include the original cost, the current cost, and the reasons for any changes.

(4) A list of change requests and amendments to the original contract, and the costs associated with each.

(5) Costs for continuing the legacy MMIS beyond the original completion date for the new MMIS, with detailed information on funding sources for those costs.

(6) Original costs for each vendor associated with the contract, the current costs for each, and the reasons for any increases in cost.

SECTION 10.29.(b) The Secretary may utilize prior year earned revenue received for the replacement MMIS in the amount of three million two hundred thirty-two thousand three hundred four dollars ($3,232,304) in fiscal year 2011-2012 and twelve million dollars ($12,000,000) in fiscal year 2012-2013. The Department shall utilize prior year earned revenues received for the procurement, design, development, and implementation of the replacement MMIS. In the event the Department does not receive prior year earned revenues in the amounts authorized by this section, or funds are insufficient to advance the project, the Department is authorized, with approval of the Office of State Budget and Management (OSBM), and after consulting with the Joint Legislative Commission on Governmental Operations, to utilize overrealized receipts and funds appropriated to the Department to achieve the level of funding specified in this section for the replacement MMIS. If the department requires funding beyond the prior year earned revenue specified in this section, the Department shall immediately report to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. The report shall include the following:

(1) The amount of the shortfall.

(2) The sources of funding the Department plans to use to make up for the shortfall.

(3) The impact on the programs or operations from which the funding is to be taken.

SECTION 10.29.(c) The Department shall make full development of the replacement MMIS a top priority. During the development and implementation of the replacement MMIS, the Department shall develop plans to ensure the timely and effective implementation of enhancements to the system to provide the following capabilities:

(1) Receiving and tracking premiums or other payments required by law.

(2) Compatibility with the Health Information System.

SECTION 10.29.(d) The Department shall make every effort to expedite the implementation of the enhancements. The contract between the Department and each contract vendor shall contain an explicit provision requiring the replacement MMIS to have the capability to fully implement the administration of NC Health Choice, NC Kids' Care, Ticket to Work, Families Pay Part of the Cost of Services under the CAP-MR/CC, CAP Children's Program, and all relevant Medicaid waivers and the Medicare 646 waiver as it applies to Medicaid eligibles. The Department must have detailed cost information for each requirement before signing the contract and must immediately provide that cost information to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. Any sole source contract must meet all State requirements and must have the written approval of the State CIO. Any decision to sole source any portion of the contract shall immediately be reported to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management.

SECTION 10.29.(e) The Office of the State Chief Information Officer (SCIO) and the Office of Information Technology Services (ITS) shall work in cooperation with the Department to ensure the timely and effective implementation of the replacement MMIS and enhancements. The SCIO shall ensure that the replacement MMIS meets all State requirements for project management and shall immediately report any failure to meet State project management requirements to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. The SCIO shall also immediately report if any replacement MMIS project, or portion of a project, is listed as red in the project portfolio management tool.

SECTION 10.29.(f) Notwithstanding G.S. 114-2.3, the Department shall engage the services of private counsel with pertinent information technology and computer law expertise to review requests for proposals and to negotiate and review contracts associated with the replacement MMIS. This shall include amendments exceeding ten million dollars ($10,000,000). The counsel engaged by the Department shall review the replacement MMIS contracts and amendments between the Department and the vendor to ensure that the requirements of subsection (d) of this section are met in their entirety, and that the terms of the contract are in the State's best interest.

SECTION 10.29.(g) By August 1, 2011, the Department shall develop a revised comprehensive schedule for the development and implementation of the replacement MMIS that fully incorporates federal and State project management and review standards. The Department shall ensure that the schedule is accurate. Any changes to the design, development, and implementation schedule shall be reported as part of the Department's monthly MMIS reporting requirements. The Department shall submit the schedule to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. This submission shall

include a detailed explanation of schedule changes that have occurred since the initiation of the project, and the cost associated with each change. Any changes to key milestones shall be immediately reported to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management, with a full explanation of the reason for the change and any associated costs.

SECTION 10.29.(h) Beginning July 1, 2011, the Department shall make quarterly reports on the progress of the development and implementation of the replacement MMIS. This report shall include any changes, or anticipated changes, in the scope, functionality, or projected costs. This report shall include any changes to any replacement MMIS vendor contracts and shall provide a detailed explanation of those changes and the associated cost increases. Each report shall be made to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. A copy of the final report on each contract or amendment award shall also be submitted to the Joint Legislative Oversight Commission on Governmental Operations.

SECTION 10.29.(i) Upon initiation of the NC MMIS Program Reporting and Analytics Project, and the Division of Health Services Regulation Project, the Department shall submit all reports regarding functionality, schedule, and cost in the next regular cycle of reports identified in this section. The Department shall ensure that the solution developed in the Reporting and Analytics Project supports the capability, in its initial implementation, to interface with the State Health Plan for Teachers and State Employees. The costs for this capability shall be negotiated prior to the award of the Reporting and Analytics Project contract. The Reporting and Analytics Project solution must be completed simultaneously with the replacement MMIS.

NORTH CAROLINA FAMILIES ACCESSING SERVICES THROUGH TECHNOLOGY (NC FAST) FUNDS

SECTION 10.30. Of the funds appropriated in this act to the Department of Health and Human Services (Department), the nonrecurring sum of nine million five hundred ninety-two thousand three hundred thirty-two dollars ($9,592,332) for fiscal year 2011-2012 and the nonrecurring sum of nine million five hundred ninety-two thousand three hundred thirty-two dollars ($9,592,332) for fiscal year 2012-2013 shall be used to support the NC FAST project. These funds shall be (i) deposited to the Department's information technology budget code and (ii) used to match federal funds for the project. In addition, the Department shall utilize prior year earned revenues received in the amount of eight million seven hundred sixty-seven thousand six hundred ninety-six dollars ($8,767,696) in fiscal year 2011-2012 for the NC FAST project. Funds appropriated to the Department by this act shall be used to expedite the development and implementation of the Global Case Management and Food and Nutrition Services and the Eligibility Information System (EIS) components of the North Carolina Families Accessing Services through Technology (NC FAST) project. In the event that the Department does not receive prior year earned revenues in the amount authorized by this section, the Department is authorized, with approval of the Office of State Budget and Management, to utilize other overrealized receipts and funds appropriated to the Department to achieve the level of funding specified in this section for the NC FAST project. The Department shall not obligate any of its overrealized receipts or funds for this purpose without (i) prior written approval from the United States Department of Agriculture Food and Nutrition Service, the United States Department of Health and Human Services Administration for Children and Families, the Centers for Medicare and Medicaid Services, and any other federal partner responsible for approving changes to the annual Advance Planning Document update (APDu) for the NC FAST Program and (ii) prior review and approval from the Office of Information Technology Services (ITS) and the Office of State Budget and Management (OSBM). The Department shall report any changes to the NC FAST Program to the Joint Legislative Oversight Committee on Information Technology, the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human

Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than 30 days after receiving all the approvals required by this section.

MEDICAID

SECTION 10.31.(a) Use of Funds, Allocation of Costs, Other Authorizations. –

(1) Use of funds. – Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy.

(2) Allocation of nonfederal cost of Medicaid. – The State shall pay one hundred percent (100%) of the nonfederal costs of all applicable services listed in this section. In addition, the State shall pay one hundred percent (100%) of the federal Medicare Part D clawback payments under the Medicare Modernization Act of 2004.

(3) Use of funds for development and acquisition of equipment and software. – If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Health and Human Services, may use funds that are identified to support the cost of development and acquisition of equipment and software and related operational costs through contractual means to improve and enhance information systems that provide management information and claims processing. The Department of Health and Human Services shall identify adequate funds to support the implementation and first year's operational costs that exceed funds allocated for the new contract for the fiscal agent for the Medicaid Management Information System.

(4) Reports. – Unless otherwise provided, whenever the Department of Health and Human Services is required by this section to report to the General Assembly, the report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division of the Legislative Services Office. Reports shall be submitted on the date provided in the reporting requirement.

(5) Medicaid as secondary payor claims. – The Department shall apply Medicaid medical policy to recipients who have primary insurance other than Medicare, Medicare Advantage, and Medicaid. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services. The Department may disregard application of this policy in cases where application of the policy would adversely affect patient care.

SECTION 10.31.(b) Policy. –

(1) Volume purchase plans and single source procurement. – The Department of Health and Human Services, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other contracting processes in order to improve cost containment.

(2) Cost-containment programs. – The Department of Health and Human Services, Division of Medical Assistance, may undertake cost-containment programs, including contracting for services, preadmissions to hospitals, and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

(3) Fraud and abuse. – The Division of Medical Assistance, Department of Health and Human Services, shall provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.

(4) Medical policy. – Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount,

sufficiency, duration, and scope of health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds three million dollars ($3,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed medical policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding three million dollars ($3,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. For medical policy changes exceeding three million dollars ($3,000,000) in total requirements for a given fiscal year that are required for compliance with federal law, the Department shall submit the proposed medical policy or policy interpretation change with the five-year fiscal analysis to the Office of State Budget and Management prior to implementing the change. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than three million dollars ($3,000,000).

(5) Posting of notices of changes on Department Web site. – For any public notice of change required pursuant to the provisions of 42 C.F.R. § 447.205, the Department shall, no later than seven business days after the date of publication, publish the same notice on its Web site on the same Web page as it publishes State Plan amendments, and the notice shall remain on the Web site continuously for 90 days.

(6) Electronic transactions. – Medicaid providers shall follow the Department's established procedures for securing electronic payments and the Department shall not provide routine provider payments by check. Medicaid providers shall file claims electronically, except that nonelectronic claims submission may be required when it is in the best interest of the Department. Medicaid providers shall submit Preadmission Screening and Annual Resident Reviews (PASARR) through the Department's Web-based tool or through a vendor with interface capability to submit data into the Web-based PASARR.

Providers shall submit requests for prior authorizations electronically via the vendor's Web site. Providers shall access their authorizations via online portals rather than receiving hard copies by mail. Recipients shall continue to receive adverse decisions via certified mail. Providers shall receive copies electronically. Once Web portal is live for provider enrollment, providers shall submit their provider enrollment applications online. Thereafter, the Department shall accept electronic signatures, rather than require receipt of signed hard copies.

SECTION 10.31.(c) Eligibility. – Eligibility for Medicaid shall be determined in accordance with the following:

(1) Medicaid and Work First Family Assistance. –

a. Income eligibility standards. – The maximum net family annual income eligibility standards for Medicaid and Work First Family Assistance and the Standard of Need for Work First Family Assistance shall be as follows:

CATEGORICALLY NEEDY – WFFA*		MEDICALLY NEEDY
Standard of Need & Families and Families and	WFFA*	Children &

Family Size	Children Income Level	Payment Level	AA, AB, AD* Income Level
1	$4,344	$2,172	$2,900
2	5,664	2,832	3,800
3	6,528	3,264	4,400
4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

*Work First Family Assistance (WFFA); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

b. The payment level for Work First Family Assistance shall be fifty percent (50%) of the standard of need. These standards may be changed with the approval of the Director of the Budget.

c. The Department of Health and Human Services shall provide Medicaid coverage to 19- and 20-year-olds in accordance with federal rules and regulations.

d. Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets.

(2) For the following Medicaid eligibility classifications for which the federal poverty guidelines are used as income limits for eligibility determinations, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines. The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to the following:

a. All elderly, blind, and disabled people who have incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines.

b. Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines and without regard to resources. Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy.

c. Infants under the age of one with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines and without regard to resources.

d. Children aged one through five with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines and without regard to resources.

e. Children aged six through 18 with family incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines and without regard to resources.

f. Family planning services to men and women of childbearing age with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines and without regard to resources.

g. Workers with disabilities described in G.S. 108A-54.1 with unearned income equal to or less than one hundred fifty percent (150%) of the federal poverty guidelines.

(3) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to adoptive children with special or rehabilitative needs regardless of the adoptive family's income.

(4) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to "independent foster care

adolescents," ages 18, 19, and 20, as defined in section 1905(w)(1) of the Social Security Act (42 U.S.C. § 1396d(w)(1)), without regard to the adolescent's assets, resources, or income levels.

(5) ICF and ICF/MR work incentive allowances. – The Department of Health and Human Services may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR services, who are regularly engaged in work activities as part of their developmental plan, and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

Monthly Net Wages	**Monthly Incentive Allowance**
$1.00 to $100.99	Up to $50.00
$101.00 to $200.99	$80.00
$201.00 to $300.99	$130.00
$301.00 and greater	$212.00

(6) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to women who need treatment for breast or cervical cancer and who are defined in 42 U.S.C. § 1396a.(a)(10)(A)(ii)(XVIII).

SECTION 10.31.(d) Services and Payment Bases. – The Department shall spend funds appropriated for Medicaid services in accordance with the following schedule of services and payment bases. Unless otherwise provided, services and payment bases will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

The Department of Health and Human Services (DHHS) shall operate and manage the Medicaid program within the annual State appropriation. DHHS shall establish policies, practices, rates, and expenditure procedures that are in compliance with CMS regulations and approved State Plans, State laws, and regulations.

Additionally, the Department shall be required to use the Physician's Advisory Group for review and will collaborate with other stakeholder groups in the adoption and implementation of all clinical and payment policies, including all public notice and posting provisions in use as of the effective date of this provision.

(1) **Mandatory Services.** – In order to manage the Medicaid program within the annual State appropriation, the Secretary shall have the authority to submit State Plan amendments and establish temporary rules affecting the amount of service and payment rate for the following mandatory services:

a. Hospital inpatient. – Payment for hospital inpatient services will be prescribed by the State Plan as established by the Department of Health and Human Services.

b. Hospital outpatient. – Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.

c. Nursing facilities. – Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare.

d. Physicians, certified nurse midwife services, nurse practitioners, physician assistants. – Fee schedules as developed by the Department of Health and Human Services.

e. EPSDT screens. – Payments in accordance with rate schedule developed by the Department of Health and Human Services.

f. Home health and related services, durable medical equipment. – Payments according to reimbursement plans developed by the Department of Health and Human Services.

g. Rural health clinical services. – Provider-based, reasonable cost, nonprovider-based, single-cost reimbursement rate per clinic visit.

h. Family planning. – Negotiated rate for local health departments. For other providers see specific services, e.g., hospitals, physicians.

i. Independent laboratory and X-ray services. – Uniform fee schedules as developed by the Department of Health and Human Services.

j. Medicare Buy-In. – Social Security Administration premium.

k. Ambulance services. – Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.

l. Medicare crossover claims. – The Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services. The Department may disregard application of this policy in cases where application of the policy would adversely affect patient care.

m. Pregnancy-related services. – Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits as described in clinical policy.

n. Mental health services. – Coverage is limited to children eligible for EPSDT services provided by:

1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and

2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.

(2) **Optional Services.** – In order to manage the Medicaid program within the annual State appropriation, the Secretary shall have the authority to submit State Plan amendments and establish temporary rules affecting the amount of service, payment rate, or elimination of the following optional services:

a. Certified registered nurse anesthetists.

b. Community Alternative Programs.

c. Hearing aids. – Wholesale cost plus dispensing fee to provider.

d. Ambulatory surgical centers.

e. Private duty nursing, clinic services, prepaid health plans.

f. Intermediate care facilities for the mentally retarded.

g. Chiropractors, podiatrists, optometrists, dentists.

h. Dental coverage. – Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.

i. Optical supplies. – Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.

j. Physical therapy, occupational therapy, and speech therapy. – Services for adults. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services.

k. Personal care services. – Payment in accordance with the State Plan developed by the Department of Health and Human Services.

l. Case management services. – Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.

m. Hospice and palliative care.

n. Medically necessary prosthetics or orthotics. – In order to be eligible for reimbursement, providers must be licensed or certified by the occupational licensing board or the certification authority having authority over the provider's license or certification. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.

o. Health insurance premiums.

p. Medical care/other remedial care. – Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals.

q. Bariatric surgeries. – Covered as described in clinical policy 1A-15, Surgery for Clinically Severe Obesity. In order to raise the standard of bariatric care in North Carolina, approval for these procedures shall only be granted to those providers (facilities and surgeons) who are designated as a Bariatric Surgery Center of Excellence (BSCOE) by the American Society for Metabolic and Bariatric Surgery (ASMBS). Providers must then submit to NC Medicaid documentation of their designation as a BSCOE as well as verify their continued annual participation.

r. Drugs. –

1. Reimbursements. – Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be established by the Department. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

2. Limitations on quantity. – The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid program. The Department may impose prior authorization requirements on brand-name drugs for which the phrase "medically necessary" is written on the prescription.

3. Dispensing of generic drugs. – Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX

of the Social Security Act), and except as otherwise provided in this subsection for drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary." An initial prescription order for a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. Notwithstanding this subdivision to the contrary, the Secretary of Health and Human Services may prevent substitution of a generic equivalent drug, including a generic equivalent that is on the State maximum allowable cost list, when the net cost to the State of the brand-name drug, after consideration of all rebates, is less than the cost of the generic equivalent. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. § 352(e)(3).

4. Specialty drug provider network. – The Department of Health and Human Services shall work with specialty drug providers, manufacturers of specialty drugs, Medicaid recipients who are prescribed specialty drugs, and the medical professionals that treat Medicaid recipients who are prescribed specialty drugs to develop ways to ensure that best practices and the prevention of overutilization are maintained in the delivery and utilization of specialty drugs.

5. Lock controlled substances prescriptions into single pharmacy/provider. – The Department of Health and Human Services, Division of Medical Assistance, shall lock Medicaid enrollees into a single pharmacy and provider when the Medicaid enrollee's utilization of selected controlled substance medications meets the lock-in criteria approved by the NC Physicians Advisory Group, as follows:

I. Enrollees may be prescribed selected controlled substance medications by only one prescribing physician and may not change the prescribing physician at any time without prior approval or authorization by the Division.

II. Enrollees may have prescriptions for selected controlled substance medications filled at only one pharmacy and may not change to another pharmacy at any time without prior approval or authorization by the Division.

5A. Prior authorization. – The Department of Health and Human Services, Division of Medical Assistance, may initiate prior authorization for the prescribing of drugs specified for the

treatment of mental illness by providers who fail to prescribe those drugs in accordance with indications and dosage levels approved by the federal Food and Drug Administration. The Department may require retrospective clinical justification for the use of multiple psychotropic drugs for a Medicaid patient. For individuals 18 years of age and under who are prescribed three or more psychotropic medications, the Department shall implement clinical edits that target inefficient, ineffective, or potentially harmful prescribing patterns. When such patterns are identified, the Medical Director for the Division of Medical Assistance and the Chief of Clinical Policy for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall require a peer-to-peer consultation with the target prescribers. Alternatives discussed during the peer-to-peer consultations shall be based upon:

I. Evidence-based criteria available regarding efficacy or safety of the covered treatments; and

II. Policy approval by a majority vote of the North Carolina Physicians Advisory Group (NCPAG).

The target prescriber has final decision-making authority to determine which prescription drug to prescribe or refill.

6. Preferred Drug List. – The Department of Health and Human Services shall establish and implement a preferred drug list program under the Division of Medical Assistance. Medications prescribed for the treatment of mental illness shall be included on the Preferred Drug List (PDL).

The pharmaceutical and therapeutics committee of the Physician's Advisory Group (PAG) shall provide ongoing review of the preferred drug list, including the implementation of prior authorization on identified drugs. Members of the committee shall submit conflict of interest disclosure statements to the Department and shall have an ongoing duty to disclose conflicts of interest not included in the original disclosure.

The Department, in consultation with the PAG, shall adopt and publish policies and procedures relating to the preferred drug list, including the following:

I. Guidelines for the presentation and review of drugs for inclusion on the preferred drug list.

II. The manner and frequency of audits of the preferred drug list for appropriateness of patient care and cost-effectiveness.

III. An appeals process for the resolution of disputes.

IV. Such other policies and procedures as the Department deems necessary and appropriate.

The Department and the pharmaceutical and therapeutics committee shall consider all therapeutic classes of prescription drugs for inclusion on the preferred drug list, except medications for treatment of human immunodeficiency virus or acquired immune deficiency syndrome shall not be subject to consideration for inclusion on the preferred drug list.

The Department shall maintain an updated preferred drug list in electronic format and shall make the list available to the public on the Department's Internet Web site.

The Department shall (i) enter into a multistate purchasing pool; (ii) negotiate directly with manufacturers or labelers; (iii) contract with a pharmacy benefit manager for

negotiated discounts or rebates for all prescription drugs under the medical assistance program; or (iv) effectuate any combination of these options in order to achieve the lowest available price for such drugs under such program.

The Department may negotiate supplemental rebates from manufacturers that are in addition to those required by Title XIX of the Social Security Act. The committee shall consider a product for inclusion on the preferred drug list if the manufacturer provides a supplemental rebate. The Department may procure a sole source contract with an outside entity or contractor to conduct negotiations for supplemental rebates.

The Secretary of the Department of Health and Human Services shall establish a Preferred Drug List (PDL) Policy Review Panel within 60 days after the effective date of this section. The purpose of the PDL Policy Review Panel is to review the Medicaid PDL recommendations from the Department of Health and Human Services, Division of Medical Assistance, and the Physician Advisory Group Pharmacy and Therapeutics (PAG P&T) Committee.

The Secretary shall appoint the following individuals to the review panel: (i) the Director of Pharmacy for the Division of Medical Assistance, (ii) a representative from the PAG P&T Committee, (iii) a representative from the Old North State Medical Society, (iv) a representative from the North Carolina Association of Pharmacists, (v) a representative from Community Care of North Carolina, (vi) A representative from the North Carolina Psychiatric Association, (vii) A representative from the North Carolina Pediatric Society, (viii) A representative from the North Carolina Academy of Family Physicians, (ix) a representative from the North Carolina Chapter of the American College of Physicians, (x) a representative from a research-based pharmaceutical company, (xi) a representative from a hospital-based pharmacy.

Individuals appointed to the Review Panel, except for the Division's Director of Pharmacy, shall only serve a two-year term.

After the Department, in consultation with the PAG P&T Committee, publishes a proposed policy or procedure related to the Medicaid PDL, the Review Panel shall hold an open meeting to review the recommended policy or procedure along with any written public comments received as a result of the posting. The Review Panel shall provide an opportunity for public comment at the meeting. After the conclusion of the meeting, the Review Panel shall submit policy recommendations about the proposed Medicaid PDL policy or procedure to the Secretary.

The Department may establish a Preferred Drug List for the North Carolina Health Choice for Children program and pursue negotiated discounts or rebates for all prescription drugs under the program in order to achieve the lowest available price for such drugs under such program. The Department may procure a sole source contract with an outside entity or contractor to conduct negotiations for these discounts or rebates. The PAG P&T Committee and Preferred Drug List Policy Review Panel will provide recommendations on policies and procedures for the NC Health Choice Preferred Drug List.

s. Incentive Payments as outlined in the State Medicaid Health Information Plan for Electronic Health Records.

t. Other mental health services. – Unless otherwise covered by this section, coverage is limited to the following:

1. Services as established by the Division of Medical Assistance in consultation with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services not to exceed the upper limits established in federal regulations.

2. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and licensed clinical supervisors, Medicaid-eligible adults may be self-referred.

3. Payments made for services rendered in accordance with this subdivision shall be qualified providers in accordance with approved policies and the State Plan. Nothing in sub-sub-subdivisions 1. or 2. of this sub-subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-sub-subdivisions 1. or 2. of this sub-subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services established by the Division of Medical Assistance in consultation with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2. of this subdivision shall be established by the Division of Medical Assistance.

u. Experimental/investigational medical procedures. – Coverage is limited to services, supplies, drugs, or devices recognized as standard medical care for the condition, disease, illness, or injury being treated as determined by nationally recognized scientific professional organizations or scientifically based federal organizations such as the Food and Drug Administration, the National Institutes of Health, the Centers for Disease Control, or the Agency for Health Care Research and Quality.

v. Clinical trials. – The Division of Medical Assistance shall develop clinical policy for the coverage of routine costs in clinical trial services for life-threatening conditions using resources such as coverage criteria from Medicare, NC State Health Plan, and the input of the Physician Advisory Group.

w. Organ transplants.

(3) Never Events and Hospital Acquired Conditions (HACs) shall not be reimbursed. Medicaid will adhere to Medicare requirements for definition of events and conditions.

SECTION 10.31.(e) Provider Performance Bonds and Visits. –

(1) Subject to the provisions of this subdivision, the Department may require Medicaid-enrolled providers to purchase a performance bond in an amount not to exceed one hundred thousand dollars ($100,000) naming as beneficiary the Department of Health and Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may require the purchase of a performance bond or the submission of an executed letter of credit or financial instrument as a condition of initial enrollment, reenrollment, or reinstatement if:

a. The provider fails to demonstrate financial viability.

b. The Department determines there is significant potential for fraud and abuse.

c. The Department otherwise finds it is in the best interest of the Medicaid program to do so.

The Department shall specify the circumstances under which a performance bond or executed letter of credit will be required.

(1a) The Department may waive or limit the requirements of this subsection for individual Medicaid-enrolled providers or for one or more classes of Medicaid-enrolled providers based on the following:

a. The provider's or provider class's dollar amount of monthly billings to Medicaid.

b. The length of time an individual provider has been licensed, endorsed, certified, or accredited in this State to provide services.

c. The length of time an individual provider has been enrolled to provide Medicaid services in this State.

d. The provider's demonstrated ability to ensure adequate record keeping, staffing, and services.

e. The need to ensure adequate access to care.

In waiving or limiting requirements of this subsection, the Department shall take into consideration the potential fiscal impact of the waiver or limitation on the State Medicaid Program. The Department shall provide to the affected provider written notice of the findings upon which its action is based and shall include the performance bond requirements and the conditions under which a waiver or limitation apply. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.

(2) Reimbursement is available for up to 30 visits per recipient per fiscal year for the following professional services: physicians, nurse practitioners, nurse midwives, physician assistants, clinics, health departments, optometrists, chiropractors, and podiatrists. The Department of Health and Human Services shall adopt medical policies in accordance with G.S. 108A-54.2 to distribute the allowable number of visits for each service or each group of services consistent with federal law. In addition, the Department shall establish a threshold of some number of visits for these services. The Department shall ensure that primary care providers or the appropriate CCNC network are notified when a patient is nearing the established threshold to facilitate care coordination and intervention as needed.

Prenatal services, all EPSDT children, emergency room visits, and mental health visits subject to independent utilization review are exempt from the visit limitations contained in this subdivision. Subject to appropriate medical review, the Department may authorize exceptions when additional care is medically necessary. Routine or maintenance visits above the established visit limit will not be covered unless necessary to actively

manage a life threatening disorder or as an alternative to more costly care options.

SECTION 10.31.(f) Exceptions and Limitations on Services; Authorization of Co-Payments and Other Services. –

(1) Exceptions to service limitations, eligibility requirements, and payments. – Service limitations, eligibility requirements, and payment bases in this section may be waived by the Department of Health and Human Services, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, contracting for services, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services or when the Department determines that such a waiver or innovation projects will result in a reduction in the total Medicaid costs.

(2) Co-payment for Medicaid services. – The Department of Health and Human Services may establish co-payments up to the maximum permitted by federal law and regulation.

(3) Provider enrollment fee. – Effective September 1, 2009, the Department of Health and Human Services, Division of Medical Assistance, shall charge an enrollment fee of one hundred dollars ($100.00), or the amount federally required, to each provider enrolling in the Medicaid program for the first time. The fee shall be charged to all providers at recredentialing every three years.

SECTION 10.31.(g) Rules, Reports, and Other Matters. –

Rules. – The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. The Department of Health and Human Services shall adopt rules requiring providers to attend training as a condition of enrollment and may adopt temporary or emergency rules to implement the training requirement.

Prior to the filing of the temporary or emergency rules authorized under this subsection with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

MEDICAID PROVIDER ASSESSMENTS

SECTION 10.31A. The Secretary of Health and Human Services may implement a Medicaid assessment program for any willing provider category allowed under federal regulations up to the maximum percentage allowed by federal regulation. The Department may retain up to sixty-five percent (65%) of the amount from an assessment program implemented after December 31, 2010, that can be used by the Department to support Medicaid expenditures. Any assessment funds not retained by the Department shall be used to draw federal Medicaid matching funds for implementing increased rates or new reimbursement plans for each provider category being assessed.

Receipts from the assessment program are hereby appropriated for the 2011-2012 fiscal year and the 2012-2013 fiscal year for the purposes set out in this section.

DMA CONTRACT SHORTFALL

SECTION 10.32.(a) Budget approval is required by the Office of State Budget and Management prior to the Department of Health and Human Services, Division of Medical Assistance, entering into any new contract or the renewal or amendment of existing contracts that exceed the current contract amounts.

SECTION 10.32.(b) The Division of Medical Assistance shall make every effort to effect savings within its operational budget and use those savings to offset its contract shortfall. Notwithstanding G.S. 143C-6-4(b)(3), the Department may use funds appropriated in this act to cover the contract shortfall in the Division of Medical Assistance if insufficient funds exist within the Division.

MEDICAID COST CONTAINMENT ACTIVITIES

SECTION 10.33.(a) The Department of Health and Human Services may use up to five million dollars ($5,000,000) in the 2011-2012 fiscal year and up to five million dollars ($5,000,000) in the 2012-2013 fiscal year in Medicaid funds budgeted for program services to support the cost of administrative activities when cost-effectiveness and savings are demonstrated. The funds shall be used to support activities that will contain the cost of the Medicaid Program, including contracting for services, hiring additional staff, funding pilot programs, Health Information Exchange and Health Information Technology (HIE/HIT) administrative activities, or providing grants through the Office of Rural Health and Community Care to plan, develop, and implement cost containment programs.

Medicaid cost containment activities may include prospective reimbursement methods, incentive-based reimbursement methods, service limits, prior authorization of services, periodic medical necessity reviews, revised medical necessity criteria, service provision in the least costly settings, plastic magnetic-stripped Medicaid identification cards for issuance to Medicaid enrollees, fraud detection software or other fraud detection activities, technology that improves clinical decision making, credit balance recovery and data mining services, and other cost containment activities. Funds may be expended under this section only after the Office of State Budget and Management has approved a proposal for the expenditure submitted by the Department. Proposals for expenditure of funds under this section shall include the cost of implementing the cost containment activity and documentation of the amount of savings expected to be realized from the cost containment activity.

SECTION 10.33.(b) The Department shall report annually on the expenditures under this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The report shall include the methods used to achieve savings and the amount saved by these methods. The report is due to the House and Senate Appropriations Subcommittees on Health and Human Services and the Fiscal Research Division not later than December 1 of each year for the activities of the previous State fiscal year.

MEDICAID SPECIAL FUND TRANSFER

SECTION 10.34. Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143C-9-1, there is appropriated from the Medicaid Special Fund to the Department of Health and Human Services the sum of forty-three million dollars ($43,000,000) for the 2011-2012 fiscal year and the sum of forty-three million dollars ($43,000,000) for the 2012-2013 fiscal year. These funds shall be allocated as prescribed by G.S. 143C-9-1(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143C-9-1(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act. The Department may also use funds in the Medicaid Special Fund to fund the settlement of the Disproportionate Share Hospital payment audit issues between the Department of Health and Human Services and the federal government related to fiscal years 1997-2002, and funds are appropriated from the Fund for the 2011-2012 fiscal year for this purpose.

ACCOUNTING FOR MEDICAID RECEIVABLES AS NONTAX REVENUE

SECTION 10.35.(a) Receivables reserved at the end of the 2011-2012 and 2012-2013 fiscal years shall, when received, be accounted for as nontax revenue for each of those fiscal years.

SECTION 10.35.(b) For the 2011-2012 fiscal year, the Department of Health and Human Services shall deposit from its revenues one hundred fifteen million dollars ($115,000,000) with the Department of State Treasurer to be accounted for as nontax revenue. For the 2012-2013 fiscal year, the Department of Health and Human Services shall deposit from its revenues one hundred fifteen million dollars ($115,000,000) with the Department of State Treasurer to be accounted for as nontax revenue. These deposits shall represent the return of General Fund appropriations, nonfederal revenue, fund balances or other resources from State owned and operated hospitals which are used to provide indigent and non-indigent care services. The return from State owned and operated hospitals to DHHS will be made from nonfederal resources in an amount equal to the amount of the payments from the Division of Medical Assistance for uncompensated care. The treatment of any revenue derived from federal

programs shall be in accordance with the requirements specified in the Code of Federal Regulations, Title 2, Part 225.

FAMILIES PAY PART OF THE COST OF SERVICES UNDER THE CAP-MR/DD PROGRAM AND THE CAP-CHILDREN'S PROGRAM BASED ON FAMILY INCOME

SECTION 10.36.(a) Subject to approval from the Centers for Medicare and Medicaid Services (CMS), the Department of Health and Human Services, Division of Medical Assistance, shall, in consultation with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and Community Alternatives Program (CAP) stakeholders, develop a schedule of cost-sharing requirements for families of children with incomes above the Medicaid allowable limit to share in the costs of their child's Medicaid expenses under the CAP-MR/DD (Community Alternatives Program for Mental Retardation and Developmentally Disabled) and the CAP-C (Community Alternatives Program for Children). The cost-sharing amounts shall be based on a sliding scale of family income and shall take into account the impact on families with more than one child in the CAP programs. In developing the schedule, the Department shall also take into consideration how other states have implemented cost-sharing in their CAP programs. The Division of Medical Assistance may establish monthly deductibles as a means of implementing this cost-sharing. The Department shall provide for at least one public hearing and other opportunities for individuals to comment on the imposition of cost-sharing under the CAP program schedule.

SECTION 10.36.(b) The Division of Medical Assistance shall also, in collaboration with the Controller's Office of the Department of Health and Human Services, the Division of Information Resource Management (DIRM), and the new vendor of the replacement Medicaid Management Information System, develop business rules, program policies, and procedures and define relevant technical requirements.

SECTION 10.36.(c) Implementation of this provision shall be delayed until the implementation of the new Medicaid Management Information System.

AUTHORIZE THE DIVISION OF MEDICAL ASSISTANCE TO TAKE CERTAIN STEPS TO EFFECTUATE COMPLIANCE WITH BUDGET REDUCTIONS IN THE MEDICAID PROGRAM

SECTION 10.37.(a) The Department of Health and Human Services, Division of Medical Assistance, may take the following actions, notwithstanding any other provision of this act or other State law or rule to the contrary:

(1) In-Home Care provision. – In order to enhance in-home aide services to Medicaid recipients, the Department of Health and Human Services, Division of Medical Assistance, shall:

a. No longer provide services under PCS and PCS-Plus the later of January 1, 2012, or whenever CMS approves the elimination of the PCS and PCS-Plus programs and the implementation of the following two new services:

1. In-Home Care for Children (IHCC). – Services to assist families to meet the in-home care needs of children, including those individuals under the age of 21 receiving comprehensive and preventive child health services through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program.

2. In-Home Care for Adults (IHCA). – Services to meet the eating, dressing, bathing, toileting, and mobility needs of individuals 21 years of age or older who, because of a medical condition, disability, or cognitive impairment, demonstrate unmet needs for, at a minimum (i) three of the five qualifying activities of daily living (ADLs) with limited hands-on assistance; (ii) two ADLs, one of which requires extensive assistance; or (iii) two ADLs, one of which requires assistance at the full dependence level. The five qualifying ADLs are eating, dressing, bathing, toileting, and mobility.

IHCA shall serve individuals at the highest level of need for in-home care who are able to remain safely in the home.

b. Establish, in accordance with G.S. 108A-54.2, a Medical Coverage Policy for each of these programs to include:
   1. For IHCC, up to 60 hours per month in accordance with an assessment conducted by DMA or its designee and a plan of care developed by the service provider and approved by DMA or its designee. Additional hours may be authorized when the services are required to correct or ameliorate defects and physical and mental illnesses and conditions in this age group, as defined in 42 U.S.C. § 1396d(r)(5), in accordance with a plan of care approved by DMA or its designee.
   2. For IHCA, up to 80 hours per month in accordance with an assessment conducted by DMA or its designee and a plan of care developed by the service provider and approved by DMA or its designee.

c. Implement the following program limitations and restrictions to apply to both IHCC and IHCA:
   1. Additional services to children required under federal EPSDT requirements shall be provided to qualified recipients in the IHCC Program.
   2. Services shall be provided in a manner that supplements, rather than supplants, family roles and responsibilities.
   3. Services shall be authorized in amounts based on assessed need of each recipient, taking into account care and services provided by the family, other public and private agencies, and other informal caregivers who may be available to assist the family. All available resources shall be utilized fully, and services provided by such agencies and individuals shall be disclosed to the DMA assessor.
   4. Services shall be directly related to the hands-on assistance and related tasks to complete each qualifying ADL in accordance with the IHCC or IHCA assessment and plan of care, as applicable.
   5. Services provided under IHCC and IHCA shall not include household chores not directly related to the qualifying ADLs, nonmedical transportation, financial management, and non-hands-on assistance such as cueing, prompting, guiding, coaching, or babysitting.
   6. Essential errands that are critical to maintaining the health and welfare of the recipient may be approved on a case-by-case basis by the DMA assessor when there is no family member, other individual, program, or service available to meet this need. Approval, including the amount of time required to perform this task, shall be documented on the recipient's assessment form and plan of care.

d. Utilize the following process for admission to the IHCC and IHCA programs:
   1. The recipient shall be seen by his or her primary or attending physician, who shall provide written authorization for referral for the service and written attestation to the medical necessity for the service.
   2. All assessments for admission to IHCC and IHCA, continuation of these services, and change of status reviews for these services shall be performed by DMA or its designee. The DMA designee may not be an owner of a provider business or provider of in-home or personal care services of any type.

3. DMA or its designee shall determine and authorize the amount of service to be provided on a "needs basis," as determined by its review and findings of each recipient's degree of functional disability and level of unmet needs for hands-on personal assistance in the five qualifying ADLs.

e. Take all appropriate actions to manage the cost, quality, program compliance, and utilization of services provided under the IHCC and IHCA programs, including, but not limited to:

1. Priority independent reassessment of recipients before the anniversary date of their initial admission or reassessment for those recipients likely to qualify for the restructured IHCC and IHCA programs.
2. Priority independent reassessment of recipients requesting a change of service provider.
3. Targeted reassessments of recipients prior to their anniversary dates when the current provider assessment indicates they may not qualify for the program or for the amount of services they are currently receiving.
4. Targeted reassessment of recipients receiving services from providers with a history of program noncompliance.
5. Provider desk and on-site reviews and recoupment of all identified overpayments or improper payments.
6. Recipient reviews, interviews, and surveys.
7. The use of mandated electronic transmission of referral forms, plans of care, and reporting forms.
8. The use of mandated electronic transmission of uniform reporting forms for recipient complaints and critical incidents.
9. The use of automated systems to monitor, evaluate, and profile provider performance against established performance indicators.
10. Establishment of rules that implement the requirements of 42 C.F.R. § 441.16.

f. Time line for implementation of new IHCC and IHCA programs.

1. Subject to approvals from CMS, DMA shall make every effort to implement the new IHCC and IHCA programs by January 1, 2013.
2. DMA shall ensure that individuals who qualify for the IHCC and IHCA programs shall not experience a lapse in service and, if necessary, shall be admitted on the basis of their current provider assessment when an independent reassessment has not yet been performed and the current assessment documents that the medical necessity requirements for the IHCC or IHCA program, as applicable, have been met.
3. Prior to the implementation date of the new IHCC and IHCA programs, all recipients in the PCS and PCS-Plus programs shall be notified pursuant to 42 C.F.R. § 431.220(b) and discharged, and the Department shall no longer provide services under the PCS and PCS-Plus programs, which shall terminate. Recipients who qualify for the new IHCC and IHCA programs shall be admitted and shall be eligible to receive services immediately.

(2) Clinical coverage. – The Department of Health and Human Services, Division of Medical Assistance, shall amend applicable clinical policies and submit applicable State Plan amendments to Centers for Medicare and Medicaid Services (CMS) to implement the budget reductions authorized in the following clinical coverage areas in this act:

a. Eliminate or limit adult physical therapy, occupational therapy, and speech therapy visits to three visits per calendar year.

(3) MH/DD/SAS personal care and personal assistance services provision. – A denial, reduction, or termination of Medicaid-funded personal care services or in-home care services shall result in a similar denial, reduction, or termination of State-funded MH/DD/SAS personal care and personal assistance services.

(4) Community Support Team. – Authorization for a Community Support Team shall be based upon medical necessity as defined by the Department and shall not exceed 18 hours per week.

(5) MH residential. – The Department of Health and Human Services shall restructure the Medicaid child mental health, developmental disabilities, and substance abuse residential services to ensure that total expenditures are within budgeted levels. All restructuring activities shall be in compliance with federal and State law or rule. The Divisions of Medical Assistance and Mental Health, Developmental Disabilities, and Substance Abuse Services shall establish a team inclusive of providers, LMEs, and other stakeholders to assure effective transition of recipients to appropriate treatment options. The restructuring shall address all of the following:

a. Submission of the therapeutic family service definition to CMS.

b. The Department shall reexamine the entrance and continued stay criteria for all residential services. The revised criteria shall promote least restrictive services in the home prior to residential placement. During treatment, there must be inclusion in community activities and parent or legal guardian participation in treatment.

c. Require all existing residential providers or agencies to be nationally accredited within one year of enactment of this act. Any providers enrolled after the enactment of this act shall be subject to existing endorsement and nationally accrediting requirements. In the interim, providers who are nationally accredited will be preferred providers for placement considerations.

d. Before a child can be admitted to Level III or Level IV placement, an assessment shall be completed to ensure the appropriateness of placement, and one or more of the following shall apply:

1. Placement shall be a step down from a higher level placement such as a psychiatric residential treatment facility or inpatient facility.

2. Multisystemic therapy or intensive in-home therapy services have been unsuccessful.

3. The Child and Family Team has reviewed all other alternatives and recommendations and recommends Level III or Level IV placement due to maintaining health and safety.

4. Transition or discharge plan shall be submitted as part of the initial or concurrent request.

e. Length of stay is limited to no more than 120 days. Any exceptions granted will require (i) for non-CABHAs, an independent psychological or psychiatric assessment, (ii) for CABHAs, a psychological or psychiatric assessment that may be completed by the CABHA, and (iii) for both, a Child and Family Team review of goals and treatment progress, that family or discharge placement setting are actively engaged in treatment goals and objectives, and active participation of the prior authorization of vendor.

f. Submission of discharge plan is required in order for the request for authorization for Level III or Level IV services to be considered complete, but the authorization approval is not conditional upon the receipt of the signature of the system of care coordinator. The LME will designate appropriate individuals who can sign the discharge plan within 24 hours of receipt of the discharge plan. Failure to submit a complete discharge plan will result in the request being returned as unable to process.

g. Any residential provider that ceases to function as a provider shall provide written notification to DMA, the Local Management Entity, recipients, and the prior authorization vendor 30 days prior to closing of the business.

h. Record maintenance is the responsibility of the provider and must be in compliance with record retention requirements. Records shall also be available to State, federal, and local agencies.

i. Failure to comply with notification, recipient transition planning, or record maintenance shall be grounds for withholding payment until such activity is concluded. In addition, failure to comply shall be conditions that prevent enrollment for any Medicaid or State-funded service. A provider (including its officers, directors, agents, or managing employees or individuals or entities having a direct or indirect ownership interest or control interest of five percent (5%) or more as set forth in Title XI of the Social Security Act) that fails to comply with the required record retention may be subject to sanctions, including exclusion from further participation in the Medicaid program, as set forth in Title XI.

(6) Reduce Medicaid rates. – Subject to the prior approval of the Office of State Budget and Management, the Secretary shall reduce Medicaid provider rates to accomplish the reduction in funds for this purpose enacted in this act. The reductions authorized by this subdivision are subject to the following additional limitations:

a. The Secretary of Health and Human Services shall reduce Medicaid provider rates for all Medicaid providers by an annualized three percent (3%) except as follows:

1. Physician services. – The provider rate for physicians shall not be reduced.

2. Hospital inpatient services. – The provider rate for inpatient hospital services shall be reduced in the aggregate by an annualized amount not to exceed nine and six-tenths percent (9.6%). The provider rates for non-State-owned free standing psychiatric and rehabilitation hospitals are not included in this exception.

3. The Secretary shall consider the impact on access to care through primary care providers and critical access hospitals and may adjust the rates accordingly. Medicaid rates predicated on Medicare fee schedules shall follow Medicare reductions but not Medicare increases unless federally required.

4. Exceptions for certain providers. – The rate reduction applies to all Medicaid private and public providers with the following exceptions:

I. Federally qualified health centers.
II. Rural health centers.
III. State institutions.
IV. Hospital outpatient.
V. Pharmacies.
VI. The State Public Health Laboratory.
VII. The noninflationary components of the case-mix reimbursement system for nursing facilities.

5. Notwithstanding any other provision of law, no inflationary increases shall be made to Medicaid provider rates during the 2011-2013 fiscal biennium, except that inflationary increases for health care providers paying provider fees or assessments may occur if the State share of the increases can be funded with provider fees or assessments.

b. The rate reductions required by this section shall take effect in accordance with the following schedule:

1. On or Before October 1, 2011. – The provider rate reductions required by sub-subdivision a. of this sub-subdivision shall take effect on or before October 1, 2011. However, the reductions shall be adjusted by a percentage sufficient to yield savings as if the reductions had taken effect on July 1, 2011.
2. July 1, 2012. – On July 1, 2012, the provider rate reductions required by sub-sub-subdivision a.2. of this sub-subdivision and any other rate reductions implemented pursuant to sub-subdivision a. of this subdivision, but not implemented by July 1, 2011, shall be adjusted to the level at which they would have been without the adjustment required by sub-sub-subdivision 1. of this sub-subdivision.

c. No other adjustments to the provider rates or payment methodologies shall be made for physician services, critical access hospital services, hospital inpatient services or hospital outpatient services, non-State-owned free standing psychiatric and rehabilitation hospitals, and adult care homes except as provided in sub-subdivision a. of this subdivision and except as authorized by Section 10.47(d) of this act.

(7) Medicaid identification cards. – The Department shall issue Medicaid identification cards to recipients on an annual basis with updates as needed.

(8) The Department of Health and Human Services shall develop a plan for the consolidation of case management services utilizing CCNC. The plan shall address the time line and process for implementation, the identification of savings, and the Medicaid recipients affected by the consolidation. Consolidation under this subdivision does not apply to HIV case management. By December 1, 2012, the Department shall report on the plan to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

(9) For the purpose of promoting cost-effective utilization of outpatient mental health services for children, DMA shall require prior authorization for services following the 16th visit.

(10) Provision of Medicaid Private Duty Nursing (PDN). – DMA shall change the Medicaid Private Duty Nursing program provided under the State Medicaid Plan, as follows:

a. Restructure the current PDN program to provide services that are:
1. Provided only to qualified recipients under the age of 21.
2. Authorized by the recipient's primary care or attending physician.
3. Limited to 16 hours of service per day, unless additional services are required to correct or ameliorate defects and physical and mental illnesses and conditions as defined in 42 U.S.C. § 1396d(r)(5).
4. Approved, based on an initial assessment and continuing need reassessments performed by an Independent Assessment Entity (IAE) that does not provide PDN services, and authorized in amounts that are medically necessary based on the recipient's medical condition, amount of family assistance available, and other relevant conditions and circumstances, as defined by the Medicaid Clinical Coverage Policy for this service.
5. Provided in accordance with a plan of care approved by DMA or its designee.

b. Develop and submit to CMS a 1915(c) Home and Community Based Services Waiver for individuals dependent on technology to substitute for a vital body function.

c. Once approved by CMS and upon approval of the Medicaid Clinical Coverage Policy, transition all qualified recipients age 21 and older currently receiving PDN to waiver services provided under the Technology Dependent Waiver.

(11) Medicaid service modifications and eliminations. – Subject to the prior approval of the Centers for Medicare and Medicaid Services where required, the Division of Medical Assistance shall make the following eliminations of or modifications to Medicaid services:

a. Optical. –
   1. Eliminate adult routine eye exams. Eye exams shall be restricted to cases in which a specific optical problem exists.
   2. Eliminate optical services and supplies.

b. Durable medical equipment. – The Department may adjust the rate paid for incontinence supplies or reduce cost through a negotiated single source contract with a manufacturer for incontinence supply procurement, notwithstanding any other provision of law. The contract shall provide that suppliers may use the contract but are also free to take advantage of better prices available elsewhere. The Department may effectuate any combination of these options in order to achieve the lowest available cost for incontinence supply procurement.

c. Specialized therapies. – For evaluations, reevaluations, as well as physical, occupational, speech, respiratory, and audiological services, reduce the maximum number of allowable services by one per year.

d. Home health. – Restrict usage of the miscellaneous T199 code. All billing must be for a specific service.

e. Pregnancy Home Model Initiative.

f. Dental. –
   1. Eliminate composite fillings for back teeth fillings.
   2. Limit the number of surfaces that can be filled to four per tooth.
   3. Limit frequency of scaling and replaning to once every two years.
   4. Raise the threshold for eligibility for replaning to 5mm from 4mm.
   5. Eliminate cast dentures for partial dentures only and replace with acrylic dentures. Change the frequency of replacement from every 10 years to every eight years.
   6. Require prior authorization for oral excision of gum tissue.
   7. Beginning the 2012-2013 fiscal year, limit adult dental to emergency and pregnant women only.

g. Miscellaneous. –
   1. Restrict usage of evaluation and management billing as well as of unlisted codes and strengthen supporting documentation requirements. Billing shall use specific service codes for specific services as a prerequisite to reimbursement.
   2. Restrict circumcision coverage to medically necessary procedures.
   3. Utilize Bloodhound, Inc., software, or comparable software, to examine billing codes that are duplicative or inconsistent with evidence-based practices.
   4. Require prior authorization for back surgery for selective diagnoses and require that all other therapies have been exhausted prior to granting authorization.
   5. Require prior authorization for capsule endoscopy but not traditional endoscopy.
   6. Require prior authorization for selected medical procedures and services, including elective cardiac procedures, chronic pain management, and related procedures.

7. Negotiate a single source contract for genetic testing, notwithstanding any other provision of law.
8. Limit outpatient specialized therapies to three visits a year.
9. Eliminate H Codes, provisionally licensed MH billing, and reduce service limits.
10. Eliminate podiatry, except for diabetes.
11. Eliminate adult physical therapy, occupational therapy, and speech therapy.
12. Reduce nursing homes ceiling to one hundred percent (100%).
13. Eliminate respiratory therapy.
14. Eliminate chiropractic services.
15. Eliminate home infusion therapy.
16. Eliminate over-the-counter drugs.

The modifications and eliminations under sub-sub-subdivisions g.8. through g.14. become effective in the 2012-2013 fiscal year. The eliminations under sub-sub-subdivisions g.15. and g.16. become effective in the 2011-2012 fiscal year.

SECTION 10.37.(b) At least 30 days prior to the adoption of new or amended medical coverage policies necessitated by the reductions to the Medicaid program enacted in this act, the Department shall:

(1) Publish the proposed new or amended medical coverage policies via the Medicaid Bulletin published on the Department's Web site, which shall include an invitation to readers to send written comments on the proposed new or amended policies to the Department's mailing address, including e-mail.
(2) Notify via direct mail the members of the Physician Advisory Group (PAG) of the proposed policies.
(3) Update the policies published on the Web site to reflect any changes made as a result of written comments received from the PAG and others.
(4) Provide written notice to recipients about changes in policy.

SECTION 10.37.(c) The Department of Health and Human Services shall not implement any actions directed by this act if the Department determines that such actions would jeopardize the receipt of federal funds appropriated or allocated to the Department.

MEDICAID WAIVER FOR ASSISTED LIVING

SECTION 10.38.(a) The Department of Health and Human Services, Division of Medical Assistance (Division), shall develop and implement a home- and community-based services program under Medicaid State Plan 1915(i) authority in order to continue Medicaid funding of personal care services to individuals living in adult care homes. Providers who do not accept reimbursement for residents' personal care services through Medicaid or do not accept reimbursement through the State-County Special Assistance program shall not be subject to the provisions, requirements, or conditions of the Medicaid waiver pursuant to this section.

SECTION 10.38.(b) The Division shall implement the program upon approval of the application by the Centers for Medicare and Medicaid Services.

SECTION 10.38.(c) On or before April 1, 2012, the Division shall provide a report on the status of approval and implementation of the program to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

PROGRAM INTEGRITY

SECTION 10.39. In order to ensure all claims presented by a provider for payment by the Department of Health and Human Services meet the Department's medical necessity criteria and all other applicable Medicaid, Health Choice, or other federal or State documentation requirements, a provider may be required to undergo prepayment claims review by DHHS. Claims reviews conducted pursuant to this section shall be in accordance with the

provisions of the Patient Protection and Affordable Care Act, P.L. 111-148, and any implementing regulations.

TRANSFER TO OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 10.40. From funds available to the Department of Health and Human Services (Department) for the 2011-2012 fiscal year, the sum of one million dollars ($1,000,000), and for the 2012-2013 fiscal year the sum of one million dollars ($1,000,000), shall be transferred by the Department of Health and Human Services to the Office of Administrative Hearings (OAH). These funds shall be allocated by the OAH for mediation services provided for Medicaid applicant and recipient appeals and to contract for other services necessary to conduct the appeals process. OAH shall continue the Memorandum of Agreement (MOA) with the Department for mediation services provided for Medicaid recipient appeals and contracted services necessary to conduct the appeals process. The MOA will facilitate the Department's ability to draw down federal Medicaid funds to support this administrative function. Upon receipt of invoices from OAH for covered services rendered in accordance with the MOA, the Department shall transfer the federal share of Medicaid funds drawn down for this purpose.

NC HEALTH CHOICE

SECTION 10.41.(a) G.S. 108A-54.3 is amended by adding a new subdivision to read:

"**§ 108A-54.3. Procedures for changing medical policy.**

The Department shall develop, amend, and adopt medical coverage policy in accordance with the following:

...

(5) Any changes in medical policy that require an amendment to the Health Choice State Plan will be submitted by the Department upon approval of the proposed policy."

SECTION 10.41.(b) G.S. 108A-70.21(b) reads as rewritten:

"(b) Benefits. – All health benefits changes of the Program shall meet the coverage requirements set forth in this subsection. Except as otherwise provided for eligibility, fees, deductibles, copayments, and other cost sharing charges, health benefits coverage provided to children eligible under the Program shall be equivalent to coverage provided for dependents under ~~the Predecessor Plan.~~ North Carolina Medicaid Program except for the following:

(1) No services for long-term care.

(2) No nonemergency medical transportation.

(3) No EPSDT.

(4) Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.

In addition to the benefits provided under the ~~Predecessor Plan,~~ North Carolina Medicaid Program, the following services and supplies are covered under the Health Insurance Program for Children established under this Part:

~~(1) Oral examinations, teeth cleaning, and topical fluoride treatments twice during a 12-month period, full mouth X-rays once every 60 months, supplemental bitewing X-rays showing the back of the teeth once during a 12-month period, sealants, extractions, other than impacted teeth or wisdom teeth, therapeutic pulpotomies, space maintainers, root canal therapy for permanent anterior teeth and permanent first molars, prefabricated stainless steel crowns, and routine fillings of amalgam or other tooth-colored filling material to restore diseased teeth.~~

~~(1a) Orthognathic surgery to correct functionally impairing malocclusions when orthodontics was approved and initiated while the child was covered by Medicaid and the need for orthognathic surgery was documented in the orthodontic treatment plan.~~

(2) Vision: Scheduled routine eye examinations once every 12 months, eyeglass lenses or contact lenses once every 12 months, routine replacement of eyeglass frames once every 24 months, and optical supplies and solutions when needed. ~~Optical~~ NCHC recipients must obtain optical services, supplies, and solutions ~~must be obtained~~ from NCHC enrolled, licensed or

certified ophthalmologists, optometrists, or ~~optical dispensing laboratories.~~ opticians. In accordance with G.S. 148-134, NCHC providers must order complete eyeglasses, eyeglass lenses, and ophthalmic frames through Nash Optical Plant. Eyeglass lenses are limited to NCHC-approved single vision, bifocal, trifocal, or other complex lenses necessary for a Plan enrollee's visual welfare. Coverage for oversized lenses and frames, designer frames, photosensitive lenses, tinted contact lenses, blended lenses, progressive multifocal lenses, coated lenses, and laminated lenses is limited to the coverage for single vision, bifocal, trifocal, or other complex lenses provided by this subsection. Eyeglass frames are limited to ~~those~~ NCHC-approved frames made of zylonite, metal, or a combination of zylonite and metal. All visual aids covered by this subsection require prior approval. Requests for medically necessary complete eyeglasses, eyeglass lenses, and ophthalmic frames outside of the NCHC-approved selection require prior approval. Requests for medically necessary fabrication of complete eyeglasses or eyeglass lenses outside of Nash Optical Plant require prior approval. Upon prior approval refractions may be covered more often than once every 12 months.

(3) ~~Hearing: Auditory diagnostic testing services and hearing aids and accessories when provided by a licensed or certified audiologist, otolaryngologist, or other approved hearing aid specialist. Prior approval is required for hearing aids, accessories, earmolds, repairs, loaners, and rental aids.~~Under the North Carolina Health Choice Program for Children, the co-payment for nonemergency visits to the emergency room for children whose family income is at or below one hundred fifty percent (150%) of the federal poverty level is ten dollars ($10.00). The co-payment for children whose family income is between one hundred fifty-one percent (151%) and two hundred percent (200%) of the federal poverty level is twenty-five dollars ($25.00).

(4) Over the counter medications: Selected over the counter medications provided the medication is covered under the State Medical Assistance Plan. Coverage shall be subject to the same policies and approvals as required under the Medicaid program.

(5) Routine diagnostic examinations and tests: annual routine diagnostic examinations and tests, including x-rays, blood and blood pressure checks, urine tests, tuberculosis tests, and general health check-ups that are medically necessary for the maintenance and improvement of individual health are covered.

No benefits are to be provided for services and materials under this subsection that do not meet the standards accepted by the American Dental Association.

The Department shall provide services to children enrolled in the NC Health Choice Program through Community Care of North Carolina (CCNC) and shall pay Community Care of North Carolina providers ~~for these services~~ the per member, per month fees as allowed under Medicaid. ~~The Department shall pay for these services only if sufficient information is available to the Department for utilization management of the services provided through CCNC.~~"

SECTION 10.41.(c) G.S. 108A-70.23 is repealed.

SECTION 10.41.(d) G.S. 108A-70.27(c) reads as rewritten:

"(c) ~~The Executive Administrator and Board of Trustees of the North Carolina Teachers' and State Employees' Major Medical Plan ("Plan")~~ The Division of Medical Assistance shall provide to the Department data required under this section that are collected by the Plan. Data shall be reported by the Plan in sufficient detail to meet federal reporting requirements under Title XXI. The Plan shall report periodically to the Joint Legislative Health Care Oversight Committee claims processing data for the Program and any other information the Plan or the Committee deems appropriate and relevant to assist the Committee in its review of the Program."

SECTION 10.41.(e) G.S. 108A-70.29 is amended by adding a new subsection to read:

"(f) Additional Rule-Making Authority. – The Department of Health and Human Services shall have the authority to adopt rules for the transition and operation of the North Carolina Health Choice Program. Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes for enrolling providers to participate in the NC Health Choice Program, for regulating provider participation in the NC Health Choice Program, and for other operational issues regarding the NC Health Choice Program."

SECTION 10.41.(f) The Department shall begin to transition all health benefit changes of the Program to meet the coverage requirements set forth in subsection (b) of this section.

MEDICATION THERAPY MANAGEMENT PILOT

SECTION 10.42.(a) The Department of Health and Human Services shall develop a two-year medication therapy management pilot program to be administered through Community Care of North Carolina (CCNC) in order to determine (i) the best method of adapting the ChecKmedsNC program to the Medicaid program and CCNC's Medical Homes and (ii) the most effective and efficient role for community-based pharmacists as active members of CCNC's care management teams. The pilot program created pursuant to this section shall consist of the following components:

(1) Identification of at least 20 community-based pharmacies that are geographically distributed and sufficiently representative to generalize pilot findings among pharmacies that dedicate pharmacist time to work with patients, their care team members, and their Medical Home practices to improve patient outcomes. To the extent that available resources allow, other types of community-based pharmacists may be involved, including those working with long-term care residents or their attending physicians.

(2) Targeting of Medicaid recipients with co-occurring illnesses or conditions that are especially susceptible to poor patient outcomes when medication is underused, misused, or poorly coordinated.

(3) Allowing pharmacists identified pursuant to subdivision (1) of this section to have access to CCNC's Web-based Pharmacy Portal, which allows CCNC to establish and monitor patients' prescriptions and to communicate with other care team members.

SECTION 10.42.(b) On January 1, 2012, and every six months thereafter, CCNC shall report to the Department of Health and Human Services, the House and Senate Appropriations Subcommittees on Health and Human Services, and the Fiscal Research Division on the development and implementation of this pilot program. This reporting requirement shall terminate with the filing of the third report on January 1, 2013. In addition to any other information, the reports required by this section shall include the following additional information:

(1) The July 1, 2012, report shall include an interim evaluation of the pharmacists' demonstrated use of the CCNC Pharmacy Home Model and the pharmacists' role in intervening and successfully managing the medication therapy of Medicaid recipients with chronic illnesses.

(2) The January 1, 2013, report shall include an evaluation of the pharmacists' role in CCNC's management of Medicaid recipients with mental health diagnoses or who receive Home Health or Nursing Home care, and a determination of the appropriate per member/per month pharmacists should receive for participating in the Medical Home Model of CCNC.

SECTION 10.42.(c) Funding for this pilot program shall be made available through the Enhanced Federal Funding for Health Homes for the Chronically Ill.

MEDICAID RECIPIENT APPEALS

SECTION 10.44.(a) G.S. 108A-70.9A reads as rewritten:

"**§ 108A-70.9A. Appeals by Medicaid recipients.**

(a) Definitions. – The following definitions apply in this Part, unless the context clearly requires otherwise.

(1) Adverse determination. – A determination by the Department to deny, terminate, suspend, or reduce a Medicaid service or an authorization for a Medicaid service.
(2) OAH. – The Office of Administrative Hearings.
(3) Recipient. – A recipient ~~and~~ or the recipient's ~~parent,~~parent or legal guardian, ~~or legal representative,~~ unless otherwise specified.

(b) General Rule. – Notwithstanding any provision of State law or rules to the contrary, this section shall govern the process used by a Medicaid recipient to appeal an adverse determination made by the Department.

(c) Adverse Notice. – Except as otherwise provided by federal law or regulation, at least 10 days before the effective date of an adverse determination, the Department shall notify the recipient, and the provider, if applicable, in writing of the adverse determination and of the recipient's right to appeal the adverse determination. The Department shall not be required to notify a recipient's ~~parent, guardian, or legal representative~~ parent or legal guardian unless the recipient's ~~parent, guardian, or legal representative~~ parent or legal guardian has requested in writing to receive the notice. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:
(1) An identification of the recipient whose services are being affected by the adverse determination, including the recipient's full name and Medicaid identification number.
(2) An explanation of what service is being denied, terminated, suspended, or reduced and the reason for the determination.
(3) The specific regulation, statute, or medical policy that supports or requires the adverse determination.
(4) The effective date of the adverse determination.
(5) An explanation of the recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an administrative law judge.
(6) An explanation of how the recipient can request a hearing and a statement that the recipient may represent himself or herself or use legal counsel, a relative, or other spokesperson.
(7) A statement that the recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the recipient, whichever is less, if the recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.
(8) The ~~name and~~ telephone number of ~~a contact person at~~ the ~~Department~~ Department's Medicaid Appeals Section and 1-800 number to respond in a timely fashion to the recipient's questions.
(9) The telephone number by which the recipient may contact a Legal Aid/Legal Services office.
(10) The individualized departmental appeal request form described in subsection (e) of this section that the recipient may use to request a hearing.

(d) Appeals. – Except as provided by this section and G.S. 108A-70.9B, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. The recipient shall request a hearing within 30 days of the mailing of the notice required by subsection (c) of this section by ~~sending an~~ properly filing a completed appeal request form ~~to OAH and the Department.~~ with OAH. Where a request for hearing concerns the reduction, modification, or termination of Medicaid services, including the failure to act upon a timely request for reauthorization with reasonable promptness, upon the receipt of ~~a timely appeal,~~ an appeal filed within 10 days of the date of the adverse notice, the Department shall reinstate or continue the services ~~to~~ at the level or manner prior to action by the Department as permitted by federal law or ~~regulation.~~ regulation and as required by subdivision (c)(7) of this section. If the hearing request is submitted more than 10 days from the date of the adverse notice, and regardless of whether OAH accepts the appeal and schedules the case for hearing, the Department shall not authorize payment for services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the recipient pending the outcome of the appeal. The Department shall immediately forward a copy

of the notice to OAH electronically. The information contained in the notice is confidential unless the recipient appeals. OAH may dispose of the records after one year. The Department may not influence, limit, or interfere with the recipient's decision to request a hearing.

(e) Appeal Request Form. – Along with the notice required by subsection (c) of this section, the Department shall also provide the recipient with an appeal request form which shall be no more than one side of one page. Only a completed individualized hearing request form provided by the Department shall be accepted for hearing by OAH. Appeal request forms filed more than 30 days from the date of the adverse notice shall not be accepted for hearing by OAH under any circumstances. Within 24 hours of receipt of a properly filed individualized Departmental appeal request form, OAH shall notify the Department by facsimile or electronic messaging. The form shall include the following:

(1) A statement that in order to request an appeal, the recipient must send the completed individualized Departmental appeal request form by mail or fax to the address or fax number listed on the form within 30 days of ~~mailing of the notice.~~ the date of the adverse notice, which is the date the notice was mailed.

(1a) A statement that the completed individualized Departmental request form must be properly filed with OAH on or before the effective date of the adverse notice for maintenance of services to continue during the pendency of the appeal.

(2) The recipient's name, address, ~~telephone number,~~ and Medicaid identification number.

(3) A preprinted statement that indicates that the recipient would like to appeal the specific adverse determination of which the recipient was notified in the notice.

(4) A statement informing the recipient that he or she may choose to be represented by a lawyer, a relative, a friend, or other spokesperson.

(5) A space for the recipient's signature and ~~date.~~date, telephone number, and current address.

(6) If the recipient designates a personal representative, a space for the personal representative's name, telephone number, and current address.

(f) Final Decision. – After a hearing before an administrative law judge, the judge shall return the decision and record to the Department in accordance with G.S. 108A-70.9B. The Department shall make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly notify the recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes."

SECTION 10.44.(b) G.S. 108A-70.9B reads as rewritten:

"§ 108A-70.9B. Contested Medicaid cases.

(a) Application. – This section applies only to contested Medicaid cases commenced by Medicaid recipients under G.S. 108A-70.9A. Except as otherwise provided by G.S. 108A-70.9A and this section governing time lines and procedural steps, a contested Medicaid case commenced by a Medicaid recipient is subject to the provisions of Article 3 of Chapter 150B of the General Statutes. To the extent any provision in this section or G.S. 108A-70.9A conflicts with another provision in Article 3 of Chapter 150B of the General Statutes, this section and G.S. 108A-70.9A control.

(b) Simple Procedures. – Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid recipient in order to complete the case as quickly as possible.

(1) To the extent possible, OAH shall schedule and hear contested Medicaid cases within 55 days of submission of a ~~request for appeal.~~timely filed completed individualized Departmental appeal request form.

(2) Hearings shall be conducted telephonically or by video technology with all parties, however the recipient may request that the hearing be conducted in person before the administrative law judge. An in-person hearing shall be conducted in Wake County, however, for good cause shown, the in-person hearing may be conducted in the county of residence of the recipient or a nearby county. Good cause shall ~~include, but is not limited to,~~be limited to

the recipient's impairments limiting ~~travel or the unavailability of the recipient's treating professional witnesses. The Department shall provide written notice to the recipient of the use of telephonic hearings, hearings by video conference, and in-person hearings before the administrative law judge, and how to request a hearing in the recipient's county of residence.~~travel.

(3) The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An administrative law judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing.

(4) The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances. Continuances shall only be granted in accordance with rules adopted by OAH and shall not be granted on the day of the hearing, except for good cause shown. If a petitioner fails to make an appearance at a hearing that has been properly noticed via certified mail by OAH, OAH shall immediately dismiss the contested case, unless the recipient moves to show good cause within three business days of the date of dismissal. Good cause to reopen a contested Medicaid case under these circumstances shall be limited to medical or other documented emergencies involving the recipient or his or her witnesses. A failure to answer the telephone for a properly noticed telephone hearing shall not constitute good cause sufficient to continue the case on the date of the hearing or reopen a previously dismissed contested Medicaid case.

(5) The notice of hearing provided by OAH to the recipient shall include the following information:

a. The recipient's right to examine at a reasonable time before the hearing and during the hearing the contents of the recipient's case file and documents to be used by the Department in the hearing before the administrative law judge.

b. The recipient's right to an interpreter during the appeals process.

c. Circumstances in which a medical assessment may be obtained at agency expense and be made part of the record. Qualifying circumstances include those in which (i) a hearing involves medical issues, such as a diagnosis, an examining physician's report, or a medical review team's decision; and (ii) the administrative law judge considers it necessary to have a medical assessment other than that performed by the individual involved in making the original decision.

(c) Mediation. – Upon receipt of an appeal request form as provided by G.S. 108A-70.9A(e) or other clear request for a hearing by a Medicaid recipient, OAH shall immediately notify the Mediation Network of North Carolina, which shall contact the recipient within five days to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. Upon completion of the mediation, the mediator shall inform OAH and the Department within 24 hours of the resolution by facsimile or electronic messaging. In cases where the mediator only informs OAH of the mediation results, OAH shall transmit the mediation decision to the Department within 24 hours of receipt from the mediator. If the parties have resolved matters in the mediation, OAH shall dismiss the case. OAH shall not conduct a hearing of any contested Medicaid case until it has received notice from the mediator assigned that either: (i) the mediation was unsuccessful, or (ii) the petitioner has rejected the offer of mediation, or (iii) the petitioner has failed to appear at a scheduled mediation. Nothing in this subsection shall restrict the right to a contested case hearing.

(d) Burden of Proof. – The recipient has the burden of proof ~~to show entitlement to a requested benefit or the propriety of requested agency action when the agency has denied the benefit or refused to take the particular action. The agency has the burden of proof when the~~

~~appeal is from an agency determination to impose a penalty or to reduce, terminate, or suspend a previously granted benefit.~~ in all cases heard pursuant to G.S. 108A-70.9A. The party with the burden of proof on any issue has the burden of going forward, and the administrative law judge shall not make any ruling on the preponderance of evidence until the close of all evidence.

(e) New Evidence. – The recipient shall be permitted to submit evidence regardless of whether obtained prior to or subsequent to the Department's actions and regardless of whether the Department had an opportunity to consider the evidence in making its adverse determination. When the evidence is received, at the request of the Department, the administrative law judge shall continue the hearing for a minimum of 15 days and a maximum of 30 days to allow for the Department's review of the evidence. Subsequent to review of the evidence, if the Department reverses its original decision, it shall immediately inform the administrative law judge.

(f) Issue for Hearing. – For each adverse determination, the hearing shall determine whether the Department substantially prejudiced the rights of the recipient and if the Department, based upon evidence at the hearing:

(1) Exceeded its authority or jurisdiction.
(2) Acted erroneously.
(3) Failed to use proper procedure.
(4) Acted arbitrarily or capriciously.
(5) Failed to act as required by law or rule.

(g) Decision. – The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. OAH shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing. The judge shall prepare a written decision and send it to the parties. The decision shall be sent together with the record to the agency within 20 days of the conclusion of the hearing."

DEPARTMENT TO DETERMINE COST-SAVINGS FOR MEDICAID THAT WOULD RESULT FROM PROVISION OF MUSCULOSKELETAL HEALTH SERVICES

SECTION 10.45.(a) The Department of Health and Human Services shall study and determine the cost-savings that would result for Medicaid if the following measures were implemented:

(1) Healthcare providers who have expertise in musculoskeletal conditions and who are willing to assist emergency departments were identified.
(2) Evidence-based medical criteria were developed, implemented, and supported for high-cost/high-risk elective musculoskeletal procedures.
(3) Patient management services were provided to primary care and emergency department physicians who provided musculoskeletal services.

SECTION 10.45.(b) The Department shall report its findings to the House and Senate Appropriations Subcommittees on Health and Human Services and to the Fiscal Research Division on or before October 1, 2011.

DHHS SAVINGS THROUGH CCNC

SECTION 10.47.(a) The Department of Health and Human Services, in conjunction with Community Care of North Carolina (CCNC) Networks and North Carolina Community Care, Inc., shall obtain savings totaling eighty-three million seventy-one thousand five hundred eighty-one dollars ($83,071,581) for the 2011-2012 fiscal year and ninety million dollars ($90,000,000) for the 2012-2013 fiscal year through cooperation and effective cost savings on the part of various health care providers.

SECTION 10.47.(b) The Department of Health and Human Services shall monitor the performance of the CCNC Networks and the expenditures of various health care providers to determine the extent to which the savings required by subsection (a) of this section are being achieved.

SECTION 10.47.(c) On or before October 1, 2011, and quarterly thereafter, the Department shall report to the House and Senate Appropriations Subcommittees on Health and Human Services and to the Fiscal Research Division on the savings being achieved pursuant to this section.

SECTION 10.47.(d) If, by October 1, 2011, or anytime thereafter, savings are not being achieved at a rate sufficient to yield savings in the amount required by subsection (a) of

this section, the Secretary of Health and Human Services shall, to the extent required in order to achieve savings at the required rate, take whatever actions are necessary, including the following to be effective January 1, 2012:

(1) Reduce Medicaid provider rates by up to two percent (2%). This reduction shall be in addition to other provider rate reductions in this act.

(2) Eliminate or reduce the level or duration of optional Medicaid services.

INCREASE GENERIC DRUG DISPENSING RATE IN MEDICAID BY REVISING PHARMACY DISPENSING FEES FOR PHARMACISTS THAT DISPENSE HIGH PROPORTIONS OF GENERIC DRUGS

SECTION 10.48.(a) The Department of Health and Human Services shall revise its pharmacy dispensing fees under the Medicaid Program in order to encourage a greater proportion of prescriptions dispensed to be generic prescriptions and thereby achieve savings of fifteen million dollars ($15,000,000) in the 2011-2012 fiscal year and twenty-four million dollars ($24,000,000) in the 2012-2013 fiscal year.

SECTION 10.48.(b) The Department shall report its progress in achieving the savings required by subsection (a) of this section on November 1, 2011, January 1, 2012, and quarterly thereafter to the House and Senate Appropriations Subcommittees on Health and Human Services and to the Fiscal Research Division. If any report required by this subsection reveals that those savings are not being achieved, the Department shall reduce prescription drug rates by an amount sufficient to achieve the savings.

NC NOVA

SECTION 10.49. The Department of Health and Human Services, Division of Health Service Regulation, may use up to thirty-eight thousand dollars ($38,000) for fiscal year 2011-2012 and up to thirty-eight thousand dollars ($38,000) for fiscal year 2012-2013 of existing resources to continue the NC New Organizational Vision Award special licensure designation program established under G.S. 131E-154.14. The Division shall use federal civil monetary penalty receipts as a source of support for this initiative, when appropriate.

INTENSIVE FAMILY PRESERVATION SERVICES FUNDING AND PERFORMANCE ENHANCEMENTS

SECTION 10.50.(a) Notwithstanding the provisions of G.S. 143B-150.6, the Intensive Family Preservation Services (IFPS) Program shall provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and to children and families in cases of abuse where a child is not at imminent risk of removal. The Program shall be developed and implemented statewide on a regional basis. The IFPS shall ensure the application of standardized assessment criteria for determining imminent risk and clear criteria for determining out-of-home placement.

SECTION 10.50.(b) The Department of Health and Human Services shall require that any program or entity that receives State, federal, or other funding for the purpose of IFPS shall provide information and data that allows for the following:

(1) An established follow-up system with a minimum of six months of follow-up services.

(2) Detailed information on the specific interventions applied, including utilization indicators and performance measurement.

(3) Cost-benefit data.

(4) Data on long-term benefits associated with IFPS. This data shall be obtained by tracking families through the intervention process.

(5) The number of families remaining intact and the associated interventions while in IFPS and 12 months thereafter.

(6) The number and percentage, by race, of children who received IFPS compared to the ratio of their distribution in the general population involved with Child Protective Services.

SECTION 10.50.(c) The Department shall establish a performance-based funding protocol and shall only provide funding to those programs and entities providing the required information specified in subsection (b) of this section. The amount of funding shall be based on the individual performance of each program.

FOSTER CARE AND ADOPTION ASSISTANCE PAYMENT RATES

SECTION 10.51. Part 4 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-49.1. Foster care and adoption assistance payment rates.**

(a) The maximum rates for State participation in the foster care assistance program are established on a graduated scale as follows:

(1) $475.00 per child per month for children from birth through five years of age.

(2) $581.00 per child per month for children six through 12 years of age.

(3) $634.00 per child per month for children 13 through 18 years of age.

(b) The maximum rates for the State adoption assistance program are established consistent with the foster care rates as follows:

(1) $475.00 per child per month for children from birth through five years of age.

(2) $581.00 per child per month for children six through 12 years of age.

(3) $634.00 per child per month for children 13 through 18 years of age.

(c) The maximum rates for the State participation in human immunodeficiency virus (HIV) foster care and adoption assistance are established on a graduated scale as follows:

(1) $800.00 per child per month with indeterminate HIV status.

(2) $1,000 per child per month with confirmed HIV infection, asymptomatic.

(3) $1,200 per child per month with confirmed HIV infection, symptomatic.

(4) $1,600 per child per month when the child is terminally ill with complex care needs.

In addition to providing board payments to foster and adoptive families of HIV-infected children, any additional funds remaining that are appropriated for purposes described in this subsection shall be used to provide medical training in avoiding HIV transmission in the home.

(d) The State and a county participating in foster care and adoption assistance shall each contribute fifty percent (50%) of the nonfederal share of the cost of care for a child placed by a county department of social services or child-placing agency in a family foster home or residential child care facility. A county shall be held harmless from contributing fifty percent (50%) of the nonfederal share of the cost for a child placed in a family foster home or residential child care facility under an agreement with that provider as of October 31, 2008, until the child leaves foster care or experiences a placement change."

ADOPTION ASSISTANCE VENDOR PAYMENTS

SECTION 10.51A.(a) The Department of Health and Human Services, Division of Social Services, is authorized to eliminate the Adoption Assistance Vendor payments for all adoptions finalized on or after July 1, 2011. All agreements entered into prior to July 1, 2011, will remain in effect.

SECTION 10.51A.(b) Eligibility for Adoption Assistance is clarified to mean that only children who have been in foster care are eligible for Adoption Assistance.

CHILD CARING INSTITUTIONS

SECTION 10.52. Until the Social Services Commission adopts rules setting standardized rates for child caring institutions as authorized under G.S. 143B-153(8), the maximum reimbursement for child caring institutions shall not exceed the rate established for the specific child caring institution by the Department of Health and Human Services, Office of the Controller. In determining the maximum reimbursement, the State shall include county and IV-E reimbursements.

REPEAL STATE ABORTION FUND

SECTION 10.53. Section 93 of Chapter 479 of the 1985 Session Laws, as amended by Section 75 of Chapter 738 of the 1987 Session Laws, Section 72 of Chapter 500 of the 1989 Session Laws, Section 79 of Chapter 1066 of the 1989 Session Laws, Section 106 of Chapter 689 of the 1991 Session Laws, Section 259.1 of Chapter 321 of the 1993 Session Laws, Section 23.27 of Chapter 324 of the 1995 Session Laws, and Section 23.8A of Chapter 507 of the 1995 Session Laws, is repealed.

CHILD WELFARE POSTSECONDARY SUPPORT PROGRAM

SECTION 10.54.(a) Of the funds appropriated from the General Fund to the Department of Health and Human Services, the sum of one million five hundred eighty-four thousand one hundred twenty-five dollars ($1,584,125) for the 2011-2012 fiscal year and one million five hundred eighty-four thousand one hundred twenty-five dollars ($1,584,125) for the 2012-2013 fiscal year shall be used to support the child welfare postsecondary support program for the educational needs of foster youth aging out of the foster care system and special needs children adopted from foster care after age 12 by providing assistance with the "cost of attendance" as that term is defined in 20 U.S.C. § 1087ll.

Funds appropriated by this subsection shall be allocated by the State Education Assistance Authority.

SECTION 10.54.(b) Of the funds appropriated from the General Fund to the Department of Health and Human Services, the sum of fifty thousand dollars ($50,000) for the 2011-2012 fiscal year and the sum of fifty thousand dollars ($50,000) for the 2012-2013 fiscal year shall be allocated to the North Carolina State Education Assistance Authority (SEAA). The SEAA shall use these funds only to perform administrative functions necessary to manage and distribute scholarship funds under the child welfare postsecondary support program.

SECTION 10.54.(c) Of the funds appropriated from the General Fund to the Department of Health and Human Services, the sum of three hundred thirty-nine thousand four hundred ninety-three dollars ($339,493) for the 2011-2012 fiscal year and the sum of three hundred thirty-nine thousand four hundred ninety-three dollars ($339,493) for the 2012-2013 fiscal year shall be used to contract with an entity to administer the child welfare postsecondary support program described under subsection (a) of this section, which administration shall include the performance of case management services.

SECTION 10.54.(d) Funds appropriated to the Department of Health and Human Services for the child welfare postsecondary support program shall be used only for students attending public institutions of higher education in this State.

TANF BENEFIT IMPLEMENTATION

SECTION 10.55.(a) The General Assembly approves the plan titled "North Carolina Temporary Assistance for Needy Families State Plan FY 2010-2012," prepared by the Department of Health and Human Services and presented to the General Assembly. The North Carolina Temporary Assistance for Needy Families State Plan covers the period October 1, 2010, through September 30, 2012. The Department shall submit the State Plan, as revised in accordance with subsection (b) of this section, to the United States Department of Health and Human Services, as amended by this act or any other act of the 2011 General Assembly.

SECTION 10.55.(b) The counties approved as Electing Counties in the North Carolina Temporary Assistance for Needy Families State Plan FY 2010-2012, as approved by this section are Beaufort, Caldwell, Catawba, Lenoir, Lincoln, Macon, and Wilson.

SECTION 10.55.(c) Counties that submitted the letter of intent to remain as an Electing County or to be redesignated as an Electing County and the accompanying county plan for fiscal year 2011 through 2012, pursuant to G.S. 108A-27(e), shall operate under the Electing County budget requirements effective July 1, 2009. For programmatic purposes, all counties referred to in this subsection shall remain under their current county designation through September 30, 2012.

SECTION 10.55.(d) For the 2011-2012 fiscal year, Electing Counties shall be held harmless to their Work First Family Assistance allocations for the 2010-2011 fiscal year, provided that remaining funds allocated for Work First Family Assistance and Work First Diversion Assistance are sufficient for payments made by the Department on behalf of Standard Counties pursuant to G.S. 108A-27.11(b).

SECTION 10.55.(e) In the event that departmental projections of Work First Family Assistance and Work First Diversion Assistance for the 2011-2012 fiscal year indicate that remaining funds are insufficient for Work First Family Assistance and Work First Diversion Assistance payments to be made on behalf of Standard Counties, the Department is authorized to deallocate funds, of those allocated to Electing Counties for Work First Family Assistance in excess of the sums set forth in G.S. 108A-27.11, up to the requisite amount for payments in Standard Counties. Prior to deallocation, the Department shall obtain approval by the Office of State Budget and Management. If the Department adjusts the allocation set forth in subsection (d) of this section, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations

Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

PAYMENTS FOR LIEAP/CIP

SECTION 10.56.(a) Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-25.4. Use of payments under the Low-Income Energy Assistance Program and Crisis Intervention Program.**

(a) The Low-Income Energy Assistance Program Plan developed by the Department of Health and Human Services (Department) and submitted to the U.S. Department of Health and Human Services shall focus the annual energy assistance payments on the elderly population age 60 and above with income up to one hundred thirty percent (130%) of the federal poverty level and disabled persons receiving services through the Division of Aging and Adult Services. The energy assistance payment shall be paid directly to the service provider by the county department of social services. The Plan for Crisis Intervention Program (CIP) shall provide assistance for vulnerable populations who meet income eligibility criteria established by the Department. The CIP payment shall be paid directly to the service provider by the county department of social services and shall not exceed six hundred dollars ($600.00) per household in a fiscal year.

(b) The Department shall submit the Plan for each program to the U.S. Department of Health and Human Services no later than September 1 of each year and implement the Plan no later than October 1 of each year."

SECTION 10.56.(b) Beginning September 1, 2011, on or before September 1 of each year and for a period of three years thereafter, the Department of Health and Human Services shall submit a copy of the Plan to the House Appropriations Subcommittee on Health and Human Services and Senate Appropriations Committee on Health and Human Services.

NON-MEDICAID REIMBURSEMENT CHANGES

SECTION 10.58.(a) Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no higher than those under the North Carolina Medical Assistance Program.

The Department of Health and Human Services may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of this section, the Department of Health and Human Services may negotiate with providers of medical services under the various Department of Health and Human Services programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services that cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

DSB Medical Eye Care	125% FPL
DSB Independent Living <55	125% FPL
DSB Independent Living 55>	200% FPL
DSB Vocational Rehabilitation	125% FPL
DVR Independent Living	125% FPL
DVR Vocational Rehabilitation	125% FPL

The Department of Health and Human Services shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department.

SECTION 10.58.(b) Subject to the prior approval of the Office of State Budget and Management, the Secretary shall reduce provider rates for services rendered for the Medical Eye Care, Independent Living, and Vocational Rehabilitation programs within the Division of Services for the Blind, and Independent Living and Vocational Rehabilitation

programs within the Division of Vocational Rehabilitation to accomplish the reduction in funds for this purpose enacted in this act.

STATE-COUNTY SPECIAL ASSISTANCE

SECTION 10.59.(a) The maximum monthly rate for residents in adult care home facilities shall be one thousand one hundred eighty-two dollars ($1,182) per month per resident unless adjusted by the Department in accordance with subsection (d) of this section. The eligibility of Special Assistance recipients residing in adult care homes on September 30, 2009, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from the adoption of this maximum monthly rate, provided these recipients are otherwise eligible.

SECTION 10.59.(b) The maximum monthly rate for residents in Alzheimer/Dementia special care units shall be one thousand five hundred fifteen dollars ($1,515) per month per resident unless adjusted by the Department in accordance with subsection (d) of this section.

SECTION 10.59.(c) Notwithstanding any other provision of this section, the Department of Health and Human Services shall review activities and costs related to the provision of care in adult care homes and shall determine what costs may be considered to properly maximize allowable reimbursement available through Medicaid personal care services for adult care homes (ACH-PCS) under federal law. As determined, and with any necessary approval from the Centers for Medicare and Medicaid Services (CMS), and the approval of the Office of State Budget and Management, the Department may transfer necessary funds from the State-County Special Assistance program within the Division of Social Services to the Division of Medical Assistance and may use those funds as State match to draw down federal matching funds to pay for such activities and costs under Medicaid's personal care services for adult care homes (ACH-PCS), thus maximizing available federal funds. The established rate for State-County Special Assistance set forth in subsections (b) and (c) of this section shall be adjusted by the Department to reflect any transfer of funds from the Division of Social Services to the Division of Medical Assistance and related transfer costs and responsibilities from State-County Special Assistance to the Medicaid personal care services for adult care homes (ACH-PCS). Subject to approval by the Centers for Medicare and Medicaid Services (CMS) and prior to implementing this section, the Department may disregard a limited amount of income for individuals whose countable income exceeds the adjusted State-County Special Assistance rate. The amount of the disregard shall not exceed the difference between the Special Assistance rate prior to the adjustment and the Special Assistance rate after the adjustment and shall be used to pay a portion of the cost of the ACH-PCS and reduce the Medicaid payment for the individual's personal care services provided in an adult care home. In no event shall the reimbursement for services through the ACH-PCS exceed the average cost of the services as determined by the Department from review of cost reports as required and submitted by adult care homes. The Department shall report any transfers of funds and modifications of rates to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.59.(d) The Department of Health and Human Services shall recommend rates for State-County Special Assistance and for Adult Care Home Personal Care Services. The Department may recommend rates based on appropriate cost methodology and cost reports submitted by adult care homes that receive State-County Special Assistance funds and shall ensure that cost reporting is done for State-County Special Assistance and Adult Care Home Personal Care Services to the same standards as apply to other residential service providers.

DHHS BLOCK GRANTS

SECTION 10.60.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2012, according to the following schedule:

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) FUNDS

Local Program Expenditures

Division of Social Services		
01.	Work First Family Assistance	$ 79,840,356
02.	Work First County Block Grants	94,453,315
03.	Work First Electing Counties	2,378,213
04.	Adoption Services – Special Children's Adoption Fund	3,609,355
05.	Family Violence Prevention	2,200,000
06.	Child Protective Services – Child Welfare Workers for Local DSS	14,452,391
07.	Child Welfare Collaborative	754,115
Division of Child Development		
08.	Subsidized Child Care Program	67,439,721
Division of Public Health		
09.	Teen Pregnancy Initiatives	450,000
DHHS Administration		
10.	Division of Social Services	1,093,176
11.	Office of the Secretary	75,392
Transfers to Other Block Grants		
Division of Child Development		
12.	Transfer to the Child Care and Development Fund	82,210,675
13.	Transfer to Social Services Block Grant for Child Protective Services – Child Welfare Training in Counties	1,300,000
14.	Transfer to Social Services Block Grant for Foster Care Services	650,829
15.	Transfer to Social Services Block Grant for Child Protective Services	5,040,000
16.	Transfer to Social Services Block Grant for Adult Protective Services	1,191,925
17.	Transfer to Social Services Block Grant for County Departments of Social Services	375,000
18.	Transfer to Social Services Block Grant for Independent Living Program	1,000,000
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) FUNDS		$ 358,514,463

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS

Local Program Expenditures

Division of Social Services

01.	NC FAST	$ 1,664,936
02.	Work First – Boys and Girls Clubs	2,500,000
03.	Maternity Homes	943,002

Division of Public Health

04.	Teen Pregnancy Initiatives	2,500,000

DHHS Administration

05.	Division of Social Services	1,389,084

TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS $ 8,997,022

SOCIAL SERVICES BLOCK GRANT

Local Program Expenditures

Divisions of Social Services and Aging and Adult Services

01.	County Departments of Social Services	$ 29,288,783
02.	Child Protective Services (Transfer from TANF)	5,040,000
03.	Adult Protective Services (Transfer from TANF)	1,191,925
04.	State In-Home Services Fund	2,101,113
05.	State Adult Day Care Fund	2,155,301
06.	Child Protective Services/CPS Investigative Services-Child Medical Evaluation Program	609,455
07.	Foster Care Services (Transfer from TANF $650,829)	2,147,967
08.	Special Children Adoption Incentive Fund	500,000
09.	Child Protective Services-Child Welfare Training for Counties (Transfer from TANF)	1,300,000
10.	Home and Community Care Block Grant (HCCBG)	1,834,077
11.	Child Advocacy Centers	375,000
11A.	Food Banks	1,000,000

Division of Central Management and Support

12.	ALS Association Jim "Catfish" Hunter Chapter	400,000
	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	
13.	Mental Health Services Program	422,003
14.	Developmental Disabilities Services Program	5,000,000
15.	Mental Health Services-Adult and Child/Developmental Disabilities Program/ Substance Abuse Services-Adult	3,234,601
	Division of Public Health	
16.	Prevent Blindness	150,000
	Division of Vocational Rehabilitation	
17.	Vocational Rehabilitation Services – Easter Seal Society/UCP Community Health Program	188,263
	DHHS Program Expenditures	
	Division of Aging and Adult Services	
18.	UNC-CARES Training Contract	247,920
	Division of Services for the Blind	
19.	Independent Living Program (Transfer from TANF $1,000,000)	4,633,077
20.	Accessible Electronic Information for Blind and Disabled Persons	75,000
	Division of Health Service Regulation	
21.	Adult Care Licensure Program	411,897
22.	Mental Health Licensure and Certification Program	205,668
	DHHS Administration	
23.	Division of Aging and Adult Services	688,436
24.	Division of Social Services	892,624
25.	Office of the Secretary/Controller's Office	138,058
26.	Office of the Secretary/DIRM	87,483
27.	Division of Child Development	15,000
28.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	29,665
29.	Division of Health Service Regulation	235,625

30.	Office of the Secretary-NC Interagency Council for Coordinating Homeless Programs	250,000
31.	Office of the Secretary	48,053

Transfers to Other Block Grants

Division of Public Health

32.	Transfer to Preventive Health Services Block Grant for HIV/STD Prevention and Community Planning	145,819
TOTAL SOCIAL SERVICES BLOCK GRANT		$ 65,042,813

LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT

Local Program Expenditures

Division of Social Services

01.	Low-Income Energy Assistance Program (LIEAP)	$ 11,862,617
02.	Crisis Intervention Program (CIP)	48,569,233
02A.	NC FAST Implementation	4,732,667

Local Administration

Division of Social Services

03.	County DSS Administration	5,604,940

DHHS Administration

04.	Office of the Secretary/DIRM	276,784
05.	Office of the Secretary/Controller's Office	12,332

Transfers to Other State Agencies

Department of Commerce

06.	Weatherization Program	500,000
07.	Heating Air Repair and Replacement Program (HARRP)	4,744,344
08.	Local Residential Energy Efficiency Service Providers – Weatherization	25,000
09.	Local Residential Energy Efficiency Service Providers – HARRP	227,038
10.	Department of Commerce Administration – Weatherization	25,000
11.	Department of Commerce Administration – HARRP	227,038

Department of Administration		
12.	N.C. Commission on Indian Affairs	110,638
TOTAL LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT		$ 76,917,631
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT		
Local Program Expenditures		
Division of Child Development		
01.	Subsidized Child Care Services (CCDF)	$ 151,534,624
02.	Electronic Tracking System	3,336,345
03.	Subsidized Child Care Services (Transfer from TANF)	82,210,675
04.	Quality and Availability Initiatives (TEACH Program $3,800,000)	25,948,434
Division of Social Services		
05.	Local Subsidized Child Care Services Support (4% Administrative Allowance)	16,471,587
DHHS Administration		
Division of Child Development		
06.	DCD Administrative Expenses	6,539,277
Division of Central Administration		
07.	DHHS Central Administration – DIRM' Technical Services	774,317
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT		$ 286,815,255
MENTAL HEALTH SERVICES BLOCK GRANT		
Local Program Expenditures		
01.	Mental Health Services – Adult	$ 6,656,212
02.	Mental Health Services – Child	5,121,991
03.	Administration	100,000
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT		$ 11,878,203
SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT		
Local Program Expenditures		
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services		

01.	Substance Abuse Services – Adult	$ 20,008,541
02.	Substance Abuse Treatment Alternative for Women	8,107,303
03.	Substance Abuse – HIV and IV Drug	5,116,378
04.	Substance Abuse Prevention – Child	7,186,857
05.	Substance Abuse Services – Child	4,940,500
06.	Institute of Medicine	250,000
07.	Administration	250,000
	Division of Public Health	
08.	Risk Reduction Projects	633,980
09.	Aid-to-Counties	209,576
	TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT	$ 46,703,135

MATERNAL AND CHILD HEALTH BLOCK GRANT

	Local Program Expenditures	
	Division of Public Health	
01.	Children's Health Services	$ 8,528,156
02.	Women's Health	8,510,783
03.	Oral Health	42,268
	DHHS Program Expenditures	
	Division of Public Health	
04.	Children's Health Services	1,417,087
05.	Women's Health	136,628
06.	State Center for Health Statistics	164,318
07.	Quality Improvement in Public Health	1,636
08.	Health Promotion	89,374
09.	Office of Minority Health	40,141
	DHHS Administration	
	Division of Public Health	
10.	Division of Public Health Administration	631,966
	TOTAL MATERNAL AND CHILD	

HEALTH BLOCK GRANT	$ 19,562,357

PREVENTIVE HEALTH SERVICES BLOCK GRANT

Local Program Expenditures

Division of Public Health

01.	NC Statewide Health Promotion	$ 1,730,653
02.	Services to Rape Victims	89,152
03.	HIV/STD Prevention and Community Planning (Transfer from Social Services Block Grant)	145,819

DHHS Program Expenditures

Division of Public Health

04.	State Center for Health Statistics	55,040
05.	NC Statewide Health Promotion	947,056
06.	Oral Health	70,000
07.	State Laboratory of Public Health	16,600
08.	Services to Rape Victims	107,960

TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT	$ 3,162,280

COMMUNITY SERVICES BLOCK GRANT

Local Program Expenditures

Office of Economic Opportunity

01.	Community Action Agencies	$ 18,075,488
02.	Limited Purpose Agencies	1,004,194

DHHS Administration

03.	Office of Economic Opportunity	1,004,194

TOTAL COMMUNITY SERVICES BLOCK GRANT	$ 20,083,876

GENERAL PROVISIONS

SECTION 10.60.(b) Information to Be Included in Block Grant Plans. – The Department of Health and Human Services shall submit a separate plan for each Block Grant received and administered by the Department, and each plan shall include the following:

(1) A delineation of the proposed allocations by program or activity, including State and federal match requirements.

(2) A delineation of the proposed State and local administrative expenditures.

(3) An identification of all new positions to be established through the Block Grant, including permanent, temporary, and time-limited positions.

(4) A comparison of the proposed allocations by program or activity with two prior years' program and activity budgets and two prior years' actual program or activity expenditures.

(5) A projection of current year expenditures by program or activity.
(6) A projection of federal Block Grant funds available, including unspent federal funds from the current and prior fiscal years.

SECTION 10.60.(c) Changes in Federal Fund Availability. – If the Congress of the United States increases the federal fund availability for any of the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase proportionally across the program and activity appropriations identified for that Block Grant in this section. In allocating an increase in federal fund availability, the Office of State Budget and Management shall not approve funding for new programs or activities not appropriated in this section.

If the Congress of the United States decreases the federal fund availability for any of the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall develop a plan to adjust the block grants based on reduced federal funding.

Prior to allocating the change in federal fund availability, the proposed allocation must be approved by the Office of State Budget and Management. If the Department adjusts the allocation of any Block Grant due to changes in federal fund availability, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.60.(d) Appropriations from federal Block Grant funds are made for the fiscal year ending June 30, 2012, according to the schedule enacted for State fiscal year 2011-2012 or until a new schedule is enacted by the General Assembly.

SECTION 10.60.(e) All changes to the budgeted allocations to the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations for review prior to implementing the changes. The report shall include an itemized listing of affected programs, including associated changes in budgeted allocations. All changes to the budgeted allocations to the Block Grants shall be reported immediately to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. This subsection does not apply to Block Grant changes caused by legislative salary increases and benefit adjustments.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) FUNDS

SECTION 10.60.(e1) The sum of ninety-four million four hundred fifty-three thousand three hundred fifteen dollars ($94,453,315) appropriated in this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used for Work First County Block Grants. The Division shall certify these funds in the appropriate State level services based on prior year actual expenditures. The Division has the authority to realign the authorized budget for these funds among the State level services based on current year actual expenditures.

SECTION 10.60.(f) The sum of one million ninety-three thousand one hundred seventy-six dollars ($1,093,176) appropriated in this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used to support administration of TANF-funded programs.

SECTION 10.60.(g) The sum of two million two hundred thousand dollars ($2,200,000) appropriated under this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used to provide domestic violence services to Work First recipients. These funds shall be used to provide domestic violence counseling, support, and other direct services to clients. These funds shall not be used to establish new domestic violence shelters or to facilitate lobbying efforts. The Division of Social Services may use up to seventy-five thousand dollars ($75,000) in TANF funds to support one administrative position within the Division of Social Services to implement this subsection.

Each county department of social services and the local domestic violence shelter program serving the county shall develop jointly a plan for utilizing these funds. The plan shall include the services to be provided and the manner in which the services shall be delivered. The county plan shall be signed by the county social services director or the director's designee and the domestic violence program director or the director's designee and submitted to the Division of Social Services by December 1, 2011. The Division of Social Services, in consultation with the Council for Women, shall review the county plans and shall provide consultation and technical assistance to the departments of social services and local domestic violence shelter programs, if needed.

The Division of Social Services shall allocate these funds to county departments of social services according to the following formula: (i) each county shall receive a base allocation of five thousand dollars ($5,000) and (ii) each county shall receive an allocation of the remaining funds based on the county's proportion of the statewide total of the Work First caseload as of July 1, 2011, and the county's proportion of the statewide total of the individuals receiving domestic violence services from programs funded by the Council for Women as of July 1, 2011. The Division of Social Services may reallocate unspent funds to counties that submit a written request for additional funds.

SECTION 10.60.(h) The sum of fourteen million four hundred fifty-two thousand three hundred ninety-one dollars ($14,452,391) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in TANF funds for the 2011-2012 fiscal year for child welfare improvements shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and post-adoption services for eligible families.

SECTION 10.60.(i) The sum of three million six hundred nine thousand three hundred fifty-five dollars ($3,609,355) appropriated in this section in TANF funds to the Department of Health and Human Services, Special Children Adoption Fund, for the 2011-2012 fiscal year shall be used in accordance with G.S. 108A-50.2, as enacted in Section 10.48 of S.L. 2009-451. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

SECTION 10.60.(j) The sum of seven hundred fifty-four thousand one hundred fifteen dollars ($754,115) appropriated in this section to the Department of Health and Human Services in TANF funds for the 2011-2012 fiscal year shall be used to continue support for the Child Welfare Collaborative.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) CONTINGENCY FUNDS

SECTION 10.60.(k) The sum of two million five hundred thousand dollars ($2,500,000) appropriated in this section to the Department in TANF funds for Boys and Girls Clubs for the 2011-2012 fiscal year shall be used to make grants for approved programs. The Department of Health and Human Services, in accordance with federal regulations for the use of TANF Contingency funds, shall administer a grant program to award funds to the Boys and Girls Clubs across the State in order to implement programs that improve the motivation, performance, and self-esteem of youths and to implement other initiatives that would be expected to reduce gang participation, school dropout, and teen pregnancy rates. The Department shall facilitate collaboration between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs and encourage them to submit joint applications for the funds if appropriate.

SECTION 10.60.(l) The sum of one million three hundred eighty-nine thousand eighty-four dollars ($1,389,084) appropriated in this section in TANF Contingency funds to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used to support administration of TANF-funded programs.

SOCIAL SERVICES BLOCK GRANT

SECTION 10.60.(l) The sum of twenty-nine million two hundred eighty-eight thousand seven hundred eighty-three dollars ($29,288,783) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used for County Block Grants. The Division shall certify these funds in the appropriate State level services based on prior year actual expenditures. The Division has the authority to realign the authorized budget for these funds among the State level services based on current year actual expenditures.

SECTION 10.60.(m) The sum of one million three hundred thousand dollars ($1,300,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used to support various child welfare training projects as follows:

(1) Provide a regional training center in southeastern North Carolina.
(2) Provide training for residential child caring facilities.
(3) Provide for various other child welfare training initiatives.

SECTION 10.60.(n) The sum of two million one hundred forty-seven thousand nine hundred sixty-seven dollars ($2,147,967) appropriated in this section in the Social Services Block Grant for child caring agencies for the 2011-2012 fiscal year shall be allocated in support of State foster home children.

SECTION 10.60.(o) The Department of Health and Human Services is authorized, subject to the approval of the Office of State Budget and Management, to transfer Social Services Block Grant funding allocated for departmental administration between divisions that have received administrative allocations from the Social Services Block Grant.

SECTION 10.60.(p) Social Services Block Grant funds appropriated for the Special Children's Adoption Incentive Fund will require a fifty percent (50%) local match.

SECTION 10.60.(q) The sum of four hundred twenty-two thousand three dollars ($422,003) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used to continue a Mental Health Services Program for children.

SECTION 10.60.(r) The sum of five million forty thousand dollars ($5,040,000) appropriated in this section in the Social Services Block Grant for the 2011-2012 fiscal year shall be allocated to the Department of Health and Human Services, Division of Social Services. The Division shall allocate these funds to local departments of social services to replace the loss of Child Protective Services State funds that are currently used by county government to pay for Child Protective Services staff at the local level. These funds shall be used to maintain the number of Child Protective Services workers throughout the State. These Social Services Block Grant funds shall be used to pay for salaries and related expenses only and are exempt from 10A NCAC 71R .0201(3) requiring a local match of twenty-five percent (25%).

SECTION 10.60.(s) The sum of four hundred thousand dollars ($400,000) appropriated in this section in the Social Services Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Central Management and Support, shall be allocated to the ALS Association, Jim "Catfish" Hunter Chapter, to be used to provide patient care and community services to persons with ALS and their families. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.60.(t) The sum of one hundred fifty thousand dollars ($150,000) appropriated in this section in the Social Services Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Public Health, shall be allocated to Prevent Blindness North Carolina to be used for direct service programs. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.60.(u) The sum of seventy-five thousand dollars ($75,000) appropriated in this section in the Social Services Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Services for the Blind, shall be used to provide accessible electronic information for blind and disabled persons. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.60.(v) The sum of three hundred seventy-five thousand dollars ($375,000) appropriated in this section in the Social Services Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Social Services, shall

be used to continue support for the Child Advocacy Centers and are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.60.(w) Social Services Block Grant funds allocated to the North Carolina Inter-Agency Council for 2011-2012 fiscal year for coordinating homeless programs and child medical evaluations are exempt from the provisions of 10A NCAC 71R .0201(3).

LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT

SECTION 10.60.(x) Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Commission on Governmental Operations. Additional funds received shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Commission on Governmental Operations.

SECTION 10.60.(y) The sum of eleven million eight hundred sixty-two thousand six hundred seventeen dollars ($11,862,617) appropriated in this section in the Low-Income Home Energy Assistance Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Social Services, shall be used for energy assistance payments for the households of (i) elderly persons age 60 and above with income up to one hundred thirty percent (130%) of the federal poverty level and (ii) disabled persons eligible for services funded through the Division of Aging and Adult Services. County departments of social services shall submit to the Division of Social Services an outreach plan for targeting households with 60-year-old household members no later than August 1 of each year.

SECTION 10.60.(y1) The sum of four million seven hundred thirty-two thousand six hundred sixty-seven dollars ($4,732,667) appropriated in this section in the Low-Income Home Energy Assistance Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Central Management and Support Division, shall be used to continue the implementation of the NCFAST program. The U.S. Department of Health and Human Services has authorized the use of the LIEAP program service funds to continue the implementation of the NCFAST program. This meets the required participation based on the federally approved cost allocation plan. In order to advance the implementation of NCFAST, which creates a single portal of entry for the Department Health and Human Services programs, these federal funds are critical, otherwise State funds will have to be identified.

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT

SECTION 10.60.(z) Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.60.(aa) If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT

SECTION 10.60.(bb) The sum of two hundred fifty thousand dollars ($250,000) appropriated in this section in the Substance Abuse Prevention and Treatment Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2011-2012 fiscal year for the North Carolina Institute of Medicine (NCIOM) shall be used to continue its Task Force on the mental health, social, and emotional needs of young children and their families. In addition to the issues identified in Section 16.1 of S.L. 2010-152, the Task Force shall study the impact of parents' substance use problems on the mental health and social and emotional well-being of children from conception through age five. The NCIOM shall make an interim report to the General Assembly no later than January 15, 2012, which may include legislative and other recommendations, and shall issue its final report with findings, recommendations, and any proposed legislation to the 2013 General Assembly upon its convening.

MATERNAL AND CHILD HEALTH BLOCK GRANT

SECTION 10.60.(cc) The sum of one million four hundred ninety-seven thousand dollars ($1,497,000) appropriated in this section in the Maternal and Child Health Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Public Health, shall be used to fund the following activities as indicated:

(1) March of Dimes to provide folic acid and education for women before pregnancy to reduce birth defects and infant mortality, the sum of three hundred fifty thousand dollars ($350,000).

(2) Teen Pregnancy Prevention, the sum of six hundred fifty thousand dollars ($650,000).

(3) Healthy Start/Safe Sleep, the sum of two hundred forty-seven thousand dollars ($247,000).

(4) Perinatal Quality Collaborative of North Carolina, the sum of two hundred fifty thousand dollars ($250,000).

SECTION 10.60.(dd) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2011-2012 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an abstinence until marriage education program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4) and (4a). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

SECTION 10.60.(ee) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

PART XI. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

REPEAL BOARD OF AGRICULTURE REVIEW OF FEE SCHEDULES

SECTION 11.2. G.S. 106-6.1(b) is repealed.

RECLASSIFY THREE VACANT POSITIONS WITHIN DACS TO ANIMAL WELFARE PROGRAM

SECTION 11.7. The Department of Agriculture and Consumer Services shall reclassify three vacant positions within the Department and shall fill these reclassified positions in a timely manner in order to provide support for the Animal Welfare Program within the Department.

PART XII. DEPARTMENT OF LABOR

LABOR/REPEAL STATUTE REQUIRING BIENNIAL REVIEW OF FEES BY DEPARTMENT

SECTION 12.1. G.S. 95-14.1 is repealed.

PART XIII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

ABOLISH, TRANSFER TO OTHER DEPARTMENTS, OR CONSOLIDATE WITHIN DENR ALL ENVIRONMENTAL HEALTH PROGRAMS UNDER DENR

SECTION 13.3.(a) The Vector Control Program and the Tick Control Program within the Division of Environmental Health of the Department of Environment and Natural Resources are abolished. Further, any equipment that the State loaned to any local health department as part of the Vector Control Program that is in the possession of the local health department shall be retained by that local health department, and the ownership of that equipment shall be transferred from the State to that local health department.

SECTION 13.3.(b) All functions, powers, duties, and obligations previously vested in the Sleep Products Program within the Public Health Pest Management Section of the Division of Environmental Health of the Department of Environment and Natural Resources are transferred to and vested in the Department of Agriculture and Consumer Services by a Type I transfer, as defined in G.S. 143A-6.

SECTION 13.3.(c) The following sections of the Division of Environmental Health that support programs implemented through local health departments and programs primarily focused on food safety and other public health concerns are, subject to subsection (b) of this section, transferred from the Department of Environment and Natural Resources to the Division of Public Health of the Department of Health and Human Services with all the elements of a Type I transfer, as defined by G.S. 143A-6:

(1) Environmental Health Services Section.
(2) Grade "A" Milk Sanitation Program.
(3) On-Site Water Protection Section.
(4) Office of Education and Training.

SECTION 13.3.(d) All functions, powers, duties, and obligations previously vested in the Radiation Protection Section within the Division of Environmental Health of the Department of Environment and Natural Resources are transferred to and vested in the Division of Health Safety Regulation of the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6.

SECTION 13.3.(e) The Public Water Supply Section of the Division of Environmental Health of the Department of Environment and Natural Resources shall be transferred to the Division of Water Resources of the Department of Environment and Natural Resources with all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 13.3.(f) The Shellfish Sanitation and Recreational Water Quality Section of the Division of Environmental Health of the Department of Environment and Natural Resources shall be transferred to the Division of Marine Fisheries of the Department of Environment and Natural Resources with all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 13.3.(g) The Division of Environmental Health of the Department of Environment and Natural Resources is abolished, and the Public Health Pest Management Section of the Division of Environmental Health of the Department of Environment and Natural Resources is abolished.

SECTION 13.3.(h) G.S. 143B-279.3(c)(3) is repealed.

SECTION 13.3.(i) Part 1 of Article 12 of Chapter 130A of the General Statutes is repealed.

SECTION 13.3.(j) G.S. 143-300.8 reads as rewritten:

"**§ 143-300.8. Defense of local sanitarians.**

Any local health department sanitarian enforcing rules of the Commission for Public Health ~~or of the Environmental Management Commission~~ under the supervision of the Department of ~~Environment and Natural Resources~~Health and Human Services pursuant to G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Public ~~Health or of the Environmental Management Commission.~~Health. The Department of Environment and Natural Resources shall pay any judgment against the sanitarian, or any settlement made on his behalf, subject to the provisions of G.S. 143-300.6."

SECTION 13.3.(k) G.S. 106-143 reads as rewritten:

"**§ 106-143. Article construed supplementary.**

Nothing in this Article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the Commission for Public Health or the Department of Environment and Natural Resources or any local health department in their sanitary work in connection with public and private water supplies, sewerage, meat, milk, milk products, ~~shellfish, finfish,~~ or other foods, or food products, or the production, handling, or processing of these items."

SECTION 13.3.(l) Part 8 of Article 8 of Chapter 130A of the General Statutes is recodified as Article 4H of Chapter 106 of the General Statutes, to be entitled "Bedding"; G.S. 130A-261 is recodified as G.S. 106-65.95; G.S. 130A-262 is recodified as G.S. 106-65.96; G.S. 130A-263 is recodified as G.S. 106-65.97; G.S. 130A-264 is recodified as G.S. 106-65.98; G.S. 130A-265 is recodified as G.S. 106-65.99; G.S. 130A-266 is recodified as G.S. 106-65.100; G.S. 130A-267 is recodified as G.S. 106-65.101; G.S. 130A-268 is recodified as G.S. 106-65.102; G.S. 130A-269 is recodified as G.S. 106-65.103; G.S. 130A-270 is

recodified as G.S. 106-65.104; G.S. 130A-271 is recodified as G.S. 106-65.105; G.S. 130A-272 is recodified as G.S. 106-65.106; and G.S. 130A-273 is recodified as G.S. 106-65.107.

SECTION 13.3.(m) G.S. 106-65.95, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.95. Definitions.**

The following definitions shall apply throughout this ~~Part:~~Article:

...."

SECTION 13.3.(n) G.S. 106-65.96, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.96. Sanitizing.**

(a) No person shall sell any renovated bedding or secondhand bedding unless it is sanitized in accordance with rules adopted by the ~~Commission.~~Board of Agriculture.

(b) A sanitizing apparatus or process shall not be used for sanitizing bedding or material required to be sanitized under this ~~Part~~ Article until the apparatus is approved by the ~~Department.~~Department of Agriculture and Consumer Services.

(c) A person who sanitizes bedding shall attach to the bedding a yellow tag containing information required by the rules of the ~~Commission.~~Board of Agriculture.

(d) A person who sanitizes material or bedding for another person shall keep a complete record of the kind of material and bedding which has been sanitized. The record shall be subject to inspection by the ~~Department.~~Department of Agriculture and Consumer Services.

(e) A person who receives used bedding for renovation or storage shall attach to the bedding a tag on which is legibly written the date of receipt and the name and address of the owner."

SECTION 13.3.(o) G.S. 106-65.98, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.98. Storage of used materials.**

No establishment shall store any unsanitized previously used materials in the same room with bedding or materials that are new or have been sanitized unless the new or sanitized bedding or materials are completely segregated from the unsanitized materials in a manner approved by the rules of the ~~Commission.~~Board of Agriculture."

SECTION 13.3.(p) G.S. 106-65.99, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.99. Tagging requirements.**

(a) A tag of durable material approved by the ~~Commission~~ Board of Agriculture shall be sewed securely to all bedding. The tag shall be at least two inches by three inches in size.

(b) The following shall be plainly stamped or printed upon the tag with ink in English:

(1) The name and kind of material or materials used to fill the bedding which are listed in the order of their predominance;

(2) A registration number obtained from the ~~Department;~~Department of Agriculture and Consumer Services; and

(3) In letters at least one-eighth inch high the words "made of new material", if the bedding contains no previously used material; or the words "made of previously used materials", if the bedding contains any previously used material; or the word "secondhand" on any bedding which has been used but not remade.

(4) Repealed by Session Laws 1987, c. 456, s. 4.

(c) A white tag shall be used for manufactured bedding and a yellow tag for renovated or sanitized bedding.

(d) The tag must be sewed to the outside covering before the filling material has been inserted. No trade name, advertisement nor any other wording shall appear on the tag."

SECTION 13.3.(q) G.S. 106-65.100, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.100. Altering tags prohibited.**

No person, other than one purchasing bedding for personal use or a representative of the Department of Agriculture and Consumer Services shall remove, deface or alter the tag required by this ~~Part.~~Article."

SECTION 13.3.(r) G.S. 106-65.101, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.101. Selling regulated.**

(a) No person shall sell any bedding in this State (whether manufactured within or without this State) which has not been manufactured, tagged, and labeled in the manner required by this ~~Part~~ Article and which does not otherwise comply with the provisions of this ~~Part.~~Article.

(b) This ~~Part~~ Article shall not apply to bedding sold by the owner and previous user from the owner's home directly to a purchaser for the purchaser's own personal use unless the bedding has been exposed to an infectious or communicable disease.

(c) Possession of any bedding in any store, warehouse, itinerant vendor's conveyance or place of business, other than a private home, hotel or other place where these articles are ordinarily used, shall constitute prima facie evidence that the item is possessed with intent to sell. No secondhand bedding shall be possessed with intent to sell for a period exceeding 60 days unless it has been sanitized."

SECTION 13.3.(s) G.S. 106-65.102, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.102. Registration numbers.**

(a) All persons manufacturing or sanitizing bedding in this State or manufacturing bedding to be sold in this State shall apply for a registration number on a form prescribed by the ~~Secretary.~~Commissioner of Agriculture. Upon receipt of the completed application and applicable fees, the Department of Agriculture and Consumer Services shall issue to the applicant a certificate of registration showing the person's name and address, registration number and other pertinent information required by the rules of the ~~Commission.~~Board of Agriculture."

SECTION 13.3.(t) G.S. 106-65.103, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.103. Payment of fees; licenses.**

(c) The Department of Agriculture and Consumer Services shall administer and enforce this ~~Part.~~Article. A person who has done business in this State throughout the preceding calendar year shall obtain a license by paying a fee to the Department of Agriculture and Consumer Services in an amount determined by the total number of bedding units manufactured, sold, or sanitized in this State by the applicant during the calendar year immediately preceding, at the rate of five and two tenths cents (5.2¢) per bedding unit. However, if this amount is less than fifty dollars ($50.00), a minimum fee of fifty dollars ($50.00) shall be paid to the ~~Department.~~Department of Agriculture and Consumer Services.

(d) A person who has not done business in this State throughout the preceding calendar year shall obtain a license by paying an initial fee to the Department of Agriculture and Consumer Services in the amount of seven hundred twenty dollars ($720.00) for the first year in which business is done in this State, prorated in accordance with the quarter of the calendar year in which the person begins doing business. After submission of proof of business volume in accordance with subsection (h) of this section for the part of the preceding calendar year in which the person did business in this State, the Department of Agriculture and Consumer Services shall determine the amount of fee for which the person is responsible for that time period by using a rate of five and two tenths cents (5.2¢) for each bedding unit. However, if this amount is less than fifty dollars ($50.00), then the amount of the fee for which the person is responsible shall be fifty dollars ($50.00). If the person's initial payment is more than the amount of the fee for which the person is responsible, the Department of Agriculture and Consumer Services shall make a refund or adjustment to the cost of the fee due for the next year in the amount of the difference. If the initial payment is less than the amount of the fee for which the person is responsible, the person shall pay the difference to the ~~Department.~~Department of Agriculture and Consumer Services.

(d1) Payments, refunds, and adjustments shall be made in accordance with rules adopted by the ~~Commission.~~Board of Agriculture.

(d2) Upon payment of the fees charged pursuant to subsections (c) and (d), or the first installment thereof as provided by rules adopted by the ~~Commission,~~Board of Agriculture, the Department of Agriculture and Consumer Services shall issue a license to the person. Licenses shall be kept conspicuously posted in the place of business of the licensee at all times. The ~~Secretary~~ Commissioner of Agriculture may suspend a license for a maximum of six months for two or more serious violations of this ~~Part~~ Article or of the rules of the ~~Commission,~~Board of Agriculture within any 12-month period.

(e) A maximum fee of seven hundred fifty dollars ($750.00) shall be charged for units of bedding manufactured in this State but not sold in this State.

(f) For the sole purpose of computing fees for which a person is responsible, the following definitions shall apply: One mattress is defined as one bedding unit; one upholstered spring is defined as one bedding unit; one pad is defined as one bedding unit; one sleeping bag is defined as one bedding unit; five comforters, pillows or decorative pillows are defined as one bedding unit; and any other item is defined as one bedding unit.

(g) An application for license must be submitted on a form prescribed by the ~~Secretary.~~Commissioner of Agriculture. No license may be issued to a person unless the person complies with the rules of the ~~Commission~~ Board of Agriculture governing the granting of licenses.

(h) The ~~Commission~~ Board of Agriculture shall adopt rules for the proper enforcement of this section. The rules shall include provisions governing the type and amount of proof which must be submitted by the applicant to the Department of Agriculture and Consumer Services in order to establish the number of bedding units that were, during the preceding calendar year:

(1) Manufactured and sold in this State;
(2) Manufactured outside of this State and sold in this State; and
(3) Manufactured in this State but not sold in this State.

(i) The ~~Commission~~ Board of Agriculture may provide in its rules for additional proof of the number of bedding units sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer is incomplete, misleading or incorrect."

SECTION 13.3.(u) G.S. 106-65.104, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.104. Bedding Law Account.**

The Bedding Law Account is established as a nonreverting account within the ~~Department.~~Department of Agriculture and Consumer Services. All fees collected under this ~~Part~~ Article shall be credited to the Account and applied to the following costs:

(1) Salaries and expenses of inspectors and other employees who enforce this ~~Part.~~Article.
(2) Expenses directly connected with the enforcement of this ~~Part,~~Article, including attorney's fees, which are expressly authorized to be incurred by the ~~Secretary~~ Commissioner of Agriculture without authority from any other source when in the ~~Secretary's opinion~~opinion of the Commissioner of Agriculture it is advisable to employ an attorney to prosecute any persons."

SECTION 13.3.(v) G.S. 106-65.105, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.105. Enforcement by the ~~Department.~~Department of Agriculture and Consumer Services.**

(a) The Department of Agriculture and Consumer Services shall enforce the provisions of this ~~Part~~ Article and the rules adopted by the ~~Commission.~~Board of Agriculture.

(b) The ~~Secretary~~ Commissioner of Agriculture may prohibit sale and place an "off sale" tag on any bedding which is not made, sanitized, or tagged as required by this ~~Part~~ Article and the rules of the ~~Commission.~~Board of Agriculture. The bedding shall not be sold or otherwise removed until the violation is remedied and the ~~Secretary~~ Commissioner of Agriculture has reinspected it and removed the "off sale" tag.

(c) A person supplying material to a bedding manufacturer shall furnish an itemized invoice of all furnished material. Each material entering into willowed or other mixtures shall be shown on the invoice. The bedding manufacturer shall keep the invoice on file for one year subject to inspection by the ~~Department.~~Department of Agriculture and Consumer Services.

(d) When the ~~Secretary~~ Commissioner of Agriculture has reason to believe that bedding is not tagged or filled as required by this ~~Part,~~Article, the ~~Secretary~~ Commissioner of Agriculture shall have authority to open a seam of the bedding to examine the filling, and, if unable after this examination to determine if the filling is of the kind stated on the tag, shall have the authority to examine purchase or other records necessary to determine definitely the kind of material used in the bedding. The ~~Secretary~~ Commissioner of Agriculture shall have authority to seize and hold for evidence any records and any bedding or bedding material which in the ~~Secretary's opinion~~opinion of the Commissioner of Agriculture is made, possessed or offered for sale in violation of this ~~Part~~ Article or the rules of the ~~Commission.~~Board of

Agriculture. The ~~Secretary~~ Commissioner of Agriculture shall have authority to take a sample of any bedding or bedding material for the purpose of examination or for evidence."

SECTION 13.3.(w) G.S. 106-65.106, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.106. Exemptions for blind persons and State institutions.**

(a) In cases where bedding is manufactured, sanitized or renovated in a plant or place of business which has qualified as a nonprofit agency for the blind or severely handicapped under P.L. 92-28, as amended, the responsible person shall satisfy the provisions of this ~~Part~~ Article and the rules of the ~~Commission.~~Board of Agriculture. However, the responsible persons at these plants or places of business shall not be required to pay fees in accordance with ~~G.S. 130A-269.~~G.S. 106-65.103.

(b) State institutions engaged in the manufacture, renovation or sanitizing of bedding for their own use or that of another State institution are exempted from all provisions of this ~~Part.~~Article."

SECTION 13.3.(x) G.S. 106-65.107, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-65.107. Rules.**

The ~~Commission~~ Board shall adopt rules required by this ~~Part~~ Article in order to protect the public health."

SECTION 13.3.(y) G.S. 90A-51 reads as rewritten:

"**§ 90A-51. Definitions.**

The words and phrases defined below shall when used in this Article have the following meaning unless the context clearly indicates otherwise:

...

(2a) "Environmental health practice" means the provision of environmental health services, including administration, organization, management, education, enforcement, and consultation regarding environmental health services provided to or for the public. These services are offered to prevent environmental hazards and promote and protect the health of the public in the following areas: food, lodging, and institutional sanitation; on-site wastewater treatment and disposal; ~~milk and dairy sanitation; shellfish sanitation; recreational water quality;~~ public swimming pool sanitation; childhood lead poisoning prevention; well permitting and inspection; tattoo parlor sanitation; and all other areas of environmental health requiring the delegation of authority by the Division of ~~Environmental~~ Public Health of the Department of Health and Human Services to State and local environmental health professionals to enforce rules adopted by the Commission for Public ~~Health or the Environmental Management Commission.~~Health. The definition also includes local environmental health professionals enforcing rules of local boards of health for on-site wastewater systems and wells.

...."

SECTION 13.3.(z) G.S. 90A-55(a) reads as rewritten:

"(a) Board Membership. – The Board shall consist of 12 members who shall serve staggered terms: the Secretary of ~~Environment and Natural Resources,~~Health and Human Services, or the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Division of ~~Environmental~~ Public Health of the Department of ~~Environment and Natural Resources,~~Health and Human Services, and seven practicing environmental health specialists who qualify by education and experience for registration under this Article, six of whom shall represent the Western, Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board."

SECTION 13.3.(aa) G.S. 90A-55(c) reads as rewritten:

"(c) The Environmental Health Section of the North Carolina Public Health Association, Inc., shall submit a recommended list of Board member candidates to the Governor for the Governor's consideration in appointments, except for the two representatives of the Department of ~~Environment and Natural Resources~~Health and Human Services recommended by the Secretary of ~~Environment and Natural Resources~~Health and Human Services and the local health director recommended by the North Carolina Local Health Directors Association."

SECTION 13.3.(bb) G.S. 90A-71(4) reads as rewritten:

"(4) "Department" means the Department of ~~Environment and Natural Resources.~~Health and Human Services."

SECTION 13.3.(cc) G.S. 90A-73(a)(3) reads as rewritten:

"(3) One member appointed by the Governor who is ~~an employee of the Division of Environmental Health of the Department~~a registered professional engineer licensed under Chapter 89C of the General Statutes and whose work experience includes the design of on-site wastewater systems to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three."

SECTION 13.3.(dd) G.S. 90A-81(b) reads as rewritten:

"(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certified contractor or inspector or any work performed by a certified contractor or inspector, or conflicts involving any certified contractor or inspector and the Division of ~~Environmental~~ Public Health of the Department or a local health department."

SECTION 13.3.(ee) G.S. 106-307.2(b) reads as rewritten:

"(b) The State Veterinarian shall notify the State Health Director and the Director of the Division of ~~Environmental~~ Public Health in the Department of ~~Environment and Natural Resources~~Health and Human Services when the State Veterinarian receives a report indicating an occurrence or potential outbreak of anthrax, arboviral infections, brucellosis, epidemic typhus, hantavirus infections, murine typhus, plague, psittacosis, Q fever, hemorrhagic fever, virus infections, and any other disease or condition transmissible to humans that the State Veterinarian determines may have been caused by a terrorist act."

SECTION 13.3.(ff) G.S. 130A-4(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of ~~Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter and the rules of the Commission."

SECTION 13.3.(gg) G.S. 130A-12 reads as rewritten:

"**§ 130A-12. Confidentiality of records.**

All records containing privileged patient medical information, information protected under 45 Code of Federal Regulations Parts 160 and 164, and information collected under the authority of Part 4 of Article 5 of this Chapter that are in the possession of the Department of Health and Human ~~Services, the Department of Environment and Natural Resources,~~Services or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Information contained in the records may be disclosed only when disclosure is authorized or required by State or federal law. Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment, payment, or health care operations. For purposes of this section, the terms "treatment," "payment," and "health care operations" have the meanings given those terms in 45 Code of Federal Regulations § 164.501."

SECTION 13.3.(hh) G.S. 130A-17(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of ~~Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter."

SECTION 13.3.(ii) G.S. 130A-18(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of ~~Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter."

SECTION 13.3.(jj) G.S. 130A-19(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of ~~Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter."

SECTION 13.3.(kk) G.S. 130A-20(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of ~~Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter."

SECTION 13.3.(ll) G.S. 130A-21(a) reads as rewritten:

"(a) In addition to the authority of the Department of Agriculture and Consumer Services pursuant to G.S. 106-125, the Secretary ~~of Environment and Natural Resources~~ or a local health

director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when the food or drink is in an establishment that is subject to regulation by the Department of ~~Environment and Natural Resources~~Health and Human Services pursuant to this Chapter, that is subject to rules adopted by the Commission, or that is the subject of an investigation pursuant to G.S. 130A-144; however, no such action shall be taken in any establishment or part of an establishment that is under inspection or otherwise regulated by the Department of Agriculture and Consumer Services or the United States Department of Agriculture other than the part of the establishment that is subject to regulation by the Department of ~~Environment and Natural Resources~~Health and Human Services pursuant to this Chapter. Any action under this section shall only be taken by, or after consultation with, Department of ~~Environment and Natural Resources~~Health and Human Services regional environmental health specialists, or the Director of the Division of ~~Environmental~~ Public Health or the Director's designee, in programs regulating food and drink pursuant to this Chapter or in programs regulating food and drink that are subject to rules adopted by the Commission. Authority under this section shall not be delegated to individual environmental health specialists in local health departments otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When any action is taken pursuant to this section, the Department of ~~Environment and Natural Resources~~Health and Human Services or the local health director shall immediately notify the Department of Agriculture and Consumer Services. For the purposes of this subsection, all duties and procedures in G.S. 106-125 shall be carried out by the Secretary of ~~the Department of Environment and Natural Resources~~Health and Human Services or the local health director and shall not be required to be carried out by the Department of Agriculture and Consumer Services. It shall be unlawful for any person to remove or dispose of the food or drink by sale or otherwise without the permission of a Department of ~~Environment and Natural Resources~~Health and Human Services regional environmental health specialist, the Director of the Division of ~~Environmental~~ Public Health or the Director's designee, the local health director, or a duly authorized agent of the Department of Agriculture and Consumer Services, or by the court in accordance with the provisions of G.S. 106-125."

SECTION 13.3.(mm) G.S. 130A-21(d) reads as rewritten:

"(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture and Consumer Services. The Department of ~~Environment and Natural Resources~~Health and Human Services and the Department of Agriculture and Consumer Services are authorized to enter agreements respecting the duties and responsibilities of each agency in the exercise of their embargo authority."

SECTION 13.3.(nn) G.S. 130A-22(c) reads as rewritten:

"(c) The Secretary ~~of Environment and Natural Resources~~ may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling."

SECTION 13.3.(oo) G.S. 130A-23(e) reads as rewritten:

"(e) The Secretary of Environment and Natural Resources shall have all of the applicable rights enumerated in this section to enforce the provisions of ~~Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter."

SECTION 13.3.(pp) G.S. 130A-34.1(a) reads as rewritten:

"(a) The Local Health Department Accreditation Board is established within the North Carolina Institute for Public Health. The Board shall be composed of 17 members appointed by the Secretary of the Department of Health and Human Services as follows:

(1) Four shall be county commissioners recommended by the North Carolina Association of County Commissioners, and four shall be members of a local

board of health as recommended by the Association of North Carolina Boards of Health.

(2) Three local health directors.

(3) ~~Two~~ Three staff members from the Division of Public Health, Department of Health and Human Services.

~~(4) One staff member from the Division of Environmental Health, recommended by the Secretary of Environment and Natural Resources.~~

(5) Three at large."

SECTION 13.3.(qq) G.S. 130A-227(b) reads as rewritten:

"(b) The following definitions shall apply throughout this Article:

(1) "Department" means the Department of ~~Environment and Natural Resources.~~Health and Human Services.

(2) "Secretary" means the Secretary of ~~Environment and Natural Resources.~~Health and Human Services."

SECTION 13.3.(rr) G.S. 130A-21(b) reads as rewritten:

"(b) If the Secretary ~~of Environment and Natural Resources~~ or a local health director has probable cause to believe that any milk designated as Grade "A" milk is misbranded or does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the Secretary ~~of Environment and Natural Resources~~ or a local health director may detain or embargo the milk by affixing a tag to it and warning all persons not to remove or dispose of the milk until permission for removal or disposal is given by the official by whom the milk was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed milk without that permission."

SECTION 13.3.(ss) G.S. 130A-334(1a) reads as rewritten:

"(1a) "Department" means the Department of ~~Environment and Natural Resources.~~Health and Human Services."

SECTION 13.3.(tt) G.S. 104E-5 reads as rewritten:

"**§ 104E-5. Definitions.**

Unless a different meaning is required by the context, the following terms as used in this Chapter shall have the meanings hereinafter respectively ascribed to them:

...

(6) "Department" means the ~~State Department of Environment and Natural Resources.~~Department of Health and Human Services.

...."

SECTION 13.3.(uu) G.S. 104E-8(c) reads as rewritten:

"(c) The 10 ex officio members shall be appointed by the Governor, shall be members or employees of the following State agencies or their successors, and shall serve at the Governor's pleasure:

...

(6) The Division of ~~Environmental~~ Health Safety Regulation of the Department.

...."

SECTION 13.3.(vv) G.S. 104E-9 reads as rewritten:

"**§ 104E-9. Powers and functions of Department of ~~Environment and Natural Resources.~~ Health and Human Services.**

(a) The Department of ~~Environment and Natural Resources~~Health and Human Services is authorized:

...

(b) The Division of ~~Environmental~~ Health Safety Regulation of the Department shall develop a training program for tanning equipment operators that meets the training rules adopted by the Commission. If the training program is provided by the Department, the Department may charge each person trained a reasonable fee to recover the actual cost of the training program."

SECTION 13.3.(ww) G.S. 120-70.33(3) reads as rewritten:

"**§ 120-70.33. Powers and duties.**

The Joint Select Committee shall have the following powers and duties:

...

(3) To evaluate actions of the Radiation Protection Commission, the radiation protection programs administered by the Division of ~~Environmental~~ Health Safety Regulation of the Department of ~~Environment and Natural~~

~~Resources,~~Health and Human Services, and of any other board, commission, department, or agency of the State or local government as such actions relate to low-level radioactive waste management;

...."

SECTION 13.3.(xx) G.S. 159G-20 reads as rewritten:

"**§ 159G-20. Definitions.**

The following definitions apply in this Chapter:

...

~~(4) Division of Environmental Health. – The Division of Environmental Health of the Department of Environment and Natural Resources.~~

(5) Division of Water Quality. – The Division of Water Quality of the Department of Environment and Natural Resources.

(5a) Division of Water Resources. – The Division of Water Resources of the Department of Environment and Natural Resources.

...."

SECTION 13.3.(yy) G.S. 159G-23 reads as rewritten:

"**§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking Water Reserve.**

The criteria in this section apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Division of Water Quality and the Division of ~~Environmental Health~~Water Resources must each establish a system of assigning points to applications based on the following criteria:

...."

SECTION 13.3.(zz) G.S. 159G-26(a) reads as rewritten:

"(a) Requirement. – The Department must publish a report each year on the accounts in the Water Infrastructure Fund that are administered by the Division of Water Quality or the Division of ~~Environmental Health.~~Water Resources. The report must be published by 1 November of each year and cover the preceding fiscal year. The Department must make the report available to the public and must give a copy of the report to the Environmental Review Commission and the Fiscal Research Division of the General Assembly."

SECTION 13.3.(aaa) G.S. 159G-30 reads as rewritten:

"**§ 159G-30. Department's responsibility.**

The Department, through the Division of Water Quality and the Division of ~~Environmental Health,~~Water Resources, administers loans and grants made from the CWSRF, the DWSRF, the Wastewater Reserve, and the Drinking Water Reserve. The Division of Water Quality administers loans and grants from the CWSRF and the Wastewater Reserve. The Division of ~~Environmental Health~~Water Resources administers loans and grants from the DWSRF and the Drinking Water Reserve."

SECTION 13.3.(bbb) G.S. 159G-37 reads as rewritten:

"**§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water Reserve.**

An application for a loan or grant from the CWSRF or the Wastewater Reserve must be filed with the Division of Water Quality of the Department. An application for a loan or grant from the DWSRF or the Drinking Water Reserve must be filed with the Division of ~~Environmental Health~~Water Resources of the Department. An application must be submitted on a form prescribed by the Division and must contain the information required by the Division. An applicant must submit to the Division any additional information requested by the Division to enable the Division to make a determination on the application. An application that does not contain information required on the application or requested by the Division is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this Article."

SECTION 13.3.(ccc) G.S. 159G-38(b) reads as rewritten:

"(b) Division Review. – If, after reviewing an application, the Division of Water Quality or the Division of ~~Environmental Health,~~Water Resources, as appropriate, determines that a project requires an environmental assessment, the assessment must be submitted before the Division continues its review of the application. If, after reviewing an environmental assessment, the Division concludes that an environmental impact statement is required, the Division may not continue its review of the application until a final environmental impact

statement has been completed and approved as provided in the North Carolina Environmental Policy Act."

SECTION 13.3.(ddd) G.S. 159G-38(c) reads as rewritten:

"(c) Hearing. – The Division of Water Quality or the Division of ~~Environmental Health,~~Water Resources, as appropriate, may hold a public hearing on an application for a loan or grant under this Article if it determines that holding a hearing will serve the public interest. An individual who is a resident of any county in which a proposed project is located may submit a written request for a public hearing. The request must set forth each objection to the proposed project or other reason for requesting a hearing and must include the name and address of the individual making the request. The Division may consider all written objections to the proposed project, any statement submitted with the hearing request, and any significant adverse effects the proposed project may have on the environment. The Division's decision on whether to hold a hearing is conclusive. The Division must keep all written requests for a hearing on an application as part of the records pertaining to the application."

SECTION 13.3.(eee) G.S. 159G-39(a) reads as rewritten:

"(a) Point Assignment. – The Division of Water Quality or the Division of ~~Environmental Health,~~Water Resources, as appropriate, must review all applications filed for a loan or grant under this Article for an application period. The Division must rank each application in accordance with the points assigned to the evaluation criteria. The Division must make a written determination of an application's rank and attach the determination to the application. The Division's determination of rank is conclusive."

SECTION 13.3.(fff) G.S. 166A-6.1(b) reads as rewritten:

"(b) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Crime Control and Public Safety, for the use of the ~~Division of Environmental Health of the Department of Environment and Natural Resources,~~Radiation Protection Section of the Division of Public Health of the Department of Health and Human Services, an annual fee of thirty-six thousand dollars ($36,000) for each fixed nuclear facility that is located within this State or that has a Plume Exposure Pathway Emergency Planning Zone any part of which is located within this State. This fee shall be applied only to the costs of planning and implementing emergency response activities as required by the Federal Emergency Management Agency for the operation of nuclear facilities. This fee is to be paid no later than July 31 of each year."

SECTION 13.3.(ggg) Part 3 of Article 8 of Chapter 130A of the General Statutes is repealed, except G.S. 130A-230 is recodified as G.S. 113-221.2 in Article 17 of Chapter 113 of the General Statutes.

SECTION 13.3.(hhh) G.S. 113-221.2, as recodified in subsection (ggg) of this section, reads as rewritten:

"**§ 113-221.2. ~~Commission to adopt rules; enforcement of rules.~~Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea.**

For the protection of the public health, the Marine Fisheries Commission shall adopt rules establishing sanitation requirements for the harvesting, processing and handling of scallops, ~~shellfish~~ shellfish, and crustacea of in-State origin. The rules of the Marine Fisheries Commission may also regulate scallops, ~~shellfish~~ shellfish, and crustacea shipped into North Carolina. The Department is authorized to enforce the rules and may issue and revoke permits according to the rules."

SECTION 13.3.(iii) Part 3A of Article 8 of Chapter 130A of the General Statutes is repealed, except G.S. 130A-233.1 is recodified as G.S. 113-221.3 in Article 17 of Chapter 113 of the General Statutes.

SECTION 13.3.(jjj) G.S. 113-221.3, as recodified in subsection (iii) of this section, reads as rewritten:

"**§ 113-221.3. Monitoring program for State coastal fishing and recreation waters; ~~development and implementation of program.~~removal or destruction of warning signs.**

(a) For the protection of the public health of swimmers and others who use the State's coastal fishing waters for recreational activities, the Department shall develop and implement a program to monitor the State's coastal fishing waters for contaminants. The monitoring program shall cover all coastal fishing waters up to the point where those waters are classified as inland fishing waters.

(b) The Marine Fisheries Commission shall adopt rules to provide for a water quality monitoring program for the coastal recreation waters of the State and to allow the Department to implement the federal Beaches Environmental Assessment and Coastal Health Act of 2000 (Pub. L. No. 106-284; 114 Stat. 870, 875; 33 U.S.C. §§ 1313, 1362). The rules shall address, but are not limited to, definitions, surveys, sampling, action standards, and posting of information on the water quality of coastal recreation waters.

(c) No person shall remove, destroy, damage, deface, mutilate, or otherwise interfere with any sign posted by the Department pursuant to subsection (b) of this section. No person, without just cause or excuse, shall have in his or her possession any sign posted by the Department pursuant to subsection (b) of this section. Any person who violates this section is guilty of a Class 2 misdemeanor.

(d) As used in this section, coastal recreation waters has the same meaning as in 33 U.S.C. § 1362."

SECTION 13.3.(kkk) G.S. 130A-21(c) is recodified as a new section G.S. 113-221.4 in Article 17 of Chapter 113 of the General Statutes to be entitled "Embargo."

SECTION 13.3.(lll) G.S. 113-221.4, as recodified in subsection (kkk) of this section, reads as rewritten:

"**§ 113-221.4. Embargo.**

(a) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any scallops, ~~shellfish~~ shellfish, or crustacea is adulterated or misbranded, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the article by affixing a tag to it and warning all persons not to remove or dispose of the article until permission for removal or disposal is given by the official by whom it was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed article without that permission.

(b) The official by whom the scallops, ~~shellfish~~ shellfish, or crustacea was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the court finds that the article is adulterated or misbranded, that article shall be destroyed under the supervision of the petitioner. All court costs and fees, storage and other expense shall be taxed against the claimant of the article. If, the article, by proper labelling can be properly branded, the court, after the payment of all costs, fees, expenses, and an adequate bond, may order that the article be delivered to the claimant for proper labelling under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court that the article is no longer mislabelled and that the expenses of supervision have been paid."

SECTION 13.3.(mmm) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

SECTION 13.3.(nnn) The transfers under this section become effective July 1, 2011, and funds transferred shall be net of any changes enacted by this section. Any references in this act to any program, office, section, division, or department that is transferred under this section shall be construed to be consistent with the transfer under this section.

REQUIRE DENR TO USE DWQ'S GROUNDWATER INVESTIGATION UNIT'S WELL DRILLING SERVICES IN OTHER DENR DIVISIONS

SECTION 13.4.(a) The purposes of this section are (i) to assure that the Groundwater Investigation Unit well drilling staff are fully utilized by establishing a procedure whereby the Groundwater Investigation Unit may bid to contract to provide well drilling services to other divisions of the Department of Environment and Natural Resources and by providing funding support by these divisions for the Unit's costs and travel expenses and (ii) to reduce the need for the Department of Environment and Natural Resources to enter into contracts with private well drilling companies.

SECTION 13.4.(b) During the 2011-2012 fiscal year and the 2012-2013 fiscal year, the Groundwater Investigation Unit of the Division of Water Quality of the Department of Environment and Natural Resources shall bid to contract to perform well drilling services for any division within the Department of Environment and Natural Resources that needs to have wells drilled to monitor groundwater, as part of remediating a contaminated site, or as part of any other division or program responsibility, except for a particular instance when this would

be impracticable. The provisions of Article 3 of Chapter 143 of the General Statutes apply to any contract entered into under this section.

SECTION 13.4.(c) The terms of any contract entered into under this section may include a provision whereby the division within the Department of Environment and Natural Resources that contracts for the well drilling services of the Groundwater Investigation Unit may use available receipts for the 2011-2012 fiscal year and for the 2012-2013 fiscal year, as applicable, for the costs of the Groundwater Investigation Unit well drilling staff that are incurred to perform the well drilling services under the contract.

DENR CIVIL PENALTY ASSESSMENTS

SECTION 13.6. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.16. Civil penalty assessments.**

(a) The purpose of this section is to provide to the person receiving a notice of violation of an environmental statute or an environmental rule a greater opportunity to understand what corrective action is needed, receive technical assistance from the Department of Environment and Natural Resources, and to take the needed corrective action. It is also the purpose of this section to provide to the person receiving the notice of violation a greater opportunity for informally resolving matters involving any such violation.

(b) In order to fulfill the purpose set forth in subsection (a) of this section, the Department of Environment and Natural Resources shall, effective July 1, 2011, extend the period of time by 10 days between the time the violator is sent a notice of violation of an environmental statute or an environmental rule and the subsequent date the violator is sent an assessment of the civil penalty for the violation."

WATER AND AIR QUALITY ACCOUNT REVERTS

SECTION 13.7. G.S. 143-215.3A(a) reads as rewritten:

"(a) The Water and Air Quality Account is established as ~~a nonrevertingan~~ account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. 105-449.43, G.S. 105-449.125, and G.S. 105-449.136 shall be used to administer the air quality program. Any funds credited to the Account from fees collected for laboratory facility certifications under G.S. 143-215.3(a)(10) that are not expended at the end of each fiscal year for the purposes for which these fees may be used under G.S. 143-215.3(a)(10) shall revert. Any other funds credited to the Account that are not expended at the end of each fiscal year shall not revert. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

(1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.
(2) Fees credited to the Title V Account.
(3) Repealed by Session Laws 2005-454, s. 7, effective January 1, 2006.
(4) Fees collected under G.S. 143-215.28A.
(5) Fees collected under G.S. 143-215.94C shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund."

CHANGE EFFECTIVE DATE REGARDING WELL TESTING

SECTION 13.10. Section 4 of S.L. 2009-124 reads as rewritten:

"**SECTION 4.** Section 1 of this act becomes effective October 1, ~~2010.~~2012. The remainder of the act is effective when it becomes law."

FUNDS FOR CLEANUP AND MONITORING OF TEXFI SITE CONTAMINATION

SECTION 13.10A. Reduce the operating expenditures of the Solid Waste Management Trust Fund by the sum of fifty thousand dollars ($50,000) for the 2011-2012 fiscal year and provide funding in the sum of fifty thousand dollars ($50,000) to be used for the 2011-2012 fiscal year for the cleanup and monitoring of the groundwater and other contamination located at the Texfi site in Fayetteville and for any emergency cleanup activities needed at that site.

FUNDS FOR RECYCLING PROGRAMS FOR PRODUCTS THAT CONTAIN MERCURY

SECTION 13.10B.(a) Effective July 1, 2011, until December 31, 2017, G.S. 130A-310.54 reads as rewritten:

"**§ 130A-310.54. Mercury ~~Switch Removal Account.~~Pollution Prevention Fund.**

(a) The Mercury ~~Switch Removal Account~~Pollution Prevention Fund is established in the Department. Revenue is credited to the ~~Account~~ Fund from the certificate of title fee under G.S. 20-85.

(b) Revenue in the Mercury ~~Switch Removal Account~~Pollution Prevention Fund shall be used ~~to~~ for the following purposes:

(1) To reimburse the Department and others for costs incurred in implementing the mercury switch removal program.

(2) To establish and implement recycling programs for products containing mercury, including at least recycling programs for light bulbs and thermostats.

(b1) The reimbursable costs under subdivision (1) of subsection (b) of this section are:

(1) Five dollars ($5.00) for each mercury switch removed by a vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility pursuant to this Article and sent to destination facilities in accordance with the NVMSRP for recycling or disposal.

(2) Costs incurred by the Department in administering the program.

(c) The Department shall reimburse vehicle crushers, vehicle dismantlers, vehicle recyclers, and scrap vehicle processing facilities based on a reimbursement request that attests to the number of switches sent to destination facilities for recycling or disposal in accordance with the NVMSRP. Each reimbursement request shall be verified against information posted on the Internet site provided by the vehicle manufacturers in accordance with the NVMSRP, or against other information that verifies the reimbursement requested to the satisfaction of the Department. The vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall provide the Department with any information requested by the Department to verify the accuracy of a reimbursement request. Each vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall maintain accurate records that support each reimbursement request for a minimum of three years from the date the reimbursement request is approved."

SECTION 13.10B.(b) Effective December 31, 2017, G.S. 130A-310.54, as amended by Sections 4 and 9 of S.L. 2007-142, reads as rewritten:

"**§ 130A-310.54. Funds to implement plan.**

(a) The Mercury Pollution Prevention ~~Account~~ Fund is established in the Department. Revenue is credited to the ~~Account~~ Fund from the certificate of title fee under G.S. 20-85.

(b) Revenue in the Mercury Pollution Prevention ~~Account~~ Fund shall be used ~~to~~ for the following purposes:

(1) To reimburse the Department and others for costs incurred in implementing the mercury minimization plan.

(2) To establish and implement recycling programs for products containing mercury, including at least recycling programs for light bulbs and thermostats.

(b1) The reimbursable costs under subdivision (1) of subsection (b) of this section are:

(1) Five dollars ($5.00) for each mercury switch removed by a vehicle recycler or scrap metal recycling facility pursuant to this Article.

(2) Costs incurred by the Department in administering the plan.

(c) The Department shall reimburse vehicle recyclers and scrap metal recycling facilities based on the quarterly reports submitted under G.S. 130A-310.53. The Department may request any information needed to determine the accuracy of the reports."

FUNDS FOR DENR STUDY OF ONSHORE SHALE GAS RESOURCES IN NC

SECTION 13.10D. Notwithstanding any other provision of this act, if Senate Bill 709, 2011 Regular Session becomes law, the Department of Environment and Natural Resources shall, notwithstanding the provisions of G.S. 130A-310.54, use one hundred thousand dollars ($100,000) from the Mercury Switch Removal Account for the 2011-2012

fiscal year to study the issue of onshore shale gas resources in the State as provided in Senate Bill 709.

REPEAL DENR REVIEW OF FEE SCHEDULES

SECTION 13.11. G.S. 143B-279.2(4) is repealed.

DWSRF LOANS AND GRANTS TO INVESTOR-OWNED DRINKING WATER CORPORATIONS

SECTION 13.11A.(a) G.S. 159G-20 reads as rewritten:

"**§ 159G-20. Definitions.**

The following definitions apply in this Chapter:

...

(10a) Investor-owned drinking water corporation. – A corporation owned by investors and incorporated solely for the purpose of providing drinking water services for profit.

...."

SECTION 13.11A.(b) G.S. 159G-31 reads as rewritten:

"**§ 159G-31. Entities eligible to apply for loan or grant.**

A local government unit or a nonprofit water corporation is eligible to apply for a loan or grant from the CWSRF, the DWSRF, the Wastewater Reserve, or the Drinking Water Reserve. An investor-owned drinking water corporation is also eligible to apply for a loan or grant from the DWSRF. Other entities are not eligible for a loan or grant from these accounts."

SECTION 13.11A.(c) G.S. 159G-40 reads as rewritten:

"**§ 159G-40. Terms of loan and execution of loan documents.**

(a) Approval by Local Government Commission. – The Department may not award a loan under this Article unless the Local Government Commission approves the award of the loan and the terms of the loan. The terms of a loan awarded from the CWSRF and the DWSRF must be consistent with federal law. In reviewing a proposed loan to a local government unit, the Local Government Commission must consider the loan as if it were a bond proposal and review the proposed loan in accordance with the factors set out in G.S. 159-52 for review of a proposed bond issue. The Local Government Commission must review a proposed loan to a nonprofit water corporation and to an investor-owned drinking water corporation in accordance with the factors set out in G.S. 159-153.

...

(d) Debt Instrument. – A local government ~~unit and~~unit, a nonprofit water ~~corporation~~ corporation, and an investor-owned drinking water corporation may execute a debt instrument payable to the State to evidence an obligation to repay the principal of and interest on a loan awarded under this Article. The Treasurer, with the assistance of the Local Government Commission, must develop debt instruments for use by local government ~~units and~~units, nonprofit water ~~corporations~~ corporations, and investor-owned drinking water corporations under this section. The Local Government Commission must develop procedures for loan recipients to deliver debt instruments to the State without public bidding."

SECTION 13.11A.(d) G.S. 159G-43(b) reads as rewritten:

"(b) Disqualification. – An individual may not perform an inspection of a project under this section if the individual meets any of the following criteria:

(1) Is an officer or employee of the local government ~~unit or~~unit, nonprofit water ~~corporation~~ corporation, or investor-owned drinking water corporation that received the loan or grant award for the project.

(2) Is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan or grant was made."

SECTION 13.11A.(e) G.S. 159-153 is amended by adding a new subsection to read:

"(a2) Investor-Owned Drinking Water Corporation. – A loan from the DWSRF, an account within the Water Infrastructure Fund, to an investor-owned drinking water corporation, as defined in G.S. 159G-20, is subject to approval by the Commission under this section."

REGULATORY REFORM FOR DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF LABOR, AND DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

SECTION 13.11B.(a) Article 1 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-14.2. Limitation on rule-making authority.**

(a) Federal Analog. – The Department may not adopt a rule that imposes a more restrictive standard or limitation than those imposed by federal law or rule if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is permitted by this subsection. It is the intent of the General Assembly that the standards and limitations adopted by the Department shall be no more restrictive than the most nearly applicable federal standards and limitations. Adoption of a rule with more restrictive standards or limitations is permitted to respond to at least one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) An act of the General Assembly or United States Congress that expressly requires the Department to adopt rules.

(3) A change in federal or State budgetary policy.

(4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.

(5) A court order.

(b) No Federal Analog. – Before the Department publishes in the North Carolina Register the proposed text of a permanent rule change with no federal analog, the Department shall prepare and submit into the record of the rule making an evaluation of costs and benefits. The evaluation shall include estimates of the economic and social costs of compliance with the proposed rule to commerce and industry, units of local government, and any other entities affected by the rule, as well as estimates of the benefits of the proposed rule to public health, safety, and welfare and to the environment. The evaluation shall present relevant data, assumptions, analyses, and calculations in sufficient detail to allow the calculation of a ratio of quantifiable costs to quantifiable benefits for the proposed rule. Benefits and costs which cannot be quantified may be expressed in qualitative terms. For purposes of this subsection "no federal analog" means that there is no federal regulation, standard, or requirement pertaining to the same subject matter or activity. This subsection does not apply to a rule required by an act of the General Assembly or the United States Congress that expressly requires the Department to adopt rules."

SECTION 13.11B.(b) Part 3 of Article 1 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-22.6. Limitation on rule-making authority.**

(a) Federal Analog. – The Department may not adopt a rule that imposes a more restrictive standard or limitation than those imposed by federal law or rule if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is permitted by this subsection. It is the intent of the General Assembly that the standards and limitations adopted by the Department shall be no more restrictive than the most nearly applicable federal standards and limitations. Adoption of a rule with more restrictive standards or limitations is permitted to respond to at least one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) An act of the General Assembly or United States Congress that expressly requires the Department to adopt rules.

(3) A change in federal or State budgetary policy.

(4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.

(5) A court order.

(b) No Federal Analog. – Before the Department publishes in the North Carolina Register the proposed text of a permanent rule change with no federal analog, the Department shall prepare and submit into the record of the rule making an evaluation of costs and benefits. The evaluation shall include estimates of the economic and social costs of compliance with the proposed rule to commerce and industry, units of local government, and any other entities affected by the rule, as well as estimates of the benefits of the proposed rule to public health, safety, and welfare and to the environment. The evaluation shall present relevant data, assumptions, analyses, and calculations in sufficient detail to allow the calculation of a ratio of

quantifiable costs to quantifiable benefits for the proposed rule. Benefits and costs which cannot be quantified may be expressed in qualitative terms. For purposes of this subsection "no federal analog" means that there is no federal regulation, standard, or requirement pertaining to the same subject matter or activity. This subsection does not apply to a rule required by an act of the General Assembly or the United States Congress that expressly requires the Department to adopt rules."

SECTION 13.11B.(c) Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.16. Limitation on rule-making authority.**

(a) Federal Analog. – An agency, as defined in G.S. 150B-2 and created under this Article, may not adopt a rule that imposes a more restrictive standard or limitation than those imposed by federal law or rule if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is permitted by this subsection. It is the intent of the General Assembly that the standards and limitations adopted by such agency shall be no more restrictive than the most nearly applicable federal standards and limitations. Adoption of a rule with more restrictive standards or limitations is permitted to respond to at least one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) An act of the General Assembly or United States Congress that expressly requires such agency to adopt rules.
(3) A change in federal or State budgetary policy.
(4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.
(5) A court order.

(b) No Federal Analog. – Before the agency publishes in the North Carolina Register the proposed text of a permanent rule change with no federal analog, the agency shall prepare and submit into the record of the rule making an evaluation of costs and benefits. The evaluation shall include estimates of the economic and social costs of compliance with the proposed rule to commerce and industry, units of local government, and any other entities affected by the rule, as well as estimates of the benefits of the proposed rule to public health, safety, and welfare and to the environment. The evaluation shall present relevant data, assumptions, analyses, and calculations in sufficient detail to allow the calculation of a ratio of quantifiable costs to quantifiable benefits for the proposed rule. Benefits and costs which cannot be quantified may be expressed in qualitative terms. For purposes of this subsection "no federal analog" means that there is no federal regulation, standard, or requirement pertaining to the same subject matter or activity. This subsection does not apply to a rule required by an act of the General Assembly or the United States Congress that expressly requires the agency to adopt rules."

PARKS AND RECREATION TRUST FUND; ALLOCATION OF DEED STAMP TAX PROCEEDS CREDITED TO FUND

SECTION 13.14.(a) Notwithstanding the provisions of G.S. 113-44.15(b), effective for taxes levied during the 2011-2012 fiscal year, the net tax proceeds that are credited to the Parks and Recreation Trust Fund by the Secretary of Revenue pursuant to G.S. 105-228.30(b) shall be allocated as follows:

(1) Six million dollars ($6,000,000) shall be used for the operating expenses of the Division of Parks and Recreation of the Department of Environment and Natural Resources;
(2) Up to nine million seven hundred fifty thousand dollars ($9,750,000) shall be used for the State Parks System for capital projects, repairs and renovations of park facilities, and land acquisition and to retire debt incurred for these purposes under Article 9 of Chapter 142 of the General Statutes;
(3) Up to six million three hundred forty-five thousand dollars ($6,345,000) shall be used for grants to local government units consistent with the match and other requirements set forth in G.S. 113-44.14(b)(2); and
(4) Up to one million fifty-seven thousand five hundred dollars ($1,057,500) shall be used for the Coastal and Estuarine Water Beach Access Program.

SECTION 13.14.(b) Any funds that become available to the Parks and Recreation Trust Fund during the 2011-2012 fiscal year that are in excess of the funds allocated under subsection (a) of this section shall be used as provided in G.S. 113-44.15(b).

NATURAL HERITAGE TRUST FUND USED FOR COSTS TO ADMINISTER PLANT CONSERVATION PROGRAM/CONSERVATION PLANNING & COMMUNITY AFFAIRS PROGRAM

SECTION 13.16. G.S. 113-77.9(c) reads as rewritten:

"(c) Other Purposes. – The Trustees may authorize expenditures from the Fund to pay for the inventory of natural areas conducted under the Natural Heritage Program established pursuant to the Nature Preserves Act, Article 9A of Chapter 113A of the General Statutes. The Trustees may also authorize expenditures from the Fund to pay for conservation and protection planning and for informational programs for owners of natural areas, as defined in G.S. 113A-164.3. The Trustees shall authorize expenditures from the Fund not to exceed seventy-five thousand dollars ($75,000) to pay the cost of the Department of Agriculture and Consumer Services to administer the Plant Conservation Program. The Trustees shall authorize expenditures from the Fund not to exceed three hundred twenty-five thousand dollars ($325,000) to pay the cost of supporting staff in the Office of Conservation Planning and Community Affairs of the Department of Environment and Natural Resources."

OYSTER SANCTUARY PROGRAM SUPPORT

SECTION 13.18. G.S. 113-175.1(c) reads as rewritten:

"(c) The Marine Fisheries Commission and the Wildlife Resources Commission may authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income only to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The Marine Fisheries Commission and the Wildlife Resources Commission are encouraged to consider supporting the Oyster Sanctuary Program managed by the Division of Marine Fisheries. The Marine Fisheries Commission and the Wildlife Resources Commission may not authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income to establish positions without specific authorization from the General Assembly. All proposals to the Marine Fisheries Commission and the Wildlife Resources Commission for the disbursement of funds from the Marine Resources Fund shall be made by and through the Fisheries Director. Expenditure of the assets of the Marine Resources Fund shall be made through the State budget accounts of the Division of Marine Fisheries in accordance with the provisions of the Executive Budget Act. The Marine Resources Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes."

MARINE FISHERIES ENCOURAGED TO CONTRACT WITH PRIVATE SECTOR FOR OYSTER SANCTUARY RESTORATION

SECTION 13.18A. The Division of Marine Fisheries of the Department of Environment and Natural Resources is encouraged to contract with private sector businesses for any oyster sanctuary restoration projects in the Pamlico Sound that are funded in whole or in part with State funds, State fees, State grants, or revenue generated from any license issued by the State.

DIVISION OF MARINE FISHERIES TO USE DIVISION OF FOREST RESOURCES MECHANICS FOR AIRCRAFT MAINTENANCE

SECTION 13.18B.(a) The Division of Marine Fisheries of the Department of Environment and Natural Resources shall use mechanics employed by the Division of Forest Resources of the Department of Environment and Natural Resources for the purpose of performing aircraft maintenance for all aircraft of the Division of Marine Fisheries except for a particular instance when this would be impracticable.

SECTION 13.18B.(b) The Division of Forest Resources of the Department of Environment and Natural Resources shall perform aircraft maintenance using its mechanics for all aircraft of the Division of Marine Fisheries, except for a particular instance when this would be impracticable. The Division of Forest Resources shall develop a process to establish priorities for the aviation maintenance needs of all the aircraft in both the Division of Forest Resources and the Division of Marine Fisheries.

END PILOT PROGRAM FOR ANNUAL INSPECTIONS OF CERTAIN ANIMAL OPERATIONS

SECTION 13.21.(a) Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, Section 5 of S.L. 2001-254, Section 1.1 of S.L. 2002-176, Section 6.1 of S.L. 2003-340, Section 12.7(a) of S.L. 2005-276, Section 2 of S.L. 2007-536, and Section 1 of S.L. 2009-84, reads as rewritten:

"**SECTION 1.** Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, Section 5 of S.L. 2001-254, Section 1.1 of S.L. 2002-176, Section 6.1 of S.L. 2003-340, Section 12.7(a) of S.L. 2005-276, and Section 2 of S.L. 2007-536, reads as rewritten:

'(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 November 1997, and to terminate ~~1 September 2011~~,June 30, 2011, regarding the annual inspections of animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this ~~pilot~~ program. In addition, Brunswick County and Pender County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes in these four counties at least once a year to determine whether any animal waste management system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in each of these four counties shall be located in an office in the county in which that person will be conducting inspections. As part of this ~~pilot~~ program, the Department of Environment and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the four counties are used for the quick response to complaints and reported problems previously referred only to the Division of Water Quality of the Department of Environment and Natural Resources.'"

SECTION 13.21.(b) The section becomes effective June 30, 2011.

END DSWC ROLE REGARDING ANIMAL WASTE MANAGEMENT SYSTEMS

SECTION 13.22.(a) G.S. 143-215.10A reads as rewritten:

"**§ 143-215.10A. Legislative findings and intent.**

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical ~~assistance, through operations reviews,~~assistance will be provided by the Division of Soil and Water Conservation. ~~Permitting, inspection,~~Inspection and enforcement will be ~~vested in~~provided by the Division of Water Quality."

SECTION 13.22.(b) G.S. 143-215.10D is repealed.

TRANSFER DIVISION OF SOIL AND WATER CONSERVATION AND SOIL AND WATER CONSERVATION COMMISSION TO DACS

SECTION 13.22A.(a) The Division of Soil and Water Conservation is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 13.22A.(b) All functions, powers, duties, and obligations previously vested in the State Soil and Water Conservation Commission are transferred to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 13.22A.(c) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.~~

...."

SECTION 13.22A.(d) G.S. 143B-279.3(b) reads as rewritten:

"(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

...

~~(21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.~~

...."

SECTION 13.22A.(e) Part 7 of Article 7 of Chapter 143B of the General Statutes is recodified as Article 71 of Chapter 106 of the General Statutes, and accordingly G.S. 143B-294 through G.S. 143B-297.1 are recodified as G.S. 106-840 through G.S. 106-844.

SECTION 13.22A.(f) G.S. 106-840, as recodified by subsection (e) of this section, reads as rewritten:

"**§ 106-840. Soil and Water Conservation Commission – creation; powers and duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation districts.

b. To approve application for watershed plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee or agent has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, shall be guilty of a Class 1 misdemeanor."

SECTION 13.22A.(g) G.S. 106-841, as recodified by subsection (e) of this section, reads as rewritten:

"**§ 106-841. Soil and Water Conservation Commission – members; selection; removal; compensation; quorum; services.**

(a) The Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

...

(g) All clerical and other services required by the Commission shall be supplied by the ~~Secretary of Environment and Natural Resources.~~ Department of Agriculture and Consumer Services."

SECTION 13.22A.(h) G.S. 139-3(4) reads as rewritten:

"(4) "Commission" or "Soil and Water Conservation Commission" means the Soil and Water Conservation Commission created by G.S. ~~143B-294.~~106-840."

SECTION 13.22A.(i) G.S. 139-4(d) reads as rewritten:

"(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

...

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~Part 9 of Article 21 of Chapter 143~~Article 72 of Chapter 106 of the General Statutes and the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control or the Community Conservation Assistance Program as provided by G.S. 139-8(b).

(11) To develop and implement a program for the approval of water quality and animal waste management systems technical specialists.

(12) To develop and approve best management practices for the Agriculture Cost Share Program for Nonpoint Source Pollution Control and for use in the water quality protection programs of the Department of Environment and Natural Resources and to adopt rules that establish criteria governing approval of these best management practices."

SECTION 13.22A.(j) G.S. 139-4(e) reads as rewritten:

"(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control and the Community Conservation Assistance Program if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and

(2) The application is approved by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 13.22A.(k) G.S. 139-5(d) reads as rewritten:

"(d) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted."

SECTION 13.22A.(l) G.S. 139-5(e) reads as rewritten:

"(e) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter

provided. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district."

SECTION 13.22A.(m) G.S. 139-7 reads as rewritten:

"**§ 139-7. District board of supervisors – appointive members; organization of board; certain powers and duties.**

The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the board of supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons from the district to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the office shall be deemed vacant on the date the term is set to expire and the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not required to, appoint two persons from the district without recommendation from the board of supervisors, to serve as district supervisors along with the elected members of the board of supervisors. Such appointments shall be made at the same time other appointments are made under this section, and the persons appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees

such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. In any given year, if the supervisors provide for an internal audit, and the supervisor serving as chairman certifies, under oath, that this internal audit is a true and accurate reflection of the accounts of receipts and disbursements, then the supervisors shall not be required, notwithstanding the provisions of G.S. 159-34, to provide for an audit of the accounts of receipts and disbursements by a certified public accountant or by an accountant certified by the Local Government Commission. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

~~All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948.~~"

SECTION 13.22A.(n) G.S. 139-8(a)(13) reads as rewritten:

"(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~G.S. 143-215.74~~G.S. 106-850 and to assist in the implementation and supervision of any other program intended to protect water quality or quantity administered by the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services by providing technical assistance, allocating available grant monies, and providing any other assistance that may ~~by~~ be required or authorized by any provision of federal or State law."

SECTION 13.22A.(o) G.S. 139-13 reads as rewritten:

"**§ 139-13. Discontinuance of districts.**

At any time after five years after the organization of a district under the provisions of this Chapter, any 25 occupiers of land lying within the boundaries of such districts may file a petition with the Soil and Water Conservation Commission praying that the operations of the district be terminated and the existence of the district discontinued. The Commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the Commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively

practicable and feasible. If the Commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the Soil and Water Conservation Commission of a certification that the Commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificates of the Soil and Water Conservation Commission setting forth the determination of the Commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Soil and Water Conservation Commission shall be substituted for the district or supervisors as party to such contracts. The Commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of G.S. 139-11, nor the pendency of any action instituted under the provisions of such section, and the Commission shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The Soil and Water Conservation Commission shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this Chapter, more often than once in five years."

SECTION 13.22A.(p) G.S. 143-215.10A reads as rewritten:

"**§ 143-215.10A. Legislative findings and intent.**

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance, through operations reviews, will be provided by the Division of Soil and Water ~~Conservation.~~Conservation of the

Department of Agriculture and Consumer Services. Permitting, inspection, and enforcement will be vested in the Division of Water Quality."

SECTION 13.22A.(q) G.S. 143-215.10C(e)(6) reads as rewritten:

"(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be a rate-determining element. Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission of the Department of Agriculture and Consumer Services and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels."

SECTION 13.22A.(r) G.S. 143-215.10D reads as rewritten:

"**§ 143-215.10D. Operations review.**

(a) The Division, in cooperation with the Division of Soil and Water ~~Conservation,~~Conservation of the Department of Agriculture and Consumer Services, shall develop a reporting procedure for use by technical specialists who conduct operations reviews of animal operations. The reporting procedure shall be consistent with the Division's inspection procedure of animal operations and with this Part. The report shall include any corrective action recommended by the technical specialist to assist the owner or operator of the animal operation in complying with all permit requirements. The report shall be submitted to the Division within 10 days following the operations review unless the technical specialist observes a violation described in G.S. 143-215.10E. If the technical specialist finds a violation described in G.S. 143-215.10E, the report shall be filed with the Division immediately.

(b) As part of its animal waste management plan, each animal operation shall have an operations review at least once a year. The operations review shall be conducted by a technical specialist employed by the Division of Soil and Water Conservation of the ~~Department,~~Department of Agriculture and Consumer Services, a local Soil and Water Conservation District, or the federal Natural Resources Conservation Services working under the direction of the Division of Soil and Water Conservation.

(c) Operations reviews shall not be performed by technical specialists with a financial interest in any animal operation."

SECTION 13.22A.(s) G.S. 143-215.10M(a) reads as rewritten:

"(a) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on or before 1 October of each year as required by this section. Each report shall include:

...

(2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services has conducted since the last report.

(3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services that have been conducted since the last report.

(4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

(5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

...."

SECTION 13.22A.(t) Part 9 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 72 of Chapter 106 of the General Statutes, and accordingly

G.S. 143-215.74, 143-215.74A, and 143-215.74B are recodified as G.S. 106-850, 106-851, and 106-852.

SECTION 13.22A.(u) G.S. 106-850(b)(9), as recodified under subsection (t) of this section, reads as rewritten:

"(9) When the applicant is either (i) a limited-resource farmer, (ii) a beginning farmer, or (iii) a person farming land that is located in an enhanced voluntary agricultural district and is subject to a conservation agreement under G.S. 106-743.2 that remains in effect, State funding shall be limited to ninety percent (90%) of the average cost for each practice with the assisted farmer providing ten percent (10%) of the cost, which may include in-kind support of the practice, with a maximum of one hundred thousand dollars ($100,000) per year to each applicant. The following definitions apply in this subdivision:

a. Beginning farmer. – A farmer who has not operated a farm or who has operated a farm for not more than 10 years and who will materially and substantially participate in the operation of the farm.

a1. Enhanced voluntary agricultural district. – A district established by a county or a city by ordinance under Part 3 of Article 61 of ~~Chapter 106 of the General Statutes.~~this Chapter.

...."

SECTION 13.22A.(v) G.S. 106-850(c), as recodified under subsection (t) of this section, reads as rewritten:

"(c) The program shall be reviewed, prior to implementation, by the Committee created by ~~G.S. 143-215.74B.~~G.S. 106-852. The Technical Review Committee shall meet quarterly to review the progress of this program."

SECTION 13.22A.(w) G.S. 106-850(e), as recodified under subsection (t) of this section, reads as rewritten:

"(e) The Soil and Water Conservation Commission shall report on or before 31 January of each year to the Environmental Review ~~Commission~~Commission, the Department of Agriculture and Consumer Services, and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 13.22A.(x) Part 11 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 73 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74M is recodified as G.S. 106-860.

SECTION 13.22A.(y) G.S. 106-860(a), as recodified under subsection (x) of this section, reads as rewritten:

"(a) Program Established. – There is established the Community Conservation Assistance Program. The Program shall be implemented and supervised by the Soil and Water Conservation ~~Commission.~~Commission of the Department of Agriculture and Consumer Services."

SECTION 13.22A.(z) G.S. 106-860(d), as recodified under subsection (x) of this section, reads as rewritten:

"(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by the Community Conservation Assistance Program Advisory Committee. The Advisory Committee shall meet quarterly to review the progress of the Program. The Advisory Committee shall consist of the following members:

(1) The Director of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services or the Director's designee, who shall serve as the Chair of the Advisory Committee.

(2) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.

(3) The Director of the Cooperative Extension Service at North Carolina State University or the Director's designee.

(4) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.

(5) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
(6) The State Conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or the State Conservationist's designee.
(7) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.
(8) The President of the North Carolina Conservation District Employees Association or the President's designee.
(9) The President of the North Carolina Association of Resource Conservation and Development Councils or the President's designee.
(10) The Director of the Division of Water Quality of the Department of Environment and Natural Resources or the Director's designee.
(11) The Director of the Division of Forest Resources of the Department of Environment and Natural Resources or the Director's designee.
(12) The Director of the Division of Land Resources of the Department of Environment and Natural Resources or the Director's designee.
(13) The Director of the Division of Coastal Management of the Department of Environment and Natural Resources or the Director's designee.
(14) The Director of the Division of Water Resources of the Department of Environment and Natural Resources or the Director's designee.
(15) The President of the Carolinas Land Improvement Contractors Association or the President's designee."

SECTION 13.22A.(aa) G.S. 106-860(e), as recodified under subsection (x) of this section, reads as rewritten:

"(e) Report. – The Soil and Water Conservation Commission shall report no later than 31 January of each year to the Environmental Review ~~Commission~~Commission, the Department of Agriculture and Consumer Services, and the Fiscal Research Division. The report shall include a summary of projects that received State funding pursuant to the Program, the results of the evaluation conducted pursuant to subdivision (5) of subsection (b) of this section, findings regarding the effectiveness of each project to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 13.22A.(bb) G.S. 113-291.10(a) reads as rewritten:

"(a) There is established the Beaver Damage Control Advisory Board. The Board shall consist of nine members, as follows:

...

(4) The Director of the Division of Soil and Water Conservation of the Department of ~~Environment and Natural Resources~~,Agriculture and Consumer Services, or a designee;

...."

SECTION 13.22A.(cc) G.S. 106-743.4(b) reads as rewritten:

"(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is eligible under G.S. ~~143-215.74(b)~~106-850(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to ~~Part 9 of Article 21 of Chapter 143 of the General Statutes~~Article 72 of this Chapter for funds to benefit that farmland."

SECTION 13.22A.(dd) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under subsections (a) and (b) of this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and any other conforming changes necessitated by this section.

AGRICULTURAL WATER RESOURCES ASSISTANCE PROGRAM/CONFORMING CHANGES; FUNDS TO PROMOTE WATER SUPPLY DEVELOPMENT

SECTION 13.23.(a) Chapter 139 of the General Statutes is amended by adding a new Article to read:

"Article 5.
"Agricultural Water Resources Assistance Program.
"**§ 139-60. Agricultural Water Resources Assistance Program.**

(a) Program Established. – The Agricultural Water Resources Assistance Program is established. The purpose of the Program shall be to assist farmers and landowners in doing any one or more of the following:

(1) Identify opportunities to increase water use efficiency, availability, and storage.

(2) Implement best management practices to conserve and protect water resources.

(3) Increase water use efficiency.

(4) Increase water storage and availability for agricultural purposes.

(b) Program Administration. – The Agricultural Water Resources Assistance Program shall be implemented by the Soil and Water Conservation Commission through the soil and water conservation districts in the same manner as the Agriculture Cost Share Program for Nonpoint Source Pollution Control under Part 9 of Article 21 of Chapter 143 of the General Statutes. The Soil and Water Conservation Commission shall supervise and administer this Program as provided in this section and as provided in Part 9 of Article 21 of Chapter 143 of the General Statutes for the Agriculture Cost Share Program for Nonpoint Source Pollution Control. At least once each calendar year, the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources and the Commissioner of Agriculture shall meet with stakeholders for the purpose of advising the Soil and Water Conservation Commission on the development and administration of the Program, including the development of annual goals for the Program.

(c) Program Functions. – Under the Agricultural Water Resources Assistance Program, the Soil and Water Conservation Commission shall do the following:

(1) Within funds available for this Program, provide cost-share funds subject to all of the following limitations and requirements:

a. Except as provided in G.S. 143-215.74(b)(9), State funding shall be limited to:

1. Seventy-five percent (75%) of the average cost for each project, with the assisted person providing twenty-five percent (25%) of the project cost, which may include in-kind support of the project.

2. A maximum of seventy-five thousand dollars ($75,000) per year to each applicant.

b. Applicants shall be limited to farmers who have an adjusted gross income in each of the previous two years that is at or below two hundred fifty thousand dollars ($250,000), unless at least seventy-five percent (75%) of this adjusted gross income is derived directly from farming, ranching, or forestry operations.

c. The requirements and limitations under subdivisions (1), (2), (5), (7), and (8) of subsection (b) of G.S. 143-215.74 do not apply. All other limitations and requirements set out in Part 9 of Article 21 of Chapter 143 of the General Statutes, as modified by this section, apply.

(2) Approve best management practices eligible for cost-share funds under this Program.

(3) Establish criteria to allocate funds to local soil and water conservation districts.

(4) Develop a process for soliciting and reviewing applications and for selecting farmers to participate in the Program.

(5) Investigate and pursue other funding sources to supplement State funds, including federal, local, and private funding sources.

(6) Provide technical assistance to participating persons to assist with the projects that are eligible for cost-share funds under subsection (a) of this section and to facilitate the timely transfer of technology among participating persons.

(7) Adopt temporary and permanent rules as necessary to implement this Program.

(d) Report. – No later than January 31 of each year, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall prepare a comprehensive report on the implementation of subsections (a) through (c) of this section. The

report shall be submitted to the Environmental Review Commission as a part of the report required by G.S. 143-215.74(e)."

SECTION 13.23.(b) G.S. 14-234(d3) reads as rewritten:

"(d3) Subsection (a) of this section does not apply to an application for or the receipt of a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to Part 9 of Article 21 of Chapter 143 of the General ~~Statutes or~~Statutes, the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General ~~Statutes~~ Statutes, or the Agricultural Water Resources Assistance Program created pursuant to Article 5 of Chapter 139 of the General Statutes by a member of the Soil and Water Conservation Commission if the requirements of G.S. 139-4(e) are met, and does not apply to a district supervisor of a soil and water conservation district if the requirements of G.S. 139-8(b) are met."

SECTION 13.23.(c) G.S. 139-4(d) reads as rewritten:

"(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

...

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to Part 9 of Article 21 of Chapter 143 of the General ~~Statutes and~~ Statutes, the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General ~~Statutes.~~Statutes, and the Agricultural Water Resources Assistance Program created pursuant to Article 5 of this Chapter.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution ~~Control or~~Control, the Community Conservation Assistance ~~Program~~ Program, or the Agricultural Water Resources Assistance Program as provided by G.S. 139-8(b)."

SECTION 13.23.(d) G.S. 139-4(e) reads as rewritten:

"(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution ~~Control and~~Control, the Community Conservation Assistance ~~Program~~ Program, or the Agricultural Water Resources Assistance Program if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and

(2) The application is approved by the Secretary of Environment and Natural Resources."

SECTION 13.23.(e) G.S. 139-8(b) reads as rewritten:

"(b) A district supervisor may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to Part 9 of Article 21 of Chapter 143 of the General ~~Statutes or~~Statutes, the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General ~~Statutes~~ Statutes, or the Agricultural Water Resources Assistance Program created pursuant to Article 5 of this Chapter if:

1. The district supervisor does not vote on the application or attempt to influence the outcome of any action on the application; and
2. The application is approved by the Commission."

SECTION 13.23.(f) The stakeholders that the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources and the Commissioner of Agriculture shall meet with, as required under G.S. 139-60, as enacted by subsection (a) of this section, shall be the stakeholders involved in identifying and developing best management practices for water conservation and water efficiency by agricultural water users pursuant to S.L. 2010-149.

SECTION 13.23.(g) The first report required by G.S. 139-60, as enacted by subsection (a) of this section, shall be submitted to the Environmental Review Commission no later than January 31, 2013.

SECTION 13.23.(h) Of the funds available to the Department of Environment and Natural Resources for Water Resource Projects, the sum of one million dollars ($1,000,000) shall be transferred to the Department of Environment and Natural Resources, Division of Soil and Water Conservation, for the 2011-2012 fiscal year to implement the Agricultural Water

Resources Assistance Program established in Article 5 of Chapter 139 of the General Statutes, as enacted by subsection (a) of this section. The Soil and Water Conservation Commission may use up to fifteen percent (15%) of these funds for the costs of the Division of Soil and Water Conservation and the costs of the Soil and Water Conservation Districts to provide engineering assistance, to provide technical assistance, and to administer the Agricultural Water Resources Assistance Program. Any of these funds that are not expended or encumbered as of June 30, 2012, shall not revert and shall remain available for purposes set forth in this subsection until expended.

CONTRACT TO OUTSOURCE GIFT SHOPS AT NC ZOO TO DIRECT PROFITS TO ZOO FUND

SECTION 13.24. The Department of Environment and Natural Resources shall enter into a contract for the operation of at least three of the gift shops located at the North Carolina Zoological Park during the 2011-2012 fiscal year and the 2012-2013 fiscal year, and this contract shall provide that any profits that result from operating these gift shops during the 2011-2012 fiscal year and the 2012-2013 fiscal year are credited at the end of each quarter to the Special Zoo Fund created under G.S. 143B-336.1. The provisions of Article 3 and Article 8 of Chapter 143 of the General Statutes apply to any contract entered into under this section.

TRANSFER FORESTRY DIVISION AND FORESTRY COUNCIL FROM DENR TO DACS

SECTION 13.25.(a) The Division of Forest Resources is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer as defined by G.S. 143A-6.

SECTION 13.25.(b) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(6) Forest Resources Division, Department of Natural Resources and Community Development.~~

...."

SECTION 13.25.(c) Article 7 of Chapter 143A of the General Statutes is amended by adding a new section to read:

"**§ 143A-65.1. Division of Forest Resources.**

The Department of Agriculture and Consumer Services shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests."

SECTION 13.25.(d) All functions, powers, duties, and obligations previously vested in the Forestry Council are transferred from the Department of Environment and Natural Resources to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 13.25.(e) G.S. 143B-279.3(b) reads as rewritten:

"(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

...

~~(13) Forestry Council, Department of Natural Resources and Community Development.~~

...."

SECTION 13.25.(f) Part 12 of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-308, 143B-309, and 143B-310) is recodified in Article 7 of Chapter 143A of the General Statutes as G.S. 143A-66.1, 143A-66.2, and 143A-66.3.

SECTION 13.25.(g) G.S. 143A-66.1, as recodified in subsection (f) of this section, reads as rewritten:

"**§ 143A-66.1. Forestry Council – creation; powers and duties.**

There is hereby created the Forestry Council of the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. The Forestry Council shall have the following functions and duties:

(1) To advise the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture with respect to all matters concerning the protection, management, and preservation of State-owned, privately owned, and municipally owned forests in the State, including but not limited to:
   a. Profitable use of the State's forests consistent with the principles of sustained productivity.
   b. Best management practices, including those for protection of soil, water, wildlife, and wildlife habitat, to be used in managing the State's forests and their resources.
   c. Restoration of forest ecosystems and protection of rare and endangered species occurring in the State's private forests consistent with principles of private ownership of land.

(2) To maintain oversight of a continuous monitoring and planning process, to provide a long-range, comprehensive plan for the use, management, and sustainability of North Carolina's forest resources, and to report regularly on progress made toward meeting the objectives of the plan.

(3) To provide a forum for the identification, discussion, and development of recommendations for the resolution of conflicts in the management of North Carolina's forests.

(4) To undertake any other studies, make any reports, and advise the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture on any matter as the ~~Secretary~~ Commissioner may direct."

SECTION 13.25.(h) G.S. 143A-66.2, as recodified in subsection (f) of this section, reads as rewritten:

"**§ 143A-66.2. Forestry Council – members; chairperson; selection; removal; compensation; quorum.**

(a) The Forestry Advisory Council of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall consist of 18 members appointed as follows:

(1) Three persons who are registered foresters and who represent the primary forest products industry, one each from the Mountains, Piedmont and Coastal Plain.
(2) One person who represents the secondary wood-using industry.
(3) One person who represents the logging industry.
(4) Four persons who are nonindustrial woodland owners actively involved in forest management, one of whom has agricultural interests, and at least one each from the Mountains, Piedmont, and Coastal Plain.
(5) Three persons who are members of statewide environmental or wildlife conservation organizations.
(6) One consulting forester.
(7) Two persons who are forest scientists with knowledge of the functioning and management of forest ecosystems.
(8) One person who represents a banking institution that manages forestland.
(9) One person with expertise in urban forestry.
(10) One person with active experience in city and regional planning.

...

(h) All clerical and other services required by the Council, including the support required to carry out studies it is requested to make, shall be supplied by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 13.25.(i) G.S. 106-22 is amended by adding two new subdivisions to read:

"(18) Forests. – Have charge of forest maintenance, forest fire protection, reforestation, and the protection of the forests.

(19) State forests. – Have charge of all State forests and measures for forest fire prevention."

SECTION 13.25.(j) G.S. 113-8 reads as rewritten:

"**§ 113-8. Powers and duties of the Department.**

The Department shall make investigations of the natural resources of the State, and take such measures as it may deem best suited to promote the conservation and development of such resources.

It shall have ~~charge of the work of forest maintenance, forest fire prevention, reforestation, and~~ the protection of lands and water ~~supplies by the preservation of forests;~~supplies; it shall also have the care of State ~~forests and~~ parks, and other recreational areas now owned or to be acquired by the State, including the lakes referred to in G.S. 146-7.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State, and take such measures as it may consider necessary to promote their development.

It shall have the duty of enforcing all laws relating to the conservation of marine and estuarine resources.

The Department may take such other measures as it may deem advisable to obtain and make public a more complete knowledge of the State and its resources, and it is authorized to cooperate with other departments and agencies of the State in obtaining and making public such information.

The Department may acquire such real and personal property as may be found desirable and necessary for the performance of the duties and functions of the Department and pay for same out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired shall be in the name of the State of North Carolina for the use and benefit of the Department."

SECTION 13.25.(k) G.S. 113-22 is repealed.

SECTION 13.25.(l) G.S. 106-22 is amended by adding three new subdivisions to read:

"(18) Forests. – Have charge of forest maintenance, forest fire protection, reforestation, and the protection of the forests.

(19) State forests. – Have charge of all State forests and measures for forest fire prevention.

(20) Property for State forests. – Acquire real and personal property as desirable and necessary for the performance of the duties and functions of the Department under subdivision (19) of this section and pay for the property out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired under this subdivision shall be in the name of the State of North Carolina for the use and benefit of the Department."

SECTION 13.25.(m) The title of Subchapter II of Chapter 113 of the General Statutes reads as rewritten:

"**SUBCHAPTER II. STATE ~~FORESTS AND~~ PARKS.**"

SECTION 13.25.(n) Article 2 of Chapter 113 of the General Statutes reads as rewritten:

"Article 2.

"Acquisition and Control of State ~~Forests and~~ Parks.

"**§ 113-29. ~~Policy and plan to be inaugurated by Department of Environment and Natural Resources.~~Definitions.**

~~(a)~~ In this Article, unless the context requires otherwise, "Department" means the Department of Environment and Natural Resources; and "Secretary" means the Secretary of Environment and Natural Resources.

~~(b) The Department of Environment and Natural Resources shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:~~

~~(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.~~

~~(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.~~

~~(3) To furnish trained and experienced experts in forest management, to inspect private forestlands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.~~

~~(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.~~

~~(5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department as State demonstration forests for experiment and demonstration in forest management.~~

~~"§ 113-29.1. Growing of timber on unused State lands authorized.~~

~~The Department of Administration may allocate to the Department, for management as a State forest, any vacant and unappropriated lands, any marshlands or swamplands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as research stations shall not be subject to the provisions of this section. The Department shall plant timber producing trees on all lands allocated to it for that purpose by the Department of Administration. The Secretary may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Secretary, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Department.~~

~~"§ 113-30. Use of lands acquired by counties through tax foreclosures as demonstration forests.~~

~~The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department title to such tax-delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the Secretary may be suitable for the purposes named in G.S. 113-29, subdivision (5).~~

~~"§ 113-31. Procedure for acquisition of delinquent tax lands from counties.~~

~~In the carrying out of the provisions of G.S. 113-30, the several boards of county commissioners shall furnish forthwith on written request of the Department a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list the Secretary shall have the lands examined and if any one or more of these properties is in his judgment suitable for the purposes set forth in G.S. 113-30, request shall be made to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined.~~

~~"§ 113-32. Purchase of lands for use as demonstration forests.~~

~~Where no suitable tax-delinquent lands are available and in the judgment of the Department the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in G.S. 113-29 to 113-33 shall allow the Department to acquire land under the right of eminent domain.~~

~~"§ 113-33. Forest management appropriation.~~

~~Necessary funds for carrying out the provisions of G.S. 113-29 and 113-30 to 113-33 shall be set up in the regular budget as an item entitled "forest management.~~

"§ 113-34. Power to acquire lands as State ~~forests,~~ parks, and other recreational areas; donations or leases by United States; leases for recreational purposes.

(a) ~~The Governor may, upon recommendation of the Department, accept gifts of land to the State to be held, protected, and administered by the Department as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. The gifts of land must be absolute except in cases where the mineral interest on the land has previously been sold. The Department may purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, park, and protection purposes, using for these purposes any special appropriations or funds available.~~ The Department may acquire by gift, purchase, or condemnation under the provisions of Chapter 40A of the General Statutes, areas of land in different sections of the State that may in the opinion of the Department be necessary for the purpose of establishing or developing ~~State forests,~~ State parks, and other areas and developments essential to the effective operation of the ~~State forestry and~~ State park activities under its charge. Condemnation proceedings shall be instituted and prosecuted in the name of the State, and any property so acquired shall be administered, developed, and used ~~for experiment and demonstration in forest management,~~ for public ~~recreation,~~recreation and for other purposes authorized or required by law. Before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where the property is located. The Attorney General shall ensure that all deeds to the State for land acquired under this section are properly executed before the gift is accepted or payment of the purchase money is made.

(b) The Department may accept as gifts to the State any ~~forest and~~ submarginal farmland acquired by the federal government that is suitable for the purpose of creating and maintaining ~~State forests,~~ game refuges, public shooting grounds, State parks, State lakes, and other recreational areas, or to enter into longtime leases with the federal government for the areas and administer them with funds secured from their administration in the best interest of longtime public use, supplemented by any appropriations made by the General Assembly. The Department may segregate revenue derived from State hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of State ~~forests,~~ game refuges, public shooting grounds, State parks, State lakes, and other recreational areas to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

(c) The Department, with the approval of the Governor and Council of State, may enter into leases of lands and waters for State parks, State lakes, and recreational purposes.

(d), (e) Repealed by Session Laws 2003-284, s. 35.1(a), effective July 1, 2003.

(f) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"§ 113-34.1. Power to acquire conservation lands not included in the State Parks System.

The Department of Administration may acquire and allocate to the Department of Environment and Natural Resources for management by the Division of Parks and Recreation lands that the Department of Environment and Natural Resources finds are important for conservation purposes but which are not included in the State Parks System. Lands acquired pursuant to this section are not subject to Article 2C of Chapter 113 of the General Statutes and may be traded or transferred as necessary to protect, develop, and manage the Mountains to Sea State Park Trail, other State parks, or other conservation lands. This section does not expand the power granted to the Department of Environment and Natural Resources under G.S. 113-34(a) to acquire land by condemnation.

"§ 113-35. ~~State timber may be sold by Department; forest nurseries; control~~Control over State parks; operation of public service facilities; concessions to private concerns; authority to charge fees and adopt rules.

(a) ~~Timber and other products of State forests may be sold, cut, and removed under rules of the Department. The Department may establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules adopted by the Department. When the Secretary determines that a surplus of seedlings or seed exists, this surplus may be sold, and the sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either~~

~~within or outside of this State.~~ The Department shall make reasonable rules governing the use by the public of ~~State forests,~~ State ~~parks, State lakes, game refuges, and public shooting grounds~~parks and State lakes under its charge. These rules shall be posted in conspicuous places on and adjacent to the properties of the State and at the courthouse of the county or counties in which the properties are located. A violation of these rules is punishable as a Class 3 misdemeanor.

(a1) The Department may adopt rules under which the Secretary may issue a special-use permit authorizing the use of pyrotechnics in State parks in connection with public exhibitions. The rules shall require that experts supervise the use of pyrotechnics and that written authorization for the use of pyrotechnics be obtained from the board of commissioners of the county in which the pyrotechnics are to be used, as provided in G.S. 14-410. The Secretary may impose any conditions on a permit that the Secretary determines to be necessary to protect public health, safety, and welfare. These conditions shall include a requirement that the permittee execute an indemnification agreement with the Department and obtain general liability insurance covering personal injury and property damage that may result from the use of pyrotechnics with policy limits determined by the Secretary.

(b) The Department may construct, operate, and maintain within the ~~State forests,~~ State parks, State lakes, and other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for each of the following:

(1) The erection, maintenance, and use of docks, piers, and any other structures permitted in or on State lakes under rules adopted by the Department.

(2) ~~Hunting privileges on State forests and fishing~~Fishing privileges in ~~State forests,~~ State ~~parks,~~parks and State lakes, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(3) Vehicle access for off-road driving at the beach at Fort Fisher State Recreation Area.

(4) The erection, maintenance, and use of a marina at Carolina Beach.

(b1) Members of the public who pay a fee under subsection (b) of this section for access to Fort Fisher State Recreation Area may have 24-hour access to Fort Fisher State Recreation Area from September 15 through March 15 of each year.

(c) The Department may make reasonable rules for the operation and use of boats or other craft on the surface of the waters under its charge. The Department may charge and collect reasonable fees for the use of boats and other watercraft that are purchased and maintained by the Department; however, the Department shall not charge a fee for the use or operation of any other boat or watercraft on these waters.

(d) The Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest. The Department may adopt reasonable rules for the regulation of the use by the public of the lands and waters under its charge and of the public service facilities and conveniences authorized under this section. A violation of these rules is punishable as a Class 3 misdemeanor.

(e) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

~~"§ 113-36. Applications of proceeds from sale of products.~~

~~(a) Application of Proceeds Generally. Except as provided in this section, all money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Secretary.~~

~~(b) Tree Cone and Seed Purchase Fund. A percentage of the money obtained from the sale of seedlings and remaining unobligated at the end of a fiscal year, shall be placed in a special, continuing and nonreverting Tree Cone and Seed Purchase Fund under the control and direction of the Secretary. The percentage of the sales placed in the fund shall not exceed ten percent (10%). At the beginning of each fiscal year, the Secretary shall select the percentage for the upcoming fiscal year depending upon the anticipated costs of tree cones and seeds which the department must purchase. Money in this fund shall not be allowed to accumulate in excess~~

~~of the amount needed to purchase a four-year supply of tree cones and seed, and shall be used for no purpose other than the purchase of tree cones and seeds.~~

~~(c) Forest Seedling Nursery Program Fund. The Forest Seedling Nursery Program Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. Except as provided in subsection (b) of this section, this Fund shall consist of receipts from the sale of seed and seedlings as authorized in G.S. 113-35 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Forest Seedling Nursery Program.~~

~~(d) Bladen Lakes State Forest Fund. The Bladen Lakes State Forest Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. This Fund shall consist of receipts from the sale of forest products from Bladen Lakes State Forest as authorized in G.S. 113-35 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Bladen Lakes State Forest.~~

"§ 113-37. Legislative authority necessary for payment.

Nothing in this Article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly.

~~"§ 113-38. Distribution of funds from sale of forestlands.~~

~~All funds paid by the National Forest Commission, by authority of act of Congress, approved May 23, 1908 (35 Stat., 260), for the Counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school district or districts in which said national forestlands shall be located.~~

~~All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed.~~

"§ 113-39. License fees for hunting and fishing on government-owned property unaffected.

No wording in G.S. 113-307.1(a), or any other North Carolina statute or law, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park to be ~~excepted~~ exempt from this section.

"§ 113-40. Donations of property for ~~forestry or~~ park purposes; agreements with federal government or agencies for acquisition.

The Department is hereby authorized and empowered to accept gifts, donations or contributions of land suitable for ~~forestry or~~ park purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the Department are desirable for ~~State forests or~~ State parks.

"§ 113-41. Expenditure of funds for development, etc.; disposition of products from lands; rules.

When lands are acquired or leased under G.S. 113-40, the Department is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules as may be necessary to carry out the purposes of G.S. 113-40 to 113-44.

"§ 113-42. Disposition of revenues received from lands acquired.

All revenues derived from lands now owned or later acquired under the provisions of G.S. 113-40 to 113-44 shall be set aside for the use of the Department in acquisition, management, development and use of such lands until all obligations incurred have been paid

in full. Thereafter, fifty percent (50%) of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe, and fifty percent (50%) shall be paid into the school fund to be used in the county or counties in which lands are located.

"**§ 113-43. State not obligated for debts created hereunder.**

Obligations for the acquisition of land incurred by the Department under the authority of G.S. 113-40 to 113-44 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State.

"**§ 113-44. Disposition of lands acquired.**

The Department shall have full power and authority to sell, exchange or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of ~~State forests and~~ State parks: Provided, however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into."

SECTION 13.25.(o) Chapter 106 of the General Statutes is amended by adding a new Article to read:

"Article 71.

"Acquisition and Control of State Forests.

"**§ 106-840. Policy and plan to be inaugurated by Department of Agriculture and Consumer Services.**

(a) In this Article, unless the context requires otherwise, "Department" means the Department of Agriculture and Consumer Services and "Commissioner" means Commissioner of Agriculture.

(b) The Department shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:

(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.

(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.

(3) To furnish trained and experienced experts in forest management, to inspect private forestlands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting, and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.

(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.

(5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department as State demonstration forests for experiment and demonstration in forest management.

"**§ 106-841. Growing of timber on unused State lands authorized.**

The Department of Administration may allocate to the Department, for management as a State forest, any vacant and unappropriated lands, any marshlands or swamplands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as research stations shall not be subject to the provisions of this section. The Department shall plant timber-producing trees on all lands allocated to it for that purpose by the Department of Administration. The Commissioner may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Commissioner, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Department.

"**§ 106-842. Use of lands acquired by counties through tax foreclosures as demonstration forests.**

The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department title to such tax-delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the Commissioner may be suitable for the purposes named in subdivision (5) of subsection (b) of G.S. 106-840.

"**§ 106-843. Procedure for acquisition of delinquent tax lands from counties.**

In the carrying out of the provisions of G.S. 106-842, the several boards of county commissioners shall furnish forthwith on written request of the Department a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list, the Commissioner shall have the lands examined and, if any one or more of these properties is in the Commissioner's judgment suitable for the purposes set forth in G.S. 106-842, request shall be made to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request, the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee-simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined.

"**§ 106-844. Purchase of lands for use as demonstration forests.**

Where no suitable tax-delinquent lands are available and, in the judgment of the Department, the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed-upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in G.S. 106-840 to G.S. 106-845 shall allow the Department to acquire land under the right of eminent domain.

"**§ 106-845. Forest management appropriation.**

Necessary funds for carrying out the provisions of G.S. 106-840 and G.S. 106-842 to G.S. 106-845 shall be set up in the regular budget as an item entitled "forest management."

"**§ 106-846. Power to acquire lands as State forests; donations or leases by United States; leases for recreational purposes.**

(a) The Governor may, upon recommendation of the Department, accept gifts of land to the State to be held, protected, and administered by the Department as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. The gifts of land must be absolute except in cases where the mineral interest on the land has previously been sold. The Department may purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, and protection purposes, using for these purposes any special appropriations or funds available. The Department may acquire by condemnation under the provisions of Chapter 40A of the General Statutes areas of land in different sections of the State that may in the opinion of the Department be necessary for the purpose of establishing or developing State forests and other areas and developments essential to the effective operation of the State forestry activities under its charge. Condemnation proceedings shall be instituted and prosecuted in the name of the State, and any property so acquired shall be administered, developed, and used for experiment and demonstration in forest management, for public recreation, and for other purposes authorized or required by law. Before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where the property is located. The Attorney General shall ensure that all deeds to the State for land acquired under this section are properly executed before the gift is accepted or payment of the purchase money is made.

(b) The Department may accept as gifts to the State any forest and submarginal farmland acquired by the federal government that is suitable for the purpose of creating and maintaining State forests or enter into longtime leases with the federal government for the areas and administer them with funds secured from their administration in the best interest of longtime public use, supplemented by any appropriations made by the General Assembly. The Department may segregate revenue derived from State hunting and fishing licenses, use permits, and concessions, and other proper revenue secured through the administration of State

forests, to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

(c) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"**§ 106-847. State timber may be sold by Department; forest nurseries; operation of public service facilities; concessions to private concerns; authority to charge fees and adopt rules.**

(a) Timber and other products of State forests may be sold, cut, and removed under rules of the Department. The Department may establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules adopted by the Department. When the Commissioner determines that a surplus of seedlings or seed exists, this surplus may be sold, and the sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either within or outside of this State. The Department shall make reasonable rules governing the use by the public of State forests under its charge. These rules shall be posted in conspicuous places on and adjacent to the properties of the State and at the courthouse of the county or counties in which the properties are located. A violation of these rules is punishable as a Class 3 misdemeanor.

(b) The Department may construct, operate, and maintain within the State forests and other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for hunting privileges on State forests and fishing privileges in State forests, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(c) The Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest. The Department may adopt reasonable rules for the regulation of the use by the public of the lands and waters under its charge and of the public service facilities and conveniences authorized under this section. A violation of these rules is punishable as a Class 3 misdemeanor.

(d) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"**§ 106-848. Applications of proceeds from sale of products.**

(a) Application of Proceeds Generally. – Except as provided in this section, all money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Commissioner.

(b) Tree Cone and Seed Purchase Fund. – A percentage of the money obtained from the sale of seedlings and remaining unobligated at the end of a fiscal year shall be placed in a special, continuing, and nonreverting Tree Cone and Seed Purchase Fund under the control and direction of the Commissioner. The percentage of the sales placed in the Fund shall not exceed ten percent (10%). At the beginning of each fiscal year, the Commissioner shall select the percentage for the upcoming fiscal year depending upon the anticipated costs of tree cones and seeds which the Department must purchase. Money in this Fund shall not be allowed to accumulate in excess of the amount needed to purchase a four-year supply of tree cones and seed and shall be used for no purpose other than the purchase of tree cones and seeds.

(c) Forest Seedling Nursery Program Fund. – The Forest Seedling Nursery Program Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. Except as provided in subsection (b) of this section, this Fund shall consist of receipts from the sale of seed and seedlings as authorized in G.S. 106-847 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Forest Seedling Nursery Program.

(d) Bladen Lakes State Forest Fund. – The Bladen Lakes State Forest Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. This Fund shall consist of receipts from the sale of forest products from Bladen Lakes State Forest as authorized in G.S. 106-847 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Bladen Lakes State Forest.

"**§ 106-849. Legislative authority necessary for payment.**

Nothing in this Article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly.

"**§ 106-850. Distribution of funds from sale of forestlands.**

All funds paid by the National Forest Commission, by authority of an act of Congress, approved May 23, 1908, (35 Stat. 260), for the Counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school administrative unit in which said national forestlands shall be located.

All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed.

"**§ 106-851. License fees for hunting and fishing on government-owned property unaffected.**

No wording in G.S. 113-307.1(a), or any other North Carolina public, local, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State, or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park are exempt from this section.

"**§ 106-852. Donations of property for forestry purposes; agreements with federal government or agencies for acquisition.**

The Department may accept gifts, donations, or contributions of land suitable for forestry purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the Department are desirable for State forests.

"**§ 106-853. Expenditure of funds for development, etc.; disposition of products from lands; rules.**

When lands are acquired or leased under G.S. 106-852, the Department may make expenditures from any funds not otherwise obligated, for the management, development, and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules as may be necessary to carry out the purposes of G.S. 106-852 to G.S. 106-856.

"**§ 106-854. Disposition of revenues received from lands acquired.**

All revenues derived from lands now owned or later acquired under the provisions of G.S. 106-852 to G.S. 106-856 shall be set aside for the use of the Department in acquisition, management, development, and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty percent (50%) of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe and fifty percent (50%) shall be paid into the school fund to be used in the county or counties in which lands are located.

"**§ 106-855. State not obligated for debts created hereunder.**

Obligations for the acquisition of land incurred by the Department under the authority of G.S. 106-852 to G.S. 106-856 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State.

"**§ 106-856. Disposition of lands acquired.**

The Department shall have full power and authority to sell, exchange, or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest

orderly development and management of State forests: Provided, however, said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into."

SECTION 13.25.(p) Article 4 of Chapter 113 of the General Statutes (G.S. 113-51, 113-52, 113-53.1, 113-54, 113-55, 113-55.1, 113-55.2, 113-56, 113-56.1, 113-57, 113-58, 113-59, 113-60, 113-60.1, 113-60.2, and 113-60.3) is recodified as a new Article 72 of Chapter 106 of the General Statutes, G.S. 106-860 through G.S. 106-875.

SECTION 13.25.(q) Article 72 of Chapter 106 of the General Statutes, as recodified under subsection (p) of this section, reads as rewritten:

"Article 72.

"Protection and Development of Forests; Fire Control.

"**§ 106-860. Powers of Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.**

(a) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this State, and it is hereby authorized to enter into an agreement with the Secretary of Agriculture of the United States for the protection of the forested watersheds of streams in this State.

(b) In this Article, unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of Agriculture.

~~(1)~~(2) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

~~(2) "Secretary" means the Secretary of Environment and Natural Resources.~~

"**§ 106-861. Forest rangers.**

The ~~Secretary~~ Commissioner may appoint one county forest ranger and one or more deputy forest rangers in each county of the State in which, after careful investigation, the amount of forestland and the risks from forest fires shall, in his judgment, warrant the establishment of a forest fire organization.

"**§ 106-862. Forest laws defined.**

The forest laws consist of:

(1) G.S. 14-136 to G.S. 14-140;

(2) Articles ~~2, 4, 4A, 4C, and 6A~~71 through 79 of this Chapter;

(3) G.S. 77-13 and G.S. 77-14;

(4) Other statutes enacted for the protection of forests and woodlands from fire, insects, or disease and concerning obstruction of streams and ditches in forests and woodlands; and

(5) Regulations and ordinances adopted under the authority of the above statutes.

"**§ 106-863. Duties of forest rangers; payment of expenses by State and counties.**

Forest rangers shall have charge of measures for controlling forest fires, protection of forests from pests and diseases, and the development and improvement of the forests for maximum production of forest products; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the ~~Secretary;~~Commissioner; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the ~~Secretary;~~Commissioner; and shall perform such other acts and duties as shall be considered necessary by the ~~Secretary~~ Commissioner in the protection, development and improvement of the forested area of each of the counties within the State. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the ~~Secretary;~~Commissioner; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the ~~Secretary~~ Commissioner shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one month after receipt of such statement from the ~~Secretary.~~Commissioner. Appropriations made by a county for the purposes set out in Articles ~~4, 4A, 4C and 6A~~72, 73, 75, and 79 of this Chapter in the cooperative forest protection, development and improvement work are not to replace

State and federal funds which may be available to the ~~Secretary~~ Commissioner for the work in said county, but are to serve as a supplement thereto. Funds appropriated to the Department for a fiscal year for the purposes set out in Articles ~~4, 4A, 4C and 6A~~72, 73, 75, and 79 of this Chapter shall not be expended in a county unless that county shall contribute at least twenty-five percent (25%) of the total cost of the forestry program.

"§ 106-864. Powers of forest rangers to prevent and extinguish fires; authority to issue citations and warning tickets.

(a) Forest rangers shall prevent and extinguish forest fires and shall have control and direction of all persons and equipment while engaged in the extinguishing of forest fires. During a season of drought, the ~~Secretary~~ Commissioner or his designate may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland, the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or deputy forest ranger may summon any resident between the ages of 18 and 45 years, inclusive, to assist in extinguishing fires and may require the use of crawler tractors and other property needed for such purposes; any person so summoned and who is physically able who refuses or neglects to assist or to allow the use of equipment and such other property required shall be guilty of a Class 3 misdemeanor and upon conviction shall only be subject to a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00). No action for trespass shall lie against any forest ranger, deputy forest ranger, or person summoned by him for crossing lands, backfiring, burning out or performing his duties as a forest ranger or deputy forest ranger.

(b) Forest rangers are authorized to issue and serve citations under the terms of G.S. 15A-302 and warning tickets under the terms of ~~G.S. 113-55.2~~G.S. 106-866 for offenses under the forest laws. This subsection may not be interpreted to confer the power of arrest on forest rangers, and does not make them criminal justice officers within the meaning of G.S. 17C-2.

"§ 106-865. Powers of forest law-enforcement officers.

The ~~Secretary~~ Commissioner is authorized to appoint as many forest law-enforcement officers as he deems necessary to carry out the forest law-enforcement responsibilities of the Department. Forest law-enforcement officers shall have all the powers and the duties of a forest ranger enumerated in ~~G.S. 113-54 and 113-55.~~G.S. 106-863 and G.S. 106-864. Forest law-enforcement officers shall, in addition to their other duties, have the powers of peace officers to enforce the forest laws. Any forest law-enforcement officer may arrest, without warrant, any person or persons committing any crime in his presence or whom such officer has probable cause for believing has committed a crime in his presence and bring such person or persons forthwith before a district court or other officer having jurisdiction. Forest law-enforcement officers shall also have authority to obtain and serve warrants including warrants for violation of any duly promulgated rule of the Department.

"§ 106-866. Warning tickets for violations of the forest laws.

(a) To encourage the cooperation of the public in achieving the objectives of the forest laws, the ~~Secretary~~ Commissioner may provide for the issuance of warning tickets instead of the initiation of criminal prosecution by forest rangers and forest law-enforcement officers. Issuance of the warning tickets shall be in accordance with criteria administratively promulgated by the ~~Secretary~~ Commissioner within the requirements of this section. These criteria are exempt from Article 2A of Chapter 150B of the General Statutes.

(b) No warning ticket may be issued unless all of the following conditions are met:

(1) The forest ranger or the forest law-enforcement officer must be convinced that the offense was not committed intentionally.

(2) The offense is not one, or a type of offense, for which the ~~Secretary~~ Commissioner has prohibited the issuance of warning tickets.

(3) At the time of the violation it was not reasonably foreseeable that the conduct of the offender could result in any significant destruction of forests or woodlands or constitute a hazard to the public.

(c) A warning ticket may not be issued if the offender has previously been charged with, or issued a warning ticket for, the same or a similar offense within the preceding three years. A list of persons who have been issued warning tickets under this section within the preceding three years shall be maintained and periodically updated by the ~~Secretary.~~Commissioner.

(d) This section does not entitle any person who has committed an offense to the right to be issued a warning ticket, and the issuance of a warning ticket does not prohibit the later initiation of criminal prosecution for the same offense for which the warning ticket was issued.

"§ 106-867. Compensation of forest rangers.

Forest rangers shall receive compensation from the Department at a reasonable rate to be fixed by said Department for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in the performance of their duties, according to an itemized statement to be rendered the ~~Secretary~~ Commissioner every month, and approved by him. Forest rangers shall render to the ~~Secretary~~ Commissioner a statement of the services rendered by the men employed by them or their deputy rangers, as provided in this Article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the ~~Secretary.~~Commissioner. If said bill be duly approved by the ~~Secretary,~~Commissioner, it shall be paid by direction of the Department out of any funds provided for that purpose.

"§ 106-868. Overtime compensation for forest fire fighting.

The Department shall, within funds appropriated to the Department, provide overtime compensation to the professional employees of the Division of Forest Resources involved in fighting forest fires.

"§ 106-869. Woodland defined.

For the purposes of this Article, woodland is taken to include all forest areas, both timber and cutover land, and all second-growth stands on areas that have at one time been cultivated.

"§ 106-870. Misdemeanor to destroy posted forestry notice.

Any person who shall maliciously or willfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the ~~Secretary,~~Commissioner, under the provisions of this Article, or any other act which may be passed for the purpose of protecting and developing the forests in this State, shall be guilty of a Class 3 misdemeanor.

"§ 106-871. Cooperation between counties and State in forest protection and development.

The board of county commissioners of any county is hereby authorized and empowered to cooperate with the Department in the protection, reforestation, and promotion of forest management of their own forests within their respective counties, and to appropriate and pay out of the funds under their control such amount as is provided in ~~G.S. 113-54.~~G.S. 106-863.

"§ 106-872. Instructions on forest preservation and development.

(a) It shall be the duty of all district, county, township rangers, and all deputy rangers provided for in this Chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire rangers all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such rangers by the State and federal forestry agencies touching or dealing with forest preservation, development, and forest management.

(b) It shall be the duty of the various rangers herein mentioned under the direction of the ~~Secretary,~~Commissioner, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, the development and scientific management of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do.

"§ 106-873. Authority of Governor to close forests and woodlands to hunting, fishing and trapping.

During periods of protracted drought or when other hazardous fire conditions threaten forest and water resources and appear to require extraordinary precautions, the Governor of the State, upon the joint recommendation of the ~~Secretary~~ Commissioner and the Executive Director of the North Carolina Wildlife Resources Commission, may by official proclamation:

(1) Close any or all of the woodlands and inland waters of the State to hunting, fishing and trapping for the period of the emergency.

(2) Forbid for the period of the emergency the building of campfires and the burning of brush, grass or other debris within 500 feet of any woodland in any county, counties, or parts thereof.

(3) Close for the period of the emergency any or all of the woodlands of the State to such other persons and activities as he deems proper under the circumstances, except to the owners or tenants of such property and their agents and employees, or persons holding written permission from any owner or his recognized agent to enter thereon for any lawful purpose other than hunting, fishing or trapping.

"**§ 106-874. Publication of proclamation; annulment thereof.**

Such proclamation shall become effective 24 hours after certified time of issue, and shall be published in such newspapers and posted in such places and in such manner as the Governor may direct. It shall be annulled in the same manner by another proclamation by the Governor when he is satisfied, upon joint recommendation of the ~~Secretary~~ Commissioner and the Executive Director of the North Carolina Wildlife Resources Commission, that the period of the emergency has passed.

"**§ 106-875. Violation of proclamation a misdemeanor.**

Any person, firm or corporation who enters upon any woodlands or inland waters of the State for the purpose of hunting, fishing or trapping, or who builds a campfire or burns brush, grass or other debris within 500 feet of any woodland, after a proclamation has been issued by the Governor forbidding such activities, or who violates any other provisions of the Governor's proclamation with regard to permissible activities in closed woodlands shall be guilty of a Class 1 misdemeanor."

SECTION 13.25.(r) Article 4A of Chapter 113 of the General Statutes (G.S. 113-60.4, 113-60.5, 113-60.6, 113-60.7, 113-60.8, 113-60.9, 113-60.10) is recodified as a new Article 73 of Chapter 106 of the General Statutes, G.S. 106-880 through G.S. 106-886.

SECTION 13.25.(s) Article 73 of Chapter 106 of the General Statutes, as recodified under subsection (r) of this section, reads as rewritten:

"Article 73.

"Protection of Forest Against Insect Infestation and Disease.

"**§ 106-880. Purpose and intent.**

(a) The purpose of this Article is to place within the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicate outbreaks of forest insect pests and tree diseases.

(b) In this Article, unless the context requires otherwise, the expression "Department" means the Department of ~~Environment and Natural Resources; "Secretary"~~Agriculture and Consumer Services, and "Commissioner" means the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture.

"**§ 106-881. Authority of the Department.**

The authority and responsibility for carrying out the purpose, intent and provisions of this Article are hereby delegated to the Department. The administration of the provisions of this Article shall be under the general supervision of the ~~Secretary.~~Commissioner. ~~The provisions of this Article shall not abrogate or change any power or authority as may be vested in the North Carolina Department of Agriculture and Consumer Services under existing statutes.~~

"**§ 106-882. Definitions.**

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

(1) "Control zone" means an area of potential or actual infestation or infection, boundaries of which are fixed and clearly described in a manner to definitely identify the zone.

(2) "Forestland" means land on which forest trees occur.

(3) "Forest trees" means only those trees which are a part and constitute a stand of potential immature or mature commercial timber trees, provided that the term "forest trees" shall be deemed to include shade trees of any species around houses, along highways, and within cities and towns, if the same constitute insect and disease menaces to nearby timber trees or timber stands.

(4) "Infection" means attack by any disease affecting forest trees which is declared by the ~~Secretary~~ Commissioner to be dangerously injurious thereto.
(5) "Infestation" means attack by means of any insect, which is by the ~~Secretary~~ Commissioner declared to be dangerously injurious to forest trees.

"§ 106-883. Action against insects and diseases.

Whenever the ~~Secretary,~~Commissioner, or his agent, determines that there exists an infestation of forest insect pests or an infection of forest tree diseases, injurious or potentially injurious to the timber or forest trees within the State of North Carolina, and that said infestation or infection is of such a character as to be a menace to the timber or forest growth of the State, the ~~Secretary~~ Commissioner shall declare the existence of a zone of infestation or infection and shall declare and fix boundaries so as to definitely describe and identify said zone of infestation or infection, and the ~~Secretary~~ Commissioner or his agent shall give notice in writing by mail or otherwise to each forest landowner within the designated control zone advising him of the nature of the infestation or infection, the recommended control measures, and offer him technical advice on methods of carrying out controls.

"§ 106-884. Authority of ~~Secretary~~ Commissioner and his agents to go upon private land within control zones.

The ~~Secretary~~ Commissioner or his agents shall have the power to go upon the land within any zone of infestation or infection and take measures to control, suppress or eradicate the insect, infestation or disease infection. If any person refuses to allow the ~~Secretary~~ Commissioner or his agents to go upon his land, or if any person refuses to adopt adequate means to control or eradicate the insect, infestation or disease infection, the ~~Secretary~~ Commissioner may apply to the superior court of the county in which the land is located for an injunction or other appropriate remedy to restrain the landowner from interfering with the ~~Secretary~~ Commissioner or his agents in entering the control zone and adopting measures to control, suppress or eradicate the insect infestation or disease infection, provided the cost of court or control thereof shall not be a liability against the forest landowner nor constitute a lien upon the real property of such infested area.

"§ 106-885. Cooperative agreements.

In order to more effectively carry out the purposes of this Article, the Department is ~~hereby~~ authorized to enter into cooperative agreement with the federal government and other public and private agencies, and with the owners of forestland.

"§ 106-886. Annulment of control zone.

Whenever the ~~Secretary~~ Commissioner determines that the forest insect or disease control work within a designated control zone is no longer necessary or feasible, then the ~~Secretary~~ Commissioner shall declare the zone of infestation or infection no longer pertinent to the purposes of this Article and such zone will then no longer be recognized."

SECTION 13.25.(t) Article 4B of Chapter 113 of the General Statutes (G.S. 113-60.11, 113-60.12, 113-60.13, 113-60.14, and 113-60.15) is recodified as a new Article 74 of Chapter 106 of the General Statutes, G.S. 106-890 through G.S. 106-894.

SECTION 13.25.(u) G.S. 106-893, as recodified in subsection (t) of this section, reads as rewritten:

"§ 106-893. Compact Administrator; North Carolina members of advisory committee.

The ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture is hereby designated as Compact Administrator for this State and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

At some time before the adjournment of each regular session of the General Assembly, the Governor shall choose one person from the membership of the House of Representatives, and shall choose one person from the membership of the Senate, who shall serve on the advisory committee of the Southeastern Interstate Forest Fire Protection Compact as provided for in Article III of said Compact. At the time of the selection of the House and Senate members of such advisory committee, the Governor shall choose one alternate member from the House of Representatives and one from the Senate who shall serve on such advisory committee in case of the death, absence or disability of the regular members so chosen."

SECTION 13.25.(v) G.S. 106-894, as recodified in subsection (t) of this section, reads as rewritten:

"§ 106-894. Agreements with noncompact states.

The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services is hereby authorized to enter into written agreements with the State forest fire control agency of any other state or any province of Canada which is party to a regional forest fire protection compact. The provisions of any written agreement entered into pursuant to this Article shall be substantially in the form of the authority heretofore granted under the provisions of this Article, Southeastern Interstate Forest Fire Protection Compact."

SECTION 13.25.(w) Article 4C of Chapter 113 of the General Statutes (G.S. 113-60.21, 113-60.22, 113-60.23, 113-60.24, 113-60.25, 113-60.26, 113-60.27, 113-60.28, 113-60.29, 113-60.30, and 113-60.31) is recodified as a new Article 75 of Chapter 106 of the General Statutes, G.S. 106-900 through G.S. 106-910.

SECTION 13.25.(x) Article 75 of Chapter 106 of the General Statutes, as recodified by subsection (w) of this section, reads as rewritten:

"Article 75.

"Regulation of Open Fires.

"§ 106-900. Purpose and findings.

The purpose of this Article is to regulate certain open burning in order to protect the public from the hazards of forest fires and air pollution and to adapt such regulation to the needs and circumstances of the different areas of North Carolina. The General Assembly finds that open burning in proximity to woodlands must be regulated in all counties to protect against forest fires and air pollution. The General Assembly further finds that in certain counties a high percentage of the land area contains organic soils or forest types which may pose greater problems of forest fire and air pollution controls, and that in counties in which a great amount of land-clearing operations is taking place on these organic soils or these forest types, additional control of open burning is required. The counties subject to the need for additional control are classified as high hazard counties for purpose of this Article.

"§ 106-901. Definitions.

As used in this Article:

(1) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(2) "Forest ranger" means the county forest ranger or deputy forest ranger designated under ~~G.S. 113-52.~~G.S. 106-861.

(3) "Person" means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.

(4) "Woodland" means woodland as defined in ~~G.S. 113-57.~~G.S. 106-869.

"§ 106-902. High hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties of Beaufort, Bladen, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Duplin, Gates, Hyde, Jones, Onslow, Pamlico, Pasquotank, Perquimans, Tyrrell, and Washington which are classified as high hazard counties in accordance with ~~G.S. 113-60.21.~~G.S. 106-900.

(b) It is unlawful for any person to willfully start or cause to be started any fire in any woodland under the protection of the Department or within 500 feet of any such woodland without first having obtained a permit from the Department. Permits for starting fires may be obtained from forest rangers or other agents authorized by the county forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled in accordance with ~~G.S. 113-60.25 or 113-60.27.~~G.S. 106-904 or G.S. 106-906.

(c) It is unlawful for any person to willfully burn any debris, stumps, brush or other flammable materials resulting from ground clearing activities and involving more than five contiguous acres, regardless of the proximity of the burning to woodland and on which such materials are placed in piles or windrows without first having obtained a special permit from the Department. Areas less than five acres in size will require a regular permit in accordance with ~~G.S. 113-60.23(b).~~G.S. 106-902(b).

(1) Prevailing winds at the time of ignition must be away from any city, town, development, major highway, or other populated area, the ambient air of which may be significantly affected by smoke, fly ash, or other air contaminates from the burning.

(2) The location of the burning must be at least 1,000 feet from any dwelling or structure located in a predominately residential area other than a dwelling or

structure located on the property on which the burning is conducted unless permission is granted by the occupants.

(3) The amount of dirt or organic soil on or in the material to be burned must be minimized and the material arranged in a way suitable to facilitate rapid burning.

(4) Burning may not be initiated when it is determined by a forest ranger, based on information supplied by a competent authority that stagnant air conditions or inversions exist or that such conditions may occur during the duration of the burn.

(5) Heavy oils, asphaltic material, or items containing natural or synthetic rubber may not be used to ignite the material to be burned or to promote the burning of such material.

(6) Initial burning may be commenced only between the hours of 9:00 A.M. and 3:00 P.M. and no combustible material may be added to the fire between 3:00 P.M. on one day and 9:00 A.M. on the following day, except that when favorable meteorological conditions exist, any forest ranger authorized to issue the permit may authorize in writing a deviation from the restrictions.

"§ 106-903. Open burning in non-high hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties not designated as high hazard counties in ~~G.S. 113-60.23(a).~~G.S. 106-902(a).

(b) It shall be unlawful for any person to start or cause to be started any fire or ignite any material in any woodland under the protection of the Department or within 500 feet of any such woodland during the hours starting at midnight and ending at 4:00 P.M. without first obtaining a permit from the Department. Permits may be obtained from forest rangers or other agents authorized by the forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled under ~~G.S. 113-60.25 or 113-60.27.~~G.S. 106-904 or G.S. 106-906.

"§ 106-904. Open burning prohibited statewide.

During periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, the ~~secretary~~ Commissioner is authorized to prohibit all open burning regardless of whether a permit is required under ~~G.S. 113-60.23 or 113-60.24.~~G.S. 106-902 or G.S. 106-903. The ~~secretary~~ Commissioner shall issue a press release containing relevant details of the prohibition to news media serving the area affected.

"§ 106-905. Permit conditions.

Permits issued under this Article shall be issued in the name of the person undertaking the burning and shall specify the specific area in which the burning is to occur, the type and amount of material to be burned, the duration of the permit, and such other factors as are necessary to identify the burning which is allowed under the permit.

"§ 106-906. Permit suspension and cancellation.

Upon a determination that hazardous forest fire conditions exist the ~~secretary~~ Commissioner is authorized to cancel any permit issued under this Article and suspend the issuance of any new permits. Upon a determination by the Environmental Management Commission or its agent that open burning permitted under this Article is causing significant contravention of ambient air quality standards or that an air pollution episode exists pursuant to Article 21B of Chapter 143 of the General Statutes, the ~~secretary~~ Commissioner shall cancel any permits issued under authority of this Article and shall suspend the issuance of any new permits.

"§ 106-907. Control of existing fires.

(a) If a fire is set without a permit required by ~~G.S. 113-60.23, 113-60.24 or 113-60.25~~G.S. 106-902, 106-903, or 106-904, and is set in an area in which permits are prohibited or cancelled at the time the fire is set, the person responsible for setting the fire or causing the fire to be set shall immediately extinguish the fire or take such other action as directed by any forest ranger authorized to issue permits under ~~G.S. 113-60.23(c).~~G.S. 106-902(c). In the event that the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department

for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(b) If a fire requiring a permit under ~~G.S. 113-60.23(c)~~G.S. 106-902(c) is set without a permit and a forest ranger authorized to issue such permits determines that a permit would not have been issued for the fire at the time it was set, the person responsible for setting the fire or causing the fire to be set shall immediately take such action as the forest ranger directs to extinguish or control the fire. In the event the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(c) If a fire is set in accordance with a permit but the burning is taking place contrary to the conditions of the permit, any forest ranger with authority to issue permits in the area in question may order the permittee in writing to undertake the steps necessary to comply with the conditions of his permit. If the permittee is not making a reasonable effort to comply with the order, the forest ranger may enter the property and take reasonable steps to extinguish or control the fire and the permittee shall reimburse the Department for the expenses incurred by the Department.

"§ 106-908. Penalties.

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under ~~G.S. 113-60.28.~~G.S. 106-907.

"§ 106-909. Effect on other laws.

This Article shall not be construed as affecting or abridging the lawful authority of local governments to pass ordinances relating to open burning within their boundaries. Nothing in this Article shall relieve any person from compliance with the provisions of Article 21B of Chapter 143 of the General Statutes and regulations adopted thereunder. In the event that permits are required for open burning associated with land clearing under the authority of Article 21B of Chapter 143 of the General Statutes, the authority to issue such permits shall be delegated to forest rangers who are authorized to issue permits under ~~G.S. 113-60.23(c).~~G.S. 106-902(c).

"§ 106-910. Exempt fires; no permit fees.

(a) This Article shall not apply to any fires started, or caused to be started, within 100 feet of an occupied dwelling house if such fire shall be confined (i) within an enclosure from which burning material may not escape or (ii) within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.

(b) No charge shall be made for the granting of any permit required by this Article."

SECTION 13.25.(y) Article 4D of Chapter 113 of the General Statutes (G.S. 113-60.32 and G.S. 113-60.33) is recodified as a new Article 76 of Chapter 106 of the General Statutes, G.S. 106-911 and G.S. 106-912.

SECTION 13.25.(z) Article 76 of Chapter 106 of the General Statutes, as recodified by subsection (y) of this section, reads as rewritten:

"Article 76.

"Fire Fighters on Standby Duty.

"§ 106-911. Definitions.

As used in this Article:

(1) "Fire fighter" means an employee of the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services who engages in fire suppression duties.

(2) "Fire suppression duties" means involvement in on-site fire suppression, participation in Project Fire Team while it is mobilized, Operations Room duty during on-going fires or when required by high readiness plans, mop-up activities to secure fire sites, scouting and detecting forest fires, performance

of standby duty, and any other activity that directly contributes to the detection, response to, and control of fires.

"§ 106-912. Standby duty.

(a) Standby duty is time during which a fire fighter is required to remain within 25 miles of his duty station and be available to return to the duty station on call. The Department of Agriculture and Consumer Services shall provide each fire fighter on standby duty with an electronic paging device that makes the wearer accessible to his duty station.

(b) Notwithstanding subsection (a) of this section, for at least two out of 14 consecutive days that a fire fighter is on duty, the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall permit the fire fighter to be more than 25 miles from his duty station so long as the fire fighter gives the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services a telephone number where he can be reached; each month, the days the fire fighter is permitted to be more than 25 miles from his duty station shall include one full weekend. On the days the fire fighter is permitted to be more than 25 miles from his duty station, the Department of ~~Environment and Natural Resources~~ Agriculture and Consumer Services may call him only when there is a bona fide emergency."

SECTION 13.25.(aa) Article 4E of Chapter 113 of the General Statutes (G.S. 113-60.40, 113-60.41, 113-60.42, 113-60.43, 113-60.44, and 113-60.45) is recodified as a new Article 77 of Chapter 106 of the General Statutes, G.S. 106-920 through G.S. 106-925.

SECTION 13.25.(bb) Article 77 of Chapter 106 of the General Statutes, as recodified by subsection (aa) of this section, reads as rewritten:

"Article 77.

"North Carolina Prescribed Burning Act.

"§ 106-920. Legislative findings.

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. The General Assembly finds that the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire-prone forestlands, referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of wildfires that cause damage.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Prescribed burning benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage and an area for escape and brooding and that satisfy other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) Prescribed burning enhances the resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife, recreation, and other purposes.

As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable. By recognizing the benefits of prescribed burning and by adopting requirements governing prescribed burning, the General Assembly helps to educate the public, avoid misunderstandings, and reduce complaints about this valuable management tool.

"§ 106-921. Definitions.

As used in this Article:

(1) "Certified prescribed burner" means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(2) "Prescribed burning" means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and safe environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) "Prescription" means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burning.

"**106-922. Immunity from liability.**

(a) Any prescribed burning conducted in compliance with ~~G.S. 113-60.43~~G.S. 106-923 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burning in compliance with ~~G.S. 113-60.43~~G.S. 106-923 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) Notwithstanding subsections (a) and (b), this section does not apply when a nuisance or damage results from a negligently or improperly conducted prescribed burning.

"**§ 106-923. Prescribed burning.**

(a) Prior to conducting a prescribed burning, the landowner shall obtain a prescription for the prescribed burning prepared by a certified prescribed burner and filed with the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. A copy of the prescription shall be provided to the landowner. A copy of this prescription shall be in the possession of the responsible burner on site throughout the duration of the prescribed burning. The prescription shall include:

(1) The landowner's name and address.

(2) A description of the area to be burned.

(3) A map of the area to be burned.

(4) An estimate in tons of the fuel located on the area.

(5) The objectives of the prescribed burning.

(6) A list of the acceptable weather conditions and parameters for the prescribed burning sufficient to minimize the likelihood of smoke damage and fire escaping onto adjacent areas.

(7) The name of the certified prescribed burner responsible for conducting the prescribed burning.

(8) A summary of the methods that are adequate for the particular circumstances involved to be used to start, control, and extinguish the prescribed burning.

(9) Provision for reasonable notice of the prescribed burning to be provided to nearby homes and businesses to avoid effects on health and property.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with a prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning. A landowner may conduct a prescribed burning without being a certified prescribed burner if the landowner is burning a tract of forestland of 50 acres or less owned by that landowner and is following all conditions established in a prescription prepared by a certified prescribed burner.

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. This open-burning permit must remain in effect throughout the period of the prescribed burning. The prescribed burning shall be conducted in compliance with all the following:

(1) The terms and conditions of the open-burning permit under ~~Article 4C~~Article 75 of this Chapter.

(2) The State's air pollution control statutes under Article 21 and Article 21B of Chapter 143 of the General Statutes and any rules adopted pursuant to these statutes.

(3) Any applicable local ordinances relating to open burning.

(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(5) Any rules adopted by the Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, to implement this Article.

"**§ 106-924. Adoption of rules.**

The Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, may adopt rules that govern prescribed burning under this Article.

"**§ 106-925. Exemption.**

This Article does not apply when the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture has cancelled burning permits pursuant to ~~G.S. 113-60.27~~G.S. 106-906 or prohibited all open burning pursuant to ~~G.S. 113-60.25.~~G.S. 106-904."

SECTION 13.25.(cc) Article 5 of Chapter 113 of the General Statutes (G.S. 113-61, 113-62, 113-63, 113-64, 113-65, 113-66, 113-67, 113-68, 113-69, 113-70, 113-71, 113-72, 113-73, 113-74, 113-75, 113-76, and 113-77) is recodified as a new Article 78 of Chapter 106 of the General Statutes, G.S. 106-930 through G.S. 106-946.

SECTION 13.25.(dd) Article 78 of Chapter 106 of the General Statutes, as recodified by subsection (cc) of this section, reads as rewritten:

"Article 78.

"Corporations for Protection and Development of Forests.

"**§ 106-930. Private limited dividend corporations may be formed.**

(a) In this Article, unless the context requires otherwise, "Department" means the Department of ~~Environment and Natural Resources; and "Secretary"~~Agriculture and Consumer Services, and "Commissioner" means the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture.

(b) Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the Secretary shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article.

"**§ 106-931. Manner of organizing.**

A corporation formed under this Article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this Article and that it consents to be and shall be at all times subject to the rules and supervision of the Secretary, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules from time to time imposed by the Secretary.

"**§ 106-932. Directors.**

There shall not be less than three directors, one of whom shall always be a person designated by the Secretary, which one need not be a stockholder.

"**§ 106-933. Duties of supervision by ~~Secretary of Environment and Natural Resources.~~Commissioner.**

Corporations formed under this Article shall be regulated by the ~~Secretary~~ Commissioner in the manner provided in this Article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this Article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties which cannot be fairly charged to any particular corporation or corporations shall be charged to, and paid by, all the corporations then organized and existing under this Article pro rata according to their respective stock capitalizations. The ~~Secretary~~ Commissioner shall:

(1) Adopt rules to implement this Article and to protect and develop forests subject to its jurisdiction.

(2) Order all corporations organized under this Article to do such acts as may be necessary to comply with the provisions of law and the rules adopted by the ~~Secretary,~~Commissioner, or to refrain from doing any acts in violation thereof.

(3) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the ~~Secretary.~~Commissioner.

(4) Require every such corporation to file with the ~~Secretary~~ Commissioner annual reports and, if the ~~Secretary~~ Commissioner shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the ~~Secretary~~ Commissioner may require.

"§ 106-934. Powers of ~~Secretary.~~Commissioner.

The ~~Secretary~~ Commissioner may:

(1) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(2) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The ~~Secretary~~ Commissioner shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(3) Enforce the provisions of this Article, a rule implementing this Article, or an order issued under this Article by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief.

"§ 106-935. Provision for appeal by corporations to Governor.

If any corporation organized under this Article is dissatisfied with or aggrieved at any rule or order imposed upon it by the ~~Secretary,~~Commissioner, or any valuation or appraisal of any of its property made by the ~~Secretary,~~Commissioner, or any failure of or refusal by the ~~Secretary~~ Commissioner to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the Governor by filing with him a claim of appeal upon which the decision of the Governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the Governor in a written mandate to the ~~Secretary,~~Commissioner, who shall abide thereby and take such actions as the same may direct.

"§ 106-936. Limitations as to dividends.

The shares of stock of corporations organized under this Article shall have a par value and, except as provided in ~~G.S. 113-69~~G.S. 106-938 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum (6%) per annum on stock having a preference as to dividends, or eight per centum (8%) per annum on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest.

"§ 106-937. Issuance of securities restricted.

No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the State of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the ~~Secretary.~~Commissioner.

"§ 106-938. Limitation on bounties to stockholders.

Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in ~~G.S. 113-67~~G.S. 106-936 except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof.

"**§ 106-939. Earnings above dividend requirements payable to State.**

Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in ~~G.S. 113-67~~G.S. 106-936 shall be paid over to the State of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the ~~Secretary~~ Commissioner shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered.

"**§ 106-940. Dissolution of corporation.**

Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the State of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within 20 years of the date of its organization unless the same is accompanied by a certificate of the ~~Secretary~~ Commissioner consenting to such dissolution.

"**§ 106-941. Cutting and sale of timber.**

Any such corporation may cut and sell the timber on its land or permit the cutting thereof, but all such cuttings shall be in accordance with the rules, restrictions and limitations imposed by the ~~Secretary,~~Commissioner, who shall impose such rules, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time.

"**§ 106-942. Corporation may not sell or convey without consent of ~~Secretary,~~Commissioner, or pay higher interest rate than 6%.**

No such corporation ~~shall:~~shall do any of the following:

(1) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the ~~Secretary~~ Commissioner of the terms of such sale, transfer or assignment, and unless the ~~Secretary~~ Commissioner shall consent thereto, and if the ~~Secretary~~ Commissioner shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the rules and supervision of the ~~Secretary~~ Commissioner for such period as the latter may ~~require;~~require.

(2) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum (6%) per annum without the consent of the ~~Secretary;~~Commissioner.

(3) Mortgage any real property without first having obtained the consent of the ~~Secretary.~~Commissioner.

"**§ 106-943. Power to borrow money limited.**

Any such corporation formed under this Article may, subject to the approval of the ~~Secretary,~~Commissioner, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the ~~Secretary,~~Commissioner, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the rules of the ~~Secretary~~ Commissioner for such period as the mortgage or trust indenture may specify.

"**§ 106-944. ~~Secretary~~ Commissioner to approve development of forests.**

No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the ~~Secretary,~~Commissioner, and such approval shall not be given unless:

(1) The ~~Secretary~~ Commissioner shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the ~~Secretary~~ Commissioner shall require of the activities to be included in the project, such statement to set forth the proposals as to

a. Fire prevention and protection,

b. Protection against insects and tree diseases,

c. Protection against damage by livestock and game,

d. Means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and

e. Planting and spacing of trees.

(2) There shall be submitted to the ~~Secretary~~ Commissioner a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the ~~Secretary~~ Commissioner as to where such funds are to be secured.

(3) The ~~Secretary~~ Commissioner shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained-yield basis except insofar as the ~~Secretary~~ Commissioner shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the ~~Secretary,~~Commissioner, and that it will at all times comply with such rules concerning the project as the ~~Secretary~~ Commissioner shall from time to time impose.

"§ 106-945. Application of corporate income.

The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the ~~Secretary~~ Commissioner to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus, and/or to the payment of dividends not exceeding the maximum fixed by this Article; third, the balance, if any, in reduction of debts.

"§ 106-946. Reorganization of corporations.

Reorganization of corporations organized under this Article shall be subject to the supervision of the ~~Secretary~~ Commissioner and no such reorganization shall be had without the authorization of the ~~Secretary.~~Commissioner."

SECTION 13.25.(ee) Article 6A of Chapter 113 of the General Statutes (G.S. 113-81.1, 113-81.2, and 113-81.3) is recodified as a new Article 79 of Chapter 106 of the General Statutes, G.S. 106-950 through G.S. 106-952.

SECTION 13.25.(ff) Article 79 of Chapter 106 of the General Statutes, as recodified by subsection (ee) of this section, reads as rewritten:

"Article 79.

"Forestry Services and Advice for Owners and Operators of Forestland.

"§ 106-950. Authority to render scientific forestry services.

(a) In this Article, unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of Agriculture.

~~(1)~~(2) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

~~(2) "Secretary" means the Secretary of Environment and Natural Resources.~~

(b) The Department is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. The Department is also authorized to cooperate with landowners of the State and with counties, municipalities and State agencies by making available forestry services consisting of specialized equipment and operators, or by renting such equipment, and to perform such labor and services as may be necessary to carry out approved forestry practices, including site preparation, forest planting, prescribed burning, and other appropriate forestry practices. For such services or rentals, a reasonable fee representing the ~~Secretary's~~ Commissioner's estimate of not less than the costs of such services or rentals shall be charged, provided however, when the ~~Secretary~~ Commissioner deems it in the public interest, said services may be provided without charge, for the purpose of encouraging the use of approved scientific forestry practice on the private or other forestlands within the State, or for the purpose of providing practical demonstrations of said practices. Receipts from these activities and rentals shall be credited to the budget of the Department for the furtherance of these activities.

"§ 106-951. Services under direction of ~~Secretary;~~Commissioner; compensation; when services without charge.

(a) The administration of the provisions of this Article shall be under the direction of the ~~Secretary.~~Commissioner. The ~~Secretary,~~Commissioner, or his authorized agent, upon

receipt of a request from a forest landowner or operator for technical forestry assistance or service, may designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products by blazing, spotting with paint or otherwise designating in an approved manner; he may measure or estimate the commercial volume contained in the trees designated; he may furnish the landowner or operator with a statement of the volume of the trees so designated and estimated; he may assist in finding a suitable market for the products so designated, and he may offer general forestry advice concerning the management of the forest.

(b) For such designating, measuring or estimating services the ~~Secretary~~ Commissioner may make a charge, on behalf of the Department, in an amount not to exceed five percent (5%) of the sale price or fair market value of the stumpage so designated and measured or estimated. Upon receipt from the ~~Secretary~~ Commissioner of a statement of such charges, the landowner or operator or his agent shall make payment to the ~~Secretary~~ Commissioner within 30 days.

(c) In those cases where the ~~Secretary~~ Commissioner deems it desirable to so designate and measure or estimate trees without charge, such services shall be given for the purpose of encouraging the use of approved scientific forestry principles on the private or other forestlands within the State, and to establish practical demonstrations of said principles.

"§ 106-952. Deposit of receipts with State treasury.

All moneys paid to the ~~Secretary~~ Commissioner for services rendered under the provisions of this Article shall be deposited into the State treasury to the credit of the Department."

SECTION 13.25.(gg) Article 11 of Chapter 113A of the General Statutes (G.S. 113A-176, 113A-177, 113A-178, 113A-179, 113A-180, 113A-180.1, 113A-181, 113A-182, and 113A-183) is recodified as a new Article 80 of Chapter 106 of the General Statutes, G.S. 106-955 through G.S. 106-963.

SECTION 13.25.(hh) Article 80 of Chapter 106 of the General Statutes, as recodified by subsection (gg) of this section, reads as rewritten:

"Article 80.

"Forest Development Act.

"§ 106-955. Title.

This Article shall be known as the "Forest Development Act."

"§ 106-956. Statement of purpose.

(a) The General Assembly finds that:

(1) It is in the public interest of the State to encourage the development of the State's forest resources and the protection and improvement of the forest environment.

(2) Unfavorable environmental impacts, particularly the rapid loss of forest land to urban development, are occurring as a result of population growth. It is in the State's interest that corrective action be developed now to offset forest land losses in the future.

(3) Regeneration of potentially productive forest land is a high-priority problem requiring prompt attention and action. Private forest land will become more important to meet the needs of the State's population.

(4) Growing demands on forests and related land resources cannot be met by intensive management of public and industrial forest lands alone.

(b) The purpose of this Article is to direct the ~~Secretary~~ Commissioner of Agriculture to implement a forest development program to:

(1) Provide financial assistance to eligible landowners to increase the productivity of the privately owned forests of the State through the application of forest renewal practices and other practices that improve tree growth and overall forest health.

(2) Insure that forest operations in the State are conducted in a manner designed to protect the soil, air, and water resources, including but not limited to streams, lakes and estuaries through actions of landowners on lands for which assistance is sought under provisions in this Article.

(3) Implement a program of voluntary landowner participation through the use of a forest development fund to meet the above goals.

(c) It is the intent of the General Assembly that in implementing the program under this Article, the ~~Secretary~~ Commissioner will cause it to be coordinated with other related programs in such a manner as to encourage the utilization of private agencies, firms and individuals

furnishing services and materials needed in the application of practices included in the forest development program.

"§ 106-957. Definitions.

As used in this Article:

(1) "Approved forest management plan" means the forest management plan submitted by the eligible landowner and approved by the ~~Secretary.~~Commissioner. Such plan shall include forest management practices to insure both maximum forest productivity and environmental protection of the lands to be treated under the management plan.

(2) "Approved practices'" mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature timber, or of insuring maximum growth potential of forest stands to commercial production levels. Such practices shall include those required to accomplish site preparation, natural and artificial forestation, noncommercial removal of residual stands for silvicultural purposes, cultivation of established young growth of desirable trees for silvicultural purposes, and improvement of immature forest stands for silvicultural purposes. In each case, approved practices will be determined by the needs of the individual forest stand. These practices shall include existing practices and such practices as are developed in the future to insure both maximum forest productivity and environmental protection.

(2a) "Commissioner" means the Commissioner of Agriculture.

(3) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(3a) "Eligible land" means land owned by an eligible landowner.

(4) "Eligible landowner" means a private individual, group, association or corporation owning land suitable for forestry purposes. Where forest land is owned jointly by more than one individual, group, association or corporation, as tenants in common, tenants by the entirety, or otherwise, the joint owners shall be considered, for the purpose of this Article, as one eligible landowner and entitled to receive cost-sharing payments as provided herein only once during each fiscal year.

(5) Recodified as § 113A-178(3a).

(6) "Forest development assessment" means an assessment on primary forest products from timber severed in North Carolina for the funding of the provisions of this Article, as authorized by the General Assembly.

(7) "Forest development cost-sharing payment" means financial assistance to partially cover the costs of implementing approved practices in such amounts as the ~~Secretary~~ Commissioner shall determine, subject to the limitations of this Article.

(8) "Forest development fund" means the Forest Development Fund created by ~~G.S. 113A-183.~~G.S. 106-963.

(8a) "Maintain" means to retain the reforested area as forestland for a 10-year period and to comply with the provisions in the approved forest management plan.

~~(9) "Secretary" means the Secretary of Environment and Natural Resources.~~

"§ 106-958. Powers and duties.

(a) The ~~Secretary~~ Commissioner shall have the powers and duties to administer the provisions of this Article.

(b) The Department shall serve as the disbursing agency for funds to be expended from and deposited to the credit of the Forest Development Fund.

(c) Subject to the limitations set forth in ~~G.S. 113A-183(d),~~G.S. 106-963(d), the ~~Secretary~~ Commissioner is authorized to employ administrative, clerical and field personnel to support the program created by this Article and to compensate such employees from the Forest Development Fund for services rendered in direct support of the program.

(d) The ~~Secretary~~ Commissioner is authorized to purchase equipment for the implementation of this program from the Forest Development Fund subject to the limitations of

~~G.S. 113A-183(e).~~G.S. 106-963(e). All equipment purchased with these funds will be assigned to and used only for the forest development program, except for emergency use in forest fire suppression and other activities relating to the protection of life or property. The Forest Development Fund will be reimbursed from other program funds for equipment costs incurred during such emergency use.

"§ 106-959. Administration of cost sharing.

The ~~Secretary~~ Commissioner shall have authority to administer the cost sharing provisions of this Article, including but not limited to the following:

(1) Prescribe the manner and requirements of making application for cost sharing funds.

(2) Identify those approved forestry practices as defined in ~~G.S. 113A-178(2)~~G.S. 106-957(2) which shall be approved for cost sharing under the provisions of this Article.

(3) Review periodically the cost of forest development practices and establish allowable ranges for cost sharing purposes for approved practices under varying conditions throughout the State.

(4) Determine, prior to approving forest development cost sharing payments to any landowner, that all proposed practices are appropriate and are comparable in cost to the prevailing cost of those practices in the general area in which the land is located. Should the ~~Secretary~~ Commissioner determine that the submitted cost of any practice is excessive, he shall approve forest development cost sharing payments based upon an allowable cost established under ~~G.S. 113A-180(3).~~G.S. 106-959(3).

(5) Determine, prior to approving forest development cost sharing payments, that an approved forest management plan as defined in ~~G.S. 113A-178(1)~~G.S. 106-957(1) for the eligible land has been filed with the ~~Secretary~~ Commissioner and that the landowner has indicated in writing his intent to comply with the terms of such management plan.

(6) Determine, prior to approving forest development cost sharing payments, that the approved practices for which payment is requested have been completed in a satisfactory manner, conform to the approved forest management plan submitted under ~~G.S. 113A-180(5),~~G.S. 106-959(5), and otherwise meet the requirements of this Article.

(7) Disburse from the Forest Development Fund to eligible landowners cost sharing payments for satisfactory completion of practices provided for by this Article and the ~~Secretary~~ Commissioner shall, insofar as is practicable, disburse the funds from the State's appropriation on a matching basis with the funds generated by the Primary Forest Product Assessment.

"§ 106-960. Cost-share agreements.

(a) In order to receive forest development cost-share payments, an eligible landowner shall enter into a written agreement with the Department describing the eligible land, setting forth the approved practices implemented for the area and covered by the approved forest management plan, and agreeing to maintain those practices for a 10-year period.

(b) In the absence of Vis major or Act of God or other factors beyond the landowner's control, a landowner who fails to maintain the practice or practices for a 10-year period in accordance with the agreement set forth in subsection (a) of this section shall repay to the Fund all cost-sharing funds received for that area.

(c) If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner shall:

(1) Obtain a written statement, or a form approved by the Department, from the new owner or transferee in which the new owner or transferee agrees to maintain the approved practices for the remainder of the 10-year period; or

(2) Repay to the Fund all cost-sharing funds received for implementing the approved practices on the land.

If a written statement is obtained from the new owner or transferee, the original landowner will no longer be responsible for maintaining the approved practices or repaying the cost-sharing funds. The responsibility for maintaining those practices for the remainder of the 10 years shall devolve to the new owner or transferee.

"§ 106-961. Limitation of payments.

(a) An eligible landowner may receive forest development cost sharing payments for satisfactory completion of approved practices as determined by the ~~Secretary,~~Commissioner, except that the ~~Secretary~~ Commissioner shall approve no assistance in an amount exceeding the lesser of (i) a sum equal to sixty percent (60%) of the landowner's actual per acre cost incurred in implementing the approved practice or (ii) a sum equal to sixty percent (60%) of the prevailing per acre cost as determined by the ~~Secretary~~ Commissioner under ~~G.S. 113A-180(3)~~G.S. 106-959(3) for implementing that approved practice.

(b) The maximum amount of forest development cost sharing funds allowed to any landowner in one fiscal year will be the amount required to complete all approved practices on 100 acres of land at the prevailing cost sharing rate established under ~~G.S. 113A-181(a).~~G.S. 106-961(a).

(c) Eligible landowners may not use State cost sharing funds if funds from any federal cost sharing program are used on the same acreage for forestry practices during the same fiscal year.

"§ 106-962. Participation by government political subdivisions.

No governmental agency, federal, State or local, will be eligible for forest development payments under the provision of this Article.

"§ 106-963. Forest Development Fund.

(a) The Forest Development Fund is created in the Department ~~of Environment and Natural Resources~~ as a special fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to it. The Fund is created to provide revenue to implement this Article. The Fund consists of the following revenue:

(1) Assessments on primary forest products collected under ~~Article 12 of Chapter 113A~~Article 81 of Chapter 106 of the General Statutes.
(2) General Fund appropriations.
(3) Gifts and grants made to the Fund.

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Processor Assessment Act may be used for program support under the provisions of ~~G.S. 113A-179(c).~~G.S. 106-958(c).

(e) Funds used for the purchase of equipment under the provisions of ~~G.S. 113A-179(d)~~ G.S. 106-958(d) shall be limited to appropriations from the General Fund to the Forest Development Fund designated specifically for equipment purchase."

SECTION 13.25.(ii) Article 12 of Chapter 113A of the General Statutes (G.S. 113A-189, 113A-190, 113A-191, 113A-192, 113A-193, 113A-194, 113A-195, and 113A-196) is recodified as a new Article 81 of Chapter 106 of the General Statutes, G.S. 106-965 through G.S. 106-972.

SECTION 13.25.(jj) Article 81 of Chapter 106 of the General Statutes, as recodified by subsection (ii) of this section, reads as rewritten:

"Article 81.
"Primary Forest Product Assessment Act.

"§ 106-965. Short title.

This Article shall be known as the Primary Forest Product Assessment Act.

"§ 106-966. Statement of purpose.

(a) The purpose of this Article is to create an assessment on primary forest products processed from North Carolina timber to provide a source of funds to finance the forestry operations provided for in the Forest Development Act of 1977.

(b) All assessments levied under the provisions of this Article shall be used only for the purposes specified in ~~G.S. 113A-193(c)~~G.S. 106-969(c) and in the Forest Development ~~Act.~~Act, Article 11 of this Chapter.

"§ 106-967. Definitions.

The following words, terms and phrases hereinafter used for the purpose of this Article are defined as follows:

(1) "Primary forest product" shall include those products of the tree after it is severed from the stump and cut to its first roundwood product for further conversion. These products include but are not limited to whole trees for chipping, whole tree logs, sawlogs, pulpwood, veneer bolts, and posts, poles and piling.

(2) "Processor" shall mean the individual, group, association, or corporation that procures primary forest products at their initial point of concentration for conversion to secondary products or for shipment to others for such conversion.

(3) "Forest Development Fund" shall mean the special fund established by ~~the Forest Development Act of 1977.~~G.S. 106-963.

(4) For the purpose of this Article, the following are not considered "primary forest products":

a. Christmas trees and associated greens;

b. Material harvested from an individual's own land and used on said land for the construction of fences, buildings or other personal use developments;

c. Fuel wood harvested for personal use or use in individual homes.

"§ 106-968. Operation of assessment system.

(a) The General Assembly hereby levies an assessment on all primary forest products harvested from lands within the State of North Carolina.

(b) This assessment shall be at the rates as established in ~~G.S. 113A-194(b)~~G.S. 106-970(b) and the proceeds of such assessment shall be deposited in the Forest Development Fund.

"§ 106-969. Duties.

(a) The Secretary, Department of Revenue, shall:

(1) Develop the necessary administrative procedures to collect the assessment;

(2) Collect the assessment from the primary forest product processors;

(3) Deposit funds collected from the assessment in the Forest Development Fund;

(4) Audit the records of processors to determine compliance with the provisions of this Article.

(b) The ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture shall:

(1) Provide to the Secretary, Department of Revenue, lists of processors subject to the assessment;

(2) Advise the Secretary, Department of Revenue, of the appropriate methods to convert measurements of primary forest products by other systems to those authorized in this Article;

(3) Establish in November prior to those sessions in which the General Assembly considers the State budget, the estimated total assessment that will be collectible in the next budget period and so inform the General Assembly;

(4) Within 30 days of certification of the State budget, notify the Secretary, Department of Revenue, of the need to collect the assessment for those years covered by the approved budget.

(5) By January 15 of each odd-numbered year, report to the General Assembly on the number of acres reforested, type of owners assisted, geographic distribution of funds, the amount of funds encumbered and other matters. The report shall include the information by forestry district and statewide and shall be for the two fiscal years prior to the date of the report.

(c) The Secretary of Revenue shall be reimbursed for those actual expenditures incurred as a cost of collecting the assessment for the Forest Development Fund. This amount shall be transferred from the Forest Development Fund in equal increments at the end of each quarter of the fiscal year to the Department of Revenue. This amount shall not exceed five percent (5%) of the total assessments collected on primary forest products during the preceding fiscal year.

"§ 106-970. Assessment rates.

(a) The assessment rates shall be based on the following standards:

(1) For primary forest products customarily measured in board feet, the "International 1/4 Inch Log Rule" or equivalent will be used;

(2) For primary forest products customarily measured in cords, the standard cord of 128 cubic feet or equivalent will be used;

(3) For any other type of forest product separated from the soil, the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture shall determine a fair unit assessment rate, based on the cubic foot volume of one

thousand foot board measure, International 1/4 Inch Log Rule or one standard cord, 128 cubic feet.

(b) The assessment levied on primary forest products shall be at the following rates:

(1) Fifty cents (50¢) per thousand board feet for softwood sawtimber, veneer logs and bolts, and all other softwood products normally measured in board feet;

(2) Forty cents (40¢) per thousand board feet for hardwood and bald cypress sawtimber, veneer, and all other hardwood and bald cypress products normally measured in board feet;

(3) Twenty cents (20¢) per cord for softwood pulpwood and other softwood products normally measured in cords;

(4) Twelve cents (12¢) per cord for hardwood pulpwood and other hardwood and bald cypress products normally measured in cords;

(5) All material harvested within North Carolina for shipment outside the State for primary processing will be assessed at a percentage of the invoice value. This percentage will be established to yield rates equal to those if the material were processed within the State.

"**§ 106-971. Collection of assessment.**

(a) The assessment shall be levied against the processor of the primary forest product.

(b) The assessment shall be submitted on a quarterly basis of the State's fiscal year due and payable the last day of the month following the end of each quarter.

(c) The assessment shall be remitted to the Secretary, Department of Revenue, by check or money order, with such production reports as may be required by said Secretary.

(d) The processor shall maintain for a period of three fiscal years and make available to the Secretary, Department of Revenue, such production records necessary to verify proper reporting and payment of revenue due the Forest Development Fund.

(e) The production reports of the various processors shall be used only for assessment purposes. Production information will not be made a part of the public record on an individual processor basis.

(f) Any official or employee of the State who discloses information obtained from a production report, except as may be necessary for administration and collection of the assessment, or in the performance of official duties, or in administration or judicial proceedings related to the levy or collection of the assessment, shall be guilty of a Class 3 misdemeanor punishable only by a fine not to exceed fifty dollars ($50.00).

"**§ 106-972. Enforcement of collection.**

The Secretary of Revenue shall enforce collection of the primary forest product assessment in accordance with the remedies and procedures contained in Article 9 of Chapter 105 of the General Statutes."

SECTION 13.25.(kk) G.S. 1-339.17(c1) reads as rewritten:

"(c1) When the public sale is a sale of timber by sealed bid, the notice shall also be given in writing, not less than 21 days before the date on which bids are opened, to a reasonable number of prospective timber buyers, which in all cases shall include the timber buyers listed in the office of the Division of Forest Resources <u>of the Department of Agriculture and Consumer Services</u> for the county or counties in which the timber to be sold is located."

SECTION 13.25.(ll) G.S. 20-81.12(b35) reads as rewritten:

"(b35) First in Forestry. – The Division must receive 300 or more applications for the First in Forestry plate before the plate may be developed. The Division shall transfer quarterly one-half of the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the First in Forestry plates to the Division of Forest Resources <u>of the Department of Agriculture and Consumer Services</u> for a State forests and forestry education program and shall transfer quarterly one-half of the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the First in Forestry plates to the Forest Education and Conservation Foundation for their programs."

SECTION 13.25.(mm) G.S. 97-2(2) reads as rewritten:

"(2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business,

profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina National Guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation's specifically excluding such executive officer in such contract of insurance, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term "employee" shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State-approved mission pursuant to Article 11 of Chapter 143B of the General Statutes.

"Employee" shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than

meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

"Employee" shall include an authorized pickup firefighter of the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources. As used in this section, "authorized pickup firefighter" means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the Division of Forest Resources for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

It shall be a rebuttable presumption that the term "employee" shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person."

SECTION 13.25.(nn) G.S. 105-259(b)(41) reads as rewritten:

"(41) To furnish the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services pertinent contact and financial information concerning companies that are involved in the primary processing of timber products so that the Secretary of Environment and Natural Resources is able to comply with G.S. 113A-193 under the Primary Forest Product Assessment Act."

SECTION 13.25.(oo) G.S. 105-277.7(a)(2) reads as rewritten:

"(2) A representative of the Division of Forest Resources of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, designated by the Director of that Division."

SECTION 13.25.(pp) G.S. 105-296(j) reads as rewritten:

"(j) The assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Division of Forest Resources of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the

revocation must be refunded to the property owner. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

SECTION 13.25.(qq) G.S. 106-202.14(b)(3) reads as rewritten:

"(3) The Division of Forest Resources, Department of ~~Environment and Natural Resources;~~Agriculture and Consumer Services;".

SECTION 13.25.(rr) G.S. 113-291.10(a)(3) reads as rewritten:

"(3) The Director of the Division of Forest Resources of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, or a designee;"

SECTION 13.25.(ss) G.S. 143-166.2(d) reads as rewritten:

"(d) The term "law-enforcement officer", "officer", or "fireman" shall mean a sheriff and all law-enforcement officers employed full-time, permanent part-time, or temporarily by a sheriff, the State of North Carolina or any county or municipality thereof, whether paid or unpaid; and all full-time custodial employees and probation and parole officers of the North Carolina Department of Correction; and all full time institutional and full-time, permanent part-time, and temporary detention employees of the Department of Juvenile Justice and Delinquency Prevention and full-time, permanent part-time, and temporary detention officers employed by any sheriff, county or municipality, whether paid or unpaid. The term "firemen" shall mean both "eligible firemen" as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the ~~North Carolina~~ Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated; and shall mean all otherwise eligible persons who, while actively engaged as firefighters or rescue squad workers, are acting in the capacity of a fire or rescue instructor outside their own department or squad. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-491(a). The term "fireman" shall also mean county fire marshals when engaged in the performance of their county duties. The term "rescue squad worker" shall also mean county emergency services coordinators when engaged in the performance of their county duties."

SECTION 13.25.(tt) G.S. 143-166.7 reads as rewritten:

"**§ 143-166.7. Applicability of Article.**

The provisions of this Article shall apply and be in full force and effect with respect to any law-enforcement officer, fireman, rescue squad worker or senior Civil Air Patrol member killed in the line of duty on or after May 13, 1975. The provisions of this Article shall apply with respect to full-time, permanent part-time and temporary employees of ~~North Carolina~~ Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, killed in line of duty on or after July 1, 1975. The provisions of this Article

shall apply to county fire marshals and emergency services coordinators killed in the line of duty on and after July 1, 1988."

SECTION 13.25.(uu) G.S. 143-214.25A(a) reads as rewritten:

"(a) The Division of Water Quality of the Department shall develop a program to train and certify individuals to determine the presence of surface waters that would require the application of rules adopted by the Commission for the protection of riparian buffers. The Division may train and certify employees of the Division as determined by the Director of the Division of Water Quality; employees of units of local government to whom responsibility for the implementation and enforcement of the riparian buffer protection rules is delegated pursuant to G.S. 143-214.23; and Registered Foresters under Chapter 89B of the General Statutes who are employees of the Division of Forest Resources of the Department of Agriculture and Consumer Services as determined by the Director of the Division of Forest Resources. The Director of the Division of Water Quality may review the determinations made by individuals who are certified pursuant to this section, may override a determination made by an individual certified under this section, and, if the Director of the Division of Water Quality determines that an individual is failing to make correct determinations, revoke the certification of that individual."

SECTION 13.25.(vv) G.S. 143-215.74M(d)(11) reads as rewritten:

"(11) The Director of the Division of Forest Resources of the Department of Agriculture and Consumer Services or the Director's designee."

SECTION 13.25.(ww) G.S. 166A-18 reads as rewritten:

"**§ 166A-18. Division of Forest Resources designated as emergency response agency.**

The Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services is designated an emergency response agency of the State of North Carolina for purposes of:

(1) Supporting the Division of Emergency Management of the Department of Crime Control and Public Safety in responding to all-risk incidents.
(2) Receipt of any applicable State or federal funding.
(3) Training of other State and local agencies in disaster and emergency management.
(4) Any other disaster and emergency response roles for which the Division has special training or qualifications."

SECTION 13.25.(xx) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

SECTION 13.25.(yy) The transfers under this section become effective July 1, 2011, and funds transferred shall be net of any changes enacted by this section.

SECTION 13.25.(zz) Any references in this act to the Division of Forest Resources of the Department of Environment and Natural Resources shall be construed to refer to the Division of Forest Resources of the Department of Agriculture and Consumer Services. Any references in this act to the Forestry Council of the Department of Environment and Natural Resources shall be construed to refer to the Forestry Council of the Department of Agriculture and Consumer Services.

CLEAN WATER MANAGEMENT TRUST FUND

SECTION 13.26.(a) G.S. 113A-253.1 is repealed.

SECTION 13.26.(b) G.S. 113A-253(a) reads as rewritten:

"(a) Fund Established. – The Clean Water Management Trust Fund is established as a special revenue fund. The Fund receives revenue from the following sources and may receive revenue from other sources:

(1) Annual ~~appropriations under G.S. 143-15.3B.~~appropriations.
(2) Scenic River special registration plates under G.S. 20-81.12."

SECTION 13.26.(c) The funds appropriated in this act to the Clean Water Management Trust Fund shall be allocated as follows:

(1) Notwithstanding the provisions of G.S. 113A-253(d), the sum of three million dollars ($3,000,000) shall be used for the 2011-2012 fiscal year and for the 2012-2013 fiscal year for the costs of administering the Clean Water Management Trust Fund, including costs to support the Board of Trustees of

the Clean Water Management Trust Fund and its staff, the operating costs of the Board of Trustees of the Clean Water Management Trust Fund and its staff, and the costs of making debt payments to retire debt as provided under G.S. 113A-253(c);

(2) Notwithstanding the provisions of G.S. 113A-253(c) and G.S. 113A-254, the sum of one million five hundred thousand dollars ($1,500,000) shall be used for the 2011-2012 fiscal year and for the 2012-2013 fiscal year for State matching funds for the Readiness and Environmental Protection Initiative and any other United States Department of Defense program that provides for military buffers and protects the overall military training mission; and

(3) The sum of eight million dollars ($8,000,000) shall be used for the 2011-2012 fiscal year and for the 2012-2013 fiscal year for the costs for wastewater projects, water quality restoration projects, minigrants, conservation easements, and stormwater projects consistent with the provisions of Article 18 of Chapter 113A of the General Statutes.

SECTION 13.26.(d) The funds allocated under subdivision (1) and subdivision (3) of subsection (c) of this section shall not be used for land acquisition; however, the funds allocated under subdivision (3) of subsection (c) of this section may be used to purchase conservation easements. Notwithstanding the provisions of G.S. 113A-253(c) and G.S. 113A-254, the funds allocated under subdivision (2) of subsection (c) of this section may be used for land acquisition.

SECTION 13.26.(e) Any funds that become available to the Clean Water Management Trust Fund during the 2011-2012 fiscal year and the 2012-2013 fiscal year that are in excess of the funds allocated under subsection (c) of this section for that fiscal year shall be used as provided in subdivision (1) and subdivision (3) of subsection (c) of this section.

NEW FUNDING SOURCE FOR WILDLIFE RESOURCE COMMISSION OPERATING BUDGET

SECTION 13.27.(a) G.S. 105-164.44B is repealed.

SECTION 13.27.(b) The Office of State Budget and Management, the State Controller, and the Wildlife Resources Commission shall jointly effectuate, beginning with the Wildlife Resources Commission's operating budget for the 2011-2012 fiscal year, the transition from the Wildlife Resources Commission receiving sales tax proceeds to fund its operating budget to the Wildlife Resources Commission receiving an appropriation of sixteen million dollars ($16,000,000) from the General Fund to fund its operating budget.

ANNUAL REPORT TO GOV OPS ON WILDLIFE RESOURCES FUND EXPENDITURES

SECTION 13.28.(a) G.S. 143-250 reads as rewritten:

"**§ 143-250. Wildlife Resources Fund.**

All moneys in the game and fish fund or any similar State fund when this Article becomes effective shall be credited forthwith to a special fund in the office of the State Treasurer, and the State Treasurer shall deposit all such moneys in said special fund, which shall be known as the Wildlife Resources Fund.

All unexpended appropriations made to the Department of Conservation and Development, the Board of Conservation and Development, the Division of Game and Inland Fisheries or to any other State agency for any purpose pertaining to wildlife and wildlife resources shall also be transferred to the Wildlife Resources Fund.

Except as otherwise specifically provided by law, all moneys derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, including the income received and accruing from the investment of license revenues, and all funds thereafter received from whatever sources shall be deposited to the credit of the Wildlife Resources Fund and made available to the Commission until expended subject to the provisions of this Article. License revenues include the proceeds from the sale of hunting, fishing, trapping, and related licenses, from the sale, lease, rental, or other granting of rights to real or personal property acquired or produced with license revenues, and from federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is being made. For purposes of this section, real property includes lands, buildings, minerals, energy resources, timber, grazing rights, and animal products. Personal property includes equipment,

vehicles, machines, tools, and annual crops. The Wildlife Resources Fund herein created shall be subject to the provisions of the State Budget Act, Chapter 143C of the General Statutes of North Carolina as amended, and the provisions of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, Chapter 143, Article 2 of the General Statutes of North Carolina as amended.

All moneys credited to the Wildlife Resources Fund shall be made available to carry out the intent and purposes of this Article in accordance with plans approved by the North Carolina Wildlife Resources Commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this Article, Chapter 75A, Article 1, and Chapter 113, Subchapter IV of the General Statutes of North Carolina. ~~The~~ No later than October 1 of each year, the Wildlife Resources Commission shall report to the Joint Legislative Commission on Governmental Operations ~~before expending from the Wildlife Resources Fund more than the amount authorized in the budget enacted by the General Assembly for the fiscal period.~~ on the expenditures from the Wildlife Resources Fund during the fiscal year that ended the previous July 1 of that year and on the planned expenditures for the current fiscal year.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina Wildlife Resources Commission the Governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned."

SECTION 13.28.(b) The first report required under G.S. 143-250, as amended by subsection (a) of this section, is due no later than October 1, 2011.

ANNUAL APPROPRIATIONS FOR BEAVER DAMAGE CONTROL PROGRAM FROM FUNDS AVAILABLE TO THE WILDLIFE RESOURCES COMMISSION

SECTION 13.29. G.S. 113-291.10(f) reads as rewritten:

"(f) Each county that volunteers to participate in this program for a given fiscal year shall provide written notification of its wish to participate no later than September 30 of that year and shall commit the sum of four thousand dollars ($4,000) in local funds no later than September 30 of that year. ~~At least three hundred forty-nine thousand dollars ($349,000)~~ Funds, as appropriated for this program each fiscal year of the ~~biennium~~ biennium, shall be paid from funds available to the Wildlife Resources Commission to provide the State share necessary to support this program, provided the sum of at least twenty-five thousand dollars ($25,000) in federal funds is available each fiscal year of the biennium to provide the federal share."

PART XIV. DEPARTMENT OF COMMERCE

NER BLOCK GRANTS

SECTION 14.1.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2012, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT

01.	State Administration	$ 1,000,000
02.	State Technical Assistance	450,000
03.	Scattered Site Housing	8,000,000
04.	Economic Development	7,210,000
05.	Small Business/Entrepreneurship	3,000,000
06.	NC Catalyst	5,000,000
07.	Infrastructure	19,740,000
08.	Capacity Building	600,000

TOTAL COMMUNITY DEVELOPMENT
BLOCK GRANT – 2012 Program Year $ 45,000,000

SECTION 14.1.(b) Decreases in Federal Fund Availability. – If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

SECTION 14.1.(c) Increases in Federal Fund Availability for Community Development Block Grant. – Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

SECTION 14.1.(d) Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars ($1,000,000) may be used for State Administration; up to four hundred fifty thousand dollars ($450,000) may be used for State Technical Assistance; up to eight million dollars ($8,000,000) may be used for Scattered Site Housing; up to seven million two hundred ten thousand dollars ($7,210,000) may be used for Economic Development; up to three million dollars ($3,000,000) may be used for Small Business/Entrepreneurship; up to five million dollars ($5,000,000) shall be used for NC Catalyst; up to nineteen million seven hundred forty thousand dollars ($19,740,000) may be used for Infrastructure; up to six hundred thousand dollars ($600,000) may be used for Capacity Building. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

SECTION 14.1.(e) The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

(1) A reallocation is required because of an emergency that poses an imminent threat to public health or public safety, the Director of the Budget may authorize the reallocation without consulting the Commission. The Department of Commerce shall report to the Commission on the reallocation no later than 30 days after it was authorized and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(2) The State will lose federal block grant funds or receive less federal block grant funds in the next fiscal year unless a reallocation is made, the Department of Commerce shall provide a written report to the Commission on the proposed reallocation and shall identify the reason that failure to take action will result in the loss of federal funds. If the Commission does not hear the issue within 30 days of receipt of the report, the Department may take the action without consulting the Commission.

SECTION 14.1.(f) By September 1, 2011, the Division of Community Assistance, Department of Commerce, shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of Community Development Block Grant Funds appropriated in the prior fiscal year. The report shall include the following:

(1) A discussion of each of the categories of funding and how the categories were selected, including information on how a determination was made that there was a statewide need in each of the categories.

(2) Information on the number of applications that were received in each category and the total dollar amount requested in each category.

(3) A list of grantees, including the grantee's name, county, category under which the grant was funded, the amount awarded, and a narrative description of the project.

SECTION 14.1.(g) For purposes of this section, eligible activities under the category of Infrastructure in subsection (a) of this section are limited to the installation of public water or sewer lines and improvements to water or sewer treatment plants that have specific problems such as being under moratoriums or special orders of consent.

Notwithstanding the provisions of subsection (e) of this section, funds allocated to the Infrastructure category in subsection (a) of this section shall not be reallocated to any other category.

ONE NORTH CAROLINA FUND

SECTION 14.2.(a) Of the funds appropriated in this act to the One North Carolina Fund for the 2011-2012 fiscal year, the Department of Commerce may use up to two hundred fifty thousand dollars ($250,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs during the 2011-2012 fiscal year. The Department of Commerce shall not use more than two hundred fifty thousand dollars ($250,000) for administrative costs in any one fiscal year.

SECTION 14.2.(b) G.S. 143B-437.07 reads as rewritten:

"**§ 143B-437.07. Economic development grant reporting.**

(a) Report. – The Department of Commerce must publish on or before March 1 of each year the ~~following information,~~ information required by this subsection, itemized by business entity, ~~for all grant programs administered by the Department that disbursed or awarded grant monies to businesses during the previous calendar year:~~for each business or joint private venture to which the State has, in whole or in part, granted one or more economic development incentives during the previous five calendar years. The Department must provide the General Assembly with updated supplemental information consistent with this subsection on a quarterly basis in the form and manner requested by the General Assembly. The information in the report must include all of the following:

~~(1) The amount of grant monies awarded during the previous year.~~

~~(2) The amount of grant monies disbursed during the previous year.~~

~~(3) The amount of grant monies that were disbursed in earlier years to business entities that received grant monies during the previous year.~~

~~(4) The amount of potential future liability under the grant program.~~

~~(5) The number, type, and wage level of jobs created or retained during the previous year as a result of a grant.~~

~~(6) A description of any other financial assistance received during the previous year from all economic development incentive programs administered by the Department.~~

~~(7) Any amount recaptured from the business entity during the previous year for failure to comply with the grant agreement or applicable law.~~

(1) A unique project identification number and a unique descriptor or title.

(2) The date of the award agreement.

(3) The name, mailing address, telephone number, and Web site of the business recipient, or recipients if a joint venture, and the physical location of the site receiving the incentive. If the physical location of the site is undecided, then the name of the county in which the site will be located.

(4) The development tier designation of the county in which the site is located on the date the incentive is awarded.

(5) The NAICS six-digit code and NAICS category of business receiving the incentive. The term 'NAICS' has the same meaning as defined in G.S. 105-164.3.

(6) The sources and dollar value of eligible State incentives by program name.

(7) The sources and dollar value of local government funds provided by any locality and the nature of the local funding. Examples of the nature of local funding include cash, fee-waivers, in-kind services, and donation of land, buildings, or other assets.

(8) The intended use of the incentive by any category or categories to which State law restricts or limits uses of incentive funds. If the use of the incentive funds is not restricted, then the intended purpose of the funds.

(9) The amount of incentive monies disbursed taken during the period.

(10) The amount of potential future liability under the applicable incentive program.

(11) The number, type, and wage level of jobs required to be created or retained to receive a disbursement of incentive monies.

(12) The actual full-time equivalent jobs employed by the recipient during the period.

(13) The projected cost per job created or retained, including State and local funds.

(14) Any amount recaptured from the business entity during the period for failure to satisfy the terms of the grant agreement.

(b) Online Posting. – The Department of Commerce must post on its Internet Web site a summary of the report compiled in subsection (a) of this section. The summary report must include the information required by subdivisions (2), (9), (11), and (12) of subsection (a) of this section.

(c) Economic Development Incentive. – An economic development incentive includes any grant program administered by the Department of Commerce that disburses or awards monies to businesses. Examples of these grant programs include the Job Development Investment Grant Program, the Job Maintenance and Capital Development Fund, One North Carolina Fund, and the Industrial Development Fund, including the Utility Account. The State also incents economic development through the use of tax expenditures in the form of tax credits and refunds. The Department of Revenue must report annually on these statutory economic development incentives, as required under G.S. 105-256."

SECTION 14.2.(c) Notwithstanding G.S. 143B-437.07, as amended by this act, the Department of Commerce is not required to include information in its annual report relating to economic development incentives provided by local governments prior to July 1, 2011.

EXTEND DEADLINE FOR TWENTY PERCENT REDUCTION ON PETROLEUM PRODUCTS USE FOR STATE FLEETS/CLARIFY REPORTING REQUIREMENT

SECTION 14.2B.(a) Section 19.5(a) of S.L. 2005-276, as amended by Section 14.14(a) of S.L. 2009-451, reads as rewritten:

"**SECTION 19.5.(a)** All State agencies, universities, and community colleges that have State-owned vehicle fleets shall develop and implement plans to improve the State's use of alternative fuels, synthetic lubricants, and efficient vehicles. The plans shall achieve a twenty percent (20%) reduction or displacement of the current petroleum products consumed by ~~July 1, 2011.~~July 1, 2016. Before implementation of any plan, all affected agencies shall report their plan to the State Energy Office within the Department of Commerce. The State Energy Office shall compile a report on the plans submitted and report to the Joint Legislative Commission on Governmental Operations. Agencies shall implement their plans by January 1, 2006. Reductions may be met by petroleum or oils displaced through the use of biodiesel, ethanol, synthetic oils or lubricants, other alternative fuels, the use of hybrid electric vehicles, other fuel-efficient or low-emission vehicles, or additional methods as may be approved by the State Energy Office, thereby reducing the amount of harmful emissions. The plan shall not impede mission fulfillment of the agency and shall specifically address a long-term cost-benefit analysis, allowances for changes in vehicle usage, total miles driven, and exceptions due to technology, budgetary limitations, and emergencies."

SECTION 14.2B.(b) Section 19.5(c) of S.L. 2005-276, as amended by Section 14.14(b) of S.L. 2009-451, reads as rewritten:

"**SECTION 19.5.(c)** Agencies shall report by September 1, 2006, and annually thereafter through ~~September 1, 2011,~~September 1, 2016, to the State Energy Office within the Department of Commerce on the efforts undertaken to achieve the reductions. The State Energy Office shall compile and forward a report to the Joint Legislative Commission on Governmental Operations by November 1, 2006, and annually thereafter through ~~November 1, 2011,~~November 1, 2016, on the agencies' progress in meeting their plans."

STATUS OF TRAVEL AND TOURISM INDUSTRY IN NC/ANNUAL REPORT

SECTION 14.3. G.S. 143B-434.2(d) reads as rewritten:

"(d) The Department of Commerce, and the Division of Tourism, Film, and Sports Development within that Department, shall implement the policies set forth in this section. The Division of Tourism, Film, and Sports Development shall make an annual report to the General Assembly regarding the status of the travel and tourism industry in North Carolina; the report shall be submitted to the General Assembly by ~~January 15~~October 15 of each year beginning ~~January 15, 1992.~~October 15, 2011. The duties and responsibilities of the Department of Commerce through the Division of Tourism, Film, and Sports Development shall be to:

...."

WINE AND GRAPE GROWERS COUNCIL ELIMINATED

SECTION 14.3B. Part 2J of Article 10 of Chapter 143B of the General Statutes is repealed.

21ST CENTURY COMMUNITIES PROGRAM ELIMINATED/CONFORMING CHANGES

SECTION 14.3C. Part 2K of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 2K. North Carolina Certified Retirement Community Program.

"**§ 143B-437.100. North Carolina Certified Retirement Community Program – creation; powers and duties.**

(a) Program. – There is established the North Carolina Certified Retirement Community Program as part of the ~~21st Century Communities program of the~~ North Carolina Department of Commerce. The Department shall coordinate the development and planning of the North Carolina Certified Retirement Community Program with other State and local groups interested in participating in and promoting the North Carolina Certified Retirement Community Program. The Department shall adopt administrative rules to implement the provisions of this Part. For purposes of this Part, "Department" means the North Carolina Department of Commerce, and "Program" means the North Carolina Certified Retirement Community Program.

(b) Purpose. – The purpose of the Program is to encourage retirees and those planning to retire to make their homes in North Carolina. In order to further this purpose, the Department shall engage in the following activities:

(1) Promote the State as a retirement destination to retirees and those persons and families who are planning retirement both in and outside of North Carolina.

(2) Assist North Carolina communities in their efforts to market themselves as retirement locations and to develop communities that retirees would find attractive for a retirement lifestyle.

(3) Assist in the development of retirement communities and continuing care facilities under Article 64 of Chapter 58 of the General Statutes in order to promote economic development and a potential workforce to enrich North Carolina communities.

(4) Encourage mature market travel and tourism to North Carolina to evaluate future retirement desirability and to visit those who have chosen to retire in North Carolina.

(c) Factors. – The Department shall identify factors that are of interest to retirees or potential retirees in order to inform them of the benefits of living in North Carolina. These factors shall be used to develop a scoring system to determine whether an applicant will qualify as a North Carolina certified retirement community and may include the following:

(1) North Carolina's State and local tax structure.
(2) Housing opportunities and cost.
(3) Climate.
(4) Personal safety.
(5) Working opportunities.
(6) Health care and continuing care services.
(7) Transportation.
(8) Continuing education.
(9) Leisure living.
(10) Recreation.
(11) The performing arts.
(12) Festivals and events.
(13) Sports.
(14) Other services and facilities necessary to enable persons to age in the community with a minimum of restrictions.

(d) Certification. – The Department shall establish criteria for qualifying as a North Carolina certified retirement community. To be eligible to obtain certification as a North

Carolina certified retirement community, the community shall meet each of the following requirements:

(1) Be located within 30 miles of a hospital and of emergency medical services.

(2) Take steps to gain the support of churches, clubs, businesses, media, and other entities whose participation will increase the Program's success in attracting retirees or potential retirees.

(3) Establish a retiree attraction committee. The retiree attraction committee shall fulfill or create subcommittees to fulfill each of the following:

a. Conduct a retiree desirability assessment analyzing the community with respect to each of the factors identified by the Department and submit a report of the analysis to the Department.

b. Send a representative of the retirement attraction committee to attend State training meetings conducted by the ~~21st Century Communities program~~ Department during the certification process.

c. Raise funds necessary to run the Program, organize special events, and promote and coordinate the Program with local entities.

d. Establish a community image, evaluate target markets, and develop a marketing and public relations plan designed to accomplish the purpose of the Program.

e. Develop a system that identifies and makes contact with existing and prospective retirees, that provides tour guides when prospects visit the community, and that responds to inquiries, logs contacts made, invites prospects to special community events, and maintains continual contact with prospects until the prospect makes a retirement location decision.

(4) Remit an application fee to the ~~21st Century Communities program~~Department equal to the greater of ten thousand dollars ($10,000) or the product of fifty cents (50¢) multiplied by the population of the community, as determined by the most recent census.

(5) Submit the completed marketing and public relations plan designed to accomplish the purpose of the Program to the Department.

(6) Submit a long-term plan outlining the steps the community will undertake to maintain or improve its desirability as a destination for retirees, including corrections to any services or facilities identified in the retiree desirability assessment.

"§ 143B-437.101. North Carolina Certified Retirement Community Program – administration.

(a) Administration and Support. – Upon being certified as a North Carolina certified retirement community, the ~~21st Century Communities program~~Department shall provide the following assistance to the community:

(1) Assistance in the training of local Program staff and volunteers.

(2) Ongoing oversight and guidance in marketing and updating on national retirement trends.

(3) Inclusion in the State's national advertising and public relations campaigns and travel show promotions, including a prominent feature on the Department's Web site.

(4) Eligibility for State financial assistance for brochures, support material, and advertising.

(5) An annual evaluation and progress assessment on maintaining and improving the community's desirability as a home for retirees.

(b) Expiration. – A community's certification under this section expires on the fifth anniversary of the date the initial certification is issued. To be considered for recertification by the ~~21st Century Communities program,~~Department, an applicant community shall submit the following:

(1) A completed new application in accordance with the requirements of this Part.

(2) Data demonstrating the success or failure of the community's efforts to market and promote itself as a desirable location for retirees and potential retirees.

(3) The fee required by G.S. 143B-437.100(d)(4)."

EMPLOYMENT SECURITY COMMISSION FUNDS

SECTION 14.4.(a) Funds from the Employment Security Commission Reserve Fund shall be available to the Employment Security Commission of North Carolina to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security Commission Reserve Fund surcharge. The total administrative costs paid with funds from the Reserve in the 2011-2012 fiscal year shall not exceed two million five hundred thousand dollars ($2,500,000).

SECTION 14.4.(b) There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina the sum of twenty million dollars ($20,000,000) for the 2011-2012 fiscal year to be used for the following purposes:

(1) $19,500,000 for the operation and support of local Employment Security Commission offices.

(2) $200,000 to operate the system that tracks former participants in State education and training programs.

(3) $300,000 to maintain compliance with Chapter 96 of the General Statutes, which directs the Commission to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs.

SECTION 14.4.(c) There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina an amount not to exceed one million dollars ($1,000,000) for the 2011-2012 fiscal year to fund State initiatives not currently funded through federal grants.

SECTION 14.4.(d) There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of one million dollars ($1,000,000) for the 2011-2012 fiscal year to fund "Opportunity NC," which provides work-based training opportunities to recipients of unemployment insurance benefits. Opportunity NC must meet all of the following factors:

(1) The training, even though it includes actual operation of the facilities of the employer, is similar to what would be given in a vocational school or academic educational instruction.

(2) The training is for the benefit of the trainee.

(3) The trainees do not displace regular employees, but work under their close observation.

(4) The employer who provides the training derives no immediate advantage from the activities of the trainees, and, on occasion, the employer's operations may actually be impeded.

(5) The trainees are not necessarily entitled to a job at the conclusion of the training period.

(6) The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

SECTION 14.4.(e) Of the funds credited to and held in the State of North Carolina's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act and pursuant to Title II of Division B of P.L. 111-5, the Assistance for Unemployed Workers and Struggling Families Act, the Employment Security Commission of North Carolina may expend the sum of two hundred five million sixty-three thousand five hundred fifty-two dollars ($205,063,552) as follows: (i) one hundred million dollars ($100,000,000) shall be used to design and build the integrated unemployment insurance benefit and tax accounting system and (ii) the remaining funds shall be used for the operation of the unemployment insurance program.

TRANSFER EMPLOYMENT SECURITY COMMISSION TO DEPARTMENT OF COMMERCE

SECTION 14.5. The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of

the Employment Security Commission are transferred to the Department of Commerce with all of the elements of a Type I transfer as defined by G.S. 143A-6.

EXTEND UNEMPLOYMENT INSURANCE BENEFITS

SECTION 14.5A.(a) G.S. 96-12.01(a1)(4)c. is amended by adding a new sub-sub-subdivision to read:

"3. This section applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before December 31, 2011, provided that:

I. The average rate of (i) insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in all of the preceding three calendar years and equaled or exceeded five percent (5%) or (ii) total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent (6.5%); and

II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subsection, equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 14.5A.(b) G.S. 96-12.01(a1)(4)e. reads as rewritten:

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

...

e. Total extended benefit amount.

1. The total extended benefit amount payment to any eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

I. Fifty percent (50%) of the total amount of regular benefits which were payable to the individual under this Chapter in the individual's applicable benefit year; or

II. Thirteen times the individual's weekly benefit amount that was payable to the individual under this Chapter for a week of total unemployment in the applicable benefit year.

2. I. Effective with respect to weeks beginning in a high unemployment period, sub-subdivision e.1. of this subdivision shall be applied by substituting:

A. "Eighty percent (80%)" for "fifty percent (50%)" in sub-subdivision e.1.I., and

B. "Twenty" for "thirteen" in sub-subdivision e.1.II.

II. For purposes of sub-subdivision 2.I., the term "high unemployment period" means any period during

which an extended benefit period would be in effect if sub-subdivision c. of this subdivision were applied by substituting "eight percent (8%)" for six and one-half percent (6.5%)".

3. This subdivision applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before December 31, 2011, provided that:

I. The average rate of total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent (8%); and

II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subdivision equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 14.5A.(c) The intent of this section is to allow extended benefits to be paid as provided under the Federal Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 so long as the payment of the benefits does not hinder the State's ability to reduce the debt it owes the federal government to pay unemployment benefits. It is not the intent of this section to pay for the extended benefits with contributions paid by employers under Chapter 96 of the North Carolina General Statutes or with contributions paid by employers under the federal payroll tax that would otherwise be used to pay down the amount borrowed from the federal government by the State to pay unemployment benefits. Nothing in this section obligates the State to pay extended benefits provided by this section with contributions payable under Chapter 96 of the General Statutes or with any other State funds. This section is null and void if the payment of the benefits would divert federal payroll tax revenue payable by North Carolina employers that would otherwise be used to pay down the amount borrowed from the federal government by the State to pay unemployment benefits.

SECTION 14.5A.(d) This section becomes effective April 16, 2011, and expires January 1, 2012.

AGRICULTURAL EMPLOYEES/UNEMPLOYMENT INSURANCE

SECTION 14.5B. G.S. 96-8(5)n. reads as rewritten:

"n. With respect to employment on and after January 1, 1978, any person or employing unit who (a) during any calendar quarter in the current calendar year or the preceding calendar year paid wages of ~~twenty thousand dollars ($20,000)~~fifty thousand dollars ($50,000) or more for agricultural labor, or (b) on each of some 20 days during the current or preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day. Provided, that with respect to agricultural labor performed by a crew on and after January 1, 1978, the crew leader shall be deemed an employer if (1) either of the requirements set forth in the first sentence of this paragraph are met; and (2) the crew members are not employed by another person within the meaning of the first sentence of this paragraph; (3) and if the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided

by the crew leader. For purposes of this paragraph, the term "crew leader" means an individual who (1) furnishes individuals to perform agricultural labor for any other person, (2) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and (3) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person. The farm operator shall be deemed to be the employer of any worker hired by the farm operator; any assignment to work with a crew or under a crew leader notwithstanding. All the workers shall be deemed the employees of the farm operator when the crew leader does not qualify as the employer under the provisions set out in this paragraph."

DEPARTMENT OF COMMERCE/CONTRACTS RELATED TO EMPLOYMENT SECURITY ORGANIZATIONAL REFORM

SECTION 14.5C. Notwithstanding any other provision of law to the contrary, the Department of Commerce may enter into contracts or, as necessary, enter into sole source contracts to timely obtain recommendations to achieve employment security organizational reform recommendations and savings.

TRANSFER STATE PORTS AUTHORITY FROM DEPARTMENT OF COMMERCE TO DEPARTMENT OF TRANSPORTATION

SECTION 14.6.(a) The North Carolina State Ports Authority, as contained in Part 10 of Article 10 of Chapter 143B of the General Statutes, is hereby transferred by a Type II transfer to the Department of Transportation. The North Carolina State Ports Authority shall use the State's budgeting, accounting, and human resources systems and shall comply with laws and policies related to submitting budget requests to the Office of State Budget and Management.

SECTION 14.6.(b) Part 10 of Article 10 of Chapter 143B of the General Statutes is recodified as Article 20 of Chapter 136 of the General Statutes, G.S. 136-260 through G.S. 136-275.

SECTION 14.6.(c) G.S. 120-123 reads as rewritten:

"**§ 120-123. Service by members of the General Assembly on certain boards and commissions.**

No member of the General Assembly may serve on any of the following boards or commissions:

...

(26) The North Carolina State Ports Authority, as established by ~~G.S. 143B-452.~~ G.S. 136-260.

...."

SECTION 14.6.(d) G.S. 143-166.13 reads as rewritten:

"**§ 143-166.13. Persons entitled to benefits under Article.**

(a) The following persons who are subject to the Criminal Justice Training and Standards Act are entitled to benefits under this Article:

...

(15) North Carolina Ports Authority Police, Department of ~~Commerce;~~Transportation;

...."

SECTION 14.6.(e) G.S. 143B-346 reads as rewritten:

"**§ 143B-346. Department of Transportation – purpose and functions.**

The general purpose of the Department of Transportation is to provide for the necessary planning, construction, maintenance, and operation of an integrated statewide transportation system for the economical and safe transportation of people and goods as provided for by law. The Department shall also provide and maintain an accurate register of transportation vehicles as provided by statutes, and the Department shall enforce the laws of this State relating to transportation safety assigned to the Department. The Department of Transportation shall be responsible for all of the transportation functions of the executive branch of the State as provided by law except those functions delegated to the Utilities ~~Commission, the State Ports~~

~~Authority,~~ Commission and the Commissioners of Navigation and Pilotage as provided for by Chapter 76. The major transportation functions include aeronautics, highways, mass transportation, motor vehicles, and transportation safety as provided for by State law. The Department of Transportation shall succeed to all functions vested in the Board of Transportation and the Department of Motor Vehicles on July 1, 1977."

SECTION 14.6.(f) G.S. 143B-431 reads as rewritten:

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

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

(1) All of the executive functions of the State in relation to economic development including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, ~~the development of our State's ports,~~and energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:

a. The State Board of Alcoholic Control,
b. The North Carolina Utilities Commission,
c. The Employment Security Commission,
d. The North Carolina Industrial Commission,
e. State Banking Commission and the Commissioner of Banks,
f. Savings Institutions Division,
g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
h. Credit Union Commission,
i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17, 2004.
j. The North Carolina Mutual Burial Association Commission,
k. The North Carolina Rural Electrification Authority,
~~l. The North Carolina State Ports Authority,~~

all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and

(3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of Commerce by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this ~~Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article.~~Chapter.

...."

SECTION 14.6.(g) G.S. 143B-433 reads as rewritten:

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

The Department of Commerce shall be organized to include:

(1) The following agencies:

a. The North Carolina Alcoholic Beverage Control Commission.
b. The North Carolina Utilities Commission.
c. The Employment Security Commission.
d. The North Carolina Industrial Commission.
e. State Banking Commission.
f. Savings Institutions Division.
g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.
h. Credit Union Commission.

i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17, 2004.
j. The North Carolina Mutual Burial Association Commission.
k. North Carolina Cemetery Commission.
l. The North Carolina Rural Electrification Authority.
m. Repealed by Session Laws 1985, c. 757, s. 179(d).
n. North Carolina Science and Technology Research Center.
~~o. The North Carolina State Ports Authority.~~
p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2, 2010.
q. Economic Development Board.
r. Labor Force Development Council.
s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective September 30, 2000.
u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
v. Repealed by Session Laws 1993, c. 321, s. 313b.

...."

SECTION 14.6.(h) G.S. 143B-452, recodified as G.S. 136-260 in subsection (b) of this section, reads as rewritten:

"**§ 136-260. Creation of Authority. – membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.**

(a) The North Carolina State Ports Authority is hereby ~~created.~~created within the Department of Transportation and shall be subject to and under the direct supervision of the Secretary of Transportation. It shall be governed by a board composed of nine members and hereby designated as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11 members and hereby designated as the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. Members of the North Carolina Board of Transportation may be appointed to the Authority. The Governor shall appoint seven members to the Authority, and the General Assembly shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall consist of seven persons appointed by the Governor, and four persons appointed by the General Assembly. Effective ~~July 1, 1989,~~July 1, 2011, the Governor shall appoint six members to the Authority, in addition to the Secretary of ~~Commerce,~~Transportation, who shall serve as a voting member of the Authority by virtue of his office. The Secretary of ~~Commerce~~ Transportation shall fill the first vacancy occurring after ~~July 1, 1989,~~July 1, 2011, in a position on the Authority over which the Governor has appointive power.

...."

SECTION 14.6.(i) G.S. 146-65 reads as rewritten:

"**§ 146-65. Exemptions from Chapter.**

This Chapter does not apply to any of the following:

(1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation or the North Carolina Turnpike Authority.
(2) The North Carolina State Ports Authority in exercising its powers under ~~G.S. 143B-452 through G.S. 143B-467.~~G.S. 136-260 through G.S. 136-275."

SECTION 14.6.(j) G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(11) The North Carolina State Ports Authority with respect to fees established pursuant to ~~G.S. 143B-454(a)(11).~~G.S. 136-262(a)(11).

...."

SECTION 14.6.(k) The Revisor of Statutes shall make any other conforming statutory changes that are necessary to reflect the transfer under subsection (a) of this section.

STUDY COSTS OF SERVICES PROVIDED BY DEPARTMENT OF COMMERCE TO AGENCIES IN THE DEPARTMENT OF COMMERCE

SECTION 14.7.(a) In consultation with the Fiscal Research Division, the Department of Commerce and the ABC Commission, State Banking Commission, Credit Union Division, Cemetery Commission, Utilities Commission, Utilities Commission Public Staff, and the Rural Electrification Authority shall study the following: (i) the types of services provided by the Department of Commerce to each of the agencies during each fiscal year; and (ii) formulas or methods to be used to determine the costs of the services, including the advantages and disadvantages of each formula or method. The Department of Commerce and each of the agencies shall prepare a joint recommendation as to which formula or method to determine the costs of the services should be used. In addition, the Department of Commerce and each of the agencies shall develop a memorandum of understanding that details the services to be provided by the Department of Commerce during each fiscal year.

SECTION 14.7.(b) By May 1, 2012, the Department of Commerce shall report the results of the study, including formula or method recommendations, required under subsection (a) of this section, to the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division. By May 1, 2012, the Department of Commerce shall also submit a copy of each memorandum of understanding required under subsection (a) of this section to the Fiscal Research Division.

INDUSTRIAL COMMISSION FEES/COMPUTER SYSTEM REPLACEMENT

SECTION 14.8. The North Carolina Industrial Commission may retain the additional revenue generated as a result of an increase in the fee charged to parties for the filing of compromised settlements. These funds shall be used for the purpose of replacing existing computer hardware and software used for the operations of the Commission. These funds may also be used to prepare any assessment of hardware and software needs prior to purchase and to develop and administer the needed databases and new Electronic Case Management System, including the establishment of two time-limited positions for application development and support and mainframe migration. The Commission may not retain any fees under this section unless they are in excess of the former two-hundred-dollar ($200.00) fee charged by the Commission for filing a compromised settlement.

UTILITIES COMMISSION/TERMS OF COMMISSIONERS

SECTION 14.8A.(a) G.S. 62-10 reads as rewritten:

"**§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.**

(a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be ~~eight~~ four years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the ~~eighth~~ fourth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975,

one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for ~~eight~~ four years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then current session of the General Assembly.

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner and that of the commissioner designated as chairman shall be set by the General Assembly in the Current Operations Appropriations Act. In lieu of merit and other increment raises paid to regular State employees, each commissioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. "Service" means service as a member of the Utilities Commission.

(h1) In addition to compensation for their services, each member of the Commission who lives at least 50 miles from the City of Raleigh shall be paid a weekly travel allowance for each week the member travels to the City of Raleigh from the member's home for business of the Commission. The allowance shall be calculated for each member by multiplying the actual round-trip mileage from that member's home to the City of Raleigh by the rate-per-mile which is the business standard mileage rate set by the Internal Revenue Service in Rev. Proc. 93-51, December 27, 1993.

(i) The standards of judicial conduct provided for judges in Article 30 of Chapter 7A of the General Statutes shall apply to members of the Commission. Members of the Commission shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.

(j) Except as provided in subsection (h1) of this section, members of the Commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a)."

SECTION 14.8A.(b) This section becomes effective July 1, 2011, and applies to all vacancies on the Utilities Commission occurring on or after that date.

STATE-AID REPORTING REQUIREMENTS

SECTION 14.10.(a) The North Carolina Association of Community Development Corporations, North Carolina Institute of Minority Economic Development, Inc., FFA Foundation, Ag in the Classroom, Land Loss Prevention Project, North Carolina Minority Support Center, North Carolina Community Development Initiative, Inc., Councils of Government, High Point Market Authority, and Partnership for the Sounds, Inc., shall do the following:

(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.10.(b) Remaining allotments after September 1 shall not be released to any nonprofit organization that does not satisfy the reporting requirements provided in subsection (a) of this section.

SECTION 14.10.(c) No more than one hundred thousand dollars ($100,000) in State funds shall be used for the annual salary of any one employee of an entity named in subsection (a) of this section.

GRASSROOTS SCIENCE PROGRAM

SECTION 14.11.(a) The Grassroots Science Program within the Department of Environment and Natural Resources is transferred to the Department of Commerce.

SECTION 14.11.(b) Of the funds appropriated in this act to the Department of Commerce for State Aid, the sum of two million eight hundred ninety-nine thousand eight hundred eighty-five dollars ($2,899,885) for the 2011-2012 fiscal year and the sum of two million eight hundred ninety-nine thousand eight hundred eighty-five dollars ($2,899,885) for the 2012-2013 fiscal year is allocated as grants-in-aid for each fiscal year as follows:

	2011-2012	2012-2013
Aurora Fossil Museum	$49,000	$49,000
Cape Fear Museum	$132,125	$132,125
Carolina Raptor Center	$92,050	$92,050
Catawba Science Center	$120,100	$120,100
Colburn Earth Science Museum, Inc.	$61,170	$61,170
Core Sound Waterfowl Museum	$49,000	$49,000
Discovery Place	$543,945	$543,945
Eastern NC Regional Science Center	$49,000	$49,000
Fascinate-U	$66,530	$66,530
Granville County Museum Commission, Inc.–Harris Gallery	$49,000	$49,000
Greensboro Children's Museum	$110,845	$110,845
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	$127,695	$127,695
Highlands Nature Center	$65,050	$65,050
Imagination Station	$70,600	$70,600
The Iredell Museums, Inc.	$50,310	$50,310
Kidsenses	$66,700	$66,700
Museum of Coastal Carolina	$64,025	$64,025
The Natural Science Center of Greensboro, Inc.	$152,920	$152,920
North Carolina Museum of Life and Science	$311,685	$311,685
Pisgah Astronomical Research Institute	$49,000	$49,000
Port Discover: Northeastern North Carolina's Center for Hands-On Science, Inc.	$49,000	$49,000
Rocky Mount Children's Museum	$59,290	$59,290
Schiele Museum of Natural History and Planetarium, Inc.	$188,370	$188,370
Sci Works Science Center and Environmental Park of Forsyth County	$120,215	$120,215
Sylvan Heights Waterfowl Park and Eco-Center	$49,000	$49,000

Western North Carolina Nature Center	$92,630	$92,630
Wilmington Children's Museum	$60,630	$60,630
Total	$2,899,885	$2,899,885

SECTION 14.11.(c) No later than March 1, 2012, the Department of Commerce shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

(1) The actual operating budget for the 2010-2011 fiscal year.
(2) The proposed operating budget for the 2011-2012 fiscal year.
(3) The total attendance at the museum during the 2011 calendar year.

SECTION 14.11.(d) No later than March 1, 2013, the Department of Commerce shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

(1) The actual operating budget for the 2011-2012 fiscal year.
(2) The proposed operating budget for the 2012-2013 fiscal year.
(3) The total attendance at the museum during the 2012 calendar year.

SECTION 14.11.(e) As a condition for qualifying to receive funding under this section, all of the following documentation shall, no later than November 1 of each year of the 2011-2013 fiscal biennium, be submitted for each museum under this section to the Department of Commerce for fiscal years ending between July 1, 2009, and June 30, 2010, and only those costs that are properly documented under this subsection are allowed by the Department in calculating the distribution of funds under this section:

(1) Each museum under this section shall submit its IRS (Internal Revenue Service) Form 990 to show its annual operating expenses, its annual report, and a reconciliation that explains any differences between expenses as shown on the IRS Form 990 and the annual report.
(2) Each friends association of a museum under this section shall submit its IRS Form 990 to show its reported expenses for the museum, its annual report, and a reconciliation that explains any differences between expenses as shown on the IRS Form 990 and the annual report, unless the association does not have both an IRS Form 990 and an annual report available; in which case, it shall submit either an IRS Form 990 or an annual report.
(3) The chief financial officer of each county or municipal government that provides funds for the benefit of the museum shall submit a detailed signed statement of documented costs spent for the benefit of the museum that includes documentation of the name, address, title, and telephone number of the person making the assertion that the museum receives funds from the county or municipality for the benefit of the museum.
(4) The chief financial officer of each county or municipal government or each friends association that provides indirect or allocable costs that are not directly charged to a museum under this section but that benefit the museum shall submit in the form of a detailed statement enumerating each cost by type and amount that is verified by the financial officer responsible for the completion of the documentation and that includes the name, address, title, and telephone number of the person making the assertion that the county, municipality, or association provides indirect or allocable costs to the museum.

SECTION 14.11.(f) As used in subsection (e) of this section, "friends association" means a nonprofit corporation established for the purpose of supporting and assisting a museum that receives funding under this section.

SECTION 14.11.(g) No more than one hundred thousand dollars ($100,000) in State funds shall be used for the annual salary of any one employee of an entity named in subsection (b) of this section.

WAKE FOREST INSTITUTE FOR REGENERATIVE MEDICINE/PROFIT SHARING WITH STATE

SECTION 14.12.(a) Wake Forest University Health Sciences (hereinafter "Wake Forest") shall reimburse the State for State funds appropriated to the Wake Forest Institute of Regenerative Medicine (hereinafter "Institute") by returning to the State five percent (5%) of

the royalty revenue received by the Institute from inventions arising under those research projects to which State funds were allocated by the Institute, subject to the following:

(1) The total amount to be reimbursed to the State shall be limited to the amount of State funds appropriated to the Institute plus simple interest at the rate of four percent (4%) annually from the time of disbursement until reimbursement commences;

(2) Wake Forest shall be entitled to deduct the expenses reasonably incurred in prosecuting, defending, and enforcing patent rights for the invention, except to the extent the expenses are recovered from a third party, before calculating the amount to be paid to the State;

(3) Calculation of the payments to the State shall be based upon royalty revenue proportionate to the State funds used in the research, with budgets developed consistent with federal research funding accounting guidelines; and

(4) Payments shall be used by the State in a manner consistent with Title 35 of the United States Code, section 202, subdivision (c)(7).

SECTION 14.12.(b) The Institute shall comply with the following reporting requirements:

(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

(2) Provide to the Fiscal Research Division a copy of the Institute's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.12.(c) Remaining allotments after September 1 shall not be released to the Institute if it does not satisfy the reporting requirements provided in subsection (b) of this section.

SECTION 14.12.(d) No more than one hundred thousand dollars ($100,000) in State funds shall be used for the annual salary of any one employee of the Institute.

COUNCIL OF GOVERNMENT FUNDS

SECTION 14.12A.(a) Of the funds appropriated in this act to the Department of Commerce, the sum of three hundred forty-three thousand one hundred eighty-seven dollars ($343,187) for the 2011-2012 fiscal year and the sum of two hundred forty-three thousand one hundred eighty-seven dollars ($243,187) for the 2012-2013 fiscal year shall be used only as provided by this section. Each regional council of government or lead regional organization is allocated up to twenty-five thousand dollars ($25,000) for the 2011-2012 and the 2012-2013 fiscal years.

SECTION 14.12A.(b) A regional council of government may use funds allocated to it by this section only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other activities as deemed appropriate by the member governments.

SECTION 14.12A.(c) Funds allocated by this section shall be paid by electronic transfer in two equal installments each fiscal year. Upon receipt of the report required by subsection (e) of this section, the first installment shall be paid no later than September 15 of each year.

SECTION 14.12A.(d) Funds allocated by this section shall not be used for payment of dues or assessments by the member governments and shall not supplant funds appropriated by the member governments.

SECTION 14.12A.(e) By September 1 of each year, and more frequently as requested, each council of government or lead regional organization shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources. Each council of government or lead regional organization shall provide to the Fiscal Research Division of the General Assembly a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

RTI INTERNATIONAL/REPORTING REQUIREMENTS; USE OF STATE FUNDS

SECTION 14.12B.(a) RTI International shall do the following:

(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.12B.(b) Remaining allotments after September 1 shall not be released to RTI International if the organization does not satisfy the reporting requirements provided in subsection (a) of this section.

SECTION 14.12B.(c) Funds appropriated in this act to RTI International shall be used to support new research that is conducted in the State of North Carolina. Funds appropriated to RTI International for the 2011-2012 fiscal year that are unexpended and unencumbered as of June 30, 2012, shall revert to the General Fund on June 30, 2012.

SECTION 14.12B.(d) No more than one hundred thousand dollars ($100,000) in State funds shall be used for the annual salary of any one employee of RTI International.

E-NC AUTHORITY TO TRANSFER FEDERAL GRANT FOR BROADBAND MAPPING TO NC CENTER FOR GEOGRAPHIC INFORMATION AND ANALYSIS

SECTION 14.12C. The e-NC Authority shall consult with the National Telecommunications and Information Administration to determine the manner in which an orderly transfer of grant funds awarded to the e-NC Authority under the State Broadband Data and Development grant program may be made to the NC Center for Geographic Information and Analysis. The e-NC Authority and the NC Center for Geographic Information and Analysis shall comply with the requirements of the National Telecommunications and Information Administration to ensure that the grant funds are transferred as quickly and as efficiently as possible to prevent any significant disruption in the North Carolina mapping and planning project currently titled NC BRIM, NC Broadband-Rigor in Mapping.

BIOFUELS CENTER OF NORTH CAROLINA

SECTION 14.14.(a) Of the funds appropriated in this act to the Biofuels Center of North Carolina (Center), the sum of four million dollars ($4,000,000) for each fiscal year in the 2011-2013 biennium shall be allocated as follows:

	2011-2012	2012-2013
General Administration	$897,953	$897,953
Administration – Projects & Program Delivery	$650,767	$650,767
Communications & Public Information	$127,200	$127,200
Grant Program	$1,434,480	$1,434,480
Targeted Projects & Accelerated Initiatives	$889,600	$889,600

SECTION 14.14.(b) The Center shall comply with the following reporting requirements:

(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

(2) Provide to the Fiscal Research Division a copy of the Center's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.14.(c) Remaining allotments after September 1 shall not be released to the Center if it does not satisfy the reporting requirements provided in subsection (b) of this section.

SECTION 14.14.(d) No more than one hundred thousand dollars ($100,000) in State funds shall be used for the annual salary of any one employee of the Center.

NORTH CAROLINA BIOTECHNOLOGY CENTER

SECTION 14.15.(a) Of the funds appropriated in this act to the North Carolina Biotechnology Center (Center), the sum of sixteen million five hundred seventy-six thousand six hundred fifteen dollars ($16,576,615) for each fiscal year in the 2011-2013 biennium shall be allocated as follows:

(1) Job Creation: Ag Biotech Initiative, Economic and Industrial Development, Regional Offices and Statewide Development, and related activities – $3,569,736;

(2) Science and Commercialization: Science and Technology Development, Centers of Innovation, Business and Technology Development, Education and Training, and related activities – $10,729,550; and

(3) Center Operations: Administration, Professional and Technical Assistance and Oversight, Corporate Communications, Human Resource Management, Financial and Grant Administration, Legal, and Accounting – $2,277,329.

SECTION 14.15.(b) Except to provide administrative flexibility, up to ten percent (10%) of each of the allocations in subsection (a) of this section may be reallocated to one or more of the other allocations in subsection (a) of this section if, in the judgment of Center management, the reallocation will advance the mission of the Center.

SECTION 14.15.(c) The Center shall comply with the following reporting requirements:

(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

(2) Provide to the Fiscal Research Division a copy of the Center's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.15.(d) Remaining allotments after September 1 shall not be released to the Center if it does not satisfy the reporting requirements provided in subsection (b) of this section.

SECTION 14.15.(e) No more than one hundred thousand dollars ($100,000) in State funds shall be used for the annual salary of any one employee of the Center.

RURAL ECONOMIC DEVELOPMENT CENTER

SECTION 14.16.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of three million three hundred eighty-four thousand six hundred dollars ($3,384,600) for each year in the 2011-2013 biennium shall be allocated as follows:

	2011-2012	2012-2013
Center Administration, Technical Assistance, & Oversight	$1,229,830	$1,229,830
Research and Demonstration Grants	$277,780	$277,780
Institute for Rural Entrepreneurship	$108,205	$108,205
Community Development Grants	$797,360	$797,360
Microenterprise Loan Program	$146,965	$146,965
Water/Sewer/Business Development Matching Grants	$662,960	$662,960
Statewide Water/Sewer Database	$ 75,098	$ 75,098
Agricultural Advancement Consortium	$ 86,402	$ 86,402.

SECTION 14.16.(b) Funds allocated in subsection (a) of this section for community development grants shall support development projects and activities within the State's communities. Any new or previously funded community development corporation, as that term is defined in subsection (c) of this section, is eligible to apply for community development grant funds. However, no community development grant funds shall be released to a community development corporation unless the corporation can demonstrate that there are no outstanding or proposed assessments or other collection actions against the corporation for any State or federal taxes, including related penalties, interest, and fees.

SECTION 14.16.(c) For purposes of this section, the term "community development corporation" means a nonprofit corporation:

(1) Chartered pursuant to Chapter 55A of the General Statutes;

(2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;
(3) Whose primary mission is to develop and improve low-income communities and neighborhoods and Tier 1 counties through economic and related development;
(4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and
(5) Whose primary function is to act as deal maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the targeted community.

SECTION 14.16.(d) The Rural Center shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests.

SECTION 14.16.(e) In awarding grants under this section, the Rural Center shall give preference to a resident company. For purposes of this section, the term "resident company" means a company that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State. An application for a project that serves an economically distressed area shall have priority over a project that does not. A grant to assist with water infrastructure needs is not subject to the provisions of G.S. 143-355.4.

SECTION 14.16.(f) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

SECTION 14.16.(g) No more than one hundred thousand dollars ($100,000) in State funds shall be used for the annual salary of any one employee of the Rural Center.

RURAL ECONOMIC DEVELOPMENT CENTER/INFRASTRUCTURE PROGRAM

SECTION 14.17.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of fifteen million five hundred eighty-eight thousand seven hundred seventy-two dollars ($15,588,772) for each year in the 2011-2013 fiscal biennium shall be allocated as follows:

(1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. The grants under this Program shall not be subject to the provisions of G.S. 143-355.4.
(2) To provide matching grants or loans to local governments in distressed areas that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.
(3) To provide grants and technical assistance to reinvigorate the economies of towns with populations of less than 7,500 and to invest in economic innovation that stimulates business and job growth in distressed areas.
(4) Recipients of grant funds appropriated under this section shall contribute a cash match for the grant that is equivalent to at least five percent (5%) of the grant amount. The cash match shall come from local resources and may not be derived from other State or federal grant funds or from funds provided by the Rural Center.

SECTION 14.17.(b) In awarding grants under this section, the Rural Center shall give preference to a resident company. For purposes of this section, the term "resident company" means a company that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State. An application for a project that serves an economically distressed area shall have priority over a project that does not. A grant to assist with water infrastructure needs is not subject to the provisions of G.S. 143-355.4.

SECTION 14.17.(c) During each year of the 2011-2013 fiscal biennium, the Rural Center may use up to three hundred twenty-nine thousand one hundred seventy-eight dollars

($329,178) of the funds appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

SECTION 14.17.(d) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the North Carolina Economic Infrastructure Program in the prior State fiscal year.

OPPORTUNITIES INDUSTRIALIZATION CENTERS FUNDS

SECTION 14.18.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of two hundred seventy-one thousand three hundred twenty dollars ($271,320) for each year in the 2011-2013 fiscal biennium shall be equally distributed among the certified Opportunities Industrialization Centers (OI Centers).

SECTION 14.18.(b) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on OI Centers receiving funds pursuant to subsection (a) of this section. The report shall include data for each OI Center on all itemized expenditures and all fund sources for the prior State fiscal year. The report shall also contain a written narrative on prior fiscal year program activities, objectives, and accomplishments that were funded with funds appropriated in subsection (a) of this section.

SECTION 14.18.(c) The Rural Center shall ensure that each OI Center complies with the audit and reporting requirements prescribed by G.S. 143C-6-23 and Section 09 North Carolina Administrative Code 03M .0101.

SECTION 14.18.(d) No funds appropriated under this act shall be released to an OI Center listed in subsection (a) of this section if the OI Center has any overdue tax debts, as that term is defined in G.S. 105-243.1, at the federal or State level.

NC SMALL BUSINESS LENDING ENHANCEMENTS

SECTION 14.19.(a) Income-Producing Property Program. – There is created, as a component of the North Carolina Capital Access Program, the Income-Producing Property Program. The purpose of the Income-Producing Property Program is to leverage public investment, along with private sector resources, to stimulate additional financing opportunities for new and existing buildings used for business purposes in North Carolina. The Income-Producing Property Program must require that at least fifty percent (50%) of the commercial property to be financed by it is occupied, as evidenced by lease agreements. The leveraged resources available through the Program will encourage financial institutions to provide additional access to debt capital. Small businesses will be able to use that capital to provide economic opportunity, create jobs, enhance productivity, and spur innovation.

The Income-Producing Property Program must comply with the current guidelines established under the State Small Business Credit Initiative, section 3002 of the 2010 Small Business Jobs Act, Title III, as ratified by the United States Congress, with the exception that Income-Producing property will be eligible for enrollment under the program.

The North Carolina Rural Economic Development Center, Inc., may enter into participating agreements with a financial institution determined to have sufficient lending experience and financial and managerial capacity to participate in the North Carolina Capital Access Program. A financial institution that enters into a participating agreement with the Rural Center becomes eligible to enroll loans under the North Carolina Capital Access Program. To enroll a loan under the Income-Producing Property Program, the borrower of the funds being loaned must have a place of business in North Carolina and the loan proceeds must be used for a business purpose in North Carolina.

The following definitions apply in this subsection:

(1) Financial institution. – An insured depository institution, insured credit union, or community development financial institution (CDFI) that lends capital in the State of North Carolina.

(2) Income-producing property. – Real property held in order to earn income by leasing or letting. Examples of income-producing property include shopping centers, office buildings, and manufacturing plants.

(3) North Carolina Capital Access Program. – Created by the State of North Carolina under authority granted by Section 28.1 of Chapter 769 of the 1993

Session Laws as ratified by the North Carolina General Assembly to provide loan insurance to increase capital to businesses, particularly small- and medium-sized businesses, to foster economic development in North Carolina. The North Carolina Rural Economic Development Center, Inc., was designated to administer the Program.

SECTION 14.19.(b) The North Carolina Small Business Express Loan Fund. – There is established the North Carolina Small Business Express Loan Fund. The purpose of the Fund is to provide small loans, ranging from five thousand dollars ($5,000) to twenty-five thousand dollars ($25,000), for the start-up or expansion of small businesses. The Fund will complement the existing Microenterprise Loan Program. To be eligible to borrow money from the Fund, the borrower must have a place of business in North Carolina; meet strict credit requirements determined by the North Carolina Rural Economic Development Center, Inc.; receive approved technical assistance; and plan to use the borrowed funds for a business purpose in North Carolina.

The following definitions apply in this subsection:

(1) Approved technical assistance. – Business planning and assessment services provided by a counselor associated with a program approved by the North Carolina Rural Economic Development Center, Inc. The Rural Center must approve the counseling programs offered by the Small Business & Technology Development Centers, the community college Small Business Centers, and SCORE chapters.

(2) Microenterprise Loan Program. – The program initially funded as a pilot program through the North Carolina General Assembly in 1987 that provides loans ranging up to twenty-five thousand dollars ($25,000) to individuals who have sound ideas for starting or expanding a small business but may not qualify for bank loans.

SECTION 14.19.(c) Program Conditions. – The North Carolina Rural Economic Development Center, Inc., will administer the Income-Producing Property Program and the North Carolina Small Business Express Loan Fund. The Rural Center may use up to four percent (4%) of the funds appropriated for these purposes to administer the programs. The Rural Center may not use the funds appropriated for these purposes to compete with financial institutions in making loans to small business borrowers. Based upon actual demand for the programs, the Rural Center Board of Directors may reallocate the funds appropriated for these purposes between the two programs. By September 1 of each year, and more frequently as requested, the Rural Center must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the North Carolina Small Business Lending Enhancements authorized by this section.

PART XV. JUDICIAL DEPARTMENT

GRANT FUNDS

SECTION 15.1. Notwithstanding G.S. 143C-6-9, the Administrative Office of the Courts may use up to the sum of one million five hundred thousand dollars ($1,500,000) from funds available to the Department to provide the State match needed in order to receive grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

TRANSFER OF EQUIPMENT AND SUPPLY FUNDS

SECTION 15.2. Funds appropriated to the Judicial Department in the 2011-2013 fiscal biennium for equipment and supplies shall be certified in a reserve account. The Administrative Office of the Courts may transfer these funds to the appropriate programs and between programs as the equipment priorities and supply consumptions occur during the operating year. These funds shall not be expended for any other purpose.

REIMBURSEMENT FOR USE OF PERSONAL VEHICLES

SECTION 15.3. Notwithstanding the provisions of G.S. 138-6(a)(1), the Judicial Department, during the 2011-2013 fiscal biennium, may elect to establish a per-mile

reimbursement rate for transportation by privately owned vehicles at a rate less than the business standard mileage rate set by the Internal Revenue Service.

COLLECTION OF WORTHLESS CHECK FUNDS

SECTION 15.4. Notwithstanding the provisions of G.S. 7A-308(c), the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on June 30, 2011, for the purchase or repair of office or information technology equipment during the 2011-2012 fiscal year. Prior to using any funds under this section, the Judicial Department shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the equipment to be purchased or repaired and the reasons for the purchases.

DISPUTE RESOLUTION FEES

SECTION 15.5. G.S. 7A-38.2(d) reads as rewritten:

"(d) An administrative fee, not to exceed two hundred dollars ($200.00), may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediation training programs operating under this Article. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. Notwithstanding the provisions of G.S. 143C-1-2(b), certification and renewal fees collected by the Dispute Resolution Commission are nonreverting and are only to be used at the direction of the Commission."

WORKLOAD FORMULA FOR SUPERIOR COURT JUDGES/MINUTES MAINTAINED BY THE CLERK OF SUPERIOR COURT TO RECORD CONVENING AND ADJOURNMENT OR RECESS OF COURT

SECTION 15.6.(a) The Administrative Office of the Courts shall use funds available to contract with the National Center for State Courts to develop a workload formula for superior court judges. The results of this formula shall be submitted to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by December 1, 2011.

SECTION 15.6.(b) G.S. 7A-109 is amended by adding a new section to read:

"(a1) The minutes maintained by the clerk pursuant to this subsection shall record the date and time of each convening of court, as well as the date and time of each recess or adjournment of court with no further business before the court."

SECTION 15.6.(c) The Administrative Office of the Courts shall provide on a monthly basis the records of the dates and times of convening, recess, and adjournment of court collected by each clerk of superior court pursuant to G.S. 7A-109, as enacted by subsection (b) of this section, to the National Center for State Courts, the Fiscal Research Division, and the Study Committee on Consolidation of Judicial and Prosecutorial Districts created in Section 15.11 of this act.

STUDY FEASIBILITY OF OFFICE OF PROSECUTORIAL SERVICES

SECTION 15.7.(a) The School of Government at the University of North Carolina at Chapel Hill shall study the feasibility and cost of creating an Office of Prosecutorial Services within the judicial branch. The study shall compare North Carolina's judicial branch structure to that of other states in terms of organizational placement of prosecutorial and defense services within the context of the unified court system and shall also determine the necessary resources and costs required to make an Office of Prosecutorial Services viable as an independent agency under the judicial branch. The School of Government shall submit the report by April 1, 2012, to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety.

SECTION 15.7.(b) The Conference of District Attorneys may use funds available during the 2011-2012 fiscal year to contract for fiscal management and analysis services to analyze the differences between budgeted and actual position and associated costs in prosecutors' offices.

ENSURE MINIMUM NUMBER OF CLERK OF COURT STAFF

SECTION 15.8. G.S. 7A-102(a) reads as rewritten:

"(a) The numbers and salaries of assistant clerks, deputy clerks, and other employees in the office of each clerk of superior court shall be determined by the Administrative Officer of the Courts after consultation with the clerk concerned. However, no office of clerk of superior court shall have fewer than five total staff positions in addition to the elected clerk of superior court. All personnel in the clerk's office are employees of the State. The clerk appoints the assistants, deputies, and other employees in the clerk's office to serve at his or her pleasure. Assistant and deputy clerks shall take the oath of office prescribed for clerks of superior court, conformed to the office of assistant or deputy clerk, as the case may be. Except as provided by subsection (c2) of this section, the job classifications and related salaries of each employee within the office of each superior court clerk shall be subject to the approval of the Administrative Officer of the Courts after consultation with each clerk concerned and shall be subject to the availability of funds appropriated for that purpose by the General Assembly."

STUDY INFRACTIONS AND WAIVABLE OFFENSES

SECTION 15.9. The Revenue Laws Study Committee shall study the penalties and fines for infractions and waivable offenses and determine whether the current amounts are at a level appropriate for the associated offenses. The Committee shall report its findings, together with any recommended legislation, to the 2012 Regular Session of the 2011 General Assembly upon its convening.

WAIVER OF CRIMINAL COURT COSTS ONLY WHEN JUDGE MAKES FINDING OF JUST CAUSE TO GRANT WAIVER

SECTION 15.10.(a) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and ~~collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no~~collected. No costs may be assessed when a case is dismissed. Costs under this section may not be waived unless the judge makes a written finding of just cause to grant such a waiver.

...."

SECTION 15.10.(b) The Administrative Office of the Courts shall make the necessary modifications to its information systems to maintain records of all cases in which the judge makes a finding of just cause to grant a waiver of criminal court costs under G.S. 7A-304(a) and shall report on those waivers to the Joint Legislative Commission on Governmental Operations by October 1 of each year.

STUDY CONSOLIDATION OF JUDICIAL AND PROSECUTORIAL DISTRICTS

SECTION 15.11.(a) Creation. – There is created the Study Committee on Consolidation of Judicial and Prosecutorial Districts. The Committee shall consist of 10 members to be appointed as follows:

(1) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) Four members of the Senate appointed by the President Pro Tempore of the Senate.

(3) Two members who are knowledgeable about the operations of district attorneys' offices, one appointed by the Speaker of the House of Representatives and one appointed by the President Pro Tempore of the Senate.

The Speaker of the House of Representatives shall designate one representative as cochair, and the President Pro Tempore of the Senate shall designate one senator as cochair. Vacancies on the Committee shall be filled by the same appointing authority making the initial appointment.

The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may meet at any time upon the joint call of the cochairs. The Committee may meet in the Legislative Building or the Legislative Office Building.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of

Representatives and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 15.11.(b) Duties. – The Committee shall study the number and structure of judicial and prosecutorial districts in the State and shall make recommendations to reduce those districts by consolidation to increase efficiency and improve the quality of justice. Those recommendations shall, to the extent deemed feasible by the Committee, provide for judicial and prosecutorial district plans that are identical.

SECTION 15.11.(c) Report. – The Committee may make a final report, including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly upon its convening. The Committee shall terminate upon filing its final report or upon the convening of the 2012 Regular Session of the 2011 General Assembly, whichever is earlier.

STATEWIDE ADMINISTRATIVE COURT SESSIONS

SECTION 15.11A. The Administrative Office of the Courts shall develop protocols to offer regular Administrative Court sessions in each district court district in the State for the purpose of hearing Chapter 20 infractions. Each district shall offer Administrative Court regularly by October 1, 2011. The Administrative Office of the Courts shall report to the Joint Legislative Commission on Governmental Operations on the scheduling and deployment of resources by February 1, 2012.

OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS/EXPANSION OF PUBLIC DEFENDER OFFICES

SECTION 15.16.(a) The Judicial Department, Office of Indigent Defense Services, may use up to the sum of two million one hundred fifty thousand dollars ($2,150,000) in appropriated funds during the 2011-2012 fiscal year for the expansion of existing offices currently providing legal services to the indigent population under the oversight of the Office of Indigent Defense Services, for the creation of new public defender offices within existing public defender programs, or for the establishment of regional public defender programs. Notwithstanding the defender districts established by G.S. 7A-498.7, the Office of Indigent Defense Services may use a portion of these funds to create positions within existing public defender programs to handle cases in adjacent counties or districts. These funds may be used to create up to 50 new attorney positions and 25 new support staff positions during the 2011-2012 fiscal year and for the salaries, benefits, equipment, and related expenses for these positions in both years of the biennium. Positions creation will be staggered across the two years of the biennium. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion.

SECTION 15.16.(b) G.S. 7A-498.7(b) reads as rewritten:

"(b) For each new term, and to fill any vacancy, public defenders shall be appointed from a list of not less than two and not more than three names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to rules adopted by the Commission on Indigent Defense Services. The appointment shall be made by the ~~senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 that includes the county or counties of the defender district for which the public defender is being appointed.~~Commission on Indigent Defense Services."

SECTION 15.16.(c) The Office of Indigent Defense Services shall issue a request for proposals from private law firms or not-for-profit legal representation organizations for the provision of all legal services for indigent clients in all judicial districts. The Office of Indigent Defense Services shall report on the issuance of this request for proposals to the Joint Legislative Commission on Governmental Operations by October 1, 2011. In cases where the proposed contract can provide representation services more efficiently than current costs, the Office of Indigent Defense Services shall use private assigned counsel funds to enter into contracts for this purpose.

OFFICE OF INDIGENT DEFENSE SERVICES REPORT

SECTION 15.17. The Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on:

(1) The volume and cost of cases handled in each district by assigned counsel or public defenders;

(2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program;

(3) Plans for changes in rules, standards, or regulations in the upcoming year; and

(4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services, including any recommendations concerning the feasibility and desirability of establishing regional public defender offices.

AUDIT OF FARMWORKER LEGAL AID PROGRAM

SECTION 15.18. The State Auditor shall conduct a financial audit of the Farmworker Legal Aid program of Legal Aid of North Carolina. The audit shall include assessments of compliance with all State and federal mandates regarding use of funds under the Access to Civil Justice Act and shall assess whether State and federal funds are commingled in the administration and operation of this legal aid program. The State Auditor shall publish this audit not later than October 1, 2011.

LIMIT COMPENSATION RATE PAID TO EXPERT WITNESSES BY THE OFFICE OF INDIGENT DEFENSE SERVICES

SECTION 15.20. G.S. 7A-498.5(f) reads as rewritten:

"(f) The Commission shall establish policies and procedures with respect to the distribution of funds appropriated under this Article, including rates of compensation for appointed counsel, schedules of allowable expenses, appointment and compensation of expert witnesses, and procedures for applying for and receiving compensation. The rate of compensation set for expert witnesses may be no greater than the rate set by the Administrative Office of the Courts under G.S. 7A-314(d)."

TRIAL COURT ADMINISTRATOR POSITIONS

SECTION 15.21. Notwithstanding any other provision of this act, there shall be a trial court administrator position in the following judicial districts: 4, 5, 7B/7C, 10, 12, 14, 18, 21, 26, and 28.

PART XVI. DEPARTMENT OF JUSTICE

USE OF SEIZED AND FORFEITED PROPERTY TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES BY THE FEDERAL GOVERNMENT

SECTION 16.1.(a) Assets transferred to the Departments of Justice, Correction, and Crime Control and Public Safety during the 2011-2013 fiscal biennium pursuant to applicable federal law shall be credited to the budgets of the respective departments and shall result in an increase of law enforcement resources for those departments. The Departments of Justice, Correction, and Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations upon receipt of the assets and, before using the assets, shall report on the intended use of the assets and the departmental priorities on which the assets may be expended.

SECTION 16.1.(b) The General Assembly finds that the use of assets transferred pursuant to federal law for new personnel positions, new projects, acquisition of real property, repair of buildings where the repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods. Therefore, the Department of Justice, the Department of Correction, and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly.

SECTION 16.1.(c) Nothing in this section prohibits North Carolina law enforcement agencies from receiving funds from the United States Department of Justice, the

United States Department of the Treasury, and the United States Department of Health and Human Services.

PURCHASE OF TIME MANAGEMENT SOFTWARE

SECTION 16.2. The Department of Justice shall use funds available to purchase, or purchase licenses for, time management software to be used to ensure adequate record keeping and management of Department attorneys' time. The software shall be of a quality and type generally used by attorneys in the private sector.

PRIVATE PROTECTIVE SERVICES AND ALARM SYSTEMS LICENSING BOARDS PAY FOR USE OF STATE FACILITIES AND SERVICES

SECTION 16.3.(a) G.S. 74C-4 is amended by adding a new subsection to read:

"(h) The Board shall pay the appropriate State agency for the use of physical facilities and services provided to it by the State."

SECTION 16.3.(b) G.S. 74D-4 is amended by adding a new subsection to read:

"(h) The Board shall pay the appropriate State agency for the use of physical facilities and services provided to it by the State."

CERTAIN LITIGATION EXPENSES TO BE PAID BY CLIENTS

SECTION 16.4. G.S. 114-8.2 reads as rewritten:

"**§ 114-8.2. Charges for legal services.**

The Department of Justice shall charge State boards and commissions that are totally supported by receipts from fees or surcharges for legal services rendered by the Department to the board or commission. Client State departments, agencies, boards, and commissions shall reimburse the Department of Justice for reasonable court fees, attorney travel and subsistence costs, and other costs directly related to litigation in which the Department of Justice is representing the department, agency, or board."

HIRING OF SWORN STAFF POSITIONS FOR THE STATE BUREAU OF INVESTIGATION

SECTION 16.5. The Department of Justice may hire sworn personnel to fill vacant positions in the State Bureau of Investigation only in the following circumstances: (i) the position's regular responsibilities involve warrant executions, property searches, criminal investigations, or arrest activities that are consistent in frequency with the responsibilities of other sworn agents; (ii) the position is a promotion for a sworn agent who was employed at the State Bureau of Investigation prior to July 1, 2007; (iii) the position is a forensic drug chemist position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; (iv) the position is a forensic impressions analyst position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; or (v) the position primarily involves supervising sworn personnel.

CRIMINAL INFORMATION DATABASE STUDY

SECTION 16.6. The Department of Justice shall issue a request for information to determine the cost to have a private company maintain the software required for criminal information databases managed by the Criminal Information Division. The Department of Justice shall report the results of this request for information to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division by March 1, 2012.

PART XVII. DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS

SECTION 17.1. Funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the 2011-2012 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention regarding the criteria for awarding

federal funds. The Office of State Budget and Management, the Governor's Crime Commission, and the Department of Juvenile Justice and Delinquency Prevention shall report to the Appropriations Committees of the Senate and House of Representatives and the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the 2011-2012 fiscal year, the amount of funds anticipated for the 2012-2013 fiscal year, and the allocation of funds by program and purpose.

ANNUAL EVALUATION OF COMMUNITY PROGRAMS

SECTION 17.2. The Department of Juvenile Justice and Delinquency Prevention shall conduct an evaluation of the wilderness camp programs and of multipurpose group homes.

In conducting the evaluation of each of these programs, the Department shall consider whether participation in each program results in a reduction of court involvement among juveniles. The Department also shall identify whether the programs are achieving the goals and objectives of the Juvenile Justice Reform Act, S.L. 1998-202. The Department shall report the results of the evaluation to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the chairs of the Senate and House of Representatives Appropriations Committees and the chairs of the Subcommittees on Justice and Public Safety of the Senate and House of Representatives Appropriations Committees by March 1 of each year.

ALLOCATE REALIZED SAVINGS OF WILDERNESS CAMPS TO FUND CERTAIN LEVEL 2 INTERMEDIATE DISPOSITIONAL ALTERNATIVES FOR JUVENILES

SECTION 17.3.(a) If any funds appropriated by this act to the Department of Juvenile Justice and Delinquency Prevention for the 2011-2013 fiscal biennium for wilderness camps are not required for or expended for wilderness camps, then those funds shall be allocated to the Juvenile Crime Prevention Council grants fund to be used for the Level 2 intermediate dispositional alternatives for juveniles listed in G.S. 7B-2506(13) through (23).

SECTION 17.3.(b) The Department of Juvenile Justice and Delinquency Prevention shall submit an electronic report by October 1, 2011, on all expenditures made from the miscellaneous contract line in Fund Code 1310 to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Fiscal Research Division of the General Assembly. The report shall include all of the following: an itemized list of the contracts that have been executed, the amount of each contract, the date the contract was executed, the purpose of the contract, the number of juveniles that will be served and the manner in which they will be served, the amount of money transferred to the Juvenile Crime Prevention Council fund, and an itemized list of grants allocated from the funds transferred to the Juvenile Crime Prevention Council fund.

JUVENILE CRIME PREVENTION COUNCIL FUNDS

SECTION 17.4.(a) On or before October 1 of each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council (JCPC) grants, including the following:

(1) The amount of the grant awarded.
(2) The membership of the local committee or council administering the award funds on the local level.
(3) The type of program funded.
(4) A short description of the local services, programs, or projects that will receive funds.
(5) Identification of any programs that received grant funds at one time but for which funding has been eliminated by the Department.
(6) The number of at-risk, diverted, and adjudicated juveniles served by each county.
(7) The Department's actions to ensure that county JCPCs prioritize funding for dispositions of intermediate and community-level sanctions for

court-adjudicated juveniles under minimum standards adopted by the Department.

(8) The total cost for each funded program, including the cost per juvenile and the essential elements of the program.

An electronic copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly.

SECTION 17.4.(b) Of the funds appropriated by this act for the 2011-2012 fiscal year to the Department of Juvenile Justice and Delinquency Prevention for Juvenile Crime Prevention Council grants, the sum of one hundred twenty-one thousand six hundred dollars ($121,600) shall be transferred to Project Challenge North Carolina, Inc., to be used for the continued support of Project Challenge programs throughout the State.

FUNDING FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION EDUCATION PROGRAMMING

SECTION 17.5. The Department of Juvenile Justice and Delinquency Prevention shall work with the Department of Public Instruction to identify all education fund sources that can be used to cover education programming costs of the Department of Juvenile Justice and Delinquency Prevention.

The Department of Juvenile Justice and Delinquency Prevention shall report by March 1, 2012, to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee regarding its findings and recommendations.

DJJDP AND DOC JOINT EFFORT TO MAKE IN-HOME MONITORING AVAILABLE AS ALTERNATIVE TO DETENTION FOR JUVENILES

SECTION 17.6. It is the intent of the General Assembly to reduce the State's reliance on detention facilities and youth development centers in the Department of Juvenile Justice and Delinquency Prevention as correctional options for juveniles by increasing the use of community-based alternatives whenever possible. Therefore, the Department of Juvenile Justice and Delinquency Prevention and the Department of Correction shall work together to increase the use of in-home monitoring as an alternative to detention for juveniles. The Department of Correction and the Department of Juvenile Justice and Delinquency Prevention shall assess the monitoring needs for both the adult and juvenile systems, identify the contracts that the Department of Correction currently has for monitoring services, and determine which contracts, if any, may be negotiated or renegotiated to cover monitoring services for both the adult and juvenile systems. The Department of Juvenile Justice and Delinquency Prevention and the Department of Correction may also identify other options to increase the use of in-home monitoring as an alternative to detention for juveniles that may work well and be cost-effective.

The Department of Juvenile Justice and Delinquency Prevention and the Department of Correction shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Fiscal Research Division regarding their findings and recommendations by September 1, 2011.

TREATMENT STAFFING MODEL AT YOUTH DEVELOPMENT CENTERS

SECTION 17.7. The Department shall implement the staffing treatment model presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee as part of the Department's November 14, 2006, report regarding the joint use with the Department of Correction of the Swannanoa Youth Development Center campus.

The staffing levels of the new youth development centers shall be capped at 66 staff for a 32-bed facility and 198 staff for the 96-bed facility for the 2011-2013 fiscal biennium. Staffing ratios shall be no more than 2.1 staff per every juvenile committed at every other existing youth development center.

YOUTH DEVELOPMENT CENTER ANNUAL REPORT

SECTION 17.8. The Department of Juvenile Justice and Delinquency Prevention shall report by October 1 of each year to the Chairs of the House of Representatives and Senate

Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Fiscal Research Division on the Youth Development Center (YDC) population, staffing, and capacity in the preceding fiscal year. Specifically, the report shall include all of the following:

(1) The on-campus population of each YDC, including the county the juveniles are from.
(2) The housing capacity of each YDC.
(3) A breakdown of staffing for each YDC, including number, type of position, position title, and position description.
(4) The per-bed and average daily population cost for each facility.
(5) The operating cost for each facility, including personnel and nonpersonnel items.
(6) A brief summary of the treatment model, education, services, and plans for reintegration into the community offered at each facility.
(7) The average length of stay in the YDCs.
(8) The number of incidents of assaults/attacks on staff at each facility.

DJJDP FACILITY MONTHLY COMMITMENT REPORT

SECTION 17.9. The Department of Juvenile Justice and Delinquency Prevention shall report electronically on the first day of each month to the Fiscal Research Division regarding each juvenile correctional facility and the average daily population for the previous month. The report shall include (i) the average daily population for each detention center and (ii) the monthly summary of the Committed Youth Report.

USE OF INMATE LABOR FOR REPAIR AND RENOVATION OF YOUTH DEVELOPMENT CENTERS

SECTION 17.10.(a) The Department of Juvenile Justice and Delinquency Prevention and the Department of Correction in consultation with the Governor's Crime Commission shall establish policies regarding the appropriate use of inmate construction crews provided by the Department of Correction for repair and renovation projects located on property owned or controlled by the Department of Juvenile Justice and Delinquency Prevention. The policies shall require that a sight and sound barrier be maintained between the adults and juveniles at the center at any time that inmate construction crews are used for repair and renovation projects on property owned or controlled by the Department of Juvenile Justice and Delinquency Prevention. The policies shall be developed and ready for implementation by September 1, 2011.

SECTION 17.10.(b) Effective September 1, 2011, and notwithstanding G.S. 148-26(f), the Department of Juvenile Justice and Delinquency Prevention and the Department of Correction may use inmate construction crews provided by the Department of Correction for repair and renovation projects located on property owned or controlled by the Department of Juvenile Justice and Delinquency Prevention pursuant to the policies developed and implemented under subsection (a) of this section.

ALLOCATE FUNDS FOR REPAIRS AND RENOVATIONS TO STONEWALL JACKSON AND C.A. DILLON YOUTH DEVELOPMENT CENTERS

SECTION 17.11. Of the funds appropriated by this act to the Department of Juvenile Justice and Delinquency Prevention for the 2011-2012 fiscal year, the sum of two million three hundred thirty thousand nine hundred dollars ($2,330,900) shall be allocated to the Stonewall Jackson Youth Development Center, and the sum of one million five hundred thirty-one thousand dollars ($1,531,000) shall be allocated to the C.A. Dillon Youth Development Center to be used for repairs and renovations that (i) will increase operational capacity at those facilities and (ii) satisfy the requirements of G.S. 143C-4-3(b). This allocation is separate from and in addition to any allocation of funds that might be made pursuant to Section 30.5 of this act.

JUVENILE ASSESSMENT CENTER FUNDS

SECTION 17.12. Of the funds appropriated by this act for the 2011-2012 fiscal year and for the 2012-2013 fiscal year to the Department of Juvenile Justice and Delinquency Prevention for the operation of the Cumberland Regional Juvenile Detention Center the sum of

one hundred twenty-four thousand seventy-five dollars ($124,075) shall be used for the Juvenile Assessment Center in each fiscal year.

PART XVIII. DEPARTMENT OF CORRECTION

FEDERAL GRANT REPORTING

SECTION 18.1. The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant.

FEDERAL GRANT MATCHING FUNDS

SECTION 18.2. Notwithstanding the provisions of G.S. 143C-6-9, the Department of Correction may use up to the sum of one million two hundred thousand dollars ($1,200,000) during the 2011-2012 fiscal year and up to the sum of one million two hundred thousand dollars ($1,200,000) during the 2012-2013 fiscal year from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

USE OF CLOSED PRISON FACILITIES

SECTION 18.3. In conjunction with the closing of prison facilities, including small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located, with the elected State and local officials, and with State and federal agencies about the possibility of converting that unit to other use. The Department may also consult with any private for-profit or nonprofit firm about the possibility of converting the unit to other use. In developing a proposal for future use of each unit, the Department shall give priority to converting the unit to other criminal justice use. Consistent with existing law and the future needs of the Department of Correction, the State may provide for the transfer or the lease of any of these units to counties, municipalities, State agencies, federal agencies, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from one security custody level to another, where that conversion would be cost-effective. A prison unit under lease to a county pursuant to the provisions of this section for use as a jail is exempt for the period of the lease from any of the minimum standards adopted by the Secretary of Health and Human Services pursuant to G.S. 153A-221 for the housing of adult prisoners that would subject the unit to greater standards than those required of a unit of the State prison system.

LIMIT USE OF OPERATIONAL FUNDS

SECTION 18.4. Funds appropriated in this act to the Department of Correction for operational costs for additional facilities shall be used for personnel and operating expenses set forth in the budget approved by the General Assembly in this act. These funds shall not be expended for any other purpose, except as provided for in this act, and shall not be expended for additional prison personnel positions until the new facilities are within 120 days of projected completion, except that the Department may establish critical positions prior to 120 days of completion representing no more than twenty percent (20%) of the total estimated number of positions.

REIMBURSE COUNTIES FOR HOUSING AND EXTRAORDINARY MEDICAL COSTS FOR INMATES, PAROLEES, AND POST-RELEASE SUPERVISEES AWAITING TRANSFER TO STATE PRISON SYSTEM

SECTION 18.5. Notwithstanding G.S. 143C-6-9, the Department of Correction may use funds available to the Department for the 2011-2013 fiscal biennium to pay the sum of forty dollars ($40.00) per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog.

CENTER FOR COMMUNITY TRANSITIONS/CONTRACT AND REPORT

SECTION 18.6. The Department of Correction may continue to contract with The Center for Community Transitions, Inc., a nonprofit corporation, for the purchase of prison beds for minimum security female inmates during the 2011-2013 fiscal biennium. The Center for Community Transitions, Inc., shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the annual cost per inmate and the average daily inmate population compared to bed capacity using the same methodology as that used by the Department of Correction.

PAROLE ELIGIBILITY REPORT/MUTUAL AGREEMENT PAROLE PROGRAM/MEDICAL RELEASE PROGRAM

SECTION 18.7.(a) The Post-Release Supervision and Parole Commission shall, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, analyze the amount of time each inmate who is eligible for parole on or before July 1, 2012, has served compared to the time served by offenders under Structured Sentencing for comparable crimes. The Commission shall determine if the person has served more time in custody than the person would have served if sentenced to the maximum sentence under the provisions of Article 81B of Chapter 15A of the General Statutes. The "maximum sentence," for the purposes of this section, shall be calculated as set forth in subsection (b) of this section.

SECTION 18.7.(b) For the purposes of this section, the following rules apply for the calculation of the maximum sentence:

(1) The offense upon which the person was convicted shall be classified as the same felony class as the offense would have been classified if committed after the effective date of Article 81B of Chapter 15A of the General Statutes.

(2) The minimum sentence shall be the maximum number of months in the presumptive range of minimum durations in Prior Record Level VI of G.S. 15A-1340.17(c) for the felony class determined under subdivision (1) of this subsection. The maximum sentence shall be calculated using G.S. 15A-1340.17(d), (e), or (e1).

(3) If a person is serving sentences for two or more offenses that are concurrent in any respect, then the offense with the greater classification shall be used to determine a single maximum sentence for the concurrent offenses. The fact that the person has been convicted of multiple offenses may be considered by the Commission in making its determinations under subsection (a) of this section.

SECTION 18.7.(c) The Post-Release Supervision and Parole Commission shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2012. The report shall include the following: the class of the offense for which each parole-eligible inmate was convicted and

whether an inmate had multiple criminal convictions. The Commission shall reinitiate the parole review process for each offender who has served more time than that person would have under Structured Sentencing as provided by subsections (a) and (b) of this section.

The Commission shall also report on the number of parole-eligible inmates reconsidered in compliance with this section and the number who were actually paroled.

SECTION 18.7.(d) The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates enrolled in the mutual agreement parole program, the number completing the program and being paroled, and the number who enrolled but were terminated from the program. The information should be based on the previous calendar year.

SECTION 18.7.(e) The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates proposed for release, considered for release, and granted release under Chapter 84B of Chapter 15A of the General Statutes, providing for the medical release of inmates who are either permanently and totally disabled, terminally ill, or geriatric.

CRIMINAL JUSTICE PARTNERSHIP

SECTION 18.8.(a) Notwithstanding any other provision of law, a county may use funds appropriated pursuant to the Criminal Justice Partnership Act, Article 6A of Chapter 143B of the General Statutes, to provide more than one community-based corrections program.

SECTION 18.8.(b) Effective July 1, 2011, the Department of Correction shall recalculate the county allocation funding formula mandated under G.S. 143B-273.15 using updated data.

SECTION 18.8.(c) Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

SECTION 18.8.(d) The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

SECTION 18.8.(e) The Department of Correction shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

(1) The amount of funds carried over from the prior fiscal year;

(2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;

(3) Any counties the Department anticipates will submit requests for new implementation grants;

(4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;

(5) An analysis of offender participation data received, including data on each program's utilization and capacity;

(6) An analysis of comparable programs prepared by the Division of Research and Planning, Department of Correction, including a comparison of programs in each program type on selected outcome measures developed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Division of Research and Planning, and a

summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards;

(7) A review of whether each sentenced offender program is meeting established program goals developed by the Division of Community Corrections in consultation with the Division of Research and Planning and the State Criminal Justice Partnership Advisory Board;

(8) The number of community offenders and intermediate offenders served by each county program;

(9) The amount of Criminal Justice Partnership funds spent on community offenders and intermediate offenders; and

(10) A short description of the services and programs provided by each partnership, including who the service providers are and the amount of funds each service provider receives.

SWANNANOA CORRECTIONAL CENTER FOR WOMEN

SECTION 18.9. The Department of Correction shall relocate the fence at Swannanoa Correctional Center for Women so that the school building is located on the side of the campus housing the Department of Correction facilities, and the Department shall retain the sight and sound barrier between the adults and juveniles at the center.

INMATE MEDICAL COST CONTAINMENT

SECTION 18.10.(a) The Department of Correction shall reimburse those providers and facilities providing approved inmate medical services outside the correctional facility two times the then-current Medicaid rate for any given service.

This section does not apply to vendors providing services that are not billed on a fee-for-service basis, such as temporary staffing. Nothing in this section shall preclude the Department from contracting with a provider for services at rates that provide greater documentable cost avoidance for the State than do the rates contained in this section or at rates that are less favorable to the State but that will ensure the continued access to care.

SECTION 18.10.(b) The Department of Correction shall make every effort to contain inmate medical costs by making use of its own hospital and health care facilities to provide health care services to inmates. To the extent that the Department of Correction must utilize other facilities and services to provide health care services to inmates, the Department shall make reasonable efforts to make use of hospitals or other providers with which it has a contract or, if none is reasonably available, hospitals with available capacity or other health care facilities in a region to accomplish that goal. The Department shall make reasonable efforts to equitably distribute inmates among all hospitals or other appropriate health care facilities. With respect to any single hospital, the Department of Correction shall continue to make its best effort to seek admission of the number of inmates representing no more than nine percent (9%) of all inmates requiring hospitalization or hospital services on an annual basis beginning in the 2011-2012 fiscal year, unless the failure to do so would jeopardize the health of an inmate or unless a higher level is agreed to by contract. The Department shall also give preference to those hospitals or other health care facilities in the same county or an adjoining county to the correctional facility where an inmate requiring hospitalization is incarcerated. The Department will continue these efforts until it has reached a number which represents no more than five percent (5%) of all inmates requiring hospitalization or hospital services on an annual basis at any single hospital by July 1, 2013, unless the failure to do so would jeopardize the health of an inmate or unless a higher level is agreed to by contract.

SECTION 18.10.(c) G.S. 131E-77 is amended by adding a new subsection to read:

"(a1) As a condition of licensure, hospitals licensed under this Article shall treat inmates in the custody of the Department of Correction, unless a hospital lacks the capacity or capability to provide such treatment."

SECTION 18.10.(d) The Department of Correction shall report to the Joint Legislative Commission on Governmental Operations no later than November 1, 2011, and quarterly thereafter on:

(1) The volume of services provided by community medical providers that can be scheduled in advance and, of that volume, the percentage of those services that are provided by contracted providers; and

(2) The volume of services provided by community medical providers that cannot be scheduled in advance and, of that volume, the percentage of those services that are provided by contracted providers.

DEPARTMENT OF CORRECTION RULES FOR INMATE LABOR

SECTION 18.12. G.S. 148-26 is amended by adding a new subsection to read:

"(g) The Department of Correction shall establish rules, standards, and procedures for establishing inmate labor services contracts with any county or municipality expressing interest in contracting for inmate labor."

REPORT ON PROBATION AND PAROLE CASELOADS

SECTION 18.13.(a) The Department of Correction shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on caseload averages for probation and parole officers. The report shall include:

(1) Data on current caseload averages and district averages for probation/parole officer positions;
(2) Data on current span of control for chief probation officers;
(3) An analysis of the optimal caseloads for these officer classifications;
(4) An assessment of the role of surveillance officers;
(5) The number and role of paraprofessionals in supervising low-risk caseloads;
(6) An update on the Department's implementation of the recommendations contained in the National Institute of Correction study conducted on the Division of Community Corrections in 2004 and 2008;
(7) The process of assigning offenders to an appropriate supervision level based on a risk assessment and an examination of other existing resources for assessment and case planning, including the Sentencing Services Program in the Office of Indigent Defense Services and the range of screening and assessment services provided by the Division of Mental Health, Developmental Disability, and Substance Abuse Services in the Department of Health and Human Services; and
(8) Data on cases supervised solely for the collection of court-ordered payments.

SECTION 18.13.(b) The Department of Correction shall conduct a study of probation/parole officer workload. The study shall include analysis of the type of offenders supervised, the distribution of the probation/parole officers' time by type of activity, the caseload carried by the officers, and comparisons to practices in other states. The study shall be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of the offenders supervised and the time required to supervise those offenders.

SECTION 18.13.(c) The Department of Correction shall report the results of the study and recommendations for any adjustments to caseload goals to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by January 1, 2013.

SECTION 18.13.(d) The Department of Correction shall report by March 1 of each year to the Chairs of the House and Senate Appropriations Committees, the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the following:

(1) The number of sex offenders enrolled on active and passive GPS monitoring.
(2) The caseloads of probation officers assigned to GPS-monitored sex offenders.
(3) The number of violations.
(4) The number of absconders.
(5) The projected number of offenders to be enrolled by the end of the 2011-2012 fiscal year and the end of the 2012-2013 fiscal year.

REMOVE SUNSET ON CORRECTION ENTERPRISES STATE AND LOCAL EMPLOYEE/RETIREE PURCHASE ALLOWANCE

SECTION 18.14. Section 6 of S.L. 2007-280 reads as rewritten:

"**SECTION 6.** This act becomes effective ~~August 1, 2007, but the first sentence of G.S. 148-127(5) as enacted by this act expires on July 1, 2012.~~August 1, 2007."

PART XIX. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

CONSOLIDATE THE DEPARTMENT OF CORRECTION, THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY, THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, THE STATE BUREAU OF INVESTIGATION, AND THE NORTH CAROLINA JUSTICE ACADEMY INTO THE DEPARTMENT OF PUBLIC SAFETY

CREATION OF DEPARTMENT

SECTION 19.1.(a) The Department of Public Safety is established as a new executive department. All functions, powers, duties, and obligations vested in the following departments and agencies are transferred to, vested in, and consolidated within the Department of Public Safety by a Type I transfer, as defined in G.S. 143A-6:

(1) The Department of Correction.
(2) The Department of Crime Control and Public Safety.
(3) The Department of Juvenile Justice and Delinquency Prevention.
(4) The State Bureau of Investigation, including the North Carolina State Crime Laboratory.
(5) The North Carolina Justice Academy.

SECTION 19.1.(b) Chapter 143B of the General Statutes is amended by adding a new Article to read:

"Article 5A.
"Department of Public Safety.
"Part 1. General Provisions.

"**§ 143B-259. Organization.**

(a) There is established the Department of Public Safety. The head of the Department of Public Safety is the Secretary of Public Safety, who shall be known as the Secretary. The appointment of the Secretary shall be subject to confirmation by a Joint Resolution of the General Assembly. Notwithstanding G.S. 147-12(a)(3), a person appointed to fill a vacancy in the position of Secretary shall serve no longer than the thirtieth calendar day after the convening of the next regular session of the General Assembly. The General Assembly may also convene a special session for purposes of considering the confirmation of a person appointed to be the Secretary.

The Department shall consist of seven divisions and an Office of External Affairs as follows:

(1) The Division of Adult Correction, which shall consist of the former Department of Correction. The head of the Division of Adult Correction shall be a chief deputy secretary, who shall be responsible for prisons, community corrections, and correction enterprises.
(2) The Division of Juvenile Justice, which shall consist of the former Department of Juvenile Justice and Delinquency Prevention. The head of the Division of Juvenile Justice shall be a chief deputy secretary, who shall be responsible for youth detention centers, court services, community programs, and youth development centers.
(3) The Division of Law Enforcement, which shall consist of the following former divisions of the Department of Crime Control and Public Safety and the Department of Justice: the State Highway Patrol, the Alcohol Law Enforcement Division, the State Capitol Police Division, and the State Bureau of Investigation. The head of the Division of Law Enforcement shall be a chief deputy secretary.
(4) The Division of Emergency Management.
(5) The National Guard.
(6) The Division of Administration, the head of which shall be a deputy secretary responsible for all administrative functions, including fiscal, auditing, information technology, purchasing, human resources, engineering,

and facility management functions for the Department. Within the Division, there is established a Grants Management Section, which shall consist of the Governor's Crime Commission, the Criminal Justice Partnership Program, and the Juvenile Crime Prevention Council Fund. Other sections within the Division of Administration shall be:

a. The Fiscal and Budget Section.
b. The Victims' Services Section.
c. The Engineering and Facility Management Section.
d. The Purchasing Section.
e. The Human Resources Section.
f. The Research and Policy Section.
g. The Information Technology Section.
h. The Training Section.

(7) The North Carolina State Crime Laboratory, the head of which shall be a director who reports directly to the Secretary.

(8) The Office of External Affairs, which shall be responsible for federal and State liaison activities, victim services, and public affairs.

(b) The powers and duties of the deputy secretaries and the respective divisions shall be subject to the direction and control of the Secretary of Public Safety.

"**§ 143B-259.1. Powers and duties of the Department of Public Safety.**

It shall be the duty of the Department of Public Safety to do all of the following:

(1) Provide assigned law enforcement and emergency services to protect the public against crime and against natural and man-made disasters.

(2) To plan and direct a coordinated effort by the law enforcement agencies of State government and to ensure maximum cooperation between State and local law enforcement agencies in the fight against crime.

(3) To prepare annually a State plan for the State's criminal justice system.

(4) To serve as the State's chief coordinating agency to control crime, to ensure the safety of the public, and to ensure an effective and efficient State criminal justice system.

(5) To have charge of investigations of criminal matters particularly set forth in this Article and of such other crimes and areas of concern in the criminal justice system as the Governor may direct.

(6) To regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State.

(7) To provide National Guard troops trained by the State to federal standards.

(8) To ensure the preparation, coordination, and currency of military and civil preparedness plans and the effective conduct of emergency operations by all participating agencies to sustain life and prevent, minimize, or remedy injury to persons and damage to property resulting from disasters caused by enemy attack or other hostile actions or from disasters due to natural or man-made causes.

(9) To develop a plan for a coordinated and integrated electronic communications system for State government and cooperating local agencies, including coordination and integration of existing electronic communications systems.

(10) To carry out the relevant provisions of Part 2 of this Article, Chapter 148 of the General Statutes, Chapter 15 of the General Statutes, Chapter 15A of the General Statutes, and other provisions of the General Statutes governing the provision of necessary custody, supervision, and treatment to control and rehabilitate criminal offenders and thereby reduce the rate and cost of crime and delinquency.

(11) To carry out the relevant provisions of Part 3 of this Article, Chapter 7B of the General Statutes, and other provisions of the General Statutes governing juvenile justice and the prevention of delinquent acts by juveniles.

(12) To provide for the scientific analysis of evidence of crime.

"**§ 143B-259.2. Powers and duties of the Secretary of Public Safety.**

The Secretary of Public Safety shall have the powers and duties as are conferred on the Secretary by this Article, delegated to the Secretary by the Governor, and conferred on the Secretary by the Constitution and laws of this State. These powers and duties include the following:

(1) Provision of assistance to other agencies. – The Secretary, through appropriate subunits of the Department, shall, at the request of the Governor, provide assistance to State and local law enforcement agencies, district attorneys, and judges, when called upon by them and so directed.

(2) Coordination of government subunits emergencies. – In the event that the Governor, in the exercise of the Governor's constitutional and statutory responsibilities, shall deem it necessary to utilize the services of more than one subunit of State government to provide protection to the people from natural or man-made disasters or emergencies, including, but not limited to, wars, insurrections, riots, civil disturbances, or accidents, the Secretary, under the direction of the Governor, shall serve as the chief coordinating officer for the State between the respective subunits so utilized.

(3) Allocation of State resources during emergencies. – Whenever the Secretary exercises the authority provided in subdivision (2) of this section, the Secretary shall be authorized to utilize and allocate all available State resources as are reasonably necessary to cope with the emergency or disaster, including directing of personnel and functions of State agencies or units thereof for the purpose of performing or facilitating the initial response to the disaster or emergency. Following the initial response, the Secretary, in consultation with the heads of the State agencies which have or appear to have the responsibility for dealing with the emergency or disaster, shall designate one or more lead agencies to be responsible for subsequent phases of the response to the emergency or disaster. Pending an opportunity to consult with the heads of such agencies, the Secretary may make interim lead agencies designations.

(4) Reporting of emergencies to the Secretary. – Every department of State government is required to report to the Secretary, by the fastest means practicable, all natural or man-made disasters or emergencies, including, but not limited to, wars, insurrections, riots, civil disturbances, or accidents which appear likely to require the utilization of the services of more than one subunit of State government.

(5) Rule making. – The Secretary is authorized to adopt rules and procedures for the implementation of this section.

(6) Powers of Governor and Council of State not superseded. – Nothing contained in this section shall be construed to supersede or modify those powers granted to the Governor or the Council of State to declare and react to a state of disaster as provided in Chapter 166A of the General Statutes, the Constitution, or elsewhere.

(7) Reporting required prior to grant awards. – Prior to any notification of proposed grant awards to State agencies for use in pursuing the objectives of the Governor's Crime Commission pursuant to sub-subdivisions a. through g. of subdivision (8) of this section, the Secretary shall report to the Senate and House Appropriations Committees for review of the proposed grant awards.

(8) Other powers and duties. – The Secretary shall have the following additional powers and duties:

a. Accepting gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting the work of the Governor's Crime Commission.

b. Making grants for use in pursuing the objectives of the Governor's Crime Commission.

c. Adopting rules as may be required by the federal government for federal grants-in-aid for criminal justice purposes and to implement and carry out the regulatory and enforcement duties assigned to the Department of Public Safety as provided by the various commercial

vehicle, oversize/overweight, motor carrier safety, motor fuel, and mobile and manufactured home statutes.

d. Ascertaining the State's duties concerning grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice, and developing and administering a plan to ensure that the State fulfills its duties.

e. Administering the Assistance Program for Victims of Rape and Sex Offenses.

f. Appointing, with the Governor's approval, a special police officer to serve as Chief of the State Capitol Police Section of the Division of Law Enforcement.

g. Appointing an employee of the Division of Administration to be the central point of contact for any federal surplus property or purchasing programs."

CREATION OF STATUTORY PARTS AND SUBPARTS

SECTION 19.1.(c) Article 5A of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 4. Division of Law Enforcement."

SECTION 19.1.(e) Article 5A of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 5. Division of Emergency Management."

SECTION 19.1.(f) Article 5A of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 6. Division of Administration."

SECTION 19.1.(f1) Article 5A of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 7. Office of External Affairs."

CHANGES TO STATUTORY REFERENCES TO AGENCIES

SECTION 19.1.(g) The following statutes are amended by deleting the language "Crime Control and Public Safety" wherever it appears and substituting "Public Safety": G.S. 7A-343.1, 8-50.2, 14-86.1, 14-309.7, 14-309.11, 15B-3, 15B-6, 17C-3, 17C-6, 18B-101, 18B-110, 19-2.1, 20-17.7, 20-39.1, 20-49, 20-79.5, 20-81.12, 20-116, 20-118, 20-119, 20-125, 20-178.1, 20-183.9, 20-183.10, 20-184, 20-185, 20-187, 20-187.1, 20-187.3, 20-188, 20-189, 20-190, 20-191, 20-192, 20-195, 20-196, 20-196.3, 20-196.4, 20-377, 20-379, 20-380, 20-381, 20-382.2, 20-383, 20-387, 20-389, 20-390, 20-391, 20-392, 20-393, 20-396, 20-397, 58-32-1, 58-78-1, 66-165, 66-168, 104E-8, 105-259, 105-269.3, 105-449.44, 120-12.1, 120-70.94, 122C-408, 122C-409, 122C-411, 122C-414, 126-5, 127A-17.1, 127A-19, 127A-20, 127A-21, 127A-22, 127A-35, 127A-40, 127A-42, 127A-43, 127A-54, 127A-57, 127A-80, 127A-81, 127A-107, 127A-139, 127A-161, 127A-162, 127A-163, 127A-164, 127C-2, 130A-475, 143-166.13, 143-215.52, 143-215.56, 143-215.93A, 143-215.94GG, 143-215.94HH, 143-341, 143-355.1, 143-651, 143-652.1, 143-652.2, 143-654, 143-655, 143-658, 143-661, 143-664, 143-726, 143A-79.2, 143A-239, 143A-240, 143A-241, 143A-242, 143A-243, 143A-244, 143A-245, 143B-2, 143B-6, 143B-181, 143B-394.15, 143B-417, 143B-426.22, 143B-477, 143B-478, 143B-479, 143B-480, 143B-480.1, 143B-480.2, 143B-480.3, 143B-490, 143B-491, 143B-492, 143B-495, 143B-496, 143B-497, 143B-498, 143B-499, 143B-499.2, 143B-499.4, 143B-499.7, 143B-508, 143B-508.1, Parts 8 and 9 of Article 11 of Chapter 143B of the General Statutes, 143B-510, 146-30, 147-12, 150B-1, 161-11.4, 164-37, 166A-5, 166A-6, 166A-6.03, 166A-6.1, 166A-14, 166A-18, 166A-21, 166A-26, 166A-28, 166A-60, 166A-61, and 166A-62. In all other instances in which the term "Crime Control and Public Safety" appears in the General Statutes, the Revisor of Statutes shall replace that term with "Public Safety".

SECTION 19.1.(h) The following statutes are amended by deleting the language "Department of Correction" wherever it appears and substituting "Division of Adult Correction of the Department of Public Safety" and by deleting the word "Department" when it refers to the Department of Correction and substituting "Division": G.S. 1-110, 7A-109.3, 7A-313, 7A-451, 7A-474.3, 7A-474.18, 7A-498.3, 7B-2204, 7B-2517, 7B-3000, 7B-3001, 7B-3100, 13-1, 14-202, 14-208.6, 14-208.20, 14-208.22, 14-208.40, 14-208.43, 14-208.45, 14-258.1,

14-258.3, 14-258.4, 14-415.10, 15-6.1, 15-10.1, 15-194, 15-196.3, 15-203, 15-204, 15-205, 15-206, 15-209, 15A-145, 15A-145.1, 15A-146, 15A-147, 15A-149, 15A-150, 15A-544.3, 15A-544.5, 15A-615, 15A-821, 15A-830, 15A-832, 15A-1332, 15A-1340.13, 15A-1340.16, 15A-1340.20, 15A-1342, 15A-1343, 15A-1343.2, 15A-1343.3, 15A-1344, 15A-1351, 15A-1352, 15A-1353, 15A-1354, 15A-1355, 15A-1368, 15A-1368.2, 15A-1368.3, 15A-1368.4, 15A-1368.6, 15A-1369, 15A-1374, 15A-1376, 15A-2000, 15B-21, 15B-31, 15B-32, 17C-3, 20-19, 20-81.12, 20-179, 65-4, 66-58, 97-13, 105-259, 108A-14, 114-10.1, 114-14, 115C-106.3, 115C-108.1, 115C-296.2, 115D-5, 120-12.1, 120-70.94, 122C-22, 122C-55, 122C-62, 122C-311, 122C-312, 122C-313, 122C-402, 122C-421, 126-5, 127A-54, 130A-25, 131E-98, 131E-184, 131E-214.1, 143-63.1, 143-134, 143-166.2, 143-166.13, 143-300.7, 143-599, 143B-2, 143B-6, 143B-179, 143B-260 through 143B-267, 143B-270, 143B-271, 143B-272, 143B-273.2, 143B-273.5, 143B-273.8, 143B-273.15, 143B-273.15A, 143B-394.15, 143B-417, 143B-476, 143B-478, 146-33, 147-12, 148-2 through 148-4.1, 148-6, 148-10 through 148-10.3, 148-12, 148-18 through 148-19.1, 148-22, 148-22.1, 148-23 through 148-24, 148-26, 148-26.5, 148-28, 148-29, 148-32.1 through 148-33.2, 148-36, 148-37, 148-37.2, 148-37.3, 148-40, 148-41, 148-45, 148-46.1, 148-53, 148-54, 148-57, 148-59, 148-64, 148-64.1, 148-65.7, 148-66, 148-67, 148-70, 148-74, 148-77, 148-78, 148-118.1, 148-118.2, 148-118.4, 148-118.5, 148-118.6, 148-118.8, 148-128, 148-134, 150B-1, 153A-221, 153A-230.1, 153A-230.2, 153A-230.3, 153A-230.5, 162-39, 163-82.20A, 164-40, 164-42, and 164-47. In any other instances in which the term "Department of Correction" appears in the General Statutes, the Revisor of Statutes shall replace "Department of Correction" with "Division of Adult Correction", and in any other instances in which the word "Department" is used to refer to the Department of Correction, the Revisor of Statutes shall delete the word "Department" and substitute the word "Division".

SECTION 19.1.(i) The following statutes are amended by deleting the language "Secretary of Correction" or "Secretary of the Department of Correction" wherever it appears and substituting "Secretary of Public Safety": G.S. 15-10.2, 15-10.3, 15-194, 15-203 through 15-207, 15-209, 15A-1340.36, 15A-1371, 17C-3, 20-79.5, 115C-112.1, 122C-312, 130A-25, 143B-261.2, 143B-262.1, 143B-262.4, 143B-263, 143B-265, 143B-266, 143B-267, 143B-270, 143B-271, 143B-273.2, 143B-394.15, 143B-478, 148-4, 148-4.1, 148-5, 148-10.1, 148-11, 148-13, 148-18.1, 148-19, 148-20, 148-22, 148-22.1, 148-24, 148-25, 148-26, 148-26.5, 148-28, 148-33, 148-33.1, 148-33.2, 148-36, 148-37, 148-37.2, 148-41, 148-45, 148-46, 148-46.2, 148-57, 148-65.6, 148-65.9, 148-74, 148-78, 148-118.6, 148-118.8, 148-118.9, 148-121, 148-122, 162-39, 164-37, and 164-40. In any other instances in which the term "Secretary of Correction" appears in the General Statutes, the Revisor of Statutes shall replace "Secretary of Correction" with "Secretary of Public Safety".

SECTION 19.1.(j) The following statutes are amended by deleting the language "Division of Prisons" wherever it appears and substituting "Section of Prisons of the Division of Adult Correction": G.S. 14-208.6, 14-208.40C, 14-258.2, 15A-1343, 17C-3, 66-58, 130A-25, 143B-262.1, 143B-262.2, 143B-264, 143B-478, 148-11, 148-18, 148-29, and 148-130. In any other instances in which the term "Division of Prisons" appears in the General Statutes, the Revisor of Statutes shall replace "Division of Prisons" with "Section of Prisons of the Division of Adult Correction". The following statutes are amended by deleting the language "Division of Correction Enterprises" wherever it appears and substituting "Section of Correction Enterprises of the Division of Adult Correction": G.S. 14-208.6, 14-208.40C, 14-258.2, 15A-1343, 17C-3, 66-58, 130A-25, 143B-262.1, 143B-262.2, 143B-264, 143B-478, 148-11, 148-18, 148-29, and 148-130. In any other instances in which the term "Division of Correction Enterprises" appears in the General Statutes, the Revisor of Statutes shall replace "Division of Correction Enterprises" with "Section of Correction Enterprises of the Division of Adult Correction".

SECTION 19.1.(k) The following statutes are amended by deleting the language "Division of Community Corrections" wherever it appears and substituting "Section of Community Corrections of the Division of Adult Correction": G.S. 7B-3000, 7B-3001, 7B-3100, 14-208.40C, 14-208.41, 15A-837, 15A-1340.11, 15A-1342, 15A-1343, 15A-1343.2, 15A-1368.4, 15A-1369.4, 15A-1371, 17C-3, 20-179.3, 105-259, 115D-5, 143B-262, 143B-262.4, 143B-273.4, 143B-478, and 148-65.6. In any other instances in which the term "Division of Community Corrections" appears in the General Statutes, the Revisor of Statutes shall replace "Division of Community Corrections" with "Section of Prisons of the Division of Adult Correction".

SECTION 19.1.(l) The following statutes are amended by deleting the language "Department of Juvenile Justice and Delinquency Prevention" wherever it appears and substituting "Division of Juvenile Justice of the Department of Public Safety": G.S. 7A-302, 7B-1501, 7B-3100, 7B-4002, 14-239, 14-258.4, 14-316.1, 66-58, 114-12.1, 114-19.6, 115C-106.3, 115C-107.6, 115C-108.1, 115C-296.2, 115D-1, 115D-5, 120-70.94, 120-216, 122C-113, 122C-117, 126-5, 143-166.2, 143-166.13, 143-661, 143B-2, 143B-6, 143B-152.14, 143B-153, 143B-417, 143B-478, 143B-511 through 143B-550, 148-26, 164-37, 164-40, and 164-43. In all other instances in which the term "Department of Juvenile Justice and Delinquency Prevention" appears in the General Statutes, the Revisor of Statutes shall replace "Department of Juvenile Justice and Delinquency Prevention" with "Division of Juvenile Justice" and in all other instances in which the word "Department" is used to refer to the Department of Juvenile Justice and Delinquency Prevention, the Revisor of Statutes shall delete the word "Department" and substitute the word "Division", or, make other appropriate changes to the General Statutes to reference the Division rather than the Department.

SECTION 19.1.(m) The following statutes are amended by deleting the language "Secretary of Juvenile Justice and Delinquency Prevention" wherever it appears and substituting "Secretary of Public Safety": G.S. 17C-3, 20-79.5, 115C-112.1, and 143B-515. In all other instances in which the term "Secretary of Juvenile Justice and Delinquency Prevention" appears in the General Statutes, the Revisor of Statutes shall replace "Secretary of Juvenile Justice and Delinquency Prevention" with "Secretary of Public Safety".

SECTION 19.1.(n) The following statutes are amended by deleting the language "Alcohol Law Enforcement Division" and "Division of Alcohol Law Enforcement" wherever it appears and substituting "Alcohol Law Enforcement Section" and by deleting the word "Division" when it refers to the Alcohol Law Enforcement Division and substituting "Section": G.S. 18B-903, 19-2.1, 105-259, 143-652.1, 143-652.2, 143-654, 143-655, and 143-656. In all other instances in which the terms "Alcohol Law Enforcement Division" or "Division of Alcohol Law Enforcement" appears in the General Statutes, the Revisor of Statutes shall replace those terms with "Alcohol Law Enforcement Section", and in all other instances in which the word "Division" is used to refer to the Alcohol Law Enforcement Division, the Revisor of Statutes shall delete the word "Division" and substitute the word "Section".

SECTION 19.1.(p) The following statutes are amended by deleting the language "State Highway Patrol Division" wherever it appears and substituting "State Highway Patrol Section"; by deleting the word "Division" wherever it appears when it refers to the State Highway Patrol Division and substituting "Section"; and by deleting the language "Division of the State Highway Patrol" wherever it appears and substituting "State Highway Patrol Section": G.S. 20-185, 20-195, and 20-196. In all other instances in which the term "State Highway Patrol Division" appears in the General Statutes, the Revisor of Statutes shall replace that term with "State Highway Patrol Section", and in all other instances in which the word "Division" is used to refer to the State Highway Patrol Division, the Revisor of Statutes shall delete the word "Division" and substitute the word "Section".

SECTION 19.1.(q) The following statutes are amended by deleting the language "ALE Division" wherever it appears and substituting "ALE Section": G.S. 18B-201, 18B-202, 18B-203, 18B-504, 18B-805, 18B-902, and 18B-904. In any other instances in which the term "ALE Division" appears in the General Statutes, the Revisor of Statutes shall replace "ALE Division" with "ALE Section".

SECTION 19.1.(q1) The following statutes are amended by deleting the word "Director" wherever it appears and substituting "Chief": G.S. 114-13, 114-14, 114-14.1, 114-15, 114-15.1, 114-15.3, 114-20, and 114-20.1.

RECODIFICATION OF AFFECTED STATUTES

SECTION 19.1.(r) Both of the following apply to any recodification pursuant to subsections (s) through (x) of this section:

(1) Statutory sections of the former statutes that were reserved for future codification shall have corresponding sections that are reserved for future codification in the recodified statutes.

(2) The recodifications are of the affected statutes as rewritten by subsections (g) through (q) of this section, as applicable.

SECTION 19.1.(s) Division of Adult Correction. – Article 6 of Chapter 143B of the General Statutes is recodified as Part 2 of Article 5A of Chapter 143B of the General

Statutes, "Division of Adult Correction," but the statutory numbering shall remain unchanged and the various Parts of former Article 6 shall be redesignated as Subparts of Part 2 of Article 5A of the General Statutes.

SECTION 19.1.(t) Division of Juvenile Justice. – Article 12 of Chapter 143B of the General Statutes, except for G.S. 143B-550, is recodified as Part 3 of Article 5A of Chapter 143B of the General Statutes, "Division of Juvenile Justice and Delinquency Prevention," G.S. 143B-272.1 through G.S. 143B-272.43. The various Parts of former Article 12 shall be redesignated as Subparts of Part 3 of Article 5A of the General Statutes.

SECTION 19.1.(u) Division of Law Enforcement. – Parts 1 and 7 of Article 11 of Chapter 143B of the General Statutes are repealed. Part 9 of Article 11 of Chapter 143B of the General Statutes is recodified as Subpart A of Part 4 of Article 5A of Chapter 143B of the General Statutes, G.S. 143B-272.45. Article 4 of Chapter 114 of the General Statutes, other than G.S. 114-16, is recodified as Subpart B of Part 4 of Article 5A of Chapter 143B of the General Statutes, G.S. 143B-272.46A through G.S. 143B-272.46L.

SECTION 19.1.(w) Division of Emergency Management. – Part 8 of Article 11 of Chapter 143B of the General Statutes is recodified as Subpart A of Part 5 of Article 5A of Chapter 143B of the General Statutes and renumbered as G.S. 143B-272.52. Part 5A of Article 11 of Chapter 143B of the General Statutes is recodified as Subpart B of Part 5 of Article 5A of Chapter 143B of the General Statutes, G.S. 143B-272.60 through G.S. 143B-272.72. Part 5 of Article 11 of Chapter 143B of the General Statutes is recodified as Subpart C of Part 5 of Article 5A of Chapter 143B of the General Statutes, G.S. 143B-272.73A through G.S. 143B-272.73C.

SECTION 19.1.(x) Division of Administration. – Part 3 of Article 11 of Chapter 143B of the General Statutes is recodified as Subpart A of Part 6 of Article 5A of Chapter 143B of the General Statutes, "Grants Management Section", G.S. 143B-272.75 through G.S. 143B-272.77. G.S. 143B-477 and G.S. 143B-550 are recodified under that Subpart as G.S. 143B-272.78 and G.S. 143B-272.79, respectively. Article 6A of Chapter 143B of the General Statutes is recodified as Subpart B of Part 6 of Article 5A of Chapter 143B of the General Statutes, G.S. 143B-272.80 through G.S. 143B-272.101.

SECTION 19.1.(x1) Office of External Affairs. – Part 3A of Article 11 of Chapter 143B of the General Statutes is recodified as Part 7 of Article 5A of Chapter 143B of the General Statutes, "Victims' Services Section", G.S. 143B-272.103 through G.S. 143B-272.104.

SECTION 19.1.(x2) North Carolina State Crime Laboratory. – G.S. 114-16 is recodified as Part 8 of Article 5A of Chapter 143B of the General Statutes, "North Carolina State Crime Laboratory", G.S. 143B-272.108, and as recodified is amended by deleting the word "Bureau" wherever it appears and substituting the name "North Carolina State Crime Laboratory" where first used in that section and "State Crime Laboratory" at each subsequent location in that section. G.S. 114-16.1 is recodified as G.S. 143B-272.109.

OTHER SUBSTANTIVE CHANGES

SECTION 19.1.(y) Part 9 of Article 11 of Chapter 143B of the General Statutes, as rewritten by subsection (g) of this section, and recodified by subsection (u) of this section, reads as rewritten:

"Subpart A. State Capitol Police ~~Division.~~Section.

"§ 143B-272.45. State Capitol Police ~~Division~~ Section – powers and duties.

(a) ~~Division~~Section Established. – There is hereby established, within the Law Enforcement Division of the Department of Public Safety, the State Capitol Police ~~Division,~~Section, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) Purpose. – The State Capitol Police ~~Division~~ Section shall serve as a special police agency of the Department of Public Safety. The ~~Director~~ Chief of the State Capitol Police, appointed by the Secretary pursuant to ~~G.S. 143B-476(6),~~ G.S. 143B-259.2, with the approval of the Governor, may appoint as special police officers such reliable persons as he may deem necessary.

(c) Appointment of Officers. – Special police officers appointed pursuant to this section may not exercise the power of arrest until they shall take an oath, to be administered by any person authorized to administer oaths, as required by law.

(d) Jurisdiction of Officers. – Each special police officer of the State Capitol Police shall have the same power of arrest as the police officers of the City of Raleigh. Such authority

may be exercised within the same territorial jurisdiction as exercised by the police officers of the City of Raleigh, and in addition thereto the authority of a deputy sheriff may be exercised on property owned, leased, or maintained by the State located in the County of Wake.

(e) Reserved for future codification purposes.

(f) Public Safety. – The ~~Director~~ Chief of the State Capitol Police, or the ~~Director's~~ Chief's designee, shall exercise at all times those means that, in the opinion of the ~~Director~~ Chief or the designee, may be effective in protecting all State buildings and grounds, except for the State legislative buildings and grounds as defined in G.S. 120-32.1(d), and the persons within those buildings and grounds from fire, bombs, bomb threats, or any other emergency or potentially hazardous conditions, including both the ordering and control of the evacuation of those buildings and grounds. The ~~Director,~~Chief, or the ~~Director's~~ Chief's designee, may employ the assistance of other available law enforcement agencies and emergency agencies to aid and assist in evacuations of those buildings and grounds."

SECTION 19.1.(z) G.S. 18B-500 reads as rewritten:

"**§ 18B-500. Alcohol law-enforcement agents.**

(a) Appointment. – The ~~Secretary of Crime Control and Public Safety~~ Secretary of the Department of Public Safety shall appoint alcohol law-enforcement agents and other enforcement personnel. The ~~Secretary of Crime Control and Public Safety~~ Secretary of the Department of Public Safety may also appoint regular employees of the Commission as alcohol law-enforcement agents. Alcohol law-enforcement agents shall be designated as "alcohol law-enforcement agents". Persons serving as reserve alcohol law-enforcement agents are considered employees of the ~~Division of Alcohol Law Enforcement~~ Alcohol Law Enforcement Section for workers' compensation purposes while performing duties assigned or approved by the ~~Director of~~ Chief of the Alcohol Law Enforcement Section or the ~~Director's~~ Chief's designee.

(b) Subject Matter Jurisdiction. – After taking the oath prescribed for a peace officer, an alcohol law-enforcement agent shall have authority to arrest and take other investigatory and enforcement actions for any criminal offense. The primary responsibility of an agent shall be enforcement of the ABC laws, lottery laws, and Article 5 of Chapter 90 (The Controlled Substances Act); however, an agent may perform any law-enforcement duty assigned by the ~~Secretary of Crime Control and Public Safety~~Secretary of the Department of Public Safety or the Governor.

(c) Territorial Jurisdiction. – An alcohol law-enforcement agent is a State officer with jurisdiction throughout the State.

(d) Service of Commission Orders. – Alcohol law-enforcement agents may serve and execute notices, orders, or demands issued by the Alcoholic Beverage Control Commission or the North Carolina State Lottery Commission for the surrender of permits or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, alcohol law-enforcement agents shall have all the power and authority possessed by law-enforcement officers when executing an arrest warrant.

(e) Discharge. – Alcohol law-enforcement agents are subject to the discharge provisions of G.S. 18B-202.

(f) Repealed by Session Laws 1995, c. 507, s. 6.2(a)."

SECTION 19.1.(z1) G.S. 114-12, as recodified by subsection (u) of this section, reads as rewritten:

"**§ 143B-272.46A. Bureau of Investigation created; powers and duties.**

In order to secure a more effective administration of the criminal laws of the State, to prevent crime, and to procure the speedy apprehension of criminals, the ~~Attorney General~~Secretary of Public Safety shall set up in the ~~Department of Justice~~ Division of Law Enforcement of the Department of Public Safety a ~~division~~ section to be designated as the State Bureau of Investigation. The ~~Division~~ Section shall have charge of and administer the agencies and activities herein set up for the identification of criminals, for their apprehension, ~~for the scientific analysis of evidence of crime,~~ and investigation and preparation of evidence to be used in criminal courts; and the said Bureau shall have charge of investigation of criminal matters herein especially mentioned, and of such other crimes and criminal procedure as the Governor may direct."

SECTION 19.1.(aa) Part 8 of Article 11 of Chapter 143B of the General Statutes, as rewritten by subsection (g) of this section and recodified by subsection (w) of this section, reads as rewritten:

"Subpart A. Emergency Management Division.

"§ 143B-272.52. Division of Emergency Management of the Department of Public Safety.

(a) There is established, within the Department of Crime Control and Public Safety, the Division of Emergency Management, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) The Division of Emergency Management shall have the following powers and duties:

~~(1) To exercise the powers and duties exercised prior to the enactment of this section, in accordance with G.S. 143B-475(a)(11).~~

(2) To exercise the powers and duties conferred on it by Chapter 166A of the General Statutes.

(3) To exercise any other powers vested by law."

SECTION 19.1.(bb) Part 7 of Article 11 of Chapter 143B of the General Statutes is repealed, and the Law Enforcement Support Services Division of the Department of Crime Control and Public Safety is abolished.

SECTION 19.1.(cc) The evidence warehouse that was operated by the Law Enforcement Support Services Division of the Department of Crime Control and Public Safety prior to the effective date of this section, and all State-owned personal property located in or associated with the warehouse, is hereby reallocated to the North Carolina State Crime Laboratory of the Department of Public Safety. The Department of Public Safety shall assume any lease to which the warehouse is subject at the time this section becomes effective.

SECTION 19.1.(cc1) G.S. 114-16, as amended by Section 10 of S.L. 2011-19 and recodified by subsection (x2) of this section, reads as rewritten:

"§ 143B-272.108. North Carolina State Crime Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by State; radio system.

(a) Generally. – In the said North Carolina State Crime Laboratory there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of bloodstains, microscopic and other examination material associated with the commission of crime, examination and analysis of projectiles of ballistic imprints and records which might lead to the determination or identification of criminals, the examination and identification of fingerprints, and other evidence leading to the identification, apprehension, or conviction of criminals. A sufficient number of persons skilled in such matters shall be employed to render a reasonable service to the public and the criminal justice system in the discharge of their duties. In the personnel of the State Crime Laboratory shall be included a sufficient number of persons of training and skill in the investigation of crime and in the preparation of evidence as to be of service to local enforcement officers, under the direction of the Governor, in criminal matters of major importance.

The laboratory and clinical facilities of the institutions of the State, both educational and departmental, shall be made available to the State Crime Laboratory, and scientists and doctors now working for the State through its institutions and departments may be called upon by the Governor to aid the State Crime Laboratory in the evaluation, preparation, and preservation of evidence in which scientific methods are employed, and a reasonable fee may be allowed by the Governor for such service.

The State radio system shall be made available to the Bureau for use in its work.

(b) Additional Powers and Duties of the Crime Laboratory. – The Crime Laboratory shall have the following additional powers and duties:

(1) To provide central storage and management of evidence according to the provisions of Article 13 of Chapter 15A of the General Statutes and create and maintain a data bank of statewide storage locations of postconviction evidence or other similar programs.

(2) To provide central storage and management of rape kits according to the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 with specific protections against release of names of victims providing anonymous or 'Jane Doe' rape kits without victim consent.

(3) To provide for the storage and management of evidence."

SECTION 19.1.(cc2) Chapter 17D of the General Statutes are amended by deleting the language "Department of Justice" wherever it appears and substituting "Department of Public Safety".

CONFORMING CHANGES

SECTION 19.1.(dd) G.S. 7A-343.1, as rewritten by subsection (g) of this section, reads as rewritten:

"**§ 7A-343.1. Distribution of copies of the appellate division reports.**

...

~~Juvenile Justice and Delinquency Prevention, Department of~~Juvenile Justice, Division of

1

...."

SECTION 19.1.(dd1) G.S. 14-16.9 reads as rewritten:

"**§ 14-16.9. Officers-elect to be covered.**

Any person who has been elected to any office covered by this Article but has not yet taken the oath of office shall be considered to hold the office for the purpose of this Article and ~~G.S. 114-15.~~G.S. 143B-272.46F."

SECTION 19.1.(ee) G.S. 15A-1342(j) reads as rewritten:

"(j) Immunity for Injury to Defendant Performing Community Service. – Immunity from liability for injury to a defendant performing community service shall be as set forth in ~~G.S. 143B-475.1(d).~~G.S. 143B-262.4(d)."

SECTION 19.1.(gg) G.S. 18B-101(5), as rewritten by subsection (g) of this section, reads as rewritten:

"(5) ~~'ALE Division'~~ 'ALE Section' means the Alcohol Law Enforcement ~~Division~~ Section of the Department of Public Safety."

SECTION 19.1.(hh) G.S. 20-184, as rewritten by subsection (g) of this section, reads as rewritten:

"**§ 20-184. Patrol under supervision of Department of Public Safety.**

The Secretary of Public Safety, under the direction of the Governor, shall have supervision, direction and control of the State Highway Patrol. The Secretary shall establish in the Department of Public Safety a State Highway Patrol ~~Division,~~Section, prescribe regulations governing ~~said Division,~~the Section, and assign to the ~~Division~~ Section such duties as ~~he~~the Secretary may deem proper."

SECTION 19.1.(hh1) G.S. 113-172(a) reads as rewritten:

"(a) The Secretary shall designate license agents for the Department. At least one license agent shall be designated for each county that contains or borders on coastal fishing waters. The Secretary may designate additional license agents in any county if the Secretary determines that additional agents are needed to provide efficient service to the public. The Division and license agents designated by the Secretary under this section shall issue licenses authorized under this Article in accordance with this Article and the rules of the Commission. The Secretary may require license agents to enter into a contract that provides for their duties and compensation, post a bond, and submit to reasonable inspections and audits. If a license agent violates any provision of this Article, the rules of the Commission, or the terms of the contract, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to renew a designation as a license agent and may impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by ~~G.S. 114-15.1.~~G.S. 143B-272.46G."

SECTION 19.1.(hh2) G.S. 114-12.1, as recodified by subsection (u) of this section and rewritten by subsection (l) of this section, reads as rewritten:

"**§ 143B-272.46B. Minority sensitivity training for law enforcement personnel.**

(a) The Department of ~~Justice~~ Public Safety shall develop guidelines for minority sensitivity training for all law enforcement personnel throughout the State. The Department shall ensure that all persons who work with minority juveniles in the juvenile justice system are taught how to communicate effectively with minority juveniles and how to recognize and address the needs of those juveniles. The Department shall also advise all law enforcement and professionals who work within the juvenile justice system of ways to improve the treatment of

minority juveniles so that all juveniles receive equal treatment. Except where local law enforcement has existing minority sensitivity training that meets the Department guidelines, the Department shall conduct the minority sensitivity training annually. Prior to the training each year, the Department shall assess whether minorities are receiving fair and equal treatment in the juvenile justice system with regard to the administration of predisposition procedures, of diversion methods, of dispositional alternatives, and of treatment and post-release supervision plans.

(b) The Division of Juvenile Justice of the Department of Public Safety shall ensure that all juvenile court counselors and other Division personnel receive the minority sensitivity training specified in subsection (a) of this section."

SECTION 19.1.(hh3) G.S. 114-13, as recodified by subsection (u) of this section and rewritten by subsection (q1) of this section, reads as rewritten:

"§ 143B-272.46C. Chief of the Bureau; personnel.

The ~~Attorney General~~Secretary of Public Safety shall appoint a Chief of the Bureau of Investigation, who shall serve at the will of the ~~Attorney General,~~Secretary, and whose salary shall be fixed by the Department of Administration under G.S. 143-36 et seq. He may further appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the Bureau. The salaries of such assistants shall be fixed by the Department of Administration under G.S. 143-36 et seq. The salaries of clerical and stenographic help shall be the same as now provided for similar employees in other State departments and bureaus."

SECTION 19.1.(hh4) G.S. 114-15.2, as recodified by subsection (u) of this section, reads as rewritten:

"§ 143B-272.46H. Use of private investigators limited.

No State executive officer, department, agency, institution, commission, bureau, or other organized activity of the State that receives support in whole or in part from the State except for counties, cities, towns, other municipal corporations or political subdivisions of the State or any agencies of these subdivisions, or county or city boards of education may employ a private investigator without the consent of the ~~Attorney General.~~Secretary of Public Safety. If the ~~Attorney General~~Secretary of Public Safety determines that it is impracticable for the Bureau to conduct the investigation, the ~~Attorney General~~ Secretary shall employ a private investigator and shall fix the compensation for his services. The cost of the private investigator shall be paid from funds credited to the entity requesting the investigation or from the Contingency and Emergency Fund."

SECTION 19.1.(hh5) G.S. 114-19.1(d) reads as rewritten:

"(d) Nothing in this section shall be construed as enlarging any right to receive any record of the State Bureau of Investigation. Such rights are and shall be controlled by ~~G.S. 114-15, G.S. 114-19,~~ G.S. 143B-272.46F, G.S. 143B-272.46L, G.S. 120-19.4A, and other applicable statutes."

SECTION 19.1.(ii) G.S. 120-70.94(2a), as rewritten by subsection (g) of this section, reads as rewritten:

"(2a) Examine the effectiveness of the Department of Public Safety in implementing the duties and responsibilities charged to the Department in ~~G.S. 143B-474~~ G.S. 143B-259.1(1) through (9) and the overall effectiveness and efficiency of law enforcement in the State;".

SECTION 19.1.(ll) G.S. 131D-10.4(3) reads as rewritten:

"§ 131D-10.4. Exemptions.

This Article shall not apply to:

...

(3) Secure detention facilities as specified in ~~Article 12~~Part 3 of Article 5A of Chapter 143B of the General Statutes;".

SECTION 19.1.(mm) G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. – The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY NUMBER OF COPIES
State Departments and Officials
...
~~Office of Juvenile Justice~~Division of Juvenile Justice of the Department of Public Safety 1
...."

SECTION 19.1.(oo) G.S. 143B-273.4(b), as recodified by subsection (x) of this section, reads as rewritten:

"(b) The priority populations for programs funded under this ~~Article~~ Subpart shall be offenders sentenced to intermediate punishments."

SECTION 19.1.(pp) G.S. 143B-273.7, as recodified as G.S. 143B-272.87 by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.87. Duties of State Criminal Justice Partnership Advisory Board.**

The State Criminal Justice Partnership Advisory Board has the following duties:

...

(5) To coordinate community-based corrections programs administered by the state agencies and programs funded under this ~~Article;~~Subpart;

...

(8) To evaluate the effects of categories of programs funded by this ~~Article~~ Subpart and prepare a written report."

SECTION 19.1.(qq) G.S. 143B-273.9, as recodified by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.89. Election to apply for funding.**

A county may elect to apply for funding under this ~~Article~~ Subpart by a vote of the board of county commissioners approving the decision to apply, and by appointing a county criminal justice partnership advisory board. Two or more counties, by vote of the board of county commissioners of each county, may agree to create a multicounty board instead of a county board. A multicounty board shall perform the same functions as a county board for each county that participates in establishing the multicounty board. The board or boards of county commissioners shall notify the Secretary of the intent to apply for funds within 60 days of receiving notification of the availability of funds and may request technical assistance to develop the community-based corrections plan."

SECTION 19.1.(rr) G.S. 143B-273.12(c), as recodified by subsection (x) of this section, reads as rewritten:

"(c) The proposed program shall target eligible offenders as defined in ~~G.S. 143B-273.4.~~G.S. 143B-272.84."

SECTION 19.1.(ss) G.S. 143B-273.14, as recodified as G.S. 143B-273.94 by subsection (x) of this section, reads as rewritten:

"**§ 143B-273.94. Fundable programs; community-based corrections programs.**

(a) Fundable programs under this ~~Article~~ Subpart shall include community-based corrections programs which are operated under a county community-based corrections plan and funded by the State subsidy provided in this ~~Article.~~Subpart. Based on the prioritized populations in ~~G.S. 143B-273.4,~~ G.S. 143B-272.84, the programs may include, but are not limited to, the following:

...

(a1) Funding provided under this ~~Article~~ Subpart for personnel for satellite substance abuse centers shall only be used for personnel who provide direct services to offenders.

(b) Community-based corrections funds may be used to operate programs and may also be used to construct, acquire, or renovate community facilities established to provide the programs and services set forth in subsection (a) of this section. Construction and renovation funds may not be used for jails. Construction and renovation funds may not be used to reimburse expenses for any facilities renovated before the effective date of this ~~Article.~~Subpart.

(c) When a county receives more than fifty thousand dollars ($50,000) in community-based corrections funds, then that county shall use at least fifty percent (50%) of those funds to develop programs for offenders who receive intermediate punishments."

SECTION 19.1.(tt) G.S. 143B-273.16(a), as recodified by subsection (x) of this section, reads as rewritten:

"(a) To continue to receive funding under this ~~Article~~Subpart, a county shall submit an updated application for implementation funding to the Secretary at the beginning of each fiscal year."

SECTION 19.1.(uu) G.S. 143B-273.17, as recodified by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.98. Termination of participation in program.**

A county receiving financial aid under this ~~Article~~ Subpart may terminate its participation by delivering a resolution of the board or boards of county commissioners to the Secretary at the beginning of any calendar quarter. Upon withdrawal from the program, the board or boards of county commissioners may adopt a resolution stating that it is in the best interests of the county that the county community corrections advisory board be dissolved, whereupon the county commissioners shall pay and discharge any debts or liabilities of the advisory board, collect and distribute assets of the advisory board under the laws of North Carolina, and pay over any remaining proceeds or property to the proper fund."

SECTION 19.1.(vv) G.S. 143B-273.19, as recodified by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.100. Prohibited uses of funds.**

(a) Counties may not use funds received under this ~~Article~~ Subpart to supplant or replace existing funds or other resources from the federal, State, or county government for existing community-based corrections programs.

(b) Counties may not use funds received under this ~~Article~~ Subpart for indirect costs associated with a program."

SECTION 19.1.(ww) G.S. 143B-477, as recodified by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.78. ~~Crime Control Division of the Department of Public Safety.~~Additional duties of the Grants Management Section.**

~~(a) There is hereby established, within the Department of Public Safety, the Crime Control Division, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.~~

(b) The ~~Crime Control Division shall provide clerical and professional services required by the Governor's Crime Commission and~~ Grants Management Section shall administer the State Law Enforcement Assistance Program and such additional related programs as may be established by or assigned to the ~~Commission~~Section. It shall serve as the single State planning agency for purposes of the Crime Control Act of 1976 (Public Laws 94-503). Administrative responsibilities shall include, but are not limited to, the following:

(1) Compiling data, establishing needs and setting priorities for funding and policy recommendations for the Governor's Crime Commission;

(2) Preparing and revising statewide plans for adoption by the Governor's Crime Commission which are designed to improve the administration of criminal justice and to reduce crime in North Carolina;

(3) Advising State and local interests of opportunities for securing federal assistance for crime reduction and for improving criminal justice administration and planning within the State of North Carolina;

(4) Stimulating and seeking financial support from federal, State, and local government and private sources for programs and projects which implement adopted criminal justice administration improvement and crime reduction plans;

(5) Assisting State agencies and units of general local government and combinations thereof in the preparation and processing of applications for financial aid to support improved criminal justice administration, planning and crime reduction;

(6) Encouraging and assisting coordination at the federal, State, and local government levels in the preparation and implementation of criminal justice administration improvements and crime reduction plans;

(7) Applying for, receiving, disbursing, and auditing the use of funds received for the program from any public and private agencies and instrumentalities for criminal justice administration, planning, and crime reduction purposes;

(8) Entering into, monitoring, and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;

(9) Providing technical assistance to State and local law-enforcement agencies in developing programs for improvement of the law-enforcement and criminal justice system; and

(10) Taking such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities.

~~(c) The Crime Control Division shall also provide professional and clerical staff services to the adjunct committees of the Governor's Crime Commission established in G.S. 143B-480.~~"

SECTION 19.1.(xx) G.S. 143B-479(a)(10), as recodified by subsection (x) of this section, reads as rewritten:

"(10) To serve as a coordinating committee and forum for discussion of recommendations from its adjunct committees formed pursuant to ~~G.S. 143B-480;~~ G.S. 143B-272.77; and".

SECTION 19.1.(yy) G.S. 143B-499.1, as recodified by subsection (w) of this section, reads as rewritten:

"**§ 143B-272.65. Dissemination of missing persons data by law-enforcement agencies.**

A law-enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, legal custodian, or person responsible for the supervision of the missing individual shall immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to all appropriate law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center. No law enforcement agency shall establish or maintain any policy which requires the observance of any waiting period before accepting a missing person report.

If the report involves a missing child and the report meets the criteria established in ~~G.S. 143B-499.7(b),~~ G.S. 143B-272.71(b), as soon as practicable after receipt of the report, the law enforcement agency shall notify the Center and the National Center for Missing and Exploited Children of the relevant data about the missing child."

SECTION 19.1.(zz) G.S. 143B-499.2(6a), as recodified by subsection (w) of this section, reads as rewritten:

"(6a) Develop and maintain the AMBER Alert System as created by ~~G.S. 143B-499.7;~~G.S. 143B-272.71."

SECTION 19.1.(aaa) G.S. 143B-499.4(5), as rewritten by subsection (g) of this section and recodified by subsection (w) of this section, reads as rewritten:

"(5) Any other person authorized by the Secretary of the Department of Public Safety pursuant to ~~G.S. 143B-498(1).~~G.S. 143B-272.63."

SECTION 19.1.(bbb) G.S. 143B-499.5, as recodified by subsection (w) of this section, reads as rewritten:

"**§ 143B-272.69. Provision of toll-free service; instructions to callers; communication with law-enforcement agencies.**

The Center shall provide a toll-free telephone line for anyone to report the disappearance of any individual or the sighting of any missing child or missing person. The Center personnel shall instruct the caller, in the case of a report concerning the disappearance of an individual, of the requirements contained in ~~G.S. 143B-499~~ G.S. 143B-272.64 of first having to submit a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing. Any law-enforcement agency may retrieve information imparted to the Center by means of this phone line. The Center shall directly communicate any report of a sighting of a missing person or a missing child to the law-enforcement agency having jurisdiction in the area of disappearance or sighting."

SECTION 19.1.(ccc) G.S. 143B-515(3), as recodified by subsection (t) of this section, reads as rewritten:

"(3) County Councils. – Juvenile Crime Prevention Councils created under ~~G.S. 143B-544.~~G.S. 143B-272.33."

SECTION 19.1.(ddd) G.S. 143B-535, as recodified by subsection (t) of this section, reads as rewritten:

"**§ 143B-272.24. Duties and powers of chief court counselors.**

The chief court counselor in each district appointed under ~~G.S. 143B-516(b)(15)~~ G.S. 143B-272.6(b)(15) may:

(1) Appoint juvenile court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.

(2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district.

(3) Provide in-service training for staff as required by the Department.

(4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services.

(5) Delegate to a juvenile court counselor or supervisor the authority to carry out specified responsibilities of the chief court counselor to facilitate the effective operation of the district.

(6) Designate a juvenile court counselor in the district as acting chief court counselor, to act during the absence or disability of the chief court counselor."

SECTION 19.1.(eee) G.S. 143B-543, as recodified by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.105. Legislative intent.**

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this ~~Part~~ Subpart is to develop community-based alternatives to youth development centers and to provide community-based delinquency, substance abuse, and gang prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils."

SECTION 19.1.(fff) G.S. 143B-545, as recodified by subsection (t) of this section, reads as rewritten:

"**§ 143B-272.34. Terms of appointment.**

Each member of a County Council shall serve for a term of two years, except for initial terms as provided in this section. Each member's term is a continuation of that member's term under G.S. 147-33.62. Members may be reappointed. The initial terms of appointment began January 1, 1999. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of ~~G.S. 143B-544(a)~~G.S. 143B-272.33(a) were appointed for an initial term ending on June 30, 2000. The initial term of the second member added to each County Council pursuant to ~~G.S. 143B-544(a)(12)~~ G.S. 143B-272.33(a)(12) shall begin on July 1, 2001, and end on June 30, 2002. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of ~~G.S. 143B-544(a)~~ G.S. 143B-272.33(a) shall be appointed for two-year terms, beginning on July 1. All other persons appointed to the Council were appointed for an initial term ending on June 30, 2001, and, after those initial terms, persons shall be appointed for two-year terms beginning on July 1."

SECTION 19.1.(ggg) G.S. 143B-550, as recodified by subsection (x) of this section and as rewritten by subsection (l) of this section, reads as rewritten:

"**§ 143B-272.79. Funding for programs.**

(a) Annually, the ~~Department~~ Division of Administration shall develop and implement a funding mechanism for programs that meet the standards developed under ~~this Part.~~Subpart F of Part 3 of Article 5A of Chapter 143B of the General Statutes. The ~~Department~~ Division shall ensure that the guidelines for the State and local partnership's funding process include the following requirements:

(1) Fund effective programs. – The ~~Department~~ Division shall fund programs that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded.

(2) Use a formula for the distribution of funds. – A funding formula shall be developed that ensures that even the smallest counties will be able to provide the basic prevention and alternative services to juveniles in their communities.

(3) Allow and encourage local flexibility. – A vital component of the State and local partnership established by this section is local flexibility to determine how best to allocate prevention and alternative funds.

(4) Combine resources. – Counties shall be allowed and encouraged to combine resources and services.

(b) The ~~Department~~ Division shall adopt rules to implement this section. The ~~Department~~ Division shall provide technical assistance to County Councils and shall require them to evaluate all State-funded programs and services on an ongoing and regular basis.

(c) The Division of Juvenile Justice of the Department of Public Safety shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety no later than March 1, 2006, and annually thereafter, on the results of the alternatives to commitment demonstration programs funded by Section 16.7 of S.L. 2004-124. The 2007 report and all annual reports thereafter shall also include projects funded by Section 16.11 of S.L. 2005-276 for the 2005-2006 fiscal year. Specifically, the report shall provide a detailed description of each of the demonstration programs, including the numbers of juveniles served, their adjudication status at the time of service, the services/treatments provided, the length of service, the total cost per juvenile, and the six- and 12-month recidivism rates for the juveniles after the termination of program services."

SECTION 19.1.(hhh) G.S. 166A-14(a1)(1)a., as rewritten by subsection (g) of this section, reads as rewritten:

"a. Emergency management services are provided at any place in this State during a state of disaster or state of emergency declared by the Governor pursuant to this Article or G.S. 14-288.15, and the services are provided under the direction and control of the Secretary of the Department of Public Safety pursuant to G.S. 166A-5, 166A-6, and ~~143B-476,~~ 143B-259.2, or the Governor."

LIMITED AUTHORITY TO RECLASSIFY AND ELIMINATE CERTAIN POSITIONS

SECTION 19.1.(hhh1) Notwithstanding any other provision of law, subject to the approval of the Director of the Budget, the Office of State Budget and Management or the Secretary of the Department of Public Safety may reclassify or eliminate existing administrative positions that are not specifically addressed in this act as needed for the efficient operation of the Department.

CREATION OF REGIONAL OFFICES

SECTION 19.1.(hhh2) The Department of Public Safety shall, in addition to the headquarters offices, create eight regional offices in the Division of Law Enforcement at each of which shall be collocated personnel and property of the State Bureau of Investigation, the Alcohol Law Enforcement Section, and the State Highway Patrol. Specifically, each regional office shall house one district of personnel and equipment for the Alcohol Law Enforcement Section, one district of personnel and equipment for the State Bureau of Investigation Section, and headquarters personnel and equipment for each State Highway Patrol Section troop headquarters. These regional offices shall be operational by July 1, 2012, and on or before March 1, 2012, the Department shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the following:

(1) The amount of savings the Department anticipates achieving as a result of collocating personnel and property of the State Bureau of Investigation, the Alcohol Law Enforcement Section, and the State Highway Patrol at the eight regional offices.

(2) The counties that will be included in each district and the regional office that will serve each district.

(3) The staffing levels anticipated at each regional office.

(4) Any statutory or regulatory changes that will be required as a prerequisite to or consequence of housing personnel and property of the State Bureau of Investigation, the Alcohol Law Enforcement Section, and the State Highway Patrol within the same regional offices.

CHANGES TO CONFORM WITH S.L. 2011-19

SECTION 19.1.(hhh3) G.S. 114-16.1(a), as recodified by subsection (x2) of this section, reads as rewritten:

"(a) Creation and Membership. – The North Carolina Forensic Science Advisory Board (Board) is hereby established as an advisory board within the Department of ~~Justice.~~Public Safety. The Board shall consist of 16 members, consisting of the State Crime Laboratory Director, and 15 members appointed by the ~~Attorney General~~Secretary of Public Safety as follows:

(1) A forensic scientist or any other person with an advanced degree who has received substantial education, training, or experience in the subject of laboratory standards or quality assurance regulation and monitoring.
(2) The Chief Medical Examiner of the State.
(3) A forensic scientist with an advanced degree who has received substantial education, training, or experience in the discipline of molecular biology.
(4) A forensic scientist with an advanced degree who has experience in the discipline of population genetics.
(5) A scientist with an advanced degree who has experience in the discipline of forensic chemistry.
(6) A scientist with an advanced degree who has experience in the discipline of forensic biology.
(7) A forensic scientist or any other person with an advanced degree who has received substantial education, training, or experience in the discipline of trace evidence.
(8) A scientist with a doctoral degree who has experience in the discipline of forensic toxicology and is certified by the American Board of Forensic Toxicologists.
(9) A member of the International Association for Identification.
(10) A member of the Association of Firearms and Toolmark Examiners.
(11) A member of the International Association for Chemical Testing.
(12) A director of a private or federal forensic laboratory located in the State.
(13) A member of the American Society of Crime Laboratory Directors.
(14) A member of the Academy of Forensic Sciences.
(15) A member of the American Statistical Association.

A chairman shall be elected from among the members appointed, and staff shall be provided by the Department of ~~Justice.~~Public Safety."

SECTION 19.1.(hhh4) Section 3 of S.L. 2011-19 reads as rewritten:

"**SECTION 3.** The ~~State Bureau of Investigation (SBI)~~Department of Public Safety shall encourage and seek collaborative opportunities and grant funds for research programs, in association, whenever possible, with the university system or independent nationally recognized forensic institutions, on human observer bias and sources of human error in forensic examinations. Such programs might include studies to determine the effects of contextual bias in forensic practice (e.g., studies to determine whether and to what extent the results of forensic analysis are influenced by knowledge regarding the background of the suspect and the investigator's theory of the case). In addition, research on sources of human error should be closely linked with research conducted to quantify and characterize the amount of error. Based on the results of these studies, and in consultation with the North Carolina Forensic Sciences Advisory Board, the North Carolina State Crime Laboratory should develop standard operating procedures (that will lay the foundation for model protocols) to minimize, to the extent possible, potential bias and sources of human error in forensic science. These standard operating procedures should apply to all forensic analyses that may be used in litigation."

SECTION 19.1.(hhh5) Section 6(a) of S.L. 2011-19 reads as rewritten:

"**SECTION 6.(a)** The position of ombudsman is created in the North Carolina State Crime Laboratory within the North Carolina Department of ~~Justice.~~Public Safety. The primary purpose of this position shall be to work with defense counsel, prosecutorial agencies, criminal

justice system stakeholders, law enforcement officials, and the general public to ensure all processes, procedures, practices, and protocols at the Laboratory are consistent with State and federal law, best forensic law practices, and in the best interests of justice in this State. The ombudsman shall mediate complaints brought to the attention of the ombudsman between the ~~SBI~~ North Carolina State Crime Laboratory and defense counsel, prosecutorial agencies, law enforcement agencies, and the general public. The ombudsman shall ensure all criminal justice stakeholders and the general public are aware of the availability, responsibilities, and role of the ombudsman and shall regularly attend meetings of the Conferences of the District Attorneys, District and Superior Court Judges, Public Defenders, the Advocates for Justice, and Bar Criminal Law Sections. The ombudsman shall make recommendations on a regular basis to the Director of the State Crime Laboratory, ~~Director~~ Chief of the SBI, and ~~Attorney General of North Carolina~~the Secretary of Public Safety as to policies, procedures, practices, and training of employees needed at the Laboratory to ensure compliance with State and federal law, best forensic law practices, and to resolve any meritorious systemic complaints received by the ombudsman."

SECTION 19.1.(hhh6) Section 6(b) of S.L. 2011-19 reads as rewritten:

"**SECTION 6.(b)** The funds for the position of ombudsman created in Section 6(a) of this act shall be provided by the Department of ~~Justice~~ Public Safety from other funds appropriated to the Department, and from other grants or funding that are available from other sources."

SECTION 19.1.(hhh7) G.S. 8-58.20(c) reads as rewritten:

"(c) The analyst who analyzes the forensic sample and signs the report shall complete an affidavit on a form developed by the ~~State Bureau of Investigation.~~North Carolina State Crime Laboratory. In the affidavit, the analyst shall state (i) that the person is qualified by education, training, and experience to perform the analysis, (ii) the name and location of the laboratory where the analysis was performed, and (iii) that performing the analysis is part of that person's regular duties. The analyst shall also aver in the affidavit that the tests were performed pursuant to the accrediting body's standards for that discipline and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory. The affidavit shall be sufficient to constitute prima facie evidence regarding the person's qualifications. The analyst shall attach the affidavit to the laboratory report and shall provide the affidavit to the investigating officer and the district attorney in the prosecutorial district in which the criminal charges are pending. An affidavit by a forensic analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any criminal proceeding with respect to the forensic analysis administered and the procedures followed."

REPORTING AND EFFECTIVE DATE

SECTION 19.1.(iii) The Office of State Budget and Management, in consultation with the Department of Juvenile Justice and Delinquency Prevention, the Department of Crime Control and Public Safety, the Department of Correction, and the Department of Justice, shall make the following reports on progress implementing this section to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee:

(1) An interim report on or before October 1, 2011.

(2) A final report on or before January 15, 2012. This report shall include information about any reclassifications of positions or reductions in force pursuant to subsection (hhh1) of this section and may include any recommendations for changes to the statutes that organize the Department of Public Safety.

SECTION 19.1.(jjj) Other than subsection (iii), this section becomes effective January 1, 2012. On and after that date, any references or directives in this act to the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention, or the Department of Crime Control and Public Safety shall be construed to apply to the appropriate division of the Department of Public Safety pursuant to the departmental consolidation enacted by this section.

CONSOLIDATE BUDGET CODES FOR DEPARTMENT OF PUBLIC SAFETY

SECTION 19.2. The Office of State Budget and Management and the State Controller, in consultation with the Fiscal Research Division, shall consolidate the budget codes for the Department of Crime Control and Public Safety, the Department of Juvenile

Justice and Delinquency Prevention, and the Department of Correction into a single budget code for the Department of Public Safety. Fund codes within that budget code shall align with the new organizational structure of the Department of Public Safety. The new budget code shall be established by July 1, 2012.

ABOLISH BUTNER PUBLIC SAFETY DIVISION

SECTION 19.3.(a) The Butner Public Safety Division of the Department of Crime Control and Public Safety is abolished.

SECTION 19.3.(b) On or before July 1, 2011, the following actions shall be taken with respect to the real and personal property of the Butner Public Safety Division:

(1) The Governor shall convey to the Town of Butner all right, title, and interest in all of the personal property, tangible and intangible, of the Butner Public Safety Division. This conveyance shall be exempt from all statutes concerning in any way the disposition of personal property.

(2) The State of North Carolina shall lease to the Town of Butner, for a period of 99 years and for monetary consideration of one dollar ($1.00) per year, all real property allocated to or occupied by the Butner Public Safety Division as of April 1, 2011. The lease instrument shall contain (i) a provision that the Town of Butner agrees to use the leased property for public safety purposes and (ii) a provision that the Town of Butner, as lessee, agrees to maintain the property in its present condition and will not sell or damage any portion of the leased property.

SECTION 19.3.(c) The contract between the Town of Butner and the Department of Crime Control and Public Safety under G.S. 122C-408 terminates upon such conveyance.

SECTION 19.3.(d) G.S. 122C-408, 122C-411, 122C-414, 160A-288(d)(4), and 160A-288.2(d)(3) are repealed.

SECTION 19.3.(e) G.S. 143-341(8)i.3. reads as rewritten:

"3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway Patrol or the State Bureau of Investigation which are used primarily for law-enforcement ~~purposes, and except those motor vehicles under the ownership, custody or control of the Department of Crime Control and Public Safety for Butner Public Safety which are used primarily for law-enforcement, fire, or emergency purposes.~~purposes."

SECTION 19.3.(f) The Charter of the Town of Butner, as enacted by Section 1.1 of S.L. 2007-269, is amended by adding a new Article to read:

"ARTICLE IX. PROVISION OF FIRE PROTECTION SERVICES TO THE BUTNER POLICE AND FIRE PROTECTION DISTRICT.

"Section 9.1. **Provision of fire protection services.** The Town of Butner shall provide fire protection services to the Butner Fire and Police Protection District. The cost of providing these services shall be funded with (i) the tax proceeds transferred to the Town pursuant to Chapter 830 of the 1983 Session Laws, as amended, and (ii) any allocations from the State Fire Protection Grant Fund that are made from time to time."

SECTION 19.3.(g) Subsection 1(b) of Chapter 830 of the 1983 Session Laws, as amended by Section 43.3 of S.L. 2005-276, reads as rewritten:

"(b) The territorial jurisdiction set forth in subsection (a) of this section shall constitute the Butner Fire and Police Protection District. The tax collectors of Durham and Granville Counties shall annually collect a tax of twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in the portions of said district in their respective counties from year to year which tax shall be collected as county taxes are collected and shall remit the same to the ~~State Treasurer for deposit in the General Fund.~~Town of Butner for deposit."

SECTION 19.3.(h) Section 2 of Chapter 830 of the 1983 Session Laws reads as rewritten:

"Sec. 2. The purpose of this act is to ~~partially fund the expenses of the Butner Fire and Police Protection District.~~fund the cost of the fire protection services provided by the Town of Butner."

SECTION 19.3.(i) G.S. 122C-205 reads as rewritten:

"§ 122C-205. Return of clients to 24-hour facilities.

...

(c) Upon receipt of notice of an escape or breach of a condition of release as described in subsections (a) and (b) of this section, an appropriate law enforcement officer shall take the client into custody and have the client returned to the 24-hour facility from which the client has escaped or has been conditionally released. Transportation of the client back to the 24-hour facility shall be provided in the same manner as described in ~~G.S. 122C-251 and G.S. 122C-408(b).~~ G.S. 122C-251. Law enforcement agencies who are notified of a client's escape or breach of conditional release shall be notified of the client's return by the responsible 24-hour facility. Under the circumstances described in this section, the initial notification by the 24-hour facility of the client's escape or breach of conditional release shall be given by telephone communication to the appropriate law enforcement agency or agencies and, if available and appropriate, by Division of Criminal Information (DCI) message to any law enforcement agency in or out of state and by entry into the National Crime Information Center (NCIC) telecommunications system. As soon as reasonably possible following notification, written authorization to take the client into custody shall also be issued by the 24-hour facility. Under this section, law enforcement officers shall have the authority to take a client into custody upon receipt of the telephone notification or Division of Criminal Information message prior to receiving written authorization. The notification of a law enforcement agency does not, in and of itself, render this information public information within the purview of Chapter 132 of the General Statutes. However, the responsible law enforcement agency shall determine the extent of disclosure of personal identifying and background information reasonably necessary, under the circumstances, in order to assure the expeditious return of a client to the 24-hour facility involved and to protect the general public and is authorized to make such disclosure. The responsible law enforcement agency may also place any appropriate message or entry into either the Division of Criminal Information System or National Crime Information System, or both, as appropriate.

...

(h) The cost and expenses of transporting a respondent to or from a 24-hour facility is the responsibility of the county of residence of the respondent. ~~The State (when providing transportation under G.S. 122C-408(b)), a~~ A city, or a county is entitled to recover the reasonable cost of transportation from the county of residence of the respondent. The county of residence of the respondent shall reimburse the State, another county, or a city the reasonable transportation costs incurred as authorized by this subsection. The county of residence of the respondent is entitled to recover the reasonable cost of transportation it has paid to the State, a city, or a county. Provided that the county of residence provides the respondent or other individual liable for the respondent's support a reasonable notice and opportunity to object to the reimbursement, the county of residence of the respondent may recover that cost from:

(1) The respondent, if the respondent is not indigent;
(2) Any person or entity that is legally liable for the resident's support and maintenance provided there is sufficient property to pay the cost;
(3) Any person or entity that is contractually responsible for the cost; or
(4) Any person or entity that otherwise is liable under federal, State, or local law for the cost."

SECTION 19.3.(j) G.S. 122C-251 reads as rewritten:

"§ 122C-251. Transportation.

...

(b) Except as provided in subsections (f) and ~~(g) or in G.S. 122C-408(b),~~(g) of this section, transportation between counties under the involuntary commitment proceedings of this Article for admission to a 24-hour facility shall be provided by the county where the respondent is taken into custody. Transportation between counties under the involuntary commitment proceedings of this Article for respondents held in 24-hour facilities who have requested a change of venue for the district court hearing shall be provided by the county where the petition for involuntary commitment was initiated. Transportation between counties under the involuntary commitment proceedings of this Article for discharge of a respondent from a

24-hour facility shall be provided by the county of residence of the respondent. However, a respondent being discharged from a facility may use his own transportation at his own expense.

(c) Transportation of a respondent may be by city-or county-owned vehicles or by private vehicle by contract with the city or county. To the extent feasible, law enforcement officers transporting respondents shall dress in plain clothes and shall travel in unmarked vehicles. Further, law enforcement officers, to the extent possible, shall advise respondents when taking them into custody that they are not under arrest and have not committed a crime, but are being transported to receive treatment and for their own safety and that of others.

(d) In providing transportation of a respondent, a city or county shall provide a driver or attendant who is the same sex as the respondent, unless the law-enforcement officer allows a family member of the respondent to accompany the respondent in lieu of an attendant of the same sex as the respondent.

(e) In providing transportation required by this section, the law-enforcement officer may use reasonable force to restrain the respondent if it appears necessary to protect himself, the respondent, or others. No law-enforcement officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under the authority of this Article.

(f) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a clerk, a magistrate, or a district court judge, where applicable, may authorize the family or immediate friends of the respondent, if they so request, to transport the respondent in accordance with the procedures of this Article. This authorization shall only be granted in cases where the danger to the public, the family or friends of the respondent, or the respondent himself is not substantial. The family or immediate friends of the respondent shall bear the costs of providing this transportation.

(g) The governing body of a city or county may adopt a plan for transportation of respondents in involuntary commitment proceedings in this Article. Law-enforcement personnel, volunteers, or other public or private agency personnel may be designated to provide all or parts of the transportation required by involuntary commitment proceedings. Persons so designated shall be trained and the plan shall assure adequate safety and protections for both the public and the respondent. Law enforcement, other affected agencies, and the area authority shall participate in the planning. If any person other than a law-enforcement agency is designated by a city or county, the person so designated shall provide the transportation and follow the procedures in this Article. References in this Article to a law-enforcement officer apply to this person.

(h) The cost and expenses of transporting a respondent to or from a 24-hour facility is the responsibility of the county of residence of the respondent. ~~The State (when providing transportation under G.S. 122C-408(b)), a~~ A city, or a county is entitled to recover the reasonable cost of transportation from the county of residence of the respondent. The county of residence of the respondent shall reimburse the State, another county, or a city the reasonable transportation costs incurred as authorized by this subsection. The county of residence of the respondent is entitled to recover the reasonable cost of transportation it has paid to the State, a city, or a county. Provided that the county of residence provides the respondent or other individual liable for the respondent's support a reasonable notice and opportunity to object to the reimbursement, the county of residence of the respondent may recover that cost from:

(1) The respondent, if the respondent is not indigent;
(2) Any person or entity that is legally liable for the resident's support and maintenance provided there is sufficient property to pay the cost;
(3) Any person or entity that is contractually responsible for the cost; or
(4) Any person or entity that otherwise is liable under federal, State, or local law for the cost."

SECTION 19.3.(k) G.S. 122C-290(b) reads as rewritten:

"(b) If the respondent whose treatment is provided on an outpatient basis fails to comply with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance or whose treatment is provided on an inpatient basis is discharged in accordance with G.S. 122C-205.1(b), the area authority or physician may request the clerk or magistrate to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk or magistrate shall issue an order to a law enforcement officer to take the respondent into custody and to take him immediately to the designated area authority or physician for examination. The custody order is valid throughout the State. The law

enforcement officer shall turn the respondent over to the custody of the physician or area authority who shall conduct the examination and release the respondent or have the respondent taken to a 24-hour facility upon a determination that treatment in the facility will benefit the respondent. Transportation to the 24-hour facility shall be provided as specified in G.S. 122C-251, upon notice to the clerk or magistrate that transportation is ~~necessary, or as provided in G.S. 122C-408(b).~~ necessary. If placement in a 24-hour facility is to exceed 45 consecutive days, the area authority or physician shall notify the clerk of court by the 30th day and request a supplemental hearing as specified in G.S. 122C-291."

REPORTS ON LAW ENFORCEMENT ACCREDITATION SERVICES

SECTION 19.4. The State Highway Patrol, Alcohol Law Enforcement Division, State Capitol Police, and State Bureau of Investigation shall report by March 1, 2012, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety, and to the Fiscal Research Division on any national associations that provide accreditation services for those law enforcement agencies, including, but not limited to, the Commission on Accreditation for Law Enforcement Agencies. The report shall include an itemization of the personnel and other costs associated with the service, a summary of the accreditation process, and a summary of the benefits gained from the services.

STUDY THE FEASIBILITY OF ASSESSING A FEE FOR PROVIDING TRAFFIC CONTROL BY THE STATE HIGHWAY PATROL AT SPECIAL EVENTS

SECTION 19.5.(a) The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall study the feasibility of assessing a fee for services provided by the State Highway Patrol for certain special events. In conducting this study, the Committee shall determine the costs associated with providing traffic control devices and personnel to provide traffic control and direction at special functions and events. The Committee shall also develop criteria to determine events, if any, for which a fee will be assessed and criteria to determine the amount of the fee, if any, that should be assessed.

SECTION 19.5.(b) The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall make a report to the 2012 Regular Session of the 2011 General Assembly no later than June 1, 2012, detailing the information required by this section and shall provide any recommended changes in current legislation or proposed new legislation if required.

PART XX. DEPARTMENT OF ADMINISTRATION

STATE ENTITIES TO USE AGENCY FOR PUBLIC TELECOMMUNICATIONS

SECTION 20.1. Part 22 of Article 9 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-426.11A. Use of Agency for Public Telecommunications required.**

Notwithstanding any other provision of law, the Agency for Public Telecommunications shall be the primary party with whom all State agencies, departments, and institutions other than The University of North Carolina System and the constituent institutions of the Community College System may contract for media placement and the creation of the media to be placed. Agencies, departments, and institutions may use another party only if the Agency for Public Telecommunications determines that the Agency for Public Telecommunications cannot fulfill the agency's, department's, or institution's needs. Any contract entered into contrary to the provisions of this section is voidable at the discretion of the Governor and the Council of State."

TRANSFER OF NC HUMAN RELATIONS COMMISSION FROM DEPARTMENT OF ADMINISTRATION TO OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 20.1A.(a) The North Carolina Human Relations Commission created pursuant to G.S. 143B-391, other than the administration of the Martin Luther King, Jr. Commission created pursuant to G.S. 143B-426.34A, is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, from the Department of Administration to the Office of Administrative Hearings.

SECTION 20.1A.(b) Part 9 of Article 9 of Chapter 143B of the General Statutes, G.S. 143B-391 and G.S. 143B-392, is recodified as G.S. 7A-761 and G.S. 7A-762 in Article 60 of the General Statutes.

SECTION 20.1A.(c) G.S. 7A-761, as recodified by this section, reads as rewritten:

"**§ 7A-761. North Carolina Human Relations Commission – creation; powers and duties.**

There is hereby created the North Carolina Human Relations Commission of the ~~Department of Administration.~~Office of Administrative Hearings. The North Carolina Human Relations Commission shall have the following functions and duties:

...

(7) To receive on behalf of the ~~Department of Administration~~Office of Administrative Hearings and to recommend expenditure of gifts and grants from public and private donors;

...

(10) To advise the ~~Secretary of Administration~~ Director of the Office of Administrative Hearings upon any matter the ~~Secretary~~ Director may refer to it;

...."

SECTION 20.1A.(d) G.S. 7A-762, as recodified of this section, reads as rewritten:

"**§ 7A-762. North Carolina Human Relations Commission – Members; selection; quorum; compensation.**

(a) The Human Relations Commission of the ~~Department of Administration~~Office of Administrative Hearings shall consist of 22 members. The Governor shall appoint one member from each of the 13 congressional districts, plus five members at large, including the chairperson. The Speaker of the North Carolina House of Representatives shall appoint two members to the Commission. The President Pro Tempore of the Senate shall appoint two members to the Commission. The terms of four of the members appointed by the Governor shall expire June 30, 1988. The terms of four of the members appointed by the Governor shall expire June 30, 1987. The terms of four of the members appointed by the Governor shall expire June 30, 1986. The terms of four of the members appointed by the Governor shall expire June 30, 1985. The terms of the members appointed by the Speaker of the North Carolina House of Representatives shall expire June 30, 1986. The terms of the members appointed by the Lieutenant Governor shall expire June 30, 1986. The initial term of office of the person appointed to represent the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996. At the end of the respective terms of office of the initial members of the Commission, the appointment of their successors shall be for terms of four years. No member of the commission shall serve more than two consecutive terms. A member having served two consecutive terms shall be eligible for reappointment one year after the expiration of his second term. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be filled in the manner of the original appointment for the unexpired term.

...

(d) All clerical and support services required by the Commission shall be supplied by the ~~Secretary of the Department of Administration.~~Director of the Office of Administrative Hearings."

STUDY BY THE LEGISLATIVE RESEARCH COMMISSION OF THE DUTIES AND SERVICES OF THE NORTH CAROLINA HUMAN RELATIONS COMMISSION AND THE CIVIL RIGHTS DIVISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 20.2.(a) The Legislative Research Commission is authorized to study the duties and services of the North Carolina Human Relations Commission and the Civil Rights Division of the Office of Administrative Hearings to determine whether there is unnecessary overlap and duplication of services and recommend the placement of the Commission and Division in the appropriate agency or agencies.

SECTION 20.2.(b) The Legislative Research Commission may make an interim report to the 2011 General Assembly when it reconvenes in 2012 and shall make its final report to the 2013 General Assembly.

SECTION 20.2.(c) This section is effective when it becomes law.

DOMESTIC VIOLENCE CENTER FUNDS

SECTION 20.3. The Department of Administration, in administering the Domestic Violence Center Fund, G.S. 50B-9, shall adhere to the requirements of the law and shall not limit the number of grantees that are eligible in each county, or by any other geographic limitation. Every domestic violence center that was in operation by the preceding July 1, offers the services described in the statute, and is a nonprofit corporation or a local government entity shall receive an amount that is equal to that received by all other grantees of the Fund.

USE OF CAPITAL PROJECT CONTINGENCY FUNDS TO INCREASE THE SPEED AND EFFICIENCY OF THE STATE CONSTRUCTION OFFICE

SECTION 20.4.(a) Contingency reserve funds appropriated for capital improvement projects that are subject to the Department of Administration's review authority under G.S. 143-341(3)a. shall be placed in a statewide capital reserve administered by the Office of State Budget and Management to ensure optimal management and administration of funds needed for new construction and repairs and renovations projects.

Notwithstanding any other provision of law, upon a request of the administration of a State agency, and after consultation with the Office of State Construction, the Director of the Budget may, when it is in the best interest of the State to do so, allocate funds from the reserve to the requesting agency to be used for any of the purposes for which contingency funds may permissibly be used. Under no circumstances, may funds disbursed from the statewide capital reserve be used for a capital improvement project not previously authorized by the General Assembly.

SECTION 20.4.(b) Each fiscal year of the biennium, the Director of the Budget may reallocate a portion of the funds deposited in the reserve not to exceed eight hundred seventy-five thousand dollars ($875,000) in any fiscal year to the State Construction Office in the Department of Administration to be used to support the staffing needs of the Office in connection with carrying out its design and plan review, construction, building code compliance, inspection, and related duties imposed by G.S. 143-341(3) and other sections of the General Statutes to ensure timely and complete responses in an effort to reduce the need for the use of contingency fees.

SECTION 20.4.(c) This section is effective when it becomes law and applies to all open and active capital improvement projects, regardless of the source of funds.

OFFICE OF STATE PERSONNEL/STUDY CENTRALIZED HUMAN RESOURCES FOR COUNCIL OF STATE OFFICES

SECTION 20.5. By the convening of the 2012 Regular Session of the 2011 General Assembly, the Office of State Personnel (OSP), in conjunction with the Office of State Budget and Management, shall report to the General Assembly and to the Fiscal Research Division on the feasibility of transferring the human resources management functions currently divided among the various Council of State offices and departments to be centralized under the Office of State Personnel. At a minimum, the report shall include the following:

(1) A detailed analysis of the costs to the State of maintaining separate human resources offices in Council of State offices and departments.

(2) An estimate of potential cost savings that would accrue to the State if all human resources management functions were under the OSP.

(3) Recommendations on State law changes required to effectuate centralization of all human services resources management functions under the OSP.

STATE BOARD OF ELECTIONS AND ETHICS

SECTION 20.6.(a) The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the State Ethics Commission are transferred to the State Board of Elections and Ethics Enforcement created in this section. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the State Board of Elections are transferred to the State Board of Elections and Ethics Enforcement created in this section. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the lobbying registration and lobbying enforcement

functions of the Secretary of State are transferred to the State Board of Elections and Ethics Enforcement created in this section. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 20.6.(b) The Office of State Budget and Management and the State Controller, in consultation with the Fiscal Research Division, shall consolidate the budget codes for the State Ethics Commission, the State Board of Elections, and the lobbying registration and lobbying enforcement functions of the Secretary of State into a single budget code for the State Board of Elections and Ethics Enforcement. Fund codes within that budget code shall align with the organizational structure of the State Board of Elections and Ethics Enforcement. The Office of State Budget and Management and the State Controller, in consultation with the Fiscal Research Division, shall consolidate the budget codes for the State Board of Elections, State Ethics Commission, and the Lobbyist Registration Division of the Department of the Secretary of State into a single budget code for the State Board of Elections and Ethics Enforcement. Fund codes within that budget code shall align with the new organizational structure of the State Board of Elections and Ethics Enforcement. The new budget code shall be established by July 1, 2012.

SECTION 20.6.(c) The General Statutes are amended by adding a new Chapter to read:

"**Chapter 163A.**

"**State Elections and Ethics Act.**

"**SUBCHAPTER I. GENERAL PROVISIONS.**

"Article 1.

"State Board of Elections and Ethics Enforcement.

"**§ 163A-100. Board of Elections and Ethics Enforcement established.**

There is established the State Board of Elections and Ethics Enforcement (hereinafter in this Chapter "State Board").

"**§ 163A-101. Membership.**

(a) The State Board shall consist of nine members. Three members shall be appointed by the Governor, no more than two of whom shall be of the same political party. Six members shall be appointed by the General Assembly, three upon the recommendation of the Speaker of the House of Representatives, no more than two of whom shall be of the same political party, and three upon the recommendation of the President Pro Tempore of the Senate, no more than two of whom shall be of the same political party. Members shall serve for three-year terms beginning January 1, 2012, except for the initial terms that shall be as follows:

(1) One member appointed by the Governor shall serve an initial term of one year beginning January 1, 2012.

(2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of one year beginning January 1, 2012.

(3) One member appointed by the Governor shall serve an initial term of two years beginning January 1, 2012.

(4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years beginning January 1, 2012.

(b) Members shall be removed from the Board only for misfeasance, malfeasance, or nonfeasance. Members appointed by the Governor may be removed by the Governor. Members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be removed by the Governor upon the recommendation of the Speaker. Members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be removed by the Governor upon the recommendation of the President Pro Tempore.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the State Board or employee while employed by the State Board shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.
(2) Hold office in any political party above the precinct level.
(3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Board would have jurisdiction or authority.
(4) Otherwise be an employee of the State, a community college, or a local school administrative unit, or serve as a member of any other State board.

(e) The Governor shall annually appoint a member of the Board to serve as chair of the State Board. The State Board shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the State Board shall be compensated for service as provided by law.

"**§ 163A-102. Meetings and quorum.**

The State Board shall meet at least quarterly and at other times as called by its chair or by four of its members. In the case of a vacancy in the chair, meetings may be called by the vice-chair. Five members of the State Board constitute a quorum.

"**§ 163A-103. Staff and offices.**

The State Board may employ professional and clerical staff, including an Executive Director. The State Board shall be located within the Department of Administration for administrative purposes only but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration. The State Board is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 163A-104. Powers of the chair in the execution of State Board duties.**

(a) In the performance of the duties enumerated in this Chapter, the chair of the State Board shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence.

(b) Upon the written request or requests of two or more members of the State Board, the chair shall issue subpoenas for designated witnesses or identified papers, books, records, and other evidence.

(c) In the absence of the chair or upon the chair's refusal to act, any two members of the State Board may issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. In the absence of the chair or upon the chair's refusal to act, any member of the State Board may administer oaths.

(d) The State Board may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The Court shall authorize subpoenas under this subsection when the Court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the Court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"**§ 163A-105. Executive Director of the State Board.**

(a) There is hereby created the position of Executive Director of the State Board, who shall perform all duties imposed by statute and such duties as might be assigned by the State Board.

(b) The State Board shall appoint an Executive Director for a term of four years with compensation determined by the State Personnel Commission. The Executive Director shall serve, unless removed for cause, until a successor is appointed. In the event of a vacancy, the vacancy shall be filled for the remainder of the term.

(c) The Executive Director shall be responsible for staffing, administration, and execution of the State Board's decisions and orders and shall perform such other responsibilities as may be assigned by the State Board.

"**SUBCHAPTER II. ETHICS AND LOBBYING.**

"Article 2.

"Definitions; General Provisions.

"**§ 163A-200. Definitions.**

The following definitions apply in this Subchapter:

(1) Blind trust. – A trust established by or for the benefit of a covered person or a member of the covered person's immediate family for divestiture of all control and knowledge of assets. A trust qualifies as a blind trust under this subdivision if the covered person or a member of the covered person's immediate family has no knowledge of the holdings and sources of income of the trust, the trustee of the trust is independent of and not associated with or employed by the covered person or a member of the covered person's immediate family and is not a member of the covered person's extended family, and the trustee has sole discretion as to the management of the trust assets.

(2) Board. – Any State board, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, as determined and designated by the State Board, except for those public bodies that have only advisory authority.

(3) Business. – Any of the following organized for profit:

a. Association.
b. Business trust.
c. Corporation.
d. Enterprise.
e. Joint venture.
f. Organization.
g. Partnership.
h. Proprietorship.
i. Vested trust.
j. Every other business interest, including ownership or use of land for income.

(4) Business with which associated. – A business in which the covered person or filing person or any member of that covered person's or filing person's immediate family satisfies any of the criteria listed in a sub-subdivision of this subdivision. For purposes of this subdivision, the term "business" shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if (i) the covered person, filing person, or a member of the covered person's or filing person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund and (ii) the fund is publicly traded, or the fund's assets are widely diversified.

a. Is an employee.
b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned.
c. Owns a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more in the business or five percent (5%) of the business, whichever is less, other than as a trustee on a deed of trust.
d. Is a lobbyist registered under this Chapter.

(5) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.

(6) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any covered person or filing person in return for services rendered or to be rendered by that covered person or filing person or another. This term does not include campaign contributions properly received and reported as required by this Chapter.

(7) Confidential information. – Information defined as confidential by the law.

(8) Constitutional officers of the State. – Officers whose offices are established by Article III of the North Carolina Constitution.

(9) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.

(10) Covered person. – A legislator, public servant, or judicial officer, as identified by the State Board under G.S. 163A-208.

(11) Designated individual. – A legislator, legislative employee, or public servant.

(12) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, State boards, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For legislative employees, it is the authority that hired the individual. For judicial employees, it is the Chief Justice.

(13) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:

a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.

b. A public servant's communication with a person, or another person on that person's behalf, with respect to any of the following:

1. Applying for a permit, license, determination of eligibility, or certification.

2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.

3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.

4. Rate making.

c. Internal administrative functions, including those functions exempted from the definition of "rule" in G.S. 150B-2(8a).

d. Ministerial functions.

e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting, or submitted as written comment, on a proposed executive action in response to a request for public comment, provided the identity of the person on whose behalf the comments are made is disclosed as part of the public participation and no reportable expenditure is made.

(14) Extended family. – Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal descendant, spouse's lineal ascendant, spouse's sibling, and the spouse of any of these individuals.

(15) Filing person. – An individual required to file a statement of economic interest under this Subchapter.

(16) Financial benefit. – A direct pecuniary gain or loss to the legislator, the public servant, or a person with which the legislator or public servant is associated, or a direct pecuniary loss to a business competitor of the legislator, the public servant, or a person with which the legislator or public servant is associated.

(17) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for lobbying.

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.
e. Any campaign contribution properly reported as required under this Chapter.
f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:
1. A sympathy card, letter, or note.
2. Flowers.
3. Food or beverages for immediate consumption.
4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars ($200.00) per death per donor.

(18) Governmental unit. – A political subdivision of the State or any other entity or organization created by a political subdivision of the State.

(19) Honorarium. – Payment for services for which fees are not legally or traditionally required.

(20) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.

(21) In session. – One of the following:
a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:
1. Adjourns sine die.
2. Recesses or adjourns for more than 10 days.
b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:
1. Adjourns sine die.
2. Recesses or adjourns for more than 10 days.

(22) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other individual, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars ($60,000) or more.

(23) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court, or any individual elected or appointed to any of these positions prior to taking office.

(24) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Section 22(1) of Article II of the North Carolina Constitution or for the Governor to allow the bill to become law under Section 22(7) of Article II of the North Carolina Constitution.

(25) Legislative employee. – Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative State boards who are paid by State funds, and students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, but not including legislators, members of the Council of State, nonsupervisory employees of the Administrative Division's Facility Maintenance and Food Services staff, or pages.

(26) Legislator. – A member or presiding officer of the General Assembly, or an individual elected or appointed a member or presiding officer of the General Assembly before taking office.

(27) Liaison personnel. – Any State employee, counsel employed under G.S. 147-17, or officer whose principal duties, in practice or as set forth in that individual's job description, include lobbying legislators or legislative employees.

(28) Lobby or lobbying. – Any of the actions listed in this subdivision. The terms "lobby" or "lobbying" do not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

(29) Lobbyist. – An individual who engages in lobbying for payment and meets any of the criteria listed in this subdivision. The term "lobbyist" does not include individuals who are specifically exempted from this Subchapter under Part 5 of Article 5 of this Chapter or registered as liaison personnel under Part 4 of Article 5 of this Chapter.

a. Represents another person or governmental unit but is not directly employed by that person or governmental unit.

b. Contracts for payment for lobbying.

c. Is employed by a person, and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying, as defined in subdivision (28)a. of this section, or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying, as defined in subdivision (29)b. of this section.

(30) Lobbyist principal. – The person or governmental unit on whose behalf the lobbyist lobbies and who makes payment for the lobbying. In the case where a lobbyist is paid by a law firm, consulting firm, or other entity retained by a person or governmental unit for lobbying, the principal is the person or governmental unit whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the association or other organization, not the individual members of the association or other organization. The term "lobbyist principal" does not include those designating registered liaison personnel under Part 4 of Article 5 of this Chapter.

(31) Nonprofit corporation or organization with which associated. – Any not-for-profit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the covered person, filing person, or any member of the covered person's or filing person's immediate family is a director, officer, governing board member, employee, lobbyist registered under this Subchapter, or independent contractor. The term "nonprofit corporation or organization with which associated" does not include any board, entity, or other organization created by this State or by any political subdivision of this State.

(32) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(33) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(34) Payment. – Any money, thing of value, or economic benefit conveyed to the lobbyist for lobbying, other than reimbursement of actual travel, administrative expenses, or subsistence.

(35) Permanent designee. – An individual designated by a public servant to serve and vote in the absence of the public servant on a regular basis on a board on which the public servant serves.

(36) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together. The term "person" does not include the State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State.

(37) Person with which the legislator is associated. – Any of the following:

a. A member of the legislator's extended family.

b. A client of the legislator.

c. A business with which the legislator or a member of the legislator's immediate family is associated.

d. A nonprofit corporation or association with which the legislator or a member of the legislator's immediate family is associated.

e. The State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State that employs the legislator or a member of the legislator's immediate family.

(38) Person with which the public servant is associated. – Any of the following:

a. A member of the public servant's extended family.

b. A client of the public servant.

c. A business with which the public servant or a member of the public servant's immediate family is associated.

d. A nonprofit corporation or association with which the public servant or a member of the public servant's immediate family is associated.

e. The State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State that employs the public servant or a member of the public servant's immediate family.

(39) Political party. – Either of the two largest political parties in the State based on statewide voter registration at the applicable time.

(40) Public servants. – All of the following:

a. Constitutional officers of the State and individuals elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each individual designated under sub-subdivision a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2) to individuals designated under sub-subdivision a., c., or d. of this subdivision.

f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. Judicial employees.

i. All voting members of boards, including ex officio members, permanent designees of any voting member, and members serving by executive, legislative, or judicial branch appointment.

j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.
k. For the North Carolina Community College System, the voting members of the State Board of Community Colleges, the president and the chief financial officer of the North Carolina Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.
l. Members of the State Board, the executive director, and the assistant executive directors of the State Board.
m. Individuals under contract with the State working in or against a position included under this subdivision.
n. The director of the Office of State Personnel.
o. The State Controller.
p. The chief information officer, deputy chief information officers, chief financial officers, and general counsel of the Office of Information Technology Services.
q. The director of the North Carolina Museum of Art.
r. The executive director of the Agency for Public Telecommunications.
s. The Commissioner of Motor Vehicles.
t. The Commissioner of Banks and the Chief Deputy Commissioner of Banks.
u. The executive director of the North Carolina Housing Finance Agency.
v. The executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority.

(41) Reportable expenditure. – Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:
a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00) per designated individual per single calendar day.
b. A contract, agreement, promise, or other obligation whether or not legally enforceable.

(42) State agency. – An agency in the executive branch of the government of this State, including the Governor's Office, a board, a department, a division, and any other unit of government in the executive branch.

(43) State Board. – The State Board of Elections and Ethics Enforcement, as established by this Chapter.

(44) Solicitation of others. – A solicitation of members of the public to communicate directly with or contact one or more designated individuals to influence or attempt to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the methods listed in this subdivision. The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices.
a. A broadcast, cable, or satellite transmission.
b. An e-mail communication or a Web site posting.
c. A communication delivered by print media, as defined in G.S. 163-278.38Z.
d. A letter or other written communication delivered by mail or by comparable delivery service.

e. Telephone.
f. A communication at a conference, meeting, or similar event.

(45) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family, except a blind trust. The term "vested trust" does not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:
a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
b. The fund is publicly traded or the fund's assets are widely diversified.

"**§ 163A-201. Application to the Lieutenant Governor.**

For purposes of this Subchapter, the Lieutenant Governor shall be considered a legislator when carrying out the Lieutenant Governor's duties under Section 13 of Article II of the North Carolina Constitution and a public servant for all other purposes.

"**§ 163A-202. Application to candidates to certain offices.**

For purposes of this Subchapter, the term "legislator" and the term "public servant" shall include an individual having filed a notice of candidacy or otherwise qualified to have that individual's name on the ballot for such office under this Chapter.

"**§ 163A-203. Education programs.**

(a) The State Board shall develop and implement an ethics and lobbying education and awareness program designed to instill in all covered persons and legislative employees a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest.

(b) The State Board shall offer basic ethics and lobbying education and awareness presentations to all public servants upon their election, appointment, or employment and shall offer periodic refresher presentations as the State Board deems appropriate. Every public servant shall participate in an ethics and lobbying presentation approved by the State Board within six months of the public servant's election, reelection, appointment, or employment and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the State Board deems appropriate. This subsection shall not apply to judicial officers.

(c) A public servant appointed to a board determined and designated as nonadvisory under G.S. 163A-208(a)(3) shall attend an ethics and lobbying presentation approved by the State Board within six months of notification of the designation by the State Board and at least every two years thereafter in a manner as the State Board deems appropriate.

(d) The State Board, jointly with the Legislative Ethics Committee, shall make basic ethics and lobbying education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the State Board and the Committee deem appropriate. Every legislator shall participate in an ethics and lobbying presentation approved by the State Board and Committee within two months of either the convening of the General Assembly to which the legislator is elected or within two months of the legislator's appointment, whichever is later. Every legislative employee shall participate in an ethics and lobbying presentation approved by the State Board and Committee within three months of employment and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the State Board and Committee deem appropriate.

(e) The State Board shall develop and implement a lobbying education and awareness program designed to instill in lobbyists and lobbyists' principals a keen and continuing awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Subchapter or other related laws. The State Board shall make lobbying education and awareness programs available to lobbyists and lobbyists' principals.

(f) Upon request, the State Board shall assist each State agency in developing in-house ethics and lobbying education programs and procedures necessary or desirable to meet the State agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(g) Each State agency head shall designate an ethics liaison who shall maintain active communication with the State Board on all State agency ethics and lobbying issues. The ethics liaison shall attend ethics and lobbying education and awareness programs as provided under this section. The ethics liaison shall continuously assess and advise the State Board of any

issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the State Board as to their appropriate resolution.

(h) The State Board shall publish a newsletter containing summaries of the State Board's opinions, policies, procedures, and interpretive bulletins with respect to ethics and lobbying, as issued from time to time. The newsletter shall be distributed to all covered persons and legislative employees. Publication under this subsection may be done electronically.

(i) The State Board shall assemble and maintain a collection of relevant State laws, rules, and regulations and set forth ethical standards applicable to covered persons and lobbying laws and regulations. This collection shall be made available electronically as resource material.

"**§ 163A-204. Requests for advice.**

(a) At the written request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a public servant or legislative employee, legal counsel for any public servant or legislative employee, any ethics liaison under G.S. 163A-203, or any member of the State Board, the State Board shall render advice on specific questions involving the meaning and application of Articles 3 and 4 of this Chapter and the public servant's or legislative employee's compliance therewith. This subsection shall apply to judicial officers only for advice related to Article 3 of this Chapter.

(b) At the request of a legislator, the State Board shall render recommended advice on specific questions involving the meaning and application of this Subchapter and Part 1 of Article 14 of Chapter 120 of the General Statutes and the legislator's compliance therewith. Any recommended formal advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee, together with a copy of the request. Except for the Lieutenant Governor, the immunity granted under this section shall not apply after the time the Committee modifies or overturns the advisory opinion of the State Board in accordance with G.S. 120-104.

(c) At the written request of any person, State agency, or governmental unit affected by Article 5 of this Subchapter, the State Board shall render advice on specific questions involving the meaning and application of Article 5 of this Subchapter and that person's, State agency's, or any governmental unit's compliance therewith.

(d) On its own motion, the State Board may render advisory opinions on specific questions involving the meaning and application of this Subchapter.

(e) All written requests for advice and advice rendered in response to those requests shall relate prospectively to real or reasonably anticipated fact settings or circumstances.

(f) A request for a formal advisory opinion under subsection (a), (b), or (c) of this section shall be in writing, electronic or otherwise. The State Board shall issue formal advisory opinions having prospective application only. Any individual, person, or governmental unit who relies upon the advice provided on a specific matter addressed by the requested formal advisory opinion shall be immune from all of the following:

(1) Investigation by the State Board, except for an inquiry under G.S. 163A-206(b)(3).

(2) Any adverse action by the employing entity.

(g) At the request of the State Auditor, the State Board shall render advisory opinions on specific questions involving the meaning and application of this Subchapter, Article 14 of Chapter 120 of the General Statutes, and an affected person's compliance therewith. The request shall be in writing, electronic or otherwise, and relate to real fact settings and circumstances. Except when the question involves a question governed by subsection (b) of this section, the State Board shall issue an advisory opinion under this subsection within 60 days of the receipt of all information deemed necessary by the State Board to render an opinion. If the question involves a question governed by subsection (b) of this section, the State Board shall comply with the provisions of that section prior to responding to the State Auditor by delivering the recommended advisory opinion to the Committee within 60 days of the receipt of all information deemed necessary by the State Board to render an opinion. The Committee shall act on the opinion within 30 days of receipt, and the Committee shall deliver the opinion to the State Auditor. If the Committee fails to act on a recommended advisory opinion under this subsection within 30 days of receipt, the State Board shall deliver its recommended advisory opinion to the State Auditor. Notwithstanding subsection (k) of this section, the Auditor may only release those portions of the advisory opinion necessary to comply with the requirements of G.S. 147-64.6(c)(1).

(h) Staff to the State Board may issue advice, but not formal or recommended formal advisory opinions, under procedures adopted by the State Board.

(i) The State Board shall publish its formal advisory opinions within 30 days of issuance. These formal advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting formal advisory opinions. When the State Board issues a recommended formal advisory opinion to a legislator under subsection (b) of this section, the State Board shall publish only the edited formal advisory opinion of the Committee within 30 days of receipt of the edited opinion from the Committee.

(j) Except as provided under subsections (g), (i), and (k) of this section, a request for advice, any advice provided by State Board staff, any formal or recommended formal advisory opinions, any supporting documents submitted or caused to be submitted to the State Board or State Board staff, and any documents prepared or collected by the State Board or State Board staff in connection with a request for advice are confidential. The identity of the individual making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual who requests advice or receives advice, including a formal or recommended formal advisory opinion, may authorize the release of the request, the advice, or any supporting documents to any other person, the State, or any governmental unit.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1.

(k) Staff to the State Board may share with staff to the Committee all information and documents related to requests for advice made by legislators under this section. The information and documents in the possession of staff to the Committee are confidential and are not public records.

(l) Requests for advice may be withdrawn by the requestor at any time prior to the issuance of the advice.

"**§§ 163A-209 through 163A-249: Reserved for future codification purposes.**

"**§ 163A-250. Enforcement.**

In addition to any other remedy, penalty, or crime in this Subchapter:

(1) Violation of Articles 3 and 4 of this Chapter by any covered person or legislative employee is grounds for disciplinary action. Except as specifically provided in this Chapter and for perjury under G.S. 163A-206 and G.S. 138A-24, no criminal penalty shall attach for any violation of Articles 3 and 4 of this Chapter.

(2) The willful failure of any public servant serving on a board to comply with Articles 3 and 4 of this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the Speaker of the House of Representatives, the Speaker of the House of Representatives may remove the offending public servant. For appointees of the General Assembly made upon the recommendation of the Speaker of the House of Representatives, the Governor at the recommendation of the Speaker of the House of Representatives may remove the offending public servant. For appointees of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For appointees of the General Assembly made upon the recommendation of the President Pro Tempore of the Senate, the Governor at the recommendation of the President Pro Tempore of the Senate may remove the offending public servant. For public servants elected to a board by either the Senate or House of Representatives, the electing house of the General Assembly shall exercise the discretion of whether to remove the offending public servant. For all other appointees, the State Board shall exercise the discretion of whether to remove the offending public servant.

(3) The willful failure of any public servant serving as a State employee to comply with Articles 3 and 4 of this Chapter is a violation of a written work

order, thereby permitting disciplinary action as allowed by the law, including termination from employment. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For public servants who are judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined. For legislative employees, the Legislative Services Commission shall make or refer to the hiring authority all final decisions on the matter in which the offending legislative employee shall be disciplined. For public servants appointed or elected for The University of North Carolina or the North Carolina Community College System, the appointing or electing authority shall make all final decisions on the matter in which the offending public servant shall be disciplined. For any other public servant serving as a State employee, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(4) The willful failure of any constitutional officer of the State to comply with Articles 3 and 4 of this Subchapter is malfeasance in office for purposes of G.S. 123-5.

(5) The willful failure of a legislator, other than the Lieutenant Governor, to comply with Articles 3 and 4 of this Chapter is grounds for sanctions under G.S. 120-103.1.

(6) The State Board may seek to enjoin violations of G.S. 138A-34.

(7) Whoever willfully violates any provision of Article 3 or 4 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of those Articles shall in any way act as a lobbyist for a period of two years from the date of conviction.

(8) In addition to the criminal penalties set forth in this section, the State Board may levy civil fines for a violation of any provision of Article 5 of this Chapter up to five thousand dollars ($5,000) per violation.

(9) Complaints of violations of this Subchapter involving the State Board or any member or employee of the State Board shall be referred to the Attorney General for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district, as defined in G.S. 7A-60, of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provision of this Subchapter.

(10) Nothing in this Subchapter affects the power of the State to prosecute any person for any violation of the criminal law.

"Article 6. Reserved for future codification purposes.

"Article 7. Reserved for future codification purposes.

"Article 8. Reserved for future codification purposes.

"Article 9. Reserved for future codification purposes.

"**SUBCHAPTER III. ELECTION ADMINISTRATION.**

"Article 10.

"...

"Article 12.

"General Provisions.

"...

"Article 38: Reserved for future codification purposes.

"Article 39: Reserved for future codification purposes.

"**SUBCHAPTER IV. CAMPAIGN FINANCE REGULATION.**

"Article 45."

SECTION 20.6.(d) Article 1 of Chapter 138A of the General Statutes is repealed.

SECTION 20.6.(e) The following statutes are repealed: G.S. 138A-6, 138A-7, 138A-8, 38A-9, 138A-13, and 138A-14.

SECTION 20.6.(f) The following statutes are recodified:

(1) G.S. 138A-10 as G.S. 163A-208.
(2) G.S. 138A-11 as G.S. 163A-205.
(3) G.S. 138A-12 as G.S. 163A-206.
(4) G.S. 138A-15 is as G.S. 163A-207.
(5) Article 3 of Chapter 138A of the General Statutes as Article 3 of Chapter 163A of the General Statutes.

SECTION 20.6.(g) The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in G.S. 138A-15, 138A-21, 138A-22, 138A-24, and 138A-25 as recodified by subsection (f) of this section.

SECTION 20.6.(h) Article 4 of Chapter 138A of the General Statutes is recodified as Article 4 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in G.S. 138A-36, 138A-39, and 138A-41 as recodified by this subsection.

SECTION 20.6.(i) The following statutes are repealed:
(1) Article 5 of Chapter 138A of the General Statutes.
(2) Article 1 of Chapter 120C of the General Statutes.

SECTION 20.6.(j) Article 2 of Chapter 120C of the General Statutes is recodified as Part 1 of Article 5 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Article" wherever it appears in G.S. 120C-200, 120C-206, 120C-215, and 120C-216 as recodified by this subsection.

SECTION 20.6.(k) Article 3 of Chapter 120C of the General Statutes is recodified as Part 2 of Article 5 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Article" wherever it appears in G.S. 120C-301, 120C-303, and 120C-304 as recodified by this subsection.

SECTION 20.6.(l) Article 4 of Chapter 120C of the General Statutes is recodified as Part 3 of Article 5 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Article" wherever it appears in G.S. 120C-400 and G.S. 120C-405 as recodified by this subsection.

SECTION 20.6.(m) Article 5 of Chapter 120C of the General Statutes is recodified as Part 4 of Article 5 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Article" wherever it appears in G.S. 120C-501 as recodified by this subsection.

SECTION 20.6.(n) Article 6 of Chapter 120C of the General Statutes is repealed.

SECTION 20.6.(o) Article 7 of Chapter 120C of the General Statutes is recodified as Part 5 of Article 5 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Article" wherever it appears in G.S. 120C-700, as recodified by this subsection.

SECTION 20.6.(p) Article 8 of Chapter 120C of the General Statutes is recodified as Part 6 of Article 5 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Article" wherever it appears in G.S. 120C-800, as recodified by this subsection.

SECTION 20.6.(q) The following statutes are recodified:
(1) Article 1 of Chapter 163 of the General Statutes as Article 10 of Chapter 163A of the General Statutes.
(2) Article 2 of Chapter 163 of the General Statutes as Article 11 of Chapter 163A of the General Statutes.

SECTION 20.6.(r) The following statutes are repealed: G.S. 163-19, 163-20, and 163-21.

SECTION 20.6.(s) G.S. 163-22 is recodified as G.S. 163A-1200, to be in Article 12 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in G.S. 163-22 as recodified by this subsection.

SECTION 20.6.(t) G.S. 163-22.2 is recodified as G.S. 163A-1201, to be in Article 12 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Chapter 163 of the General Statutes" to "this Subchapter" wherever it appears in G.S. 163-22.2 as recodified by this subsection.

SECTION 20.6.(u) G.S. 163-22.3 is recodified as G.S. 163A-1202, to be in Article 12 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term

"Article 11 of this Chapter" to "this Subchapter" wherever it appears in G.S. 163-22.3 as recodified by this subsection.

SECTION 20.6.(v) G.S. 163-23 is repealed.

SECTION 20.6.(w) G.S. 163-24 is recodified as G.S. 163A-1203, to be in Article 12 of Chapter 163A of the General Statutes.

SECTION 20.6.(x) G.S. 163-25, as amended by S.L. 2011-31, is recodified as G.S. 163-1204, to be in Article 12 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Chapter 163 of the General Statutes" to "this Subchapter" wherever it appears in G.S. 163-25, as amended by S.L. 2011-31 and as recodified by this subsection.

SECTION 20.6.(y) The following statutes are repealed: G.S. 163-26 and G.S. 163-27.

SECTION 20.6.(z) G.S. 163-27.1 is recodified as G.S. 163A-1205, to be in Article 12 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in G.S. 163-27.1 as recodified by this subsection.

SECTION 20.6.(aa) G.S. 163-28 is repealed.

SECTION 20.6.(bb) Article 4 of Chapter 163 of the General Statutes is recodified as Article 13 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in Article 4 of Chapter 163 of the General Statutes as recodified by this subsection. The Revisor of Statutes shall change the term "Articles 4, 5, and 20 of this Chapter" to "this Subchapter" wherever it appears in G.S. 163-33.1 as recodified by this subsection. The Revisor of Statutes shall change the term "Article 11 of this Chapter" to "this Subchapter" wherever it appears in G.S. 163-33.3 as recodified by this subsection.

SECTION 20.6.(cc) Article 4A of Chapter 163 of the General Statutes is recodified as Article 14 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Article 22A of this Chapter" to "Subchapter IV of this Chapter" wherever it appears in G.S. 163-40.1 as recodified by this subsection.

SECTION 20.6.(dd) Article 5 of Chapter 163 of the General Statutes is recodified as Article 15 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in Article 5 of Chapter 163 of the General Statutes as recodified by this subsection.

SECTION 20.6.(ee) Article 6 of Chapter 163 of the General Statutes is recodified as Article 16 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in Article 6 of Chapter 163 of the General Statutes as recodified by this subsection.

SECTION 20.6.(ff) Article 7A of Chapter 163 of the General Statutes is recodified as Article 17 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in Article 7A of Chapter 163 of the General Statutes as recodified by this subsection. The Revisor of Statutes shall change the term "Article 8 of this Chapter" to "this Subchapter" wherever it appears in G.S. 163-82.7 and G.S. 163-82.10B as recodified by this subsection.

SECTION 20.6.(gg) The following statutes are recodified:

(1) Article 8 of Chapter 163 of the General Statutes as Article 18 of Chapter 163A of the General Statutes.

(2) Article 8A of Chapter 163 of the General Statutes as Article 19 of Chapter 163A of the General Statutes.

SECTION 20.6.(hh) Article 9 of Chapter 163 of the General Statutes is recodified as Article 20 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in G.S. 163-97 as recodified by this subsection.

SECTION 20.6.(ii) Article 10 of Chapter 163 of the General Statutes is recodified as Article 21 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in Article 10 of Chapter 163 of the General Statutes as recodified by this subsection. The Revisor of Statutes shall change the term "Article 11B of this Chapter" to "Article 23 of this Chapter" wherever it appears in G.S. 163-106 as recodified by this subsection.

SECTION 20.6.(jj) Article 11 of Chapter 163 of the General Statutes is recodified as Article 22 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Article 14A of this Chapter" to "this Subchapter" wherever it appears in G.S. 163-122 as recodified by this subsection. The Revisor of Statutes shall change the term "Article 25 of this Chapter" to "Article 37 of this Chapter" wherever it appears in G.S. 163-122 as recodified by this subsection. The Revisor of Statutes shall change the term "Article 11B of this Chapter" to "this Subchapter" wherever it appears in G.S. 163-122 as recodified by this subsection. The Revisor of Statutes shall change the term "Subchapter IX of Chapter 163 of the General Statutes" to "this Subchapter" wherever it appears in G.S. 163-122 as recodified by this subsection.

SECTION 20.6.(kk) Article 11B of Chapter 163 of the General Statutes is recodified as Article 23 of Chapter 163A of the General Statutes.

SECTION 20.6.(ll) Article 12 of Chapter 163 of the General Statutes is recodified as Article 24 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Article 12A of this Chapter" to "Article 25 of this Chapter" wherever it appears in Article 12 of Chapter 163 of the General Statutes as recodified by this subsection. The Revisor of Statutes shall change the term "Article 5 of this Chapter" to "Article 15 of this Chapter" wherever it appears in G.S. 163-130.2 as recodified by this subsection.

SECTION 20.6.(mm) Article 12A of Chapter 163 of the General Statutes is recodified as Article 25 of Chapter 163A of the General Statutes.

SECTION 20.6.(nn) Article 14A of Chapter 163 of the General Statutes is recodified as Article 26 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in Article 14A of Chapter 163 of the General Statutes as recodified by this subsection. The Revisor of Statutes shall change the term "Article 15A of this Chapter" to "Article 27 of this Chapter" wherever it appears in Article 14A of Chapter 163 of the General Statutes as recodified by this subsection.

SECTION 20.6.(oo) Article 15A of Chapter 163 of the General Statutes is recodified as Article 27 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Article 14A of this Chapter" to "Article 26 of this Chapter" wherever it appears in Article 15A of Chapter 163 of the General Statutes as recodified by this subsection.

SECTION 20.6.(pp) Article 17 of Chapter 163 of the General Statutes is recodified as Article 28 of Chapter 163A of the General Statutes.

SECTION 20.6.(qq) Article 18 of Chapter 163 of the General Statutes is recodified as Article 29 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in Article 18 of Chapter 163 of the General Statutes as recodified by this subsection.

SECTION 20.6.(rr) Article 18A of Chapter 163 of the General Statutes is recodified as Article 30 of Chapter 163A of the General Statutes.

SECTION 20.6.(ss) The Revisor of Statutes shall change the term "Article 9 of Chapter 163 of the General Statutes" to "Article 20 of this Chapter" wherever it appears in Article 14A of Chapter 163 of the General Statutes.

SECTION 20.6.(tt) Article 19 of Chapter 163 of the General Statutes is recodified as Article 31 of Chapter 163A of the General Statutes.

SECTION 20.6.(uu) Article 20 of Chapter 163 of the General Statutes is recodified as Article 32 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Articles 20 and 21 of this" to "this Article and Article 33 of this Chapter" wherever it appears in Article 20 of Chapter 163 of the General Statutes as recodified by this subsection. The Revisor of Statutes shall change the term "Article 20 of this Chapter" to "this Article" wherever it appears in Article 20 of Chapter 163 of the General Statutes as recodified by this subsection. The Revisor of Statutes shall change the term "Article 21 of this Chapter" to "Article 33 of this Chapter" wherever it appears in Article 20 of Chapter 163 of the General Statutes.

SECTION 20.6.(vv) Article 21 of Chapter 163 of the General Statutes is recodified as Article 33 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Article 20 of this Chapter" to "Article 32 of this Chapter" wherever it appears in G.S. 163-246 as recodified by this subsection. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in Article 21 of Chapter 163 of the General Statutes. The Revisor of Statutes shall change the term "Chapter 163 of the General

Statutes" to "this Subchapter" wherever it appears in Article 21 of Chapter 163 of the General Statutes.

SECTION 20.6.(ww) Article 22 of Chapter 163 of the General Statutes is recodified as Article 34 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in Article 22 of Chapter 163 of the General Statutes as recodified by this subsection.

SECTION 20.6.(xx) Article 22A of Chapter 163 of the General Statutes is recodified as Article 45 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in Article 22A of Chapter 163 of the General Statutes. The Revisor of Statutes shall change the term "Article 11 of Chapter 163 of the General Statutes" to "Article 22 of this Chapter" wherever it appears in G.S. 163-278.13C as recodified by this subsection. The Revisor of Statutes shall change the term "Article 22 of this Chapter" to "Article 34 of this Chapter" wherever it appears in G.S. 163-278.19 as recodified by this subsection. The Revisor of Statutes shall change the term "Article 22D of this Chapter" to "Article 47 of this Chapter" wherever it appears in G.S. 163-278.13 as recodified by this subsection. The Revisor of Statutes shall change the term "Article 22J of this Chapter" to "Article 50 of this Chapter" wherever it appears in G.S. 163-278.13 as recodified by this subsection. The Revisor of Statutes shall change the term "Article 22M of Chapter 163 of the General Statutes" to "Article 51 of this Chapter" wherever it appears in G.S. 163-278.16B as recodified by this subsection.

SECTION 20.6.(yy) Article 22B of Chapter 163 of the General Statutes is recodified as Article 46 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Article 22A of this Chapter" to "Article 45 of this Chapter" wherever it appears in Article 22B of the General Statutes as recodified by this subsection.

SECTION 20.6.(zz) Article 22D of Chapter 163 of the General Statutes is recodified as Article 47 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Article 22A of this Chapter" to "Article 45 of this Chapter" wherever it appears in G.S. 163-278.64 as recodified by this subsection. The Revisor of Statutes shall change the term "Article 25 of this Chapter" to "Article 37 of this Chapter" wherever it appears in G.S. 163-278.64 as recodified by this subsection.

SECTION 20.6.(aaa) Article 22G of Chapter 163 of the General Statutes is recodified as Article 48 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Article 22A of this Chapter" to "Article 45 of this Chapter" wherever it appears in Article 22G of Chapter 163 of the General Statutes as recodified by this subsection.

SECTION 20.6.(bbb) Article 22H of Chapter 163 of the General Statutes is recodified as Article 49 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Article 22A of this Chapter" to "Article 45 of this Chapter" wherever it appears in Article 22H of Chapter 163 of the General Statutes as recodified by this subsection.

SECTION 20.6.(ccc) Article 22J of Chapter 163 of the General Statutes is recodified as Article 50 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "Article 22A of this Chapter" to "Article 45 of this Chapter" wherever it appears in G.S. 163-278.98 as recodified by this subsection.

SECTION 20.6.(ddd) Article 22M of Chapter 163 of the General Statutes is recodified as Article 51 of Chapter 163A of the General Statutes.

SECTION 20.6.(eee) Article 23 of Chapter 163 of the General Statutes is recodified as Article 35 of Chapter 163A of the General Statutes. The Revisor of Statutes shall change the term "this Chapter" to "this Subchapter" wherever it appears in Article 23 of Chapter 163 of the General Statutes as recodified by this subsection. The Revisor of Statutes shall change the term "Article 8 of this Chapter" to "Article 18 of this Chapter" wherever it appears in Article 23 of Chapter 163 of the General Statutes as recodified by this subsection. The Revisor of Statutes shall change the term "Chapter 163" to "this Subchapter" wherever it appears in Article 23 of Chapter 163 of the General Statutes, as amended by S.L. 2011-31 and as recodified by this subsection. The Revisor of Statutes shall change the term "Articles 3, 4, 5, 6, 7A, 8, 9, 10, 11, 12, 13, 14, 15, 19, and 22 of this Chapter" to "this Subchapter" wherever it appears in G.S. 163A-286 as recodified by this subsection.

SECTION 20.6.(fff) The following statutes are recodified:

(1) Article 24 of Chapter 163 of the General Statutes as Article 36 of Chapter 163A of the General Statutes.

(2) Article 25 of Chapter 163 of the General Statutes as Article 37 of Chapter 163A of the General Statutes.

SECTION 20.6.(ggg) G.S. 150B-1(c)(16) is repealed.

SECTION 20.6.(hhh) The Revisor of Statutes shall change the terms "Chapter 120C of the General Statutes" to "this Subchapter" wherever it appears in Chapter 138A of the General Statutes.

SECTION 20.6.(iii) The Revisor of Statutes shall change the terms "Chapter 138A of the General Statutes" to "this Subchapter" wherever it appears in Chapter 120C of the General Statutes.

SECTION 20.6.(jjj) The Revisor of Statutes shall change the cite "G.S. 138A-3" to "G.S. 163A-200" wherever it appears in the General Statutes.

SECTION 20.6.(kkk) The Revisor of Statutes shall change the terms "Commission," "Secretary of State," and "Secretary" to "State Board" wherever it appears in Chapter 163A of the General Statutes, as enacted by this section.

SECTION 20.6.(lll) Except in Article 1 of Chapter 163A of the General Statutes, as enacted by this section, the Revisor of Statutes shall change the term "State Board of Elections" to "State Board" wherever it appears in Chapter 163A of the General Statutes, as enacted by this section.

SECTION 20.6.(mmm) The Revisor of Statutes, in recodifying any statute or Article as instructed in this section, shall also renumber and change internal cross-references in those statutes and Articles accordingly.

SECTION 20.6.(nnn) Any previous assignment of duties of a quasi-legislative or quasi-judicial nature by the Governor or General Assembly to the agencies or functions transferred by this section shall have continued validity with the transfer under this section. Except as otherwise specifically provided in this section, each enumerated commission, board, or other function of State government transferred to the State Board of Elections and Ethics Enforcement created in this section, is a continuation of the former entity for purposes of succession to all the rights, powers, duties, and obligations of the former. Where the former entities are referred to by law, contract, or other document in their former name, the State Board of Elections and Ethics Enforcement created in this section is charged with exercising the functions of the former named entity.

SECTION 20.6.(ooo) No action or proceeding pending on January 1, 2012, brought by or against the State Board of Elections, State Ethics Commission, or the Secretary of State regarding the lobbyist registration and lobbying enforcement of the Secretary of State shall be affected by any provision of this section, but the same may be prosecuted or defended in the name of State Board of Elections and Ethics Enforcement created in this section. In these actions and proceedings, the State Board of Elections and Ethics Enforcement or its Executive Director as appropriate shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.

Any business or other matter undertaken or commanded by any State program or office or contract transferred by this section to State Board of Elections and Ethics Enforcement pertaining to or connected with the functions, powers, obligations, and duties set forth herein, which is pending on January 1, 2012, may be conducted and completed by the State Board of Elections and Ethics Enforcement in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the original program, office, or commissioners or directors thereof.

SECTION 20.6.(ppp) The consolidation provided for under this section shall not affect any ongoing investigation or audit. Any ongoing hearing or other proceeding before the State Ethics Commission or State Board of Elections shall be transferred to the State Board of Elections and Ethics Enforcement, as created by this section. Prosecutions for offenses or violations committed before January 1, 2012, are not abated or affected by this section, and the statutes that would be applicable but for this section remain applicable to those prosecutions.

SECTION 20.6.(qqq) Any rule, policy, procedure, or other guidance document not subject to Chapter 150B of the General Statutes adopted by the State Ethics Commission, Secretary of State, or State Board of Elections shall remain in effect until the State Board of Elections and Ethics Enforcement amends or repeals that rule, policy, procedure, or other guidance document. The list of covered boards adopted by the State Ethics Commission under G.S. 138A-10(a)(3) shall continue in effect until amended or repealed by the State Board of Elections and Ethics Enforcement.

SECTION 20.6(rrr) Any evaluation of a statement of economic interest issued by the State Ethics Commission pursuant to Article 3 of Chapter 138A of the General Statutes in 2011 shall remain in effect amended or repealed by the State Board of Elections and Ethics Enforcement.

SECTION 20.6.(sss) The State Board of Elections and Ethics Enforcement shall report to the Legislative Ethics Committee on or before April 1, 2012, and again on or before February 1, 2013, as to recommendations for statutory changes necessary to further implement this consolidation.

SECTION 20.6.(ttt) If any subsection or provision of this section is declared unconstitutional or invalid by the courts, it does not affect the validity of this section as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 20.6.(uuu) This section becomes effective January 1, 2012, and applies to elections held on or after that date.

ELIMINATE FUNDING FOR DEVELOPMENT OF SMART CARDS

SECTION 20.7. Notwithstanding Section 6.19 of S.L. 2010-31, funds in the amount of one million dollars ($1,000,000) shall be transferred from the E-Commerce Reserve Fund to the General Fund to support appropriations made in this act.

PART XXI. DEPARTMENT OF CULTURAL RESOURCES

TRANSPORTATION MUSEUM SPECIAL FUND

SECTION 21.1. Article 1 of Chapter 121 of the General Statutes is amended by adding a new section to read:

"**§ 121-7.6. North Carolina Transportation Museum special fund.**

(a) Fund Established. – The North Carolina Transportation Museum Fund is created as a special interestbearing, nonreverting enterprise fund in the Department of Cultural Resources. The Fund shall be used to pay all costs associated with the operation and maintenance of the North Carolina Transportation Museum.

(b) Monies Credited to the Fund. – Notwithstanding Chapter 146 of the General Statutes, all receipts derived from the lease, rental, or other disposition of structures or products of the land, as well as all admissions and fees, gifts, donations, grants, and bequests, shall be credited to the Fund. The Fund shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(c) Emergency Reserve. – The Department of Cultural Resources shall establish, out of existing unobligated funds including lapsed salaries and unobligated special funds, an emergency reserve fund in the amount of three hundred thousand dollars ($300,000). Any use of the emergency reserve will require reimbursement from museum receipts.

(d) Audit. – The Fund shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. The Fund shall reimburse the State Auditor for the cost of any audit."

ROANOKE ISLAND COMMISSION FUNDING/HISTORIC ROANOKE ISLAND FUND

SECTION 21.2.(a) The Roanoke Island Commission shall receive State funds through the 2011-2012 fiscal year. Beginning with the 2012-2013 fiscal year, the Roanoke Island Commission shall be self-supporting.

SECTION 21.2.(b) All funds and assets in the Outer Banks Island Farm Fund are transferred to the Roanoke Island Commission Fund established in G.S. 143B-131.8.

SECTION 21.2.(c) G.S. 143B-131.8 is amended by adding the following new subsections:

"(c) Notwithstanding subsection (b) of this section, the Commission may expend and use funds from the principal and from the remaining twenty percent (20%) of the interest generated by the principal of the Roanoke Island Commission Endowment Fund if (i) the Commission has insufficient cash flow to meet its financial obligations as they become due and (ii) those financial obligations are critical to the operation and maintenance of the Commission or the properties operated by the Commission. The Commission shall not use funds from the principal or the remaining twenty percent (20%) of the interest generated by the principal of the Roanoke Island Endowment Fund for capital expenditures.

(d) The Department of Cultural Resources shall pay to the Commission on a monthly basis a pro rata share of the utilities, maintenance, and operating expenses of the Outer Banks History Center, which is located in the facility owned by the Commission. The funds received pursuant to this subsection shall be credited to the Roanoke Island Commission Fund.

(e) The Department of Cultural Resources shall credit to the Roanoke Island Commission Fund all rental proceeds received by the Department from the rental properties located near the Outer Banks Island Farm."

SECTION 21.2.(d) G.S. 143B-131.2(b)(1) reads as rewritten:

"(1) To advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the appearance, maintenance, and aesthetic quality of U.S. Highway 64/264 and the U.S. 64/264 Bypass travel corridor on Roanoke Island and the grounds on Roanoke Island Festival Park. However, the local government that has jurisdiction over the affected portion of the travel corridor shall process the applications for and issue the certificates of appropriateness and shall be responsible for the enforcement of those certificates and any rules adopted pursuant to this subdivision that apply to the portion of the travel corridor within the jurisdiction of the local government. No reimbursement shall be made by the Commission to the local government for the processing of applications or issuance of certificates of appropriateness, or the enforcement of those certificates or the rules."

SECTION 21.2.(e) G.S. 143B-131.2(b)(10) reads as rewritten:

"(10) ~~To establish and maintain a separate fund composed of moneys which may come into its hands from~~ To accept gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may ~~also~~ establish a reserve fund to be maintained and used for contingencies and emergencies. ~~Funds appropriated to the Commission may be transferred to the Friends of Elizabeth II, Inc., a private, nonprofit corporation.~~ The Friends of Elizabeth II, Inc., shall use the balance of any unencumbered funds that were transferred to it ~~to carry out the purposes of this Part.~~ pursuant to this subdivision only for expenses of the Commission or the properties operated by the Commission that are identified as operating or for maintenance costs by the Commission and that are requested by the Commission."

SECTION 21.2.(f) Effective July 1, 2012, all funds held by the Roanoke Island Commission, including all balances credited to the Roanoke Island Commission Endowment Fund, shall be transferred to the Historic Roanoke Island Fund established in G.S. 143B-131.8A.

SECTION 21.2.(g) Effective July 1, 2012, G.S. 143B-131.1 reads as rewritten:

"**§ 143B-131.1. Commission established.**

There is established the Roanoke Island Commission. The Commission shall be an ~~independent~~ independent, self-supporting commission, but shall be located within the Department of Cultural Resources for historic resource management, organizational, and budgetary purposes."

SECTION 21.2.(h) Effective July 1, 2012, G.S. 143B-131.2(b)(14) reads as rewritten:

"(14) To administer the ~~Roanoke Island Commission Fund and the Roanoke Island Commission Endowment Fund as provided in G.S. 143B-131.8.~~ Historic Roanoke Island Fund as provided in G.S. 143B-131.8A."

SECTION 21.2.(i) Effective July 1, 2012, G.S. 143B-131.8 is repealed.

SECTION 21.2.(j) Effective July 1, 2012, Part 27A of Article 2 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-131.8A. Historic Roanoke Island Fund.**

(a) The Historic Roanoke Island Fund is established as a nonreverting enterprise fund and shall be administered by the Roanoke Island Commission. All operating revenues generated by the Roanoke Island Commission, including revenues collected from any property operated by the Roanoke Island Commission, together with all gifts, grants, donations, or other financial assets of whatever kind received or held by the Roanoke Island Commission shall be

credited to the Historic Roanoke Island Fund and shall be used only (i) for the expenses of operating and maintaining the Roanoke Island Commission and the properties managed by the Roanoke Island Commission, (ii) to carry out any of the other duties and purposes set out by this Part, or (iii) for capital expenditures for the properties operated by the Commission.

(b) The Department of Cultural Resources shall pay to the Commission on a monthly basis a pro rata share of the utilities, maintenance, and operating expenses of the Outer Banks History Center, which is located in the facility owned by the Commission. The funds received pursuant to this subsection shall be credited to the Historic Roanoke Island Fund.

(c) The Department of Cultural Resources shall credit to the Historic Roanoke Island Fund all rental proceeds received by the Department from the rental properties located near the Outer Banks Island Farm."

PART XXII. GENERAL ASSEMBLY

PED STUDYING ADMINISTRATION OF STATE ATTRACTIONS

SECTION 22.1.(a) The Program Evaluation Division shall study and review State operations considered attractions in the State, such as State Historic Sites, Museums, State Parks, Aquariums, and the North Carolina Zoo, and recommend whether administration of such attractions can be consolidated in one Department or administrative unit. In conducting its study, the Program Evaluation Division shall review all sources of revenue generated by these attractions, including admission fees, donations, and concession sales, and shall review daily visitation trends for these attractions to determine optimal operating schedules.

SECTION 22.1.(b) The Program Evaluation Division shall report its findings by March 30, 2012, to the full chairs of the House of Representatives and Senate Appropriations Committees, the chairs of the House of Representatives Appropriations Subcommittee on General Government, the chairs of the Senate Appropriations Committee on General Government and Information Technology, and the Fiscal Research Division.

REVISOR OF STATUTES

SECTION 22.2. Article 2 of Chapter 114 of the General Statutes is recodified as Article 7D of Chapter 120 of the General Statutes to be entitled "Codification of Statutes" and as recodified, reads as rewritten:

"Article 7D.

"Codification of Statutes.

"**§ 120-36.21. ~~Creation of Division; powers and duties.~~Codification of Statutes.**

The ~~Attorney General shall set up in the Department of Justice a division to be designated as the Division of Legislative Drafting and Codification of Statutes. There shall be assigned to this Division by the Attorney General~~ Legislative Services Commission shall assign to its staff duties as follows:

(1) To prepare bills to be presented to the General Assembly ~~at the request of the Governor, and the officials of the State and departments thereof, and members of the General Assembly, and to advise with said officials in connection therewith, and to advise with and assist counties, cities, and towns in the drafting of legislation to be submitted to the General Assembly.~~ as provided by G.S. 120-31(9).

(2) To supervise the recodification of all the statute law of North Carolina and supervise the keeping of such recodifications current by including therein all laws hereafter enacted by supplements thereto issued periodically, all of which recodifications and supplements shall be appropriately annotated.

(3) In order that the laws of North Carolina, as set out in the General Statutes of North Carolina, may be made and kept as simple, as clear, as concise and as complete as possible, and in order that the amount of construction and interpretation of the statutes required of the courts may be reduced to a minimum, ~~it shall also be the duty of the Division of Legislative Drafting and Codification of Statutes~~ to establish and maintain a system of continuous statute research and correction. To that end the ~~Division~~ staff shall:

a. Make a systematic study of the general statutes of the State, as set out in the General Statutes and as hereafter enacted by the General Assembly, for the purpose of ascertaining what ambiguities,

conflicts, duplications and other imperfections of form and expression exist therein and how these defects may be corrected.

b. Consider such suggestions as may be submitted ~~to the Division~~ with respect to the existence of such defects and the proper correction thereof.

c. Prepare for submission to the General Assembly from time to time bills to correct such defects in the statutes as its research discloses.

"§ 120-36.22. Revisor of Statutes.

The member of the staff of the ~~Attorney General~~ Legislative Services Commission who is assigned to perform the duties prescribed by ~~G.S. 114-9(3)~~ G.S. 120-36.21(3) shall be known as the Revisor of Statutes.~~Statutes and he shall be subject to all the provisions of Chapter 126 of the General Statutes relating to the State Personnel System.~~"

PART XXIII. DEPARTMENT OF INSURANCE

PERMISSABLE USE OF INSURANCE REGULATORY FUND

SECTION 23.1. The Department of Insurance shall not expend funds from the Insurance Regulatory Fund created under G.S. 58-6-25 for any purpose other than to reimburse the General Fund for appropriations from that fund to the Department.

NO BUDGET REDUCTION FOR CERTAIN STATE FIRE PROTECTION GRANT FUND RECIPIENTS

SECTION 23.2. Notwithstanding any other provision of this act, there shall be no reduction in funding under G.S. 58-85A-1 during the 2011-2013 fiscal biennium for local fire districts and political subdivisions of the State that receive grant funding of one thousand dollars ($1,000) or less under that statute.

PART XXIV. OFFICE OF ADMINISTRATIVE HEARINGS

ACCESS TO REGISTER AND CODE

SECTION 24.1. G.S. 150B-21.24(a) reads as rewritten:

"(a) Register. – The Codifier of Rules shall make available the North Carolina Register on the Internet at no charge. ~~Upon request the Codifier shall provide a free copy of the current volume of the Register to any person who receives a free copy of the North Carolina Administrative Code or any member of the General Assembly.~~"

PART XXV. OFFICE OF STATE BUDGET AND MANAGEMENT

TRANSFER STATE FIRE PROTECTION GRANT FUND

SECTION 25.1. Article 85A of Chapter 58 of the General Statutes reads as rewritten:

"Article 85A.

"State Fire Protection Grant Fund.

"§ 58-85A-1. Creation of Fund; allocation to local fire districts and political subdivisions of the State.

(a) There is created in the ~~Office of State Budget and Management~~Department of Insurance the State Fire Protection Grant Fund. The purpose of the Fund is to compensate local fire districts and political subdivisions of the State for providing local fire protection to State-owned buildings and their contents.

(b) The ~~Office of State Budget and Management~~Department of Insurance shall develop and implement an equitable and uniform statewide method for distributing any funds to the State's local fire districts and political subdivisions.

~~Upon the request of the Director of the Budget, the Department of Insurance shall provide the Office of State Budget and Management all information necessary to develop and implement the formula.~~

(c) It is the intent of the General Assembly to appropriate annually to the State Fire Protection Grant Fund up to four million one hundred eighty thousand dollars ($4,180,000) from the General Fund, one hundred fifty-eight thousand dollars ($158,000) from the Highway Fund, and one million three hundred forty-five thousand dollars ($1,345,000) from University

of North Carolina receipts. Funds received from the General Fund shall be allocated only for providing local fire protection for State-owned property supported by the General Fund; funds received from the Highway Fund shall be allocated only for providing local fire protection for State-owned property supported by the Highway Fund; and funds received from University of North Carolina receipts shall be allocated only for providing local fire protection for State-owned property supported by University of North Carolina receipts."

NC SYMPHONY FUNDING

SECTION 25.2.(a) Of the funds appropriated in this act to the Office of State Budget and Management-Special Appropriations, the sum of one million five hundred thousand dollars ($1,500,000) in nonrecurring funds for the 2011-2012 fiscal year shall be allocated to the North Carolina Symphony in accordance with this section.

SECTION 25.2.(b) It is the intent of the General Assembly that the NC Symphony achieve its goal of raising the sum of eight million dollars ($8,000,000) in non-State funding to support the operations of the Symphony. To that end, upon demonstrating to the Office of State Budget and Management that the NC Symphony has reached fund-raising targets in the amounts set forth in this subsection, the NC Symphony shall receive allocations from the Office of State Budget and Management as follows:

(1) Upon raising the initial sum of four million dollars ($4,000,000) in non-State funding, the NC Symphony shall receive the sum of five hundred thousand dollars ($500,000).

(2) Upon raising an additional sum of two million dollars ($2,000,000) in non-State funding for a total amount of six million dollars ($6,000,000) in non-State funds, the NC Symphony shall receive the sum of five hundred thousand dollars ($500,000).

(3) Upon raising an additional sum of two million dollars ($2,000,000) in non-State funding for a total sum of eight million dollars ($8,000,000) in non-State funds, the NC Symphony shall receive the final sum of five hundred thousand dollars ($500,000) for the 2011-2012 fiscal year.

SECTION 25.2.(c) Funds allocated pursuant to this section are in addition to any other funds allocated to the NC Symphony in this act.

PART XXVI. STATE BOARD OF ELECTIONS

NO EXPENDITURE OF HAVA TITLE II FUNDS FOR STATE FY 2011-2012

SECTION 26.1. The State Board of Election shall not expend any Help America Vote Funds (HAVA) Title II Funds for the 2011-2012 fiscal year and, unless prohibited by federal law, shall retain those funds until Maintenance of Effort funds are appropriated.

ALLOWING COUNTY BOARDS OF ELECTION TO EMPLOY PERSONNEL TO MAINTAIN VOTING SYSTEMS

SECTION 26.3.(a) G.S. 163-165.9 reads as rewritten:

"**§ 163-165.9. Voting systems: powers and duties of county board of elections.**

(a) Before approving the adoption and acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

(1) Recommend to the board of county commissioners which type of voting system should be acquired by the county.

(2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the type of voting system to be recommended and also witness a demonstration of at least one other type of voting system certified by the State Board of Elections.

(3) Test, during an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted.

(b) After the acquisition of any voting system, the county board of elections shall comply with any requirements of the State Board of Elections regarding training and support of the voting system by completing all of the following:

(1) The county board of elections shall comply with all specifications of its voting system vendor for ballot printers. The county board of elections is authorized to contract with noncertified ballot printing vendors, so long as

the noncertified ballot printing vendor meets all specifications and all quality assurance requirements as set by the State Board of Elections.

(2) The county board of elections shall annually maintain software license and maintenance agreements necessary to maintain the warranty of its voting system. A county board of elections may employ qualified personnel to maintain a voting system in lieu of entering into maintenance agreements necessary to maintain the warranty of its voting system. The State Board of Elections ~~shall not~~is not required to provide routine maintenance to any county board of elections that does not maintain the warranty of its voting system. If the State Board of Elections provides any maintenance to a county that has not maintained the warranty of its voting system, the county shall reimburse the State for the cost.

(3) The county board of elections shall not replace any voting system, or any portion thereof, without approval of the State Board of Elections.

(4) The county board of elections may have its voting system repaired pursuant to its maintenance agreement but shall notify the State Board of Elections at the time of every repair, according to guidelines that shall be provided by the State Board of Elections."

SECTION 26.3.(b) This section becomes effective July 1, 2011.

PART XXVI-A. STATE CONTROLLER

OVERPAYMENTS AUDIT

SECTION 26A.1.(a) During the 2011-2013 biennium, receipts generated by the collection of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors as required by G.S. 147-86.22(c) are to be deposited in Special Reserve Account 24172.

SECTION 26A.1.(b) For each year of the 2011-2013 biennium, five hundred thousand dollars ($500,000) of the funds transferred from Special Reserve Account 24172 shall be used by the Office of the State Controller for data processing, debt collection, or e-commerce costs.

SECTION 26A.1.(c) All funds available in Special Reserve Account 24172 on July 1 of each year of the 2011-2013 biennium are transferred to the General Fund on that date.

SECTION 26A.1.(d) Any unobligated funds in Special Reserve Account 24172 that are realized above the allowance in subsection (b) of this section are subject to appropriation by the General Assembly.

SECTION 26A.1.(e) The State Controller shall report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the revenue deposited into Special Reserve Account 24172 and the disbursement of that revenue.

PART XXVII. DEPARTMENT OF THE STATE TREASURER

LOCAL GOVERNMENT UNIT POSITIONS

SECTION 27.1.(a) G.S. 105-501(b) reads as rewritten:

"(b) Deductions. – The costs incurred by the State to provide the functions listed in this subsection that support local governments are deductible from the collections to be allocated each month for distribution.

(1) The Department's cost of the following for the preceding month must be deducted and credited to the Department:

a. ~~Performing the duties imposed by Article 15 of this Chapter.~~The Local Government Division.

b. The Property Tax Commission.

(1a) The Department of State Treasurer's costs for personnel and operations of the Local Government Commission.

(2) One-twelfth of the costs of the following for the preceding fiscal year must be deducted and credited to the General Fund:

a. The School of Government at the University of North Carolina at Chapel Hill in operating a training program in property tax appraisal and assessment.
b. The personnel and operations provided by the Department of State Treasurer for the Local Government Commission.
c. Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter."

SECTION 27.1.(b) G.S. 105-501(b), as rewritten by subsection (a) of this section, reads as rewritten:

"(b) Deductions. – The costs incurred by the State to provide the functions listed in this subsection that support local governments are deductible from the collections to be allocated each month for distribution.

(1) The Department's cost of the following for the preceding month must be deducted and credited to the Department:
a. The Local Government Division.
b. The Property Tax Commission.

(1a) The Department of State Treasurer's costs for personnel and operations of the Local Government Commission.

(2) One-twelfth of the costs of the following for the preceding fiscal year must be deducted and credited to the General Fund:
a. The School of Government at the University of North Carolina at Chapel Hill in operating a training program in property tax appraisal and assessment.
~~b. The personnel and operations provided by the Department of State Treasurer for the Local Government Commission.~~
c. Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter."

SECTION 27.1.(c) Subsection (b) of this section becomes effective July 1, 2012.

PART XXVIII. DEPARTMENT OF TRANSPORTATION

CASH FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATION

SECTION 28.1.(a) The General Assembly authorizes and certifies anticipated revenues for the Highway Fund as follows:

For Fiscal Year 2013-2014	$2,125.4 million
For Fiscal Year 2014-2015	$2,238.0 million
For Fiscal Year 2015-2016	$2,352.3 million
For Fiscal Year 2016-2017	$2,470.9 million

SECTION 28.1.(b) The General Assembly authorizes and certifies anticipated revenues for the Highway Trust Fund as follows:

For Fiscal Year 2013-2014	$1,084.0 million
For Fiscal Year 2014-2015	$1,169.8 million
For Fiscal Year 2015-2016	$1,232.6 million
For Fiscal Year 2016-2017	$1,256.7 million

CHANGES TO HIGHWAY FUND CERTIFIED BUDGET TO INCREASE TRANSPARENCY

SECTION 28.2. Notwithstanding G.S. 143C-6-4(b), the Office of State Budget and Management, in consultation with the Department of Transportation, the Office of the State Controller, and the Fiscal Research Division, shall execute changes to the Department of Transportation's Highway Fund (Budget Code 84210) 2012-2013 Fiscal Year Certified Budget to increase transparency. The Adjusted 2012-2013 Fiscal Year Certified Budget for Budget Code 84210 shall include object detail using the North Carolina Accounting System Uniform Chart of Accounts prescribed by the Office of the State Controller to provide a more detailed accounting of the proposed budgets and receipts and actual expenditures and revenue collections. This includes, but is not limited to, applying object detail at the four-digit level for all acounts to full-time and part-time positions, to operating expenditures and receipts, and to

intrafund transfers. In addition, work order positions shall be budgeted within existing fund codes. These readjustments to the enacted budget are for the sole purpose of correctly aligning authorized positions and associated operating costs with the appropriate purposes and definitions as defined in G.S. 143C-1-1. The Office of State Budget and Management shall change the certified budget to reflect these adjustments only after reporting the proposed adjustments to the Chairs of the Senate Appropriations Committee on Department of Transportation and the Chairs of the House Appropriations Subcommittee on Transportation and to the Fiscal Research Division no later than March 1, 2012. It is the intent of the General Assembly that these changes in the certified budget for Budget Code 84210 shall begin with the 2012-2013 fiscal year and shall be used in subsequent fiscal years.

REMOVE PILOT DESIGNATION FOR PUBLIC-PRIVATE PARTNERSHIPS

SECTION 28.3. G.S. 136-28.1 reads as rewritten:

"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

...

(l) The Department of Transportation may enter into ~~as many as two pilot~~ contracts for ~~public-private~~ public-private participation in providing litter removal from State right-of-way. Selection of firms to perform this work shall be made using a best value procurement process and shall be without regard to other provisions of law regarding the Adopt-A-Highway Program administered by the Department. Acknowledgement of sponsors may be indicated by appropriate signs that shall be owned by the Department of Transportation. The size, style, specifications, and content of the signs shall be determined in the sole discretion of the Department of Transportation. The Department of Transportation may issue ~~rules~~ guidelines, rules, and policies necessary to ~~implement~~ administer this ~~section.~~ subsection.

(m) The Department of Transportation may enter into ~~as many as two pilot~~ contracts for public-private participation ~~in providing real-time traveler information~~ at State-owned rest areas. Selection of firms ~~to perform this work~~ shall be made using a best value procurement process. Recognition of sponsors in the program may be indicated by appropriate acknowledgment for any services provided. The size, style, specifications, and content of the acknowledgment shall be determined in the sole discretion of the Department. Revenues generated pursuant to a contract initiated under this subsection shall be shared with Department of Transportation at a predetermined percentage or rate, and shall be earmarked by the Department to maintain the State owned rest areas from which the revenues are generated. The Department of Transportation may issue guidelines, rules, and policies necessary to administer ~~a pilot program initiated under~~ this subsection."

REMOVE CAP ON DESIGN-BUILD PROJECTS

SECTION 28.4. G.S. 136-28.11(a) reads as rewritten:

"(a) Design-Build Contracts Authorized. – Notwithstanding any other provision of law, the Board of Transportation may award contracts ~~for up to 25 projects~~ each fiscal year for construction of transportation projects on a design-build basis."

FLEXIBILITY TO SEEK LIMITED SPONSORSHIPS

SECTION 28.5.(a) G.S. 66-58 reads as rewritten:

"§ 66-58. Sale of merchandise or services by governmental units.

...

(b) The provisions of subsection (a) of this section shall not apply to:

...

(20) The Department of Transportation, or any ~~nonprofit~~ lessee of or other party contracting with the Department, for the sale of ~~books, crafts, gifts, and other tourism related items at visitor centers~~ travel-related goods and services at welcome centers, visitor centers, rest areas, and administrative facilities owned by the Department.

...

(c) The provisions of subsection (a) shall not prohibit:

...

(20) The Department of Transportation or any lessee of or contracting party with the Department from conducting activities related to privatization and operation of welcome centers, visitor centers, rest areas, and administrative

facilities or from entering into agreements for sponsorship of agency services.

...."

SECTION 28.5.(b) G.S. 136-18 reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

...

(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except (i) for materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii) for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Health and Human Services, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor and each day's use shall constitute a separate offense. Notwithstanding the provisions of this section, the Department of Transportation is authorized to contract for sponsorship of ferry welcome centers, Incident Management Assistance Patrols, welcome centers, visitor centers, and rest areas and to allow the contracting party to use the right-of-way for commercial purposes for the sale of travel-related goods at services in accordance with G.S. 136-89.56."

...

(39) To enter into partnership agreements with private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, and to plan, design, develop, acquire, construct, equip, maintain, and operate transportation infrastructure in this State. The Department is also authorized to enter into partnership agreements with private entities and authorized political subdivisions to finance the cost of acquiring, constructing, equipping, maintaining, and operating facilities, including ferry welcome centers, Incident Management Assistance Patrols, welcome centers, visitor centers, rest areas, and administrative offices. The Department is further authorized to enter into partnership agreements with private entities and authorized political subdivisions to finance the cost of providing sponsorship for State services. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. Any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to an agreement entered into under this section shall comply with the competitive bidding requirements of Article 2 of this Chapter.

...."

SECTION 28.5.(c) G.S. 136-89.56 reads as rewritten:

"**§ 136-89.56. Commercial enterprises.**

No commercial enterprises or activities shall be authorized or conducted by the Department of Transportation, any other State agency, or the governing body of any city or town, within or on the property acquired for or designated as a controlled-access facility, as defined in this Article, except for:

(1) ~~Materials displayed~~ The sale of goods and services by the Department, a lessee, or other service provider or contracting party at welcome ~~centers which~~ centers, visitor centers, rest areas, and other administrative offices shall be directly related to travel, accommodations, tourist-related activities, tourist-related services, and attractions. The Department of Transportation shall issue rules and may adopt guidelines and policies regulating the display and sale of these materials. These materials may contain advertisements for real estate; and

...."

SMALL CONSTRUCTION AND CONTINGENCY FUNDS

SECTION 28.6. Of the funds appropriated in this act to the Department of Transportation:

(1) Seven million dollars ($7,000,000) shall be allocated in each fiscal year for small construction projects recommended by the State Highway Administrator in consultation with the Chief Operating Officer and approved by the Secretary of the Department of Transportation. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for small construction projects.

(2) Twelve million dollars ($12,000,000) shall be allocated statewide in each fiscal year for rural or small urban highway improvements and related transportation enhancements to public roads and public facilities, industrial access roads, and spot safety projects, including pedestrian walkways that enhance highway safety. Projects funded pursuant to this subdivision shall be approved by the Secretary of Transportation.

None of these funds used for rural secondary road construction are subject to the county allocation formulas in G.S. 136-44.5(b) and (c).

These funds are not subject to G.S. 136-44.7.

The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to construction. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

ADJUST SECONDARY ROAD CONSTRUCTION AND SECONDARY ROAD MAINTENANCE

SECTION 28.7.(a) Notwithstanding G.S. 136-44.2A, secondary road construction and secondary road maintenance funds from the Highway Fund shall not increase over the amounts allocated in the fiscal year 2011-2012 and fiscal year 2012-2013 base budgets.

SECTION 28.7.(b) Notwithstanding G.S. 136-182, secondary road construction and secondary road maintenance funds from the Highway Trust Fund shall not increase over the amounts allocated in the fiscal year 2011-2012 and fiscal year 2012-2013 base budgets.

SYSTEM PRESERVATION FUNDS PREFERENCE FOR DEFICIENT BRIDGES

SECTION 28.8. The funds allocated to the system preservation program (Budget Code 84240-7839) for fiscal years 2011-2012 and 2012-2013 shall be used for bridge improvements on structurally deficient bridges.

INCREASE DOT PRIVATIZATION

SECTION 28.9. The Department of Transportation shall seek to increase the use of contracts to further privatize design and engineering work where practical and economical. In doing so, the Department of Transportation shall do the following:

(1) Identify State-funded professional service contracts of two hundred fifty thousand dollars ($250,000) or less that are likely to attract increased participation by Small Professional Services Firms and then direct the solicitation of applicable contracts to those firms.
(2) Expand the use of multiple contract awards for maintenance and repair projects.
(3) Increase the outsourcing of preliminary engineering projects to fifty percent (50%) of the total funds in the annual work plan.

STATE STREET-AID TO MUNICIPALITIES (POWELL BILL) ADJUSTMENTS

SECTION 28.10.(a) G.S. 136-41.1(a) reads as rewritten:

"(a) There is annually appropriated out of the State Highway Fund a sum equal to the net amount after refunds that was produced during the fiscal year by a one and three-fourths cents (1 3/4¢) tax on each gallon of motor fuel taxed under Article 36C of Chapter 105 of the General Statutes and on the equivalent amount of alternative fuel taxed under Article 36D of that Chapter. ~~The~~ One-half of the amount appropriated shall be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. The second one-half of the amount appropriated shall be allocated in cash on or before January 1 of each year to the cities and towns of the State in accordance with this section. In addition, as provided in G.S. 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the cities and towns of this State to be used for the same purposes and distributed in the same manner as the revenue appropriated to them under this section from the Highway Fund. Like the appropriation from the Highway Fund, the appropriation from the Highway Trust Fund shall be based on revenue collected during the fiscal year preceding the date the distribution is made.

...."

SECTION 28.10.(b) Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-41.2B. Eligibility for funds; municipalities with no road miles ineligible.**

No municipality shall be eligible to receive funds under G.S. 136-41.1 unless the municipality maintains public streets that (i) are within its jurisdiction and (ii) do not form a part of the State highway system."

SECTION 28.10.(c) Unexpended and unencumbered funds previously allocated to municipalities made ineligible to receive funds by subsection (b) of this section shall be reallocated to eligible municipalities in accordance with G.S. 136-41.1.

SECTION 28.10.(d) G.S. 136-41.3 reads as rewritten:

"**§ 136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.**

...

No funds allocated to municipalities pursuant to G.S. 136-41.1 and 136-41.2 shall be permitted to accumulate for a period greater than permitted by this section. Interest on accumulated funds shall be used only for the purposes permitted by the provisions of G.S. 136-41.3. ~~Any~~ Except as otherwise provided in this section, any municipality having accumulated an amount greater than the sum of the past 10 allocations made, shall have an amount equal to such excess deducted from the next allocation after receipt of the report required by this section. Such deductions shall be carried over and added to the amount to be allocated to municipalities for the following year. Notwithstanding the other provisions of this section, the Department shall adopt a policy to allow small municipalities to apply to the Department to be allowed to accumulate up to the sum of the past 20 allocations if a municipality's allocations are so small that the sum of the past 10 allocations would not be sufficient to accomplish the purposes of this section.

...."

STATE AID TO RAILROADS TRANSPARENCY

SECTION 28.12. G.S. 136-44.20(d) is repealed.

PROGRAM EVALUATION DIVISION TO STUDY NORTH CAROLINA RAILROAD

SECTION 28.12A. The Program Evaluation Division of the General Assembly shall conduct a comprehensive evaluation of the North Carolina Railroad Company, a North

Carolina corporation of which the State is the sole shareholder and which is a discretely reported component unit of the State as defined by the Governmental Accounting Standards Board. The evaluation shall address, at a minimum, the following issues:

(1) Whether the corporation is adhering to its stated corporate mission of maximizing the value of the corporation for the people of the State.

(2) What economic development benefits have been provided by the corporation and for what costs.

(3) An evaluation of the use of available cash by the corporation, including the purchase of real property used for investment purposes rather than paying dividends to the State.

(4) The approximate value of the corporation's assets, based on a market valuation rather than historic or book value of assets.

(5) The approximate value of the entire corporation as a going concern.

(6) The effectiveness of the provisions of Chapter 124 of the General Statutes to allow the State to exercise its shareholder rights and to provide effective shareholder oversight of the corporation.

(7) Whether the ownership of the corporation provides the State a reasonable return on its investment, attempting to consider both the tangible and intangible value provided by the corporation.

(8) Whether the corporation should be sold, transferred under the jurisdiction of the Department of Transportation or another State agency, or maintain its corporate structure.

(9) Whether the General Assembly should consider the possibility of repealing the corporate charter of the corporation by a special act, as allowed under Section 1 of Article VIII of the North Carolina Constitution.

For the purposes of this evaluation, the terms "State agency" or "agency" as used under Article 7C of Chapter 120 of the General Statutes shall include the North Carolina Railroad Company.

For the purposes of this evaluation, the Program Evaluation Division is hereby granted authority to exercise the State's shareholder right to inspect the corporate books and records of the North Carolina Railroad Company on behalf of the State.

The Program Evaluation Division may hire consultants to aid it in its evaluation, including experts in appraisal and valuation.

The Program Evaluation Division shall report the results of its study to the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Transportation Oversight Committee no later than May 1, 2012.

REPORT, CONSULTATION, AND APPROVAL OF RAIL PROJECTS

SECTION 28.15. G.S. 136-44.36 reads as rewritten:

"**§ 136-44.36. Department of Transportation designated as agency to administer federal and State railroad revitalization programs.**

(a) The General Assembly hereby designates the Department of Transportation as the agency of the State of North Carolina responsible for administering all State and federal railroad revitalization programs. The Department of Transportation is authorized to develop, and the Board of Transportation is authorized to adopt, a State railroad plan, and the Department of Transportation is authorized to do all things necessary under applicable State and federal legislation to properly administer State and federal railroad revitalization programs within the State. Such authority shall include, but shall not be limited to, the power to receive federal funds and distribute and expend federal and State funds for rail programs designed to cover the costs of acquiring, by purchase, lease or other manner as the department considers appropriate, a railroad line or other rail property to maintain existing or to provide future rail service; the costs of rehabilitating and improving rail property on railroad lines to the extent necessary to permit safe, adequate and efficient rail service on such lines; and the costs of constructing rail or rail related facilities for the purpose of improving the quality, efficiency and safety of rail service. The Department shall also have the authority to preserve railroad corridors for future railroad use and interim compatible uses and may lease such corridors for interim compatible uses. Such authority shall also include the power to receive and administer federal financial assistance without State financial participation to railroad companies to cover the costs of local rail service continuation payments, of rail line rehabilitation, and of rail line

construction as listed above. This Article shall not be construed to grant to the department the power or authority to operate directly any rail line or rail facilities.

(b) Notwithstanding subsection (a) of this section, the acceptance of federal funds by the Department of Transportation for rail programs shall be subject to the following:

(1) Report. – For any project under subsection (a) of this section, the Department of Transportation shall report the project details, including the amounts of federal funds and any State matching funds, as well as the expected annual maintenance and operational costs to the State of the project for the next 25 years, to the Joint Legislative Transportation Oversight Committee if the General Assembly is not in session, or to the House Appropriations Subcommittee on Transportation and the Senate Committee on Appropriations on Department of Transportation if the General Assembly is in session.

(2) Consultation. – If either the amount of State matching funds required by the federal grant or the amount of future annual maintenance and operational costs of the project are reasonably expected to exceed three million dollars ($3,000,000), then the Department shall not accept the federal funds prior to consultation with the Joint Legislative Transportation Oversight Committee if the General Assembly is not in session, or with the House Appropriations Subcommittee on Transportation and the Senate Committee on Appropriations on Department of Transportation if the General Assembly is in session. Failure of the Joint Legislative Transportation Oversight Committee, the House Appropriations Subcommittee on Transportation, or the Senate Committee on Appropriations on Department of Transportation to hold a meeting with the Department of Transportation within 60 days of a written request for a meeting from the Department of Transportation shall be deemed a waiver of consultation by the committee.

(3) Approval. – If either the amount of State matching funds required by the federal grant or the amount of future annual maintenance and operational costs of the project are reasonably expected to exceed twenty million dollars ($20,000,000), then the Department's acceptance of funds shall be subject to approval of the project by an act of the General Assembly. If 30 days have passed since consultation or the expiration of the consultation period under subdivision (2) of this subsection, then the inaction of the General Assembly, including the lack of an extra session to address the project, shall be deemed an approval of the project, and the Department may accept the funds without an act of the General Assembly.

For purposes of this subsection, the terms "State matching funds" and "annual maintenance and operational costs to the State" shall not include funds that may pass through the Department of Transportation but that originally came from a non-State source."

PROHIBIT RAIL DIVISION FROM PROVIDING CONVENIENCE ITEMS FREE OF CHARGE ON ALL PASSENGER RAIL SERVICE

SECTION 28.16. The Department of Transportation, Rail Division, shall not provide convenience items to passengers free of charge unless the items are donated to the State. These items include bottled or canned drink products, excluding water, newspapers, or other items of convenience. The Department of Transportation may charge a nominal fee for such items through vending machines or through other mechanisms.

STUDY MANNS HARBOR REPAIR AND PAINT SHOP

SECTION 28.16A. The Joint Legislative Transportation Oversight Committee shall study the issue of privatizing the ferry repair facilities and paint shop at Manns Harbor. As part of its analysis, the Joint Legislative Transportation Oversight Committee shall consider the cost of performing ferry repairs through a private corporation, potential operational savings from closing the Manns Harbor repair and paint shop facilities, the potential sale or lease price of the Manns Harbor facility, and the overall annual savings or costs from privatizing ferry repairs and paint operations. In order to conduct its study, the Joint Legislative Transportation Oversight Committee may employ outside consultants. The Joint Legislative Transportation

Oversight Committee shall submit its report to the General Assembly no later than May 25, 2012.

ELIMINATE AERONAUTICS COUNCIL, BICYCLE COMMITTEE, AND RAIL COUNCIL

SECTION 28.17.(a) The Aeronautics Council of the Department of Transportation is eliminated. G.S. 143B-356 and G.S. 143B-357 are repealed.

SECTION 28.17.(b) The North Carolina Bicycle Committee within the Department of Transportation is eliminated. G.S. 136-71.13 is repealed.

SECTION 28.17.(c) The North Carolina Rail Council of the Department of Transportation is eliminated. Part 9 of Article 8 of Chapter 143B of the General Statutes is repealed.

AVIATION DIVISION APPROPRIATION

SECTION 28.17A. Notwithstanding G.S. 136-16.4, the continuing aviation appropriation from the Highway Fund to the Department of Transportation shall be reduced as provided in this act.

FLEXIBLE USE OF FUNDS TO LEVERAGE FEDERAL FUNDS FOR RURAL PUBLIC TRANSPORTATION

SECTION 28.18. In order to ensure maximum receipts of funding and to facilitate the use of funds available to the Department, the Department of Transportation, Public Transportation Division, shall have the flexibility to transfer funding from the consolidated capital program of its rural funding programs for vehicles, technology, and facilities to the operating programs, based on the Department's ability to leverage all additional federal funds to meet the capital needs of rural transportation systems. This section applies only to fiscal years 2011-2012 and 2012-2013.

MAXIMIZE LEVERAGE OF FEDERAL PUBLIC TRANSPORTATION OPERATING AND CAPITAL FUNDS FOR LOCAL PUBLIC TRANSPORTATION SYSTEMS

SECTION 28.19. The Department of Transportation, Public Transportation Division, shall provide local public transportation systems with maximum flexibility to use State operating funds from the "urban and regional maintenance," "elderly and disabled," "work first and transportation employment," and "urban technology, human service transportation management, and rural general public" grant programs to leverage all eligible federal transit operating assistance funds. This section applies only to fiscal years 2011-2012 and 2012-2013.

STREAMLINE GRANT PROCESS AND CONSOLIDATE GRANTS FOR PUBLIC TRANSPORTATION

SECTION 28.20.(a) The Department of Transportation, Public Transportation Division, shall work with stakeholders to streamline the grant application process, determine levels for funding distributions, and make recommendations to the General Assembly to maximize the use of these grant funds. The Department of Transportation shall report these findings to the Joint Legislative Transportation Oversight Committee no later than March 1, 2012.

SECTION 28.20.(b) The Department of Transportation and the Office of State Budget and Management are directed to combine grant funding to the "elderly and disabled," "work first and transportation employment," and the human service transportation management and rural general public grant programs within the "urban technology, human service transportation management and rural general public" grant programs. The Highway Fund Budget Code 84210, Fund Code 7831, shall be changed to reflect these consolidations and the separation of the "urban technology, human service transportation management and rural general public" grant program. The grant categories and respective formulas shall remain unchanged. The Department shall determine an appropriate distribution for funds based upon the needs of the local governments.

Consolidating the funding sources should enable the Department to increase utilization of all available funds based on documented local needs, reduce program administration at the State and local levels, and increase flexibility for regional systems to apply and expend funds for multicounty transit needs.

SECTION 28.20.(c) Subsection (b) of this section becomes effective July 1, 2012.

STUDY REGIONAL CONSOLIDATION OF TRANSIT SYSTEMS

SECTION 28.21. The Department of Transportation, Public Transportation Division, is directed to study the feasibility and appropriateness of developing regional transit systems with the goals of (i) providing increased mobility between existing transit systems within one county and between counties, (ii) improving planning and coordination to better meet public demand, (iii) maximizing funding, and (iv) developing centralized professional staff that will create operational and administrative efficiencies. This study shall examine both (i) the consolidation of transit service planning and delivery based on regional travel patterns and (ii) the consolidation of single-county transit systems, where applicable. The Department of Transportation, Public Transportation Division, shall report the results of its study to the Joint Legislative Transportation Oversight Committee no later than March 1, 2012.

BLUE LINE EXTENSION AND RED LINE COMMUTER RAIL PROJECTS

SECTION 28.21A. The Department of Transportation shall not enter into any contracts for the construction, design, or planning of the LYNX Blue Line Extension/Northeast Corridor project or the LYNX Red Line/North Corridor Commuter Rail project if the contract requires the present or future commitment of any State funds.

FLEXIBLE USE OF FUNDS FOR DIVISION OF MOTOR VEHICLES FOR FISCAL YEARS 2011-2012 AND 2012-2013

SECTION 28.23. Of the funds appropriated in this act to the Department of Transportation, Division of Motor Vehicles:

(1) One hundred five thousand dollars ($105,000) may be used for contractual security services at the Division of Motor Vehicles Registration and International Registration Plan (IRP) office in the City of Charlotte.

(2) Two hundred twenty-five thousand thirty dollars ($225,030) may be used for the purpose of staffing the dedicated commercial drivers license skills testing sites located in the City of Lumberton and under construction in Iredell County. The Division is authorized to reclassify five existing, vacant positions for this purpose.

COMPETITIVE BIDDING OF LICENSE PLATE AGENCY CONTRACTS

SECTION 28.23A.(a) G.S. 20-63(h) reads as rewritten:

"(h) Commission Contracts for Issuance of Plates and Certificates. – All registration plates, registration certificates, and certificates of title issued by the Division, outside of those issued from the Charlotte and Raleigh offices of the Division and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of the plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina. The Division shall make a reasonable effort in every locality, except as noted above, to enter into a commission contract for the issuance of the plates and certificates and a record of these efforts shall be maintained in the Division. In the event the Division is unsuccessful in making commission contracts, it shall issue the plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates, and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of the distribution. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated.

Commission contracts entered into by the Division under this subsection prior to September 1, 2011, shall provide for the payment of compensation on a per transaction basis. The collection of the highway use tax shall be considered a separate transaction for which one dollar and twenty-seven cents ($1.27) compensation shall be paid. The performance at the same time of one or more of the remaining transactions listed in this subsection shall be considered a single transaction for which one dollar and forty-three cents ($1.43) compensation shall be paid.

A transaction is any of the following activities:

(1) Issuance of a registration plate, a registration card issued without collection of property taxes or fees under G.S. 105-330.5, a registration renewal sticker, or a certificate of title.
(2) Issuance of a handicapped placard or handicapped identification card.
(3) Acceptance of an application for a personalized registration plate.
(4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.
(5) Cancellation of a title because the vehicle has been junked.
(6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.
(7) Receipt of the civil penalty imposed by G.S. 20-311 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.
(8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.
(8a) Collection of civil penalties imposed for violations of G.S. 20-183.8A.
(8b) Sale of one or more inspection stickers in a single transaction to a licensed inspection station.
(9) Collection of the highway use tax.
(10) Acceptance of a temporary lien filing."

SECTION 28.23A.(b) G.S. 20-63(h1) reads as rewritten:

"(h1) Commission contracts entered into by the Division under this subsection prior to September 1, 2011, shall also provide for the payment of an additional one dollar ($1.00) of compensation to commission contract agents for any transaction assessed a fee under subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of G.S. 20-85."

SECTION 28.23A.(c) G.S. 20-63 is amended by adding a new subsection to read:

"(h3) Competitive Contract Bidding. – For contracts entered into after September 1, 2011, the Division shall advertise geographic regions for commission contracts. The Division shall award commission contracts through a competitive bidding process, to include bids on all transaction fees to be earned under the commission contract. The Division shall award the contract to the lowest responsible, responsive bidder, taking into consideration background checks, prior contractual relations with potential commission agents, the ability to satisfactorily perform commission contract, and other factors deemed appropriate by the Division and advertised as part of the bid solicitation."

CONFORMING CHANGES RELATED TO DMV AUDITORS AND CHANGES RELATED TO DMV HEARINGS

SECTION 28.23B.(a) G.S. 20-183.8F reads as rewritten:

"**§ 20-183.8F. Requirements for giving license holders notice of violations and for taking summary action.**

~~(a) Finding of Violation. – When an auditor of the Division finds that a violation has occurred that could result in the suspension or revocation of an inspection station license, a self-inspector license, a mechanic license, or the registration of a person engaged in the business of replacing windshields, the auditor must give the affected license holder written notice of the finding. The notice must be given within five business days after the completion of the investigation that resulted in the discovery of the violation. The notice must state the period of suspension or revocation that could apply to the violation and any monetary penalty that could apply to the violation. The notice must also inform the license holder of the right to a hearing if the Division charges the license holder with the violation.~~

(b) Notice of Charges. – When the Division decides to charge an inspection station, a self-inspector, or a ~~mechanic, or a person who is engaged in the business of replacing windshields~~mechanic with a violation that could result in the suspension or revocation of the person's license, ~~an auditor of~~ the Division must deliver a written statement of the charges to the affected license holder. The statement of charges must inform the license holder of ~~this right,~~the right to request a hearing, instruct the person on how to obtain a hearing, and inform the license holder of the effect of not requesting a hearing. The license holder has the right to a hearing before the license is suspended or revoked. ~~G.S. 20-183.8E~~G.S. 20-183.8G sets out the procedure for obtaining a hearing.

(c) Exception for Summary Action. – The right granted by subsection (b) of this section to have a hearing before a license is suspended or revoked does not apply if the Division summarily suspends or revokes the license after a judge has reviewed and authorized the proposed action. A license issued to an inspection station, a self-inspector, or a mechanic is a substantial property interest that cannot be summarily suspended or revoked without judicial review.

(d) A notice or statement prepared pursuant to this section or an order of the Division that is directed to a mechanic may be served on the mechanic by delivering a copy of the notice, statement, or order to the station or to the place of business of the self-inspector where the mechanic is employed. Delivery under this section to any person may be made via certified mail or by hand delivery."

SECTION 28.23B.(b) G.S. 20-183.8G(b) reads as rewritten:

"(b) Hearing After Statement of Charges. – When a license holder receives a statement of charges of a violation that could result in the suspension or revocation of the person's license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within ~~10 business~~30 days after receiving the request. The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing."

DEPARTMENT OF REVENUE TO REPORT ON MOTOR FUELS TAX AUDITOR AND INVESTIGATOR PERFORMANCE

SECTION 28.25. The Department of Revenue, Motor Fuels Division and the Tax Enforcement Division, shall report on the performance of auditor and investigator collection and enforcement activities as it relates to its administration of the motor fuels, alternative fuels, motor carrier, and inspection tax laws. The report will overview the Department's collection and enforcement activities and include recommendations to improve these efforts. This Department shall develop a methodology to compare performance by employees and include these results in the report. The Department of Revenue shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative Commission on Governmental Operations by March 1, 2012.

REDUCE ADMINISTRATIVE TRANSFERS AND REDIRECT LEAKING UNDERGROUND STORAGE TANK FUNDING TO HIGHWAY FUND FOR SYSTEM PRESERVATION

SECTION 28.25A.(a) Notwithstanding G.S. 119-18(b) or any other provision of law, the amount of allowable costs of administering Chapter 119 of the General Statutes for the Department of Agriculture and Consumer Services shall be reduced by a recurring two hundred sixty-one thousand eight hundred eighty-eight dollars ($261,888). Notwithstanding G.S. 119-18(b) or any other provision of law, the amount of allowable costs of administering Subchapter V of Chapter 105 of the General Statutes for the Department of Revenue shall be reduced by a recurring one million twenty-four thousand five hundred forty-four dollars ($1,024,544).

SECTION 28.25A.(b) G.S. 119-18(b) reads as rewritten:

"(b) Proceeds. – The proceeds of the inspection tax levied by this section shall be applied first to the costs of administering this Article and Subchapter V of Chapter 105 of the General Statutes. The remainder of the proceeds shall be credited on a monthly basis to ~~the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is at least five million dollars ($5,000,000), one-half of the remainder of the proceeds shall be credited to the Noncommercial Fund and one-half of the remainder of the proceeds shall be credited to the Commercial Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is less than this threshold~~

~~amount, all of the remainder of the proceeds shall be credited to the Noncommercial Fund.~~the Highway Fund to be used for system preservation under the Department of Transportation in the highway maintenance program."

STUDY REIMBURSEMENT PROCESS FOR DEPARTMENT OF CORRECTION LITTER PICKUP

SECTION 28.26. The Office of State Budget and Management, in consultation with the Department of Correction and Department of Transportation, shall study performance-based reimbursement as an alternative to the current funding mechanism for inmate litter pickup, which consists of a direct appropriation from the Department of Transportation's Highway Fund budget to the Department of Correction. Measures for an alternative funding mechanism may include reimbursements based on total mileage of highways cleaned, per hour reimbursements for non-litter pickup activities, or other factors, as appropriate.

The Office of State Budget and Management shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative Commission on Governmental Operations no later than March 1, 2012. It is intended that the report contain recommendations for reimbursement rates that have been agreed upon by the Department of Correction and the Department of Transportation and that the recommended rate structure will be included in the report. The report shall also include any statutory changes to be considered by the General Assembly in relation to this report.

STATE HIGHWAY PATROL FUNDS TRANSFER

SECTION 28.27.(a) In fiscal year 2011-2012, the State Treasurer shall transfer one hundred ninety-three million five hundred eighty-five thousand four hundred thirty-four dollars ($193,585,434) of the funds allocated to the Highway Fund under G.S. 105-449.125 to the General Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue.

SECTION 28.27.(b) In fiscal year 2012-2013, the State Treasurer shall transfer one hundred eighty-nine million eight hundred fifty-nine thousand five hundred seven dollars ($189,859,507) of the funds allocated to the Highway Fund under G.S. 105-449.125 to the General Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue.

SECTION 28.27.(c) The Office of State Budget and Management and the Office of State Controller shall discontinue use of the Crime Control and Public Safety – Highway Fund budget code (Budget Code 24960) and shall certify funds appropriated by this act for the State Highway Patrol under a separate fund code within the Crime Control and Public Safety – General Fund budget code (Budget Code 14900). The Department of Transportation, Office of State Budget and Management, and Office of State Controller shall certify and account for State matching funds for Motor Carrier Safety Assistance Program grants, federal funds, and other receipts budgeted for State Highway Patrol programs, as necessary.

SECTION 28.27.(d) G.S. 20-194 reads as rewritten:

"**§ 20-194. ~~Expense of administration; defense~~Defense of members and other State law-enforcement officers in civil actions; payment of judgments.**

~~(a) All expenses incurred in carrying out the provisions of this Article shall be paid out of the highway fund.~~

...."

STATE HIGHWAY PATROL POSITIONS AND MANAGEMENT FLEXIBILITY

SECTION 28.28.(a) The Administrative Services Section of the State Highway Patrol is hereby eliminated. The Secretary of the Department of Crime Control and Public Safety shall consolidate remaining Administrative Services Section positions and organizational units with other functions of the Department.

SECTION 28.28.(b) The following State Highway Patrol positions are hereby eliminated:

Position ID	Position Title
60084611	Program Assistant V

60084615	Attorney
60085385	Sergeant
60084952	First Sergeant
60085315	W/A First Sergeant
60084628	Assessment Analyst
60084772	Office Assistant
60084779	Budget Analyst
60085953	Major
60084998	First Sergeant
60084947	Captain
60085945	W/A Captain
60085302	Lieutenant
60084755	Office Assistant
60084858	Office Assistant
60084686	Deputy Secretary

SECTION 28.28.(c) In addition to the other budgetary reductions required by this act, the Department of Crime Control and Public Safety, State Highway Patrol, shall have management flexibility to achieve savings in the Patrol's operation of five million five hundred eighty-nine thousand five hundred ninety-two dollars ($5,589,592), recurring, in fiscal year 2011-2012 and eight million seven hundred twenty-two thousand eight hundred ninety-two dollars ($8,722,892), recurring, in fiscal year 2012-2013. The Department of Crime Control and Public Safety, State Highway Patrol, is authorized to eliminate positions to achieve this budgetary reduction but is encouraged to find efficiencies and savings elsewhere in the Patrol's administrative structure. Additionally, the Department of Crime Control and Public Safety, State Highway Patrol, may eliminate filled positions but shall not eliminate sworn law enforcement officer positions assigned to districts for the purposes of traffic and commercial motor vehicle enforcement, unless the State Highway Patrol has first achieved twenty-five percent (25%) of the requisite savings elsewhere in the operation of the Patrol including through staffing reductions in its administrative structure and areas other than district-level enforcement operations. If the State Highway Patrol must eliminate district-level enforcement positions to meet the savings required by this section, then the Patrol shall maintain balanced law enforcement coverage among the troops and is authorized to move trooper positions from one troop to another to maintain balanced coverage.

SECTION 28.28.(d) The Commander of the State Highway Patrol shall report on the number of positions eliminated for fiscal year 2011-2012. The report shall identify the position number and type; assignment area or organizational unit; whether the position was filled or vacant; personnel savings achieved; and any severance paid. The report shall also include alternatives considered to the implemented reductions in force. The Commander shall submit the report to the House of Representatives Appropriations Subcommittee on Justice and Public Safety, the Senate Appropriations Committee on Justice and Public Safety, and the Joint Legislative Crime Control and Public Safety Oversight Committee no later than March 1, 2012.

ADDITIONAL HIGHWAY TRUST FUND MONEY FOR MOBILITY FUND; VISITOR CENTERS FUNDING

SECTION 28.30.(a) G.S. 20-85(a1), as amended by Section 31.11 of this act, reads as rewritten:

"(a1) One dollar ($1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of this section shall be credited to the North Carolina Highway Fund. The Division shall use the fees derived from transactions with the Division for technology improvements. The Division shall use the fees derived from transactions with commission contract agents for the payment of compensation to commission contract agents. An additional fifty cents ($.50) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited to the Mercury Switch Removal Account in the Department of Environment and Natural Resources. An additional fifty cents (50¢) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited to the Mobility Fund."

SECTION 28.30.(b) Notwithstanding G.S. 20-85(a1), as amended by subsection (a) of this section, for fiscal year 2011-2012, the first four hundred thousand dollars ($400,000) collected of the additional fifty cents (50¢) of the transaction fee that would be credited to the

Mobility Fund under G.S. 20-85(a1), as amended by subsection (a) of this section, shall instead be credited to the Reserve for Visitor Centers in the Highway Fund.

SECTION 28.30.(c) Notwithstanding G.S. 20-79.7(c)(2), for fiscal year 2012-2013, the annual appropriation under G.S. 20-79.7(c)(2) shall instead be appropriated to the Highway Fund.

MAINTAIN CURRENT LEVEL OF ADMINISTRATIVE FUNDING FROM HIGHWAY TRUST FUND

SECTION 28.31. Notwithstanding G.S. 136-176(b), the amount of allowable expenses to administer the Highway Trust Fund shall not increase over the amounts allocated in the fiscal year 2011-2012 and fiscal year 2012-2013 base budgets.

TRANSFER MID-CURRITUCK BRIDGE FUNDING TO GENERAL FUND TO PURCHASE SCHOOL BUSES IN FY 2011-2012 AND TO THE MOBILITY FUND; AND TRANSFER GARDEN PARKWAY FUNDING TO URBAN LOOPS PROGRAM

SECTION 28.32.(a) Any funds appropriated to the North Carolina Turnpike Authority under G.S. 136-176(b2) to cover debt service or related financing costs for the Mid-Currituck Bridge project and that remain unencumbered at the end of fiscal year 2010-2011 are hereby transferred to the General Fund for the purpose of replacing school buses for local school districts. Notwithstanding G.S. 105-187.9(c), as amended by subsection (e) of this section, in fiscal year 2011-2012 the amount to be transferred under G.S. 105-187.9(c) to the Mobility Fund shall be reduced by the sum of five million two hundred twenty-three thousand six hundred forty-two dollars ($5,223,642), and that amount shall instead be transferred to the General Fund for the purpose of replacing school buses for local school districts.

SECTION 28.32.(b) Any funds appropriated to the North Carolina Turnpike Authority under G.S. 136-176(b2) to cover debt service or related financing costs for the Garden Parkway project and that remain unencumbered at the end of fiscal year 2010-2011 are hereby transferred to the Highway Trust Fund to be used for urban loop projects.

SECTION 28.32.(c) The amendment to G.S. 105-187.9(c) made in Section 28.7(h) of S.L. 2010-31 is repealed. Sections 28.7(j) and 28.7(k) of S.L. 2010-31 are repealed.

SECTION 28.32.(d) Section 28.7(l) of S.L. 2010-31 reads as rewritten:

"**SECTION 28.7.(l)** Subsections (f) and (g) of this section become effective July 1, 2011. Subsection (h) of this section becomes effective July 1, 2012. ~~Subsections (i), (j), and (k)~~ Subsection (i) of this section ~~become~~ becomes effective July 1, 2013. The remainder of this section becomes effective July 1, 2010."

SECTION 28.32.(e) G.S. 105-187.9(c) reads as rewritten:

"(c) Mobility Fund Transfer. – In each fiscal year, the State Treasurer shall transfer ~~thirty-one million dollars ($31,000,000)~~ forty-six million dollars ($46,000,000) from the taxes deposited in the Trust Fund to the Mobility Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue."

SECTION 28.32.(f) Effective July 1, 2012, G.S. 105-187.9(c), as amended by subsection (e) of this section, reads as rewritten:

"(c) Mobility Fund Transfer. – In each fiscal year, the State Treasurer shall transfer ~~forty-six million dollars ($46,000,000)~~ sixty million dollars ($60,000,000) from the taxes deposited in the Trust Fund to the Mobility Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue."

SECTION 28.32.(g) Effective July 1, 2013, G.S. 105-187.9(c), as amended by subsection (d) of this section, reads as rewritten:

"(c) Mobility Fund Transfer. – In each fiscal year, the State Treasurer shall transfer ~~sixty million dollars ($60,000,000)~~ eighty-six million dollars ($86,000,000) from the taxes deposited in the Trust Fund to the Mobility Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by

transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue."

SECTION 28.32.(h) G.S. 136-89.183A is repealed.

SECTION 28.32.(i) G.S. 136-176(b) reads as rewritten:

"(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four and eight-tenths percent (4.8%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section may be used each fiscal year by the Department for expenses to administer the Trust Fund. Operation and project development costs of the North Carolina Turnpike Authority are eligible administrative expenses under this subsection. Any funds allocated to the Authority pursuant to this subsection shall be repaid by the Authority from its toll revenue as soon as possible, subject to any restrictions included in the agreements entered into by the Authority in connection with the issuance of the Authority's revenue bonds. Beginning one year after the Authority begins collecting tolls on a completed Turnpike Project, interest shall accrue on any unpaid balance owed to the Highway Trust Fund at a rate equal to the State Treasurer's average annual yield on its investment of Highway Trust Fund funds pursuant to G.S. 147-6.1. Interest earned on the unpaid balance shall be deposited in the Highway Trust Fund upon repayment. The sum up to the amount anticipated to be necessary to meet the State matching funds requirements to receive federal-aid highway trust funds for the next fiscal year may be set aside for that purpose. The sum of thirty-five million dollars ($35,000,000) shall be allocated and used for urban loop projects. The rest of the funds in the Trust Fund shall be allocated and used as follows:

(1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct projects on segments or corridors of the Intrastate System as described in G.S. 136-178 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects.

(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops.

(3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction.

The Department must administer funds allocated under subdivisions (1), (2), and (4) of this subsection in a manner that ensures that sufficient funds are available to make the debt service payments on bonds issued under the State Highway Bond Act of 1996 as they become due."

SECTION 28.32.(j) G.S. 136-176(b2), as amended by Section 28.7(g) of S.L. 2010-31, reads as rewritten:

"(b2) There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of ~~ninety-nine million dollars ($99,000,000).~~ forty-nine million dollars ($49,000,000). Of the amount allocated by this subsection, twenty-five million dollars ($25,000,000) shall be used to pay debt service or related financing costs and expenses on revenue bonds or notes issued for the construction of the Triangle ~~Expressway,~~ Expressway and twenty-four million dollars ($24,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Monroe ~~Connector/Bypass, fifteen million dollars ($15,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Mid-Currituck Bridge, and thirty-five million dollars ($35,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Garden Parkway.~~ Connector/Bypass. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the

Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations made in this subsection at any time to decrease or eliminate the amount annually appropriated to the Authority. Funds transferred from the Highway Trust Fund to the Authority pursuant to this subsection are not subject to the equity formula in G.S. 136-17.2A."

SECTION 28.32.(k) G.S. 136-187(2) reads as rewritten:

"(2) To study, plan, develop, and undertake preliminary design work on up to ~~nine~~ six Turnpike Projects. At the conclusion of these activities, the Turnpike Authority is authorized to design, establish, purchase, construct, operate, and maintain the following projects:

a. Triangle Expressway, including segments also known as N.C. 540, Triangle Parkway, ~~and~~ Western Wake Freeway in Wake and Durham ~~Counties.~~ Counties, and Southeast Extension in Wake and Johnston Counties.

~~b. Gaston East-West Connector, also known as the Garden Parkway.~~

c. Monroe Connector/Bypass.

d. Cape Fear Skyway.

~~e. A bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia, pursuant to G.S. 136-89.183A.~~

f. Repealed by Session Laws 2008-225, s. 4, effective August 17, 2008.

Any other project proposed by the Authority in addition to the projects listed in this subdivision must be approved by the General Assembly prior to construction.

A Turnpike Project selected for construction by the Turnpike Authority shall be included in any applicable locally adopted comprehensive transportation plans and shall be shown in the current State Transportation Improvement Plan prior to the letting of a contract for the Turnpike Project."

MOBILITY FUND PROJECT SELECTION CRITERIA ADJUSTMENT

SECTION 28.33.(a) Section 28.7(b) of S.L. 2010-31, as rewritten by Section 8.2 of S.L. 2010-123, reads as rewritten:

"**SECTION 28.7.(b)** The Department of Transportation shall develop selection criteria under G.S. 136-188, as enacted by this act, and shall report to the Joint Legislative Transportation Oversight Committee on its development of the selection criteria. A preliminary report on the selection criteria for projects is due to the Joint Legislative Transportation Oversight Committee by October 1, 2010. A final report is due to the Joint Legislative Transportation Oversight Committee by December 15, 2010. ~~When developing the project criteria and selection process, the Department shall give preferential consideration to projects qualified to receive State grants from the Congestion Relief and Intermodal Transportation 21st Century Fund under Article 19 of Chapter 136 of the General Statutes. When developing the project criteria and selection process, the Department shall involve the public and other stakeholders, including, but not limited to, the North Carolina Association of Metropolitan Planning Organizations, the North Carolina Association of Rural Planning Organizations, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the North Carolina Metropolitan Mayors Coalition, and the North Carolina Council of Regional Governments.~~"

SECTION 28.33.(b) The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee on its development of the selection criteria, taking into account the modification by subsection (a) of this section, by October 15, 2011.

REMOVE URBAN LOOP PROJECTS FROM STATUTE AND ALLOW DEPARTMENT OF TRANSPORTATION TO DEFINE AND PRIORITIZE URBAN LOOP PROJECTS

SECTION 28.34.(a) G.S. 136-180 reads as rewritten:

"**§ 136-180. Urban loops.**

(a) Funds allocated from the Trust Fund for urban loops may be used only for ~~the following urban loops:~~urban loops as designated and prioritized by the Department of Transportation.

~~Loop~~	~~Description~~	~~Affected Counties~~
~~Asheville Western Loop~~	~~Multilane facility on new location from I-26 west of Asheville to US-19/23 north of Asheville for the purpose of connecting these roads. The funds may be used to improve existing corridors.~~	~~Buncombe~~
~~Charlotte Outer Loop~~	~~Multilane facility encircling City of Charlotte including 6-laning of the portion from Johnston Road/US 521 south to I-77 south of Charlotte including widening, resurface, and interchange~~	~~Mecklenburg~~
~~Durham Northern Loop~~	~~The projects listed below are eligible for funding under this section as part of the Durham Northern Loop. The priorities for planning and constructing these projects will be established by mutual agreement of the Metropolitan Planning Organization (MPO) and the Department of Transportation through the federally mandated Transportation Improvement Program development process. The cross sections for these projects will be established by mutual agreement of the MPO and the Department of Transportation through the State and federal environmental review process. (1) East end connector, from N.C. 147 to U.S. 70 East. (2) U.S. 70, from Lynn Rd. to the Northern Durham Parkway. (3) I-85, from U.S. 70 to Red Mill Rd. (4) Northern Durham Parkway, Section B, from Old Oxford Rd. to I-85. (5) Northern Durham Parkway, Section A, from I-85 to I-540. (6) Northern Durham Parkway, Section C, from Old Oxford Rd. to Roxboro Rd. (7) Roxboro Rd. from Duke St. to Goodwin Rd.~~	~~Durham, Wake~~
~~Fayetteville Western Outer Loop~~	~~Multilane facility on new location from US 401 north of Fayetteville to I-95~~	~~Cumberland~~

	~~south of Hope Mills~~	
~~Gastonia Loop~~	~~Multilane facility known as the Garden Parkway, on a new location beginning at I-485, extending west across southern Gaston County to I-85, and continuing north to US 321~~	~~Gaston, Mecklenburg~~
~~Greensboro Loop~~	~~Multilane facility on new location encircling City of Greensboro including interchanges with Cone Boulevard Extension and Lewiston-Fleming Road Extension~~	~~Guilford~~
~~Greenville Loop~~	~~Multilane extension of the Greenville Loop from US 264 west of Greenville to NC 11 south of Winterville~~	~~Pitt~~
~~Raleigh Outer Loop~~	~~Multilane facility on new location encircling City of Raleigh~~	~~Wake, Durham, Johnston~~
~~Wilmington Bypass~~	~~Multilane facility on new location from US 17 northeast of Wilmington to US 421 in southern Wilmington, continuing from US 421 in southern Wilmington northeast along Independence Blvd., and extending to Martin Luther King, Jr. Parkway, and including the Blue Clay Road interchange~~	~~New Hanover~~
~~Winston-Salem Northbelt~~	~~Multilane facility on new location from I-40 west of Winston-Salem northerly to US 311/Future I-74 in eastern Forsyth County~~	~~Forsyth~~

~~(b) The Board of Transportation may, by official resolution, accept a new interstate or freeway as the revised termini of an urban loop described in subsection (a) of this section, and the revised project shall be eligible for funding with funds described in G.S. 136-176(b)(2) if the following conditions are met:~~

~~(1) The Department of Transportation has constructed a new interstate or freeway facility since 1989 and has changed the official route designation from the termini described in subsection (a) of this section to the new facility.~~

~~(2) The Board of Transportation finds that the purposes of the urban loop facility, specifically including reduced congestion and high speed, safe, regional through travel service, would be enhanced by the action.~~"

SECTION 28.34.(b) In removing the statutory listing of urban loop projects, it is not the intent of the General Assembly to interfere with the acceleration of the following urban loop projects announced in March 2011:

(1) Charlotte I-485 widening.

(2) Greensboro Western Loop, Part C (Bryan Boulevard to Battleground Avenue) and Part D (Battleground Avenue to Lawndale Drive).

(3) Greensboro Eastern Loop, Part B (US 70 to US 29).

(4) Wilmington US 17 Bypass, Part B (US 74/76 to US 421).

MODIFY DEPARTMENT OF TRANSPORTATION REPORTING REQUIREMENTS

SECTION 28.35.(a) G.S. 136-12(a1), 136-12.2, 136-89.193(e), 136-93.1(g), and 136-125.2 are repealed.

SECTION 28.35.(b) G.S. 136-44.2 reads as rewritten:

"**§ 136-44.2. Budget and appropriations.**

...

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. ~~No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first reported to the Joint Legislative Commission on Governmental Operations.~~ For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

...."

SECTION 28.35.(c) G.S. 136-89.182 reads as rewritten:

"**§ 136-89.182. North Carolina Turnpike Authority.**

...

(j) Bylaws. – The Authority Board shall adopt, change, or amend bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational, staffing, and administrative matters as the Authority Board may determine. Any bylaws, or subsequent changes or amendments to the bylaws, shall be ~~submitted to the Board of Transportation and the Joint Legislative Transportation Oversight Committee for review and comment at least 45 days prior to adoption by the Authority Board.~~ included in the Annual Report as required by G.S. 136-89.193.

(k) Executive Director and Administrative Employees. – The Authority Board shall appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its pleasure. The Executive Director shall be the Authority's chief administrative officer and shall be responsible for the daily administration of the toll roads and bridges constructed, maintained, or operated pursuant to this Article. The Executive Director or his designee shall appoint, employ, dismiss, and, within the limits approved by the Authority Board, fix the compensation of administrative employees as the Executive Director deems necessary to carry out this Article. ~~The Authority shall report the hiring of all administrative employees to the Joint Legislative Transportation Oversight Committee within 30 days of the date of employment.~~

...."

COST-EFFICIENT TIRE RETREADS ON STATE VEHICLES AND SCHOOL BUSES

SECTION 28.36.(a) Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read as follows:

"**§ 143-63.2. Purchase of tires for State vehicles; repair or refurbishment of tires for State vehicles.**

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

(1) State vehicle. – Any vehicle owned, rented, or leased by the State, or an institution, department, or agency of the State, that is driven on a public road consistently at speeds greater than 30 miles per hour.

(2) Critical tire information. – Tire brand name, tire line name, tire identification numbers, load and pressure markings, tire size designation, service descriptions such as load and speed ratings, and other information and specifications placed on the original tire sidewall by the original tire manufacturer.

(b) Forensic Tire Standards. – In order to preserve critical tire information, the Secretary of Administration and any institution, department, or agency of the State shall only procure and install tires for State vehicles that possess the original, unaltered, and uncovered tire sidewall. Furthermore, neither the Secretary of Administration nor any institution, department, or agency of the State shall execute a contract for the repair or refurbishment of tires for State vehicles that provides for the removal, covering, or other alteration in any manner of the critical tire information contained on the original tire sidewall.

(c) Tire Purchase and Contract Standards Applicability. – All contracts for the purchase, repair, or refurbishment of tires for State vehicles, or contracts for the purchase of products or services related to the repair or refurbishment of tires for State vehicles, executed on or after the date this section becomes effective shall comply with the provisions of this section.

(d) Exemption. – Notwithstanding the provisions of this section, the State or any institution, department, or agency of the State that owns or has a legally binding contract in place for the future purchase of tires having altered or covered sidewalls prior to the date that this section becomes effective shall perform its existing contractual obligations related thereto and may continue to use those tires on State vehicles for the useful life of the retreaded tire."

SECTION 28.36.(b) Article 17 of Chapter 115C of the General Statutes is amended by adding a new section to read as follows:

"**§ 115C-249.1. Purchase of tires for school buses; repair or refurbishment of tires for school buses.**

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

(1) Critical tire information. – Tire brand name, tire line name, tire identification numbers, load and pressure markings, tire size designation, service descriptions such as load and speed ratings, and other information and specifications placed on the original tire sidewall by the original tire manufacturer.

(2) School bus. – A vehicle as defined in G.S. 20-4.01(27)d3. and G.S. 20-4.01(27)d4. that is owned, rented, or leased by a local board of education.

(b) Forensic Tire Standards. – In order to preserve critical tire information, a local board of education shall procure and install for school buses only tires that possess the original, unaltered, and uncovered tire sidewall. Furthermore, a local board of education shall not execute a contract for the repair or refurbishment of tires for school buses that provides for the removal, covering, or other alteration in any manner of the critical tire information contained on the original tire sidewall.

(c) Tire Purchase and Contract Standards Applicability. – All contracts for the purchase, repair, or refurbishment of tires for school buses, or contracts for the purchase of products or services related to the repair or refurbishment of tires for school buses, executed on or after the date this section becomes effective shall comply with the provisions of this section.

(d) Exemption. – Notwithstanding the provisions of this section, a local board of education that owns or has a legally binding contract in place for the future purchase of tires having altered or covered sidewalls prior to the date that this section becomes effective shall perform its existing contractual obligations related thereto and may continue to use those tires on school buses for the useful life of the retreaded tire."

DRIVER EDUCATION REFORM

SECTION 28.37.(a) G.S. 115C-215 reads as rewritten:

"**§ 115C-215. ~~Instruction in driver training and safety education.~~Administration of driver education program by the Department of Public Instruction.**

~~There shall be organized and administered under the general supervision of the Superintendent of Public Instruction a program of driver training and safety education in the public schools of this State, said courses to be noncredit courses taught by instructors who meet the requirements established by the State Board of Education. Instructors shall not be required to hold teacher certificates.~~

(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a standardized program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for this purpose all funds appropriated to it for this purpose and may use all other funds that become available for its use for this purpose.

(b) The driver education curriculum shall include the following:

(1) Instruction on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the "international symbol of accessibility" and other symbols and devices as provided in Article 2A of Chapter 20 of the General Statutes.

(2) At least six hours of instruction on the offense of driving while impaired and related subjects.

(3) At least six hours of actual driving experience. To the extent practicable, this experience may include at least one hour of instruction on the techniques of defensive driving.

(4) At least one hour of motorcycle safety awareness training.

(c) The State Board of Education shall establish and implement a strategic plan for the driver education program. At a minimum, the strategic plan shall consist of goals and performance indicators, including the number of program participants as compared to the number of persons projected to be eligible to participate in the program, the implementation of a standard curriculum for the program, expenditures for the program, and the success rate of program participants in receiving a drivers license as reported by the Division of Motor Vehicles. The strategic plan shall also outline specific roles and duties of an advisory committee consisting of employees of the Division of Motor Vehicles and the Department of Public Instruction and other stakeholders in driver education.

(d) The State Board of Education shall adopt a salary range for driver education instructors who are public school employees and who are not licensed teachers.

Driver education instructors who are public school employees and who are licensed teachers shall be paid on the teacher salary schedule. A day of employment for driver education instructors who hold teacher certificates shall be the same number of hours required of all regular classroom teachers as established by the local board of education.

(e) The State Board of Education shall adopt rules to permit local boards of education to enter contracts with public or private entities to provide a program of driver education at public high schools. All driver education instructors shall meet the requirements established by the State Board of Education; provided, however, driver education instructors shall not be required to hold teacher certificates."

SECTION 28.37.(b) G.S. 115C-216 reads as rewritten:

"**§ 115C-216. Boards of education required to provide courses in operation of motor vehicles.**

(a) Course of Training and Instruction Required in Public High Schools. – ~~The State Board of Education and local~~ Local boards of education ~~are required to provide as a part of the program of the public high schools in this State a course of training and instruction in the operation of motor vehicles, in accordance with G.S. 20-88.1.~~shall offer noncredit driver education courses in high schools using the standardized curriculum provided by the Department of Public Instruction.

(b) Inclusion of Expense in Budget. – The local boards of education ~~of every local school administrative unit are hereby authorized to~~shall include as an item of instructional service and as a part of the current expense fund of the budget of the ~~several~~ high schools under their supervision, the expense necessary ~~to install and maintain such a course of training and instructing eligible persons in such schools in the operation of motor vehicles.~~to offer the driver education course.

(c) to (f) Repealed by Session Laws 1991, c. 689, s. 32(c)."

SECTION 28.37.(c) G.S. 20-88.1 reads as rewritten:

"**§ 20-88.1. Driver education.**

~~(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds that become available for its use for said purpose.~~

~~The driver education program established pursuant to this section must include the following:~~

~~(1) Instruction on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the "international symbol of accessibility" and other symbols and devices as provided in Article 2A of this Chapter.~~

~~(2) At least six hours of instruction on the offense of driving while impaired and related subjects.~~

~~(3) At least six hours of actual driving experience. To the extent practicable, this experience may include at least one hour of instruction on the techniques of defensive driving.~~

~~(b) The State Board of Education shall adopt a salary range for driver education instructors who are public school employees and who do not hold teacher certificates.~~

~~Driver education instructors who are public school employees and who hold teacher certificates shall be paid on the teacher salary schedule. A day of employment for driver education instructors who hold teacher certificates shall be the same number of hours required of all regular classroom teachers as established by the local board of education.~~

~~(b1) The State Board of Education shall adopt rules to permit local boards of education to enter contracts with public or private entities to provide a program of driver education at public high schools. All driver education instructors shall meet the requirements established by the State Board of Education; provided, however, driver education instructors shall not be required to hold teacher certificates.~~

(c) All expenses incurred by the State in carrying out the provisions of ~~this section~~the driver education program administered by the Department of Public Instruction in accordance with G.S. 115C-215 shall be paid out of the Highway Fund.

(d) The Division shall prepare a driver license handbook that explains the traffic laws of the State and shall periodically revise the handbook to reflect changes in these laws. At the request of the Department of ~~Education,~~ Public Instruction, the Division shall provide free copies of the handbook to that Department for use in the program of driver education offered at public high schools."

SECTION 28.37.(d) G.S. 20-11(b) reads as rewritten:

"(b) Level 1. – A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in ~~G.S. 20-88.1~~ G.S. 115C-215 or a course of driver instruction at a licensed commercial driver training school.

(2) Passes a written test administered by the Division.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent."

SECTION 28.37.(e) G.S. 20-322(b) reads as rewritten:

"(b) Regulations adopted by the Commissioner shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond or other security in such sum and with such provisions as the Commissioner deems necessary to protect adequately the interests of the public, and such other matters as the Commissioner may prescribe. A driver education course offered to prepare an individual for a limited learner's permit or another provisional license must meet the requirements set in ~~G.S. 20-88.1~~ G.S. 115C-215 for the program of driver education offered in the public schools."

SECTION 28.37.(f) The State Board of Education shall report to the Joint Legislative Program Evaluation Oversight Committee by July 15, 2011, on the status of the implementation of Section 7.12 of S.L. 2010-31, which mandates the creation of a standard curriculum to be used for the driver education program in the Department of Public Instruction.

SECTION 28.37.(g) For the 2011-2012 school year, no State funds shall be used for driver education programs that do not use the standard driver education curriculum created in accordance with Section 7.12 of S.L. 2010-31.

SECTION 28.37.(h) The State Board of Education shall establish a pilot program to deliver driver education by electronic means. At least five local school administrative units shall participate in the pilot program. Funds appropriated for driver education shall be used to implement the pilot program. The State Board shall report on the implementation of the pilot program to the Joint Legislative Education Oversight Committee and the Joint Legislative

Program Evaluation Oversight Committee by June 15, 2012. The report shall include the cost per student of delivering the instruction and the success rate of program participants in receiving a drivers license.

SECTION 28.37.(i) The State Board of Education shall report to the Joint Legislative Education Oversight Committee and to the Joint Legislative Program Evaluation Oversight Committee by June 15, 2012, on the following:

(1) The most cost-effective method of delivering driver education in the short- and long-term. In making this determination, the State Board of Education shall consider the results of the pilot program implemented pursuant to Section 5 of this act.

(2) The strategic plan adopted by the State Board of Education in accordance with G.S. 115C-215.

PART XXIX. SALARIES AND BENEFITS

GOVERNOR AND COUNCIL OF STATE

SECTION 29.1.(a) Effective for the 2011-2013 fiscal biennium, the salary of the Governor set by G.S. 147-11(a) in the amount of one hundred thirty-nine thousand five hundred ninety dollars ($139,590) annually, payable monthly, shall remain unchanged.

SECTION 29.1.(b) Effective for the 2011-2013 fiscal biennium, the annual salaries for the members of the Council of State, payable monthly, for the 2011-2013 fiscal biennium shall remain unchanged as follows:

Council of State	Annual Salary
Lieutenant Governor	$123,198
Attorney General	123,198
Secretary of State	123,198
State Treasurer	123,198
State Auditor	123,198
Superintendent of Public Instruction	123,198
Agriculture Commissioner	123,198
Insurance Commissioner	123,198
Labor Commissioner	123,198

NONELECTED DEPARTMENT HEAD

SECTION 29.2.(a) Effective for the 2011-2013 fiscal biennium, the salaries set by G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments remain unchanged as follows:

Nonelected Department Heads	Annual Salary
Secretary of Administration	$120,363
Secretary of Correction	120,363
Secretary of Crime Control and Public Safety	120,363
Secretary of Cultural Resources	120,363
Secretary of Commerce	120,363
Secretary of Environment and Natural Resources	120,363
Secretary of Health and Human Services	120,363
Secretary of Juvenile Justice and Delinquency Prevention	120,363
Secretary of Revenue	120,363
Secretary of Transportation	120,363.

SECTION 29.2.(b) Effective January 1, 2012, subsection (a) of this section reads as rewritten:

"**SECTION 29.2.(a)** Effective for the 2011-2013 fiscal biennium, the salaries set by G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments remain unchanged as follows:

Nonelected Department Heads	Annual Salary
Secretary of Administration	$120,363

~~Secretary of Correction~~	~~120,363~~
~~Secretary of Crime Control and Public Safety~~	~~120,363~~
Secretary of Cultural Resources	120,363
Secretary of Commerce	120,363
Secretary of Environment and Natural Resources	120,363
Secretary of Health and Human Services	120,363
~~Secretary of Juvenile Justice and Delinquency Prevention~~	~~120,363~~
Secretary of Public Safety	120,363
Secretary of Revenue	120,363
Secretary of Transportation	120,363".

CERTAIN EXECUTIVE BRANCH OFFICIALS

SECTION 29.3. Effective for the 2011-2013 fiscal biennium, the annual salaries, payable monthly, for the following executive branch officials shall remain unchanged as follows:

Executive Branch Officials	Annual Salary
Chairman, Alcoholic Beverage Control Commission	$109,553
State Controller	153,319
Commissioner of Motor Vehicles	109,553
Commissioner of Banks	123,198
Chairman, Employment Security Commission	120,363
State Personnel Director	120,363
Chairman, Parole Commission	100,035
Members of the Parole Commission	46,178
Chairman, Utilities Commission	137,203
Members of the Utilities Commission	123,198
Executive Director, Agency for Public Telecommunications	92,356
Director, Museum of Art	112,256
Executive Director, North Carolina Agricultural Finance Authority	106,635
State Chief Information Officer	153,227

JUDICIAL BRANCH

SECTION 29.4.(a) Effective for the 2011-2013 fiscal biennium, the annual salaries, payable monthly, for specified judicial branch officials shall remain unchanged as follows:

Judicial Branch Officials	Annual Salary
Chief Justice, Supreme Court	$140,932
Associate Justice, Supreme Court	137,249
Chief Judge, Court of Appeals	135,061
Judge, Court of Appeals	131,531
Judge, Senior Regular Resident Superior Court	127,957
Judge, Superior Court	124,382
Chief Judge, District Court	112,946
Judge, District Court	109,372
District Attorney	119,305
Administrative Officer of the Courts	126,738
Assistant Administrative Officer of the Courts	115,763
Public Defender	119,305
Director of Indigent Defense Services	123,022

SECTION 29.4.(b) Effective for the 2011-2013 fiscal biennium, the annual salaries of employees of the Judicial Department shall remain unchanged as follows:

(1) The annual salaries of permanent full-time and part-time employees of the Judicial Department whose salaries are not itemized in this act shall remain unchanged.
(2) Notwithstanding anything to the contrary, the annual salaries of clerks of superior court under G.S. 7A-101(a) shall not change when a county changes from one population group to another.
(3) The annual salaries of assistant and deputy clerks of court set under G.S. 7A-102(c1) shall remain unchanged for the 2011-2013 fiscal biennium.
(4) The annual salaries of magistrates set under G.S. 7A-171.1(a) or G.S. 7A-171.1(a1)(1) shall remain unchanged.

GENERAL ASSEMBLY

SECTION 29.5. Effective for the 2011-2013 fiscal biennium, salaries in the legislative branch shall remain unchanged, as follows:
(1) The salaries of members and officers of the General Assembly shall remain unchanged at the amounts set under G.S. 120-3, as provided in 1994 by the 1993 General Assembly.
(2) The annual salaries set by G.S. 120-37(c) for the principal clerks in each house shall remain unchanged.
(3) The annual salaries set by G.S. 120-37(b) of the sergeant-at-arms and the reading clerk in each house shall remain unchanged.
(4) The annual salaries of the Legislative Services Officer and of nonelected employees of the General Assembly set under G.S. 120-32 shall remain unchanged.

COMMUNITY COLLEGES PERSONNEL

SECTION 29.6.(a) The annual salaries of all community college nonfaculty and professional staff whose salaries are supported from the State's General Fund shall remain unchanged for the 2011-2013 fiscal biennium.

SECTION 29.6.(b) For the 2011-2013 fiscal biennium, the annual salaries of all community college faculty whose salaries are supported from the State's General Fund shall remain unchanged. The minimum salaries for nine-month, full-time curriculum community college faculty shall also remain unchanged as follows:

Education Level	Minimum Salary
Vocational Diploma/Certificate or Less	$34,314
Associate Degree or Equivalent	$34,819
Bachelor's Degree	$37,009
Master's Degree or Education Specialist	$38,952
Doctoral Degree	$41,753.

No full-time faculty member shall earn less than the minimum salary for his or her education level.

The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members.

UNIVERSITY OF NORTH CAROLINA SYSTEM

SECTION 29.7.(a) The annual salaries of all University of North Carolina EPA faculty, EPA nonfaculty, SPA employees, and teachers employed by the North Carolina School of Science and Math shall remain unchanged for the 2011-2013 fiscal biennium.

SECTION 29.7.(b) The annual salaries of all employees of the University of North Carolina Health Care System and the Medical Faculty Practice Plan at East Carolina University shall remain unchanged for the 2011-2013 fiscal biennium.

SALARY ADJUSTMENTS FOR SPECIAL CIRCUMSTANCES ONLY/NO AUTOMATIC INCREASES

SECTION 29.8.(a) The annual pay of all State employees for the 2011-2013 fiscal biennium shall remain unchanged from that authorized on June 30, 2011, or the last date in pay status during the 2010-2011 fiscal year, if earlier; except that an increase may be allowed under the following special circumstances:

(1) For all State employees regardless of funding source, and for employees of the North Carolina Community College System and local school boards who are paid from State funds, salaries may be increased for reallocations or promotions, in-range adjustments for job change, career progression adjustments for demonstrated competencies, or any other adjustment related to an increase in job duties or responsibilities, none of which are subject to the salary freeze otherwise provided by this Part. All other salary increases are prohibited.

(2) For University of North Carolina (i) faculty using funds from the Faculty Recruiting and Retention Fund, the Distinguished Professors Endowment Fund, or the University Cancer Research Fund in the case of faculty involved in cancer research supported by that fund and (ii) faculty, nonfaculty, and other employee adjustments funded from non-State funding sources.

The cumulative salary adjustment allowed under this subsection for the 2011-2012 fiscal year may exceed ten percent (10%) of annual salary only if the adjustment is approved in advance by the Office of State Budget and Management, The University of North Carolina Board of Governors, the Board of the North Carolina Community College System, the Legislative Services Commission, the local board of education, or other authorized body as appropriate.

SECTION 29.8.(b) The automatic salary step increases for assistant and deputy clerks of superior court and magistrates are suspended for the 2011-2013 fiscal biennium.

SECTION 29.8.(c) The salary increase provisions of G.S. 20-187.3 are suspended for the 2011-2013 fiscal biennium.

SECTION 29.8.(d) Notwithstanding G.S. 53-96.1, and except as provided by subdivision (1) of subsection (a) of this section, employees of the Office of the Commissioner of Banks shall not be awarded compensation increases or bonuses during the 2011-2013 fiscal biennium.

SECTION 29.8.(e) Employees of the Lottery Commission shall not receive compensation bonuses during the 2011-2013 fiscal biennium.

SECTION 29.8.(f) No employee of any other State agency or constituent institution of The University of North Carolina, excluding employees of the University of North Carolina Health Care System and employees participating in a constituent institution's medical faculty practice plan, shall receive compensation bonuses.

MOST STATE EMPLOYEES

SECTION 29.9.(a) Effective for the 2011-2013 fiscal biennium, the salaries in effect June 30, 2011, of all permanent, full-time State employees whose salaries are set in accordance with the State Personnel Act, shall remain unchanged.

SECTION 29.9.(b) Effective for the 2011-2013 fiscal biennium, the compensation of permanent, full-time State officials and persons in exempt positions shall remain unchanged.

SECTION 29.9.(c) Effective for the 2011-2013 fiscal biennium, the salaries of permanent, part-time State employees shall remain unchanged.

SECTION 29.9.(d) Effective for the 2011-2013 fiscal biennium, the compensation of temporary and permanent hourly State employees shall remain unchanged.

ALL STATE-SUPPORTED PERSONNEL/NO SALARY INCREASES

SECTION 29.10.(a) The salaries provided for in this act are to be effective July 1, 2011, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, or whose last workday is prior to July 1, 2011.

This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

SECTION 29.10.(b) For the 2011-2013 fiscal biennium, the salaries of permanent, full-time employees who work a nine-, ten-, or eleven-month work year schedule shall remain unchanged.

STATE AGENCY TEACHERS' COMPENSATION

SECTION 29.11.(a) The salaries of employees of schools operated by the Department of Health and Human Services, the Department of Correction, or the Department

of Juvenile Justice and Delinquency Prevention who are paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule shall remain unchanged for the 2011-2013 fiscal biennium.

SECTION 29.11.(b) Effective January 1, 2012, subsection (a) of this section reads as rewritten:

"**SECTION 29.11.** The salaries of employees of schools operated by the Department of Health and Human ~~Services, the Department of Correction, or the Department of Juvenile Justice and Delinquency Prevention,~~ Services or by the Department of Public Safety who are paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule shall remain unchanged for the 2011-2013 fiscal biennium."

TEACHER SALARY SCHEDULES

SECTION 29.12.(a) The following monthly salary schedules shall apply for the 2011-2012 fiscal year to certified personnel of the public schools who are classified as teachers. The schedules contain 35 steps, with each step corresponding to one year of teaching experience. Public school employees paid according to this salary schedule and receiving NBPTS certification or obtaining a master's degree shall not be prohibited from receiving the appropriate increase in salary. Provided, however, teachers employed during the 2010-2011 school year who did not work the required number of months to acquire an additional year of experience shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2011-2012 Monthly Salary Schedule

Years of Experience	"A" Teachers	NBPTS Certification
0	$3,043	N/A
1	$3,043	N/A
2	$3,043	N/A
3	$3,043	$3,408
4	$3,085	$3,455
5	$3,129	$3,504
6	$3,264	$3,656
7	$3,404	$3,812
8	$3,538	$3,963
9	$3,667	$4,107
10	$3,771	$4,224
11	$3,819	$4,277
12	$3,868	$4,332
13	$3,918	$4,388
14	$3,967	$4,443
15	$4,018	$4,500
16	$4,069	$4,557
17	$4,122	$4,617
18	$4,176	$4,677
19	$4,231	$4,739
20	$4,286	$4,800
21	$4,345	$4,866
22	$4,403	$4,931
23	$4,461	$4,996
24	$4,523	$5,066
25	$4,584	$5,134
26	$4,650	$5,208
27	$4,714	$5,280
28	$4,779	$5,352
29	$4,845	$5,426
30	$4,913	$5,503
31	$4,984	$5,582
32	$5,055	$5,662
33	$5,153	$5,771

34+	$5,255	$5,886

2011-2012 Monthly Salary Schedule
"M" Teachers

Years of Experience	"M" Teachers	NBPTS Certification
0	$3,347	N/A
1	$3,347	N/A
2	$3,347	N/A
3	$3,347	$3,712
4	$3,394	$3,764
5	$3,442	$3,817
6	$3,590	$3,982
7	$3,744	$4,153
8	$3,892	$4,316
9	$4,034	$4,474
10	$4,148	$4,601
11	$4,201	$4,659
12	$4,255	$4,719
13	$4,310	$4,780
14	$4,364	$4,840
15	$4,420	$4,902
16	$4,476	$4,964
17	$4,534	$5,029
18	$4,594	$5,095
19	$4,654	$5,162
20	$4,715	$5,229
21	$4,780	$5,301
22	$4,843	$5,372
23	$4,907	$5,442
24	$4,975	$5,518
25	$5,042	$5,592
26	$5,115	$5,673
27	$5,185	$5,751
28	$5,257	$5,830
29	$5,330	$5,911
30	$5,404	$5,994
31	$5,482	$6,080
32	$5,561	$6,167
33	$5,668	$6,287
34+	$5,781	$6,411

SECTION 29.12.(b) Annual longevity payments for teachers shall be at the rate of one and one-half percent (1.5%) of base salary for 10 to 14 years of State service, two and twenty-five hundredths percent (2.25%) of base salary for 15 to 19 years of State service, three and twenty-five hundredths percent (3.25%) of base salary for 20 to 24 years of State service, and four and one-half percent (4.5%) of base salary for 25 or more years of State service. The longevity payment shall be paid in a lump sum once a year.

SECTION 29.12.(c) Certified public schoolteachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers. Certified public schoolteachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers.

SECTION 29.12.(d) The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate

step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified psychologists.

SECTION 29.12.(e) Speech pathologists who are certified as speech pathologists at the master's degree level and audiologists who are certified as audiologists at the master's degree level and who are employed in the public schools as speech and language specialists and audiologists shall be paid on the school psychologist salary schedule.

Speech pathologists and audiologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for speech pathologists and audiologists. Speech pathologists and audiologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for speech pathologists and audiologists.

SECTION 29.12.(f) Certified school nurses who are employed in the public schools as nurses shall be paid on the "M" salary schedule.

SECTION 29.12.(g) As used in this section, the term "teacher" shall also include instructional support personnel.

SCHOOL-BASED ADMINISTRATOR SALARY SCHEDULE

SECTION 29.13.(a) The following base salary schedule for school-based administrators shall apply only to principals and assistant principals. This base salary schedule shall apply for the 2011-2012 fiscal year, commencing July 1, 2011. Provided, however, school-based administrators (i) employed during the 2010-2011 school year who did not work the required number of months to acquire an additional year of experience and (ii) employed during the 2011-2012 school year in the same classification shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2011-2012 Principal and Assistant Principal Salary Schedules

	Classification				
Years of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-7	$3,781	-	-	-	-
8	$3,931	-	-	-	-
9	$4,074	-	-	-	-
10	$4,189	-	-	-	-
11	$4,243	$4,243	-	-	-
12	$4,298	$4,298	-	-	-
13	$4,353	$4,353	$4,408	-	-
14	$4,408	$4,408	$4,464	-	-
15	$4,464	$4,464	$4,521	$4,579	-
16	$4,521	$4,521	$4,579	$4,640	$4,701
17	$4,579	$4,579	$4,640	$4,701	$4,762
18	$4,640	$4,640	$4,701	$4,762	$4,828
19	$4,701	$4,701	$4,762	$4,828	$4,891
20	$4,762	$4,762	$4,828	$4,891	$4,956
21	$4,828	$4,828	$4,891	$4,956	$5,025
22	$4,891	$4,891	$4,956	$5,025	$5,092
23	$4,956	$4,956	$5,025	$5,092	$5,166
24	$5,025	$5,025	$5,092	$5,166	$5,237
25	$5,092	$5,092	$5,166	$5,237	$5,310
26	$5,166	$5,166	$5,237	$5,310	$5,383
27	$5,237	$5,237	$5,310	$5,383	$5,458
28	$5,310	$5,310	$5,383	$5,458	$5,537

29	$5,383	$5,383	$5,458	$5,537	$5,617
30	$5,458	$5,458	$5,537	$5,617	$5,725
31	$5,537	$5,537	$5,617	$5,725	$5,839
32	$5,617	$5,617	$5,725	$5,839	$5,956
33	$5,725	$5,725	$5,839	$5,956	$6,075
34	$5,839	$5,839	$5,956	$6,075	$6,197
35	-	$5,956	$6,075	$6,197	$6,321
36	-	-	$6,197	$6,321	$6,447
37	-	-	$6,321	$6,447	$6,576
38	-	-	-	$6,576	$6,708
39	-	-	-	$6,708	$6,842
40	-	-	-	-	$6,979

2011-2012 Principal and Assistant Principal Salary Schedules

	Classification			
Years of Exp	Prin V (44-54)	Prin VI (55-65)	Prin VII (66-100)	Prin VIII (101+)
0-17	$4,828	-	-	-
18	$4,891	-	-	-
19	$4,956	$5,025	-	-
20	$5,025	$5,092	$5,237	-
21	$5,092	$5,166	$5,310	$5,383
22	$5,166	$5,237	$5,383	$5,458
23	$5,237	$5,310	$5,458	$5,537
24	$5,310	$5,383	$5,537	$5,617
25	$5,383	$5,458	$5,617	$5,725
26	$5,458	$5,537	$5,725	$5,839
27	$5,537	$5,617	$5,839	$5,956
28	$5,617	$5,725	$5,956	$6,075
29	$5,725	$5,839	$6,075	$6,197
30	$5,839	$5,956	$6,197	$6,321
31	$5,956	$6,075	$6,321	$6,447
32	$6,075	$6,197	$6,447	$6,576
33	$6,197	$6,321	$6,576	$6,708
34	$6,321	$6,447	$6,708	$6,842
35	$6,447	$6,576	$6,842	$6,979
36	$6,576	$6,708	$6,979	$7,119
37	$6,708	$6,842	$7,119	$7,261
38	$6,842	$6,979	$7,261	$7,406
39	$6,979	$7,119	$7,406	$7,554
40	$7,119	$7,261	$7,554	$7,705
41	$7,261	$7,406	$7,705	$7,859
42	-	$7,554	$7,859	$8,016
43	-	$7,705	$8,016	$8,176
44	-	-	$8,176	$8,340

SECTION 29.13.(b) The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools and in cooperative innovative high schools, shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Fewer than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers

Principal VI	55-65 Teachers
Principal VII	66-100 Teachers
Principal VIII	More than 100 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

The beginning classification for principals in alternative schools and in cooperative innovative high school programs shall be the Principal III level. Principals in alternative schools who supervise 33 or more teachers shall be classified according to the number of teachers supervised.

SECTION 29.13.(c) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal. Provided, however, a principal who acquires an additional step for the 2011-2012 or 2012-2013 fiscal years shall not receive a corresponding increase in salary during the 2011-2013 fiscal biennium. A principal or assistant principal shall also continue to receive any additional State-funded percentage increases earned for the 1997-1998, 1998-1999, and 1999-2000 school years for improvement in student performance or maintaining a safe and orderly school.

SECTION 29.13.(d) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars ($126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars ($253.00) per month.

SECTION 29.13.(e) Longevity pay for principals and assistant principals shall be as provided for State employees under the State Personnel Act.

SECTION 29.13.(f) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subsection applies to all transfers on or after the effective date of this section, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subsection for one calendar year following the date of the merger.

SECTION 29.13.(g) Participants in an approved full-time master's in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the master's program. For the 2006-2007 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal plus the cost of tuition, fees, and books and any fellowship funds received by the intern as a full-time student, including awards of the Principal Fellows Program. The Principal Fellows Program or the school of education where the intern participates in a full-time master's in school administration program shall supply the Department of Public Instruction with certification of eligible full-time interns.

SECTION 29.13.(h) During the 2011-2012 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher.

CENTRAL OFFICE SALARIES

SECTION 29.14.(a) The monthly salary ranges that follow apply to assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers and shall remain unchanged for the 2011-2013 fiscal biennium, beginning July 1, 2011.

School Administrator I	$3,309	$6,207
School Administrator II	$3,508	$6,583
School Administrator III	$3,724	$6,984

School Administrator IV	$3,874	$7,262
School Administrator V	$4,030	$7,556
School Administrator VI	$4,275	$8,013
School Administrator VII	$4,447	$8,336

The local board of education shall determine the appropriate category and placement for each assistant superintendent, associate superintendent, director/coordinator, supervisor, or finance officer within the salary ranges and within funds appropriated by the General Assembly for central office administrators and superintendents. The category in which an employee is placed shall be included in the contract of any employee.

SECTION 29.14.(b) The monthly salary ranges that follow apply to public school superintendents and shall remain unchanged for the 2011-2013 fiscal biennium, beginning July 1, 2011.

Superintendent I	$4,720	$8,843
Superintendent II	$5,011	$9,377
Superintendent III	$5,316	$9,948
Superintendent IV	$5,642	$10,552
Superintendent V	$5,988	$11,196

The local board of education shall determine the appropriate category and placement for the superintendent based on the average daily membership of the local school administrative unit and within funds appropriated by the General Assembly for central office administrators and superintendents.

SECTION 29.14.(c) Longevity pay for superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers shall be as provided for State employees under the State Personnel Act.

SECTION 29.14.(d) Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided pursuant to this section. Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for under this section.

SECTION 29.14.(e) The State Board of Education shall not permit local school administrative units to transfer State funds from other funding categories for salaries for public school central office administrators.

SECTION 29.14.(f) The salaries of all permanent full-time personnel paid from the Central Office Allotment shall remain unchanged for the 2011-2013 fiscal biennium.

NONCERTIFIED PERSONNEL SALARIES

SECTION 29.15. The annual salary for permanent, full-time and part-time noncertified public school employees whose salaries are supported from the State's General Fund shall be remain unchanged for the 2011-2013 fiscal biennium.

ALL FURLOUGHS PROHIBITED EXCEPT AS ORDERED TO BALANCE THE BUDGET/BENEFITS PROTECTION FOR FURLOUGHED PERSONNEL

SECTION 29.18.(a) The following definitions apply in this section:

(1) Furlough. – A temporary, involuntary period of leave from employment without pay but shall not include any period of involuntary leave resulting from disciplinary action.

(2) Public agency. – A State agency, department, or institution in the executive branch of State government; The University of North Carolina; the North Carolina Community College System; and a local school administrative unit.

(3) Public employee. – An employee employed by the legislative or judicial branches or by a public agency.

SECTION 29.18.(b) Any furlough of a public employee paid with State funds is prohibited unless the furlough is ordered by the Governor while acting to balance the budget pursuant to Section 5 of Article III of the North Carolina Constitution or by the Chief Justice or

the Legislative Services Officer, respectively, to balance the judicial branch or legislative branch budget.

SECTION 29.18.(c) Whenever the Governor, the Chief Justice, or the Legislative Services Officer orders a furlough of public employees, the employing public agency, the judicial branch, or the legislative branch, respectively, shall report to the State Treasurer, the Director of the Retirement Systems Division, and the Executive Administrator of the State Health Plan the following:

(1) The specifics of the authorized furlough.

(2) The positions affected, including all full-time, part-time, temporary, and contractual positions, all nonessential personnel, and all nonteaching positions.

(3) The individual employees affected, including the applicable reduction in salary and whether the employee is subject to or exempt from the Fair Labor Standards Act.

SECTION 29.18.(d) If, in accordance with subsection (b) of this section, necessary economies in public agency expenditures must be effected by a furlough of public employees, then a public employee on a furlough who is:

(1) A member of any of the State-supported retirement plans administered by the Retirement Systems Division of the Department of State Treasurer or of an Optional Retirement Program (ORP) administered under G.S. 135-5.1 or G.S. 135-5.4 shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer shall pay both employee and employer contributions to the Retirement Systems Division or ORP on behalf of the furloughed employee as though the employee were in active service.

(2) A member of the State Health Plan for Teachers and State Employees shall be considered eligible for coverage under the Plan on the same basis as on the workday immediately preceding the furlough. The public employer shall pay contributions on behalf of the furloughed public employee as though the employee were in active service.

SECTION 29.18.(e) The benefits protections provided by this section shall also apply to public employees in the judicial and legislative branches.

MONITOR COMPLIANCE WITH FREEZE ON MOST SALARY INCREASES

SECTION 29.19.(a) The Office of State Budget and Management and the Office of State Personnel shall monitor jointly the compliance of the following units of government with the provisions of Section 29.8 of this act and shall submit quarterly reports of their monitoring activities to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division: (i) State agencies, departments, and institutions, including authorities, boards, and commissions; (ii) the judicial branch; and (iii) The University of North Carolina and its constituent institutions.

The quarterly reports required by this section shall include the following information:

(1) For agencies reporting through the BEACON HR/Payroll system, (i) a breakdown by action type (including promotion, reallocation, career progression, salary adjustment, and any similar actions increasing employee pay) of the number and annual amount of those increases and (ii) a breakdown by action reason (including in-range higher level, acting pay, trainee adjustment, and other similar action reasons) of the number and annual amount of those action types coded as salary adjustment.

(2) For The University of North Carolina and its constituent institutions, a breakdown of the number and annual amount of those increases categorized by the University as promotions, changes in job duties or responsibilities,

Distinguished Professorships, retention pay, career progression, and any similar actions increasing employee pay.

(3) A summary of actions taken by the Office of State Budget and Management and the Office of State Personnel with respect to unauthorized salary increases.

SECTION 29.19.(b) The Legislative Services Officer shall report quarterly to the President Pro Tempore of the Senate and the Speaker of the House of Representatives on compliance with this act.

COMPREHENSIVE REVIEW AND REFORM OF PUBLIC EMPLOYEE COMPENSATION PLANS

SECTION 29.20.(a) It is the intent of the General Assembly to create and implement a modernized, fair, and fully functional, performance-based compensation system for employees of State agencies, departments, institutions, The University of North Carolina System, the North Carolina Community College System, and local education agencies. To that end, the Legislative Services Commission, jointly through the Fiscal Research and Program Evaluation Divisions, is directed to commission a review and study of the current compensation plans of State agencies, departments, institutions, The University of North Carolina System, the North Carolina Community College System, and local education agencies (government sectors). The Legislative Services Commission may use a Request for Information process or a Request for Proposals process to contract with a qualified consulting firm to perform this review and study. The study, at minimum, shall include all of the following:

(1) A labor market analysis of pay, fringe benefits, classification, and banding plans of government sector employees to determine whether current employees are compensated appropriately relative to market rates for similar positions as compared to (i) other North Carolina public employees, (ii) similar positions and employees in other states, and (iii) where applicable, employees in private industry.

(2) An analysis of current performance-based compensation plans in use by the North Carolina Banking Commission, the University of North Carolina Health Care System, and the performance-based compensation system proposed by Charlotte/Mecklenburg County Schools. This analysis should include an assessment of the effectiveness of these performance-based plans and should include identification of best practices.

(3) An evaluation of current longevity pay as applicable to most government sector employees and recommendations as to whether longevity pay should be continued for new hires.

(4) An evaluation of current laws and policies related to "career status" for employees subject to the State Personnel Act and tenure for public school teachers and university professors. For public school teachers, the evaluation of tenure shall include its relationship with student performance, if any. This evaluation should also include recommendations as to whether these laws and policies should be continued or modified based upon human resource best practices.

(5) An evaluation of salary supplements for public school employees paid on account of master's degrees, attainment of other advanced degrees, and national board certification, including the relationship to student performance, if any. This evaluation should also include recommendations as to whether these salary supplements should be continued or modified based upon the effect on student performance, if any, and human resource best practices.

(6) An evaluation of the State Personnel Act including recommendations as to whether these laws and policies should be continued or modified based upon human resource best practices.

(7) An analysis of the effect of in-State regional variables on employee compensation and recommendations as to how those variables should be addressed in the future.

(8) Recommendations of how to evaluate and compare the value of employee fringe benefits.

(9) Recommendations, timetable, and design of a comprehensive performance-based compensation plan across all government sectors for implementation by the General Assembly. Recommendations must include the design of an effective employee performance evaluation system, including the identification of effective employee performance measures and information systems (including estimated costs) to track and monitor employee performance.

(10) Training recommendations for supervisors and managers regarding employee productivity and performance evaluation.

(11) Recommendations to assure equity of compensation among public employees across government sectors.

(12) Feasibility of a consensus forecasting group to make annual recommendations for compensation policy across all government sectors. These recommendations should include how to establish and maintain priorities for General Fund appropriations necessary to fund the performance-based compensation system while remaining affordable for the State and its taxpayers.

SECTION 29.20.(b) By May 1, 2012, the Fiscal Research and Program Evaluation Divisions, or at their direction by the consultant hired to perform the review and study, shall report all findings and any other final results of the study, including recommendations and legislative proposals, to the 2012 Regular Session of the 2011 General Assembly.

SECTION 29.20.(c) All State agencies, departments, institutions, The University of North Carolina System, the North Carolina Community College System, and local education agencies shall provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them to the Fiscal Research and Program Evaluation Divisions and/or the consultant necessary to complete this review and study.

SECTION 29.20.(d) The State Personnel Director, the State Budget Director, the State Controller, and the State Treasurer shall dedicate and identify staff for technical assistance, as needed, to aid in the reviews required by this section.

ESTABLISH SALARY ADJUSTMENT AND PERFORMANCE PAY RESERVE

SECTION 29.20A.(a) General Fund and Highway Fund reserve budget codes are established in the Office of State Budget and Management for the purpose of correcting labor market and other salary inequities and to provide funding for a performance-based compensation plan to effectuate recommendations made in connection with the comprehensive review and reform of public employee compensation plans under Section 29.20 of this act.

SECTION 29.20A.(b) The Director of the Budget shall allocate funds appropriated to the Salary Adjustment and Performance Pay Reserve in Sections 2.1 and 3.1 of this act, as directed by the General Assembly, to public agencies to fund labor market and equity salary increases and to provide funding for performance-based pay plans upon review of the Comprehensive Review and Reform of Public Employee Compensation Plans report.

Funds appropriated to the Salary Adjustment and Performance Pay Reserve may be allocated to public agencies for positions that are funded by the General Fund or Highway Fund. Positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund may be increased with funding from the Salary Adjustment and Performance Pay Reserve only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

For the purposes of this subsection, the term "public employee" means an employee of a State agency, department, or institution; The University of North Carolina; the North Carolina Community College System; or a local school administrative unit.

ESTABLISH SEVERANCE EXPENDITURE RESERVE

SECTION 29.21.(a) There are established in the Office of State Budget and Management General Fund and Highway Fund reserve budget codes for the purpose of funding severance-related obligations to State employees subject to the State Personnel Act, and employees exempt from the State Personnel Act, who are separated from service due to a reduction-in-force action. Severance-related expenditures from these reserves shall include obligations to fund:

(1) A State employee's severance salary continuation with an age adjustment factor as authorized by G.S. 126-8.5, including employer-related contributions for social security, and

(2) Noncontributory health premiums for up to 12 months as authorized by G.S. 135-45.2(a)(8) for employees of employing units as defined by G.S. 135-45.1(12).

SECTION 29.21.(b) The Director of the Budget shall allocate funds appropriated in Sections 2.1 and 3.1 of this act to the Severance Expenditure Reserve to public agencies to fund severance-related obligations incurred by the agencies as a result of reduction-in-force actions that cause State-supported public employees to be terminated from public employment. Funds appropriated to the Severance Expenditure Reserve shall be expended in their entirety before funds appropriated to a public agency for State-supported personal services expenditures may be used to fund any severance-related obligations.

Funds appropriated to the Severance Expenditure Reserve may be allocated to public agencies for positions that are funded by the General Fund or Highway Fund. Funds appropriated to the Severance Expenditure Reserve may also be allocated to public agencies for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund but only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

For the purposes of this subsection, the term "public employee" means an employee of a State agency, department, or institution; The University of North Carolina; the North Carolina Community College System; or a local school administrative unit.

REPEAL REDUCTION-IN-FORCE PRIORITY CONSIDERATION UNDER THE STATE PERSONNEL ACT

SECTION 29.21A.(a) G.S. 126-7.1 reads as rewritten:

"**§ 126-7.1. Posting requirement; ~~State employees receive priority consideration; reduction-in-force rights;~~ reduction in force; Work First hiring.**

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted in a place readily accessible to employees that is located within at least the following:

(1) The personnel office of the agency, department, or institution having the vacancy; and

(2) The particular work unit of the agency, department, or institution having the ~~vacancy~~vacancy. ~~in a location readily accessible to employees.~~ If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall be listed with the Office of State Personnel for the purpose of informing current State employees of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Personnel to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such violation for the work performed during the period of time between his initial employment and separation.

(a1) State employees to be affected by a reduction in force shall be notified of the reduction in force as soon as practicable, and in any event, no less than 30 days prior to the effective date of the reduction in force.

~~(a2) The State Personnel Commission shall adopt rules to provide that priority consideration for State employees separated from State employment as the result of reductions in force is to enable a State employee's return to career service at a salary grade and salary rate equal to that held in the most recent position. The State Personnel Commission shall provide that a State employee who:~~

~~(1) Accepts a position at the same salary grade shall be paid at the same salary rate as the employee's previous position.~~

~~(2) Accepts a position at a lower salary grade than the employee's previous position shall be paid at the same rate as the previous position unless the~~

~~salary rate exceeds the maximum of the new salary grade. When the salary rate exceeds the maximum of the salary grade, the employee's new salary rate shall be reduced to the maximum of the new salary grade.~~

(b) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(c) If a State employee subject to this section:

(1) Applies for another position of State employment that would constitute a promotion and;

(2) Has substantially equal qualifications as an applicant who is not a State employee then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees.

~~(c1) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force:~~

~~(1) Applies for another position of State employment equal to or lower in salary grade than the position held by the employee at the time of notification or separation; and~~

~~(2) Is determined qualified for that position~~

~~then within all State agencies, the State employee shall receive priority consideration over all other applicants but shall receive equal consideration with other applicants who are current State employees not affected by the reduction in force. This priority shall remain in effect for a period of 12 months from the date the employee receives notification of separation by reduction in force. State employees separated due to reduction in force shall receive higher priority than other applicants with employment or reemployment priorities, except that the reemployment priority created by G.S. 126-5(e)(1) shall be considered as equal. The reduction in force priority created by this subsection shall be administered in accordance with rules promulgated by the State Personnel Commission.~~

~~(c2) If the applicants for reemployment for a position include current State employees, a State employee with more than 10 years of service shall receive priority consideration over a State employee having less than 10 years of service in the same or related position classification. This reemployment priority shall be given by all State departments, agencies, and institutions with regard to positions subject to this Chapter.~~

~~(d) "Qualifications" within the meaning of subsection (c) of this section shall consist of:~~

~~(1) Training or education;~~

~~(2) Years of experience; and~~

~~(3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for.~~

(e) Each State agency, department, and institution is encouraged to hire into State government employment qualified applicants who are current or former Work First Program participants.

(f) Each State agency, department, institution, university, community college, and local education agency shall verify, in accordance with the Basic Pilot Program administered by the United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each individual's legal status or authorization to work in the United States after hiring the individual as an employee to work in the United States."

SECTION 29.21A.(b) Nothing in this section affects the extended period of priority reconsideration afforded to State employees by Section 26.14D of S.L. 2009-451, as amended by Section 9.3 of S.L. 2009-575.

SECTION 29.21A.(c) This section applies to employees subject to reductions in force on or after July 1, 2011.

JUDICIAL DEPARTMENT EXPENSE AMENDMENTS

SECTION 29.21B.(a) G.S. 7A-300.1 is repealed.

SECTION 29.21B.(b) G.S. 135-1(7a)b.10a. is repealed.

SECTION 29.21B.(c) G.S. 7A-300(a) reads as rewritten:

"(a) The operating expenses of the Judicial Department shall be paid from State funds, out of appropriations for this purpose made by the General Assembly, or from funds provided by local governments pursuant to ~~G.S. 7A-300.1, 153A-212.1,~~ G.S. 153A-212.1 or

160A-289.1. The Administrative Office of the Courts shall prepare budget estimates to cover these expenses, including therein the following items and such other items as are deemed necessary for the proper functioning of the Judicial Department:

(1) Salaries, departmental expense, printing and other costs of the appellate ~~division;~~division.

(2) Salaries and expenses of superior court judges, district attorneys, assistant district attorneys, public defenders, and assistant public defenders, and fees and expenses of counsel assigned to represent indigents under the provisions of Subchapter IX of this ~~Chapter;~~Chapter.

(3) Salaries, travel expenses, departmental expense, printing and other costs of the Administrative Office of the ~~Courts;~~Courts.

(4) Salaries and travel expenses of district judges, magistrates, and family court ~~counselors;~~counselors.

(5) Salaries and travel expenses of clerks of superior court, their assistants, deputies, and other employees, and the expenses of their offices, including supplies and materials, postage, telephone and telegraph, bonds and insurance, equipment, and other necessary ~~items;~~items.

(6) Fees and travel expenses of jurors, and of witnesses required to be paid by the ~~State;~~State.

(7) Compensation and allowances of court ~~reporters;~~reporters.

(8) Briefs for counsel and transcripts and other records for adequate appellate review when an appeal is taken by an indigent ~~person;~~person.

(9) Transcripts of preliminary hearings in indigency cases and, in cases in which the defendant pays for a transcript of the preliminary hearing, a copy for the district ~~attorney;~~attorney.

(10) Transcript of the evidence and trial court charge furnished the district attorney when a criminal action is appealed to the appellate ~~division;~~division.

(11) All other expenses arising out of the operations of the Judicial Department which by law are made the responsibility of the ~~State; and~~State.

(12) Operating expenses of the Judicial Council and the Judicial Standards Commission."

SECTION 29.21B.(d) G.S. 135-53(5) reads as rewritten:

"(5) 'Compensation' shall mean all salaries and wages derived from public funds which are earned by a member of the Retirement System for ~~his~~ the member's service as a justice or judge, or district attorney, or clerk of superior court, or public defender, or the Director of Indigent Defense Services. Effective July 1, 2009, 'compensation' also means payment of military differential wages. ~~'Compensation' shall not include local supplementation as authorized under G.S. 7A-300.1 for Judicial Department employees.~~"

STATE PERSONNEL INFORMATION AMENDMENT

SECTION 29.21C. G.S. 120-32.01(b) reads as rewritten:

"(b) Notwithstanding subsection (a) of this section, access to the ~~State Personnel Management Information System~~ BEACON/HR payroll system by the ~~Research, Bill Drafting, and Program Evaluation~~ Research and Bill Drafting Divisions shall only be through the Fiscal Research Division."

SALARY-RELATED CONTRIBUTIONS

SECTION 29.22.(a) Effective for the 2011-2013 fiscal biennium, required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employees' salary. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be paid from the source that supplies the remainder of the employee's salary. The requirements of this section as to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave,

workers' compensation, severance pay, separation allowances, and applicable disability income benefits.

Notwithstanding any other provision of law, an employing unit, as defined in G.S. 135-45.1 or in G.S. 135-48.1 as enacted by this act, that hires or has hired as an employee a retiree that is in receipt of monthly retirement benefits from any retirement system supported in whole or in part by contributions of the State shall enroll the retiree in the active group and pay the cost for the hospital-medical benefits if that retiree is employed in a position that would require the employer to pay hospital-medical benefits if the individual had not been retired.

SECTION 29.22.(b) Effective July 1, 2011, the State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 2011-2012 fiscal year are: (i) thirteen and sixty-two hundredths percent (13.62%) – Teachers and State Employees; (ii) eighteen and sixty-two hundredths percent (18.62%) – State Law Enforcement Officers; (iii) twelve and thirty-six hundredths percent (12.36%) – University Employees' Optional Retirement System; (iv) twelve and thirty-six hundredths percent (12.36%) – Community College Optional Retirement Program; (v) thirty-one and fifty-four hundredths percent (31.54%) – Consolidated Judicial Retirement System; and (vi) five and zero hundredths percent (5.00%) – Legislative Retirement System. Each of the foregoing contribution rates includes five and zero hundredths percent (5.00%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

SECTION 29.22.(c) Effective July 1, 2012, the State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 2012-2013 fiscal year are: (i) fifteen percent (15%) – Teachers and State Employees; (ii) twenty percent (20%) – State Law Enforcement Officers; (iii) twelve and sixty-six hundredths percent (12.66%) – University Employees' Optional Retirement System; (iv) twelve and sixty-six hundredths percent (12.66%) – Community College Optional Retirement Program; (v) thirty-three and fifty-one hundredths percent (33.51%) – Consolidated Judicial Retirement System; and (vi) five and thirty hundredths percent (5.30%) – Legislative Retirement System. Each of the foregoing contribution rates includes five and thirty hundredths percent (5.30%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

SECTION 29.22.(d) Effective July 1, 2011, the maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2011-2012 fiscal year to the State Health Plan for Teachers and State Employees are: (i) Medicare-eligible employees and retirees – three thousand eight hundred thirty-two dollars ($3,832) and (ii) non-Medicare-eligible employees and retirees – four thousand nine hundred thirty-one dollars ($4,931).

SECTION 29.22.(e) Effective July 1, 2012, the maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2012-2013 fiscal year to the State Health Plan for Teachers and State Employees are: (i) Medicare-eligible employees and retirees – four thousand thirty-five dollars ($4,035) and (ii) non-Medicare-eligible employees and retirees – five thousand one hundred ninety-two dollars ($5,192).

LIMIT STATE ABORTION FUNDING/HEALTH PLAN/INSURANCE

SECTION 29.23. No State funds may be used for the performance of abortions or to support the administration of any governmental health plan or government-offered insurance policy offering abortion, except that this prohibition shall not apply where (i) the life of the mother would be endangered if the unborn child were carried to term or (ii) the pregnancy is the result of a rape or incest. Nothing in this section shall be construed to limit medical care

provided after a spontaneous miscarriage. The provisions of G.S. 135-45.8(21) and (22) do not apply to complications or related charges from an abortion not covered due to this section.

PERMANENTLY EXEMPT PARTICIPANTS IN THE UNIVERSITY OF NORTH CAROLINA PHASED RETIREMENT PROGRAM FROM THE RESTRICTIONS ON RETURNING TO WORK

SECTION 29.24.(a) Section 29.28(f) of S.L. 2005-276, as amended by Section 22.21 of S.L. 2006-66 and by Section 26.22 of S.L. 2009-451, reads as rewritten:

"**SECTION 29.28.(f)** Subsections (a) and (b) of this section become effective August 1, 2005. Subsection (e) of this section becomes effective November 1, 2005, but does not apply to participants in The University of North Carolina Phased Retirement ~~Program until the earlier of August 31, 2013, or 12 months after the issuance of final phased retirement regulations by the Internal Revenue Service.~~Program. The remainder of this section becomes effective June 30, 2005."

SECTION 29.24.(b) G.S. 135-1(20) reads as rewritten:

"(20) "Retirement" ~~means~~means, for members who are not participants in The University of North Carolina Phased Retirement Program, the termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must render no service, including part-time, temporary, substitute, or contractor service, at any time during the six months immediately following the effective date of retirement. For purposes of this subdivision, service as a member of a school board or as an unpaid bona fide volunteer in a local school administrative unit shall not be considered service. Notwithstanding the foregoing, for members who are participants in The University of North Carolina Phased Retirement Program, "retirement" means entry into the Phased Retirement Program with a retirement allowance granted under this Chapter."

REDUCE THE REQUIRED BREAK IN SERVICE FOR RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM TO RETURN TO WORK WITHOUT LOSING RETIREMENT BENEFITS

SECTION 29.25.(a) G.S. 135-1 is amended by adding a new subdivision to read:

"(18a) "Qualifying period" means three months as to members who retire with their last 12 months of service as employees of The University of North Carolina or any of its constituent institutions and return to service as employees of The University of North Carolina or any of its constituent institutions, and means six months as to any other member."

SECTION 29.25.(b) G.S. 135-1(20) reads as rewritten:

"(20) "Retirement" means the termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must render no service, including part-time, temporary, substitute, or contractor service, at any time during the ~~six months~~ qualifying period immediately following the effective date of retirement. For purposes of his subdivision, service as a member of a school board or as an unpaid bona fide volunteer in a local school administrative unit shall not be considered service."

SECTION 29.25.(c) G.S. 135-3(8)c. reads as rewritten:

"c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed by, or otherwise engaged to perform services for, an employer participating in the Retirement System on a part time, temporary, interim, or on a fee for service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12 month period immediately following the effective date of retirement or in any calendar year

which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year, except when the reemployment earnings exceed the amount above in the month of December, in which case the retirement allowance shall not be suspended. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision who retired on or before June 1, 2009, regardless of age or years of creditable service, or who retires on or after July 1, 2009, after attaining (i) the age of at least 65 with five years of creditable service; or (ii) the age of at least 60 with 25 years of creditable service; or (iii) 30 years of service; and who has been retired ~~at least six months~~ for at least as long as the qualifying period as defined by G.S. 135-1(18a) and has not been employed in any capacity with a State-supported community college or a State-supported university ~~for at least six months~~ during the qualifying period as defined by G.S. 135-1(18a) immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach in a permanent full-time or part-time capacity that exceeds fifty percent (50%) of the applicable workweek as a nursing instructor in a certified nursing program for a maximum period of three years.

In order for a retired nursing instructor to be rehired, the community college or university must certify to the Teachers' and State Employees' Retirement System that it has a shortage of qualified nursing instructors, and must:

1. Make a good faith effort to fill positions with qualified nursing instructors who are not retirees;
2. Post the vacancy or vacancies for at least two months;
3. Solicit applications through local newspapers, other media, and nursing education programs; and
4. Determine that there is an insufficient number of eligible applicants for the advertised position or positions.

The North Carolina Community College System and The University of North Carolina shall certify to the Retirement System that a beneficiary is employed to teach as a nursing instructor with a State-supported community college or a State-supported university under the provisions of this sub-subdivision."

PROVIDE FOR VESTING RECIPROCITY BETWEEN THE STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEMS AND THE OPTIONAL RETIREMENT PROGRAM FOR STATE INSTITUTIONS OF HIGHER LEARNING

SECTION 29.26. G.S. 135-5.1(b)(5) reads as rewritten:

"(5) If any participant in the Optional Retirement Program having less than five years ~~coverage under the Optional Retirement Program~~ of total membership service under any combination of the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, or the Optional Retirement Program leaves the employ of The University of North Carolina and either retires or commences employment with an employer not having a retirement

program with the same company underwriting the participant's annuity contract, regardless of whether the annuity contract is held by the participant, a trust, or the Retirement System, the participant's interest in the Optional Retirement Program attributable to contributions of The University of North Carolina shall be forfeited and shall either (i) be refunded to The University of North Carolina and forthwith paid by it to the Retirement System and credited to the pension accumulation fund or (ii) be paid directly to the Retirement System and credited to the pension accumulation fund."

ENABLE THE UNC HEALTH CARE SYSTEM TO OFFER THE OPTIONAL RETIREMENT PROGRAM (ORP) AS A RETIREMENT OPTION

SECTION 29.27. G.S. 135-5.1(a) reads as rewritten:

"(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of participants in the Program. Participation in the Optional Retirement Program shall be limited to University personnel who are eligible for membership in the Teachers' and State Employees' Retirement Program and who are:

...

(5) Employees of The University of North Carolina Health Care System, subject to rules for eligibility and participation as may be adopted by the Board of Governors in the Optional Retirement Program plan document."

PART XXX. CAPITAL APPROPRIATIONS

GENERAL FUND CAPITAL APPROPRIATIONS/INTRODUCTION

SECTION 30.1. The appropriations made by the 2011 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and for acquiring buildings and land for State government purposes.

CAPITAL APPROPRIATIONS/GENERAL FUND

SECTION 30.2. There is appropriated from the General Fund for the 2011-2012 fiscal year the following amounts for capital improvements:

Capital Improvements – General Fund	**2011-2012**
Department of Environment and Natural Resources	
Water Resources Development Projects	$ 4,535,000
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	**$ 4,535,000**

WATER RESOURCES DEVELOPMENT PROJECTS

SECTION 30.3.(a) The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects in accordance with the schedule that follows. These funds will provide a State match for an estimated twenty million seven hundred forty-nine thousand dollars ($20,749,000) in federal funds.

	Name of Project	**2011-2012**
(1)	B. Everett Jordan Lake Water Supply Storage (50/50)	$ 200,000
(2)	Wilmington Harbor Maintenance (98/2)	–
(3)	Morehead City Harbor Maintenance (98/2)	50,000
(4)	Water Resources Planning in Support of Session Law 2010-143 (75/25)	–
(5)	John H. Kerr Dam and Reservoir Sec. 216 – (50/50)	50,000
(6)	Planning Assistance to Communities (50/50)	50,000
(7)	Aquatic Plant Control, Statewide and Lake Gaston (50/50)	100,000

(8)	Wilmington Harbor Improvements Feasibility (50/50)	250,000
(9)	Belhaven Harbor – CAP – Sec. 1135 (75/25)	–
(10)	Concord Streams, NC Sec. 206 (65/35)	–
(11)	Manteo Old House Channel – CAP – Sec. 204 (65/25)	–
(12)	Wilmington Harbor Deepening (75/25)	300,000
(13)	Bogue Banks Coastal Storm Damage Reduction Study – (50/50)	50,000
(14)	West Onslow Beach (Topsail Beach) PED (75/25)	–
(15)	Surf City/NTB Coastal Storm Damage Reduction Study – PED (75/25)	85,000
(16)	Neuse River Basin Restoration Feasibility Study (50/50)	300,000
(17)	Currituck Sound Environmental Restoration Study (50/50)	–
(18)	Princeville Flood Damage Reduction (50/50)	100,000
(19)	State-Local Projects	3,000,000
TOTALS		**$ 4,535,000**

SECTION 30.3.(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 2011-2012 fiscal year, or if the projects funded under subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

(1) U.S. Army Corps of Engineers project feasibility studies.
(2) U.S. Army Corps of Engineers projects whose schedules have advanced and require State-matching funds in fiscal year 2011-2012.
(3) State-local water resources development projects.

Funds subject to this subsection that are not expended or encumbered for the purposes set forth in subdivisions (1) through (3) of this subsection shall revert to the General Fund at the end of the 2012-2013 fiscal year.

SECTION 30.3.(c) The Department shall make semiannual reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

(1) All projects listed in this section.
(2) The estimated cost of each project.
(3) The date that work on each project began or is expected to begin.
(4) The date that work on each project was completed or is expected to be completed.
(5) The actual cost of each project.

The semiannual reports also shall show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

SECTION 30.3.(d) Notwithstanding any provision of law to the contrary, funds appropriated for a water resources development project shall be used to provide no more than fifty percent (50%) of the nonfederal portion of funds for the project. This subsection applies to funds appropriated in this act and to funds appropriated prior to the 2011-2013 fiscal biennium that are unencumbered and proposed for reallocation to provide the nonfederal portion of funds for water resources development projects. The limitation on fund usage contained in this subsection applies only to projects in which a local government or local governments participate.

SECTION 30.3.(e) G.S. 143-215.73A is amended by adding a new subsection to read:

"(c1) The Department shall provide information annually to appropriate county or municipal officials about the availability, requirements, and process to secure federal and State funding under the Water Resource Development Program."

NON-GENERAL FUND CAPITAL IMPROVEMENT AUTHORIZATIONS

SECTION 30.4.(a) The General Assembly authorizes the following capital projects to be funded with receipts or from other non-General Fund sources available to the appropriate department:

Name of Project	Amount of Non-General Fund Funding Authorized for FY 2011-2012
Department of Correction	
OSDT and DCC Search Trailer	$ 45,400
Statewide Emergency Fund for Small Storage Buildings	85,000
Statewide Emergency Fund for Visitors Registration	500,000
Department of Crime Control and Public Safety	
High Point Readiness Center – Addition/Alteration	1,551,000
Greensboro Readiness Center – Addition/Alteration	306,000
Murphy Firefighting Team Support Facility	2,946,000
Morrisville Flight Facility Fixed Wing Hangar	8,815,000
Statewide Master Planning Support Services – Ph III	125,000
Statewide Master Planning Support Services – Ph IV	100,000
Statewide Master Planning Support Services – Ph V	100,000
Camp Butner Operations Readiness Training Center – Ph I	1,612,000
Department of Cultural Resources	
USS North Carolina Battleship Major Hull Repairs	1,914,000
Construction of Fort at Fort Dobbs State Historic Site	2,600,000
Department of Environment and Natural Resources	
Zoo – New Restrooms at Elephant/Rhino Exhibit	400,000
Aquarium – Roanoke Island Turtle Rehabilitation Center	500,000
Wildlife Resources Commission	
Agency Land Purchases	7,500,000
Watha Hatchery Replacement of 3 Residences	150,000
Fishing Access Areas – New Construction	240,000
Boating Access Areas – New Construction	800,000
Repairs & Renovations	1,105,000
TOTAL AMOUNT OF NON-GENERAL FUND CAPITAL PROJECTS AUTHORIZED	**$31,294,400**

SECTION 30.4.(b) From funds deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services pursuant to G.S. 146-30, the sum of thirty thousand dollars ($30,000) for the 2011-2012 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be used, notwithstanding G.S. 146-30, by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, and environmental studies, and for the management of the plant conservation program preserves owned by the Department.

REPAIRS AND RENOVATIONS RESERVE ALLOCATION

SECTION 30.5.(a) Of the funds in the Reserve for Repairs and Renovations for the 2011-2012 fiscal year, fifty percent (50%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143C-4-3, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty percent (50%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143C-4-3.

Notwithstanding G.S. 143C-4-3, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

SECTION 30.5.(b) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for the installation of fire sprinklers in university residence halls. This portion shall be in addition to funds otherwise appropriated in this act for the same purpose. Such funds shall be allocated among The University of North Carolina's constituent institutions by the President of The University of North Carolina, who shall consider the following factors when allocating those funds:

(1) The safety and well-being of the residents of campus housing programs.

(2) The current level of housing rents charged to students and how that compares to an institution's public peers and other UNC institutions.

(3) The level of previous authorizations to constituent institutions for the construction or renovation of residence halls funded from the General Fund, or from bonds or certificates of participation supported by the General Fund, since 1996.

(4) The financial status of each constituent institution's housing system, including debt capacity, debt coverage ratios, credit rankings, required reserves, the planned use of cash balances for other housing system improvements, and the constituent institution's ability to pay for the installation of fire sprinklers in all residence halls.

(5) The total cost of each proposed project, including the cost of installing fire sprinklers and the cost of other construction, such as asbestos removal and additional water supply needs.

The Board of Governors shall submit progress reports to the Joint Legislative Commission on Governmental Operations. Reports shall include the status of completed, current, and planned projects. Reports also shall include information on the financial status of each constituent institution's housing system, the constituent institution's ability to pay for fire protection in residence halls, and the timing of installation of fire sprinklers. Reports shall be submitted on January 1 and July 1 until all residence halls have fire sprinklers.

SECTION 30.5.(c) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for campus public safety improvements allowable under G.S. 143C-4-3(b).

PROCEDURES FOR DISBURSEMENT OF CAPITAL FUNDS

SECTION 30.6. The appropriations made by the 2011 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the State Budget Act, Chapter 143C of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects, including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 2011 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act. Capital improvement projects authorized by the 2011 General Assembly for the design phase only shall be designed within the scope of the project as defined by the approved cost estimate filed with the Director of the Budget, including costs associated with site preparation, demolition, and movable and fixed equipment.

UNC NON-GENERAL FUND CAPITAL PROJECTS

SECTION 30.7.(a) The purpose of this section is (i) to authorize the planning or construction by certain constituent institutions of The University of North Carolina of the capital improvement projects listed in this section for the respective institutions and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, hospital receipts from patient care, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State. These funds are hereby appropriated.

SECTION 30.7.(b) The capital improvement projects, and their respective costs, authorized by this section to be constructed and financed as provided in subsection (a) of this section, including by revenue bonds, by special obligation bonds as authorized in subsection (e) of this section, or by both, are as follows:

Appalachian State University	
Winkler Residence Hall Renovation	$ 11,805,000
East Carolina University	
Athletic Facilities Expansion and Improvement – Phase 4 Auxiliary Practice Gymnasium	15,000,000
Fayetteville State University	
Rudolph Jones Student Center Expansion and Renovation	23,289,021
North Carolina A&T State University	
New Health Center	10,000,000
North Carolina Central University	
Chidley Residence Hall Expansion and Renovation	41,193,000
North Carolina State University	
Centennial Campus Housing Complex	129,000,000
Lee Residence Hall and Sullivan Residence Hall	6,000,000
The University of North Carolina at Chapel Hill	
Carolina Inn Renovation – Phase 2	9,000,000
Woollen Gymnasium Renovation – Phase 2	2,650,000
The University of North Carolina at Charlotte	
New Residence Hall – Phase X	31,045,802
New Residence Hall – Phase XI	40,837,005
Residence Dining Hall Replacement	29,176,738
Parking Deck J	27,418,000
The University of North Carolina at Greensboro	
Student Recreation Center	91,000,000
Tower Village II Residence Hall Acquisition	34,500,000
Campus Police Building	10,030,000
Village Parking Deck	10,877,000
The University of North Carolina at Pembroke	
Student Health Services Comprehensive Renovation and Addition	3,950,000
Western Carolina University	
Walker Residence Hall Expansion and Renovation	17,289,000

SECTION 30.7.(c) The capital improvement projects, and their respective costs, authorized by this section to be planned and financed as provided in subsection (a) of this

section, including by revenue bonds, by special obligation bonds as authorized in subsection (e) of this section, or by both, are as follows:

The University of North Carolina at Chapel Hill	
Mary Ellen Jones Renovation – Phase 1	$ 4,000,000
Research Building at Carolina North	6,000,000
The University of North Carolina at Charlotte	
New Residence Hall – Phase XII	3,840,741
Cedar, Hickory, and Sycamore Residence Halls Renovation	750,000

SECTION 30.7.(d) At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this section. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 30.7.(e) Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by subsections (b) and (c) of this section. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in subsections (b) and (c) of this section plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest, and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to subsection (d) of this section.

SECTION 30.7.(f) This section is effective when it becomes law.

VANCE-GRANVILLE COMM. COLL. BOND FUNDS

SECTION 30.9. Section 3(b) of S.L. 2000-3 reads as rewritten:

"**Section 3.(b)** Except as provided in this subsection, a community college may use the bond proceeds allocated in subsection (a) of this section for new construction only in accordance with the capital allocation formula adopted by the State Board of Community Colleges in March 2000. Except as provided in this subsection, a community college may use the bond proceeds allocated in subsection (a) of this section for repair and renovation only in accordance with the repair and renovation formula adopted by the State Board of Community Colleges in May 1998, as supplemented by additional repair and renovation needs determined by the State Board of Community Colleges as of April 2000. The following provisions govern reallocations:

(1) New Construction. – Except as provided in this paragraph, new construction funds allocated in this section to a specific site may not be allocated to another site. If the local board of trustees of a community college determines that new construction funds allocated to a specific site are not needed at that site, the board may request that the State Board of Community Colleges reallocate those funds for new construction at another site of the community college. Except in the case of Mayland Community ~~College,~~College and Vance-Granville Community College, the funds may not be reallocated from a site outside the main campus county to a site within the main campus county. If the State Board of Community Colleges determines that the funds are not needed for new construction at the site for which they were originally allocated, it shall approve the reallocation to the other site and shall substitute the proposed facility at the other site in the Community Colleges System Office's application to the State Treasurer pursuant to G.S. 116D-43.

Each community college shall submit to the State Board of Community Colleges a statement (i) proposing the capital facilities to be financed with the proceeds of community college general obligation bonds allocated to that community college, (ii) certifying that the proposed site is included in the allocations in this section or is a substitute facility at another site because the funds are not needed for new construction at the site for which they are

allocated in this section, (iii) certifying that the community college is prepared to proceed with the construction, acquisition, or improvement of the proposed capital facilities, and (iv) demonstrating that the applicable matching requirements have been or will be met.

Upon receipt by the State Board of Community Colleges of the information set forth above, the Board shall add the proposed capital facilities to the next application of the Community Colleges System Office to the State Treasurer to issue bonds pursuant to G.S. 116D-43.

The board of trustees of an individual community college may use funds allocated for new construction either for new construction or for repair and renovations.

...."

ALLOW THE UNIVERSITY OF NORTH CAROLINA BOARD OF GOVERNORS TO APPROVE THE PLANNING, AUTHORIZATION, AND FUNDING OF CAPITAL PROJECTS FROM NON-GENERAL FUND SOURCES

SECTION 30.10.(a) G.S. 143C-8-12 reads as rewritten:

"**§ 143C-8-12. University system capital improvement projects from sources that are not General Fund sources: approval of new project or change in scope of existing project.**

Notwithstanding any other provision of this Chapter, ~~the Director of the Budget may, upon request of~~ the Board of Governors of The University of North Carolina ~~and after consultation with the Joint Legislative Commission on Governmental Operations,~~ may approve: (i) expenditures to plan a capital improvement project of The University of North Carolina the planning for which is to be funded entirely with non-General Fund money, (ii) expenditures for a capital improvement project of The University of North Carolina that is to be funded and operated entirely with non-General Fund money, or (iii) a change in the scope of any previously approved capital improvement project of The University of North Carolina provided that both the project and change in scope are funded entirely with non-General Fund money. The Board of Governors shall report any expenditure made pursuant to this section to the Office of State Budget and Management and to the Joint Legislative Commission on Governmental Operations."

SECTION 30.10.(b) This section is effective when it becomes law.

AUTHORIZE THE UNIVERSITY OF NORTH CAROLINA BOARD OF GOVERNORS TO ALLOCATE OR REALLOCATE FUNDS TO REPAIRS AND RENOVATIONS PROJECTS

SECTION 30.11.(a) G.S. 143C-4-3 is amended by adding a new subsection to read:

"(d) Board of Governors May Allocate Funds to Particular Projects. – Any funds in the Reserve for Repairs and Renovations that are allocated to the Board of Governors of The University of North Carolina may be allocated or reallocated by the Board for repairs and renovations projects so long as (i) any project that receives an allocation or reallocation satisfies the requirements of subsection (b) of this section unless the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance and (ii) the allocation or reallocation is in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina. The Board of Governors shall report to the Joint Legislative Commission on Governmental Operations on the allocation or reallocation of funds pursuant to this section within 60 days of any allocation or reallocation under this subsection."

SECTION 30.11.(b) This section becomes effective July 1, 2011.

WAIVE THE REQUIREMENT FOR A CAPITAL PROJECT FEASIBILITY DETERMINATION FOR CAPITAL PROJECTS OF THE UNIVERSITY OF NORTH CAROLINA FOR WHICH ADVANCE PLANNING HAS NOT BEEN UNDERTAKEN

SECTION 30.12.(a) G.S. 143C-3-3 reads as rewritten:

"**§ 143C-3-3. Budget requests from State agencies in the executive branch.**

...

(c) Repairs and Renovations Funds Request. – In addition to any other information requested by the Director, any State agency proposing to repair or renovate an existing facility shall accompany that request with all of the following:

(1) A description of current deficiencies and proposed corrections with a review and evaluation of that proposal prepared by the Department of Administration.

(2) An estimate of project costs approved by the Department of Administration.

(3) A certification of project feasibility as described in ~~G.S. 143-341.~~G.S. 143-341, except that in the case of a project of The University of North Carolina for which advance planning has not been completed, the request may be submitted without this certification.

(4) An explanation of the method by which the repair or renovation is to be financed.

(d) Capital Funds Request. – In addition to any other information requested by the Director, any State agency proposing to (i) acquire real property, (ii) construct a new facility, (iii) expand the building area (sq. ft.) of an existing facility, or (iv) rehabilitate an existing facility to accommodate new or expanded uses shall accompany that request with all of the following:

(1) An estimate of its space needs and other physical requirements, together with a review and evaluation of that estimate prepared by the Department of ~~Administration.~~Administration, except that in the case of a project of The University of North Carolina for which advance planning has not been completed, the estimate of space needs may be a preliminary estimate.

(2) An estimate of project costs and cash flow requirements approved by the Department of Administration.

(3) A certification of project feasibility as described in ~~G.S. 143-341.~~G.S. 143-341, except that in the case of a project of The University of North Carolina for which advance planning has not been completed, the request may be submitted without this certification.

(4) An explanation of the method by which the acquisition, construction, or rehabilitation is to be financed.

(5) An estimate of maintenance and operating costs, including personnel, for the project, covering the first five years of operation.

(6) An estimate of revenues, if any, to be derived from the project, covering the first five years of operation.

This subsection does not apply to requests for State resources for railroad, highway, or bridge construction or renovation.

(e) Information Technology Request. – In addition to any other information requested by the Director, any State agency requesting significant State resources, as defined by the Director, for the purpose of acquiring or maintaining information technology shall accompany that request with all of the following:

(1) A statement of its needs for information technology and related resources, including expected improvements to programmatic or business operations, together with a review and evaluation of that statement prepared by the State Chief Information Officer.

(2) A statement setting forth the requirements for State resources, together with an evaluation of those requirements by the State Chief Information Officer that takes into consideration the State's current technology, the opportunities for technology sharing, the requirements of Article 3D of Chapter 147 of the General Statutes, and any other factors relevant to the analysis.

(3) A statement by the State Chief Information Officer that sets forth viable alternatives, if any, for meeting the agency needs in an economical and efficient manner.

(4) In the case of an acquisition, an explanation of the method by which the acquisition is to be financed.

This subsection shall not apply to requests submitted by the General Assembly, the Administrative Office of the Courts, or The University of North Carolina."

SECTION 30.12.(b) G.S. 143-341(3)b1. reads as rewritten:

"**§ 143-341. Powers and duties of Department.**

The Department of Administration has the following powers and duties:

...

(3) Architecture and Engineering:

...

b1. To certify that a statement of needs pursuant to ~~G.S. 143C-3-3~~ G.S. 143C-3-3, other than for a project of The University of North Carolina for which advance planning has not been completed, is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars ($100,000)."

SECTION 30.12.(c) This section becomes effective July 1, 2011.

JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON CAPITAL IMPROVEMENTS SHALL EXAMINE ADEQUACY OF PLANNING FOR LONG-TERM STATE CAPITAL NEEDS

SECTION 30.13.(a) G.S. 120-259 reads as rewritten:

"**§ 120-259. Purpose and powers of the Committee.**

(a) The Joint Legislative Oversight Committee on Capital Improvements shall examine, on a continuing basis, all of the following: ~~capital improvements approved and undertaken for State facilities and institutions. As used in this section "capital improvements" includes repairs and renovations, and "State facilities and institutions" includes facilities and institutions of The University of North Carolina.~~

(1) Capital improvements approved and undertaken for State facilities and institutions.

(2) The adequacy of planning for the State's long-term capital needs. This examination (i) may take into account the priorities embodied in the six-year capital improvements plan developed pursuant to G.S. 143C-8-5 and other planning documents but shall constitute a separate examination that does not rely exclusively on any particular document and (ii) shall look at capital needs throughout the State and not only in Wake County.

(b) The Committee shall have oversight over implementation of the six-year capital improvements plan developed pursuant to G.S. 143C-8-5.

(c) The Committee, while in discharge of official duties, shall have access to any paper or document and may compel the attendance of any State official or employee before the Committee or secure any evidence under ~~G.S. 120-19.~~ G.S. 120-19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly.

(d) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

(e) As used in this section, 'capital improvements' includes repairs and renovations, and 'State facilities and institutions' includes facilities and institutions of The University of North Carolina."

SECTION 30.13.(b) The Joint Legislative Oversight Committee on Capital Improvements shall report to the General Assembly no later than April 1, 2012, on the adequacy of planning for the State's long-term capital needs. This report shall accord with G.S. 120-259(a)(2) and shall also include at least the following:

(1) An analysis of the various mechanisms that currently exist to facilitate the long-term capital planning of State facilities and an assessment of the degree to which those mechanisms serve the needs of the State.

(2) An examination of whether and to what degree the capital project priorities of individual State agencies and departments accord with the long-term capital planning needs of the State as a whole.

(3) An examination of whether the long-term capital planning needs of the State might be better served by changing the way in which capital projects are planned. This analysis shall include an examination of the methods by which other States engage in long-term capital planning.

(4) An analysis of whether, historically, the percentage of funds that have been allocated from the Reserve for Repairs and Renovations to the Board of Governors of The University of North Carolina for university facilities compared to the percentage of funds that have been allocated from that Reserve to the Office of State Budget and Management for other State facilities is an appropriate ratio.

(5) An analysis of whether requiring the Board of Governors of The University of North Carolina to set forth capital project requests that prioritize projects on a systemwide basis would better serve the long-term capital planning needs of the State than the current practice of having each campus prioritize capital projects requests for that particular campus does.

PART XXXI. FEES

EDUCATION/STATE BOARD AUTHORITY TO ESTABLISH GED TESTING FEES

SECTION 31.2. G.S. 115D-5(s) reads as rewritten:

"(s) The State Board of Community Colleges may establish, retain and budget fees charged to students taking the General Education Development (GED) ~~test.~~ test, including fees for retesting. Fees collected for this purpose shall be used only to (i) offset the costs of the GED test, including the cost of scoring the test, (ii) offset the costs of printing GED certificates, and (iii) meet federal and State reporting requirements related to the test."

NER/COMMERCE/SET REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 31.4.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2011.

SECTION 31.4.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2011-2012 fiscal year is two hundred thousand dollars ($200,000).

SECTION 31.4.(c) This section becomes effective July 1, 2011.

FEE TO ADVERTISE IN WELCOME CENTERS

SECTION 31.4A. G.S. 143B-421.3 reads as rewritten:

"**§ 143B-421.3. Consultation required for welcome and visitor centers.**

(a) Consultation. – The Department of Commerce and the Department of Transportation shall consult with the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources before beginning the design or construction of any new welcome center or visitor center buildings.

(b) Advertising. – An annual fee is imposed on a person who places or displays advertising materials in a welcome center building. The fee imposed by this subsection does not apply to governmental or public sector entities. The annual fee shall be as follows:

(1) For advertising materials where the width is not more than four inches and the length is not more than nine inches: one hundred dollars ($100.00) per year per welcome center building.

(2) For advertising materials where the width is more than four inches or the length is more than nine inches: two hundred dollars ($200.00) per year per welcome center building."

NER/AGRICULTURE/INCREASE FEES FOR PET SHOPS, AUCTIONS, KENNELS, AND DEALERS

SECTION 31.5.(a) G.S. 19A-27 reads as rewritten:

"**§ 19A-27. License required for operation of pet shop.**

No person shall operate a pet shop unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license shall be for the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for each license period or part thereof beginning with the first day of the fiscal year."

SECTION 31.5.(b) G.S. 19A-28 reads as rewritten:

"**§ 19A-28. License required for public auction or boarding kennel.**

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for each license period or part thereof beginning with the first day of the fiscal year."

SECTION 31.5.(c) G.S. 19A-29 reads as rewritten:

"**§ 19A-29. License required for dealer.**

No person shall be a dealer unless a license to deal shall have been granted by the Director to such person. Application for such license shall be in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for each license period or part thereof, beginning with the first day of the fiscal year."

NER/AGRICULTURE/FEES FOR OUT-OF-STATE SOIL TESTS AND EXPEDITED SOIL TESTS

SECTION 31.7. G.S. 106-22 reads as rewritten:

"**§ 106-22. Joint duties of Commissioner and Board.**

The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture shall:

...

(17) Agronomic Testing. – Provide agronomic testing services and charge reasonable fees for plant ~~analysis and~~analysis, nematode ~~testing.~~testing, out-of-state soil testing, and expedited soil testing. The Board shall charge at least four dollars ($4.00) for plant ~~analysis and~~analysis, at least two dollars ($2.00) for nematode ~~testing.~~testing, at least five dollars ($5.00) for out-of-state soil testing, and at least one hundred dollars ($100.00) for expedited soil testing."

NER/AGRICULTURE/TECHNICAL CORRECTIONS REGARDING COMMERCIAL FERTILIZER INSPECTION FEE, PESTICIDE TECHNICIAN IDENTIFICATION CARD RENEWAL FEE, AND PESTICIDE DEALER LICENSE RENEWAL FEE

SECTION 31.8.(a) G.S. 106-671(b) reads as rewritten:

"(b) Reporting System. – Each manufacturer, importer, jobber, firm, corporation or person who distributes commercial fertilizers in this State shall make application to the Commissioner for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina Department of Agriculture and Consumer Services an inspection fee of ~~twenty-five cents (25¢)~~fifty cents (50¢) per ton. The Commissioner is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of commercial fertilizers sold in the State, and as are satisfactory to the Commissioner. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the inspection fees paid. Each registrant shall report monthly the tonnage sold to non-registrants on forms furnished by the Commissioner. Such reports shall be made and inspection fees shall be due and payable monthly on the fifteenth of each month covering the tonnage and kind of commercial fertilizers sold during the past month. If the report is not filed and the inspection fee paid by the last day of the month it is due, the amount due shall bear a penalty of ten percent (10%), which shall be added to the inspection fee due. If the report is not filed and the inspection fee paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit."

SECTION 31.8.(b) G.S. 106-65.31(b1) reads as rewritten:

"(b1) Registration. – Within 75 days after the hiring of an employee who is either an estimator, salesman, serviceman, or solicitor, the licensee shall apply to the Division for the issuance of an identification card for such employee. The application must be accompanied by a fee of forty dollars ($40.00) for each card. The card shall be issued in the name of the employee and shall bear the name of the employing licensee, the employer's license number and phases, the name and address of the employer's business, and such other information as the Committee may specify. The identification card shall be carried by the employee on his person at all times while performing any phase of structural pest control work. The card must be displayed upon demand by the Commissioner, the Committee, the Division, or any representative thereof, or the person for whom any phase of structural pest control work is being performed. A registered technician's identification card must be renewed annually on or before June 30 by payment of a renewal fee of ~~twenty-five dollars ($25.00).~~forty dollars ($40.00). If a card is lost or destroyed the licensee may secure a duplicate for a fee of five dollars ($5.00).The licensee shall notify the Division of the termination or change in status of any registered technician. All identification cards expire when a license expires."

SECTION 31.8.(c) G.S. 143-448(c) reads as rewritten:

"(c) The license for a pesticide dealer may be renewed annually upon application to the Board, accompanied by a fee of ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for each license, on or before the first day of January of the calendar year for which the license is issued."

NER/AGRICULTURE/INCREASE AGRICULTURAL LIMING MATERIALS TONNAGE FEES

SECTION 31.9. G.S. 106-92.8 reads as rewritten:

"**§ 106-92.8. Tonnage fees: reporting system.**

For the purpose of defraying expenses connected with the registration, inspection and analysis of the materials coming under this Article, each manufacturer or registrant shall pay to the Department of Agriculture and Consumer Services tonnage fees in addition to registration fees as follows: for agricultural liming material, ~~ten cents (10¢)~~fifty cents (50¢) per ton; for landplaster, ~~ten cents (10¢)~~fifty cents (50¢) per ton; excepting that these fees shall not apply to materials which are sold to fertilizer manufacturers for the sole purpose for use in the manufacture of fertilizer or to materials when sold in packages of 10 pounds or less.

Any manufacturer, importer, jobber, firm, corporation or person who distributes materials coming under this Article in this State shall make application for a permit to report the materials sold and pay the tonnage fees as set forth in this section.

The Commissioner of Agriculture shall grant such permits on the following conditions: The applicant's agreement that he will keep such records as may be necessary to indicate accurately the tonnage of liming materials, etc., sold in the State and his agreement for the Commissioner or this authorized representative to examine such records to verify the tonnage statement. The registrant shall report quarterly and pay the applicable tonnage fees quarterly, on or before the tenth day of October, January, April, and July of each year. The report and payment shall cover the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be on forms furnished by the Commissioner. If the report is not filed and the tonnage fees paid by the last day of the month in which it is due, or if the report be false, the amount due shall bear a penalty of ten percent (10%) which shall be added to the tonnage fees due. If the report is not filed and the tonnage fees paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit and cancel the registration."

NER/AGRICULTURE/INCREASE ANTIFREEZE DISTRIBUTION REGISTRATION FEE

SECTION 31.10. G.S. 106-579.4 reads as rewritten:

"**§ 106-579.4. Registrations.**

On or before the first day of July of each year, and before any antifreeze may be distributed for the permit year beginning July 1, the manufacturer, packager, or person whose name appears on the label shall make application to the Commissioner on forms provided by the latter for registration for each brand of antifreeze which he desires to distribute. The application shall be accompanied by specimens or facsimiles of labeling for all container sizes to be distributed, when requested by the Commissioner; a license and inspection fee of ~~two hundred fifty dollars ($250.00)~~five hundred dollars ($500.00) for each brand of antifreeze and a

properly labeled sample of the antifreeze shall also be submitted at this time. The Commissioner may inspect, test, or analyze the antifreeze and review the labeling. If the antifreeze is not adulterated or misbranded, if it meets the standards established and promulgated by the Board, and if the said antifreeze is not such a type or kind that is in violation of this Article, the Commissioner shall thereafter issue a written license or permit authorizing the sale of such antifreeze in this State for the fiscal year in which the license or inspection fee is paid. If the antifreeze is adulterated or misbranded, if it fails to meet standards promulgated by the Board, or is in violation of this Article or regulations thereunder, the Commissioner shall refuse to register the antifreeze, and he shall return the application to the applicant, stating how the antifreeze or labeling is not in conformity. If the Commissioner shall, at a later date, find that a properly registered antifreeze product has been materially altered or adulterated, or a change has been made in the name, brand or trademark under which the antifreeze is sold, or that it violates the provisions of this Article, or that it violates regulations, definitions or standards duly promulgated by the Board, he shall notify the applicant that the license authorizing sale of the antifreeze is canceled. No antifreeze license shall be canceled unless the registrant shall have been given an opportunity to be heard before the Commissioner or his duly designated agent and to modify his application in order to comply with the requirements of this Article and regulations, definitions, and standards promulgated by the Board. All fees received by the Commissioner shall be placed in the Department of Agriculture and Consumer Services fund for the purpose of supporting the antifreeze enforcement and testing program."

NER/ENVIRONMENT/REDUCE PORTION OF CERTIFICATE OF TITLE FEES CREDITED TO MERCURY SWITCH REMOVAL ACCOUNT

SECTION 31.11. G.S. 20-85(a1) reads as rewritten:

"(a1) One dollar ($1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of this section shall be credited to the North Carolina Highway Fund. The Division shall use the fees derived from transactions with the Division for technology improvements. The Division shall use the fees derived from transactions with commission contract agents for the payment of compensation to commission contract agents. An additional ~~one dollar ($1.00)~~fifty cents (50¢) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited to the Mercury Switch Removal Account in the Department of Environment and Natural Resources."

LOCALS TO RECEIVE LARGER PORTION OF FOOD AND LODGING FEES

SECTION 31.11A. G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging and Adult Services of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, a fee of seventy-five dollars ($75.00) for each permit issued. This fee shall be reassessed annually for permits that do not expire. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than ~~thirty-three and one-third percent (33-1/3%)~~ten percent (10%) of the fees collected under this subsection may be used to support State health programs and activities."

NER/ENVIRONMENT/ADDITIONAL USES OF HAZARDOUS WASTE FEES

SECTION 31.15. G.S. 130A-294.1(b) reads as rewritten:

"(b) Funds collected pursuant to this section shall be used for personnel and other resources necessary to:

(1) Provide a high level of technical assistance and waste minimization effort for the hazardous waste management program;

(2) Provide timely review of permit applications;

(3) Insure that permit decisions are made on a sound technical basis and that permit decisions incorporate all conditions necessary to accomplish the purposes of this Part;

(4) Improve monitoring and compliance of the hazardous waste management program;

(5) Increase the frequency of inspections;
(6) Provide chemical, biological, toxicological, and analytical support for the hazardous waste management program; and
(7) Provide resources for emergency response to imminent hazards associated with the hazardous waste management program.
(8) Implement and provide oversight of necessary response activities involving inactive hazardous substance or waste disposal sites.
(9) Provide compliance and prevention activities within the solid waste program to ensure that hazardous waste is not disposed in solid waste management facilities."

NER/NATURAL RESOURCES/NO NEW FEES FOR PARKING IN STATE PARKS

SECTION 31.22. Notwithstanding any provision to the contrary, the funds appropriated to the Department of Environment and Natural Resources for State Parks for the 2011-2012 fiscal year and for the 2012-2013 fiscal year shall not be reduced or replaced with fees for parking at State Parks, unless these fees were charged prior to the 2011-2012 fiscal year. No fees shall be charged and no fees shall be collected for parking in a State Park during the 2011-2012 fiscal year and for the 2012-2013 fiscal year, unless these fees were charged prior to the 2011-2012 fiscal year.

JPS/AOC/INCREASE CERTAIN COURT COSTS

SECTION 31.23.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of one hundred twenty-nine dollars and fifty cents ~~($100.50)~~($129.50) in the district court, including cases before a magistrate, and the sum of one hundred ~~two~~ fifty-four dollars and fifty cents ~~($102.50)~~($154.50) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19. "

SECTION 31.23.(b) G.S. 7A-305 reads as rewritten:

"§ 7A-305. Costs in civil actions.

(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

...

(2) For support of the General Court of Justice, the sum of one hundred ~~twenty-five~~eighty dollars ~~($125.00)~~($180.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional one thousand dollars ($1,000) shall be paid upon its assignment, and the sum of ~~eighty-~~one hundred thirty dollars ~~($80.00)~~($130.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~fifty-five~~eighty dollars ~~($55.00).~~($80.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this

subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

...

(a5) In every civil action in the superior or district court wherein a party files a pleading containing one or more counterclaims or cross-claims, except for counterclaim and cross-claim actions brought under Chapter 50B of the General Statutes for which costs are assessed pursuant to subsection (a1) of this section, the following shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the municipality providing the facilities in which the judgment is rendered. If a municipality does not provide the facilities in which the judgment is rendered, the sum is to be remitted to the county in which the judgment is rendered. Funds derived from the facilities' fees shall be used in the same manner, for the same purposes, and subject to the same restrictions as facilities' fees assessed in criminal actions.

(2) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of four dollars ($4.00), to be credited to the Court Information Technology Fund.

(3) For support of the General Court of Justice, the sum of one hundred eighty dollars ($180.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional one thousand dollars ($1,000) shall be paid upon its assignment, and the sum of one hundred thirty dollars ($130.00) in the district court, except that if the case is assigned to a magistrate, the sum shall be eighty dollars ($80.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (95¢) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

...

(f) For the support of the General Court of Justice, the sum of twenty dollars ($20.00) shall accompany any filing containing one or more motions not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a motion containing as a sole claim for relief the taxing of costs, including attorneys' fees."

SECTION 31.23.(c) G.S. 7A-306 reads as rewritten:

"**§ 7A-306. Costs in special proceedings.**

(a) In every special proceeding in the superior court, the following costs shall be assessed:

...

(2) For support of the General Court of Justice the sum of ~~seventy-five~~one hundred six dollars ~~($75.00).~~($106.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each ~~seventy-five-dollar ($75.00)~~one hundred six-dollar ($106.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

...

(g) For the support of the General Court of Justice, the sum of twenty dollars ($20.00) shall accompany any filing containing one or more motions not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a motion containing as a sole claim for relief the taxing of costs, including attorneys' fees."

SECTION 31.23.(d) G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36C-2-203, and in collections of personal property by affidavit, the following costs shall be assessed:

...

(2) For support of the General Court of Justice, the sum of ~~seventy-five~~one hundred six dollars ~~($75.00),~~($106.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars ($6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed.with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars ($15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each ~~seventy-five dollar ($75.00)~~one hundred six-dollar ($106.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

...

(4) For the support of the General Court of Justice, the sum of twenty dollars ($20.00) shall accompany any filing containing one or more motions not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a motion containing as a sole claim for relief the taxing of costs, including attorneys' fees."

SECTION 31.23.(e) G.S. 7A-308(a) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

(1) Foreclosure under power of sale in deed of trust or mortgage.....~~$150.00~~$300.00
If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: forty-five cents (.45) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars ($10.00), a minimum ten dollar ($10.00) fee will be collected. If the amount determined by the formula is more than five hundred dollars ($500.00), a maximum five hundred-dollar ($500.00) fee will be collected.

...

(20) Filing a motion to assert a right of access under G.S. 1-72.1 ..... ~~30.00~~30.00

(21) In civil matters, all alias and pluries summons issued and all endorsements issued on an original summons ..... 15.00."

SECTION 31.23.(f) G.S. 7A-34.1 is repealed.

JPS/AOC/COMMUNITY MEDIATION CENTERS/WORTHLESS CHECK PROGRAMS

SECTION 31.24.(a) G.S. 14-107.2 is amended by adding a new subsection to read:

"(b1) A community mediation center may establish and charge fees for its services in the collection of worthless checks as part of a program established under this section and may assist the Administrative Office of the Courts and district attorneys in the establishment of worthless check programs in any districts in which worthless check programs have not been established."

SECTION 31.24.(b) G.S. 7A-38.5(a) reads as rewritten:

"(a) The General Assembly finds that it is in the public interest to encourage the establishment of community mediation centers, also known as dispute settlement centers or dispute resolution centers, to support the work of these centers in facilitating communication, understanding, reconciliation, and settlement of conflicts in communities, courts, and schools, and to promote the widest possible use of these centers by the courts and law enforcement officials across the State. A center may establish and charge fees for its services."

SECTION 31.24.(c) G.S. 7A-38.6(a) reads as rewritten:

"(a) All community mediation centers ~~currently receiving State funds~~ shall report annually to the Mediation Network of North Carolina on the program's funding and activities, including:

(1) Types of dispute settlement services provided;
(2) Clients receiving each type of dispute settlement service;
(3) Number and type of referrals received, cases actually mediated (identified by docket number), cases resolved in mediation, and total clients served in the cases mediated;
(4) Total program funding and funding sources;
(5) Itemization of the use of funds, including operating expenses and personnel;
(6) Itemization of the use of State funds appropriated to the center;
(7) Level of volunteer activity; and
(8) Identification of future service demands and budget requirements.

(a1) The Mediation Network of North Carolina shall compile and summarize the information provided pursuant to ~~this subsection~~ subsection (a) of this section and shall provide the information to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by February 1 of each year.

The Mediation Network of North Carolina shall also submit a copy of its report to the Administrative Office of the Courts. The receipt and review of this report by the Administrative Office of the Courts shall satisfy any program monitoring, evaluation, and contracting requirements imposed on the Administrative Office of the Courts by Part 3 of Article 6 of Chapter 143C of the General Statutes and any rules adopted under that Part."

SECTION 31.24.(d) G.S. 7A-38.7 reads as rewritten:

"**§ 7A-38.7. Dispute resolution fee for cases resolved in mediation.**

(a) In each criminal case filed in the General Court of Justice that is resolved through referral to a community mediation center, a dispute resolution fee shall be assessed in the sum of sixty dollars ($60.00) per mediation ~~for the support of the General Court of Justice.~~ to support the services provided by the community mediation centers and the Mediation Network of North Carolina. Fees assessed under this section shall be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the ~~State Treasurer.~~ Mediation Network of North Carolina. The Mediation Network may retain up to three dollars ($3.00) of this amount as an allowance for its administrative expenses. The Mediation Network must remit the remainder of this amount to the community mediation center that mediated the case.

(b) Before providing the district attorney with a dismissal form, the community mediation center shall require proof that the defendant has paid the dispute resolution fee as required by subsection (a) of this section and shall attach the receipt to the dismissal form."

JPS/AOC/INCREASE INTERSTATE COMPACT FEE

SECTION 31.25. G.S. 148-65.7(a) reads as rewritten:

"(a) Persons convicted in this State who make a request for transfer to another state pursuant to the compact shall pay a transfer application of ~~one~~ two hundred fifty dollars ~~($150.00)~~($250.00) for each transfer application submitted. The transfer application fee shall be paid to the Compact Commissioner upon submission of the transfer application. The Commissioner or the Commissioner's designee may waive the application fee if either the

Commissioner or the Commissioner's designee finds that payment of the fee will constitute an undue economic burden on the offender.

All fees collected pursuant to this section shall be deposited in the Interstate Compact Fund and shall be used only to support administration of the Interstate Compact.

The Interstate Compact Fund is established within the Department of Correction as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert, and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Department of Correction pursuant to this subsection shall be remitted to the State Treasurer to be deposited and held in this Fund. Moneys in the Fund shall be used to supplement funds otherwise available to the Department of Correction for the administration of the Interstate Compact."

JPS/AOC/CONTINGENT COURT COST INCREASES FOR COUNTIES

SECTION 31.26.(a) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 7A-304(a)(2) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(2) For the use of the courtroom and related judicial facilities, the sum of ~~twelve~~ thirty dollars ~~($12.00)~~($30.00) in the district court, including cases before a magistrate, and the sum of thirty dollars ($30.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders and other personnel of the Office of Indigent Defense Services, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.

...."

SECTION 31.26.(b) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4b) To provide for contractual services to reduce county jail populations, the sum of fifty dollars ($50.00) for all offenses arising under Chapter 20 of the

General Statutes and resulting in a conviction of an improper equipment offense, to be remitted to the Department of Correction."

SECTION 31.26.(c) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 7A-311(a) reads as rewritten:

"(a) In a civil action or special proceeding, except for actions brought under Chapter 50B of the General Statutes, the following fees and commissions shall be assessed, collected, and remitted to the county:

(1) a. For each item of civil process served, including summons, subpoenas, notices, motions, orders, writs and pleadings, the sum of ~~fifteen~~ thirty dollars ~~($15.00).~~($30.00). When two or more items of civil process are served simultaneously on one party, only one ~~fifteen-dollar ($15.00)~~thirty-dollar ($30.00) fee shall be charged.

...."

SECTION 31.26.(d) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 7A-313 reads as rewritten:

"§ 7A-313. Uniform jail fees.

Persons who are lawfully confined in jail awaiting trial shall be liable to the county or municipality maintaining the jail in the sum of ~~five~~ ten dollars ~~($5.00)~~($10.00) for each 24 hours' confinement, or fraction thereof, except that a person so confined shall not be liable for this fee if the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill.

Persons who are ordered to pay jail fees pursuant to a probationary sentence shall be liable to the county or municipality maintaining the jail at the same per diem rate paid by the Department of Correction to local jails for maintaining a prisoner, as set by the General Assembly in its appropriations acts."

SECTION 31.26.(e) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 153A-225(a) reads as rewritten:

"(a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;

(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;

(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health director after consultation with the area mental health, developmental disabilities, and substance abuse authority, if it is adequate to protect the health and welfare of the prisoners. Upon a determination that the plan is adequate to protect the health and welfare of the prisoners, the plan must be adopted by the governing body.

As a part of its plan, each unit may establish fees of not more than ~~ten dollars ($10.00)~~ twenty dollars ($20.00) per incident for the provision of nonemergency medical care to prisoners. In establishing fees pursuant to this section, each unit shall establish a procedure for waiving fees for indigent prisoners."

LABORATORY FACILITIES FEE EXPANSION

SECTION 31.26A. G.S. 7A-304(a)(7) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(7) For the services of the State Bureau of Investigation laboratory facilities or local law enforcement laboratory facilities, the district or superior court judge shall, upon conviction, order payment of the sum of six hundred dollars ($600.00) to be remitted to the Department of Justice for support of the State Bureau of ~~Investigation.~~Investigation or to the local law enforcement laboratory that performed the analysis. This cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratories have performed DNA analysis of the crime, tests of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction.

...."

GENGOV/INS/SET INSURANCE REGULATORY CHARGE

SECTION 31.27.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six percent (6%) for the 2011 calendar year.

SECTION 31.27.(b) This section is effective when it becomes law.

INVESTMENT COMPANY NOTICE FILING FEE

SECTION 31.27A.(a) G.S. 78A-31(a) reads as rewritten:

"(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security (i) issued by an investment company that is registered or has filed a registration statement under the Investment Company Act of 1940 and (ii) covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

(1) Prior to the initial offer of the security in this State, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, together with a consent to service of process signed by the issuer and with the payment of a notice filing fee ~~of two thousand dollars ($2,000).~~equal to the sum of one thousand seven hundred twenty-five dollars ($1,725) and two hundred seventy-five dollars ($275.00) for each series, fund, or portfolio offered in this State and listed in the federal registration statement.

(2) After the initial offer of the security in this State, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, which shall be filed concurrently with the Administrator.

(3) A report of the value of securities covered under federal law that are offered or sold in this State.

(4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee ~~of two thousand dollars ($2,000)~~ equal to the sum of one thousand seven hundred twenty-five dollars ($1,725) and two hundred seventy-five dollars ($275.00) for each series, fund, or portfolio offered in this State and listed in the federal registration statement and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period.

(5) A notice filed in accordance with this section may be amended after its effective date to increase the securities specified as proposed to be offered. An amendment becomes effective upon receipt by the Administrator. Every person submitting an amended notice filing shall pay a filing fee of fifty

dollars ($50.00) with respect to the additional securities proposed to be offered."

SECTION 31.27A.(b) This section becomes effective July 1, 2011, and applies to fees for filings due on or after that date.

RAISE PARKING RATES

SECTION 31.27B.(a) The Department of Administration shall raise visitor parking rates for lots it administers in the State Government Complex by one dollar ($1.00) per hour.

SECTION 31.27B.(b) Funds generated by subsection (a) of this section shall be used to support debt service associated with the Green Square Parking Lot authorized in S.L. 2008-107.

STATEWIDE INFORMATION TECHNOLOGY PROCUREMENT

SECTION 31.27C. Statewide Information Technology Procurement shall be funded through fees charged to agencies using Statewide Information Technology Procurement services. The Office of the State Chief Information Officer shall provide a fee schedule to allow cost recovery to the Office of State Budget and Management.

If agencies fail to pay for services within 30 days of billing, the Office of State Budget and Management shall transfer the unpaid amount to the State Information Technology Procurement Office.

TRANSPORTATION/DIVISION OF MOTOR VEHICLES BULK DATA

SECTION 31.29. G.S. 20-43.1 is amended by adding a new subsection to read:

"**§ 20-43.1. Disclosure of personal information in motor vehicle records.**

(a) The Division shall disclose personal information contained in motor vehicle records in accordance with the federal Driver's Privacy Protection Act of 1994, as amended, 18 U.S.C. §§ 2721, et seq.

(b) As authorized in 18 U.S.C. § 2721, the Division shall not disclose personal information for the purposes specified in 18 U.S.C. § 2721(b)(11).

(c) The Division shall not disclose personal information for the purposes specified in 18 U.S.C. § 2721(b)(12) unless the Division receives prior written permission from the person about whom the information is requested.

(d) As authorized in 18 U.S.C. § 2721, the Division may disclose personal information to federally designated organ procurement organizations and eye banks operating in this State for the purpose of identifying individuals who have indicated an intent to be an organ donor. Personal information authorized under this subsection is limited to the individual's first, middle, and last name, date of birth, address, sex, county of residence, and drivers license number. Employees of the Division who provide access to or disclosure of information in good-faith compliance with this subsection are not liable in damages for access to or disclosure of the information.

(e) As authorized in 18 U.S.C. § 2721, the Division may also provide copies of partial crash report data collected pursuant to G.S. 20-166.1, partial driver license data kept pursuant to G.S. 20-26(a), and partial vehicle registration application data collected pursuant to G.S. 20-52 in bulk form to persons, private companies, or other entities, for uses other than official, upon payment of a fee of three cents (3¢) per individual record. The Division shall not furnish such data except upon execution by the recipient of a written agreement to comply with the Driver's Privacy Protection Act of 1994, as amended, 18 U.S.C. §§ 2721, et seq. The information released to persons, private companies, or other entities, for uses other than official, pursuant to this subsection, shall not be a public record pursuant to Chapter 132 of the General Statutes."

TRANSPORTATION/FERRY DIVISION TOLLING ON ALL ROUTES

SECTION 31.30.(a) Effective April 1, 2012, G.S. 136-82 reads as rewritten:

"**§ 136-82. Department of Transportation to establish and maintain ferries.**

The Department of Transportation is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as may, in the discretion of the Department of Transportation, be expedient. The Board of Transportation shall establish tolls for all ferry routes.

To accomplish the purpose of this section said Department of Transportation is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Department of Transportation represent the fair value of the public service rendered.

The Department of Transportation, notwithstanding any other provision of law, may operate, or contract for the operation of, concessions on the ferries and at ferry facilities to provide to passengers on the ferries food, drink, and other refreshments, personal comfort items, and souvenirs publicizing the ferry system."

SECTION 31.30.(b) The Board of Transportation shall toll all ferry routes no later than the effective date of subsection (a) of this section but is encouraged to begin tolling on all routes before that date. In establishing tolls for ferry routes under G.S. 136-82, as amended by this section, the Board of Transportation shall consider the needs of commuters and other frequent passengers.

PART XXXI-A. FINANCE PROVISIONS

ENCOURAGE JOB GROWTH AND LONG-TERM ECONOMIC PROSPERITY BY TEMPORARILY REDUCING THE INCOME TAX BURDEN ON INDIVIDUALS AND SMALL BUSINESSES

SECTION 31A.1.(a) G.S. 105-134.1 reads as rewritten:

"**§ 105-134.1. Definitions.**

The following definitions apply in this Part:

(1) Adjusted gross income. – Defined in section 62 of the Code.

~~(1)~~(1a) Code. – Defined in G.S. 105-228.90.

(2) Department. – The Department of Revenue.

(3) Educational institution. – An educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(4) Fiscal year. – Defined in section 441(e) of the Code.

(5) Gross income. – Defined in section 61 of the Code.

(6) Head of household. – Defined in section 2(b) of the Code.

(7) Individual. – A human being.

(7a) Limited liability company. – Either a domestic limited liability company organized under Chapter 57C of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a partnership. As applied to a limited liability company that is a partnership under this Part, the term "partner" means a member of the limited liability company.

(7b) Repealed by Session Laws 1998-98, s. 9.

(8) Married individual. – An individual who is married and is considered married as provided in section 7703 of the Code.

(9) Nonresident individual. – An individual who is not a resident of this State.

(10) North Carolina taxable income. – Defined in G.S. 105-134.5.

(10a) Partnership. – A domestic partnership, a foreign partnership, or a limited liability company.

(11) Person. – Defined in G.S. 105-228.90.

(12) Resident. – An individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the state for more than 183 days raises no presumption that the individual is not a resident. A resident who removes from the State during a taxable year is considered a resident until he has both established a definite domicile elsewhere and abandoned any domicile in this State. The fact of marriage does not raise any presumption as to domicile or residence.

(13) Retirement benefits. – Amounts paid to a former employee or the beneficiary of a former employee under a written retirement plan established by the employer to provide payments to an employee or the beneficiary of an employee after the end of the employee's employment with the employer where the right to receive the payments is based upon the employment relationship. With respect to a self-employed individual or the beneficiary of a self-employed individual, the term means amounts paid to the individual or beneficiary of the individual under a written retirement plan established by the individual to provide payments to the individual or the beneficiary of the individual after the end of the self-employment. In addition, the term includes amounts received from an individual retirement account described in section 408 of the Code or from an individual retirement annuity described in section 408 of the Code. For the purpose of this subdivision, the term "employee" includes a volunteer worker.

(14) S Corporation. – Defined in G.S. 105-131(b).

(15) Secretary. – The Secretary of Revenue.

~~(16) Taxable income. – Defined in section 63 of the Code.~~

(17) Taxable year. – Defined in section 441(b) of the Code.

(18) Taxpayer. – An individual subject to the tax imposed by this Part.

~~(19) This State. – The State of North Carolina.~~"

SECTION 31A.1.(b) G.S. 105-134.2 reads as rewritten:

"**§ 105-134.2. Individual income tax imposed.**

(a) Tax. – ~~A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.~~A tax is imposed for each taxable year on the North Carolina taxable income of an individual. The tax is computed at the following percentages of the taxpayer's North Carolina taxable income:

(1) For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	$21,250	~~6%~~5.75%
$21,250	$100,000	~~7%~~6.75%
$100,000	NA	~~7.75%~~7.5%

(2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	$17,000	~~6%~~5.75%
$17,000	$80,000	~~7%~~6.75%
$80,000	NA	~~7.75%~~7.5%

(3) For unmarried individuals other than surviving spouses and heads of households:

Over	Up To	Rate
0	~~$12,750~~$10,625	~~6%~~5.75%
~~$12,750~~$10,625	~~$60,000~~$50,000	~~7%~~6.75%
~~$60,000~~$50,000	NA	~~7.75%~~7.5%

(4) For married individuals who do not file a joint return under G.S. 105-152:

Over	Up To	Rate
0	$10,625	~~6%~~5.75%
$10,625	$50,000	~~7%~~6.75%
$50,000	NA	~~7.75%~~7.5%

(b) Withholding Tables. – The Secretary may provide tables that compute the amount of tax due for a taxable year under this Part. ~~In lieu of the tax imposed by subsection (a) of this~~

~~section, there is imposed for each taxable year upon the North Carolina taxable income of every individual a tax determined under tables, applicable to the taxable year, which may be prescribed by the Secretary. The amounts of the tax determined under the tables shall be computed on the basis of the rates prescribed by subsection (a) of this section. This subsection does~~ The tables do not apply to an individual ~~making~~ who files a return under section 443(a)(1) of the Code for a period of less than 12 months ~~on account of~~ due to a change in the individual's annual accounting period, or to an estate or trust. ~~The tax imposed by this subsection shall be treated as the tax imposed by subsection (a) of this section.~~"

SECTION 31A.1.(c) G.S. 105-134.5 reads as rewritten:

"**§ 105-134.5. North Carolina taxable income defined.**

(a) Residents. – For ~~residents of this State,~~ an individual who is a resident of this State, the term "North Carolina taxable income" means the taxpayer's ~~taxable income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7.~~adjusted gross income as modified in G.S. 105-134.6.

(b) Nonresidents. – For a nonresident ~~individuals,~~ individual, the term "North Carolina taxable income" means the taxpayer's ~~taxable income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which is the taxpayer's gross income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that gross income, as adjusted,~~ adjusted gross income as modified in G.S. 105-134.6, multiplied by a fraction the denominator of which is the taxpayer's adjusted gross income as modified in G.S. 105-134.6, and the numerator of which is the amount of that adjusted gross income, as modified, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade, profession, or occupation carried on in this State, or is derived from gambling activities in this State.

(c) Part-year Residents. – If an individual was a resident of this State for only part of the taxable year, having moved into or removed from the State during the year, the term "North Carolina taxable income" has the same meaning as in subsection (b) of this section except that the numerator ~~shall include gross income, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7,~~ includes adjusted gross income, as modified, derived from all sources during the period the individual was a resident.

(d) S Corporations and Partnerships. – In order to calculate the numerator of the fraction provided in subsection ~~(b),~~(b) of this section, the amount of a shareholder's pro rata share of S Corporation income that is includable in the numerator ~~shall be~~ is the shareholder's pro rata share of the S Corporation's income attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of the fraction provided in subsection (b) of this section for a member of a partnership or other unincorporated business ~~with~~ that has one or more nonresident members ~~that~~ and operates in one or more other states, the amount of the member's distributive share of income of the business that is includable in the numerator ~~shall be~~ is determined by multiplying the total net income of the business by the ratio ascertained under the provisions of G.S. 105-130.4. As used in this subsection, total net income means the entire gross income of the business less all expenses, taxes, interest, and other deductions allowable under the Code ~~which~~ that were incurred in the operation of the business.

(e) Tax Year. – A taxpayer must compute North Carolina taxable income on the basis of the taxable year used in computing the taxpayer's income tax liability under the Code."

SECTION 31A.1.(d) G.S. 105-134.6 reads as rewritten:

"**§ 105-134.6. ~~Adjustments to taxable income.~~Modifications to adjusted gross income.**

(a) Personal Exemption. – In calculating North Carolina taxable income, a taxpayer may deduct an exemption amount equal to the amount listed in the table below based on the taxpayer's filing status and adjusted gross income. The taxpayer is allowed the same number of personal exemptions claimed under section 151 of the Code for the taxable year.

Filing Status	Adjusted Gross Income	Personal Exemption
Married, filing jointly	Up to $100,000	$2,500
	Over $100,000	$2,000
Head of Household	Up to $80,000	$2,500
	Over $80,000	$2,000
Single	Up to $60,000	$2,500

	Over $60,000	$2,000
Married, filing separately	Up to $50,000	$2,500
	Over $50,000	$2,000

(b) Standard Deduction. – In calculating North Carolina taxable income, a taxpayer may deduct the standard deduction amount listed in the table below for that taxpayer's filing status or deduct the itemized deduction amounts provided in subsection (c) of this section. A taxpayer may not deduct both the standard deduction amount allowed under this subsection and the itemized deductions allowed under subsection (c) of this section. The Secretary must publish the standard deduction amounts set under this subsection.

Filing Status	Standard Deduction
Married, filing jointly	$6,000
Head of Household	4,400
Single	3,000
Married, filing separately	3,000.

(c) Itemized Deductions. – In calculating North Carolina taxable income, a taxpayer may deduct the amounts allowed under this subsection or the standard deduction amount provided in subsection (b) of this section. A taxpayer may not deduct both the amounts allowed under this subsection and the standard deduction amount allowed under subsection (b) of this section.

(1) Medical expenses. – An amount equal to the amount the taxpayer deducted under section 213 of the Code for medical expenses paid during the taxable year.

(2) Home mortgage interest. – An amount equal to the amount the taxpayer deducted under section 163 of the Code for interest paid or accrued during the taxable year on acquisition indebtedness or home equity indebtedness.

(3) Charitable contributions. – An amount equal to the amount the taxpayer deducted under section 170 of the Code for charitable contributions made during the taxable year.

(d) Other Deductions. – In calculating North Carolina taxable income, a taxpayer may deduct from the taxpayer's adjusted gross income any of the following items that are included in the taxpayer's adjusted gross income:

(1) Interest upon the obligations of any of the following:
  a. The United States or its possessions.
  b. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.
  c. A nonprofit educational institution organized or chartered under the laws of this State.

(2) Gain from the disposition of obligations issued before July 1, 1995, to the extent the gain is exempt from tax under the laws of this State.

(3) Amounts received under Title II of the Social Security Act and amounts received from retirement annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.

(4) Refunds of State, local, and foreign income taxes.

(5) The amount received during the taxable year from one or more State, local, or federal government retirement plans to the extent the amount is exempt from tax under this Part pursuant to a court order in settlement of any of the following cases:
  a. Bailey v. State, 92 CVS 10221, 94 CVS 6904, 95 CVS 6625, 95 CVS 8230.
  b. Emory v. State, 98 CVS 0738.
  c. Patton v. State, 95 CVS 04346.

(6) An amount of benefits received from one or more retirement plans during the taxable year. The maximum amount allowed to be deducted under this subdivision may not exceed four thousand dollars ($4,000). In the case of a married couple filing a joint return where both spouses received retirement benefits during the taxable year, the maximum dollar amounts apply

separately to each spouse's benefits. The amount of retirement benefits received in a taxable year is the sum of the following:

a. The amount received during the taxable year from one or more State, local, or federal government retirement plans.

b. The amount received during the taxable year from one or more retirement plans other than State, local, or federal government retirement plans. The maximum amount allowed under this sub-subdivision in any taxable year is two thousand dollars ($2,000).

(7) Income that meets both of the following requirements:

a. Is earned or received by an enrolled member of a federally recognized Indian tribe.

b. Is derived from activities on a federally recognized Indian reservation while the member resides on the reservation. Income from intangibles having a situs on the reservation and retirement income associated with activities on the reservation are considered income derived from activities on the reservation.

(8) The amount by which the basis of property under this Article exceeds the basis of the property under the Code, in the year the taxpayer disposes of the property.

(9) The amount paid to the taxpayer by the State under G.S. 148-84 as compensation for pecuniary loss suffered by reason of erroneous conviction and imprisonment.

(10) The amount contributed to an account in the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25. The maximum amount allowed to be deducted under this subdivision may not exceed two thousand five hundred dollars ($2,500). In the case of a married couple filing a joint return, the maximum dollar amount of the deduction is five thousand dollars ($5,000).

(11) If a taxpayer is an eligible firefighter or an eligible rescue squad worker, the sum of two hundred fifty dollars ($250.00). In the case of a married couple filing a joint return, each spouse may qualify separately for the deduction allowed under this subdivision. In order to claim the deduction allowed under this subdivision, the taxpayer must submit with the tax return any documentation required by the Secretary. An individual may not claim a deduction as both an eligible firefighter and as an eligible rescue squad worker in a single taxable year. The following definitions apply in this subdivision:

a. Eligible firefighter. – An unpaid member of a volunteer fire department who attended at least 36 hours of fire department drills and meetings during the taxable year.

b. Eligible rescue squad worker. – An unpaid member of a volunteer rescue or emergency medical services squad who attended at least 36 hours of rescue squad training and meetings during the taxable year.

(12) The amount paid to the taxpayer during the taxable year from the Disaster Relief Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.

(13) The first fifty thousand dollars ($50,000) of net business income the taxpayer receives during the taxable year from a small business. A small business is a business whose cumulative gross receipts from all business activity in a taxable year does not exceed eight hundred twenty-five thousand dollars ($825,000). For purposes of this subdivision, the term "business income" does not include income that is considered passive income under the Code. This subdivision expires for taxable years beginning on or after January 1, 2014.

(14) An amount equal to twenty percent (20%) of the amount added to federal taxable income as accelerated depreciation under subdivision (b)(6) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable

years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012. For the amount added to taxable income in the 2012 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2013.

(15) An amount equal to twenty percent (20%) of the amount added to federal taxable income under subdivision (b)(7) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012.

(e) Additions. – In calculating North Carolina taxable income, a taxpayer must add to the taxpayer's adjusted gross income any of the following items that are not included in the taxpayer's adjusted gross income:

(1) Interest upon the obligations of states other than this State, political subdivisions of those states, and agencies of those states and their political subdivisions.

(2) The amount by which a shareholder's share of S Corporation income is reduced under section 1366(f)(2) of the Code for the taxable year by the amount of built-in gains tax imposed on the S Corporation under section 1374 of the Code.

(3) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property.

(4) The amount excluded from gross income under section 199 of the Code.

(5) The amount deducted in a prior taxable year under subdivision (a)(10) of this section to the extent this amount was withdrawn from the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25 and not used to pay for the qualified higher education expenses of the designated beneficiary, unless the withdrawal was made without penalty under section 529 of the Code due to the death or permanent disability of the designated beneficiary.

(6) The market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14.

(7) The amount of a donation made to a nonprofit organization or a unit of State or local government for which a credit is claimed under G.S. 105-129.16H.

(8) For taxable years 2010 through 2012, eighty-five percent (85%) of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service during the taxable year. In addition, for taxable year 2010, a taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes.

(9) For taxable years 2010 and 2011, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code for property placed in service in taxable year 2010 or 2011 exceeds the amount that would have been allowed for the respective taxable year under section 179 of the Code as of May 1, 2010. For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code as of January 1, 2011. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes.

~~(a) S Corporations. Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in this section.~~

~~(b) Deductions. The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:~~

~~(1) Interest upon the obligations of any of the following:~~
~~a. The United States or its possessions.~~
~~b. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.~~
~~c. A nonprofit educational institution organized or chartered under the laws of this State.~~

~~(2) Gain from the disposition of obligations issued before July 1, 1995, to the extent the gain is exempt from tax under the laws of this State.~~

~~(3) Benefits received under Title II of the Social Security Act and amounts received from retirement annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.~~

~~(4) Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1002, s. 2.~~

~~(5) Refunds of state, local, and foreign income taxes included in the taxpayer's gross income.~~

~~(5a) Reserved.~~

~~(5b) The amount received during the taxable year from one or more State, local, or federal government retirement plans to the extent the amount is exempt from tax under this Part pursuant to a court order in settlement of the following cases: Bailey v. State, 92 CVS 10221, 94 CVS 6904, 95 CVS 6625, 95 CVS 8230; Emory v. State, 98 CVS 0738; and Patton v. State, 95 CVS 04346. Amounts deducted under this subdivision may not also be deducted under subdivision (6) of this subsection.~~

~~(6) a. An amount, not to exceed four thousand dollars ($4,000), equal to the sum of the amount calculated in subparagraph b. plus the amount calculated in subparagraph c.~~
~~b. The amount calculated in this subparagraph is the amount received during the taxable year from one or more state, local, or federal government retirement plans.~~
~~c. The amount calculated in this subparagraph is the amount received during the taxable year from one or more retirement plans other than state, local, or federal government retirement plans, not to exceed a total of two thousand dollars ($2,000) in any taxable year.~~
~~d. In the case of a married couple filing a joint return where both spouses received retirement benefits during the taxable year, the maximum dollar amounts provided in this subdivision for various types of retirement benefits apply separately to each spouse's benefits.~~

~~(7) Recodified as G.S. 105-134.6(d)(1).~~

~~(8) Recodified as G.S. 105-134.6(d)(2).~~

~~(9) Income that is (i) earned or received by an enrolled member of a federally recognized Indian tribe and (ii) derived from activities on a federally recognized Indian reservation while the member resides on the reservation. Income from intangibles having a situs on the reservation and retirement income associated with activities on the reservation are considered income derived from activities on the reservation.~~

~~(10) The amount by which the basis of property under this Article exceeds the basis of the property under the Code, in the year the taxpayer disposes of the property.~~

~~(11) Severance wages received by a taxpayer from an employer as the result of the taxpayer's permanent, involuntary termination from employment through no fault of the employee. The amount of severance wages deducted as the result of the same termination may not exceed thirty-five thousand dollars ($35,000) for all taxable years in which the wages are received.~~

~~(12) Repealed by Session Laws 1998-171, s. 2, effective October 1, 1998.~~

~~(13) Repealed by Session Laws 2002-126, s. 30C.4, effective for taxable years beginning on or after January 1, 2002.~~

~~(14) The amount paid to the taxpayer by the State under G.S. 148-84 as compensation for pecuniary loss suffered by reason of erroneous conviction and imprisonment.~~

~~(15) Interest, investment earnings, and gains of a trust, the settlors of which are two or more manufacturers that signed a settlement agreement with this State to settle existing and potential claims of the State against the manufacturers for damages attributable to a product of the manufacturers, if the trust meets all of the following conditions:~~

~~a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.~~

~~b. A court of this State approves and retains jurisdiction over the trust.~~

~~c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials.~~

~~(16) The amount paid to the taxpayer during the taxable year from the Hurricane Floyd Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.~~

~~(17) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (c)(8) of this section.~~

~~(17a) An amount equal to twenty percent (20%) of the amount added to federal taxable income as accelerated depreciation under subdivision (c)(8a) of this section. For a taxpayer who made the addition for accelerated depreciation in the 2008 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2009. For a taxpayer who made the addition for accelerated depreciation in the 2009 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2010.~~

~~(18) The amount paid to the taxpayer during the taxable year from the Disaster Relief Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.~~

~~(19) Five percent (5%) of the gross purchase price of a qualified sale of a manufactured home community. A qualified sale is a transfer of land comprising a manufactured home community in a single purchase to a group composed of a majority of the manufactured home community leaseholders or to a nonprofit organization that represents such a group. To be eligible for this deduction, a taxpayer must give notice of the sale to the North Carolina Housing Finance Agency under G.S. 42-14.3.~~

~~(20) The amount added to federal taxable income as deferred income under section 108(i)(1) of the Code. This deduction applies to taxable years beginning on or after January 1, 2014.~~

~~(c) Additions. The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:~~

~~(1) Interest upon the obligations of states other than this State, political subdivisions of those states, and agencies of those states and their political subdivisions.~~

~~(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code.~~

~~(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax or as state or local general sales tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount the taxpayer is required to add to taxable income under subdivision (4) of this subsection.~~

~~(3a) The amount by which a shareholder's share of S Corporation income is reduced under section 1366(f)(2) of the Code for the taxable year by the amount of built in gains tax imposed on the S Corporation under section 1374 of the Code.~~

~~(4) The amount by which the taxpayer's additional standard deduction for aged and blind has been increased for inflation under section 63(c)(4)(A) of the Code plus the amount by which the taxpayer's basic standard deduction, including adjustments for inflation, under the Code exceeds the appropriate amount in the following chart based on the taxpayer's filing status:~~

~~Filing Status~~	~~Standard Deduction~~
~~Married filing jointly/Surviving Spouse~~	~~$6,000~~
~~Head of Household~~	~~4,400~~
~~Single~~	~~3,000~~
~~Married filing separately~~	~~3,000~~

~~(4a) The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the Code. This amount is reduced by five hundred dollars ($500.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:~~

~~Filing Status~~	~~AGI~~
~~Married, filing jointly~~	~~$100,000~~
~~Head of Household~~	~~80,000~~
~~Single~~	~~60,000~~
~~Married, filing separately~~	~~50,000.~~

~~For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.~~

~~(5) The market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14.~~

~~(5a) The market price of the oyster shells for which the taxpayer claims a credit for the taxable year under G.S. 105-151.30.~~

~~(5b) The amount of a donation made to a nonprofit organization or a unit of State or local government for which a credit is claimed under G.S. 105-129.16H.~~

~~(6) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property.~~

~~(7) The amount of federal estate tax that is attributable to an item of income in respect of a decedent and is deducted from gross income under section 691(c) of the Code.~~

~~(8) For taxable years 2002-2005, the applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:~~

~~Taxable Year~~	~~Percentage~~

2002	100%
2003	70%
2004	70%
2005 and thereafter	0%

(8a) The applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service after December 31, 2007, but before January 1, 2010. The applicable percentage under this subdivision is eighty-five percent (85%).

In addition, a taxpayer who was allowed a special accelerated depreciation deduction in taxable year 2007 or 2008 for property placed in service during that year, and whose North Carolina taxable income for that year reflected that accelerated depreciation deduction must make the adjustments set out below. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes.

a. A taxpayer must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the accelerated depreciation deduction reflected in the taxpayer's 2007 North Carolina taxable income.

b. A taxpayer must add to federal taxable income in the taxpayer's 2009 taxable year an amount equal to the applicable percentage of the accelerated depreciation deduction reflected in the taxpayer's 2008 North Carolina taxable income.

(9) Repealed by Session Laws 2006-220, s. 3, effective for taxable years beginning on and after January 1, 2007.

(10) The amount excluded from gross income under section 199 of the Code.

(11) The amount of the taxpayer's real property tax deduction under section 63(c)(1)(C) of the Code.

(12) The amount of the taxpayer's deduction for motor vehicle sales taxes under section 164(a)(6) or section 63(c)(1)(E) of the Code.

(13) The amount of income deferred under section 108(i)(1) of the Code from the discharge of indebtedness in connection with a reacquisition of an applicable debt instrument.

(14) The amount allowed as a deduction under section 163(e)(5)(F) of the Code for an original issue discount on an applicable high yield discount obligation.

(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

(1) The amount of inheritance or estate tax attributable to an item of income in respect of a decedent required to be included in gross income under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, may be deducted in the year the item of income is included. The amount of inheritance or estate tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance or estate tax paid under Article 1 or 1A of this Chapter on property transferred to a beneficiary by a decedent exceeds the amount of the tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent, (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, and the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

The Secretary may provide to a beneficiary of an item of income in respect of a decedent any information contained on an inheritance or estate

~~tax return that the beneficiary needs to compute the deduction allowed by this subdivision.~~

~~(2) The taxpayer may deduct the amount by which the taxpayer's deductions allowed under the Code were reduced, and the amount of the taxpayer's deductions that were not allowed, because the taxpayer elected a federal tax credit in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this Chapter for the amount.~~

~~(3) The taxpayer shall add to taxable income the amount of any recovery during the taxable year not included in taxable income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Part but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from taxable income the amount of any recovery during the taxable year included in taxable income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by this Part.~~

~~(4) A taxpayer may deduct from taxable income the amount, not to exceed two thousand five hundred dollars ($2,500), contributed to an account in the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25. In the case of a married couple filing a joint return, the maximum dollar amount of the deduction is five thousand dollars ($5,000).~~

~~(5) The taxpayer shall add to taxable income the amount deducted from taxable income in a prior taxable year under subdivision (4) of this subsection to the extent this amount was withdrawn from the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25 and not used to pay for the qualified higher education expenses of the designated beneficiary, unless the withdrawal was made without penalty under section 529 of the Code due to the death or permanent disability of the designated beneficiary.~~

~~(6) A taxpayer who is an eligible firefighter or an eligible rescue squad worker may deduct from taxable income the sum of two hundred fifty dollars ($250.00). In the case of a married couple filing a joint return, each spouse may qualify separately for the deduction allowed under this subdivision. In order to claim the deduction allowed under this subdivision, the taxpayer must submit with the tax return any documentation required by the Secretary. An individual may not claim a deduction as both an eligible firefighter and as an eligible rescue squad worker in a single taxable year. The following definitions apply in this subdivision:~~

~~a. Eligible firefighter. — An unpaid member of a volunteer fire department who attended at least 36 hours of fire department drills and meetings during the taxable year.~~

~~b. Eligible rescue squad worker. — An unpaid member of a volunteer rescue or emergency medical services squad who attended at least 36 hours of rescue squad training and meetings during the taxable year.~~

~~(7) The taxpayer shall add to taxable income the amounts listed in this subdivision. An addition is not required under this subdivision for a net operating loss deduction of an eligible small business as defined under section 172(b)(1)(H) of the Code. The amounts are:~~

~~a. For taxable years 2003, 2004, and 2005, the amount of any 2008 net operating loss deduction claimed on a federal return under section 172(b)(1)(H) or section 810(b)(4) of the Code.~~

~~b. For taxable years 2004, 2005, and 2006, the amount of any 2009 net operating loss deduction claimed on a federal return under section 172(b)(1)(H) or section 810(b)(4) of the Code.~~

~~(8) For taxable years 2011 through 2013, a taxpayer who made an addition under subdivision (7) of this subsection may deduct one-third of the~~

~~taxpayer's net operating loss absorbed on the taxpayer's 2003, 2004, 2005, and 2006 federal returns under section 172(b)(1)(H) or section 810(b)(4) of the Code.~~"

SECTION 31A.1.(e) G.S. 105-151.26 reads as rewritten:

"**§ 105-151.26. Credit for charitable contributions by nonitemizers.**

A taxpayer who elects the standard deduction under ~~section 63 of the Code for federal tax purposes~~ G.S. 105-134.6(b) is allowed as a credit against the tax imposed by this Part an amount equal to seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under ~~section 170 of the Code~~ G.S. 105-134.6(c)(3) if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross ~~income as calculated under the Code.~~income.

~~No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14.~~ A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SECTION 31A.1.(f) Effective for taxable years beginning on or after January 1, 2014, G.S. 105-134.6(a), as amended by subsection (a) of this section, reads as rewritten:

"(a) Tax. – A tax is imposed for each taxable year on the North Carolina taxable income of an individual. The tax is computed at the following percentages of the taxpayer's North Carolina taxable income:

(1) For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	$21,250	~~5.75%~~6%
$21,250	$100,000	~~6.75%~~7%
$100,000	NA	~~7.5%~~7.75%

(2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	$17,000	~~5.75%~~6%
$17,000	$80,000	~~6.75%~~7%
$80,000	NA	~~7.5%~~7.75%

(3) For unmarried individuals other than surviving spouses and heads of households:

Over	Up To	Rate
0	$10,625	~~5.75%~~6%
$10,625	$50,000	~~6.75%~~7%
$50,000	NA	~~7.5%~~7.75%

(4) For married individuals who do not file a joint return under G.S. 105-152:

Over	Up To	Rate
0	$10,625	~~5.75%~~6%
$10,625	$50,000	~~6.75%~~7%
$50,000	NA	~~7.5%~~7.75%"

SECTION 31A.1.(g) Except as otherwise provided, this section becomes effective for taxable years beginning on or after January 1, 2012.

ELIMINATE DEDUCTION FOR SEVERANCE WAGES AND CREDIT FOR OYSTER SHELLS

SECTION 31A.2.(a) G.S. 105-134.6(b)(11) and (b)(19), G.S. 105-130.48, and G.S. 105-151.30 are repealed.

SECTION 31A.2.(b) This section becomes effective for taxable years beginning on or after January 1, 2011.

ELIMINATE SALES TAX EXEMPTION FOR CERTAIN NUTRITIONAL SUPPLEMENTS AND THE ENERGY STAR SALES TAX HOLIDAY

SECTION 31A.3.(a) G.S. 105-164.13(13c) and G.S. 105-164.13D are repealed.

SECTION 31A.3.(b) G.S. 105-467(b) reads as rewritten:

"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13, the State sales and use tax ~~holidays~~ holiday contained in G.S. ~~105-164.13C and G.S. 105-164.13D,~~105-164.13C, and the State refund provisions contained in G.S. 105-164.14 through G.S. 105-164.14B apply to the local sales and use tax authorized to be levied and imposed under this Article. Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by the entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the entity and is being erected, altered, or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. A request for a refund shall be in writing and shall include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the entity's fiscal year. Refunds applied for more than three years after the due date are barred."

SECTION 31A.3.(c) This section becomes effective October 1, 2011, and applies to sales made on or after that date.

PART XXXII. MISCELLANEOUS PROVISIONS

STATE BUDGET ACT APPLIES

SECTION 32.1. The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

MOST TEXT APPLIES ONLY TO THE 2011-2013 FISCAL BIENNIUM

SECTION 32.2. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2011-2013 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2011-2013 fiscal biennium.

EFFECT OF HEADINGS

SECTION 32.3. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a part.

COMMITTEE REPORT

SECTION 32.4.(a) The Senate Appropriations Committee Report on the Continuation, Expansion, and Capital Budgets dated May 26, 2011, which was distributed in the Senate and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in the State Budget Act, Chapter 143C of the General Statutes, and for these purposes shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

SECTION 32.4.(b) The budget enacted by the General Assembly is for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2011-2013 biennial budget as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget submitted a recommended continuation budget to the General Assembly on February 15, 2011, in the document "The State of North Carolina Governor's Recommended Budget, 2011-2013" and in the Budget Support Document for the various departments, institutions, and other spending agencies of the State. The adjustments to these documents made by the General Assembly are set out in the Committee Report.

SECTION 32.4.(c) The budget enacted by the General Assembly shall also be interpreted in accordance with G.S. 143C-5-5, the special provisions in this act, and other appropriate legislation.

In the event that there is a conflict between the line-item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

SEVERABILITY CLAUSE

SECTION 32.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 32.6. Except as otherwise provided, this act becomes effective July 1, 2011.

SENATE APPROPRIATIONS COMMITTEE

REPORT
ON THE
CONTINUATION, EXPANSION
AND
CAPITAL BUDGETS

House Bill 200

Proposed Committee Substitute

May 24th, 2011

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General Fund Availability Statement

		FY 2011-12	FY 2012-13
1	Unappropriated Balance Remaining		72,311,073
2	Ending Unreserved Fund Balance for FY 2009-10	236,902,394	0
3	Anticipated Reversions for FY 2010-11 - Session Law 2011-15 (S.B. 109)	537,740,799	0
4	Anticipated Overcollections from FY 2010-11	180,800,000	0
5	Repayment of Medicaid Receipts in FY 2010-11	(125,000,000)	0
6	**Statutory Earmarks:**		
7	Savings Reserve Account	(202,994,340)	0
8	Repairs and Renovations Reserve Account	(202,994,339)	0
9	**Beginning Unreserved Fund Balance**	**424,454,514**	**72,311,073**
10	**Revenues Based on Existing Tax Structure**	**18,129,800,000**	**19,181,900,000**
11	**Non-tax Revenues**		
12	Investment Income	59,400,000	76,700,000
13	Judicial Fees	217,800,000	217,800,000
14	Disproportionate Share	100,000,000	100,000,000
15	Insurance	71,400,000	73,500,000
16	Other Non-Tax Revenues	182,500,000	182,500,000
17	Highway Trust Fund/Use Tax Reimbursement Transfer	41,500,000	27,600,000
18	Highway Fund Transfer	20,230,000	24,080,000
19	**Subtotal Non-tax Revenues**	**692,830,000**	**702,180,000**
20	**Total General Fund Availability**	**19,247,084,514**	**19,956,391,073**
21	**Adjustments to Availability: 2011 Session**		
22	Loss of Estate Tax	(57,100,000)	(72,200,000)
23	Jobs Package	(186,400,000)	(485,300,000)
24	Repeal Deduction for Sale of a Manufactured Home Community to		
25	Manufactured Homeowners	100,000	100,000
26	Repeal Deduction for Severance Wages	16,000,000	16,400,000
27	Repeal Credit for Recycling Oyster Shells	100,000	100,000
28	Repeal Energy Star Tax Holiday	1,900,000	2,000,000
29	Repeal Sales Tax Exemption for Nutritional Supplements Sold by		
30	Chiropractors	300,000	400,000
31	Repeal Wildlife Resources Commission Sales Tax Earmark	22,970,000	23,920,000
32	Suspend Corporate Income Tax Earmark (Public School Construction)	0	74,750,000
33	Increase in Judicial Fees	60,986,955	60,986,955
34	Increase Investment Company Notice Filing Fee	1,600,000	1,600,000
35	Increase Parking Fees for Visitors	550,000	550,000
36	Loss of Revenue from the Town of Butner	(1,213,235)	(1,213,235)
37	Transfer from E-Commerce Reserve Fund	4,483,526	0
38	Divert Funds from Parks & Recreation Trust Fund	4,217,500	0
39	Divert Funds from Recreational/ Natural Heritage Trust Fund	4,500,000	0
40	Transfer from Highway Fund for State Highway Patrol	193,585,434	189,859,507
41	Transfer from Highway Trust Fund for School Bus Replacement	35,223,642	0
42	Transfer from Mercury Prevention Pollution Fund	125,000	0
43	Transfer from Commerce - Enterprise Fund	250,000	
44	Divert Funds from Scrap Tire Disposal Account	1,134,495	0
45	Divert Funds from White Goods Management Account	1,131,342	0
46	Diversion of Golden LEAF Funds	67,563,760	67,563,760
47	Tobacco Trust Fund Master Settlement Agreement Funds	8,334,360	8,790,386
48	Health and Wellness Trust Fund Master Settlement Agreement Funds	16,334,360	16,790,386
49	Transfer Health and Wellness Trust Funds to Public Health	32,904,411	0
50	Department of Revenue - Accounts Receivable Program	15,000,000	15,000,000
51	Medicaid Disproportionate Share Receipts	15,000,000	15,000,000
52	Adjust Transfer from Insurance Regulatory Fund	(742,348)	(742,348)
53	Adjust Transfer from Treasurer's Office	(3,881,172)	(3,916,453)
54	**Subtotal Adjustments to Availability: 2011 Session**	**254,958,030**	**(69,561,042)**
55	**Revised General Fund Availability**	**19,502,042,544**	**19,886,830,031**
56	Less General Fund Appropriations	(19,429,731,471)	(19,886,830,031)
57	**Unappropriated Balance Remaining**	**72,311,073**	**0**

SUMMARY:

GENERAL FUND APPROPRIATIONS

SUMMARY OF GENERAL FUND APPROPRIATIONS 2011 Legislative Session: Fiscal Year 2011-12						
		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2011-12
Education						
Community Colleges	1,102,475,214	(112,569,798)	(7,600,000)	(120,169,798)	(25.00)	982,305,416
Public Education	7,923,543,951	(618,571,148)	(78,216,861)	(696,788,009)	(139.75)	7,226,755,942
University System	2,887,492,464	(351,546,259)	(7,453,741)	(359,000,000)	309.80	2,528,492,464
Total Education	**11,913,511,629**	**(1,082,687,205)**	**(93,270,602)**	**(1,175,957,807)**	**145.05**	**10,737,553,822**
Health and Human Services						
Central Management and Support	70,229,335	(30,817,345)	5,599,390	(25,217,955)	(288.00)	45,011,380
Aging and Adult Services	37,419,667	(2,060,000)	0	(2,060,000)	0.00	35,359,667
Blind and Deaf / Hard of Hearing Services	8,389,110	(190,961)	(1,000,000)	(1,190,961)	0.00	7,198,149
Child Development	261,759,600	10,695,977	(6,352,644)	4,343,333	0.00	266,102,933
Health Service Regulation	17,925,590	0	(1,792,559)	(1,792,559)	0.00	16,133,031
Medical Assistance	3,314,539,538	(370,091,158)	(16,146,384)	(386,237,542)	(30.00)	2,928,301,996
Mental Health, Dev. Disabilities and Sub. Abuse	723,675,112	(50,196,885)	(25,000,000)	(75,196,885)	(7.00)	648,478,227
NC Health Choice	88,373,806	(8,921,489)	0	(8,921,489)	0.00	79,452,317
Public Health	161,930,589	(7,958,188)	32,904,411	24,946,223	(61.00)	186,876,812
Social Services	202,245,063	(17,958,411)	0	(17,958,411)	(2.00)	184,286,652
Vocational Rehabilitation	41,252,238	(2,058,522)	(2,067,928)	(4,126,450)	(5.00)	37,125,788
Total Health and Human Services	**4,927,739,648**	**(479,556,982)**	**(13,855,714)**	**(493,412,696)**	**(393.00)**	**4,434,326,952**
Justice and Public Safety						
Correction	1,421,644,768	(71,332,902)	(12,495,520)	(83,828,422)	(499.00)	1,337,816,346
Crime Control & Public Safety	34,175,427	213,752,200	0	213,752,200	3,037.00	247,927,627
Judicial Department	477,189,575	(42,131,186)	1,184,693	(40,946,493)	(399.50)	436,243,082
Judicial - Indigent Defense	122,770,246	(11,037,369)	0	(11,037,369)	(11.40)	111,732,877
Justice	89,670,944	(37,180,522)	(160,125)	(37,340,647)	(888.81)	52,330,297
Juvenile Justice & Delinquency Prevention	151,295,187	(19,563,395)	3,861,900	(15,701,495)	(278.60)	135,593,692
Total Justice and Public Safety	**2,296,746,147**	**32,506,826**	**(7,609,052)**	**24,897,774**	**959.69**	**2,321,643,921**

SUMMARY OF GENERAL FUND APPROPRIATIONS 2011 Legislative Session: Fiscal Year 2011-12						
		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2011-12
Natural and Economic Resources						
Agriculture and Consumer Services	61,754,014	(2,366,555)	12,096,590	9,730,035	(17.00)	71,484,049
Commerce	38,907,381	(7,846,258)	17,365,599	9,519,341	(20.00)	48,426,722
Commerce - State Aid	31,169,289	(4,467,305)	500,000	(3,967,305)	0.00	27,201,984
Environment and Natural Resources	188,972,401	(21,763,414)	554,373	(21,209,041)	(132.27)	167,763,360
Clean Water Mgmt. Trust Fund	100,000,000	(87,500,000)	0	(87,500,000)	0.00	12,500,000
Labor	16,842,679	(1,005,792)	0	(1,005,792)	(9.00)	15,836,887
NC Biotechnology Center	19,501,900	(2,925,285)	0	(2,925,285)	0.00	16,576,615
Rural Economic Development Center	22,640,814	(3,396,122)	20,000,000	16,603,878	0.00	39,244,692
Wildlife Resources Commission	0	15,221,179	778,821	16,000,000	0.00	16,000,000
Total Natural & Economic Resources	**479,788,478**	**(116,049,552)**	**51,295,383**	**(64,754,169)**	**(178.27)**	**415,034,309**
General Government						
Administration	69,700,026	(7,467,209)	0	(7,467,209)	(94.52)	62,232,817
Auditor	13,063,656	(1,206,082)	0	(1,206,082)	(13.00)	11,857,574
Cultural Resources	72,664,633	(11,670,024)	0	(11,670,024)	(122.51)	60,994,609
Cultural Resources - Roanoke Island Comm.	2,406,982	(1,203,491)	0	(1,203,491)	0.00	1,203,491
General Assembly	54,593,047	(8,906,058)	7,572,506	(1,333,552)	(9.00)	53,259,495
Governor	6,189,478	(1,302,417)	0	(1,302,417)	(17.00)	4,887,061
Housing Finance Agency	13,877,996	(3,204,945)	0	(3,204,945)	0.00	10,673,051
Insurance	33,458,756	2,935,165	0	2,935,165	(3.00)	36,393,921
Insurance - Worker's Compensation Fund	4,500,000	(706,000)	(1,500,000)	(2,206,000)	0.00	2,294,000
Lieutenant Governor	954,868	(179,623)	0	(179,623)	1.00	775,245
Office of Administrative Hearings	4,328,822	655,049	0	655,049	8.68	4,983,871
Revenue	88,370,399	(10,170,861)	0	(10,170,861)	(106.00)	78,199,538
Secretary of State	11,076,972	(422,409)	0	(422,409)	(4.00)	10,654,563
State Board of Elections	6,189,011	(1,002,408)	0	(1,002,408)	(14.00)	5,186,603
State Budget and Management (OSBM)	6,963,796	(1,115,133)	0	(1,115,133)	(6.00)	5,848,663
OSBM - Special Appropriations	5,934,311	(5,493,699)	1,500,000	(3,993,699)	(13.00)	1,940,612
State Controller	32,517,077	(3,539,584)	(608,536)	(4,148,120)	(18.50)	28,368,957
Treasurer - Operations	10,538,203	(3,881,172)	0	(3,881,172)	(36.00)	6,657,031
Treasurer - Fire/Rescue Retirement	17,812,114	0	0	0	0.00	17,812,114
Total General Government	**455,140,147**	**(57,880,901)**	**6,963,970**	**(50,916,931)**	**(446.85)**	**404,223,216**

SUMMARY OF GENERAL FUND APPROPRIATIONS 2011 Legislative Session: Fiscal Year 2011-12						
		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2011-12
Debt Service and Statewide Reserves						
Debt Service						
Interest / Redemption	705,905,183	(16,947,995)	0	(16,947,995)	0.00	688,957,188
Federal Reimbursement	1,616,380	0	0	0	0.00	1,616,380
Subtotal Debt Service	**707,521,563**	**(16,947,995)**	**0**	**(16,947,995)**	**0.00**	**690,573,568**
Statewide Reserves						
Contingency and Emergency Fund	5,000,000	0	0	0		5,000,000
State Retirement System Contributions	0	297,400,000		297,400,000		297,400,000
Judicial Retirement System Contribution	0	7,900,000	0	7,900,000		7,900,000
Firemen & Rescue Squad Workers Pension Fund		5,800,000	0	5,800,000		5,800,000
National Guard Pension Fund		263,000	0	263,000		263,000
State Health Plan	0	7,119,541		7,119,541		7,119,541
Information Technology Fund	7,840,000	(1,537,574)	(1,844,284)	(3,381,858)	(3.00)	4,458,142
Job Development Investment Grants (JDIG)	27,400,000	0	(12,000,000)	(12,000,000)		15,400,000
Continuation Review Reserve						
Review of Compensation Plans			2,000,000	2,000,000		2,000,000
Automated Fraud Detection Development			1,000,000	1,000,000		1,000,000
Controller- Fraud Detection Development			500,000	500,000		500,000
Severance Expenditure Reserve			75,000,000	75,000,000		75,000,000
Subtotal Statewide Reserves	**40,240,000**	**316,944,967**	**64,655,716**	**381,600,683**	**(3.00)**	**421,840,683**
Total Reserves and Debt Service	**747,761,563**	**299,996,972**	**64,655,716**	**364,652,688**	**(3.00)**	**1,112,414,251**
Total General Fund for Operations	**20,820,687,612**	**(1,403,670,842)**	**8,179,701**	**(1,395,491,141)**	**83.62**	**19,425,196,471**
Capital Improvements						
Water Resources Development Projects	0	0	4,535,000	4,535,000	0.00	4,535,000
Total Capital Improvements	**0**	**0**	**4,535,000**	**4,535,000**	**0.00**	**4,535,000**
Total General Fund Budget	**20,820,687,612**	**(1,403,670,842)**	**12,714,701**	**(1,390,956,141)**	**83.62**	**19,429,731,471**

SUMMARY OF GENERAL FUND APPROPRIATIONS						
2011 Legislative Session: Fiscal Year 2012-13						
		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2012-13
Education						
Community Colleges	1,102,475,214	(120,169,798)	0	(120,169,798)	(25.00)	982,305,416
Public Education	7,923,543,951	(677,139,628)	(54,872,023)	(732,011,651)	(139.75)	7,191,532,300
University System	2,886,730,386	(340,988,118)	(19,011,882)	(360,000,000)	205.80	2,526,730,386
Total Education	**11,912,749,551**	**(1,138,297,544)**	**(73,883,905)**	**(1,212,181,449)**	**41.05**	**10,700,568,102**
Health and Human Services						
Central Management and Support	70,229,335	(30,817,345)	0	(30,817,345)	(288.00)	39,411,990
Aging and Adult Services	37,419,667	(2,060,000)	0	(2,060,000)	0.00	35,359,667
Blind and Deaf / Hard of Hearing Services	8,372,886	(190,961)	(1,000,000)	(1,190,961)	0.00	7,181,925
Child Development	261,759,600	10,695,977	(6,352,644)	4,343,333	0.00	266,102,933
Health Service Regulation	17,925,590	0	(1,792,559)	(1,792,559)	0.00	16,133,031
Medical Assistance	3,314,539,538	(385,210,493)	(24,739,541)	(409,950,034)	(40.00)	2,904,589,504
Mental Health, Dev. Disabilities and Sub. Abuse	723,675,112	(50,196,885)	0	(50,196,885)	(7.00)	673,478,227
NC Health Choice	88,373,806	(4,655,941)	0	(4,655,941)	0.00	83,717,865
Public Health	161,930,589	(7,958,188)	0	(7,958,188)	(61.00)	153,972,401
Social Services	202,245,063	(17,958,411)	0	(17,958,411)	(2.00)	184,286,652
Vocational Rehabilitation	41,654,578	(2,058,522)	(2,067,928)	(4,126,450)	(5.00)	37,528,128
Total Health and Human Services	**4,928,125,764**	**(490,410,769)**	**(35,952,672)**	**(526,363,441)**	**(403.00)**	**4,401,762,323**
Justice and Public Safety						
Correction	1,418,867,332	(59,302,927)	(11,153,612)	(70,456,539)	(439.00)	1,348,410,793
Crime Control & Public Safety	34,175,427	236,029,495	0	236,029,495	3,037.00	270,204,922
Judicial Department	477,189,575	(43,044,434)	(1,681,000)	(44,725,434)	(488.50)	432,464,141
Judicial - Indigent Defense	122,770,246	(11,609,781)	0	(11,609,781)	(11.40)	111,160,465
Justice	89,670,944	(65,133,836)	0	(65,133,836)	(888.81)	24,537,108
Juvenile Justice & Delinquency Prevention	151,295,187	(20,154,622)	0	(20,154,622)	(278.60)	131,140,565
Total Justice and Public Safety	**2,293,968,711**	**36,783,895**	**(12,834,612)**	**23,949,283**	**930.69**	**2,317,917,994**

SUMMARY OF GENERAL FUND APPROPRIATIONS 2011 Legislative Session: Fiscal Year 2012-13						
		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2012-13
Natural and Economic Resources						
Agriculture and Consumer Services	61,754,014	(2,366,555)	8,790,386	6,423,831	(23.00)	68,177,845
Commerce	38,907,381	(7,674,952)	0	(7,674,952)	(23.00)	31,232,429
Commerce - State Aid	31,169,289	(4,127,894)	0	(4,127,894)	0.00	27,041,395
Environment and Natural Resources	188,972,401	(20,221,445)	(6,000,000)	(26,221,445)	(133.27)	162,750,956
Clean Water Mgmt. Trust Fund	100,000,000	(87,500,000)	0	(87,500,000)	0.00	12,500,000
Labor	16,842,679	(1,005,792)	0	(1,005,792)	(9.00)	15,836,887
NC Biotechnology Center	19,501,900	(2,925,285)	0	(2,925,285)	0.00	16,576,615
Rural Economic Development Center	22,640,814	(3,396,122)	20,000,000	16,603,878	0.00	39,244,692
Wildlife Resources Commission	0	15,221,179	0	15,221,179	0.00	15,221,179
Total Natural and Economic Resources	**479,788,478**	**(113,996,866)**	**22,790,386**	**(91,206,480)**	**(188.27)**	**388,581,998**
General Government						
Administration	69,700,026	(5,563,079)	0	(5,563,079)	(94.52)	64,136,947
Auditor	13,063,656	(2,387,621)	0	(2,387,621)	(26.00)	10,676,035
Cultural Resources	72,664,633	(14,407,792)	0	(14,407,792)	(165.62)	58,256,841
Cultural Resources - Roanoke Island Comm.	2,406,982	(2,406,982)	0	(2,406,982)	0.00	0
General Assembly	54,593,047	(7,488,839)	3,000,000	(4,488,839)	(47.75)	50,104,208
Governor	6,189,478	(1,302,417)	0	(1,302,417)	(17.00)	4,887,061
Housing Finance Agency	13,877,996	(3,204,945)	0	(3,204,945)	0.00	10,673,051
Insurance	33,458,756	2,935,165	0	2,935,165	(3.00)	36,393,921
Insurance - Worker's Compensation Fund	4,500,000	(1,876,346)	0	(1,876,346)	0.00	2,623,654
Lieutenant Governor	954,868	(179,623)	0	(179,623)	1.00	775,245
Office of Administrative Hearings	4,328,822	655,049	0	655,049	8.68	4,983,871
Revenue	88,370,399	(10,170,861)	0	(10,170,861)	(106.00)	78,199,538
Secretary of State	11,076,972	(422,409)	0	(422,409)	(4.00)	10,654,563
State Board of Elections	6,189,011	(1,062,408)	0	(1,062,408)	(14.00)	5,126,603
State Budget and Management (OSBM)	6,963,796	(1,115,133)	0	(1,115,133)	(6.00)	5,848,663
OSBM - Special Appropriations	5,934,311	(5,493,699)	0	(5,493,699)	(13.00)	440,612
State Controller	32,517,077	(3,539,584)	(608,536)	(4,148,120)	(18.50)	28,368,957
Treasurer - Operations	10,538,203	(3,916,453)	0	(3,916,453)	(36.00)	6,621,750
Treasurer - Fire/Rescue Retirement	17,812,114	0	0	0	0.00	17,812,114
Total General Government	**455,140,147**	**(60,947,977)**	**2,391,464**	**(58,556,513)**	**(541.71)**	**396,583,634**

SUMMARY OF GENERAL FUND APPROPRIATIONS						
2011 Legislative Session: Fiscal Year 2012-13						
		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2012-13
Debt Service and Statewide Reserves						
Debt Service:						
Interest / Redemption	705,905,183	54,079,791	0	54,079,791		759,984,974
Federal Reimbursement	1,616,380	0	0	0		1,616,380
Subtotal Debt Service	**707,521,563**	**54,079,791**	**0**	**54,079,791**	**0.00**	**761,601,354**
Statewide Reserves:						
Contingency and Emergency Fund	5,000,000	0	0	0		5,000,000
State Retirement System Contributions	0	404,200,000	0	404,200,000		404,200,000
Judicial Retirement System Contribution	0	9,000,000	0	9,000,000		9,000,000
Firemen & Rescue Squad Workers Pension Fund		6,900,000	0	6,900,000		6,900,000
National Guard Pension Fund		523,000	0	523,000		523,000
State Health Plan	0	102,151,104	0	102,151,104		102,151,104
Information Technology Fund	7,840,000	162,426	(1,844,284)	(1,681,858)	(3.00)	6,158,142
Job Development Investment Grants (JDIG)	27,400,000	0	0	0		27,400,000
Continuation Review Reserve			22,982,380	22,982,380		22,982,380
Performance Pay Reserve	0	328,000,000		328,000,000		328,000,000
Automated Fraud Detection Development			7,000,000	7,000,000		7,000,000
Controller- Fraud Detection Development			500,000	500,000		500,000
Subtotal Statewide Reserves	**40,240,000**	**850,936,530**	**28,638,096**	**879,574,626**	**(3.00)**	**919,814,626**
Total Reserves and Debt Service	**747,761,563**	**905,016,321**	**28,638,096**	**933,654,417**	**(3.00)**	**1,681,415,980**
Total General Fund for Operations	**20,817,534,214**	**(861,852,940)**	**(68,851,243)**	**(930,704,183)**	**(164.24)**	**19,886,830,031**
Capital Improvements						
Water Resources Development Projects	0	0	0	0	0.00	0
Total Capital Improvements	**0**	**0**	**0**	**0**	**0.00**	**0**
Total General Fund Budget	**20,817,534,214**	**(861,852,940)**	**(68,851,243)**	**(930,704,183)**	**(161.24)**	**19,886,830,031**

EDUCATION
Section F

Public Education

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$7,923,543,951**		**$7,923,543,951**	
Legislative Changes				
A. Technical Adjustments				
1 ADM Adjustment Fully funds both years of average daily membership (ADM) growth for public schools, providing $55.8 million in FY 2011-12 and $143.1 million in FY 2012-13. This adjustment, which accounts for changes in multiple allotments, has traditionally been included in the continuation budget.	$55,882,651	R	$143,087,414	R
2 Average Salary Adjustment Adjusts several budget lines to account for the decrease in average salaries between FY 2009-10 and FY 2010-11. This adjustment has traditionally been included in the continuation budget.	($21,838,817)	R	($22,040,287)	R
B. Other Public School Funding Adjustments				
3 LEA Adjustment Increases the LEA Adjustment reduction by $4.5 million in FY 2011-12 and by $59.8 million in FY 2012-13. The State Board of Education will distribute this reduction to all LEAs and charter schools on the basis of ADM: LEAs and charters will then be responsible for identifying budget reductions in order to meet their share of the LEA Adjustment. LEAs are expected to utilize federal EduJobs availability to minimize reducing position allotments.	($4,365,359)	R	($65,292,506)	R
4 Class Size Reduction in Grades 1-3 Adds funding for 1,124 additional teaching positions in FY 2011-12 and 1,144 additional teaching positions in FY 2012-13 to reduce the classroom teacher allotment ratios for grades 1-3 from 1 teacher per 18 students to 1 teacher per 17 students in both years of the biennium. A related provision, Section 7.1B, expresses the intent of the General Assembly to add additional teachers as funds become available with a goal of reducing the teacher allotment ratio in grades 1-3 to 1 teacher for every 15 students.	$61,697,942	R	$62,767,803	R

	FY 11-12		FY 12-13	
5 Teacher Assistants Funds teacher assistants on the basis of Kindergarten ADM only. Previously, teacher assistants were funded on the basis of ADM in grades K-3. LEAs will still have the discretion to place teacher assistants in classrooms serving grades K-3. $137.3 million will be available in FY 2011-12 and $148.5 million will be available in FY 2012-13 to fund teacher assistants.	($390,519,448)	R	($395,946,237)	R
6 Decouple Master's and NBPTS Salary Supplements Reduces the combined salary supplement for educational personnel qualifying for both a master's degree and National Board for Professional Teaching Standards (NBPTS) supplement from 23.2% to 22.0%. NBPTS salary supplements will be calculated as 12% of the base salary the individual receives on the "A" salary schedule as opposed to the current practice of calculating the NBPTS supplement from the "M" salary schedule.	($4,776,560)	R	($4,776,560)	R
7 Fund One LEA Per County Reduces funding to six base allotments received by multiple LEAs within the same county by 20% in FY 2011-12 and eliminates those amounts in FY 2012-13.	($2,214,251)	R	($11,071,255)	R
8 Education Reform Studies Provides nonrecurring funding for studies of third grade literacy programs and ways to reduce the need for remedial or developmental education in the State's higher education institutions. Funding will be available to hire an outside consultant to examine these topics.	$200,000	NR		
9 Testing Eliminates funding for four End of Course tests eliminated by S.L. 2011-8 and not required by federal law. Those tests are United States History, Civics and Economics, Algebra II, and Physical Science. The remaining testing funds are then reduced a further 10%, leaving $8.8 million available for testing in each year of the biennium.	($2,725,029)	R	($2,729,677)	R
10 Dropout Prevention Grants Eliminates funding for the Dropout Prevention Grant program.	($13,290,683)	R	($13,290,683)	R
11 Student Diagnostics Eliminates funding for the Student Diagnostics pilot program.	($10,000,000)	R	($10,000,000)	R
12 Learn & Earn Virtual Schools Eliminates funding provided to four schools to provide on-line access to Learn & Earn. Students in affected schools may access courses through the Career and College Promise program described in Section 7.1A.	($1,000,000)	R	($1,000,000)	R
13 Learn & Earn Online Eliminates funding for Learn & Earn Online courses provided through the UNC system.	($4,875,000)	R	($4,875,000)	

	FY 11-12		FY 12-13	
14 Small County Supplemental Funding Restructures this allotment to restrict eligibility to only those counties with ADM of 3,200 or less and provides per-pupil funding on a sliding scale based on the size of the school district. LEAs made ineligible under this formula will have their allotment phased-out over a five-year period. A related provision, Section 7.12, provides additional details on this change. $38.9 million will remain in this allotment in FY 2011-12 and $35.3 million will remain in FY 2012-13.	($5,146,985)	R	($8,818,208)	R
15 Noninstructional Support Personnel Reduces this allotment, which supports clerical, janitorial, substitute teachers, and other personnel, by 15% in both years of the biennium. $337.1 million will remain in this allotment in FY 2011-12 and $340.3 million will remain in FY 2012-13.	($59,497,471)	R	($60,054,792)	R
16 Textbooks Reduces funding for textbooks. $23.4 million will remain in this allotment in FY 2011-12 and $27.2 million will remain available in FY 2012-13.	($13,000,000) ($79,166,861)	R NR	($13,000,000) ($76,500,000)	R NR
17 Central Office Administration Reduces the allotment to LEAs for the salaries and benefits of central office staff by 16%. This staff includes, but is not limited to, superintendents, associate and assistant superintendents, finance officers, athletic trainers, and transportation directors. $90.4 million will remain to support these local staff in FY 2011-12 and $90.5 million will remain available in FY 2012-13.	($17,211,294)	R	($17,254,494)	R
18 School Building Administration Reduces the funding for assistant principal months of employment by approximately 21%. This reduction does not reduce any guaranteed principal positions. $302.0 million will remain in this allotment in FY 2011-12 and $304.0 million will remain available in FY 2012-13.	($24,612,054)	R	($25,023,016)	R
19 School Building Administration Position Conversion Reduces funding for this allotment based on a modification of the allowable conversion of assistant principal and principal months of employment. Currently, LEAs are allowed to "cash-out" their allotted SBA months of employment at the State-average salary and benefits, and then use the money for other purposes. This section would continue to allow conversions, but only at the equivalent amount for a beginning Principal III for converted principal positions, and the equivalent amount for a beginning assistant principal for cashed-out assistant principal positions.	($7,700,000)	R	($7,700,000)	R

	FY 11-12		FY 12-13	
20 Instructional Support Reduces this allotment, which supports guidance counselors, social workers, media specialists, and other miscellaneous personnel, by 5%. $435.8 million will remain in this allotment in FY 2011-12 and $439.9 million will remain available in FY 2012-13.	($22,934,278)	R	($23,149,479)	R
21 School Bus Replacement Provides funding in FY 2011-12 for the purchase of approximately 400 replacement school buses. These buses shall be purchased without the use of extended financing. Additionally, provides funding for the financing payments due for previously purchased buses. Beginning in FY 2012-13, permanently eliminates State support for replacement of school buses not purchased before the end of FY 2010-11 and requires school bus purchases to become a local responsibility. The $21.6 million in FY 2012-13 nonrecurring funding is sufficient to support all financing payments due for previously purchased buses.			($56,851,619) $21,627,977	R NR
22 Mentoring Eliminates funding for this allotment. School districts may use State and other funding sources to provide mentoring services for beginning teachers.	($9,214,190)	R	($9,214,190)	R
23 School Technology Fund Eliminates General Fund support for this purpose. An additional $18.0 million for the Fund will remain available from the proceeds of the Civil Penalty and Forfeiture Fund.	($10,000,000)	R	($10,000,000)	
24 Staff Development Eliminates funding for this allotment. School districts may use State and other funding sources to support professional development.	($12,565,063)	R	($12,626,995)	R
25 Uniform Education Reporting System (UERS) Reduces funding for the Uniform Education Reporting System (UERS) and the related NC WISE system as it moves into an operations and maintenance phase. This adjustment will leave $10.3 million in annual appropriations available for UERS operations.	($2,101,213)	R	($2,101,213)	R
26 More at Four Funding Reduction Reduces More at Four General Fund support by $16 million, or approximately 20%.	($16,000,000)	R	($16,000,000)	R
27 More at Four Transfer Transfers the remaining $65 million in General Fund appropriations to the Department of Health and Human Service's Division of Child Development (DCD) to provide a dedicated high-quality pre-K program within its Child Care Subsidy program. In addition, Section 5.4 of the budget bill redirects $63 million in Lottery funding for the program to DCD. A related provision in Section 10.7 of the bill details the particulars of the transfer.	($65,011,651)	R	($65,011,651)	R

	FY 11-12		FY 12-13	
28 Geographically Isolated Schools Allotment Eliminates support for the additional 7.5 teaching positions provided to one school district with the characteristics required under Section 7.26 of S.L. 2009-451, as amended.	($411,503)	R	($411,503)	R
29 Liability Insurance for Public School Personnel Establishes a single State-funded liability insurance policy for all North Carolina public schools employees. The State Board of Education shall use funding provided to establish this policy with the North Carolina Department of Public Instruction serving as the master policy holder.	$3,700,000	R	$3,700,000	R
30 JOBS Commission Schools Eliminates planning funding for these two schools which will open in the 2011-12 school year.	($200,000)	R	($200,000)	R
31 Learn and Earn Early College High Schools Transfers planning funding for the two schools recommended by the JOBS Commission. These schools shall be eligible for Learn and Earn Early College allotment funding.	$200,000	R	$200,000	R
C. Pass-through Funds				
32 Teacher Cadet Eliminates State support for this program.	($340,000)	R	($340,000)	R
33 Science Olympiad Eliminates State support for this program.	($127,500)	R	($127,500)	R
34 Kids Voting Eliminates State support for this program.	($50,000)	R	($50,000)	R
35 NC Science, Math and Technical Education Center Eliminates State support for this program.	($100,000)	R	($100,000)	R
36 Tarheel ChalleNGe Academy Provides funds for the phase one construction of the National Guard Tarheel ChalleNGe Academy site in Badin, NC.	$250,000	NR		
37 Teaching Fellows Fund Reduces the General Fund appropriation for the Teaching Fellows Fund. This reduction reflects a decrease in funds available for administrative costs associated with the Teaching Fellows Program in FY 2011-12 and FY 2012-13. Additionally, funds are reduced in FY 2012-13 to phase out support for this program. It is the intent of the General Assembly to support its obligations to the 2011-12 class of Teaching Fellows and prior classes until the State's scholarship commitment is completed.	($210,000)	R	($3,475,000)	R

	FY 11-12		FY 12-13	
D. Department of Public Instruction				
38 DPI Curriculum Division Eliminates 5.5 State-funded positions working on curriculum issues. Of these, 3.5 State-funded positions are eliminated from the Curriculum, Instruction & Technology section, and 2.0 State-funded positions are eliminated from the Career and Technology Education (CTE) section.	($457,690) -5.50	R	($457,690) -5.50	R
39 DPI Technology Services Eliminates 30.0 State-funded positions from DPI's Technology Services section. 102.85 positions (70.72 State-funded) will remain in this section.	($2,712,988) -30.00	R	($2,712,988) -30.00	R
40 DPI Communications Eliminates 4.0 State-funded positions in the Communications section. 15.0 positions (10.8 State-funded) will remain in this section.	($246,586) -4.00	R	($246,586) -4.00	R
41 Learn and Earn Administration Eliminates the State-funded position at DPI supporting Learn & Earn Online.	($139,050) -1.00	R	($139,050) -1.00	R
42 Governor's Education Cabinet Eliminates funding for the 2.0 positions that DPI provides to support the NC Education Cabinet housed in the Office of the Governor.	($206,063) -2.00	R	($206,063) -2.00	R
43 NC Professional Teaching Standards Commission Eliminates the State funding and positions supporting the NC Professional Teaching Standards Commission.	($235,646) -2.00	R	($235,646) -2.00	R
44 Teacher Academy Eliminates State funding for the Teacher Academy, a provider of professional development services for teachers.	($4,762,874) -14.00	R	($4,762,874) -14.00	R
45 North Carolina Center for the Advancement of Teaching (NCCAT) Eliminates State support for the ongoing operations of this teacher professional development provider. $500,000 in nonrecurring support is provided for the upkeep of the two NCCAT facilities until they are conveyed to other entities.	($6,102,495) $500,000 -80.25	R NR	($6,102,495) -80.25	R
46 Connectivity Eliminates the $350,000 annual transfer from Connectivity to support the e-Learning Portal. Also eliminates the $300,000 annual transfer from Connectivity to support the evaluation of the Connectivity initiative.	($650,000)	R	($650,000)	R
47 Governor's Schools Eliminates State funding for the Governor's Schools. A related provision in Section 7.9 provides the State Board with the discretion to make the program receipt-supported beginning with the summer 2012 program. Funding remains available to provide the program in summer 2011.			($849,588)	R

	FY 11-12		FY 12-13	
48 Residential Schools for the Deaf and Blind Eliminates State funding for the superintendent of residential schools position within DPI and eliminates contract for outreach services provided by Beginnings, Inc. In addition, reduces the operating budget for Residential Schools for the Deaf and Blind by approximately 4.4%. For FY 2012-13, DPI must close one of the three residential schools. A related provision, Section 7.25, directs DPI to report to the Joint Education Oversight Committee of the General Assembly the school slated for closure and the Department's plan for consolidating the programs with those at the two remaining schools.	($2,500,000) -1.00	R	($8,000,000) -1.00	R
Total Legislative Changes	**($618,571,148)** **($78,216,861)**	**R** **NR**	**($677,139,628)** **($54,872,023)**	**R** **NR**
Total Position Changes	-139.75		-139.75	
Revised Budget	**$7,226,755,942**		**$7,191,532,300**	

Community Colleges

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$1,102,475,214**		**$1,102,475,214**	

Legislative Changes

A. Technical Adjustments

49 Enrollment Growth $34,140,158 R $47,699,747 R

Provides funds to fully fund enrollment growth, including enrollment growth for equipment funding, in both years of the biennium.

According to the FY 2010-11 spring enrollment census, enrollment has increased by 3.3% (8,081 full-time-equivalent students or FTE) above the FY 2010-11 budgeted enrollment of 243,854. Curriculum enrollment has increased by 6,928 FTE (3.6%), continuing education enrollment has increased by 1,396 FTE (4.9%), and basic skills enrollment has decreased by 243 FTE (-1.1%). Total equipment funding for FY 2011-12 is $5,643,030, which maintains the amount per equipment FTE at the FY 2009-10 level. Total requirements for the enrollment growth increase are $45,058,958, of which $10,918,800 is funded from receipts.

Estimated enrollment growth during the FY 2011-12 year is also fully funded with an additional appropriation of $13,559,589, $584,775 of which is for equipment. This adjustment is based on estimated enrollment growth of 1.5% (3,672 FTE). Total requirements for the enrollment growth are $18,478,365, of which $4,918,776 is funded from receipts.

50 Hickory Metro Higher Education Center ($264,833) R ($264,833) R

Transfers categorical funding for the Hickory Metro Higher Education Center at Catawba Valley Community College to the UNC System budget.

B. State Aid Adjustments

51 Management Flexibility Reduction ($53,208,568) R ($60,974,749) R

Reduces funds in the State Aid budget. The State Board of Community Colleges shall distribute the flexibility reduction, accounting for the unique needs of each college. Each college reduced shall have the flexibility to adjust its budget to implement this reduction, but shall not impact those activities directly involved in retraining displaced workers.

	FY 11-12		FY 12-13	
52 Curriculum Tuition Increases curriculum tuition by $10 per credit hour in FY 2011-12 and an additional $2.50 per credit hour in FY 2012-13, and makes a corresponding General Fund reduction in anticipation of increased tuition receipts. For FY 2011-12, resident tuition will increase from $56.50 to $66.50 for residents and from $248.50 to $258.50 for nonresidents. Tuition for full-time resident students will increase by a maximum of $320 per year, from $1,808 to $2,128. For FY 2012-13, resident tuition will increase from $66.50 to $69 for residents and from $258.50 to $261 for nonresidents. Tuition for full-time resident students will increase by a maximum of an additional $80 per year, from $2,128 to $2,208.	($47,664,650)	R	($60,393,549)	R
53 Continuing Education Fee Increases continuing education fees by $5 per course, beginning in FY 2012-13, and takes a corresponding General Fund reduction in anticipation of increased tuition receipts. The new fees will be as follows: Classes 1-24 hours - $70, Classes 25-50 hours - $125, Classes 51+ hours - $180.			($664,509)	R
54 Funding Formula Eliminates categorical funding for Health Sciences ($16,842,300), Technical Education ($5,500,000), and Special High Cost Programs allotment for Heavy Equipment ($328,336), and restructures the curriculum and continuing education funding formulas to provide weighted funding based on the type of instruction, as directed in Section 8.3. Curriculum courses in high-cost areas such as healthcare, technical education, and lab-based science courses shall be weighted more heavily than other curriculum courses. Continuing education courses that lead to a third-party credential or certification and courses providing an industry-designed curriculum shall be weighted more heavily than other continuing education courses.	($22,670,636)	R	($22,670,636)	R
55 Basic Skills Reduces funding for basic skills education by 12.4%. Total funding remaining for the program will be $86,246,787, with $70,483,463 in State funding and $15,763,628 in federal funding.	($10,000,000)	R	($10,000,000)	R
56 Institutional and Academic Support Eliminates funding for one of the 5.5 general institutional positions in the institutional and academic support enrollment allotment funding formula for community colleges. Total funding remaining in this allotment will be $452.5 million.	($8,548,090)	R	($8,548,090)	R

	FY 11-12		FY 12-13	
57 Customized Training Reduces the Customized Training budget on a one-time basis. Total recurring funding for the program is $12,457,121; however, per G.S. 115D-5.1(f2), unexpended funds for the program do not revert and are instead carried forward to the next year. After this reduction, the total amount available for expenditure in the biennium is expected to be $31,710,340, or $15,855,170 per year. Of these funds, up to $75,000 may be used to support curriculum development, materials, and training for Small Business Centers.	($7,600,000)	NR		
58 BioNetwork Reduces funds for BioNetwork grants and centers by 6.6%. $205,582 will be reduced from BioNetwork centers (5% reduction) and $84,646 from grants to colleges (30% reduction). Total funding remaining for the program will be $4,106,056.	($290,228)	R	($290,228)	R
59 Minority Male Mentoring Reduces funding for the Minority Male Mentoring program by 10%. Total funding remaining for the program will be $810,000.	($90,000)	R	($90,000)	R
60 NC Military Business Center Reduces the categorical allotment to the NC Military Business Center at Fayetteville Technical Community College by 10%. Total funding remaining for the program will be $1,125,000.	($125,000)	R	($125,000)	
61 Textile Technology Center Reduces the categorical allotment to the Textile Technology Center at Gaston College by 10%. Total funding remaining for this program will be $821,258.	($91,251)	R	($91,251)	R
62 Manufacturing Solutions Center Reduces the categorical allotment for the Manufacturing Solutions Center at Catawba Valley Community College by 10%. Total funding remaining for this program will be $514,904.	($57,212)	R	($57,212)	R
63 Haywood Regional High Technology Center Eliminates the categorical allotment for the Regional High Technology Center at Haywood Community College. The college will continue to receive regular FTE formula funding for the enrollment at the Center.	($582,383)	R	($582,383)	R
64 Botanical Laboratory Eliminates the recurring categorical allotment for the botanical laboratory at Fayetteville Technical Community College in both years. The college will continue to receive regular FTE formula funding for the enrollment at the botanical laboratory.	($264,000)	R	($264,000)	R
65 NC REAL Eliminates pass-through funding for NC Rural Entrepreneurship through Action Learning (NC REAL).	($250,000)	R	($250,000)	R

	FY 11-12		FY 12-13	
C. Student Aid Adjustments				
66 NC Community College Grant Program Reverts the existing fund balance of $5.7 million to the Escheats Fund and increases annual appropriations by $2.5 million for a total budget of $16.5 million per year. The funds for this item are shown in the Community College System - Trust - General Fund (Budget Code: 66801) section of this report.				
67 Tuition Waivers Eliminates tuition waivers for community college faculty and staff, NC Civil Air Patrol, and individuals engaged in civil preparedness activities. Colleges are permitted to use State and local funds to pay for tuition and registration fees for one course per semester for full-time faculty and staff.	($444,000)	R	($444,000)	R
D. Community Colleges System Office Adjustments				
68 System Office Positions Eliminates 19 positions in the Community Colleges System Office, including 9 vacant, 2 expected-to-be-vacant, and 8 filled positions. The positions are as follows: Executive Division - 3 vacant and 2 filled positions; IT & Workforce Development Division - 3 vacant, 2 expected-to-be-vacant, and 4 filled positions; Business and Finance Division - 1 vacant and 1 filled position; and Academic and Student Services Division - 2 vacant and 1 filled positions.	($1,265,975) -19.00	R	($1,265,975) -19.00	R
69 System Office Operating Funds Reduces operating funds for travel, training, information technology, and other expenses.	($265,417)	R	($265,417)	R
70 2+2 E-learning Initiative Reduces the budget of the 2+2 E-learning initiative by 13%. Total funding remaining for the program will be $653,000.	($97,000)	R	($97,000)	R
71 Receipt-supported Positions Shifts 3.5 positions from General Fund appropriations to receipts. Positions and receipt source are as follows: Accountant (2 positions) - indirect cost receipts; Education Program Director (1 position) - Proprietary School receipts; Education Consultant II (.25 position) and Education Program Director II (.25 position) - federal receipts.	($322,180) -3.50	R	($322,180) -3.50	R

	FY 11-12		FY 12-13	
72 GED Program	($208,533)	R	($208,533)	R
Shifts the General Education Development (GED) program entirely to receipt support. Section 31.2 permits the State Board of Community Colleges to increase the fee assessed to individuals taking the GED exam. The current fee is $7.50.	-2.50		-2.50	
The fees will be used to support the costs of administering the tests, including scoring the tests and printing the GED certificates. A total of 2.5 positions will be shifted from appropriation to receipt support, including 2 GED & Adult High School Tech positions, and one-half of the Education Program Director position.				
Total Legislative Changes	**($112,569,798)**	**R**	**($120,169,798)**	**R**
	($7,600,000)	**NR**		
Total Position Changes	-25.00		-25.00	
Revised Budget	**$982,305,416**		**$982,305,416**	

UNC System

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$2,887,492,464**		**$2,886,730,386**	
Legislative Changes				
A. Technical Adjustments				
73 Enrollment Growth Fully funds projected enrollment growth for FY 2011-12 at the University of North Carolina. The projected enrollment increase of 1.2% equates to an additional 2,337 full-time-equivalent (FTE) students. Total requirements will increase by $56,474,924, of which $10,656,801 will be funded by increased tuition receipts, for a net State appropriation of $46,818,123.	$46,818,123	R	$46,818,123	R
74 Hickory Metro Higher Education Center Transfers funds for the Hickory Metro Higher Education Center from the North Carolina Community College System budget to the budget for Appalachian State University.	$264,833	R	$264,833	R
B. Base Budget Adjustments				
75 Management Flexibility Reduction Mandates a management flexibility reduction for the UNC operating budget. As directed in Section 9.6, the UNC Board of Governors shall not allocate this reduction on an across-the-board basis to constituent institutions.	($434,553,826)	R	($436,441,875)	R
76 UNC Hospitals Subsidy Reduces the State subsidy to UNC Hospitals by 43% for two years. $25,000,000 will remain available to UNC Hospitals after this reduction.	($19,011,882)	NR	($19,011,882)	NR
77 Center for Public Television Continuation Review Eliminates recurring funding for the Center for Public Television and provides nonrecurring funds with a twelve percent reduction for FY 2011-12. Restoration of recurring funding is subject to the findings of a legislative continuation review.	($11,997,888) $10,558,141	R NR	($11,997,888) -116.00	R

	FY 11-12		FY 12-13	
78 East Carolina School of Dentistry Operations Provides funds to the East Carolina School of Dentistry for new faculty and staff and operating costs to prepare for its first class of students, which will enroll in fall 2011, and to establish dental service learning centers throughout the State where faculty and students will serve patients. Of the new funds appropriated, approximately $3.4 million in FY 2011-12 and approximately $4.5 million in FY 2012-13 will be used for salaries, wages, and benefits. Total State appropriations will be $15 million in FY 2011-12 and $16.5 million in FY 2012-13.	$3,500,000 27.00	R	$5,000,000 39.00	R
79 Building Reserves Provides funds to operate new or renovated UNC buildings completed in FY 2011-12. Specifically, funds are for the housekeeping, maintenance, and security requirements for the added building square footage. The FY 2011-12 amount provides funding for a partial year; the FY 2012-13 appropriation represents the full-year cost.	$18,531,614 282.80	R	$29,233,551 282.80	R
80 NC A&T/UNC-G Joint School of Nanoscience and Nanoengineering Provides nonrecurring funds for the NC A&T/UNC-G Joint School of Nanoscience and Nanotechnology located the Gateway University Research Park in Greensboro. The program is designed to conduct research in areas such as drug design and delivery, nanobioengineering, and genetic screening.	$1,000,000	NR		

	FY 11-12		FY 12-13	
C. Student Aid Adjustments				
81 UNC Need-based Financial Aid Program Shifts program funding to a higher proportion from the General Fund, due to diminishing Escheat Fund principal. In FY 2011-12, total funds available for the UNC Need-based Financial Aid program from all sources will be $301,446 lower than the FY 2011-12 base budget. In FY 2012-13, total funds available will be $4,956,358 lower, and students will be limited in the length of time they can receive the grant (Section 9.11). An additional $59.9 million in forward-funding is provided in FY 2011-12, to increase program stability (Section 9.9). Total funding includes: FY 2011-12 General Fund - $48,891,429 Escheat Fund - $127,354,154 Lottery Fund - $10,744,733 FY 2012-13 General Fund - $79,608,867 Escheat Fund - $32,122,242 Lottery Fund - $10,744,733 Note: Sections 5.4 and 9.8 appropriate funds from the Lottery Fund and Escheat Fund, respectively.	$37,891,429	R	$68,608,867	R
82 Student Incentive Grant Eliminates funding for the Student Incentive Grant, as federal matching funds have been eliminated. In addition to the funds shown here, $3,613,601 in Escheat Fund program funding is also reduced, for a total reduction of $4,414,428.	($800,827)	R	($800,827)	R
83 Academic Common Market Phases out funding for the Academic Common Market program, beginning in FY 2012-13. Based on tuition waived in FY 2009-10, it is estimated that $970,747 will remain in program funding in FY 2012-13.			($970,747)	R
84 Legislative Tuition Grant Reduces funds for the Legislative Tuition Grant (LTG) by 12.5% in FY 2011-12 and eliminates funding in FY 2012-13. This program will be replaced by the Need-based Scholarships for Students Attending Private Institutions of Higher Education, described below.	($7,283,710)	R	($58,269,681)	R
85 State Contractual Scholarship Fund Reduces funds for the State Contractual Scholarship Fund by 12.5% in FY 2011-12 and eliminates funding in FY 2012-13. This program will be replaced by the Need-based Scholarships for Students Attending Private Institutions of Higher Education, described below.	($5,737,121)	R	($45,896,963)	R

	FY 11-12		FY 12-13	
86 Other Private School Aid Reduces funds for Other Private School Aid by 12.5% in FY 2011-12 and eliminates funding in FY 2012-13. This program will be replaced by the Need-based Scholarships for Students Attending Private Institutions of Higher Education, described below.	($40,125)	R	($321,000)	R
87 Need-based Scholarships for Private College Students Provides funds for the newly established Need-based Scholarships for Students Attending Private Institutions of Higher Education, beginning in FY 2012-13. This program is described in Section 9.18.			$62,286,250	R
88 Private Medical School Aid Eliminates funding for the Private Medical School aid program. Students funded under this program are eligible to apply for the Board of Governors Medical School Loan program.	($1,279,000)	R	($1,279,000)	R
89 Principal Fellows Reduces program slots by 10% beginning in FY 2012-13. Total funding remaining for the program in FY 2012-13 will be $3,258,000.			($362,000)	R
90 Future Teachers Scholarship-loan Eliminates the remaining budget of the Future Teachers Scholarship-loan, which was abolished in 2009.	($455,000)	R	($455,000)	R
91 Health, Science, and Mathematics Scholarship-loan Shifts the portion of program funding previously provided from the Escheat Fund to General Fund support. Total program funding will remain at $1,922,779.	$1,100,000	R	$1,100,000	
92 Board of Governors Medical Scholarship-loan Shifts the portion of program funding previously provided from the Escheat Fund to General Fund support. Total program funding will remain at $1,869,180.	$645,000	R	$645,000	R
93 Board of Governors Dental Scholarship-loan Shifts the portion of program funding previously provided from the Escheat Fund to General Fund support. Total program funding will remain at $939,160.	$450,239	R	$450,239	R
94 Nurse Education Scholarship-loan Shifts the portion of program funding previously provided from the Escheat Fund to General Fund support. Total program funding will remain at $867,756.	$800,000	R	$800,000	R
95 Teacher Assistant Scholarship Fund Shifts the portion of program funding previously provided from the Escheat Fund to General Fund support. Total program funding will remain at $814,714.	$600,000	R	$600,000	R

	FY 11-12		FY 12-13	
Total Legislative Changes	**($351,546,259)**	**R**	**($340,988,118)**	**R**
	($7,453,741)	**NR**	**($19,011,882)**	**NR**
Total Position Changes	309.80		205.80	
Revised Budget	**$2,528,492,464**		**$2,526,730,386**	

NC Community College System – Trust – General

Budget Code: 66801

	FY 2011-12		FY 2012-13	
Beginning Unreserved Fund Balance	**$5,919,657**		**$187,745**	
Recommended Budget				
Requirements	**$26,282,132**		**$26,282,132**	
Receipts	**$26,282,132**		**$26,282,132**	
Positions	**0.00**		**0.00**	
Legislative Changes				
Requirements:				
NC Community College Grant Program	$2,518,798	R	$2,518,798	R
Increases the annual appropriation from the Escheats Fund by $2.5 million, for a total program budget of $16.5 million per year.	$0	NR	$0	NR
	0.00		0.00	
Community College Grant Program Fund Balance	$0	R	$0	R
Appropriates the program's fund balance, which will be transferred to the Escheats Fund.	$5,731,912	NR	$0	NR
	0.00		0.00	
Correction to Base Budget	($11,648,356)	R	($11,648,356)	R
Corrects an error in the Governor's recommended budget for the total requirements in Budget Code 66801, Fund 6102.	$0	NR	$0	NR
	0.00		0.00	
Subtotal Legislative Changes	**($9,129,558)**	R	**($9,129,558)**	R
	$5,731,912	NR	**$0**	NR
	0.00		0.00	
Receipts:				
NC Community College Grant Program	$2,518,798	R	$2,518,798	R
Increases receipts from the Escheats Fund by $2.5 million. Total program receipts will be $16.5 million per year.	$0	NR	$0	NR

	FY 2011-12		FY 2012-13	
Correction to Base Budget	($11,648,356)	R	($11,648,356)	R
Corrects an error in the Governor's recommended budget for the fund balance receipts in Budget Code 66801, Fund 6102.	$0	NR	$0	NR
Subtotal Legislative Changes	**($9,129,558)**	R	**($9,129,558)**	R
	$0	NR	**$0**	NR
Revised Total Requirements	**$22,884,486**		**$17,152,574**	
Revised Total Receipts	**$17,152,574**		**$17,152,574**	
Change in Fund Balance	**($5,731,912)**		**$0**	
Total Positions	**0.00**		**0.00**	
Unappropriated Balance Remaining	**$187,745**		**$187,745**	

HEALTH
&
HUMAN SERVICES
Section G

Health and Human Services

	GENERAL FUND	
	FY 11-12	FY 12-13
Recommended Continuation Budget	$4,927,739,648	$4,928,125,764

Legislative Changes

(1.0) Division of Child Development

1 **Pre-kindergarten Funds Transfer** Transfers $65,011,651 from the Department of Public Instruction to Department of Health and Human Services to operate a pre-kindergarten program within the Division of Child Development. Additionally, lottery funds will be allocated in the amount of $63,135,709 for the continued payment of a high quality pre-kindergarten program. Sec. 10.7	$65,011,651	R	$65,011,651	R
2 **TANF Funding** Replaces State funds for child care subsidy with one time TANF funds. This reduction does not result in loss of services.	($6,352,644)	NR	($6,352,644)	NR
3 **Smart Start** Reduces the Smart Start budget by 20%, leaving $150M available to support activities. Sec. 10.5	($37,600,000)	R	($37,600,000)	R
4 **TEACH Program** Swaps federal Child Care Development Fund Block Grant with state funds for the program. Sec. 10.60 (a)	($3,800,000)	R	($3,800,000)	R
5 **Social Services Administrative Support** Reduces the allowance for County Departments of Social Services administrative allowance from 5% to 4%. This leaves $16.4M County Departments of Social Services may use to support administrative costs. Sec. 10.60 (a)	($3,195,581)	R	($3,195,581)	R
6 **Post-Secondary Education** Reduces child care subsidy funding available for post-secondary education. This reduction will change the existing policy from allowing individuals to receive subsidy for 24 months to 20 months. The combination of changing various policies (items 6-9) will result in a net reduction of $9.7M, leaving approximately $54M. Sec. 10.1 (c)(5)	($7,052,797)	R	($7,052,797)	R

	FY 11-12		FY 12-13	
7 More At Four Match Discontinues payment for the instructional day of More At Four students by child care subsidy funds. The combination of changing various policies (items 6-9) will result in a net reduction of $9.7M, leaving approximately $54M.	($1,305,008)	R	($1,305,008)	R
8 Facility Registration Fees Discontinues payment for child care centers' registration fees by child care subsidy funds. The combination of changing various policies (items 6-9) will result in a net reduction of $9.7M, leaving approximately $54M. Sec. 10.1 (c)(4)	($360,570)	R	($360,570)	R
9 Transportation Services Discontinues payment for transportation services with subsidy funds. The combination of changing various policies (items 6-9) will result in a net reduction of $9.7M, leaving approximately $54M. Sec. 10.1 (c)(4)	($1,001,718)	R	($1,001,718)	R
(2.0) Division of Mental Health, Developmental Disabilities, and Substance Abus Services				
10 Management Funding Reduction Reduces community service funds by 2%; this reduction continues a non-recurring reduction made in FY2010-11. These funds have not been used to pay for services. There is currently $350M in state funding to pay for services managed through Local Management Entities.	($7,180,807)	R	($7,180,807)	R
11 Advocacy Positions Eliminates seven vacant advocacy positions located throughout facilities and/or community settings. There are 56 positions remaining after this reduction; this is an 11% reduction in number of positions for advocacy.	($158,045) -7.00	R	($158,045) -7.00	R
12 Community Service Funds Reduces Community Services funds managed by Local Management Entities. This reduction combined with the Management Funding Reduction leaves $313M of state funds available for purchase of services through Local Management Entities.	($30,000,000)	R	($30,000,000)	R
13 Local Management Entities Reduces administration for Local Management Entities (LME) based upon an overall reduction of 5% state funds across the board and the Secretary of Health and Human Services' plan to transition LME's into 1915bc waiver programs or consolidate with the existing waiver entity. Administrative reimbursement is allowed within the capitated rate funded within the Medicaid program and the funds within Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, will no longer be needed for these LMEs. There is approximately $103M remaining of state and federal funds to continue administrative funding for LME's in FY2011-12 and FY2012-13.	($7,234,005)	R	($7,234,005)	R

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14 Child and Family Support Teams Eliminates funding for coordinator positions located in 15 Local Management Entities. These positions have supported the Child and Family Team Pilot Program. Funds within Division of Social Services for this pilot is also being eliminated within this budget.	($523,638)	R	($523,638)	R
15 Community Services Funds - Swap Replaces Community Services Funds with Local Management Entities' Fund Balance for FY2011-12. There was approximately $210M in fund balances among 17 Local Management Entities, of which $65M was defined as undesignated and unreserved. This reduction is to come from the undesignated/unreserved funding and not further reduce community services. Sec. 10.11 (d)	($25,000,000)	NR		
16 Information Technology Reserve Eliminates the funding for the information technology account that is used to fund the facilities' information technology systems upgrade.	($5,100,390)	R	($5,100,390)	R
(3.0) Division of Central Management and Support				
17 Division of Information Resource Management - Contracts Eliminates recurring funding for the DIRM Contracts. Funding for FY2012-13 is pending the findings and recommendations of a Continuation Review.	($5,599,390) $5,599,390	R NR	($5,599,390)	R
18 Community Health Centers Reduces funding available for grants to community health centers. Grants are awarded on a multi-year basis; this reduction represents the new grants to be awarded in FY2011-12. There will be $5M remaining for grants.	($1,452,527)	R	($1,452,527)	R
19 Loan Repayment Program - Federal Receipts Replaces state funds with increased federal funds available for the loan repayment program. The total program has approximately $1.4M in funds.	($458,395)	R	($458,395)	R
20 Information Resource Management - Operating Budget Reduces excess operating funds within the Division of Resource Management.	($550,556)	R	($550,556)	R
21 Position Eliminations - Office of the Controller Eliminates two positions, one due to transfer of the Residential Schools to Department of Public Instruction and one within Purchase of Medical Care Section.	($76,215) -2.00	R	($76,215) -2.00	R
22 Department Wide Administrative Efficiencies Reduces administrative funds and positions available within the Department of Health and Human Services. Administrative cost savings should include the co-location of various regional and field offices to achieve savings in leased space costs.	($1,869,435) -25.00	R	($1,869,435) -25.00	R

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23 Nonprofit Reductions Reduces grants-in-aid and contract funding for non-profits by $10M. There is currently $75M in state funds for non-profits and this reduction represents 13% of state funding.	($10,000,000)	R	($10,000,000)	R
24 Migrant Fee for Service Program Reduces the program funds for the Migrant Purchase of Medical Care Program; the federal funds will continue. There remains approximately $2.8M in this program.	($736,145)	R	($736,145)	R
25 NC Care Line Eliminates funding and positions for the NC Care Line.	($380,478)	R	($380,478)	R
	-11.00		-11.00	
26 Information Resource Management - Conversion of Contracts to Employees Reduces the contractual services line item within Division of Resource Management. This reduction represents cost-savings realized from converting 78 Information Technology Contractors to state employees.	($1,360,982)	R	($1,360,982)	R
27 Position Eliminations Eliminates vacant positions. There are over 1,600 positions vacant.	($7,771,997)	R	($7,771,997)	R
	-250.00		-250.00	
28 Budgeting Receipts - Information Resource Management Replaces state appropriations within Division of Resource Management ($410,225) and throughout Central Management and Support ($151,000) with over-realized receipts.	($561,225)	R	($561,225)	
(4.0) Division of Public Health				
29 Division of Environmental Health Transfer Transfers $14,296,540 from the Department of Environment and Natural Resources to the Department of Health and Human Services to operate various programs and activities that comprised the Division of Environmental Health. In effecting this transfer, the following activities are being eliminated: 1) Public Health Pest Management Section, and 2) the Private Well Program, WaDE Program, and Quality Assurance of the On-Site Water Protection Section.				
30 Department of Health and Human Services - Chemical Testing Unit Shifts a portion of funds for position number 60039654 from Highway Fund receipts to other receipts within the Department of Health and Human Services budget, and reduces funding for purchased services by $6,280.				

	FY 11-12		FY 12-13	
31 Early Intervention Requires the Division of Public Health to implement several administrative efficiencies, including: 1) elimination of 11 vacant positions; 2) reducing the contract to the Charlotte-Child Development Service Agency (a reduction that can be made up by its implementing Medicaid cost-settlement); and 3) other administrative efficiencies. The program will continue to be funded at nearly $80 million annually, with a combination of federal and state funds.	($3,118,046) -11.00	R	($3,118,046) -11.00	R
32 Office of Minority Health Reduces the administrative staff within the Office of Minority Health with little or no impact on the Division's ability to direct this program or provide technical assistance to Local Health Departments in striving to eliminate health disparities.	($302,262) -4.00	R	($302,262) -4.00	R
33 Consolidate Healthy Carolinians and Health Education Integrates the activities of the Office of Healthy Carolinians and Health Education into the duties of other personnel in the Division of Public Health. The Division will continue to provide technical assistance to local communities in support of the Governor's Task Force on Healthy Carolinians.	($571,447) -10.00	R	($571,447) -10.00	R
34 Local Health Department Accreditation Continues funding for the Accreditation program at a level comparable to FY 2010-11 ($375,000). This allows the program to be funded at a maintenance level.	($400,000)	R	($400,000)	R
35 Reduce Unallocated Funds for School Nurse Initiative Funds Reduces unallocated funds for state-supported school nurses, including FY 2010-11 funding for 10 unfilled nurse positions.	($566,433)	R	($566,433)	R
36 Oral Health Reduction Eliminates the epidemiology survey of children's teeth in grades 3, 5, and 7 and informational services associated with the survey.	($3,000,000) -36.00	R	($3,000,000) -36.00	R
37 Health & Wellness Trust Fund Transfer to DHHS Transfers $32,904,411 from funds available to the Health & Wellness Trust Fund to the Department of Health and Human Services as follows: -- $22,000,000 shall be used to administer the grants associated with the following programs and initiatives; Teen Tobacco Prevention, CheckMeds, Medication Assistance Program, and Obesity Prevention. -- $10,000,000 shall be used to reduce the total savings required to be achieved for the Medicaid program by Community Care of North Carolina -- The remainder shall be used to reduce the Medicaid Provider Rate cut.	$32,904,411	NR		

(5.0) NC Health Choice

	FY 11-12		FY 12-13	
38 Modify Health Choice Services Modifies and ensures the clinical appropriateness of several Health Choice Services, including: 1) Elimination of long-term care, hearing services, and non-emergency transportation; 2) Reduction of dental benefits; and 3) Assurance of evidence-based treatment.	($650,000)	R	($900,000)	R
39 Benchmark Health Choice to Medicaid Benchmarks Health Choice services to Medicaid including the amounts, types, and reimbursement rates. The exception is that Health Choice will not be benchmarked to Medicaid's Early Periodic Screening, Diagnosis, and Treatment Program.	($125,000)	R	($350,000)	R
40 Targeted Rate Adjustments Adjusts Medicaid provider reimbursement rates. The Division of Medical Assistance will adjust provider reimbursement rates that are above regional rates, or where analysis indicates an adjustment is warranted and appropriate.	($225,000)	R	($250,000)	R
41 Strengthen and Restructure Program Integrity Budgets savings to be realized by the Division of Medical Assistance as a result of restructuring and modernizing its program integrity and fraud and abuse operations to enhance recoveries and avoid overpayments. Complementary savings are expected in the Health Choice program.	($500,000)	R	($666,667)	R
42 Care Coordination through CCNC Reduces State costs in the Division of Medical Assistance by re-establishing the care and utilization management services of the Community Care of North Carolina program-both Networks and Physician of Health Choice recipients. A per member per month payment will be made to physicians and networks. The cost will be offset by better management of services and improved clinical outcomes which lead to reduced state costs.	($4,255,235)	R	($4,489,274)	R
43 Health Choice Adjustment Adjusts funding for Health Choice to reflect the changes in the consumption and mix of services, and payment to cost-settled health care providers. The policy of open enrollment will continue in FY 2011-12 and is projected to increase enrollment to approximately 148,203 children. Open enrollment will continue in FY 2012-13, but at a moderated rate.	($3,166,254)	R	$2,000,000	R

	FY 11-12		FY 12-13	
(6.0) Division of Medical Assistance				
44 Medicaid Provider Assessments Levies an assessment of up to 5.5%, consistent with Federal Regulations, on willing Medicaid healthcare providers. Currently, the list of providers includes: Hospitals, Critical Access Behavioral Health Agencies (CABHA), and Community Alternative Programs for Mentally Retarded (CAP/MR). A portion of the assessment will be retained by the State. The current 5.5% assessment on Nursing Homes is not affected.	($60,183,120)	R	($62,798,614)	R
45 Adjust Assessment on Nursing Facilities to 6% Adjusts the assessment rate on Nursing Facilities upward to 6.0%, as allowed by Federal regulations, effective October 1, 2011, by adjusting the appropriate totals accordingly.	($7,926,122)	R	($10,568,163)	R
46 Implement Pregnancy Home Model Budgets savings to be achieved from the March 2011 implementation of a collaborative effort between Community Care of North Carolina Networks and Local Health Departments to improve the quality of perinatal care and ensure that high-risk pregnant women receive the care and case management required. The improved birth outcomes, especially preventing premature births will reduce state expenditures incurred by the Division of Medical Assistance.	($528,960)	R	($3,457,596)	R
47 Health Homes for Chronically Ill Budgets revenue from the increased federal matching rate for the Health Homes for Chronically Ill Program. The Division of Medical Assistance is taking advantage of the two-year Federal program to enhance comprehensive care management for Medicaid recipients with co-occurring illnesses, including a chronic health condition and severe and persistent mental health condition. The Federal matching rate for this program, during the two-years, is 90%, versus the current rate of approximately 65%.	($16,146,384)	NR	($24,739,541)	NR
48 Strengthen and Restructure Program Integrity Budgets the anticipated savings from the Division of Medical Assistance efforts to reduce, if not eliminate, fraud and abuse in the Medicaid program by restructuring and modernizing current policies and efforts. Through policy and staffing changes and technology improvements, state administrative costs will be reduced, and avoid over payments and improving the recovery of funds.	($19,200,000) -30.00	R	($28,000,000) -40.00	R
49 Generic Substitution for Off-Patent Drugs Budgets anticipated savings in FY 2012-13. In the next 12 months several brand-name drugs are scheduled to go off patent, leading to generic drug substitution savings in FY 2012-13.			($7,000,000)	R

	FY 11-12		FY 12-13	
50 Modify Pharmacy Services Budgets savings to be realized by the Division of Medical Assistance through several actions, including: 1) Better management of drug rebates, 2) Ensuring Medicare Part D correctly reimburses Medicaid, 3) Elimination of automatic refills, and 4) For flexibility to modify dispensing fees.	($10,845,441)	R	($14,436,600)	R
51 Modify Generic Prescription Dispensing Rates Revises generic drug dispensing rates to increase the rate of generic drugs within the Medicaid Program.	($15,000,000)	R	($24,000,000)	R
52 Behavioral Health Medicaid 1915 b/c Waiver Expands the capitated behavioral health program to additional Local Management Entities (LMEs).	($10,537,931)	R	($52,551,082)	R
53 DHHS Savings Through Community Care of North Carolina (CCNC) Budgets savings to be achieved by DHHS, in conjunction with CCNC Networks and North Carolina Community Care, Inc., through the cooperation of Medicaid health care providers. To the extent these savings are not achieved, DHHS is to undertake whatever actions necessary to affect the savings, including: 1) Reducing provider rates, and 2) Eliminating or reducing the level or duration of optional Medicaid services.	($83,071,581)	R	($90,000,000)	R
54 Modify Optional and Mandatory Services Budgets savings to be achieved by the Division of Medical Assistance through adjustments to mandatory and optional Medicaid services. These changes include the following services: Optical, Durable Medical Equipment, Specialized Therapies, Home Health, Dental, and a variety of other services. In the event, these savings are not fully achieved, the elimination of optional service requirements may be required.	($16,732,335)	R	($22,295,678)	R
55 Modify and Eliminate Optional Services Budget savings to be achieved by the Division of Medical Assistance in SFY 2012-13 through adjustments to and elimination of optional Medicaid services. These changes include the following: Specialized Therapies, H Codes for provisionally licensed providers, Adult Dental, Podiatry, Adult Physical, Speech, and Occupational Therapy, Nursing Homes, Respiratory Therapy, Chiropractic Services, and Optical Services and Supplies.			($51,474,609)	R
56 Eliminate Inflationary Increases Eliminates automatic inflation increases for Medicaid providers. The Division of Medical Assistance is not to authorize any inflationary increases to Medicaid provider rates during the 2011-13 biennium, except as provided for in Section 10.43.	($62,853,775)	R	($130,874,505)	R

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57 Adjust Provider Rates Reduces Medicaid provider reimbursement rates. The Division of Medical Assistance is to reduce Medicaid provider rates by 3%, except as provided for in Section 10.46.	($71,420,718)	R	($71,420,718)	R
58 Targeted Rate Adjustments Budgets savings to be achieved by the Division of Medical Assistance adjustments of Medicaid reimbursement rates where its rates are not in-line with regional rates or where analysis indicates a rate adjustment is appropriate to bring it in-line with costs. Current examples include: High-tech Imaging in Hospital Outpatient Departments and Adult Care Home--Special Units.	($8,453,125)	R	($9,000,000)	R
59 Medicaid Rebase Rebases the Medicaid budget to adjust for changes in the number of Medicaid recipients, utilization or consumption of services, mix of services being consumed, inflation for cost-settled providers, and changes to the Federal Medical Assistance Percentage (FMAP).			$196,005,122	R
60 Eliminate Optional Service Home Infusion Therapy Eliminates the Optional Medicaid Service of Home Infusion Therapy. Medicaid recipients will receive such services through outpatient facilities.	($1,361,984)	R	($1,361,984)	R
61 Eliminate Optional Service of Over-the-Counter Drugs Eliminates optional service of Over-the-Counter drugs, similar to private health insurance plans.	($1,976,066)	R	($1,976,066)	R
(7.0) Division of Health Service Regulation				
62 Nursing Home Licensure and Certification Funds Replaces State funds with federal receipts in the Nursing Home Licensure and Certification Section on a non-recurring basis. The receipts come from civil monetary penalties assessed against nursing homes.	($1,792,559)	NR	($1,792,559)	NR
(8.0) Division of Social Services				
63 Vendor Payments for New Special Needs Adoptions Eliminates special vendor payments for all new adoption agreements effective on or after July 1,2011. Special vendor payments, of up to $2,400 a year for non-medical, non-Medicaid reimbursable goods or services for special needs children, remain in effect for adoption agreements signed prior to July 1, 2011.	($550,963)	R	($550,963)	R

	FY 11-12		FY 12-13	
64 Child and Family Team Pilot Elimination Eliminates pilot funding for local departments of social services that partially supports Child and Family Team positions. Child and Family Teams will continue to work in schools and DSS will continue to provide training and technical assistance to local departments of social services in order for the initiative to continue.	($420,804)	R	($420,804)	R
65 Replace State Funding for Child Protective Services Replaces state funds with federal block grant funds to support Child Protective Services. County departments of social services will receive Social Services Block Grant (SSBG) funds in lieu of state general funds. Sec. 10.60 (a)	($5,040,000)	R	($5,040,000)	R
66 Eliminate Special Assistance Intervention Team Eliminates the Special Assistance Intervention team, whose purpose was to provide special assistance and intervention services for low performing counties around child welfare services. The model has not been effective and positions are vacant.	($103,997) -2.00	R	($103,997) -2.00	R
67 Eliminate State General Funds to Local Departments of Social Services Continues the reduction in general funds to county departments of social services from the previous biennium. This action eliminates the State general fund contribution to county social services departments to offset the cost of administering public assistance programs. The administrative cost of these programs is shared evenly by the federal and county governments.	($5,473,985)	R	($5,473,985)	R
68 Prioritize Adult Day Care Funding for Ages 18 to 59 Reduces the State Adult Day Care Fund. Revises the policy regarding the age of persons eligible to receive Fund-supported day care services, with priority given to adults ages 18 - 59. Services will remain available to individuals 60 and older through the Home and Community Block Care Block Grant.	($1,106,000)	R	($1,106,000)	R
69 Use Social Services Block Grant (SSBG) to Support Adult Protective Services Replaces State funds with federal funds by requiring all counties to use federal SSBG funds to provide adult protective services. This will require 52 counties to begin using their SSBG allocations to provide this mandated service. Sec. 10.60 (a)	($2,000,000)	R	($2,000,000)	R
70 Eliminate State Abortion Fund Eliminates funding for the State Abortion Fund. Sec. 10.53	($50,000)	R	($50,000)	R

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71 Reduce NC Reach Scholarship Funds Reduces the budget for the NC Reach post-secondary education program by 50%, $1,584,125, maintaining the program at the FY 2010-11 funding level. Sec. 10.54 (a)	($1,584,125)	R	($1,584,125)	R
72 Reduce Child Welfare Education Collaborative Funds Eliminates the special appropriation for the Child Welfare Education Collaborative. $1,005,023 in combined federal and other state funds remain to support the program.	($239,453)	R	($239,453)	R
73 Replace Division Admin Funds with Federal Block Grant Replaces State funding for the Division of Social Services administrative costs with federal TANF Block Grant funds. Sec. 10.60 (a)	($1,389,084)	R	($1,389,084)	R
(9.0) Division of Aging and Adult Services				
74 Prioritize Senior Funding Eliminates Senior Center General Purpose Funds for non-certified senior centers and reduces funding for certified centers. Funding is eliminated, $462,589, for all non-certified centers, 85 centers will each lose $5,442. Funding for the remaining 77 certified senior centers is reduced by $197,411, for an average reduction of $2,564 each. $645,377 in state funds remains in the continuation budget for the 77 certified centers.	($660,000)	R	($660,000)	R
75 Replace Funding for Long-Term Care Constituent Advocate Program Replaces State funds with federal Civil Monetary Penalty proceeds to support the Long-Term Care Ombudsman Program, which advocates for the elderly.	($200,000)	R	($200,000)	R
76 Eliminate Volunteer Program Development Eliminates funds for the Volunteer Development Program, one of 18 services funded through the Home and Community Care Block Grant. Currently, only 11 counties elect to provide this service.	($200,000)	R	($200,000)	R
77 Reduce Home and Community Care Block Grant Reduces State funding for the Home and Community Care Block Grant by 3 percent. Approximately $33.7 million in State funds remains in the continuation budget for home-based and community services for elderly and disabled adults.	($1,000,000)	R	($1,000,000)	R
(10.0) Divisions of Services for the Blind and Services for the Deaf and Hard of Hearing				
78 Reduce Medical Eye Care Program Reduces funding for the Medical Eye Program.	($190,961)	R	($190,961)	R

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79 **Independent Living Program Funds** Replaces a portion of the General Fund for the Independent Living Program with an allocation from the Social Services Block Grant.	($1,000,000)	NR	($1,000,000)	NR
(11.0) Division of Vocational Rehabilitation				
80 **Eliminate Recreational Therapists Services** Eliminates recreational therapist services available in only five cities across the state. Four of the five positions to be eliminated are vacant.	($284,501) -5.00	R	($284,501) -5.00	R
81 **Reduce Independent Living Program** Reduces State funding for independent living services by 9%. Services will continue to be prioritized so as to avoid institutional care.	($1,774,021)	R	($1,774,021)	R
82 **Reduce Basic Support Program** Replaces a portion of the State funds for the Basic Support Program with unspent federal funds.	($2,067,928)	NR	($2,067,928)	NR
Total Legislative Changes	**($479,556,982)** **($13,855,714)**	R NR	**($490,410,769)** **($35,952,672)**	R NR
Total Position Changes	-393.00		-403.00	
Revised Budget	**$4,434,326,952**		**$4,401,762,323**	

	FY 2011-12	FY 2012-13

Subcommittee on Health and Human Services

Health & Wellness Trust Fund

Budget Code: 23460

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	**$32,904,411**	**$0**
Recommended Budget		
Requirements	**$0**	**$0**
Receipts	**$0**	**$0**
Positions	**0.00**	**0.00**

Legislative Changes

Requirements:

Health & Wellness Trust Fund to General Fund	$0	R	$0	R
Transfers the $32,904,411 in Health and Wellness Trust Fund to the General Fund for use by the Department of Health and Human Services.	$32,904,411	NR	$0	NR
	0.00		0.00	
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$32,904,411	NR	**$0**	NR
	0.00		0.00	

Receipts:

Health & Wellness Trust Fund to General Fund	$0	R	$0	R
Transfers the $32,904,411 in Health and Wellness Trust Fund to the General Fund for use by the Department of Health and Human Services.	$0	NR	$0	NR
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$0	NR	**$0**	NR

	FY 2011-12	FY 2012-13
Revised Total Requirements	**$32,904,411**	**$0**
Revised Total Receipts	**$0**	**$0**
Change in Fund Balance	**($32,904,411)**	**$0**
Total Positions	**0.00**	**0.00**
Unappropriated Balance Remaining	**$0**	**$0**

NATURAL & ECONOMIC RESOURCES
Section H

Agriculture and Consumer Services

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$61,754,014**		**$61,754,014**	
Legislative Changes				
Department-wide				
1 Cell Phones	($41,805)	R	($41,805)	R
Reduces General Fund appropriation for cell phones across the Department by 25%. The Department is to reduce the actual number of phones by this percentage as well.				
2 Longevity	($25,000)	R	($25,000)	R
Reduces General Fund appropriation for longevity across the Department to reflect expected longevity needs.				
3 Motor Fleet Management	($127,726)	R	($127,726)	R
Reduces General Fund appropriation for Motor Fleet Management expenditures across the Department by 10%. The Department is to reduce the actual number of Motor Fleet Management vehicles by 10% as well.				
4 Vacant Positions and Salary Reserve	($824,249)	R	($824,249)	R
Eliminates 12 vacant positions and fund shifts one position. Of the eliminated positions, 11 were proposed by the Department and one had been vacant for more than one year as of March 2011. The reduction includes salaries and benefits for these positions and salary reserve. Positions eliminated include:	-13.00		-13.00	

60011803	Research Tech	$34,923
60011834	Technology Support Analyst	$77,114
60011858	Lithographic Press Operator III	$58,413
60011880	Food Compliance Officer I	$50,736
60011976	Food Inspector	$47,631
60012083	Veterinarian	$126,818
60012226	Veterinary Laboratory Asst I	$32,834
60012592	Research Spec	$49,593
60012527	Processing Assistant IV	$40,649
60012095	Veterinarian	$106,463
60012094	Livestock Compliance Officer	$67,706
60011911	Chemist	$42,294
	Salary Reserve	$12,111

Fund shifts one position to the Pesticide Environmental Trust Fund:

60012056	Environmental Toxicologist	$76,964

	FY 11-12		FY 12-13	
5 Forest Resources Transfers the Division of Forest Resources from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.				
6 Soil & Water Conservation Transfers the Division of Soil and Water Conservation from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.				
7 Sleep Products Section Transfers the Sleep Products Section of the Division of Environmental Health within the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services. The Sleep Products Section has eight FTE; the $630,337 budget is entirely supported by receipts.				
Reserves & Transfers				
8 S.B. 109 Funds Provides $2.4 million to the Department to restore funds taken to meet the requirements of S.L. 2011-15 (S.B. 109).	$2,400,000	NR		
9 Tobacco Trust Fund Provides General Fund appropriation for the operation of the Tobacco Trust Fund (TTF). Beginning in FY 2011-12, MSA funds are transferred to the General Fund, not directly to TTF. These funds shall be used for administration, grants, and all costs associated with the enforcement of the MSA formerly covered by payments from both TTF and the Health & Wellness Trust Fund.	$8,334,360	NR	$8,790,386	NR
Administration				
10 Ag. Development and Farmland Preservation Trust Fund Reduces funding for the Agricultural Development and Farmland Preservation Trust Fund by 15%. This leaves $1.7 million to be appropriated to the Trust Fund.	($300,000)	R	($300,000)	R
11 Cooperative Grading Service Charge Reduces General Fund support for the General Administration Division, replacing these funds with $20,000 paid by the Cooperative Grading Program for budgeting, accounting, and HR services provided by the Division.	($20,000)	R	($20,000)	R
12 Ag in the Classroom Transfers the appropriation for Ag in the Classroom to Commerce State-Aid. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	($22,077)	R	($22,077)	R

	FY 11-12		FY 12-13	
13 FFA Foundation Transfers the appropriation for the FFA Foundation to Commerce State-Aid. A 15% reduction will be taken when the funds are added into the Commerce State-Aid section, leaving $37,531. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	($44,154)	R	($44,154)	R
Agronomics				
14 Soil Testing Fees Implements two fees related to soil testing: (1) A fee for soil tests on samples sent to the Department from outside of North Carolina and (2) a fee for expedited soil testing. The fee for out-of-state soil tests shall not be less than $5. The expedited service will be for bulk samples and the fee shall not be less than $100.	($50,000)	R	($50,000)	R
Food & Drug				
15 Antifreeze Registration Increases the fee for antifreeze registration from $250 to $500 for each brand of antifreeze. This fee has not been increased since 1979.	($75,000)	R	($75,000)	R
Food Distribution				
16 Administrative Position Eliminates one administrative position within the Food Distribution Division. The reduction includes salaries and benefits for this position. 60012718 Office Assistant III $43,235	($43,235) -1.00	R	($43,235) -1.00	R
17 Position to Federal Receipts Transfers funding for one Storeroom Manager from General Fund support to federal receipts. The reduction includes salaries and benefits for this position. 60012736 Storeroom Manager $48,608	($48,608) -1.00	R	($48,608) -1.00	R
Markets				
18 Piedmont Farmers Market Eliminates General Fund support for the Piedmont Farmers Market. This market will now operate as a self-supporting enterprise budgeted in an Enterprise Fund like the Raleigh Farmers Market.	($22,000)	R	($22,000)	R
19 Lumberton Ag Center and Farmers Market Eliminates recurring funding for the Lumberton Agricultural Center and Farmers Market and makes the funding nonrecurring for FY 2011-12. The Fiscal Research Division will perform a Justification Review of this program.	($362,230) $362,230	R NR	($362,230) -6.00	R

	FY 11-12		FY 12-13	
20 International Marketing Provides $500,000 NR for international marketing of North Carolina agricultural products.	$500,000	NR		
21 Commodities Marketing Provides $500,000 NR for the promotion of North Carolina commodities. A portion of these funds shall be used for marketing wineries and producing State winery maps.	$500,000	NR		
Plant Industry				
22 Lime Tonnage Fee Increases the lime tonnage fee from $0.10 per ton to $0.50 per ton. This fee has not been increased since 1979.	($250,000)	R	($250,000)	R
23 Over-realized License Revenue Directs the Plant Industry Division to budget over-realized receipts from business licenses in the Seed and Fertilizer Section.	($50,000)	R	($50,000)	R
24 Plant Conservation Eliminates General Fund support for the Plant Conservation program and transfers the program to receipts provided by the Natural Heritage Trust Fund. This transfer fund shifts the salary and benefits of one position: 60012489 Plant Ecologist $68,481	($68,481) -1.00	R	($68,481) -1.00	R
Research Stations				
25 Research Grant Funds Reduces General Fund support for the research stations by $50,000 and directs the Division to increase receipts from University research grants accordingly. Currently few researchers provide funding to the research stations for the services they provide. Researchers are encouraged to include operating support for the research stations in grant proposals and to compensate the research stations for the services they provide.	($50,000)	R	($50,000)	R
Vet Services				
26 Administrative Position Eliminates one administrative position from the Division of Veterinary Services. The Division is to determine which position to eliminate. The reduction reflects the average salary and benefits of an administrative position within the Division.	($51,990) -1.00	R	($51,990) -1.00	R
27 License Fees Increases the license fee for pet shops, public auctions, boarding kennels, and dealers as defined in G.S. 19A-23 from $50 to $75. This fee was last increased in 1989.	($10,000)	R	($10,000)	R

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
28 Animal Welfare Services Provides funds for the Animal Welfare Services program to support operations.	$120,000	R	$120,000	R
Total Legislative Changes	**($2,366,555)**	**R**	**($2,366,555)**	**R**
	$12,096,590	**NR**	**$8,790,386**	**NR**
Total Position Changes	-17.00		-23.00	
Revised Budget	**$71,484,049**		**$68,177,845**	

Labor

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$16,842,679**		**$16,842,679**	

Legislative Changes

Department-Wide

29 Cell Phones ($10,074) R ($10,074) R

Reduces General Fund appropriation for cell phones across the Department by 25%. The Department is to reduce the actual number of phones by this percentage as well.

30 Motor Fleet Management ($22,635) R ($22,635) R

Reduces General Fund appropriation for Motor Fleet Management expenditures across the Department by 10%. The Department is to reduce the actual number of Motor Fleet Management vehicles by this percentage as well.

Administration

31 Operating Budget ($81,241) R ($81,241)

Reduces the operating budget for the Administration Division.

32 IT Operating Budget ($255,000) R ($255,000) R

Reduces the IT operating budget for the Administration Division.

33 Vacant Position ($48,414) R ($48,414) R

Eliminates the salary and benefits of 1.0 vacant position: -1.00 -1.00

60012904 Labor Library Assistant $48,414

Occupational Safety and Health

34 Agricultural Safety & Health Vacant Position and Salary Reserve ($79,339) R ($79,339) R

Eliminates the salary and benefits of 1.0 vacant Agricultural Safety & Health position and department-wide salary reserve: -1.00 -1.00

60013261 Processing Assistant IV ($53,579)
Department-wide salary reserve ($25,760)

Standards and Inspections

35 Apprenticeship Bureau

Transfers $350,000 in Workforce Investment Act funds from the Department of Commerce to the Department of Labor to be used for the recurring operating costs of the Apprenticeship Program.

	FY 11-12		FY 12-13	
36 Mine & Quarry Vacant Position and Salary Reserve	($81,560)	R	($81,560)	R
Eliminates salary and benefits of 1.0 vacant position in the Mine & Quarry Bureau and department-wide salary reserve:	-1.00		-1.00	
60012967 Mine Safety & Health Representative ($69,900)				
Department-wide salary reserve ($11,660)				
37 Employment Discrimination Bureau Vacant Position	($83,622)	R	($83,622)	R
Eliminates the salary, benefits, salary reserve, and operating costs associated with 1.0 vacant position:	-1.00		-1.00	
60013056 Employment Discrimination Investigator ($70,116)				
Salary reserve ($7,981)				
Operating costs ($5,525)				
38 Positions to Receipts and Reduction to Department-wide Salary Reserve	($343,907)	R	($343,907)	R
Shifts the salary and benefits of 5.0 positions to receipt support:	-5.00		-5.00	
60013001 Executive Assistant I $56,190				
60012894 Accounting Technician $45,991				
60012897 Administrative Assistant I $53,488				
60012899 Accounting Technician $52,688				
60012982 Deputy Commissioner Standards & Insp. $114,402				
Department-wide Salary Reserve $21,148				
Total Legislative Changes	**($1,005,792)**	R	**($1,005,792)**	R
Total Position Changes	-9.00		-9.00	
Revised Budget	**$15,836,887**		**$15,836,887**	

Environment & Natural Resources

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$188,972,401**		**$188,972,401**	

Legislative Changes

(1.0) Department-wide

39 Filled and Vacant Positions ($1,099,424) R ($1,099,424) R

Eliminates funding for the salaries and benefits of 14.22 positions and associated operating costs across the Department of Environment and Natural Resources: -14.22 -14.22

60035952	Policy Development Analyst	(1.00)	$75,759
60035964	Environmental Engineer	(1.00)	$87,173
65010186	Engineer	(1.00)	$78,137
60091478	Administrative Asst. II	(1.00)	$43,760
60035980	Artist Illustrator II	(1.00)	$53,067
60035995	Personnel Analyst I	(1.00)	$50,036
60035987	Workers' Comp Program Manager	(1.00)	$69,074
60036011	Accounting Mgr	(1.00)	$110,318
60035072	Environmental Program Supv II	(0.22)	$20,436
60035963	Environmental Specialist	(1.00)	$57,919
60035956	Environmental Specialist	(1.00)	$71,954
60032412	Hydrogeologist	(1.00)	$104,765
60035959	Administrative Asst.	(1.00)	$50,770
60036076	GIS Specialist	(1.00)	$89,804
60036067	Appl Svcs Mgr/Spec. Projects	(1.00)	$113,266
	Operating costs		$23,186

40 Cell Phones ($112,250) R ($112,250) R

Reduces General Fund appropriation for cell phones across the Department by 25%. The Department is to reduce the actual number of phones by this percentage as well.

41 Longevity ($100,000) R ($100,000) R

Reduces General Fund appropriation for longevity across the Department to reflect expected longevity needs.

42 Motor Fleet Management ($265,029) R ($265,029) R

Reduces General Fund appropriation for Motor Fleet Management expenditures across the Department by 15%. The Department is to reduce the actual number of Motor Fleet Management vehicles by 15% as well.

43 Funds for S.B. 709, "Energy Jobs Act"

Provides $100,000 to the Department, contingent upon the adoption of S.B. 709, "Energy Jobs Act," in order to fulfill the reporting requirements of the bill. These funds shall come from the Mercury Pollution Prevention Fund in the Department of Environment and Natural Resources.

(1.0) Reserves & Transfers

44 Clean Water State Revolving Fund

Directs the Department to use $5,567,165 of its loan origination fee fund to provide the 20% State match needed to draw down the maximum available federal funds for the Clean Water State Revolving Fund for FY 2011-12. The US EPA has given the Department permission to use these funds for FY 2011-12 only.

45 Drinking Water State Revolving Fund

Provides funding to meet the 20% State match requirement for drawing down the maximum available federal funds for the Drinking Water State Revolving Fund for FY 2011-12.

	FY 11-12		FY 12-13	
	$7,118,600	NR		

46 Nature Research Center Operating Reserve

Provides funds for the operations of the Nature Research Center building. The Center is scheduled to open in the spring of 2012. These funds are to be transferred to the Department of Administration for utilities, custodial services, maintenance, pest control, etc.

	$417,498	R	$1,253,590	R

47 Nature Research Center Program Operating Reserve

Provides the operating funds and staff required to open the Nature Research Center in the spring of 2012.

	$1,465,460	R	$2,269,798	R
	22.00		22.00	

48 Green Square Office Building Operating Reserve

Provides funds for the operations of the Green Square office building, which DENR plans to move into during the summer of 2011. These funds are to be transferred to the Department of Administration for utilities, custodial services, maintenance, pest control, etc.

	$956,408	R	$1,056,408	R

49 Plains Barn Operating Reserve

Provides the operating funds and staff needed to operate the plains barn and paddock at the North Carolina Zoo.

	$128,409	R	$128,409	R
	1.50		1.50	

50 State Park System Operating Reserve

Provides the operating funds and staff for a new boat ramp at Kerr Lake State Recreation Area and new facilities and trails at Grandfather Mountain, Gorges, and Deep River State Parks. Since the projects for Kerr Lake State Recreation Area and Gorges State Park will not be complete until later in 2011, positions included for these locations shall have an effective date of April 1, 2012.

	$143,030	R	$364,812	R
	5.00		5.00	

	FY 11-12		FY 12-13	
51 Grassroots Science Museums Collaborative Transfers the appropriation for the Grassroots Science Museums Collaborative to Commerce State-Aid. A 15% reduction will be taken when the funds are added into the Commerce State-Aid section, leaving $2,899,885. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	($3,411,713)	R	($3,411,713)	R
52 Partnership for the Sounds Transfers the appropriation for the Partnership for the Sounds to Commerce State-Aid. A 15% reduction will be taken when the funds are added into the Commerce State-Aid section, leaving $409,326 recurring. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	($481,560)	R	($481,560)	R
(1.0) Administration				
53 Vacant Positions Eliminates two positions within the administrative area of the Department. These two positions had been vacant for more than a year as of March 2011. The reduction includes salaries and benefits for these positions. 60036049 Departmental Purchasing Agent II $63,832 60036070 Networking Specialist $95,219	($159,051) -2.00	R	($159,051) -2.00	R
54 Office of Environmental Education and Public Affairs Reduces the environmental education responsibilities of the Office of Environmental Education and Public Affairs, with two positions to remain to administer the environmental teacher certification program and serve as a liaison with the Department of Public Instruction. 60036088 Edu. Dev. Consultant $65,772 60036090 Edu. Dev. Consultant $75,019 60036091 Edu. Dev. Consultant $63,925	($246,134) -3.00	R	($246,134) -3.00	R
(1.0) Aquariums				
55 Gate Admissions Reduces General Fund support for the aquariums and budgets $2 million in gate admissions collected by the three aquariums. Currently, all gate admissions are budgeted in a special fund and are used for capital projects, repairs, maintenance, exhibits, etc. Over $7.5 million from the General Fund will continue to be used to support the aquariums.	($2,000,000)	R	($2,250,000)	R
(1.0) Conservation Planning & Comm. Affairs				
56 Working Lands Program Eliminates the Working Lands Program and the position associated with this program. 60036193 Program Development Coordinator $78,195	($78,195) -1.00	R	($78,195) -1.00	R

	FY 11-12		FY 12-13	
57 Program Staff Eliminates all remaining General Fund support for the Office of Conservation Planning & Community Affairs and replaces these funds with receipts from the Natural Heritage Trust Fund. All operating expenses and the salaries and benefits associated with three positions are transferred to receipts. 60036191 Program Dev Coordinator $80,859 60036192 Program Dev Coordinator $84,110 60036213 Edu. Dev. Consultant $79,213	($279,271) -3.00	R	($279,271) -3.00	R
(1.0) Forest Resources				
58 Positions to Receipt Support Reduces General Fund support for 13 positions, replacing these funds with receipts. Several of the positions shifted are partial positions; in total, 8.8 FTE are transferred to receipts. Positions and the amount shifted to receipts are listed below: 60031721 Office Assistant III $16,635 (0.4 FTE) 60031762 Office Assistant III $14,260 (0.4 FTE) 60031781 Office Assistant III $16,918 (0.4 FTE) 60031786 Office Assistant III $16,584 (0.4 FTE) 60031808 Office Assistant III $16,182 (0.4 FTE) 60031919 Office Assistant III $14,273 (0.4 FTE) 60031944 Office Assistant III $15,085 (0.4 FTE) 60031995 Forester III $80,712 (1.0 FTE) 60032202 Extension Educ & Training Spec. $64,914 (1.0 FTE) 60032214 Forester III $73,953 (1.0 FTE) 60032220 Forestry Technician $55,449 (1.0 FTE) 60032221 Forestry Technician $50,847 (1.0 FTE) 60032224 Accounting Clerk V $49,336 (1.0 FTE)	($485,148) -8.80	R	($485,148) -8.80	R
59 Operating Reduction Reduces operating expenses of the Division.	($2,448,094)	R	($2,548,094)	R
60 Vacant Position Eliminates one vacant position in the Division that had been vacant for more than one year as of March 2011. 60031683 Cook $31,504	($31,504) -1.00	R	($31,504) -1.00	R
61 Turnbull Educational State Forest Replaces General Fund appropriation for the Turnbull Educational State Forest with receipts generated by the Turnbull forest.	($87,317) -1.00	R	($87,317) -1.00	R
62 Aviation Base System Directs the Division to transition to a three base system for aircraft. Currently the Division operates nine bases across the State. The Conklin & de Decker report issued in late 2010 recommended the three base system.	($40,000)	R	($40,000)	R

	FY 11-12		FY 12-13	
63 Forest Resources Transfers the Division of Forest Resources from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.				
(1.0) Marine Fisheries				
64 Operating Expenses Reduces operating expenses across the Division.	($168,910)	R	($168,910)	R
65 Operating Expenses to Receipt Support Transfers operating expenses within the Division to commercial fishing receipts.	($200,000)	R	($200,000)	R
66 Position Changes Eliminates three permanent positions within the Division: one vacant, two filled, and one temporary position.	($202,937) -3.00	R	($202,937) -3.00	R
Filled 60032651 M.F. Biologist II $67,900 60032556 M.F. Biologist II $56,225 Vacant 60032552 Processing Asst IV $38,761 Temporary Position $40,051				
67 Positions to Receipt Support Transfers the salaries and benefits of six positions to federal grant funds.	($297,116) -6.00	R	($297,116) -6.00	
60032644 Marine Fisheries Biologist II $52,330 60032649 Marine Fisheries Technician II $38,586 60032560 Marine Fisheries Biologist II $62,495 60032650 Marine Fisheries Technician III $52,789 60032645 Marine Fisheries Technician II $38,586 60032642 Marine Fisheries Biologist II $52,330				
68 Columbia Office Closes the Columbia Office of the Division of Marine Fisheries. This reduction includes rent and operating expenses associated with the office.	($55,902)	R	($55,902)	R
69 River Herring Program Reduces funding for river herring research. This reduction leaves approximately $65,000 and one position to continue to monitor river herring.	($85,000)	R	($85,000)	R
70 Oyster Sanctuary Program Eliminates funding for the Oyster Sanctuary Program.	($1,451,778)	R	($1,451,778)	R

	FY 11-12		FY 12-13	
71 Shellfish Rehabilitation Program Reduces funding for the Shellfish Rehabilitation program, leaving $315,000 to support the Oyster Shell Recycling program and oyster sanctuary construction projects. This reduction reduces operating funds.	($260,000)	R	($260,000)	R
72 Fishery Resource Grant Program Eliminates the Fishery Resource Grant Program. This program was funded by the Division of Marine Fisheries but operated by the SeaGrant program at North Carolina State University.	($300,000)	R	($300,000)	R
73 Shellfish Mapping Program Reduces operating funds as well as the salaries and benefits for five positions associated with the Shellfish Mapping Program. Four of these positions are filled and one is vacant.	($281,168) -5.00	R	($281,168) -5.00	R
Filled 60032714 M.F. Technician II $ 38,896 60032771 M.F. Technician II $ 40,200 60032772 M.F. Technician II $ 43,584 60032774 M.F. Technician II $ 38,586 Vacant 60032773 M.F. Technician II $ 38,896				
74 Shellfish Sanitation and Recreational Water Quality Moves the Shellfish Sanitation and Recreational Water Quality program from the Division of Environmental Health to the Division of Marine Fisheries.	$1,772,789 24.75	R	$1,772,789 24.75	R
(1.0) Museum of Natural Sciences				
75 Position Changes Eliminates five filled positions within the Division. This reduction includes the salaries and benefits of these positions.	($245,180) -5.00	R	($245,180) -5.00	R
60035038 Natural Science Curator I $47,502 60035013 Art Exhibit Design Technician $48,617 60034968 Art Exhibit Design Technician $46,310 60034980 Natural Science Research Curator II $62,733 60034966 Maintenance Mechanic II $40,018				
76 Temporary Wages Reduces temporary wages in the Division.	($189,732)	R	($189,732)	R
(1.0) North Carolina Zoo				
77 Operating Expenses Reduces General Fund operating expenses at the NC Zoo by approximately 6.5%. The NC Zoo may offset this reduction by increasing fees for gate admissions by $2.	($806,396)	R	($806,396)	R

	FY 11-12		FY 12-13	
78 Operations to Receipt Support Budgets $493,604 in receipts generated by the NC Zoo from revenue sources such as gate admissions, carousel rides, and stroller rentals. These receipts are over-realized and are currently deposited into the Special Zoo Fund.	($493,604)	R	($493,604)	R
79 Gift Shops Outsources at least three gift shops operated by the North Carolina Zoo. Outsourcing the NC Zoo's gift shops will eliminate six filled positions and one vacant position.	($603,198) -7.00	R	($603,198) -7.00	R
60033433 Sales Manager I $33,260 60033304 Sales Manager I $32,505 60033404 Sales Manager I $34,235 60033403 Sales Manager II $35,133 60033402 Sales Manager II $36,506 60033459 Stock Clerk I $34,203 60033405 Sales Manager I $32,505				
80 Vacant Positions Eliminates two positions in the Division that had been vacant for more than one year as of March 2011. This reduction includes the salaries and benefits for these positions.	($68,846) -2.00	R	($68,846) -2.00	R
60033308 Grounds Worker $32,505 60033295 Vehicle Operator II $36,341				
(1.0) Parks & Recreation				
81 Operating Expenses Transfers $6 million in Parks and Recreation Trust Fund receipts to the Division of Parks and Recreation to support park operations for the biennium.	($6,000,000)	NR	($6,000,000)	NR
82 Operation Reduction Reduces operating expenses for the Division of Parks and Recreation.	($1,012,500)	R	($1,012,500)	R

	FY 11-12		FY 12-13	
83 Vacant Positions	($856,447)	R	($856,447)	R
Eliminates 18 vacant positions in the Division. This reduction includes the salaries and benefits for these positions.	-18.00		-18.00	

65007762	Maintenance Mechanic IV	$ 43,651
65007760	Maintenance Mechanic III	$ 39,789
60032890	Park Ranger	$ 45,510
60032962	Maintenance Mechanic IV	$ 42,294
65010034	Maintenance Mechanic IV	$ 46,323
65010033	Natural Science Curator II	$ 58,201
65009861	Office Assistant IV	$ 42,740
65009844	Park Ranger	$ 58,322
65009846	Park Ranger	$ 56,460
60033075	Park Ranger	$ 42,809
60033072	Park Ranger	$ 47,721
60033208	Park Ranger	$ 43,392
60032923	Park Ranger	$ 45,438
60032970	Maintenance Mechanic III	$ 39,789
60033159	Parks Designer II	$ 72,069
60032974	Maintenance Mechanic III	$ 44,165
60033046	Park Ranger	$ 44,806
60033057	Park Ranger	$ 42,968

(1.0) Soil & Water Conservation

84 Operating Reduction	($28,719)	R	($28,719)	R
Reduces operating expenses in the Division.				
85 Filled Positions	($105,990)	R	($105,990)	R
Eliminates the salary and benefits of two filled positions in the Division.	-2.00		-2.00	

60032335	Environmental Specialist	$53,355
60032377	Info & Communication Spec. I	$52,635

86 Soil & Water Conservation Districts	($68,000)	R	($68,000)	R
Reduces funding for soil and water conservation districts by $708 per district. This reduction cuts local matching funds by 10%, or $400 per district. The remainder of the reduction is from funds provided for subsistence expenses for local Supervisors. This reduction means that lunch will no longer be reimbursed on days when the local district boards meet.				

	FY 11-12		FY 12-13	
87 Routine Animal Operating Inspections	($472,725)	R	($472,725)	R
Ends the routine operating inspections of animal operations performed by the Division. Both the Division of Soil & Water Conservation and the Division of Water Quality inspect these operations. This reduction eliminates seven positions, their salaries and benefits, and associated operating costs. Two positions remain to provide technical assistance, conduct voluntary inspections, and respond to critical emergencies.	-7.00		-7.00	

60032353	Env. Specialist	$60,358
60032354	Env. Specialist	$51,649
60032355	Env. Program Supervisor II	$83,575
60032358	Engineer	$61,444
60032359	Env. Specialist	$51,649
60032366	Env. Specialist	$53,698
60032356	Env. Specialist	$56,222

88 Cooperative Soil Survey Program	($105,352)	R	($105,352)	R
Reduces operating funds and positions that support the Cooperative Soil Survey Program. This program conducts soil surveys that show the nature and distribution of various kinds of soil within a county and are used on a technical basis for land use decisions. This activity will now be carried out by local governments and the USDA Natural Resource Conservation Service. One position remains to provide technical assistance to local governments.	-2.00		-2.00	

60032322	Soil Specialist	$52,676
60032324	Soil Specialist	$52,676

89 Animal Waste Pilot Program	($51,880)	R	($51,880)	R
Ends the Animal Waste Pilot Program extended in S.L.2009-84. The pilot program currently operates in four counties (Pender, Jones, Columbus, and Brunswick) and is scheduled to sunset in September of 2011. There is one position associated with this program. This reduction includes salary and benefits for this position.	-1.00		-1.00	

60032357	Environmental Specialist	$51,880

90 Soil & Water Conservation

Transfers the Division of Soil and Water Conservation from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.

(2.0) Coastal Management

91 Positions to Receipt Support	($314,075)	R	($314,075)	R
Shifts the salary and benefits of 5.0 positions to receipt support:	-5.00		-5.00	

60031539	Office Assistant IV	$47,372
60031553	District Planner	$61,397
60031533	Asst Major Permit Coordinator	$63,651
60031546	Rule Making & Policy Analyst	$68,840
60031601	Compliance & Enforcement Field Rep.	$72,815

	FY 11-12		FY 12-13	
92 Raleigh Office	($109,523)	R	($109,523)	R
Closes the Raleigh Office of the Division of Coastal Management and eliminates 1.0 filled receipt-supported position. The Department shall fund shift other positions and operating costs within the Division to be supported by these federal receipts.	-1.00		-1.00	
60031545 Asst Dir For Policy & Planning $109,523				
(2.0) Environmental Assistance and Outreach				
93 Filled Position	($113,994)	R	($113,994)	R
Eliminates the salary and benefits of 1.0 filled position:	-1.00		-1.00	
60035066 Environmental Program Manager $113,994				
94 Customer Service Liaisons				
Directs the Division of Environmental Assistance and Outreach to provide a minimum of one Customer Service Liaison for each of the Department's Regional Offices in order to address customer services issues, complaints, information requests, and the like.				
(2.0) Environmental Health				
95 Private Well Program	($278,129)	R	($348,372)	R
Eliminates operating funding for the Private Well Program and 4.0 filled positions in FY 2011-12:	-4.00		-5.00	
60034257 Environmental Program Supervisor II $73,531 60034539 Environmental Health Regional Specialist $63,332 60034541 Environmental Health Regional Specialist $58,246 60034305 Processing Assistant IV, $38,180				
and eliminates the program's remaining position in FY 2012-13:				
60034542 Environmental Health Regional Specialist $55,275				
96 Vector Control Program	($391,311)	R	($391,311)	R
Eliminates operating funding for the Vector Control Program and its 4.26 filled positions:	-4.26		-4.26	
60034360 Enviro. Senior Specialist (1.0 FTE) $72,644 60034361 Enviro. Senior Specialist (1.0 FTE) $59,798 60034359 Enviro. Program Consultant (1.0 FTE) $84,637 60034363 Enviro. Program Consultant (1.0 FTE) $88,214 60034358 Pub. Health Pest Mgmt Sec. Chief (0.26 FTE) $23,949				
Mosquito control grant funds will be administered by existing staff within the Division of Public Health.				

	FY 11-12		FY 12-13	
97 Positions Eliminated and Shifted to Receipt Support	($389,938)	R	($389,938)	R
Eliminates the salary and benefits of 3.0 positions:	-6.50		-6.50	
Filled: 60034261 Administrative Assistant I $49,013 60034543 Administrative Assistant I $41,867 Vacant: 60034466 Extension Educ & Training Spec III $56,780 and fund shifts 3.50 positions to receipt support: 60034300 Nurse Consultant (1.0 FTE) $74,315 60034293 Enviro. Health Regional Spec. (1.0 FTE) $65,844 60034495 Enviro. Program Supervisor (0.25 FTE) $19,821 60034298 Technology Support Analyst (1.0 FTE) $61,118 60034255 Environmental Program Supv I (0.25 FTE) $21,180				
98 Public Water Supply Positions	($202,628)	R	($202,628)	R
Eliminates the salary and benefits of 2.0 vacant positions in the Public Water Supply Section:	-3.00		-3.00	
60034405 Environmental Senior Specialist $59,750 60034392 Engineer $98,022 and 1.0 filled position in the Division Finance Office: 60034413 Accounting Technician $44,856				
99 Public Water Supply Program	($767,918)	R	($767,918)	R
Transfers the Public Water Supply Program to the Division of Water Resources.	-8.80		-8.80	
100 Food and Lodging Program				
Directs the Division to change the use of the $400,000 appropriation originally intended for aid to counties for local food and lodging programs. The Division is to use those funds to pay for the costs to operate the State elements of the program. Counties will receive a higher percentage of the food and lodging fee that will more than offset not receiving these grant funds.				
101 On-Site Quality Assurance Program	($69,792)	R	($69,792)	R
Eliminates funding for the On-Site Quality Assurance Program and its 1.0 position:	-1.00		-1.00	
60034368 Environmental Health Regional Specialist $69,792				
102 Wastewater Discharge Elimination Program	($160,594)	R	($160,594)	R
Eliminates operating funding for the Wastewater Discharge Elimination Program and its 2.0 filled positions:	-2.00		-2.00	
60034370 Environmental Senior Specialist $55,541 60034306 Environmental Program Supervisor I $75,547				

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
103 Tick Control Program Eliminates operating funding for the Tick Control Program and its 1.0 filled position: 65001605 Environmental Senior Specialist $58,072	($139,499) -1.00	R	($139,499) -1.00	R
104 Sleep Products Program Transfers the Sleep Products Program to the Department of Agriculture and Consumer Services. This program's expenditures of $630,337 and 8.0 positions are fully supported by receipts.				
105 Shellfish Sanitation and Recreational Water Quality Transfers the Shellfish Sanitation and Recreational Water Quality Program to the Division of Marine Fisheries.	($1,772,789) -24.75	R	($1,772,789) -24.75	R
106 Transfer to DHHS - Division of Public Health Eliminates salary and benefits of 2.0 filled positions that will be eliminated as part of the transfer of the Division of Environmental Health to the Division of Public Health in the Department of Health and Human Services: 60034382 Division Deputy Director $116,617 60034417 Information & Communications Spec. I $56,780	($173,397) -2.00	R	($173,397) -2.00	R
(2.0) Land Resources				
107 Eliminate Landslide Mapping Program Eliminates funding for the salaries and benefits of 6.0 positions and operating costs of the Landslide Mapping Program: 60032417 Hydrogeologist $88,164 60032509 Hydrogeologist $60,272 60032510 Hydrogeologist $54,115 60032511 Hydrogeologist $54,115 60032512 Hydrogeologist $76,301 60032414 Hydrogeologist $91,892	($479,674) -6.00	R	($479,674) -6.00	R
(2.0) Waste Management				
108 Operating Budget Reduces the operating budget of the Division of Waste Management.	($23,819)	R	($23,819)	R

	FY 11-12		FY 12-13	
109 Positions Eliminated and Shifted to Receipt Support	($482,878)	R	($482,878)	R
Eliminate the salary and benefits of 3.0 vacant and 1.0 filled positions:	-6.90		-6.90	

Vacant

60034588	Hydrogeologist	(1.0 FTE)	$72,226
60095583	Engineer	(1.0 FTE)	$83,171
60034613	Environmental Sr Specialist	(1.0 FTE)	$59,273

Filled

60034616	Hydrogeologist	(1.0 FTE)	$65,806

and fund shifts 2.9 positions to receipt support:

60034617	Engineer	(0.5 FTE)	$43,137
60034596	Environmental Sr Specialist	(0.2 FTE)	$13,644
60034589	Environmental Sr Specialist	(0.2 FTE)	$14,245
60034607	Environmental Sr Specialist	(1.0 FTE)	$65,101
60034595	Environmental Sr Specialist	(0.25 FTE)	$15,438
60034602	Environmental Supervisor III	(0.25 FTE)	$21,475
60034608	Environmental Sr Specialist	(0.25 FTE)	$14,681
60034594	Environmental Sr Specialist	(0.25 FTE)	$14,681

110 Vacant Position	($63,764)	R	($63,764)	R
Eliminates the salary and benefits of 1.0 position that has been vacant for over a year as of March 2011:	-1.00		-1.00	

60034774 Hydrogeologist $63,764

(2.0) Water Quality

111 Vacant Positions	($84,333)	R	($84,333)	R
Eliminates the salary and benefits of 1.59 positions vacant for over one year:	-1.59		-1.59	

60035518	Environmental Senior Specialist	(0.59 FTE)	$39,110
60035240	Environmental Senior Technician	(1.0 FTE)	$45,223

112 Operating Budget	($442,880)	R	($442,880)	R
Reduces General Fund support of the operating budget of the Division of Water Quality by 15%.				

	FY 11-12		FY 12-13	
113 Positions Eliminated and Shifted to Receipt Support	($1,217,921)	R	($1,217,921)	R
Eliminates the salary and benefits of 6.0 vacant and 2.0 filled positions:	-22.50		-22.50	

60035140	Processing Assistant IV	(1.0 FTE)	$40,481
60035166	Chemist III	(1.0 FTE)	$74,824
60035160	Chemistry Technician III	(1.0 FTE)	$47,705
60035141	Chemistry Technician I	(1.0 FTE)	$46,684
60035489	Environmental Senior Tech.	(1.0 FTE)	$48,425
60035466	Environmental Specialist	(1.0 FTE)	$58,201
60035229	Environmental Technician	(1.0 FTE)	$45,887
60035347	Environmental Senior Tech.	(1.0 FTE)	$48,594

and shifts 14.5 positions to receipt support:

60035164	Chemistry Technician III	(1.0 FTE)	$46,684
60035161	Chemistry Technician III	(0.5 FTE)	$24,752
60035186	Processing Assistant IV	(1.0 FTE)	$40,400
60035139	Enviro. Prog. Supv. IV	(0.5 FTE)	$50,193
60035424	Environmental Engineer	(1.0 FTE)	$70,530
60035104	Accounting Clerk IV	(1.0 FTE)	$38,672
60035398	Environmental Specialist	(1.0 FTE)	$66,022
60035170	Chemistry Technician III	(1.0 FTE)	$50,432
60035099	Processing Assistant IV	(1.0 FTE)	$38,043
60035414	Environmental Engineer	(1.0 FTE)	$66,250
60035381	Environmental Senior Tech.	(1.0 FTE)	$45,181
60035270	Enviro. Prog. Supv. III	(0.5 FTE)	$42,999
60035490	Environmental Specialist	(1.0 FTE)	$58,350
60035231	Environmental Specialist	(1.0 FTE)	$55,793
60035467	Environmental Senior Tech.	(1.0 FTE)	$49,798
60035472	Environmental Engineer	(1.0 FTE)	$63,021

(2.0) Water Resources

114 Public Water Supply Section from Environmental Health	$767,918	R	$767,918	R
Transfers the Public Water Supply Section from the Division of Environmental Health to the Division of Water Resources.	8.80		8.80	
115 Transfer from Capital Improvement Funds				
Transfers $564,227 from Division of Water Resources Capital Improvement funds to Division of Water Resources on a nonrecurring basis for FY 2011-12 and reduces the General Fund operating budget in a like amount.	($564,227)	NR		

Total Legislative Changes	**($21,763,414)**	R	**($20,221,445)**	R
	$554,373	NR	**($6,000,000)**	NR
Total Position Changes	-132.27		-133.27	
Revised Budget	**$167,763,360**		**$162,750,956**	

DENR-Clean Water Management Trust Fund

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$100,000,000**		**$100,000,000**	
Legislative Changes				
Department-wide				
116 Operating Reduction Provides $12.5 million to the Clean Water Management Trust Fund. In addition, the bill repeals G.S. 113A-253.1, which set the Trust Fund's annual appropriation at $100 million.	($87,500,000)	R	($87,500,000)	R
Total Legislative Changes	**($87,500,000)**	**R**	**($87,500,000)**	**R**
Total Position Changes				
Revised Budget	**$12,500,000**		**$12,500,000**	

Commerce

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$38,907,381**		**$38,907,381**	
Legislative Changes				
Department-wide				
117 Employment Security Commission Merger Reduces expenditures due to the merger of the Employment Security Commission with the Department of Commerce. This reduction assumes an effective date of November 1, 2011 for the transfer. This transfer shall be done in accordance with S.B. 532.	($251,376)	R	($377,064)	R
118 Governor's Office Transfer Eliminates funding from various account codes (1x-5x) across the Department which have been used to transfer funds to the Governor's Office to pay for salary and benefits for one position. The Department shall not transfer funds to the Governor's Office for this purpose.	($192,354)	R	($192,354)	R
119 Salary and Operating Reductions to Align Budget Reduces various accounts (1x-5x) across the Department such that the Department may properly budget contracts with the Attorney General's Office, rather than using lapsed salary and operating line items for this purpose.	($235,558)	R	($235,558)	R
120 Cell Phones Reduces cell phones expenditures across the Department by 30%. The Department is to reduce the actual number of cell phones by this percentage as well.	($7,000)	R	($7,000)	R
121 Motor Fleet Management Reduces Motor Fleet Management expenses by 10%. The Department is to reduce the actual number of Motor Fleet Management vehicles by 10% as well.	($27,647)	R	($27,647)	R
Department-wide Reserves and Transfers				
122 Rural Electrification Authority Appropriates $150,000 to be transferred to the Rural Electrification Authority (budget code 54600 5241). In section 2.2(g) of S.L. 2009-451, $210,240 was transferred from this fund to General Fund availability.	$150,000	NR		
Administration				
123 Administrative Assistant Eliminates the salary and benefits for one filled administrative assistant position (60077162).	($54,640) -1.00	R	($54,640) -1.00	R

	FY 11-12		FY 12-13	
124 Attorney General Contracts Directs the Department to properly budget its Attorney General contracts as a separate 2x account line.	$235,558	R	$235,558	R
125 Assistant Secretary for Community Development Transfers the salary and benefits for the Assistant Secretary for Community Development position (60077156) from the Administration fund code (1111) to the Division of Community Assistance fund code (1620) so that the funding can be properly aligned in the correct division. The Department shall physically locate the Assistant Secretary in the same building as the majority of the division's employees.	($125,101) -1.00	R	($125,101) -1.00	R
126 Assistant Secretary for Policy, Research, and Strategic Planning (PRSP) Transfers the Assistant Secretary position (60077183) from the Administration fund code (1111) to the PRSP fund code (1130) so that the funding can be properly aligned in the correct division.	($125,720) -1.00	R	($125,720) -1.00	R
127 Director of Rural Development Programs Eliminates the salary and benefits for the position of Director of Rural Development Programs (60077188). This position oversees the 21st Centuries Communities Program, which is eliminated, and administers Community Development Block Grant (CDBG) programs which can be handled by existing CDBG staff. The Certified Retirement Communities Program shall be transferred to the Division of Tourism, Film, and Sports Development and administered by existing staff.	($99,308) -1.00	R	($99,308) -1.00	R
128 Public Affairs Staff Reduction Eliminates the salary and benefits for one filled position (60077186) in the Secretary's Office, Public Affairs section.	($42,289) -1.00	R	($42,289) -1.00	R
BLNC - Business Link North Carolina				
129 Director Position Eliminates the salary and benefits for the director position (60080987) for BLNC. Employees in this division will report to the Director of Business and Industry.	($131,110) -1.00	R	($131,110) -1.00	R
Business and Industry				
130 Transfer to Biotechnology Center Eliminates the transfer to the Biotechnology Center. The Department and the Biotechnology Center are encouraged to continue the Memorandum of Understanding but without the use of Commerce funds to pay for Biotechnology Center expenses.	($64,125)	R	($64,125)	R
131 Trade Shows Reduces funding for trade shows.	($50,000)	R	($50,000)	R

	FY 11-12		FY 12-13	
132 Vacant Positions	($141,727)	R	($141,727)	R
Eliminates the salaries and benefits for two positions which have been vacant for more than one year as of March 2011:	-2.00		-2.00	
60080967 Econ Development Rep $58,413 60080979 Client Development Manager $83,314				
Commerce Finance Center				
133 Industrial Development Fund	($320,107)	R	($320,107)	R
Eliminates the General Fund appropriation for the Industrial Development Fund. Funding will remain available from loan repayments and in the fund balance to fulfill existing obligations.				
134 Jobs Maintenance and Capital Development Fund (JMAC)				
Appropriates $6,000,000 for Bridgestone/Firestone and Goodyear agreements for the 2010 grant year.	$6,000,000	NR		
135 One North Carolina Fund				
Provides additional funding for the One North Carolina Fund.	$10,000,000	NR		
136 Broadband Connectivity				
Provides $1 million non-recurring for the CDBG-Economic Development section to incent private businesses to provide broadband connectivity. Priority shall be given to unserved areas in mixed urban-rural counties and then to unserved areas in mainly rural counties. The Department shall work with the Rural Economic Development Center in developing and implementing this grant program.	$1,000,000	NR		
Community Assistance				
137 Assistant Secretary Position	$125,101	R	$125,101	R
Transfers the salary and benefits for the Assistant Secretary for Community Development position (60077156) from the Administration fund code (1111) into the Division of Community Assistance fund code (1620) so that the funding can be properly aligned in the correct division. The Department shall physically locate the Assistant Secretary in the same building as the majority of the division's employees.	1.00		1.00	
138 Senior Advisor/Director Position	($117,624)	R	($117,624)	R
Eliminates the salary and benefits for the position of director (60081167). This division also has an Assistant Secretary, and thus the director position is eliminated to more properly align span of control.	-1.00		-1.00	
139 Vacant Position	($71,536)	R	($71,536)	R
Eliminates the salary and benefits for one Planner position (60081202) vacant for more than one year as of March 2011.	-1.00		-1.00	

	FY 11-12		FY 12-13	
140 21st Century Communities Eliminates operating funding for the 21st Century Communities program and the salaries and benefits for three filled positions. This program was designed to certify counties to be ready for the 21st Century and is no longer needed. 60081236 Planner $58,074 60081237 Planner $55,541 60081238 Planner $63,013	($244,699) -3.00	R	($244,699) -3.00	R
141 Filled Positions Eliminates the salaries and benefits for five filled positions and associated operating costs within the Division. Funding will still be sufficient to meet Community Development Block Grant (CDBG) match requirements. 60081178 Office Assistant IV $31,634 60081182 Comm Dev Planner I $57,511 60081198 Comm Dev Planner II $62,238 60081205 Office Assistant IV $34,305 60089504 Comm Dev Planner I $74,135 Operating Expenses $36,354	($296,177) -5.00	R	($296,177) -5.00	R
Energy				
142 Pass-through Funding to Universities Eliminates pass-through funding to the Energy Center at North Carolina A&T State University. Provides $500,000 in FY 2011-12 and $778,150 in FY 2012-13 for the Solar Center at North Carolina State University to continue energy efficiency programs. $300,000 of this funding shall be used for the Energy Management Program within the Energy Efficiency and Environmental Research in the Department of Mechanical & Aerospace Engineering. No funds shall be used for advertising or promotion of the Solar Center. Provides $200,000 in FY 2011-12 and $311,260 in FY 2012-13 to the Appalachian Energy Center at Appalachian State University.	($1,855,500)	R	($1,466,090)	
143 Operating Reduction Reduces operating expenses (2x-5x) in the division by $21,120, leaving $154,716 for these purposes.	($21,120)	R	($21,120)	R
144 Filled Position Eliminates the salary and benefits for one filled Engineer position (60014891) who currently is assigned to the Utility Savings Initiative program.	($78,880) -1.00	R	($78,880) -1.00	R
Industrial Commission				
145 Over-realized Receipts Directs the Industrial Commission to budget over-realized receipts.	($736,861)	R	($736,861)	R

	FY 11-12		FY 12-13	
International Trade				
146 Trade Shows Reduces funding for trade shows.	($50,000)	R	($50,000)	R
Management Information Systems				
147 Division Director Eliminates the salary and benefits for the director position (60080825) for the Management Information Systems division.	($153,218) -1.00	R	($153,218) -1.00	R
148 Operating Funds Reduces operating expenses (2x-5x) in the division by $18,552, leaving $163,790 for these purposes.	($18,552)	R	($18,552)	R
Office of Science and Technology				
149 Continuation Review Eliminates recurring funding for the Office of Science and Technology and makes the funding nonrecurring for FY 2011-12. This program is subject to continuation review.	($215,599) $215,599	R NR	($215,599) -2.00	R
Policy, Research, and Strategic Planning				
150 Assistant Secretary Position Transfers the Assistant Secretary position (60077183) from the Administration fund code (1111) into the Policy, Research, and Strategic Planning fund code (1130) so that the funding can be properly aligned in the correct division.	$125,720 1.00	R	$125,720 1.00	R
151 Operating Expenses Reduces operating expenses (2x-5x) in the division by $10,000, leaving $200,753 for these purposes.	($10,000)	R	($10,000)	R
Tourism, Film, and Sports Development				
152 Advertising and Marketing the State as a Tourist Destination Reduces funding for advertising and marketing the State as a tourist destination by $1,000,000, leaving $7,382,399 for these purposes.	($1,000,000)	R	($1,000,000)	R
153 Welcome Centers Position Eliminates the salary and benefits for an Office Assistant IV position (60080870) which has been vacant for more than a year as of March 2011.	($39,102) -1.00	R	($39,102) -1.00	R
154 Welcome Centers Brochure Fees Reduces the recurring appropriation to the Welcome Centers by $500,000. The Department will implement a new brochure fee to offset the General Fund reduction.	($500,000)	R	($500,000)	R
155 Wine and Grape Grower's Council Eliminates funding for the Wine and Grape Grower's Council, including the salary and benefits for one filled position (60080945).	($732,380) -1.00	R	($732,380) -1.00	R

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
Wanchese Seafood Industrial Park				
156 Capital and Operating Funds Eliminates funding most recently used for capital projects and operating expenses.	($248,327)	R	($248,327)	R
157 Receipt Support Shifts the Park to receipt support over the two years of biennium.	($75,000)	R	($167,416) -1.00	R
Workforce Development				
158 Workforce Investment Act Funds Transfers $350,000 in Workforce Investment Act funds from the Department of Commerce to the Department of Labor to be used for the recurring operating costs of the Apprenticeship Program.				
Total Legislative Changes	**($7,846,258)** **$17,365,599**	R NR	**($7,674,952)**	R
Total Position Changes	-20.00		-23.00	
Revised Budget	**$48,426,722**		**$31,232,429**	

Commerce - State Aid

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$31,169,289**		**$31,169,289**	
Legislative Changes				
159 Ag in the Classroom Transfers the appropriation for Ag in the Classroom from Agriculture to Commerce State-Aid. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	$22,077	R	$22,077	R
160 Association of CDCs Reduces the recurring pass-through appropriation for the Association of CDCs by 15%, leaving $833,582.	($147,103)	R	($147,103)	R
161 Biofuels Center Reduces the recurring pass-through appropriation for the Biofuels Center by 20%, leaving $4,000,000 recurring.	($1,000,000)	R	($1,000,000)	R
162 Councils of Government (COGs) Reduces the recurring pass-through appropriation for the COGs.	($60,563)	R	($60,563)	R
163 Community Development Initiative Reduces the recurring pass-through appropriation for the Community Development Initiative by 15%, leaving $3,980,329.	($702,411)	R	($702,411)	R
164 e-NC Authority Eliminates all funding to the e-NC Authority.	($442,035)	R	($442,035)	R
165 FFA Foundation Transfers the appropriation for the FFA Foundation from Agriculture to Commerce State-Aid. A 15% reduction is taken, leaving $37,531 recurring. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	$37,531	R	$37,531	R
166 Grassroots Science Museums Transfers the appropriation for the Grassroots Science Museums Collaborative from DENR to Commerce State-Aid. A 15% reduction is taken, leaving $2,899,885 recurring. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	$2,899,885	R	$2,899,885	R
167 High Point Furniture Market Reduces the recurring pass-through appropriation for the High Point Furniture Market by 15%, leaving $685,507 recurring.	($120,972)	R	($120,972)	R

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
168 Indian Economic Development Initiative Provides recurring funding to the Indian Economic Development Initiative.	$90,000	R	$90,000	R
169 Institute for Regenerative Medicine Reduces the recurring pass-through appropriation for the Institute for Regenerative Medicine.	($2,000,000)	R	($1,660,589)	R
170 Land Loss Prevention Project Reduces the recurring pass-through appropriation for the Land Loss Prevention Project by 15%, leaving $601,345.	($106,119)	R	($106,119)	R
171 Institute of Minority Economic Development Reduces the recurring pass-through appropriation for the Institute of Minority Economic Development by 15%, leaving $2,139,793 recurring.	($377,612)	R	($377,612)	R
172 Minority Support Center Reduces the recurring pass-through appropriation for the Minority Support Center by 15%, leaving $2,659,421.	($469,309)	R	($469,309)	R
173 Partnership for the Sounds Transfers the appropriation for the Partnership for the Sounds from DENR to Commerce State-Aid. A 15% reduction is taken, leaving $409,326 recurring. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	$409,326	R	$409,326	R
174 Regional Economic Development Commissions Eliminates all pass-through funding for the Regional Economic Development Commissions.	($2,500,000)	R	($2,500,000)	R
175 RTI International Provides $500,000 NR for RTI to match US Department of Energy grant funds.	$500,000	NR		
Total Legislative Changes	**($4,467,305)**	**R**	**($4,127,894)**	**R**
	$500,000	**NR**		
Total Position Changes				
Revised Budget	**$27,201,984**		**$27,041,395**	

N.C. Biotechnology Center

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$19,501,900**		**$19,501,900**	
Legislative Changes				
176 Operating Funds Reduces the recurring pass-through appropriation for the Biotechnology Center by 15%, leaving $16,576,615 recurring.	($2,925,285)	R	($2,925,285)	R
Total Legislative Changes	**($2,925,285)**	**R**	**($2,925,285)**	**R**
Total Position Changes				
Revised Budget	**$16,576,615**		**$16,576,615**	

Rural Economic Development Center

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$22,640,814**		**$22,640,814**	
Legislative Changes				
177 Operating Reductions Reduces the recurring pass-through appropriation for the Rural Center by 15%, leaving $19,244,692 in recurring funding.	($3,396,122)	R	($3,396,122)	R
178 North Carolina Capital Access Program Provides $12,500,000 in nonrecurring funding for FY 2011-12 and FY 2012-13 to establish the Income Producing Property Component of the North Carolina Capital Access Program.	$12,500,000	NR	$12,500,000	NR
179 North Carolina Small Business Express Loan Fund Provides $7,500,000 in nonrecurring funding for FY 2011-12 and FY 2012-13 to establish the North Carolina Small Business Express Loan Fund.	$7,500,000	NR	$7,500,000	NR
Total Legislative Changes	**($3,396,122)**	**R**	**($3,396,122)**	
	$20,000,000	**NR**	**$20,000,000**	**NR**
Total Position Changes				
Revised Budget	**$39,244,692**		**$39,244,692**	

Wildlife Resources Commission

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$0**		**$0**	
Legislative Changes				
180 Operating Funds	$16,000,000	R	$16,000,000	R
Transfers the Wildlife Resource Commission to General Fund support. The expected sales tax transfer of $22.97 million is changed to a $16 million General Fund appropriation. Of the $16 million appropriated to the Commission, $250,000 shall be used to supplement the Beaver Management Assistance Program. These funds shall be in addition to the $349,000 of Commission funds currently obligated for the program.				
Conservation Education				
181 Conservation Education	($778,821)	R	($778,821)	R
Eliminates recurring funding for the Conservation Education Division and makes the funding nonrecurring for FY 2011-12. This program is subject to Continuation Review.	$778,821	NR		
Total Legislative Changes	**$15,221,179**	R	**$15,221,179**	R
	$778,821	NR		
Total Position Changes				
Revised Budget	**$16,000,000**		**$15,221,179**	

Commerce – Enterprise

Budget Code: 54600

	FY 2011-12		FY 2012-13	
Beginning Unreserved Fund Balance	**$9,069,749**		**$8,440,899**	
Recommended Budget				
Requirements	**$4,479,458**		**$4,479,458**	
Receipts	**$4,100,608**		**$4,100,608**	
Positions	**46.00**		**46.00**	
Legislative Changes				
Requirements:				
Transfer to General Fund	$0	R	$0	R
Directs the ABC Commission to transfer $250,000 in cash balance to the General Fund for general availability.	$250,000	NR	$0	NR
	0.00		0.00	
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$250,000	NR	**$0**	NR
	0.00		0.00	
Receipts:				
ABC Commission	$0	R	$0	R
	$0	NR	$0	NR
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$0	NR	**$0**	NR

Subcommittee on Natural and Economic Resources

	FY 2011-12	FY 2012-13
Revised Total Requirements	**$4,729,458**	**$4,479,458**
Revised Total Receipts	**$4,100,608**	**$4,100,608**
Change in Fund Balance	**($628,850)**	**($378,850)**
Total Positions	**46.00**	**46.00**
Unappropriated Balance Remaining	**$8,440,899**	**$8,062,049**

DENR - Special

Budget Code: 24300

	FY 2011-12		FY 2012-13	
Beginning Unreserved Fund Balance	**$2,291,385**		**$2,166,385**	
Recommended Budget				
Requirements	**$1,029,288**		**$1,029,288**	
Receipts	**$1,029,288**		**$1,029,288**	
Positions	**0.00**		**0.00**	
Legislative Changes				
Requirements:				
Mercury Pollution Prevention Fund Provides $100,000 to the Department of Environment and Natural Resources, contingent upon the adoption of S.B. 709, "Energy Jobs Act," in order to fulfill the reporting requirements of the bill. These funds shall come from the Mercury Pollution Prevention Fund in the Department of Environment and Natural Resources.	$0 $0 0.00	R NR	$0 $0 0.00	R NR
Mercury Pollution Prevention Fund Transfers $125,000 from the cash balance of the Mercury Pollution Prevention Fund to the General Fund for general availability.	$0 $125,000 0.00	R NR	$0 $0 0.00	R NR
Subtotal Legislative Changes	**$0** **$125,000** 0.00	R NR	**$0** **$0** 0.00	R NR
Receipts:				
Mercury Prevention Transfer to General Fund	$0 $0	R NR	$0 $0	R NR
Subtotal Legislative Changes	**$0** **$0**	R NR	**$0** **$0**	R NR

Subcommittee on Natural and Economic Resources

	FY 2011-12	FY 2012-13
Revised Total Requirements	**$1,154,288**	**$1,029,288**
Revised Total Receipts	**$1,029,288**	**$1,029,288**
Change in Fund Balance	**($125,000)**	**$0**
Total Positions	**0.00**	**0.00**
Unappropriated Balance Remaining	**$2,166,385**	**$2,166,385**

DENR - PART F

Budget Code: 24309

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	**$13,599,484**	**$201,853**
Recommended Budget		
Requirements	**$45,793,981**	**$45,793,981**
Receipts	**$36,613,850**	**$36,613,850**
Positions	**0.00**	**0.00**

Legislative Changes

Requirements:

Transfer to General Fund	$0 R	$0 R
Diverts $4,217,500 million in Deed Stamp tax revenue to the General Fund for general availability.	$4,217,500 NR	$0 NR
	0.00	0.00
Subtotal Legislative Changes	**$0** R	**$0** R
	$4,217,500 NR	**$0** NR
	0.00	0.00

Receipts:

Transfer to General Fund	$0 R	$0 R
	$0 NR	$0 NR
Subtotal Legislative Changes	**$0** R	**$0** R
	$0 NR	**$0** NR

Subcommittee on Natural and Economic Resources

	FY 2011-12	FY 2012-13
Revised Total Requirements	**$50,011,481**	**$45,793,981**
Revised Total Receipts	**$36,613,850**	**$36,613,850**
Change in Fund Balance	**($13,397,631)**	**($9,180,131)**
Total Positions	**0.00**	**0.00**
Unappropriated Balance Remaining	**$201,853**	**($8,978,278)**

DENR - Recreational/ Natural Heritage Trust Fund

Budget Code: 64302

	FY 2011-12		FY 2012-13	
Beginning Unreserved Fund Balance	**($4,355,915)**		**($20,456,577)**	
Recommended Budget				
Requirements	**$31,750,487**		**$31,750,487**	
Receipts	**$20,149,825**		**$20,149,825**	
Positions	**0.00**		**0.00**	
Legislative Changes				
Requirements:				
Transfer to General Fund	$0	R	$0	R
Diverts $4.5 million in Deed Stamp tax revenue to the General Fund for general availability.	$4,500,000	NR	$0	NR
	0.00		0.00	
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$4,500,000	NR	**$0**	NR
	0.00		0.00	
Receipts:				
Transfer to General Fund	$0	R	$0	R
	$0	NR	$0	NR
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$0	NR	**$0**	NR

Subcommittee on Natural and Economic Resources

	FY 2011-12	FY 2012-13
Revised Total Requirements	**$36,250,487**	**$31,750,487**
Revised Total Receipts	**$20,149,825**	**$20,149,825**
Change in Fund Balance	**($16,100,662)**	**($11,600,662)**
Total Positions	**0.00**	**0.00**
Unappropriated Balance Remaining	**($20,456,577)**	**($32,057,239)**

Solid Waste Management Trust Fund

Budget Code: 64303

	FY 2011-12		FY 2012-13	
Beginning Unreserved Fund Balance	**$6,399,207**		**$4,111,370**	
Recommended Budget				
Requirements	**$3,836,277**		**$3,836,277**	
Receipts	**$3,814,277**		**$3,814,277**	
Positions	**1.00**		**1.00**	
Legislative Changes				
Requirements:				
White Goods Transfer to General Fund	$0	R	$0	R
Diverts White Goods tax revenue to the General Fund for general availability.	$1,131,342	NR	$0	NR
	0.00		0.00	
Scrap Tire Transfer to General Fund	$0	R	$0	R
Diverts Scrap Tire tax revenue to the General Fund for general availability.	$1,134,495	NR	$0	NR
	0.00		0.00	
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$2,265,837	NR	**$0**	NR
	0.00		0.00	
Receipts:				
White Goods Transfer to General Fund	$0	R	$0	R
	$0	NR	$0	NR
Scrap Tire Transfer to General Fund	$0	R	$0	R
	$0	NR	$0	NR
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$0	NR	**$0**	NR

Subcommittee on Natural and Economic Resources

	FY 2011-12	FY 2012-13
Revised Total Requirements	**$6,102,114**	**$3,836,277**
Revised Total Receipts	**$3,814,277**	**$3,814,277**
Change in Fund Balance	**($2,287,837)**	**($22,000)**
Total Positions	**1.00**	**1.00**
Unappropriated Balance Remaining	**$4,111,370**	**$4,089,370**

Wildlife Receipts - Non-Interest Earning

Budget Code: 24353

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	**$5,375,000**	**$26,875,000**
Recommended Budget		
Requirements	**$21,500,000**	**$21,500,000**
Receipts	**$21,500,000**	**$21,500,000**
Positions	**0.00**	**0.00**
Legislative Changes		
Requirements:		
Sales Tax Transfer Eliminates the sales tax transfer to the Wildlife Resources Commission. The Commission will now be funded through the General Fund.	($21,500,000) R $0 NR 0.00	($21,500,000) R $0 NR 0.00
Subtotal Legislative Changes	**($21,500,000)** R **$0** NR 0.00	**($21,500,000)** R **$0** NR 0.00
Receipts:		
Sales Tax Transfer Eliminates the sales tax transfer to the Wildlife Resources Commission. The Commission will now be funded through the General Fund.	$0 R $0 NR	$0 R $0 NR
Subtotal Legislative Changes	**$0** R **$0** NR	**$0** R **$0** NR

	FY 2011-12	FY 2012-13
Revised Total Requirements	**$0**	**$0**
Revised Total Receipts	**$21,500,000**	**$21,500,000**
Change in Fund Balance	**$21,500,000**	**$21,500,000**
Total Positions	**0.00**	**0.00**
Unappropriated Balance Remaining	**$26,875,000**	**$48,375,000**

JUSTICE
&
PUBLIC SAFETY
Section I

Judicial

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	$477,189,575		$477,189,575	
Legislative Changes				
1 Eliminate VRIF Positions Eliminates 194.5 full-time equivalent positions within the Judicial Branch. These positions became vacant effective March 1, 2011, through a voluntary reduction in force implemented by the Administrative Office of the Courts.	($12,935,761) -194.50	R	($12,935,761) -194.50	R
2 Freeze Statutory Pay Plans Eliminates a recurring reserve in the continuation budget for statutory pay plans for Deputy Clerks and Magistrates. These pay increases will be frozen for the 2011-13 fiscal biennium.	($6,390,013)	R	($6,390,013)	R
3 Reduce Continuation Budget Increases Reduces restored funds in the Administrative Office of the Courts' continuation budget. The AOC budget included a non-recurring reduction in FY 2010-11; the AOC eliminated positions to comply with this reduction, so the restorations to Personal Services line items can be eliminated as the positions they were associated with no longer exist.	($5,282,000)	R	($5,282,000)	R
4 Freeze Field Vacancies for Two Years Implements a hiring freeze on 35 vacant positions for the 2011-13 fiscal biennium. The freeze includes the following positions: 18 Deputy Clerks 3 Assistant District Attorneys 7 Superior Court Judicial Assistants 4 District Court Judicial Assistants 3 Court Reporters	($1,681,000)	NR	($1,681,000)	NR
5 Discretionary Position Reduction Allows the Administrative Office of the Courts to identify positions, either vacant or filled, to eliminate to achieve required savings level of $256,122. The agency will report on the positions eliminated to the Chairs of the Justice and Public Safety Appropriations Subcommittee.	($256,122)	R	($256,122)	R

	FY 11-12		FY 12-13	
6 Eliminate Dispute Resolution Eliminates all State funding for the non-profit mediation centers. The State appropriation accounts for 19% of the combined budgets for mediation centers on average. Because these centers are not-for-profit, non-State entities, they are able to charge a fee for any service provided to cover their costs.	($1,139,513)	R	($1,139,513)	R
7 Eliminate Juvenile Court Coordinator Pilot Program Eliminates two Juvenile Court Coordinator positions associated with a court improvement pilot initiative that is ending.	($108,678) -2.00	R	($108,678) -2.00	R
8 Reduce Access to Civil Justice Pass-Through Reduces the direct appropriation to the State Bar for Access to Civil Justice by $112,500, leaving $600,000 in the pass-through.	($112,500)	R	($112,500)	R
Office-District Attorney				
9 Reduce District Attorney Support Staff Reduces the number of support staff in District Attorneys' offices. There are currently 599 Assistant District Attorney positions and 550 support staff positions - a ratio of 1:1.08. This reduction establishes a ratio of 1:1.5.	($5,253,111) -151.00	R	($5,253,111) -151.00	R
Technology Services				
10 Reduce AOC Technology Services Reduces the budget for technology within the Judicial Branch. It is the intent of the General Assembly that new application development projects should be funded on a case-by-case basis by the legislature with clear timetables and budget projections.	($4,918,000)	R	($4,918,000)	R
Trial Courts				
11 Eliminate Vacant Magistrate Positions Eliminates vacant magistrate positions based on workload. The Administrative Office of the Courts' workload formula for magistrates indicates that there are over 60 more magistrates than necessary for the workload. Eliminates 19 positions currently vacant and an additional 42 vacancies occurring on January 1, 2013.	($826,272) -19.00	R	($1,739,520) -61.00	R
12 Eliminate Drug Treatment Court Eliminates all State funding for the Drug Treatment Court program.	($2,043,523) -33.00	R	($2,043,523) -33.00	R
13 Continuation Review of Family Court Eliminates recurring funding for the Family Court Program pending the outcome of a Continuation Review.	($2,865,693) $2,865,693	R NR	($2,865,693) -47.00	R

Senate Subcommittee on Justice and Public Safety	FY 11-12		FY 12-13	
Total Legislative Changes	**($42,131,186)**	**R**	**($43,044,434)**	**R**
	$1,184,693	**NR**	**($1,681,000)**	**NR**
Total Position Changes	-399.50		-488.50	
Revised Budget	**$436,243,082**		**$432,464,141**	

Judicial - Indigent Defense

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$122,770,246**		**$122,770,246**	
Legislative Changes				
14 Reduce Private Assigned Counsel Funds Reduces funding to the Private Assigned Counsel fund. The Office of Indigent Defense Services is directed to use its statutory authorization to set reimbursement rates based on projected utilization to minimize potential shortfalls in the fund, including setting differential rates for District and Superior Court work and setting fixed costs for high-volume, standard case types. The Office is also authorized to create regional public defender offices, which is expected to contain costs further.	($8,913,738)	R	($9,486,150)	R
15 Eliminate Sentencing Services Eliminates all State funding for the Sentencing Services Program. Pre-sentencing assessment and referral services may be provided by probation officers and by the Treatment Accountability for Safer Communities (TASC) program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services at the request of the court.	($2,123,631) -11.40	R	($2,123,631) -11.40	R
Total Legislative Changes	**($11,037,369)**	R	**($11,609,781)**	R
Total Position Changes	-11.40		-11.40	
Revised Budget	**$111,732,877**		**$111,160,465**	

Justice

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$89,670,944**		**$89,670,944**	

Legislative Changes

A. Department-wide

16 Vacant Position Reduction ($2,527,438) R ($2,527,438) R

Eliminates vacant positions throughout the Department.

-40.31 -40.31

17 Miscellaneous Operating Reductions ($1,325,000) R ($1,325,000) R

Makes recurring operating reductions that were taken on a non-recurring basis in FY 2010-11.

B. Administration

18 Executive Staff ($551,993) R ($551,993) R

Eliminates the following executive staff positions:

-5.00 -5.00

Position Number	Title	Total Position Cost
60010114	Chief Deputy II	$136,803
60010136	Chief Deputy II	$138,294
60010135	Administrative Secretary	$ 55,436
60010111	Special Cnsl for Dev.	$117,057
60010141	Special Counsel	$104,403

19 Information Technology Administration ($250,347) R ($250,347) R

Reorganizes the information technology section administration by eliminating two IT director positions (60011101 and 60011154).

-2.00 -2.00

20 Administrative Efficiencies ($654,404) R ($654,404) R

Reduces administrative positions based on the following ratios:

-10.00 -10.00

Human Resources:	1 position for every 150 full-time equivalent (FTE) employees.
Fiscal/Budgeting:	1 position for every $8 million of total budget requirements.
Purchasing:	1 position for every $11 million of goods or services purchased.

21 Finance Staff Receipts ($100,681) R ($100,681) R

Shifts two finance staff positions to receipt support.

-2.00 -2.00

	FY 11-12		FY 12-13	
22 Postage Budget Reduces the postage budget for the Department.	($93,000)	R	($93,000)	R
C. Legal Services				
23 Consumer Protection Receipts Shifts nine consumer protection staff to receipt support.	($482,105) -9.00	R	($482,105) -9.00	R
24 NC LEAF Eliminates the pass-through appropriation for the NC Legal Education Assistance Foundation.	($356,250)	R	($356,250)	R
25 Legal Services Division Pending passage of H.B. 306, transfers the following positions to the General Assembly:	($259,019) -3.00	R	($259,019) -3.00	R

Position Number	Title	Total Position Cost
60010185	Asst. Attorney General	$115,875
60010191	Asst. Attorney General	$ 94,904
60010189	Administrative Assistant	$ 48,240

D. State Bureau of Investigation				
26 Criminal Background Check Receipts Shifts eight Criminal Background staff to receipt support.	($396,189) -8.00	R	($396,189) -8.00	
27 SBI Personal Services Reduces the personal services line in the SBI budget to more accurately reflect actual expenditures.	($141,797) ($160,125)	R NR	($141,797)	R
28 SBI Workload Reduction Reduces State Bureau of Investigation staff based on actual workloads.	($1,704,338) -28.00	R	($1,704,338) -28.00	R
29 Sale of Aircraft Requires the SBI to sell one of its three aircraft in accordance with the Program Evaluation Division's recommendation in Report #2010-04, and reduces the SBI's operating budget to eliminate funding for insurance and maintenance costs for that aircraft.	($16,835)	R	($16,835)	R
30 SBI Transfer Transfers the State Bureau of Investigation and the NC State Crime Lab to the new NC Department of Public Safety, effective January 1, 2012.	($24,442,880) -646.00	R	($49,045,885) -646.00	R
E. Training and Standards				
31 Academy Bookstore Receipts Shifts three bookstore staff positions to receipt support.	($137,487) -3.00	R	($137,487) -3.00	R

	FY 11-12		FY 12-13	
32 Academy Staff Efficiencies	($390,449)	R	($390,449)	R
Consolidates administration of the two training academies and increases receipts for the use of facilities by non-law enforcement agencies. The following positions are eliminated:	-5.00		-5.00	

Position Number	Title	FTE	Total Position Cost
60011295	CJ Training Coord I	1.0	$62,010
60011353	CJ Training Coord I	0.5	$46,471
60011397	CJ Training Coord I	1.0	$71,173
60011369	Housekeeping Team Ldr	1.0	$37,204

The following positions are shifted to receipt support:

Position Number	Title	FTE	Total Position Cost
60011372	Housekeeper	0.5	$35,459
60011377	Security Guard	1.0	$38,132

33 Training Academies Transfer	($3,350,310)	R	($6,700,619)	R
Transfers the two Justice Training Academies to the new NC Department of Public Safety, effective January 1, 2012.	-127.50		-127.50	
Total Legislative Changes	**($37,180,522)**	**R**	**($65,133,836)**	**R**
	($160,125)	**NR**		
Total Position Changes	-888.81		-888.81	
Revised Budget	**$52,330,297**		**$24,537,108**	

Juvenile Justice & Delinquency Prevention

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$151,295,187**		**$151,295,187**	

Legislative Changes

A. Department-wide

34 Longevity ($138,777) R ($138,777) R

Makes a reduction to the budgeted amount for longevity to more accurately reflect actual expenditures.

35 Equipment ($197,563) R ($197,563) R

Makes a reduction to the budgeted amount for equipment to more accurately reflect actual expenditures.

36 Computer Services ($472,649) R ($472,649) R

Reduces the budget for computer services throughout the Department.

37 Art, Artifacts, and Literature ($100,000) R ($100,000) R

Reduces the budget for art, artifacts, and literature to more accurately reflect actual expenditures.

38 Utilities ($114,701) R ($114,701) R

Reduces the budget for utilities to more accurately reflect actual expenditures.

39 Repair Services ($154,671) R ($154,671) R

Reduces the budget for repair services to more accurately reflect actual expenditures.

40 Facility and Hardware Supplies ($25,367) R ($25,367) R

Reduces the budget for facility and hardware supplies.

41 Vacant Positions ($222,448) R ($222,448) R

Eliminates the following vacant positions:

-3.00 -3.00

Position Number	Title	Total Position Cost
60001018	Business Services Coord.	$ 52,194
60089025	Administrative Officer I	$ 65,489
60000894	Quality Assurance Specialist	$104,765

	FY 11-12		FY 12-13	
B. Administration				
42 Administrative Efficiencies	($1,281,235)	R	($1,281,235)	R
Reduces administrative positions based on the following ratios:	-20.00		-20.00	

Human Resources:	1 position for every 150 full-time equivalent (FTE) employees.
Fiscal/Budgeting:	1 position for every $8 million of total budget requirements.
Purchasing:	1 position for every $11 million of goods or services purchased.

43 Consolidation Reduction	($591,228)	R	($1,182,455)	R
Eliminates executive level positions as a result of consolidation of the Departments of Juvenile Justice and Delinquency Prevention, Crime Control and Public Safety, and Correction. Position eliminations are effective December 31, 2011. The following positions are eliminated in DJJDP:	-11.00		-11.00	

Position Number	Title	Total Position Cost
60000889	Secretary	$146,310
60000900	Chief Operating Officer	$141,425
60000890	Deputy Secretary	$131,110
60000968	Controller	$117,886
60000964	Dir. of Budget Operations	$ 96,241
60000893	Communications Director	$ 79,945
60000896	Human Resources Director	$125,296
60000916	Technical Services Manager	$125,651
60001485	Legislative Liaison	$ 97,686
60001049	Asst. to Human Resources Dir.	$ 50,325
60000892	Executive Assistant	$ 70,582

44 Staff Development	($300,338)	R	($300,338)	R
Eliminates 5 staff development positions. The Department can work with the Training Academies in the Department of Justice or the NC Community College System to provide this service.	-5.00		-5.00	
45 IT Help Desk	($172,390)	R	($172,390)	R
Eliminates two IT help desk positions. These positions are a duplication of services provided through the State's Office of Information Technology Services.	-1.60		-1.60	
C. Detention Center Services				
46 Detention Centers	($1,143,137)	R	($1,143,137)	R
Eliminates four Staff Psychologists at Wake, Richmond, New Hanover, and Cumberland Detention Centers. Eliminates 14 Youth Counselor Technicians from Perquimans, Pitt, Alexander, Cumberland, Richmond, Gaston, and Wake Detention Centers. Eliminates three Housing Unit Supervisors from Pitt, Alexander, and Cumberland.	-21.00		-21.00	

	FY 11-12		FY 12-13	
47 Detention Center Receipts Eliminates the continuation budget increase for Detention Center receipts. G.S. 143B-530 requires that any county placing a juvenile in a detention facility in another county shall pay fifty percent of the total cost of caring for the juvenile to the Department.	($2,000,000)	R	($2,000,000)	R
D. Youth Development Centers				
48 Swannanoa Youth Development Center Eliminates funding and positions at Swannanoa Youth Development Center. The Department closed Swannanoa effective March 1, 2011.	($5,000,703) -87.00	R	($5,000,703) -87.00	R
49 DHHS Security Contract Eliminates funding for a contract with the Department of Health and Human Services (DHHS) for security services at Swannanoa Youth Development Center.	($137,989)	R	($137,989)	R
50 Samarkand Youth Development Center Eliminates funding and positions at the Samarkand Youth Development Center (YDC). Bed capacity at the remaining seven YDCs is sufficient to house the juveniles currently committed to Samarkand. The Department is encouraged to increase the use of community-based alternatives to commitment to continue to reduce the need for YDCs across the State.	($3,164,764) -57.00	R	($3,164,764) -57.00	R
51 Repair and Renovation Funds Provides repair and renovation funds for Stonewall Jackson Youth Development Center ($2,330,900) and C.A. Dillon Youth Development Center ($1,531,000). Funds are to be used on repairs or renovations that increase the operational capacity of these youth development centers in order to provide more bed space at a lower cost.	$3,861,900	NR		
E. Education and Treatment Services				
52 School Superintendent Eliminates the Superintendent position in DJJDP (position number 60000978). Superintendent responsibilities can be handled by the Chief Deputy Secretary for Juvenile Justice or the head of Education and Treatment Services.	($113,637) -1.00	R	($113,637) -1.00	R
53 Education Directors Eliminates two education directors (position numbers 60001052, 60001058). The Director for Exceptional Children remains, along with one education director that is 50% receipt supported and one education director that is 100% receipt supported. In addition, the Department of Public Instruction is available to provide consultation and assistance to all public education entities in the State.	($155,550) -2.00	R	($155,550) -2.00	R

	FY 11-12		FY 12-13	
54 Youth Development Center Principals Reduces the number of youth development center principals and assistant principals by four. Two vacant principal positions are eliminated (position numbers 60001614 and 60001205). The Department has discretion to determine which two remaining principal positions to eliminate.	($336,275) -4.00	R	($336,275) -4.00	R
55 Camp Woodson Eliminates funding for Camp Woodson. This therapeutic wilderness program was closed by the Department on March 1, 2011.	($973,570) -19.00	R	($973,570) -19.00	R
F. Community Programs				
56 Juvenile Assessment Center Eliminates the pass-through appropriation to the Juvenile Assessment Center in Cumberland County. This program may continue to receive funding through Juvenile Crime Prevention Council (JCPC) grants.	($124,075)	R	($124,075)	R
57 Project Challenge Eliminates the direct pass-through appropriation for Project Challenge. Project Challenge receives funding through the Juvenile Crime Prevention Council (JCPC) allotment.	($121,600)	R	($121,600)	R
G. Court Services				
58 District Consolidation Reduces the number of districts for the Department from 39 to 30. Eliminates funding for eight chief court counselors (two districts currently share a chief), leaving one chief court counselor for each district.	($563,240) -8.00	R	($563,240) -8.00	R
59 Court Counselor Allotment Reduces the Court Counselor workload to one court counselor for every 32 complaints. This reduction is based on 2005 workload data. The Department is developing a new allotment formula that takes into account workloads and travel requirements. This new formula will be used to distribute court counselors among the 30 districts.	($1,957,488) -39.00	R	($1,957,488) -39.00	R
Total Legislative Changes	**($19,563,395)** **$3,861,900**	R NR	**($20,154,622)**	R
Total Position Changes	-278.60		-278.60	
Revised Budget	**$135,593,692**		**$131,140,565**	

Correction

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$1,421,644,768**		**$1,418,867,332**	

Legislative Changes

A. Department-wide

60 Administrative Efficiencies ($2,983,860) R ($2,983,860) R

Reduces administrative positions based on the following ratios: -60.00 -60.00

Human Resources:	1 position for every 150 full-time equivalent (FTE) employees.
Fiscal/Budgeting:	1 position for every $8 million of total budget requirements.
Purchasing:	1 position for every $11 million of goods or services purchased.

61 Consolidation Reduction ($707,238) R ($1,414,476) R

Eliminates executive level positions as a result of consolidation of the Departments of Juvenile Justice and Delinquency Prevention, Crime Control and Public Safety, and Correction. Position eliminations are effective December 31, 2011. The following positions are eliminated in DOC: -12.00 -12.00

Position Number	Title	Total Position Cost
60056032	Secretary	$146,309
60056034	Administrative Assistant III	$ 68,516
60058360	Deputy Secretary/Commissioner IV	$141,424
60056033	Chief Operating Officer	$151,109
60056056	Administrative Secretary III	$ 51,797
60056384	Accounting Director	$136,885
60056393	Accounting Manager	$117,836
60056146	Information Technology Executive	$156,996
60056264	Agency/University HR Director III	$136,464
60056255	DOC Special Assistant	$ 91,556
60056040	Director of Public Affairs	$ 87,770
60056051	Deputy Secretary/Commissioner II	$127,815

62 Reduce Temporary and Contractual Positions ($1,650,000) R ($1,650,000) R

Reduces the use of temporary and contractual staff department wide.

63 Reduce Longevity Pay ($2,009,625) R ($2,009,625) R

Reduces the longevity pay line item to more accurately reflect actual expenditures.

Senate Subcommittee on Justice and Public Safety	FY 11-12		FY 12-13	
64 Reduce the Motor Vehicle Continuation Budget Reduces the Motor Vehicle Continuation Budget.	($950,000) ($1,500,000)	R NR	($950,000)	R
65 Reduce Clothing Budget Reduces the clothing budget for inmate clothing and officer uniforms.	($1,000,000)	R	($1,000,000)	R
66 Reduce PC Equipment Reduces the budget for personal computers replacement schedule.	($300,000)	R	($300,000)	R
67 Reduce Equipment Budget Reduces the equipment budget.	($1,600,000)	R	($1,600,000)	R
68 Reduce Data Processing Equipment Reduces the funding for data processing equipment.	($300,000)	R	($300,000)	R
69 Reduce Supplies Continuation Budget Reduces the Supplies Continuation Budget.	($1,422,052)	R	($1,422,052)	R
70 Reduce Salary Reserve Reduces funds budgeted for salaries in excess of actual salaries of employees.	($1,000,000)	R	($1,000,000)	R
71 Miscellaneous Contractual Services Reduces the Miscellaneous Contractual Services Continuation Budget.	($750,000)	R	($750,000)	R
72 Reduce Travel Budget Reduces the Department's travel budget.	($500,000)	R	($500,000)	R
73 Reduce Utility Budget Reduces the Department's utility budget.	($2,000,000)	R	($2,000,000)	R
74 Reduce the Fringe Benefit Continuation Budget Reduces the continuation budget increases for various fringe benefits accounts across the Department.	($5,429,410)	R	($5,429,410)	R
75 Eliminate Domestic Violence Rehabilitation Reserve Eliminates the Domestic Violence Rehabilitation Reserve, which was funded in 2008. The Department was able to establish the domestic violence programs without ever making use of the appropriation. The domestic violence programs will continue to serve inmates at the same level.	($100,000)	R	($100,000)	R
76 Eliminate Parole Commission Support Position Eliminates a Parole Commission administrative support position (position number 60076645). This reduction will have minimal impact on the Commission.	($87,369) -1.00	R	($87,369) -1.00	R

	FY 11-12		FY 12-13	
77 Eliminates Vacant Positions Eliminates vacant positions throughout the Department.	($14,132,696) -255.00	R	($14,132,696) -255.00	R
78 Eliminate Restoration Budget Reserve Eliminates a continuation budget increase that restores a non-recurring reduction to the Department's budget for a lower than expected inmate population.	($10,042,999) ($11,957,001)	R NR	($10,042,999) ($11,957,001)	R NR
B. Department Management				
79 Legal, License, and Permit Reduces the Legal, License, and Permit Continuation Budget.	($30,000)	R	($30,000)	R
80 Shift Accountants to Receipts Funds accounting positions that support Correction Enterprise with receipts, eliminates the reimbursement from Correction Enterprise, and transfers the positions to the Correction Enterprise fund.	($110,829) -8.00	R	($110,829) -8.00	R
C. Prisons				
81 Eliminate Maintenance Positions at Central Prison Eliminates five maintenance positions that manage the boiler operation at Central Prison. This reduction is possible due to facility improvements related to the Central Prison Hospital addition.	($221,696) -5.00	R	($221,696) -5.00	R
82 Reduce Inmate Costs Reduces inmate costs by enabling inmates with shorter sentences to be rewarded for positive conduct and good behavior. These inmates would otherwise not be able to benefit from sentence reduction credits for program completion. No inmate would serve less than their minimum sentence.	($2,500,000)	R	($2,500,000)	R
83 Establish Two Release Dates Per Month Establishes two release dates per month for inmates leaving prison. Inmates would still be required to serve their mandatory sentence, but would enable the Department of Correction to reduce the costs associated with transportation and processing inmates by improved coordination.	($571,000)	R	($571,000)	R
84 Shift Inmate Medical Costs to Medicaid Shifts medical costs for Medicaid eligible inmates. The Department of Correction and the Department of Health and Human Services have developed a Memorandum of Understanding related to establishing the Medicaid eligibility of qualified inmates who receive inpatient services at a hospital and are away from the prison housing unit for 24 hours or longer. The Department of Correction will pay the State share of Medicaid.	($3,000,000)	R	($3,000,000)	R

	FY 11-12		FY 12-13	
85 Transfer Inmate Welfare Funds Transfers a one-time payment of $1 million from the Inmate Welfare Fund to the General Fund.	($1,000,000)	NR		
86 Transfer Correction Enterprise Funds Transfers a one-time payment of $1 million from the Correction Enterprise Fund to the General Fund.	($1,000,000)	NR		
87 Correction Enterprise Buy Back Directs Correction Enterprise to buy back items currently held in the Department's Central Supply Warehouse. This reduction would shift the responsibility for storing excess supplies from the Department to the receipt-supported Correction Enterprise Fund.	($1,300,000)	R	($1,300,000)	R
88 Eliminate Community Work Crews Eliminates Community Work Crews, which were partially restored in 2010 after a complete elimination in 2009. The Department was authorized to charge local government entities a $150 per day fee to offset part of the cost of the eight-person crew plus one Correctional Officer. No local entity has ever paid the Work Crew fee.	($1,602,094) -39.00	R	($1,602,094) -39.00	R
89 Reduces Chaplains Reduces Chaplain positions at minimum and medium custody prisons, and maintains at least one Chaplain position at each of the 14 close custody prisons. Each prison facility has a designated staff member responsible for coordinating the involvement and supervision of the Community Volunteer Program. This designee will coordinate the community volunteers, including the religious volunteers, at the minimum and medium custody prisons.	($1,386,653) -25.00	R	($1,386,653) -25.00	R
90 Eliminate Double Celling at Pamlico CI Eliminates funding for double celling of inmates at Pamlico Correctional Institution. Implementation of double celling has been cancelled due to county waste water treatment capacity issues.	($2,395,452) -57.00	R	($2,395,452) -57.00	R
91 Eliminate Correctional Officer Positions Eliminates 39 Correctional Officer positions associated with the Inmate Litter Crews. This reduction will eliminate positions that are not supported by receipts received from the Department of Transportation.	($1,560,000) -39.00	R	($1,560,000) -39.00	R
92 Eliminate Funding For Our Children's Place Eliminates the pass-through appropriation for Our Children's Place, which has yet to become operational.	($104,025)	R	($104,025)	R
93 Justice Reinvestment Act: Prison Closures Closes Bladen Correctional Center, Cabarrus Correctional Center, Durham Correctional Center, and Haywood Correctional Center, effective January 1, 2012. These four minimum custody prisons are closing as part of the Justice Reinvestment Act reforms. Justice Reinvestment Act: Prison Closures	($5,379,669) -203.00	R	($10,759,336) -203.00	R

	FY 11-12		FY 12-13	
94 Justice Reinvestment Act: Diagnostic Center	($616,884)	R	($822,513)	R
Eliminates 18 diagnostic center positions at Neuse Correctional Institution and Fountain Correctional Center for Women. These positions are being eliminated as part of the Justice Reinvestment Act reforms.	-18.00		-18.00	
95 Justice Reinvestment Act: Remove Misdemeanants	($3,980,368)	R	($3,980,368)	R
Removes misdemeanants with sentences of six months or less from State prisons and houses them in county facilities. Structured Sentencing misdemeanants with sentences longer than six months and Driving While Impaired misdemeanants will remain in the custody of the State. This change is part of the Justice Reinvestment Act reforms. The fee section of the budget proposes increasing the following court costs to offset the costs of housing misdemeanants: the District Criminal Court Facility court cost, which will generate an estimated $19 million; and the Service of Civil Process court cost, which will generate an estimated $3.3 million. In addition, the fee section establishes a new court cost for Improper Equipment dispositions, which will generate an estimated $12 million, and increases the daily jail fee and jail inmate medical co-pay. It is unknown how much the daily jail fee and co-pay increase will generate. These court cost increases are contingent upon passage of legislation increasing the number of days misdemeanants are housed in county jails.				
96 Operating Reserves For New Hospital Facilities	($299,859)	R	($299,859)	R
Reduces the operating reserves for the new hospitals at Central Prison and NC Correctional Institution for Women Mental Health Facility.	($1,164,417)	NR		
	-3.00		-3.00	
97 Operating Reserves For New Facilities	$5,874,102	R	$24,196,611	R
Provides funding to operate and staff new add-on facilities at Swannanoa Correctional Center for Women, Lanesboro Correctional Institution, Maury Correctional Institution, and Tabor Correctional Institution. These facilities will become operational in 2011 and 2012.	$4,125,898	NR	$803,389	NR
	280.00		340.00	

	FY 11-12		FY 12-13	
D. DACDP				
98 Reduce DACDP Administration	($405,875)	R	($405,875)	R
Reduces the Division of Alcoholism and Chemical Dependency Programs (DACDP) administration and eliminates six positions.	-6.00		-6.00	

Position Number	Title	Total Position Cost
60056812	Dep. Dir. Substance Abuse Serv.	$127,095
60056814	Personnel Technician	$ 62,921
60056770	SA Counselor Clinician	$ 53,124
60056816	Administrative Secretary III	$ 46,780
60056679	Accounting Technician	$ 46,736
60056771	Processing Assistant	$ 36,594
	Reduces Lease Savings Projection	$26,355
	Reduces Rent/Lease Motor Vehicles	$6,270

99 Eliminate DACDP Private Treatment Beds	($5,233,354)	R	($5,233,354)	R
Eliminates funding for two private contractual providers of minimum custody level treatment beds.				
E. Community Corrections				
100 Eliminate Women at Risk	($249,375)	R	($249,375)	R
Eliminates all State funding for the Women at Risk program, a substance abuse treatment program for female probationers mainly serving Buncombe and Henderson counties.				
101 Eliminate Summit House	($1,052,756)	R	($1,052,756)	R
Eliminates all State funding for Summit House, a residential facility for female probationers at risk of revocation and their children. The program accepts women from any part of the State, but operates in Guilford and Mecklenburg counties.				
102 Eliminate Harriet's House	($195,937)	R	($195,937)	R
Eliminates all State funding for Harriet's House, a residential facility serving women upon release from prison and their children.				
103 Broaden Access to Community Treatment	$4,138,260	R	$4,138,260	R
Captures funds currently directed through non-profit pass-throughs and contracts into a fund within the Division of Community Corrections to provide community treatment services through fee-for-service contracts with local providers. The Department may use up to $1,683,338 of these funds to contract for services with Summit House, Harriet's House, Women at Risk, the Mary Frances Center, and Evergreen Inc. to allow these programs to complete services to existing populations and to shut down or repurpose their operations.				

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104 Interstate Compact Receipts Funds the non-personnel operating costs of the Interstate Compact with receipts so the Division of Community Corrections can reduce the appropriations used to fund the Compact. This will have no impact on services. The fee is increasing from $150 to $250.	($125,000)	R	($125,000)	R
105 Reorganization of Victim Services Eliminates four victim service positions in the Community Corrections regional offices. The services provided by these positions can be managed within existing resources at the DOC Office of Victim Services.	($201,873) -4.00	R	($201,873) -4.00	R
106 DCC Reduction in Support Positions Eliminates 21 positions associated with middle management at the Division of Community Corrections that have become redundant due to district reorganization.	($880,727) -21.00	R	($880,727) -21.00	R
107 Eliminate DCC Personnel Tech Positions Eliminates the Personnel Technician position at each of the four Community Corrections division offices.	($156,215) -4.00	R	($156,215) -4.00	R
108 Outsource Electronic Monitoring Eliminates positions in the Community Corrections Technology Center overseeing offenders on house arrest with electronic monitoring. The service will be provided through a lower-cost contract with the provider of the monitoring equipment. The contract shall including monitoring services for the Department of Juvenile Justice and Delinquency Prevention to maximize cost savings.	($475,331) -11.00	R	($475,331) -11.00	R
109 Consolidate DCC Drug Lab Functions Closes four Community Corrections drug labs, leaving one open. Developments in the products for drug testing have reduced the need for labs.	($345,043) -8.00	R	($345,043) -8.00	R
Total Legislative Changes	**($71,332,902)** **($12,495,520)**	**R** **NR**	**($59,302,927)** **($11,153,612)**	**R** **NR**
Total Position Changes	-499.00		-439.00	
Revised Budget	**$1,337,816,346**		**$1,348,410,793**	

Crime Control and Public Safety

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$34,175,427**		**$34,175,427**	

Legislative Changes

A. Department-wide

110 Janitorial Services ($47,794) R ($47,794) R

Reduces the line item for janitorial services throughout the Department to more accurately reflect actual expenditures.

111 Waste Removal Services ($64,411) R ($64,411) R

Reduces the line item for waste removal services throughout the Department to more accurately reflect actual expenditures.

112 Utilities ($56,103) R

Reduces the line item for utilities throughout the Department in the second year of the biennium.

B. Administration

113 Criminal Justice Information Network (CJIN) ($154,423) R ($154,423) R

Eliminates two positions assigned to provide support for CJIN. The following positions are eliminated: -2.00 -2.00

Position Number	Title	Total Position Cost
60084100	Admin. Assistant II	$ 50,559
60084125	CJIN Director	$103,864

114 Consolidation Reduction ($620,241) R ($1,240,482) R

Eliminates executive level positions as a result of consolidation of the Departments of Juvenile Justice and Delinquency Prevention, Crime Control and Public Safety, and Correction. Position eliminations are effective December 31, 2011. The following positions are eliminated in CCPS: -11.00 -11.00

Position Number	Title	Total Position Cost
60084098	Secretary	$146,310
60084129	Chief Operating Officer	$136,740
60084134	Assistant Secretary	$131,349
60084686	Deputy Secretary	$133,225
60084138	Controller	$122,290
60084158	Dir. of Human Resources	$119,565
60084127	Director of IT	$131,028
60084159	Leg. Affairs Program Mgr.	$ 87,747
60084130	Special Assistant to the Sec.	$103,608
60084132	Administrative Assistant	$ 68,473
60084133	Administrative Assistant	$ 60,147

	FY 11-12		FY 12-13	
C. National Guard				
115 Reorganization of National Guard Support Reduces the operating budget for National Guard armories and reduces operating support and staffing costs in the Adjutant General's office.	($754,787)	R	($754,787)	R
D. Butner Public Safety				
116 Butner Public Safety Transfer Transfers Butner Public Safety to the Town of Butner. Provides a pass-through appropriation of $601,040 to the Town of Butner in FY 2011-12 to assist with the transition. All State funding is eliminated in FY 2012-13.	($2,615,663) -47.00	R	($3,216,703) -47.00	R
F. State Capitol Police				
117 Reorganize State Capitol Police Reorganizes State Capitol Police to focus on security in and around State-owned buildings in Wake County.	($2,267,303) -40.00	R	($2,267,303) -40.00	R
G. Alcohol Law Enforcement				
118 ALE Administration Eliminates five positions in Alcohol Law Enforcement administration. Increases Lottery receipts by $200,000 and makes other reductions to operating costs.	($1,064,210) -5.00	R	($1,064,210) -5.00	R
H. Division of Emergency Management				
119 Shift Positions to Receipt Support Makes 16 positions in the Division of Emergency Management 50% receipt supported.	($539,974) -8.00	R	($539,974) -8.00	R
I. Governor's Crime Commission				
120 NC VAN Eliminates the pass-through appropriation for the NC Victims Assistance Network. This reduction will not impact any direct services to victims provided through State agencies.	($112,500)	R	($112,500)	R

	FY 11-12		FY 12-13	
J. Law Enforcement Support Services				
121 General Fund Appropriation for LESS	($203,257)	R	($203,257)	R
Eliminates the General Fund appropriation for LESS and transfers the evidence and DNA storage warehouse to the NC Crime Lab. The Secretary of the Department shall appoint a designee to coordinate the surplus federal property and first-responder purchasing programs for local law enforcement agencies. The following positions are eliminated:	-5.00		-5.00	

Position Number	Title	Total Position Cost
60084103	Director LESS	$95,410
65011786	Processing Assistant V	$37,553
65011787	Processing Assistant V	$37,553
65011788	Processing Assistant V	$37,553
65011789	Processing Assistant V	$37,553

K. Highway Patrol				
122 Highway Patrol	$193,585,434	R	$189,859,507	R
Appropriates funds for the Highway Patrol in a new fund code in Budget Code 14900. In previous years, the budget for the Highway Patrol has been budgeted directly from the Highway Fund. Beginning in FY 2011-12, funds will be transferred from the Highway Fund to the General Fund for the support of the Highway Patrol. Reductions to the Highway Patrol's budget for FY 2011-13 have been itemized in the Transportation section of the Committee Report. Non-Highway Fund receipts collected by the Highway Patrol will also be budgeted in the new fund code.	2,368.50		2,368.50	
L. Department of Public Safety				
123 Consolidation Reserve	$818,139	R	$1,563,124	R
Creates 13 new positions for the new Department of Public Safety. These positions are effective January 1, 2012, except for the secretary position, which is effective October 1, 2011. The following positions are created:	13.00		13.00	

Title	FTE	Total Position Cost
Secretary	1.0	$146,310
Administrative Assistant	2.0	$130,620
Controller	1.0	$136,947
Chief Financial Officer	1.0	$118,364
Dir. of Human Resources	1.0	$136,387
Director of IT	1.0	$157,100
Public Information Officer	1.0	$ 87,771
Legislative Liaison	1.0	$ 97,686
Chief Deputy Secretary	3.0	$416,071
Deputy Secretary	1.0	$135,870

	FY 11-12		FY 12-13	
124 Anticipated Consolidation Savings Creates a reserve for savings that will be realized as a result of consolidation of the Departments of Juvenile Justice and Delinquency Prevention, Crime Control and Public Safety, and Correction. Savings are anticipated from bulk purchasing, the merger of regional offices in the Law Enforcement Division, and the elimination of duplicative administrative positions identified by the new Department. These savings will be taken from the consolidated budget for the Department of Public Safety, and are not limited to funds currently appropriated to the Department of Crime Control and Public Safety.			($1,417,693)	R
125 SBI Transfer Transfer the State Bureau of Investigation and the NC State Crime Lab to the new NC Department of Public Safety, effective January 1, 2012.	$24,442,880 646.00	R	$49,045,885 646.00	R
126 Training Academy Transfer Transfers the two Justice Training Academies to the new NC Department of Public Safety, effective January 1, 2012.	$3,350,310 127.50	R	$6,700,619 127.50	R
Total Legislative Changes	**$213,752,200**	R	**$236,029,495**	R
Total Position Changes	3,037.00		3,037.00	
Revised Budget	**$247,927,627**		**$270,204,922**	

Highway Patrol

Budget Code: 24960

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	**$0**	**$0**
Recommended Budget		
Requirements	**$221,219,607**	**$221,219,607**
Receipts	**$221,190,127**	**$221,190,127**
Positions	**2,384.50**	**2,384.50**

Legislative Changes

Requirements:

Transfer SHP Funds to General Fund Support Transfers the budget for the Highway Patrol from Budget Code 24960 to a new fund code in Budget Code 14900 - Crime Control and Public Safety. A corresponding item in the Justice and Public Safety section of the Committee report appropriates funds from the General Fund to the Highway Patrol.	($221,219,607) R $0 NR -2,384.50	($221,219,607) R $0 NR -2,384.50
Subtotal Legislative Changes	**($221,219,607)** R **$0** NR -2,384.50	**($221,219,607)** R **$0** NR -2,384.50

Receipts:

Transfer Highway Fund Receipts Transfers Highway Fund receipts for the Highway Patrol to General Fund availability. The Transportation section of the Committee Report reduces the transfer for the Highway Patrol by $24 million. The total amount transferred to General Fund availability will be $193,585,434 in FY 2011-12 and $189,859,507 in FY 2012-13.	($217,567,328) R $0 NR	($217,567,328) R $0 NR
Transfer Highway Patrol Receipts Transfers non-Highway Fund Highway Patrol receipts to a new fund code in Budget Code 14900 - Crime Control and Public Safety.	($3,622,799) R $0 NR	($3,622,799) R $0 NR

	FY 2011-12		FY 2012-13	
Subtotal Legislative Changes	**($221,190,127)**	R	**($221,190,127)**	R
	$0	NR	**$0**	NR
Revised Total Requirements	**$0**		**$0**	
Revised Total Receipts	**$0**		**$0**	
Change in Fund Balance	**$0**		**$0**	
Total Positions	**0.00**		**0.00**	
Unappropriated Balance Remaining	**$0**		**$0**	

GENERAL GOVERNMENT
Section J

Administration

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$69,700,026**		**$69,700,026**	
Legislative Changes				
1111 Office of the Secretary				
1 Consolidate Environmental Clearing House Function	($74,144)	R	($74,144)	R
Eliminates Environmental Clearing House Function and position (Community Development Specialist 660013846) and benefits.	-1.00		-1.00	
1121 Fiscal Management				
2 Increase Receipt Support for Positions	($188,907)	R	($188,907)	R
Increases receipt support for the following positions within Fiscal Management (60014119, 60014102, 60014118, 60014100, 60014112, 60014114, 60014107).	-2.44		-2.44	
1122 Human Resources				
3 Reduce Operating Costs	($116,612)	R	($116,612)	R
Reduces operating accounts within the Human Resources Office.				
1123 Historically Underutilized Businesses				
4 Program Reduction	($81,820)	R	($81,820)	R
Eliminates salary ($65,074) and benefits of one filled position: 60014897.	-1.00		-1.00	
1241 Management Information Systems				
5 Move Position to Receipts Support	($83,455)	R	($83,455)	R
Moves a State Construction Office related position (Business and Technology Applications Analyst 60014137) to receipts support.	-0.85		-0.85	

	FY 11-12		FY 12-13	
1264 Agency for Public Telecommunications				
6 Transfer Agency for Public Telecommunications to Receipt Support	($617,497)	R	($617,497)	R
Requires the APT division to become fully receipt supported. In addition to operating costs, the following positions will be receipt supported:	-7.71		-7.71	

Executive Director (60014546)
Administrative Assistant II (60014548)
Television Engineer III (60014554)
Television Producer/Director III (60014564)
Television Producer Director II (60014556)
Television Producer Director III (60014555)
Administrative Officer III (60014547)

	FY 11-12		FY 12-13	
1311 Office of State Personnel				
7 Eliminate Positions and Reduce Operating Expenses	($1,159,596)	R	($1,159,596)	R
Eliminates salaries and benefits of 8.25 vacant and 6 filled positions, and transfers .27 position to receipts; and reduces operating expenses.	-14.52		-14.52	

Vacant Positions

60013785	HR Consultant	($65,000)
60013823	HR Consultant	($65,000)
60013793	HR Consultant	($65,124)
60013838	HR Associate	($46,335)
60013764	Adm. Support	($31,889)
60013777	Division Director	($91,500)
60013742	Division Director	($57,010) - .50 FTE
65012021	HR Partner	($40,250) - .75 FTE
60013784	HR Consultant	($50,932)

531211 SPA Reg Salary ($513,040)
531511 Soc Sec ($39,248)
531521 Retirement ($47,910)
531561 Medical ($39,440)
SUBTOTAL Vacant Positions ($639,638)

Filled Positions

60013804	HR Partner Per. Officer	($68,303)
60013744	HR Associate	($47,432)
60013790	HR Manager	($97,353)
60013782	Associate Position	($38,851)
60013798	Partner Position	($70,046)
60013836	Adm. Support Assoc	($26,208)
60013818	HR Manager	($28,300) - .27 FTE

531211 SPA Reg Salary ($376,493)
531511 Soc Sec ($ 28,802)
531521 Retirement ($ 36,780)
531561 Medical ($ 27,100)
SUBTOTAL Filled/Receipted Pos ($469,175)

Operating Expenses
532140 Data Processing ($3,404)
532150 Academic Services ($1,500)
532700 Travel($1,500)
532930 Registration Fees ($5,000)
535830 Member Dues&Subs ($5,000)
536905 OJT Incentive Program ($10,000)
5328XX IT Costs ($24,379)
SUBTOTAL Operating Expenses ($50,783)

	FY 11-12		FY 12-13	
1311 Office of State Personnel				
8 Human Resources Development				
Provides funding to implement two components of a comprehensive Human Capital Management (HCM) System, specifically $1.5 million will support a Learning Management System and $1 million is for a Performance Management System. A comprehensive HCM system will provide significant cost savings to internal state operations as a result of the shift from a paper intensive, manual process to an automated process. Funds from the NCFlex FICA Fund will be used to support the program components. The Office of State Controller will transfer funds from the NCFlex FICA Fund to the Office of State Personnel.				
1411 State Construction				
9 Move Positions to Receipt Support	($750,012)	R	($750,012)	R
Uses a portion of the 5% Contingency Reserve for all capital projects under the State Construction Office's control to fund nine positions. The positions are as follows: 60014589 Mechanical Engineer 60014582 Engineer 60014588 Engineer 60014614 Engineer 60014580 Engineer 60014608 Construction Contracts Administrator 60014700 Control System Technician 60014590 Engineer 60089475 Engineer	-9.00		-9.00	
1412 State Property				
10 Consolidate Position	($89,028)	R	($89,028)	R
Consolidates Plan Review position with Code Review. One Management Engineer III position (60014636) and benefits will be eliminated.	-1.00		-1.00	
11 Move Positions to Receipt Support	($66,047)	R	($66,047)	R
Increases support from the Land Fund for a portion of four positions: 60014639 Real Property Agent II 60014635 Real Property Manager 60014637 Real Property Agent III 60014640 Real Property Agent III	-1.07		-1.07	
1421 Building Reserves				
12 Fund Building Reserve for the Department of Health and Human Services	$1,473,580	R	$3,377,710	R
Funds the Public Health Lab and Office of the Medical Examiner Building that will come online during FY 2011-12.				

	FY 11-12		FY 12-13	
1421 Facilities Management				
13 Eliminate Positions in Facility Management	($544,533)	R	($544,533)	R
Eliminates the following positions in the Facilities Management division. The positions are as follows:	-10.75		-10.75	
60014761 Facilities Maintenance Tech. 60014822 Building and Environmental Tech. 60014824 Building and Environmental Tech. 60014737 Plasterer 65011759 Facilities Maintenance Tech. 65011754 Building and Environmental Tech. 65011755 Building and Environmental Supervisor 60014721 Housekeeping Contract Admin. 60014784 Housekeeping Procurement Asst. 60014708 Painter 60014781 Housekeeping Supervisor				
1421 Facility Management				
14 Consolidate Position	($41,232)	R	($41,232)	R
Consolidates a position within Pest Control and Greenhouse Management. One position (Facilities Maintenance Tech 60014763) and benefits will be eliminated.	-1.00		-1.00	
15 Move Position to Receipts	($51,644)	R	($51,644)	R
Moves a carpenter position (60014730) to receipts support.	-1.00		-1.00	
1511 Purchase and Contract				
16 Eliminate Purchase and Contract Positions	($480,268)	R	($480,268)	R
Eliminates seven vacant purchase and contract positions. Positions affected are as follows:	-7.00		-7.00	
State Procurement Specialist III 60013871 Administrative Assistant III 60013904 Engineer 60013872 Auditor 65011990 State Procurement Specialist 65011994 Auditor 65011991 State Procurement Specialist III 65011993				
1731 NC Council for Women				
17 Program Reduction	($101,839)	R	($101,839)	R
Eliminates regional office and redistributes oversight responsibilities for local grantees.	-2.00		-2.00	
1732 Displaced Homemakers Program				
18 Program Reduction	($45,742)	R	($45,742)	R
Reduces appropriation for Displaced Homemakers grant funding and administrative costs by 15%. The remaining appropriation for Displaced Homemakers is $259,205 each year.				

	FY 11-12		FY 12-13	
1734 Rape Crisis Program				
19 Program Reduction Reduces appropriation for Sexual Assault grant funding and administrative costs by 15%, which provides an appropriation $2,569,031 each year.	($453,359)	R	($453,359)	R
1741 Human Relations Commission				
20 Human Relations Commission Transfer Authorizes a Type I transfer of the Human Relations Commission from the Department of Administration to the Office of Administrative Hearings. The Commission's Fair Housing responsibilities will continue in the Office of Administrative Hearings.	($841,613) -10.68	R	($841,613) -10.68	R
1742 Martin Luther King Commission				
21 Eliminate Grant Funding Eliminates funding for the grants managed by the Commission.	($42,465)	R	($42,465)	R
1761 Youth Advocacy & Involvement Office				
22 Personnel Adjustment and Operations Reduction Transfers information and referral functions with the transfer of five positions to the Governor's Office, and eliminates salaries and benefits of two vacant and three filled positions ($300,577) and reduces funds for operations ($25,632).	($326,209) -5.00	R	($326,209) -5.00	R

Vacant Positions:
60014505 Advocacy Specialist II/Assistant Director ($53,879)
60014063 Administrative Officer II ($39,078)

Filled Positions
60014064 Executive Director ($64,655)
60014502 Processing Asst/Receptionist ($34,441)
60014506 Administrative Secretary III ($41,467)

1771 Veterans Affairs - Administration				
23 Program Reduction Reduces the appropriation by realigning the budget to more closely reflect actual expenditures, and leaves $73,545 in the account. Eliminates salary and benefits of one filled position:	($562,135) -1.00	R	($562,135) -1.00	R

#60014249

531211 SPA Reg Salary ($48,415)
531511 Soc Sec ($ 3,704)
531521 Retirement ($ 5,088)
531561 Medical ($ 4,930)

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
1771 Veterans Affairs - Administration				
24 Reduces Program Funding Reduces funding for the Aid to Counties Program.	($50,000)	R	($50,000)	R
25 Reduced Scholarship Funding Reduces the General Fund appropriation for scholarships by 15%, leaving $1,750,589 in the budget each year.	($308,927)	R	($308,927)	R
1781 Domestic Violence Program				
26 Program Reduction Reduces appropriated share of Domestic Violence grant funding and administrative costs by 15%, which provides $4,132,953 each year.	($729,345)	R	($729,345)	R
1810 State Ethics Commission				
27 Adjust Personnel and Reduce Operating Budget Eliminates salaries and benefits of a vacant Program Assistant V position at $33,582, and an Attorney II position at $85,241 that is filled. Additionally reduces IT Services.	($219,519) -2.00	R	($219,519) -2.00	R

Vacant Position
60088569 Program Assistant V ($33,582)

531211 SPA Reg Salary ($33,582)
531511 Soc Sec ($2,569)
531521 Retirement ($3,529)
531561 Medical ($4,930)
Subtotal Vacant Position ($44,610)

Filled Position
65012031 Attorney II ($85,241)

531211 SPA Reg Salary ($ 85,241)
531511 Soc Sec ($ 6,521)
531521 Retirement ($ 8,959)
531561 Medical ($ 4,930)
Subtotal Vacant Position ($105,651)

Operating Budget Reductions
532140 IT Services ($64,408)
IT 5% Reduction ($ 4,850)
Subtotal Operating Budget ($72,479)

	FY 11-12		FY 12-13	
2401 E-Commerce Reserve				
28 Reduce E-Commerce Reserve Reduces the E-Commerce Reserve by eliminating SL. 2010-31, Sec. 6.19 for the purchase of $1,000,0000 in Smart Cards and $3,483,526 in funds to be used in FY 2012 for E-Procurement system upgrades for a total reduction of $4,483,526. Funds are being transferred to General Fund availability.				
Department-wide				
29 Eliminate Vacant Positions Eliminates 15.50 vacant positions and associated benefits at the Department of Administration that have been vacant for more than 100 days. The positions are as follows: 60013868 Processing Assistant V $45,601 60014243 Processing Assistant III $37,150 60014547 Administrative Officer III $81,143 60014663 Facility Maintenance Tech - Mech Trades $53,376 60014117 Accountant $62,792 60014798 Facility Maintenance Tech - Mech Trades $47,446 65011753 Building & Environmental Technician $43,923 65011757 Facility Maintenance Tech-Mech $58,102 60014656 Facility Maintenance Tech - Mech Trades $52,130 60014756 Facility Maintenance Tech - Mech Trades $46,421 60014904 Administrative Officer II $33,390 65011992 State Procurement Specialist III $64,010 60014074 Community Development Specialist I $32,415 60014208 Veterans Service Officer $48,277 60014691 Boiler Operation Shift Supervisor I $45,142 60013926 Administrative Secretary III $42,630	($793,948) -15.50	R	($793,948) -15.50	R
30 Reduce Payments to ITS Reduce payments to ITS by 5% (532800).	($58,871)	R	($58,871)	R
31 Reduce Longevity and Fringe Benefits to Actual Reduces Longevity and Fringe Benefits to actual.	($62,022)	R	($62,022)	R
Total Legislative Changes	**($7,467,209)**	R	**($5,563,079)**	R
Total Position Changes	-94.52		-94.52	
Revised Budget	**$62,232,817**		**$64,136,947**	

Auditor

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$13,063,656**		**$13,063,656**	
Legislative Changes				
1110 - Administration				
32 Reduce Payments to ITS Reduces IT payments to reflect a reduction in Community College and UNC Audits (532800).	($41,992)	R	($41,992)	R
1210 Field Audit Division				
33 Reduce Audits at Community Colleges and University of North Carolina Reduces the number of audits at the North Carolina Community College System (NCCCS) campuses to the statutory minimum of once every five years. The University of North Carolina (UNC) will receive a fiscal control audit every three years. Both UNC and NCCCS campuses will be allowed to use State appropriated funds for private audits as necessary and may contract with the Office of State Auditor for such services. In FY 2011-12, four positions will be eliminated. In FY 2012-13, it is the intention for positions related to UNC and NCCCS audits to become receipt supported. The four positions with associated benefits for elimination are as follows: 60008883 Adm. Support Spec. ($58,496) 60008950 Assistant State Auditor ($96,274) 60008961 Assistant State Auditor ($84,096) 60008811 Assistant State Auditor ($90,595)	($329,461) -4.00	R	($1,511,000) -17.00	R
1210 Field Audit Division				
34 Reduce Performance Audit Division Reduces half of the Performance Audit Division and transfers funding for up to 5 positions to the Program Evaluation Division at the North Carolina General Assembly.	($771,994) -9.00	R	($771,994) -9.00	R
1210 Field Office Division				
35 Lease Reduction Eliminates leases in Asheville, Charlotte, Fayetteville, Edenton, and Greensboro.	($62,635)	R	($62,635)	R

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Total Legislative Changes	($1,206,082)	R	($2,387,621)	R
Total Position Changes	-13.00		-26.00	
Revised Budget	**$11,857,574**		**$10,676,035**	

Cultural Resources

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$72,664,633**		**$72,664,633**	

Legislative Changes

1110 Office of the Secretary

36 Personnel Adjustment ($194,721) R ($194,721) R

Eliminates salaries and benefits of three vacant positions - 2 in the Cultural Heritage Tourism Program and a Personnel Analyst III. -3.00 -3.00

Vacant Positions
60083263 Deputy HR Director ($65,451)
65011686 Multi-Cultural and Development Officer ($38,174)
65011687 Community Development Director ($48,654)

531211 SPA Reg Salary ($152,279)
531511 Soc Sec ($ 11,650)
531521 Retirement ($ 16,005)
531561 Medical ($ 14,787)

1230 Archives & Records

37 Personnel Adjustment ($59,541) R ($59,541) R

Eliminates salary and benefits of a vacant position: 60083352 (Local Records Supervisor). -1.00 -1.00

531211 SPA Reg Salary ($46,219)
531511 Soc Sec ($3,535)
531521 Retirement ($4,858)
531561 Medical ($4,929)

38 Personnel Adjustment ($191,368) R ($191,368) R

Transfers four positions to Archives and Records Management (ARM) receipts. -4.00 -4.00

#60083376 - Processing Assistant IV
#60083348 - Accounting Technician
#60083346 - Archives and Records Professional
#60083353 - Archives and Records Professional

531211 SPA Reg Salary ($145,271)
531511 Soc Sec ($11,113)
531521 Retirement ($15,268)
531561 Medical ($19,716)

1241 State Historic Sites

	FY 11-12		FY 12-13	
39 Transfer Functions and Positions to Receipts	($576,258)	R	($1,152,515)	R
Transfers the Transportation Museum to 50% receipts-support in FY 2011-12 and total receipts-support in FY 2012-13.	-8.00		-20.50	

FY 2011-12
#60083524 Electrician II
#60083520 Museum Specialist
#60083528 Carpenter II
#60083521 Historic interpreter II
#60083530 Historic interpreter II
#60083533 Security Guard
#60083529 & #60083536 Building Environmental Technician

531211 SPA Reg Salary ($228,999)
531511 Soc Sec ($ 17,518)
531521 Retirement ($ 24,068)
531561 Medical ($ 39,432)
532188 Lawn & Garden Service Agreement ($40,262)
532199 Misc Contractual Service ($43,642)
532210 Enrg Ser - Electrical ($62,338)
532220 Enrg Ser - Nat Gas/ Propane ($26,742)
532230 Enrg Ser - Water & Sewer ($8,123)
532331 Repairs - Motor Vehicles($195)
532333 Repairs - Other Equip ($ 8,460)
532390 Repairs- Other ($40,262)
532430 Maint - Equip ($3,292)
532490 Maint Agreement - Other ($385)
532714 Transp - Grnd -In state ($6,825)
532811 Telephone Service ($5,708)
532840 Postage, Freight, Delivery ($3,241)
532911 Property - Insurance ($3,335)
532919 Other Insurance ($235)
532942 Other Emp Educ Expense ($40)
533320 Diesel Fuel ($860)
533900 Other Materials & Supplies ($2,060)
535830 Membership, Dues, & Subscrip ($236)
TOTAL FY 2011-12 ($576,258)

FY 2012-13
#60083531 NC Transportation History Museum Director
#60083522 Facility Maintenance Supervisor III
#60083527 Maintenance Mechanic V
#60083524 Electrician II
#60083523 and #60083525 Historic Sites Manager II
#60083520 Museum Specialist
#60083519 Information & Communication Specialist I
#60083528 Carpenter II
#60083535 Office Assistant IV
#60083526 and #60083534 Historic Interpreter III
#60083521 and #60083530 Historic interpreter II
#60083529 and #60083536 Building Environmental Technician
#60083532 and #60083533 Security Guard

1241 State Historic Sites

#60083404 Historic Sites Specialist I

531211 SPA Reg Salary ($662,320)
531511 Soc Sec ($50,667)
531521 Retirement ($69,610)
531561 Medical ($101,045)
532188 Lawn & Garden Service Agreement ($40,262)
532199 Misc Contractual Service ($43,642)
532210 Enrg Ser - Electrical ($62,338)
532220 Enrg Ser - Nat Gas/ Propane ($26,742)
532230 Enrg Ser - Water & Sewer ($8,123)
532331 Repairs - Motor Vehicles ($195)
532333 Repairs - Other Equip ($18,460)
532390 Repairs- Other ($40,262)
532430 Maint - Equip ($3,292)
532490 Maint Agreement - Other ($385)
532714 Transp - Grnd -In state ($6,825)
532811 Telephone Serv ($5,708)
532840 Postage, Freight, Delivery ($3,241)
532911 Property - Insurance ($3,335)
532919 Other Insurance ($235)
532942 Other Emp Educ Expense ($40)
533320 Diesel Fuel ($860)
533900 Other Materials & Supplies ($4,692)
535830 Membership, Dues, & Subscrip ($236)
Total FY 2012-13 ($1,152,515)

40 Reduction to Operating Budget — ($1,151,073) R — ($1,064,635) R

Reduces funding for the Division and 24 State Historic Sites by 15%.

1242 Tryon Palace

41 Transfers Positions to Receipts-support — ($375,075) R — ($375,075) R

Transfers the historic site's maintenance program to receipts-support. — -10.00 — -10.00

#60083572 Painter
#60083563 Carpenter II
#65011462 and 60083559 Maintenance Mechanic IV
#60083568, 60083571, 65011458, 65011459, and 60083567 Building Environmental Technicians
#65011430 Assistant Special Events Coordinator

531211 SPA Reg Salary ($275,715)
531511 Soc Sec ($21,092)
531521 Retirement ($28,978)
531561 Medical ($49,290)

42 Changes to Historic Site's Funding — ($846,951) R — ($3,027,879) R

Reduces remaining General Fund appropriation each fiscal year by transferring 10.5 positions in FY 2011-12 and 34.11 positions in FY 2012-13 with the operating budget to receipts-support. — -10.50 — -34.11

	FY 11-12		FY 12-13	
1245 NC Maritime Museum				
43 Transfer to Receipts-support	($59,265)	R	($59,265)	R
Transfers support for the Cape Lookout Studies Program and .75 FTE of position to receipts available from private partnership funds.	-0.75		-0.75	
#60083652 Associate Museum Curator				
531211 SPA Reg Salary ($31,834)				
531511 Soc Sec ($2,435)				
531521 Retirement ($3,346)				
531561 Medical ($3,697)				
532199 Misc Contractual Serv ($7,500)				
532333 Repairs- Other Equip ($863)				
532714 Transp - Grnd, In State ($1,500)				
532715 Transp - Grnd, Out State, In U.S. ($225)				
532721 Lodging - In State ($1,275)				
532724 Meals- In State ($1,013)				
532930 Registration Fees ($750)				
533110 General Office Supplies ($375)				
533720 Educ Supplies ($137)				
534539 Other Equip ($4,315)				
1247 Office of State Archaeology				
44 Program Reductions	($171,242)	R	($171,242)	R
Suspends the operations of the Archaeology Laboratory and Curation Facility and eliminates salaries and benefits of three filled positions:	-3.00		-3.00	
#60083679 Archaeological Technician ($27,544)				
#60090495 Archaeologist I ($41,100)				
#60083676 Archaeologist II ($54,341)				
531211 SPA Reg Salary ($122,985)				
531461 Longevity ($2,446)				
531511 Soc Sec ($9,595)				
531521 Retirement ($13,182)				
531561 Medical ($14,790)				
Operating Budget Reductions				
53XXXX ($8,243)				

1250 Historic Preservation Office

45 Transfer to Receipts-support	($71,106)	R	($71,106)	R
Transfers 1.5 positions to federal grant receipts.	-1.50		-1.50	
#60083622 Office Assistant III #60083629 Historic Preservation/Restoration Specialist I (.5FTE)				
531211 SPA Reg Salary ($53,921) 531511 Soc Sec ($ 4,124) 531521 Retirement ($ 5,667) 531561 Medical ($ 7,394)				

1320 Museum of Art

46 Operating Reductions	($471,601)	R	($471,601)	R
Reorganizes and consolidates Museum of Art operations by eliminating salaries and benefits of three vacant positions and 7.25 filled positions; and transfers .25 position to receipts-support.	-10.50		-10.50	
Vacant Positions SPA #65011450 Maintenance Mechanic II ($27,544) #60083791 Office Assistant III ($34,319)				
EPA #65011451 Art Museum Curator ($50,400) SUBTOTAL Vacant Positions ($112,263)				
Filled Positions #60083795 Security Guard ($24,861) #65005187 Security Guard ($24,861) #60083773 Processing Assistant III ($8,119) - (.25 FTE) #60083774 Processing Assistant III ($34,319) #60083772 Program Assistant IV ($29,783) #60083754 Processing Assistant IV ($31,389) #65005027 Art Handler ($32,411) #60083769 Library Technician ($36,378) SUBTOTAL Filled Positions ($222,121)				
Receipts-support Position #60090505 Associate Director ($15,412) - (.25 FTE)				
531111 EPA- Reg Salaries- Approp ($ 50,400) 531211 SPA- Reg Salaries- Appropr ($299,396) 531511 Soc Sec ($26,759) 535121 Retirement ($36,764) 531561 Medical ($49,300)				
Operating Reduction 53XXXX ($8,982)				

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
1330 NC Arts Council				
47 Grant Program Reduction Reduces funding for the Basic Grants Program, which provides $3,292,320 for each year of the 2011-2013 Biennium.	($581,000)	R	($581,000)	R
48 Operating Reductions Eliminates 1.75 vacant positions and 1 filled position by reassigning duties and consolidating grant categories. Vacant Positions #60083908 Arts Development Consultant ($40,856) #60083931 Information & Communication Specialist I (.75 FTE) ($27,734) Filled Position #60083927 Information & Communication Specialist II ($38,767) 531211 SPA- Reg Salaries- Appropr ($107,357) 531511 Soc Sec ($8,213) 535121 Retirement ($11,283) 531561 Medical ($13,555)	($140,408) -2.75	R	($140,408) -2.75	R
49 Grant Program Reduction Reduces funding for Grassroots Arts Program which provides $2,303,708 for each year of the 2011-2013 Biennium.	($406,537)	R	($406,537)	R
50 Eliminate Non-Competitive Funding Eliminates funding for the Vagabond School of Drama.	($40,957)	R	($40,957)	
51 Eliminate Non-Competitive Funding Eliminates funding for the Lost Colony.	($218,957)	R	($218,957)	R
52 Eliminate Non-Competitive Funding Eliminates funding for the Shakespeare Festival.	($218,957)	R	($218,957)	R
1340 NC Symphony				
53 Reduce Grant Funding Reduces grant funding for statewide concerts by 10%.	($217,310)	R	($217,310)	R

	FY 11-12		FY 12-13	
1410 State Library Services				
54 Personnel Adjustment	($499,423)	R	($499,423)	R
Consolidates and eliminates two layers of management in the State Library of NC. Transfers a position to federal receipts.	-9.00		-9.00	

Filled Positions
#60083815 Office Assistant V ($36,434)
#60083867 Library Technician ($32,029)
#60083850 Library Technician ($32,758)
#60083853 Library Technician ($28,327)
#60083861 Processing Assistant IV ($35,575)

Vacant Positions
60083822 Assistant State Librarian ($58,701)
#60083844 Library Supervisor ($54,692)
#60083904 Office Assistant III ($26,646)

Transferred to Federal Receipts Position
#60083901 Library Professional ($79,963)

531211 SPA Reg Salary ($385,125)
531511 Soc Sec ($ 29,460)
531521 Retirement ($ 40,477)
531561 Medical ($ 44,361)

1480 Statewide Programs & Grants				
55 Program Reduction	($1,980,543)	R	($1,980,543)	R
Reduces State-Aid to local libraries by 13%.				

	FY 11-12		FY 12-13	
1500 Museum of History				
56 Program Reductions	($383,505)	R	($383,505)	R
Reorganizes and consolidates the museum and its regional branches in the areas of administration, program, and operating functions. Eliminates salaries and benefits of 5 vacant positions and 4 filled positions.	-9.00		-9.00	

Vacant Positions
#60083949 Art Handler ($25,705)
#60083990 Curator of Furnishings & Decorative Arts ($42,860)
#60083981 Library Professional ($40,000)
#60084030 Museum Specialist ($33,229)
#60084043 Security Guard ($24,861)

Filled Positions
#60083942 Public Information Assistant IV ($27,615)
#60083957 Public Information Assistant III ($32,258)
#60084027 Museum Specialist ($32,796)
#60084035 Process Assistant IV ($27,615)

531211 SPA Reg Salary ($287,039)
531511 Soc Sec ($21,934)
531521 Retirement ($30,168)
531561 Medical ($44,361)

	FY 11-12		FY 12-13	
1500 Museum of History				
57 Museum Closure	($519,876)	R	($586,897)	R
Closes the Museum of the Cape Fear and transfers artifacts to the Museum of History in Raleigh.	-6.00		-14.00	

Eliminates salaries and benefits of 1 vacant and 5 filled positions with operating expenses in FY 2011-12 and eliminates salaries and benefits of 8 additional filled positions in FY 2012-13.

FY 2011-12

Vacant Position
#60084056 Security Guard ($26,220)

Filled Positions
#60084055 Museum Specialist ($32,796)
#60084057 Historical Interpreter I ($24,861)
#60084051 Assoc. Museum Curator ($40,105)
#60084053 Bldg. Envir Tech. ($25,718)
#60084052 Exhibit Builder ($30,631)

531211 SPA Reg Salary ($180,061)
531511 Soc Sec ($ 13,775)
531521 Retirement ($ 18,924)
531561 Medical ($ 29,580)
Operating Expenses ($277,536)

FY 2012-13

Filled Positions
#60084047 Administrator ($66,029)
#60084050 Adm Asst V ($33,115)
#60084048 Museum Specialist ($38,824)
#60084058 Bldg. & Env Tech ($25,718)
#60084052 Carpenter ($30,361)
#60084049 Assoc Museum Curator ($38,599)
#60084054 Museum Specialist ($32,796)
#60084059 Historic Interpreter ($27,056)

531211 SPA Reg Salary ($442,468)
531511 Soc Sec ($ 33,849)
531521 Retirement ($ 46,503)
531561 Medical ($ 64,077)

58 Close Museum of the Albemarle	($958,903)	R	($958,903)	R
Closes the Museum of the Albemarle and eliminates salaries and benefits of 15 filled positions.	-15.00		-15.00	

	FY 11-12		FY 12-13	
Department-wide				
59 Personnel Reductions	($1,280,263)	R	($1,280,263)	R
Eliminates salaries and benefits of 8.51 additional positions vacant 6 months or more since January 1, 2011; and 20 positions vacant 100 or more days since March 31, 2011.	-28.51		-28.51	
Positions vacant for 6 months or more				
#60083367 Archives & Records Professional ($1)				
#60083486 Office Assistant IV ($30,417)				
#65010790 Transportation Coordinator ($29,502)				
#60083569 Horticulture/grounds Technician (.38 FTE) ($1,329)				
#65010906 Administrative Officer III ($41,173)				
#65010907 Media Technician I ($25,705)				
#60083505 Historic Interpreter I ($24,861)				
#60090511 Museum Curator ($38,174)				
#60090513 Museum Specialist ($32,796)				
#60090514 Museum Exhibit Designer (.13 FTE) ($6,626)				
531211 SPA Reg Salary ($230,584)				
531511 Soc Sec ($17,640)				
531521 Retirement ($24,234)				
531561 Medical ($103,530)				
Positions vacant for 100 or more days				
#60080925 Heritage Tourism Officer ($38,543)				
#65011681 Maritime Heritage Tourism Officer ($35,337)				
#65011682 Heritage Tourism Officer ($35,337)				
#65011683 Heritage Tourism Officer ($35,337)				
#65011684 Heritage Tourism Officer ($35,337)				
#65011685 Regional Development Officer ($38,174)				
#60083349 Office Assistant IV ($29,656)				
#60090501 Records Management Analyst ($37,000)				
#60083465 Historic Sites Specialist II ($50,000)				
#60083470 Historic Site Assistant ($25,355)				
#60083585 Museum Specialist ($39,162)				
#65011433 Assistant Conservator ($27,942)				
#60083562 Exhibit Designer ($35,498)				
#65010801 Utility Worker Supervisor ($27,380)				
#65011464 Section Gardener ($26,584)				
#65011455 Museum Exhibits Assistant ($29,502)				
#65011424 Processing Assistant III ($24,092)				
#60083777 Building & Environmental Technician ($23,866)				
#60083804 Security Guard ($24,861)				
#60083256 Deputy Secretary ($115,000)				
531211 SPA Reg Salary ($733,963)				
531511 Soc Sec ($56,148)				
531521 Retirement ($77,140)				
531561 Medical ($98,600)				
60 IT Reduction	($55,184)	R	($55,184)	R
Reduces IT by 5%.				

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Total Legislative Changes	($11,670,024)	R	($14,407,792)	R
Total Position Changes	-122.51		-166.62	
Revised Budget	**$60,994,609**		**$58,256,841**	

Cultural Resources - Roanoke Island Commission

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$2,406,982**		**$2,406,982**	
Legislative Changes				
1584 Roanoke Island Commission				
61 Changes to Commission Funding Reduces General Fund appropriation by 50% in FY 2011-12 and eliminates all state funding in FY 2012-13 with Commission becoming self-supporting.	($1,203,491)	R	($2,406,982)	R
Total Legislative Changes	**($1,203,491)**	**R**	**($2,406,982)**	**R**
Total Position Changes				
Revised Budget	**$1,203,491**		**$0**	

General Assembly

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$54,593,047**		**$54,593,047**	
Legislative Changes				
1213 Research Division				
62 Transfer of General Statutes Commission	$270,341	R	$270,341	R
Provides funding for positions and operations of the General statutes Commission that is transferred from the Department of Justice.	3.00		3.00	
1215 Building & maintenance				
63 Reduce Division Budget and Personnel	($292,980)	R	($212,565)	R
Reduces appropriations by funding Building & Maintenance Repairs from Carryforward Reserve each year. Additionally, eliminates salaries and benefits of 3.4 positions in FY 2012-13.			-3.40	
64 Continuation Review of Building & Maintenance Division	($2,572,506)	R	($2,572,506)	R
Conducts a Continuation Review of facility services in the General Assembly during the 2011-12 Interim. The budget for the division, minus reductions authorized for FY 2012-13, is included as non-recurring, pending the findings and recommendations that will be reported to the 2012 Session.	$2,572,506	NR	-31.60	
1216 Food Service				
65 Reduce Operating Budget	($103,648)	R	($210,348)	R
Increases prices in the cafeteria and snack bars by 10%. Additionally, eliminates salaries and benefits of 3.75 positions in FY 2012-13.			-3.75	
1217 Information Systems Division				
66 Various Reductions to Operations	($2,653,145)	R	($2,114,555)	R
Reduces the operating accounts in ISD and uses Carryforward Reserve to support non-personnel costs and 2 Temporary Time-Limited positions to work with Redistricting.				
1219 Program Evaluation Division				
67 Expand Division Staff	$345,000	R	$345,000	R
Expands staff in the Program Evaluation Division with the transfer of funding from the Performance Audit Division in the State Auditor's Office to support up to 5 positions.	5.00		5.00	

	FY 11-12		FY 12-13	
1900 Committees & Other Reserves				
68 Reduction to Reserves Reduces funding in the Reserves of Committees, Studies, and Contingencies (537195).	($888,527)	R	($636,435)	R
Department-wide				
69 Various Reductions to Operating Budget Reduces the budget each year in the following areas: Reduces the number of interim days budgeted for Legislative Assistants from 3.5 days to 3 days during the first year of the biennium. Both years will be budgeted at 3.0 days during the interim with a reduction of $691,223. Eliminates funding budgeted for the purchase of furniture (desk, chairs, tables & bookshelves)with a reduction of $55,000 in FY 2011-12 and $40,000 in FY 2012-13. Reduces funding for staff travel which includes travel reimbursements, registration fees and education reimbursement. However, funding is maintained for staff in the Program Evaluation Division and Fiscal Research Division to pursue studies and conduct routine visits to state agencies and facilities. The budget is reduced $84,250 in FY 2011-12 and $94,250 in FY 2012-13. Reduces some discretionary contracts and budgeted supplies within the Building & Maintenance and Food Services Sections with a reduction of $57,773 in FY 2011-12 and $81,810 in FY 2012-13. Reduces NCSL annual dues by 20% with a reduction of $51,097 each year. Reduces appropriations by funding the Legislative Library Learning Resources and subscriptions from Carryforward Reserve with a reduction of $188,000 in FY 2011-12 and $175,800 in FY 2012-13.	($1,127,343)	R	($442,957)	R
70 Personnel Adjustments Eliminates salaries and benefits of 17 vacant permanent positions of which 2 are frozen from FY 2010-11 with a reduction of $1,033,504 each year. Also, eliminates salaries and benefits for 47 temporary positions of which 27 are frozen from FY 2010-11 at a reduction of $849,746 in FY 2011-12 and $881,310 in FY 2012-13.	($1,883,250) -17.00	R	($1,914,814) -17.00	R
71 Reserve Funds Appropriates funds for reserve to support security upgrades.	$3,000,000	NR		

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Department-wide				
72 Reserve for Information Technology Study Provides funding for the General Assembly to conduct a comprehensive, two-year evaluation of information technology operations throughout State government.	$2,000,000	NR	$3,000,000	NR
Total Legislative Changes	**($8,906,058)**	**R**	**($7,488,839)**	**R**
	$7,572,506	**NR**	**$3,000,000**	**NR**
Total Position Changes	-9.00		-47.75	
Revised Budget	**$53,259,495**		**$50,104,208**	

Governor

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$6,189,478**		**$6,189,478**	
Legislative Changes				
1420 Center for 21st Century Skills				
73 Eliminates Program and Personnel Adjustment	($91,738)	R	($91,738)	R
Eliminates the remainder of budget for the Center for 21st Century Skills, including a vacant position 60008514 (Director of 21st Century Skills Center).	-1.00		-1.00	
531111 Reg Salary ($35,000) 531511 Social Security ($2,678) 531521 Retirement ($3,679) 531561 Medical Insurance ($4,930) 532199 Misc Contractual Svcs ($45,451)				

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Department-wide				
74 Personnel and IT Reductions	($1,037,758)	R	($1,037,758)	R
Eliminates the salaries and benefits of 6 vacant positions:	-14.00		-14.00	
#60000881 Policy Analyst ($16,000) #60008496 Policy Analyst ($53,000) #60008480 W/A Administrative Assistant I ($39,000) #60008482 Operations Director ($82,200) #60008494 Deputy Director of Hispanic Affairs ($32,000) #60038174 Policy Analyst ($66,000)				
531111 Reg Salaries ($288,200) 531511 Social Security ($ 22,047) 531521 Retirement ($ 30,290) 531561 Medical Insurance ($ 29,580) SUBTOTAL Vacant Positions ($370,117)				
Eliminates the salaries and benefits of 8 filled positions:				
#65007128 Special Advisor - Education & Innovation ($109,509) #60008516 Deputy Communications Director ($81,000) #60008485 Teacher Advisor ($65,000) #60031506 Policy Analyst ($45,000) #60083951 Regional Director ($50,000) #60008474 Faith Outreach Coordinator ($20,000) #60008507 Governor's Communications Director ($115,200) #60008501 Asst. External Scheduler ($38,780)				
531111 Reg Salaries ($524,489) 531511 Social Security ($ 40,123) 531521 Retirement ($ 55,124) 531561 Medical Insurance ($ 39,440) SUBTOTAL Filled Positions ($660,176)				
Reduces IT each year by 5% ($7,465).				
75 Transfer Personnel	($172,921)	R	($172,921)	R
Transfers the Deputy Legal Counsel (#60008505) and Policy Analyst (#60071726) to the Office of the Lieutenant Governor.	-2.00		-2.00	
531111 Reg Salaries ($138,000) 531511 Social Security ($ 10,557) 531521 Retirement ($ 14,504) 531561 Medical Insurance ($ 9,860)				
Total Legislative Changes	**($1,302,417)**	R	**($1,302,417)**	R
Total Position Changes	-17.00		-17.00	
Revised Budget	**$4,887,061**		**$4,887,061**	

Housing Finance Agency

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$13,877,996**		**$13,877,996**	
Legislative Changes				
76 Program Reduction	($1,123,245)	R	($1,123,245)	R
Reduces funding for the Housing Trust Fund.				
8104 Home Protection Program				
77 Program Reduction	($2,081,700)	R	($2,081,700)	R
Reduces funding for the Home Protection Program.				
Total Legislative Changes	**($3,204,945)**	R	**($3,204,945)**	R
Total Position Changes				
Revised Budget	**$10,673,051**		**$10,673,051**	

Insurance

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	$33,458,756		$33,458,756	
Legislative Changes				
1110 Administration				
78 Reduce Expenditures Reduces various expenditure accounts in the division to more closely match actual costs. 532199 Misc Contractual Svs ($15,957) 532814 Cellular Phone Svs ($ 4,346) 532942 Other Employees Ed Expense ($ 4,918)	($25,221)	R	($25,221)	R
1200 Company Services Group				
79 Reduce Expenditures Reduces various expenditure accounts in the division to more closely match actual costs. 532814 Cellular Phone Svs ($ 119) 532942 Other Employees Ed Expense ($50,569)	($50,688)	R	($50,688)	R
1300 Technical Services Group				
80 Reduce Employee Education Expense Reduces expenditures each fiscal year in 532942 - Employee Education Expense.	($11,589)	R	($11,589)	R
1400 Public Services				
81 Reduce Cellular Phone Service Reduces expenditures each fiscal year in 532814 - Cellular Phone Service.	($2,200)	R	($2,200)	R
1500 Office of State Fire Marshal				
82 Adjust Expenditures Reduces expenditures for cellular phone service and eliminates funding for the sale of Code Books as the sale of Code Books is transferred to the publisher. 532814 Cellular Phone Svs ($ 23,315) 532850 Print, Bind, & Duplication ($330,000) 532942 Other Employees Ed Expense ($ 2,950)	($356,265)	R	($356,265)	R

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
1500 Office State Fire Marshal				
83 Transfer of Fire Protection Grant Fund Transfers the Fire Protection Grant Fund from the Office of State Budget and Management to the Department of Insurance.	$3,677,513	R	$3,677,513	R
Department-wide				
84 Eliminate Vacant Positions and Reduce Expenditure Accounts Eliminates salaries and benefits of 3 vacant positions.	($139,612)	R	($139,612)	R
	-3.00		-3.00	
Vacant Positions 60013339 Processing Assistant III ($28,490) 60013607 Office Assistant IV ($25,705) 65004532 Insurance Company Examiner ($51,443)				
531211 SPA Reg Salary ($105,638) 531511 Soc Sec ($8,081) 531521 Retirement ($11,103) 531561 Medical ($14,790)				
85 Reduction to Consumer Protection Services Fund Reduces transfer to Consumer Protection Services Fund to more closely match actual expenditures.	($156,773)	R	($156,773)	R
531111 Salaries ($38,473) 531511 Social Security ($2,943) 531521 Retirement ($4,044) 532110 Legal Services ($111,313)				
Total Legislative Changes	**$2,935,165**	R	**$2,935,165**	R
Total Position Changes	-3.00		-3.00	
Revised Budget	**$36,393,921**		**$36,393,921**	

Insurance - Volunteer Safety Workers' Compensation Fund

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$4,500,000**		**$4,500,000**	
Legislative Changes				
1900 Reserves & transfers				
86 Reduce Volunteer Safety Workers' Compensation Fund	($706,000)	R	($1,876,346)	R
Reduces funding for the Volunteer Safety Workers' Compensation Fund.	($1,500,000)	NR		
Total Legislative Changes	**($706,000)**	R	**($1,876,346)**	R
	($1,500,000)	NR		
Total Position Changes				
Revised Budget	**$2,294,000**		**$2,623,654**	

Lieutenant Governor

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$954,868**		**$954,868**	
Legislative Changes				
1110 Administration				
87 Management Flexibility Reduction Requires the Lt. Governor's Office to reduce the operating budget of the office by $284,398 recurring.	($284,398)	R	($284,398)	R
88 Transfer of Positions from the Governor's Office Transfers two positions and benefits from the Governor's Office to the Lt. Governor's Office. Positions and benefits are as follows: 60008505 Deputy Legal Counsel $120,727 60071726 Policy Analyst $52,194	$172,921 2.00	R	$172,921 2.00	R
89 Eliminate Vacant Position and Benefits Eliminates Assistant Policy Director Position and benefits (60008622).	($45,695) -1.00	R	($45,695) -1.00	R
90 Reduce Salary, Benefits, and Longevity to Actual Reduces the following accounts to actual: 531111 Salaries ($8,327) 531511 Social Security ($67) 531521 Retirement ($875) 531521 Longevity ($5,168)	($14,437)	R	($14,437)	R
91 Reduce Operating Expenses Reduces the following operating expense accounts: 532814 Cellular Phones ($6,750) 532870 Cable TV ($689) 532840 Postage ($575)	($8,014)	R	($8,014)	R
Total Legislative Changes	**($179,623)**	R	**($179,623)**	R
Total Position Changes	1.00		1.00	
Revised Budget	**$775,245**		**$775,245**	

Office of Administrative Hearings

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$4,328,822**		**$4,328,822**	
Legislative Changes				
1100 Administration and Operations				
92 Reduce Payments to ITS Reduces data and communications (532800) by 5%.	($7,612)	R	($7,612)	R
93 Type I Transfer of Human Relations Commission to OAH Transfers the Human Relations Commission to the Civil Rights Division at OAH. The transfer detail is in the Department of Administration's section of the report.	$841,613 10.68	R	$841,613 10.68	R
1100 Civil Rights Division				
94 Eliminate Vacant Position Eliminates vacant Civil Rights Investigator Position (60088595) and benefits.	($57,710) -1.00	R	($57,710) -1.00	R
1100 Hearings Division				
95 Eliminate Administrative Law Judge Position Eliminates one Administrative Law Judge position and benefits.	($121,242) -1.00	R	($121,242) -1.00	R
Administrative Hearings				
96 Funding from DHHS for Medicaid Mediation Transfers up to $2.25 million per year from the Department of Health and Human Services to the Office of Administrative Hearings for the purpose of providing Medicaid mediation services.				
Total Legislative Changes	**$655,049**	R	**$655,049**	R
Total Position Changes	8.68		8.68	
Revised Budget	**$4,983,871**		**$4,983,871**	

Revenue

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$88,370,399**		**$88,370,399**	
Legislative Changes				
1600 Collection Division				
97 Close Three Offices	($124,054)	R	($124,054)	R
Closes Offices in Nags Head, Rocky Mount, and Winston-Salem				
1700 Motor Fuels Division				
98 Eliminate Vacant Positions				
Eliminates 15 vacant positions in the Motor Fuels Division funded by the Highway Fund.				
1900 Reserves and Transfers				
99 Remaining Resolution Initiative Funding	($760,075)	R	($760,075)	R
Reduces the remaining funds appropriated for the Resolution Initiative. The funds were originally appropriated in FY 2010-11.				
Department-wide				
100 Reduce General Fund Supported Operating Expenditures	($371,495)	R	($371,495)	R
Reduces additional eight positions and associated benefits that are vacant at the Department	-8.00		-8.00	
60082603 Processing Assistant IV ($37,560)				
60081507 Revenue Tax Technician ($55,395)				
60081800 Processing Assistant III ($34,306)				
60081505 Information Processing Technician ($54,583)				
60093429 Processing Assistant IV ($41,527)				
60082584 Processing Assistant V ($39,907)				
60081612 Revenue Tax Technician ($52,675)				
60082692 Information Processing Technician ($50,861)				

Department-wide

101 Eliminate Vacant Positions	($3,498,026)	R	($3,498,026)	R
Eliminates 61 vacant positions throughout the Department and related benefits. Positions are as follows:	-61.00		-61.00	

60081469 Program Assistant V
60081535 Information Processing Technician
60081540 Team Leader
60082951 Processing Assistant V
60082846 Administrative Officer II
60082953 Processing Assistant IV
60082759 Processing Assistant III
60081588 Processing Assistant III
60082668 Data Entry Specialist
60082564 Information Processing Technician
60081675 Information Processing Technician
60081494 Information Processing Technician
60081482 Information Processing Technician
60082949 Processing Assistant IV
60081660 Revenue Officer I
60081781 Law Enforcement Agent
60082835 Processing Assistant IV
60082685 Revenue Officer II
60081633 Processing Assistant IV
60081597 Processing Assistant III
60081637 Information Processing Technician
60082570 Processing Assistant III
60082756 Processing Assistant III
60081566 Auditor
60082502 Processing Assistant III
60082553 Processing Assistant IV
60082661 Data Entry Specialist
60082599 Administrative Officer II
60082966 Administrative Assistant III
60081512 Processing Assistant V
60082682 Data Entry Specialist
60082569 Processing Assistant IV
60082758 Processing Assistant IV
60081520 Processing Assistant III
60082537 Accounting Manager
60081779 Law Enforcement Agent
60081657 Manager
60081434 Audit Director
60081748 Revenue Officer I
60082594 Processing Assistant V
60083099 Office Assistant V
60081531 Revenue Officer I
60081635 Administrative Assistant II
60081548 Administrative Assistant III
60081579 Administrative Assistant II
60081311 ETM Administrator
60082396 Revenue Administrative Officer
60082169 Field Auditor SCCI
60083224 Special Agent
60082057 Revenue Officer I

	FY 11-12		FY 12-13	
Department-wide				
60081837 Interstate Field Officer 60081337 DTAX/Audit Workbench/Taxmaster Admin 60081405 ETM Developer 60081803 Interstate Field Auditor 60083098 Audit Manager 60082033 Field Auditor 60081817 Interstate Field Auditor 60081399 ETAX/Audit Workbench/Taxmaster Developer 60082444 Revenue Officer Trainee 60082440 Revenue Officer 60082059 Revenue Officer Trainee				
102 Convert Collections Positions to Receipt Supported Converts 30 collections positions to receipt support. The source of the receipt is the Collection Assistance Fee. Positions numbers are as follows: 60082149, 60082449, 60082041, 60082129, 60082154, 60082165, 60082243, 60082244, 60081863, 60081493, 60081550, 60081747, 60082435, 60082132, 60082136, 60082137, 60082451, 60082445, 60082455, 60082047, 60082053, 60082452, 60082148, 60082162, 60082163, 60082152, 60082176, 60082454, 60082077, 60082081.	($1,896,157) -30.00	R	($1,896,157) -30.00	R
103 Reduce Supplemental Wages to FY 2010 Actual Reduces supplemental wages to FY 2009-10 actual. 531411 - OT Pay ($39,766) 531421 - Holiday Perm Pay - ($2,121)	($41,887)	R	($41,887)	R
104 Reduce Temporary Wages Reduce Temporary Wages and benefits in the following areas: 1600 - Administration ($5,018) 1603 - Human Resources ($33,784) 1605 - IT ($39,922) 1621 - Corporate ($18,488) 1643 - TPA (316,547) 1660 - Collections ($286,799) 1670 - USUB ($14,328) 1681 - Administrative Services ($97,025) 1685 - DPPD ($966,912)	($1,778,823)	R	($1,778,823)	R
105 Reduce Budgeted Longevity Reduces budgeted longevity (521461).	($32,459)	R	($32,459)	R
106 Reduce Payments to ITS Reduces payments to Information Technology Services by 5% (532800).	($602,867)	R	($602,867)	R

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Information Technology				
107 Imaging System License Corrects error, a non-recurring expenditure for an imaging system license was mistakenly coded as recurring in FY 2010-11. This reduction corrects the error.	($613,440)	R	($613,440)	R
Local Government Unit				
108 Local Government Unit to Receipts Moves positions to the Local Government Unit within the Department to receipt support to create a point of contact regarding tax distributions. Over $200 million per year is distributed to local governments each year.	($451,578) -7.00	R	($451,578) -7.00	R
Total Legislative Changes	**($10,170,861)**	R	**($10,170,861)**	R
Total Position Changes	-106.00		-106.00	
Revised Budget	**$78,199,538**		**$78,199,538**	

Secretary of State

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$11,076,972**		**$11,076,972**	
Legislative Changes				
1120 Publications				
109 Reduce Printing Budget Eliminates the printing of the NC Directory of County and State Officials, which is available electronically, and the free distribution of the NC Manual. Budget code affected is 532850.	($77,268)	R	($77,268)	R
1150 Lobbyist Registration				
110 Eliminate Four Positions in Lobbyist Registration Eliminates four positions and benefits in Lobbyist Registration Division. 60008804 Registrar/Examiner ($42,295) 60008805 Registrar/Examiner ($50,469) 65004907 Office Assistant ($36,176) 60008807 Attorney I ($71,851)	($200,791) -4.00	R	($200,791) -4.00	R
Department-wide				
111 Reduce Operating Expenditures and Eliminate Cell Phones Reduces operating expenditures in a variety of accounts and eliminates budget for cellular phones. 532700 Travel and Other Employee Expense ($25,423) 532814 Cellular Phone Service ($9,809) 532900 Other Services ($7,342) 533100 General And Administrative Supplies ($26,100 533900 Other Materials and Supplies 534500 Equipment ($42,966) 534700 Intangible Assets ($17,000)	($136,290)	R	($136,290)	R
112 Reduce Payments to ITS Reduces payments to ITS (532800) by 5%.	($8,060)	R	($8,060)	R
Total Legislative Changes	**($422,409)**	R	**($422,409)**	R
Total Position Changes	-4.00		-4.00	
Revised Budget	**$10,654,563**		**$10,654,563**	

State Board of Elections

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$6,189,011**		**$6,189,011**	
Legislative Changes				
1100 Administration				
113 Correct Error in Base Budget Corrects error, a non-recurring expenditure was miscoded as recurring (532700) related to a move into office space.			($60,000)	R
114 Administrative Services Reduces expenditures for workshops and conferences (532181) and administrative services (532170).	($23,000)	R	($23,000)	R
1200 Campaign Reporting				
115 Reduce Administrative Services Reduces Administrative Services (532170).	($45,110)	R	($45,110)	R
1300 Voter Registration and Systems				
116 Eliminate Positions in Voter Registration and Systems Eliminates all 8 District Elections Technicians ($510,610),Voting Systems Project Manager (60088251 - $65,191), Technology Support Analyst (65006606 - $64,010), and associated benefits.	($637,706) -10.00	R	($637,706) -10.00	R
117 Reduce Assigned Vehicles Reduces payments to Motor Fleet Management for vehicles from 8 District Elections Technicians (532700).	($32,634)	R	($32,634)	R
Department-wide				
118 ITS Reduction Reduces data and procurement purchases by 5% (532800).	($28,787)	R	($28,787)	R
119 Eliminate Vacant Positions Eliminates four vacant positions and benefits in the State Board of Elections 65012228 - Elections Investigator 65005662 - Business Officer 60088258 - Compliance Specialist 65012227 - Attorney II	($235,171) -4.00	R	($235,171) -4.00	R

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Total Legislative Changes	($1,002,408)	R	($1,062,408)	R
Total Position Changes	-14.00		-14.00	
Revised Budget	**$5,186,603**		**$5,126,603**	

State Budget & Management

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$6,963,796**		**$6,963,796**	
Legislative Changes				
1310 Office of State Budget & Management				
120 Personnel Adjustment and IT Reduction	($546,454)	R	($546,454)	R
Eliminates 6 vacant positions and reduces salary reserves.	-6.00		-6.00	
#60008592 State Budget Management Analyst ($62,463) #60008553 State Budget Management Analyst ($64,383) #60008582 State Budget Management Analyst ($102,163) #60008577 Human Resources Director ($62,429) #60008585 State Budget Management Analyst ($57,000) #60008609 State Budget Management Analyst ($71,925)				
531211 Salaries ($420,363) 531511 Social Security ($32,158) 531521 Retirement ($44,180) 531561 Medical Insurance ($29,580) 531211 Salary Reserves ($ 6,774)				
Reduces funding for the Information Technology Services by 5% ($13,399).				
121 Operating Reductions	($34,900)	R	($34,900)	R
Reduces operating expenses.				
532145 Server Support Services ($29,100) 532840 Postage, Freight & Delivery ($ 3,800) 534530 Other DP Equipment ($ 1,500) 534534 PC/Printer Equipment ($ 500)				
122 Longevity Reduction	($21,867)	R	($21,867)	R
Reduces longevity to actual.				
123 Integrated Budget Information System (IBIS) Funding	($511,912)	R	($511,912)	R
Eliminates funding for the Integrated Budget Information System (IBIS) continuation request for software support, hardware, and databases.				
532199 Miscellaneous Contractual Services ($250,000) 532800 Communication & Data Processing ($261,912)				

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Total Legislative Changes	($1,115,133)	R	($1,115,133)	R
Total Position Changes	-6.00		-6.00	
Revised Budget	**$5,848,663**		**$5,848,663**	

State Budget and Management - Special

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$5,934,311**		**$5,934,311**	
Legislative Changes				
1022 Special Appropriations				
124 Humanities Council Grant Reduces funding for NC Humanities Council(536G02).	($43,000)	R	($43,000)	R
1023 Fire Protection Grant Fund				
125 Transfer of Fire Protection Grant Fund Transfers management of the State Fire Protection Grant Fund to the Department of Insurance from the Office of State Budget and Management. The General Fund appropriation is reduced 10%.	($3,677,513)	R	($3,677,513)	R
1900 Reserves & Transfers				
126 NC Symphony Provides funding for the NC Symphony to leverage match to support the operation.	$1,500,000	NR		
127 Adjust Funds for Health Care Reform and Board of Elections Software Eliminates funding ($1,101,293) and positions each year for DOI Healthcare Reform Reserve (537122). Additionally, reduces budget for non-recurring ($671,893) expense that was classified as recurring in the 2010 Session for the State Board of Elections Software Purchase (to comply with HB 961).	($1,773,186) -13.00	R	($1,773,186) -13.00	R
Total Legislative Changes	**($5,493,699)** **$1,500,000**	R NR	**($5,493,699)**	R
Total Position Changes	-13.00		-13.00	
Revised Budget	**$1,940,612**		**$440,612**	

State Controller

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$32,517,077**		**$32,517,077**	

Legislative Changes

1000 Department-wide

128 Eliminate Vacant Positions ($1,172,321) R ($1,172,321) R

Eliminates salaries and benefits of 14 vacant positions and reduces IT costs by 5% or $197,689 each year in expenditure accounts 532800 - Communications/Data Processing. -14.00 -14.00

Vacant Positions

60015308 Information Processing Technician	($35,697)
60087149 State Controller Financial Specialist	($51,375)
60087175 Administrative Support Associate	($50,831)
60087196 Bus & Tech Applications Analyst	($80,145)
60090520 State Controller Risk Mitigation Spec	($61,274)
60091131 Information Processing Technician	($39,954)
60091133 Information Processing Technician	($29,502)
60091720 Information Processing Technician	($38,792)
60092194 Administrative Support Specialist	($39,400)
65009029 Business Systems Analyst III	($75,000)
65008979 Staff Development Specialist II	($47,791)
65008981 Staff Development Specialist II	($56,667)
65008996 Business & Technology Applications Spec.	($80,000)
65009030 Bus. Systems Analyst II	($80,000)

531211 SPA Reg Salary	($766,428)
531511 Soc Sec	($ 58,632)
531521 Retirement	($ 80,552)
531561 Medical	($ 69,020)
Subtotal Positions	($974,632)

129 Reduce BEACON Reserve

Reduces funding in BEACON Reserve that leaves a balance of $2,427,928 that will support operations in Reporting Support, Production Support, Security, and BASIS support for the biennium. ($536,036) NR ($536,036) NR

130 Reduce Account Balance

Reduces General Fund by transferring funding from the unclaimed property account. ($72,500) NR ($72,500) NR

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
1000 Department-wide				
131 Personnel And Operating Budget Reductions to CJLEADS	($2,367,263)	R	($2,367,263)	R
Eliminates salaries and benefits of 4.50 vacant positions and reduces operating budget.	-4.50		-4.50	
Vacant Positions 65011662 Business Systems Analyst III ($75,000) 65011663 Staff Development Specialist II ($47,791) 65011667 Staff Development Specialist II ($56,667) 65011705 Business & Technology Applications Spec. ($80,000) 65011706 Bus. Systems Analyst II ($80,000)				
531211 SPA Reg Salary ($275,000) 531511 Soc Sec ($21,038) 531521 Retirement ($28,903) 531561 Medical ($22,185) SUBTOTAL Positions ($347,126)				
Operating Budget Reductions Reduces SAS Customized Services ($625,000) Reduces State Agency Development ($1,200,000) Reduces Other Technology Services ($192,879) Reduces IT by 5% ($2,262) SUBTOTAL Operating Budget Reductions ($2,620,141)				
Total Legislative Changes	($3,539,584)	R	($3,539,584)	R
	($608,536)	NR	($608,536)	NR
Total Position Changes	-18.50		-18.50	
Revised Budget	**$28,368,957**		**$28,368,957**	

Treasurer

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$10,538,203**		**$10,538,203**	
Legislative Changes				
1300 Local Government Operations				
132 Integrated Document Management System Provides funding for the Integrated Document Management System, which is receipt supported. Requirements total $160,000 in FY 2011-12 of which $15,000 is recurring and $145,000 is non-recurring. The $15,000 is continued in FY 2012-13.				
1310 Local Government Operations				
133 Convert Division to Receipt Support Converts the State and Local Government Finance Division to receipt-support.	($3,324,834) -36.00	R	($3,324,834) -36.00	R
Department-wide				
134 Reduced Funding for Personnel and Operations Reduces funding for five positions that were converted to receipt support with a reduction each year of $526,910. Additionally, reduces Travel & Other Employee Expenses in FY 2011-12 ($23,624), Financial/Audit Services in FY 2012-13 ($58,905), and IT by 5% each year ($5,804).	($556,338)	R	($591,619)	R
Total Legislative Changes	**($3,881,172)**	R	**($3,916,453)**	R
Total Position Changes	-36.00		-36.00	
Revised Budget	**$6,657,031**		**$6,621,750**	

Treasurer - Retirement for Fire and Rescue

	GENERAL FUND	
	FY 11-12	FY 12-13
Recommended Continuation Budget	**$17,812,114**	**$17,812,114**
Legislative Changes		
135 NO LEGISLATIVE ACTION REPORTED		
Total Legislative Changes		
Total Position Changes		
Revised Budget	**$17,812,114**	**$17,812,114**

TRANSPORTATION
Section K

Highway Fund

	HIGHWAY FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$1,806,351,974**		**$1,812,408,831**	
Legislative Changes				
Administration				
1 General Administration - Cuts Decreases funds to the General Administration budget. This includes the elimination of seven (7) vacant positions funded through General Administration funds.	($4,507,486) -7.00	R	($4,507,486) -7.00	R
2 General Administration - Internal Consolidations Reduces budget through internal consolidations and eliminations to the General Administration budget.	($1,071,606) -41.00	R	($1,071,606) -41.00	R
3 Eliminate Aeronautics Council and Funding Eliminates funding for the Aeronautics Council. The Council is funded through General Administration fund code 84210-0041.	($14,435)	R	($14,435)	R
4 Eliminate Bicycle Committee and Funding Eliminates funding for the North Carolina Bicycle Committee. The Committee is funded through General Administration fund code 84210-0035.	($2,070)	R	($2,070)	R
5 Eliminate Vacant Ferry Division Position Eliminates funding for one vacant Administrative Secretary II position in the Ferry Division's Morehead City office. This position is funded through General Administration fund code 84210-7040.	($39,327) -1.00	R	($39,327) -1.00	R
6 Transfer One Public Transportation Employee to Receipt Support Transfers funding for one position (position number 60029757) in the Public Transportation Division to receipt support. This position is funded through General Administration fund code 84210-0036.	($63,528) -1.00	R	($63,528) -1.00	R
7 Highway Administration - Eliminate Keep America Beautiful Transfer Eliminates funding for the Keep America Beautiful grant (non-profit operating grant) in the Highway Administration budget.	($40,000)	R	($40,000)	R
Construction				
8 Access and Public Service Roads Reduces funding to the Access and Public Service Roads. The total budget is $1,758,885 in both years of the biennium.	($101,115)	R	($101,115)	R

	FY 11-12		FY 12-13	
9 Secondary Roads				
Reduces funding for secondary road construction in order to have greater flexibility to use funds across the State-maintained road network by shifting funds to the maintenance categories of contract resurfacing, system preservation, and to the general maintenance reserve. The total budget is $54,373,921 in FY 2011-12 and $53,480,182 in FY 2012-13.	($35,000,000)	NR	($35,000,000)	NR
10 Spot Safety Program	$3,000,000	R	$3,000,000	R
Increases funding to the Spot Safety program to improve safety on State maintained roads. The total budget is $12,100,000 in both years of the biennium.				
Department-wide				
11 Consolidate Call Center Functions			$556,074	R
Transfers funds to the new consolidated call center in FY 2012-13 to support the cost of the ferry reservations line. It is anticipated that the call center will be staffed by contracted employees, not State employees.				
Division of Motor Vehicles				
12 Driver License Continuation Review	($47,065,069)	R	($47,713,947)	R
Eliminates recurring funds for the Driver License program within the Division of Motor Vehicles and supplants with non-recurring funds for FY 2011-12. Program funding will be re-examined for FY 2012-13, per a Continuation Review.	$47,065,069	NR		
13 Reduce Driver & Vehicle Services Operating Funds	($4,224,000)	R	($4,224,000)	R
Reduces operating funds per projected driver (license issuance) and vehicle services (contractor commission) transactions. Reductions are net of the expected increase in license production costs upon implementation of the New Generation Driver License System in FY 2011-12.				
14 Shift Positions to Receipt-Support	($800,319)	R	($800,319)	R
Increases budgeted emission inspection (electronic authorization) receipts to support half of the personnel costs for License & Theft Bureau law enforcement positions.				
15 Consolidate Inspection Audits	($2,188,668)	R	($2,188,668)	R
Eliminates 39 non-sworn, Emission Specialist positions per a restructuring of the Division of Motor Vehicles Inspection Program. Presently, when an Emission Specialist audits an inspection station and detects a violation, a sworn law enforcement agent is notified for enforcement. Adjustments to Inspector's duties and technological upgrades permit this workflow to be streamlined.	-39.00		-39.00	
Receipts budgeted for these positions are reallocated to offset License & Theft Bureau personnel and operating expenses.				

	FY 11-12		FY 12-13	
16 Establish Per Record Fee for Bulk Data Establishes a fee of three cents ($.03) per partial license, registration, and accident report data record downloaded by third parties, principally for resale. Revenues are projected to increase by $5,049,796 recurring. Highway Fund appropriations are reduced per projected revenues.	($5,049,796)	R	($5,049,796)	R
17 Eliminate Vacant Positions Eliminates vacant positions within the Division of Motor Vehicles.	($343,990) -5.00	R	($417,117) -7.00	R
18 Implement Credit/Debit Payments at Driver License Offices Provides funds to offset transactional costs upon implementation of merchant card (credit/debit) point-of-sale processing at driver license offices. Pilot implementation is proposed for January 2012. Second year transactional costs are annualized. Point-of-sale terminal and other installation costs will be supported with existing funds.	$648,879	R	$1,297,757	R
Governor's Highway Safety Program				
19 GHSP - Cuts Eliminates a Public Relations Officer position supported by 50 percent highway funds and 50 percent federal funds, and shifts the employee into a vacant position fully supported by federal funds.	($28,233) -0.50	R	($28,233) -0.50	R
20 GHSP - Cuts Eliminates costs to Board in fund code 84210-0042.	($3,700)	R	($3,700)	R
Intermodal Divisions				
21 Division-wide Appropriates $24,000,000 of accumulated unencumbered fund balance from the five intermodal divisions. This balance resulted primarily from funds encumbered as the state matching component for grant applications for federal funds that were not awarded.				
22 Aviation Division - Cuts Reduces grant funds for commercial air carrier airports by $1,200,000, miscellaneous aviation programs by $1,100,000, and general aviation airports by $750,000.	($3,050,000)	R	($3,050,000)	R
23 Ferry Division - Cuts Reduces non-essential seasonal temporary employees; reduces fuel costs through engine RPM adjustments and from increasing hull cleanings from every two years to annually; eliminates non-essential overtime; and, reduces consumables used by operations and vessels.	($2,097,950)	R	($2,097,950)	R
24 Ferry Division - Tolling Raises tolling on some existing routes and adds tolls to remaining routes. Revenues will increase by $2,500,000 in FY 2011-12 and by $5,000,000 recurring in FY 2012-13.	($2,500,000)	R	($5,000,000)	R

	FY 11-12		FY 12-13	
25 Ferry Division - Efficiencies Reduces funds through division-wide efficiencies. In order to meet the reduction, the Department is authorized to reduce ferry schedules if reductions cannot be met through efficiencies.	($2,000,000)	R	($2,000,000)	R
26 Ferry Division - Eliminate Vacant Positions Eliminates 23 vacant positions that are determined to be non-critical positions. This includes one position associated with the closure of the Morehead City Office.	($1,115,490) -23.00	R	($1,115,490) -23.00	R
27 Ferry Division - Close Morehead City Field Office Closes the Morehead City Office on Feb. 1, 2012, eliminating four (4) permanent employees and six (6) temporary employees that are responsible for the ferry reservations line. The recurring reduction includes rent for the office. The ferry reservation line will be transferred outside of the Ferry Division so that call center functions may be merged across the Department in a manner selected by the Department to better coordinate communications. Funds transferred to the new call center to support ferry operations will come from existing funds within the ferry system budget for FY 2011-12.	($186,189) -4.00	R	($446,855) -4.00	R
28 Ferry Division - Call Center Transfers funds to the new consolidated call center in FY 2012-13 to support the cost of the ferry reservations line. It is anticipated the call center will be staffed by contracted employees, not State employees. Reservation line costs are anticipated to grow once the additional ferry routes become tolled.			$109,209	R
29 Ferry Division - Replace Dredge Carolina Replaces Dredge Carolina. The current dredge is over 40 years old and in need of replacement. The dredge is used to maintain channels and basins in order for the ferries to operate and keep navigable channels operational.			$10,000,000	NR
30 Public Transportation Division - Cuts Reduces all public transportation grant programs by six (6) percent.	($5,792,654)	R	($5,792,654)	R
31 Public Transportation Division - Cuts Reduces funding to the Regional New Starts and Capital grant program.	($20,750,267)	R	($20,750,267)	R
32 Public Transportation Division - Cuts Reduces the Highpoint Furniture Market grants from $1,200,000 to $1,000,000.	($200,000)	R	($200,000)	R

	FY 11-12		FY 12-13	
33 Rail Division - Transparency Repeals G.S. 136-44.20(d) in order to bring transparency to the Rail Division budget. The funds associated are transferred from the Highway Trust Fund to the Highway Fund fund code 84210-7829 to pay for the Piedmont and Carolinian passenger rail operations. These funds are used to pay Amtrak for the cost to fully operate these trains, less fare receipts.	$5,000,000	R	$5,000,000	R
34 Rail Division - Cuts Reduces funds to the Rail Division's operating budget.	($800,000)	R	($800,000)	R
35 Rail Division - Grants to Short-Line Railroads Provides non-recurring funds to short-line railroads to fund rehabilitation projects that strengthen North Carolina's short-line infrastructure. Grants shall not exceed 50 percent of the nonfederal share and must be matched by equal or greater funding from the applicant.	$400,000	NR	$400,000	NR
Maintenance				
36 Internal Consolidations Decreases funds to Maintenance through internal consolidations and eliminations in the pre-construction and administrative areas, and through the elimination of management layers. Within the Highway Fund, of the 75 positions identified for elimination, 29 positions are vacant and can be eliminated on July 1, 2011. Of the 46 filled positions, 24 positions will be eliminated December 31, 2011. The remaining 22 positions will be eliminated July 1, 2012. Within the Highway Trust Fund, of the 15 positions identified for elimination, nine (9) positions are eliminated immediately, and the remaining six (6) filled positions are eliminated December 31, 2011. Receipts for the Trust Fund positions are reduced $1,339,149 in FY 2011-12 and $1,394,531 in FY 2012-13.	($4,127,167) -53.00	R	($5,913,401) -75.00	R

	FY 11-12		FY 12-13	
37 Privatize and Outsource Functions				
Transfers funds within the Maintenance budget to outsource and further privatize existing functions. These functions include the pre-construction work to increase the amount of work privatized in preliminary engineering and project designs. Some general services functions, such as janitorial work, will be outsourced. Within the Highway Fund, of the positions to be eliminated, 57 positions are vacant and will be eliminated on July 1, 2011. Of the remaining 137 filled positions, 110 will be eliminated on December 31, 2011 and the remaining 27 positions will be eliminated on July 1, 2012. No funds are associated with these position reductions because the funds will be shifted to the costs of outsourcing and privatizing these functions. Within the Highway Trust Fund, of the 16 positions to be eliminated, three (3) positions are vacant and will be eliminated on July 1, 2011. The remaining 13 filled positions will be eliminated on July 1, 2012. No funds are associated with these position reductions because the funds will be shifted to the costs of outsourcing and privatizing these functions.	-167.00		-194.00	
38 Primary System				
Reduces funding to the primary system in order to have greater flexibility to use funds across the State-maintained road network by shifting funds to contract resurfacing, system preservation, and to the general maintenance reserve. The total budget is $184,459,157 in both years of the biennium.	($20,000,000)	NR	($20,000,000)	NR
39 Secondary System				
Reduces funding to the secondary system in order to have greater flexibility to use funds across the State-maintained road network by shifting funds to contract resurfacing, system preservation, and to the general maintenance reserve. The total budget is $267,356,761 in both years of the biennium.	($30,000,000)	NR	($30,000,000)	NR
40 Contract Resurfacing				
Increases funds for Contract Resurfacing. The contract resurfacing program provides funding for resurfacing the paved road system to improve ride quality. Contract resurfacing avoids costly patching and frequent maintenance. The total budget is $415,587,668 in FY 2011-12 and $429,805,388 in FY 2012-13. Notwithstands statutory allocations to visitor centers (G.S. 20-79.7(c)(2)) in FY 2012-13 and budgets $600,000 in Special Registration Plate Account receipts for contract resurfacing.	$141,062,005	NR	$155,279,725	NR

	FY 11-12		FY 12-13	
41 System Preservation Increases funds for System Preservation in order to make improvements on structurally deficient bridges. 81.1 percent of structurally deficient bridges are located on the secondary road system. The total budget is $223,109,406 in FY 2011-12 and $237,417,127 in FY 2012-13. Notwithstands statutory allocations to visitor centers (G.S. 20-79.7(c)(2)) in FY 2012-13 and budgets $600,000 in Special Registration Plate Account receipts for system preservation.	$144,520,335	NR	$158,828,056	NR
42 General Maintenance Reserve Increases funds for the General Maintenance Reserve in order for the Department to have greater flexibility in programming funds to target the most critical maintenance needs. The total budget is $116,030,243 in FY 2011-12 and $140,636,243 in FY 2012-13.	$78,229,931	NR	$102,835,931	NR
Repairs and Renovations				
43 Funds for Facility Improvements and Repairs Provides funds for the Department to address critical life safety repairs, renovations, and replacement of its field facilities. Projects to be funded are critical to the success of the Department to effectively deliver its statutorily mandated programs and services. $250,000 non-recurring in receipts are used in FY 2011-12.	$15,250,000	NR	$15,000,000	NR
Reserves				
44 Reserve for Continuation Reviews Establishes a reserve for Highway Fund support of the driver licensing program within the Division of Motor Vehicles and operating grants to visitor centers, per directed Continuation Reviews.			$48,113,947	R
45 Reserve for Global TransPark Authority Reduces funding for the Global TransPark Authority (fund code 84210-0869) by ten (10) percent. Highway Fund appropriations for the Authority total $1,152,000 recurring.	($128,000)	R	($128,000)	R
46 State Retirement System Contributions Increases the State's contribution to the Teachers' and State Employees' Retirement System for the 2011-2013 biennium to fund the Annual Required Contribution.	$13,300,000	R	$18,200,000	R
47 Salary Adjustment and Performance Pay Reserve Provides funding for labor market and equity salary increases and funding for performance based pay plans to effectuate recommendations made in connection with the comprehensive review and reform of public employee compensation plans.			$13,300,000	R
48 State Health Plan Provides additional funding to continue health benefit coverage for enrolled active and retired employees supported by the Highway Fund for the 2011-2013 biennium.	$332,245	R	$4,767,052	R

	FY 11-12		FY 12-13	
49 Severance Expenditure Reserve Provides funding for severance salary continuation payments and health benefit coverage under the State Health Plan for employees reduced-in-force. Additional receipts for positions funded from the Highway Trust Fund total $149,083 in FY 2011-12 and $323,012 in FY 2012-13.	$2,552,553	NR	$626,316	NR
50 Reserve for Visitor Centers Eliminates Highway Fund appropriations to the Reserve for Visitor Centers (fund code 84210-0882). Budgets $400,000 of additional title fee receipts, per transfer from the Highway Trust Fund, to offset reductions for visitor center operating grants in FY 2011-12. Total grant funding remains $400,000 for FY 2011-12. Per a Continuation Review of visitor center grants, funding will be re-examined for FY 2012-13.	($400,000)	R	($400,000)	R
Statutory Adjustments				
51 Aid to Municipalities Adjusts funding for Aid to Municipalities based on revised projections for motor fuels tax consumption in accordance with G.S. 136-41.1. The total budget is $89,373,921 in FY 2011-12 and $90,187,224 in FY 2012-13.			$1,707,042	NR
Transfers				
52 Department of Agriculture - Standards Division Eliminates funds for three (3) vacant positions for a total position cost of $146,561, one (1) filled position (Chemical Tech II) for a total position cost of $58,101, and shifts funds for another position from Highway Fund receipts to other receipts within the Department of Agriculture budget (total $57,039). Reduces operating budget for equipment and supplies by $187.	($261,888)	R	($261,888)	R
53 Department of Revenue - Motor Fuels Division Eliminates funds for 15 vacant positions for a total personnel cost savings of $785,704, reduces the "other information technology services" budget by $207,346, and reduces the travel budget by $31,494.	($1,024,544)	R	($1,024,544)	R
54 DENR Lust Trust Fund Eliminates funding for the Leaking Underground Storage Tank (LUST) program through G.S. 119-18(b). The larger transfer to LUST from motor fuels taxes through G.S. 105-449.125, which totaled $17.7 million in FY 2009-10, is not impacted.	($2,171,898)	R	($2,261,898)	R
55 Department of Health and Human Services - Chemical Testing Unit Shifts a portion of funds for position number 60039654 from Highway Fund receipts to other receipts within the Department of Health and Human Services budget, and reduces funding for purchased services by $6,280.	($28,867)	R	($28,867)	R

	FY 11-12		FY 12-13	
56 Department of Public Instruction - Driver Education Program Adjusts funding for the Driver Education Program per revised average daily membership projections for the 2011-2013 biennium.	($133,468)	NR	$194,415	NR
57 State Highway Patrol - Freeze Step Increases Continues the freeze on salary step increases (five percent) for sworn members of the State Highway Patrol for the 2011-2013 biennium.	($3,373,932)	NR	($3,373,932)	NR
58 State Highway Patrol - Management Flexibility Reserve Establishes a management flexibility reserve for the State Highway Patrol.	($5,589,592)	R	($8,722,892)	R
59 State Highway Patrol - Administrative Consolidations Eliminates the Administrative Services Section and other administrative units within the State Highway Patrol, and reduces human resources staffing as follows: - Crime Control & Public Safety Deputy Director: $108,676 (1 FTE) - General Counsel Office: $176,752 (2 FTE) - Public Information/Recruiting: $267,796 (3 FTE) - Administrative Services Section Management: $119,372 (1 FTE) - Assessment Office: $205,123 (3 FTE) - Benefits/Personnel and Performance/Promotion: $502,651 (6 FTE) $592,627 is budgeted on a non-recurring basis in FY 2011-12 for projected severance payments.	($1,380,370) $592,627	R NR	($1,380,370)	R
60 State Highway Patrol - Reduce Operating Funds Reduces funding for purchased services, equipment, and supplies.	($1,450,000)	R	($1,450,000)	R
61 State Highway Patrol - Eliminate Highway Fund Transfer Eliminates Highway Fund appropriations (fund codes 84210-0866 and 84210-1010) for transfer to the Department of Crime Control and Public Safety (budget code 24960) for State Highway Patrol operations. Equivalent transfers to the General Fund offset this reduction. The Department of Transportation shall continue to administer and transfer matching funds for Motor Carrier Safety Assistance Program grants budgeted within fund code 84210-7834 for the State Highway Patrol.	($193,585,434)	R	($189,859,507)	R
62 Transfer to General Fund Transfers funds to the General Fund per the directed certification of the State Highway Patrol budget under a Department of Crime Control and Public Safety fund code within the General Fund.	$193,585,434	R	$189,859,507	R

Senate Subcommittee on Transportation	FY 11-12		FY 12-13	
Total Legislative Changes	($98,317,094)	R	($34,746,384)	R
	$341,165,120	NR	$356,497,553	NR
Total Position Changes	-341.50		-392.50	
Revised Budget	**$2,049,200,000**		**$2,134,160,000**	

Highway Trust Fund

	HIGHWAY TRUST FUND	
	FY 11-12	FY 12-13
Recommended Continuation Budget	**$933,800,000**	**$982,400,000**

Legislative Changes

Administration

63 Administration

Appropriates $25,000,000 of the accumulated unencumbered fund balance within the Highway Trust Fund Administration budget to Urban Loops.

Aid to Municipalities

64 Statutory Adjustment to Aid to Municipalities Allocation

Increases funds for State Aid to Municipalities for FY 2011-12 and FY 2012-13, consistent with new revenue estimates and G.S. 136-176(b)(3). The total budget is $51,216,036 in FY 2011-12 and $54,043,432 in FY 2012-13.

	$6,365,050	NR	$6,371,287	NR

Construction

65 Intrastate System

Increases funds for the Intrastate System for FY 2011-12 and FY 2012-13, consistent with new revenue estimates and G.S. 136-176(b)(1). The total budget is $460,823,529 in FY 2011-12 and $487,503,034 in FY 2012-13.

	$60,663,823	NR	$60,723,266	NR

66 Secondary Roads

Notwithstands G.S. 136-176(b)(4) and reduces funding to Secondary Roads. The total budget is $36,155,667 in FY 2011-12 and $41,820,944 in FY 2012-13.

	($25,000,000)	NR	($25,000,000)	NR

67 Urban Loops

Increases funds for Urban Loops for FY 2011-12 and FY 2012-13, consistent with new revenue estimates and G.S. 136-176(b)(2). Also budgets $35,000,000 of recurring funds and $20,000,000 of non-recurring funds that are reallocated from the Garden Parkway project. Non-recurring increases also include $25,000,000 of unencumbered administrative funds from prior years and $25,000,000 in funds reallocated from secondary road construction.

The total Urban Loops budget is $275,761,364 in FY 2011-12 and $237,407,986 in FY 2012-13.

	$35,000,000	R	$35,000,000	R
	$108,631,127	NR	$61,350,039	NR

	FY 11-12		FY 12-13	
68 Mobility Fund	$10,326,358	R	$15,950,000	R
Budgets title fee revenues per a reduction in the amount statutorily transferred to the Mercury Switch Removal Account (budget code 24300-2119) in the Department of Environment and Natural Resources, per G.S. 20-85(a1). $550,000 of projected title fee revenues are budgeted for FY 2011-12 and $950,000 of projected revenues are budgeted for FY 2012-13.				
Budgets $9,776,358 in FY 2011-12 and $15,000,000 in FY 2012-13 per reallocation of funds from the Mid-Currituck Bridge project.				
The total Mobility Fund budget is $41,326,358 in FY 2011-12 and $60,950,000 in FY 2012-13.				
Transfers				
69 Transfer to Highway Fund - Reserve for Visitor Centers				
Appropriates $400,000 for transfer to the Highway Fund Reserve for Visitor Centers for operating grants to nine visitor centers in FY 2011-12.	$400,000	NR		
Highway Trust Fund revenues are projected to increase by $950,000 recurring per a reduction in the amount of title fee receipts transferred to the Mercury Switch Removal Account (budget code 24300-2119) in the Department of Environment and Natural Resources. Of these revenues, $400,000 is appropriated to the Highway Fund Reserve for Visitor Centers in FY 2011-12. The remaining balance is appropriated to the Mobility Fund.				
70 Transfer to General Fund			$115,408	R
Increases transfer to the General Fund by $35,223,642 in FY 2011-12 to purchase replacement school buses for local school systems, and by $115,408 in FY 2012-13 in accordance with G.S. 105-187.9(b)2. The total transfer is $76,720,918 in FY 2011-12 and $27,595,861 in FY 2012-13.	$35,223,642	NR		
Turnpike Authority				
71 Mid-Currituck Bridge Project	($15,000,000)	R	($15,000,000)	R
Eliminates recurring gap funding for debt service and related financing costs associated with the Mid-Currituck Bridge project. Reallocates $30,000,000 of unencumbered gap funds appropriated in FY 2009-10 and FY 2010-11, as well as $5,223,642 of FY 2011-12 funds to the General Fund to purchase replacement school buses for local school systems. The remaining recurring funds are appropriated to the Mobility Fund.				
72 Garden Parkway Project	($35,000,000)	R	($35,000,000)	R
Eliminates recurring gap funding for debt service and related financing costs for the Garden Parkway project. Reallocates $20,000,000 of unencumbered gap funds appropriated in FY 2010-11 for the project to Urban Loops.				

Senate Subcommittee on Transportation	FY 11-12		FY 12-13	
Total Legislative Changes	($4,673,642)	R	$1,065,408	R
	$186,283,642	NR	$103,444,592	NR
Total Position Changes				
Revised Budget	$1,115,410,000		$1,086,910,000	

Transportation

	SPECIAL REGISTRATION PLATE ACCOUNT	
	FY 11-12	FY 12-13
Recommended Continuation Budget	**$5,076,095**	**$5,076,095**
Legislative Changes		
Special Registration Plate Account		
73 Visitor Center Operating Grants		
Eliminates $1.2 million of Special Registration Plate Account funds allocated for operating assistance to 12 visitor centers in FY 2012-13. The Department of Transportation is directed to privatize the operations of the State-supported visitor centers by FY 2012-13. Equivalent funds are transferred from the Special Registration Plate Account to the Highway Fund for contract resurfacing and system preservation.		
Total Legislative Changes		
Total Position Changes		
Revised Budget	**$5,076,095**	**$5,076,095**

Turnpike Authority

TURNPIKE AUTHORITY

	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$4,442,571**		**$4,442,571**	
Legislative Changes				
North Carolina Turnpike Authority Administration				
74 Reduce Operating Funds Reduces operating funds for administration of the North Carolina Turnpike Authority by 18 percent. The total budget for Turnpike Authority administration is $3,642,571 for the 2011-2013 biennium.	($800,000)	R	($800,000)	R
Total Legislative Changes	**($800,000)**	R	**($800,000)**	R
Total Position Changes				
Revised Budget	**$3,642,571**		**$3,642,571**	

RESERVES/ DEBT SERVICE/ ADJUSTMENTS Section L

Statewide Reserves

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$747,761,563**		**$747,761,563**	
Legislative Changes				
A. Employee Benefits				
1 Severance Expenditure Reserve Provides funding for severance salary continuation payments and health benefit coverage under the State Health Plan for employees reduced-in-force.	$75,000,000	NR		
2 Comprehensive Review of Public Employee Compensation Plans Provides funding for a comprehensive review of public employee compensation plans as directed by this Act.	$2,000,000	NR		
3 Salary Adjustment and Performance Pay Reserve Provides funding for labor market and equity salary increases and funding for performance based pay plans to effectuate recommendations made in connection with the comprehensive review and reform of public employee compensation plans.			$328,000,000	R
4 State Retirement System Contributions Increases the State's contribution to the Teachers' and State Employees' Retirement System for the 2011-2013 biennium to fund the Annual Required Contribution.	$297,400,000	R	$404,200,000	R
5 Judicial Retirement System Contributions Increases the State's contribution to the Consolidated Judicial Retirement System for the 2011-2013 biennium to fund the Annual Required Contribution.	$7,900,000	R	$9,000,000	R
6 Firemen's and Rescue Squad Workers' Pension Fund Contributions Increases contributions to the Firemen's and Rescue Squad Workers' Pension Fund for the 2011-2013 biennium to fund the Annual Required Contribution.	$5,800,000	R	$6,900,000	R
7 National Guard Pension Fund Contributions Increases the contributions to the National Guard Pension Fund for the 2011-2013 biennium to fund the Annual Required Contribution.	$263,000	R	$523,000	R
8 State Health Plan Provides additional funding to continue health benefit coverage for enrolled active and retired employees supported by the General Fund for the FY 2011-13 biennium.	$7,119,541	R	$102,151,104	R

	FY 11-12		FY 12-13	
B. Other Reserves				
9 Job Development Incentive Grants Reserve Reduces the funding for Job Development Investment Grants to amount needed to meet projected needs for FY 2011-12 grant payments.	($12,000,000)	NR		
10 Reserve for Controller Support for Automated Fraud Detection Provides funding to support the planning, development, and implementation of an automated fraud detection system by the Office of the State Controller.	$500,000	NR	$500,000	NR
11 Reserve for Automated Fraud Detection Development Provides funding to the Office of the State Controller to engage the services of a qualified vendor to plan, develop, and implement an enterprise-level, automated fraud detection system.	$1,000,000	NR	$7,000,000	NR
12 Information Technology Fund	($1,537,574)	R	$162,426	R
Eliminates funds for five positions from the IT Fund and adds two positions for the Criminal Justice Information Network. Provides funding for enterprise-level information technology operation and projects. Shifts enterprise identity management, plus email consolidation, information technology procurement, and archiving to agency fees. Begins process of shifting responsibility for enterprise agreements to participating agencies.	($1,844,284) -3.00	NR	($1,844,284) -3.00	NR
13 Continuation/Justification Review Reserve Creates a reserve to reinstate budgets of programs being reviewed by the General Assembly's Fiscal Research Division (Justification Reviews) or state agencies (Continuation Reviews). The FY 2012-13 budgets for programs under review have been eliminated. The General Assembly in the 2012 Session will determine whether to restore funding based on the results of these reviews.			$22,982,380	NR
C. Debt Service				
14 Adjust Debt Service Payments Adjusts debt service appropriations based on updated cash flow requirements.	($9,567,995)	R	$76,853,698	R
15 Adjust Debt Service - Canceled Projects Adjusts debt service appropriations due to the cancellation of projects in SB 464 (Debt Reduction Act of 2011).	($7,380,000)	R	($22,773,907)	R

Senate Committee on Appropriations/Base Budget	FY 11-12		FY 12-13	
Total Legislative Changes	$299,996,972	R	$905,016,321	R
	$64,655,716	NR	$28,638,096	NR
Total Position Changes	-3.00		-3.00	
Revised Budget	$1,112,414,251		$1,681,415,980	

State Health Plan (Administration)

Budget Code: 28410

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	$0	$0
Recommended Budget		
Requirements	$191,734,088	$191,734,088
Receipts	$191,734,088	$191,734,088
Positions	42.00	42.00

Legislative Changes

Requirements:

Medical Benefits/Claims Processing Contract Adjust budgeted amounts for the PPO Administrative Services Agreement based on anticipated contractual costs, changes in plan membership and on-going administrative services.	($1,311,263)	R	$3,622,105	R
	$0	NR	$0	NR
	0.00		0.00	
Pharmacy Benefits Management Contract Reduce budgeted amount for PPO PBM Contract based on anticipated contractual costs, changes in plan membership and on-going pharmacy benefit and utilization management programs.	($146,568)	R	($3,335,958)	R
	$0	NR	$0	NR
	0.00		0.00	
Disease & Case Management Contracts Reduce budgeted amount for Population Health Management Services contracts based on anticipated contractual costs, changes in plan membership and on-going disease and case management services.	($6,037,580)	R	($5,284,198)	R
	$0	NR	$0	NR
	0.00		0.00	
Wellness Initiatives and Programs Reduce budgeted amount for Wellness Initiatives contracts based on anticipated contractual costs, changes in plan membership and on-going wellness programs.	($3,130,234)	R	($3,119,350)	R
	$0	NR	$0	NR
	0.00		0.00	
Other Administrative Cost Reduce budgeted amounts for the Plan's other administrative costs to more accurately reflect anticipated expenditures.	($644,294)	R	($12,544)	R
	$0	NR	$0	NR
	0.00		0.00	

	FY 2011-12		FY 2012-13	
Subtotal Legislative Changes	**($11,269,939)**	R	**($8,129,945)**	R
	$0	NR	**$0**	NR
	0.00		0.00	
Receipts:				
Reduce Transfers from Trust Funds	($11,269,939)	R	($8,129,945)	R
Reduces the amount of transfer from the Plan's health benefit trust fund budget codes to support administrative costs authorized for the FY 2011-13 biennium.	$0	NR	$0	NR
Subtotal Legislative Changes	**($11,269,939)**	R	**($8,129,945)**	R
	$0	NR	**$0**	NR
Revised Total Requirements	**$180,464,149**		**$183,604,143**	
Revised Total Receipts	**$180,464,149**		**$183,604,143**	
Change in Fund Balance	**$0**		**$0**	
Total Positions	**42.00**		**42.00**	
Unappropriated Balance Remaining	**$0**		**$0**	

CAPITAL
Section M

Capital

	GENERAL FUND	
	FY 11-12	FY 12-13
Department of Environment and Natural Resources		
1 Water Resources Development Projects		
Provides funds for the State's share of Water Resources Development Projects. Funds will provide a State match for $20,749,000 in federal funds. Projects are specified in a special provision.	$4,535,000 NR	
Total Appropriation to Capital	**$4,535,000 NR**	

INFORMATION TECHNOLOGY SERVICES

Section N

Information Technology Fund

Budget Code: 24467

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	**$792,000**	**$0**
Recommended Budget		
Requirements	**$5,685,609**	**$7,485,609**
Receipts	**$4,458,142**	**$6,158,142**
Positions	**35.00**	**35.00**

Legislative Changes

Requirements:

Center for Geographic Information and Analysis Provides funding to support the operations of the Center for Geographic Information and Analysis (CGIA), located in the Office of the State Chief Information Officer. The CGIA is the lead agency for geographic information systems (GIS) services and GIS coordination for the State of North Carolina. CGIA provides GIS services to state and local governments as well as the private sector. Two positions are eliminated, 60036161 and 60036176, for a total savings of $140,653.	$599,347	R	$599,347	R
	$0	NR	$0	NR
	-2.00		-2.00	
Enterprise Security and Risk Management Office Provides funding to support the operation of the Enterprise Security and Risk Management Office (ESRMO) in the Office of the State Chief Information Officer. The ESRMO supports the development, delivery, and maintenance of an information security and risk management program that safeguards the state's information assets and the supporting infrastructure against unauthorized use, disclosure, modification, damage or loss. Reduces position cost with retirement and replacement, resulting in savings of $37,148.	$864,148	R	$864,148	R
	$0	NR	$0	NR
	0.00		0.00	

	FY 2011-12		FY 2012-13	
Enterprise Project Management Office Provides funding to support the operation of the Enterprise Project Management Office (EPMO). The EPMO is responsible for coordinating and standardizing the management of IT projects over their life cycle, to include providing oversight during the design, development, and implementation process. Eliminates one position, 60087262, for a reduction of $121,715.	$1,473,285	R	$1,473,285	R
	$0	NR	$0	NR
	-1.00		-1.00	
Architecture and Engineering Provides funding to support the State Chief Information Officer's efforts to establish and maintain statewide information technology standards, and to design technical solutions for executive branch agencies, as well as local governments, public libraries, and K-20 organizations.	$581,986	R	$581,986	R
	$0	NR	$0	NR
	0.00		0.00	
Statewide Information Technology Procurement Allows the Statewide Information Technology Procurement Office to charge a fee to make up a $550,000 shortfall resulting from a reduction in supplemental staffing contracts. In the past, a 4.5% fee on information technology contracts has funded the Office. Reductions in supplemental staffing contracts have reduced the amount received from this fee.	($550,000)	R	($550,000)	R
	$0	NR	$0	NR
	0.00		0.00	
State Portal Eliminates appropriation for the State Portal. The State Portal was funded at $500,000 last year, but the Department of Administration is converting it to a fee-supported function.	($500,000)	R	($500,000)	R
	$0	NR	$0	NR
	0.00		0.00	
State Web Site Provides funding support to be used only for the State's current nc.gov website.	$0	R	$0	R
	$100,000	NR	$0	NR
	0.00		0.00	

	FY 2011-12		FY 2012-13	
Information Technology Consolidation	$776,440	R	$784,440	R
Provides funding for IT Consolidation to continue the State's efforts to consolidate information technology infrastructure within State agencies, coordinating the use of information technology infrastructure by focusing on the consolidation of local area network, voice, data center (servers), security, desktop, and service desk operations and services. Also begins the process of consolidating applications within the State. Eliminates two positions, 60087232 and 65000717, for a total savings of $218,201.	$0	NR	$0	NR
	-2.00		-2.00	
Data Integration License Transfer to Agencies	$0	R	$0	R
Transfers, as required by S.L. 2010-31, funding for data integration licenses from the Office of the State Chief Information Officer to State agencies using the licenses. The State Chief Information Officer is required to complete this transfer by September 1 of each State fiscal year and to report to the General Assembly upon completion of the transfer.	$200,000	NR	$1,200,000	NR
	0.00		0.00	
Criminal Justice Information Network	$166,422	R	$166,422	R
Provides funding to move two positions, 60084125 and 60084100, to the Office of the State Chief Information Officer from the Department of Crime Control and Public Safety. The Criminal Justice Information Network is responsible for providing the governmental and technical information systems necessary for accomplishing State and local governmental public safety and justice functions in the most efficient manner by appropriately and efficiently sharing criminal justice and juvenile justice information among law enforcement, judicial, and corrections agencies.	$0	NR	$0	NR
	2.00		2.00	
Transfer to OSC for E Forms Initiative	$500,000	R	$500,000	R
Transfers $500,000 from the Office of the State Chief Information Officer to the Office of the State Controller to support the planning and development of an enterprise e forms and digital signatures initiative.	$0	NR	$0	NR
	0.00		0.00	

	FY 2011-12		FY 2012-13	
Transfer IT Analyst Funding to OSBM Transfers funding from the Office of the State Chief Information Officer to the Office of State Budget and Management to be used only for the salary and benefits of an Information Technology Analyst for the Office of State Budget and Management.	$105,000	R	$105,000	R
	$0	NR	$0	NR
	0.00		0.00	
Information Technology Fund Adjustment Reduces appropriations to reflect adjustments in General Fund expenditures and receipts, and the use of the Unreserved Fund Balance.	$0	R	$0	R
	($4,635,609)	NR	($6,435,609)	NR
	0.00		0.00	
Subtotal Legislative Changes	**$4,016,628**	R	**$4,024,628**	R
	($4,335,609)	NR	**($5,235,609)**	NR
	-3.00		-3.00	
Receipts:				
Information Technology Fund Interest Accounts for the interest generated by the balance in the Information Technology Fund.	$25,000	R	$25,000	R
	$0	NR	$0	NR
ITS Overhead Reduces overhead billed to support the Office of Information Technology Services, based on rate reductions projected for the next State fiscal year.	$91,486	R	$91,486	R
	$0	NR	$0	NR
Subtotal Legislative Changes	**$116,486**	R	**$116,486**	R
	$0	NR	**$0**	NR
Revised Total Requirements	**$5,366,628**		**$6,274,628**	
Revised Total Receipts	**$4,574,628**		**$6,274,628**	
Change in Fund Balance	**($792,000)**		**$0**	
Total Positions	**32.00**		**32.00**	
Ending Unreserved Fund Balance	**$0**		**$0**	

Information Technology Internal Service Fund

Budget Code: 74660

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	**$32,445,864**	**$32,445,864**
Recommended Budget		
Requirements	**$196,263,192**	**$196,263,192**
Receipts	**$196,263,192**	**$196,263,192**
Positions	**592.00**	**592.00**

Legislative Changes

Requirements:

Reduction to IT Internal Service Fund Requires the Office of the State Chief Information Officer and the Office of Information Technology Services to limit requirements for the Information Technology Internal Service Fund to $190,000,000 each State fiscal year, and eliminates 61 positions, to include position numbers 60087678, 60087377, 60087386, 60087436, 60089620, 60090531, 60087478, 60093461, 60087389, 60087453, 60087453, 60087464, 60087472, 60087488, 60087490, 60090526, 60087530, 60087624, 60087512, 60087606, 60087532, 60093453, 65000536, 60087605, 60089810, 60087652, 60087648, 60087520, 60087674, 65010102, 60087727, 60087553, 65005226, 65000702, 65010802, 65010803, 60089805, 60087580, 60087726, 60089804, 60087413, 60087440, 60087414, 60087322, 60093458, 60087227, 60087230, 60087234, 60087246, 60087314, 60087299, 60087286, 60087239, 60087710, 60089801, 60087445, 60089785, 65000706, 60087586, 60087533, 60087544.	$0 ($6,263,192) -61.00	R NR	$0 ($6,263,192) -61.00	R NR
Subtotal Legislative Changes	**$0** **($6,263,192)** -61.00	R NR	**$0** **($6,263,192)** -61.00	R NR

Receipts:

	FY 2011-12		FY 2012-13	
Receipts for Internal Service Fund	$0	R	$0	R
Reduces receipts to Information Technology Internal Service Fund to reflect requirements.	($6,263,192)	NR	($6,263,192)	NR
Subtotal Legislative Changes	**$0**	R	**$0**	R
	($6,263,192)	NR	**($6,263,192)**	NR
Revised Total Requirements	**$190,000,000**		**$190,000,000**	
Revised Total Receipts	**$190,000,000**		**$190,000,000**	
Change in Fund Balance	**$0**		**$0**	
Total Positions	**531.00**		**531.00**	
Ending Unreserved Fund Balance	**$32,445,864**		**$32,445,864**	

HOUSE BILL 200:
Appropriations Act of 2011

2011-2012 General Assembly

Committee:	Senate Appropriations/Base Budget	**Date:**	May 23, 2011
Introduced by:	Rep. Brubaker	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to Fourth Edition H200-CSLExf-13		Committee Counsel

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 200, the Current Operations and Capital Improvements Appropriations Act of 2011, contains a finance package that reduces the individual income tax rates by ¼% and allows a $50,000 tax deduction for small business income for two years, 2012 and 2013. The House budget, H200 (V4), reserved $635 million for the finance committee for the 2011-2013 biennium; this PCS uses that reserve and eliminates four tax expenditures to create the necessary availability of $671.7 million. This tax relief is in addition to the $1.3 billion in expiring tax revenue.***[1]

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE: Part XXXI-A of the Senate PCS for House Bill 200 does the following:

- It reduces each of the individual income tax rates ¼% for taxable years 2012 and 2013: from 6%, 7%, and 7.75% to 5.75%, 6.75% and 7.5%.
- It provides an individual income tax deduction of $50,000 for net business income the taxpayer receives during the taxable year from a small business for taxable years 2012 and 2013. A small business is defined as one whose gross receipts do not exceed $825,000.
- It eliminates the individual income tax deductions for severance wages and qualified sales of a manufactured home community and the income tax credit for oyster shell recycling, effective for taxable years beginning on or after January 1, 2011.
- It eliminates the sales tax exemption for nutritional supplements sold by a chiropractor and the sales tax holiday for certain energy star products, effective October 1, 2011.
- It simplifies the calculation of individual income tax by beginning the calculation of North Carolina taxable income with federal adjusted gross income rather than federal taxable income.

Section 31A.1: Encourage Job Growth and Long-Term Economic Prosperity by Temporarily Reducing the Income Tax Burden on Individuals and Small Businesses

North Carolina's personal income tax accounts for 52% to 55% of all General Fund revenues.[2] The non-withholding portion of this tax[3] may fluctuate as much as 35% from year to year, which has contributed to the State's volatile revenue structure. Much of this volatility has occurred since the 1990s as more and more business entities have organized as limited liability entities whose income flows through the personal income tax rather than the corporate income tax.

[1] The 1% State sales tax rate expires July 1, 2011; the corporate and individual income surtaxes expire for taxable years beginning on or after January 1, 2011.

[2] In 1970, the PIT accounted for 32.7% of General Fund revenues.

[3] The non-withholding portion of the tax consists of business income, capital gains, rental income, interest and dividends, pension income, etc.

Section 31A.1(b) and (f) of the Senate PCS for House Bill 200 temporarily reduces each of the personal income tax rates by ¼%: from 6%, 7%, and 7.75% to 5.75%, 6.75%, and 7.5%.

North Carolina has a graduated individual income tax rate, meaning the tax rate increases as the taxpayer's North Carolina taxable income amount increases. The current tax rates are 6%, 7%, and 7.75%. The ¼% reduction in each of the tax rates is effective for the 2012 and 2013 taxable years only. The rates will return to their current level for taxable years beginning on or after January 1, 2014. This subsection also eliminates the marriage penalty[4] in the tax brackets by changing the tax brackets for single taxpayers to one-half that of a married couple filing jointly.[5]

North Carolina had two graduated individual income tax rates of 6% and 7% until 1991, when the General Assembly enacted the third bracket with a rate of 7.75%. In 2001, the General Assembly created a temporary fourth income tax bracket for incomes that exceeded $200,000 for taxpayers filing as married filing jointly; the tax rate for the fourth bracket was 8.25%. The temporary fourth bracket expired for taxable years beginning on or after January 1, 2008.[6]

The General Assembly enacted a temporary surtax on individual income tax in 2009, effective for taxable years 2009 and 2010.[7] The surtax was equal to a percentage of the tax payable by the taxpayer.[8] The percentage amount varied depending upon the taxpayer's North Carolina taxable income and the taxpayer's filing status. For married filing jointly, the surtax percentage was zero for taxable incomes up to $100,000; 2% for taxable incomes[9] over $100,000 and up to $250,000; and 3% for taxable incomes[10] over $250,000.

Section 31A.1(d) of the Senate PCS for House Bill 200 provides a personal income tax deduction for the first $50,000 of net business income a taxpayer receives during a taxable year from a small business.

A small business is a business whose cumulative gross receipts from all business activity in a taxable year does not exceed $825,000. The deduction is effective for the 2012 and 2013 taxable years only; it expires for taxable years beginning on or after January 1, 2014. This change in the law would affect at least 250,000 small businesses. Of these 250,000 small businesses, more than 50% of them are sole proprietorships. Sole proprietorships must complete a Form 1040, Schedule C. The data from Schedule C indicates that more than 75% of the sole proprietorships in North Carolina have gross receipts under $1,000,000 and more than 58% have North Carolina taxable income below $60,000.

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[4] The marriage tax penalty is the result of a tax system that recognizes that a married couple's living expenses are less than the expenses of two single people living separately, but more than the expenses of one single person. In addition, if one spouse is not employed full-time, a married couple's income would be less than that of two comparable single people who work full-time, but more than that of one single person. The tax law addresses these situations through the tax brackets, the personal exemptions, and the standard deduction. The result of these tax provisions is that a married couple with only one spouse working experiences a tax reduction when they marry, a married couple where one spouse earns substantially more than the other experiences no tax reduction or increase when they marry, and a married couple with both spouses earning roughly the same amount experience a tax increase when they marry.

[5] S.L. 2001-424 eliminated the marriage tax penalty in the North Carolina standard deduction; the provision was delayed a year in S.L. 2002-126.

[6] Under the 2001 legislation, the upper income tax bracket would have expired for taxable years beginning on or after January 1, 2004. In 2003, the General Assembly extended the 2004 sunset until 2006 and in 2005 it extended the sunset until 2007. In 2006, the General Assembly reduced the upper income tax rate from 8.25% to 8% for taxable year 2007. S.L. 2001-424, S.L. 2003-284, S.L. 2205-276, and S.L. 2006-66.

[7] S.L. 2009-451 also imposed a corporate income tax surtax of 3% for taxable years 2009 and 2010.

[8] The surtax was in addition to the individual income tax owed by the taxpayer.

[9] The effective tax rates in the respective tax brackets for taxpayers subject to the 2% surtax were 6.12%, 7.14%, and 7.91% respectively.

[10] The effective graduated tax rates for taxpayers subject to the 3% surtax were 6.18%, 7.21%, and 7.98%.

The term 'business income' would not include income that is considered passive income under the Code. Section 469 of the Code, as well as various IRC tax regulations, define passive income. Form 1040, Schedule E, requires reporting of passive and non-passive income. Form 1040, Schedule C, requires the reporting of profit and loss from sole proprietorships. Form 1040, Schedule F, requires the reporting of farm income and loss.

In 2010, the General Assembly enacted a refundable tax credit for a small business that made contributions during the taxable year to the State Unemployment Insurance Fund with respect to wages paid in this State. The credit applies only to the 2010 and 2011 taxable years. For purposes of the tax credit, a small business is defined as one whose cumulative gross receipts from business activity for the taxable year does not exceed $1,000,000.

The remainder of Section 31A.1 of the Senate PCS for House Bill 200 changes the starting point for calculating North Carolina taxable income from federal taxable income to federal adjusted gross income.

Of the 35 states that begin their calculation of state taxable income with federal law, 29 use federal adjusted gross income while only 6 use federal taxable income. Federal taxable income is income after all federally allowed deductions; it includes the deductions from gross income to determine adjusted gross income and the deductions from adjusted gross income to determine taxable income. The primary differences between federal taxable income and adjusted gross income are the personal and dependency exemptions and the subtraction of either the standard deduction amount or the itemized deductions amount.

North Carolina began using federal taxable income as the starting point for this calculation in 1989. At the time, this change significantly simplified North Carolina's individual income tax; it eliminated 30 individual income tax exclusions and reduced 47 deductions and exemptions to seven[11]. Since that time, however, the number of adjustments a taxpayer must make to federal taxable income to determine North Carolina taxable income has increased from 11 to more than 40. North Carolina's current system of additions and subtractions is confusing to taxpayers and complex to administer. For example, under current law, a taxpayer must adjust the standard deduction amount and the personal and dependency exemption amounts because North Carolina does not index those amounts like the federal law does.

This section also removes obsolete provisions and makes conforming and modernizing changes to the personal income tax statutes.

Section 31A.2: Eliminate Personal Income Tax Deductions for Severance Wages and Qualified Sales of a Manufactured Home Community and the Tax Credit for Oyster Shell Recycling

Section 31A.2 equalizes the tax treatment between severance pay and unemployment benefits. Unemployment benefits are taxable[12]; up to $35,000 of severance pay is not. This section removes the tax exemption for severance wages, effective for the 2011 taxable year. The General Assembly enacted the tax exemption for severance pay in 1996.[13] Initially the exemption applied only to severance pay a taxpayer received due to the permanent closure of a manufacturing or processing plant. In 1997,[14] the General Assembly expanded the exemption to include severance pay received from any source, public or private, and due to any involuntary termination through no fault of the employee: being fired without cause, being laid off due to a reduction in force, as well as being terminated due to a plant closure.

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[11] Chapter 728 of the 1989 Session Laws.
[12] North Carolina exempted up to $2,400 of unemployment benefits from State income tax for taxable years 2009 and 2010 as part of its conformity to the Internal Revenue Code. All unemployment benefits will be taxable in 2011.
[13] Chapter 13 of the 1996 Second Extra Session.
[14] S.L. 1997-525.

According to the *Biennial Tax Expenditure Report, 2009,* the deduction resulted in a $15.5 million loss of General Fund revenues, based upon 2007 returns.

Section 31A.2 eliminates the personal income tax deduction for the taxable gain from a qualified sale of a manufactured home community four years earlier than it would otherwise expire. A 'qualified sale' is a sale of land comprising a manufactured home community that is transferred in a single purchase to a group composed of a majority of the manufactured home community leaseholders, or to a nonprofit organization representing such a group. To qualify for this deduction, the taxpayer must give notice of the sale to the North Carolina Housing Finance Agency.[15] The General Assembly enacted the deduction in 2008[16], effective for taxable years beginning on or after January 1, 2008, and expiring for taxable years beginning on or after January 1, 2015. According to the *Biennial Tax Expenditure Report, 2009,* the deduction results in a loss to the General Fund of less than $100,000.

Section 31A.2 returns the sunset date for the tax credit for oyster shell recycling to its original expiration date of January 1, 2011. Since October 1, 2009, oyster shells may not be disposed in landfills. The Division of Marine Fisheries of the Department of Environment and Natural Resources operates a voluntary oyster shell donation program. The Division of Marine Fisheries purchases oyster shells in very large quantities from shucking houses at a negotiated price per bushel.[17] In 2006, the General Assembly enacted this credit to offer an additional incentive to recycle oyster shells. [18] The credit is a nonrefundable income tax credit of one dollar for each bushel of oyster shells that a taxpayer donates to the Division of Marine Fisheries. The credit may be carried forward for five years. The taxpayer may not claim a deduction for any oyster shells for which a credit is claimed. The General Assembly extended the sunset on the tax credit for recycling oyster shells from January 1, 2011, to January 1, 2013, in 2010. This section returns the expiration date to January 1, 2011. According to the *Biennial Tax Expenditure Report, 2009,* the credit results in a loss to the General Fund of less than $100,000.

Section 31A.3: Eliminate Sales Tax Exemption for Nutritional Supplements Sold by a Chiropractor at a Chiropractic Office and the Sales Tax Holiday for Certain Energy Star Products

Section 31A.3 equalizes the sales tax treatment for nutritional supplements by repealing the State and local sales and use tax exemption for supplements sold by a chiropractic physician at a chiropractic office to a patient as part of the patient's plan of treatment. There are no laws that require any dietary supplements to be sold only by health care providers. The dispensing of dietary supplements does not require a prescription. Therefore, the purchase of nutritional supplements at any place of business, other than a chiropractic office, is subject to State and local sales tax. The exemption became effective October 1, 1997.[19] The repeal of this exemption becomes effective October 1, 2011. According to the *Biennial Tax Expenditure Report, 2009,* the exemption results in a loss to the General Fund of less than $400,000.

Section 31A.3 repeals the sales tax holiday for certain energy star products, effective October 1, 2011. During the first weekend in November,[20] the following Energy Star-rated products are exempt from State and local sales and use tax: clothes washers, freezers and refrigerators, central air conditioners and room air conditioners, air-source heat pumps and geothermal heat pumps, ceiling fans, dehumidifiers, and programmable thermostats. An Energy Star-rated product is one that meets the

---

[15] G.S. 42-14.3 requires an owner of a manufactured home community to notify the owners of the homes in the community of intent to convert the property to another use.
[16] Section 28.27, S.L. 2008-107.
[17] In 2006, the negotiated price was 50¢ per bushel.
[18] Section 24.18, S.L. 2006-66. Recycled oyster shells offer the following value: (1) aid in the restoration of oyster populations by their placement in sanctuaries and/or estuaries; (2) landscaping purposes; and (3) nutritional supplements.
[19] S.L. 1997-369.
[20] The holiday period begins 12:01 AM on the first Friday of November and ends 11:59 PM on the following Sunday.

energy efficient guidelines set by the United States Environmental Protection Agency (EPA) and the United States Department of Energy and is authorized to carry the Energy Star label. The General Assembly enacted the holiday in 2008[21]; according to the *Biennial Tax Expenditure Report, 2009,* the holiday results in a loss to the General Fund of $1.8 million.

H200-SMRB-61(CSLExf-13) v4

[21] Section 28.12, S.L. 2008-107.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H200-AMCxf-17 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H200-PCS30341-LExf-13

Date May 24 ,2011

Senator Newton

moves to amend the bill on page 357, line 34, by inserting between the words "filing" and "containing" the phrase "requiring a notice of hearing and";

RAR

and by adjusting the appropriate totals accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H200-AMCf-18 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H200-PCS30341-LExf-13

Date May 24 ,2011

Senator Brown

moves to amend the bill on page 359, line 14, to page 360, line 49, by deleting those lines and substituting the following language to read:

"**SECTION 31.26.(a)** If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then Chapter 148 of the General Statutes is amended by adding a new section to read:

'**§ 148.10. Statewide Misdemeanor Confinement Fund established.**

There is created within the Department of Correction a special, non-reverting fund called the Statewide Misdemeanor Confinement Fund.'

SECTION 31.26.(b) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 7A-304(a) is amended by adding a new subdivision to read:

'(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(2b) For the maintenance of misdemeanors in county jails, the sum of eighteen dollars ($18.00) in the district court to be remitted to the Statewide Misdemeanor Confinement Fund in the Department of Correction.

....'

SECTION 31.26.(c) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 7A-304(a) is amended by adding a new subdivision to read:

'(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when

the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4b) To provide for contractual services to reduce county jail populations, the sum of fifty dollars ($50.00) for all offenses arising under Chapter 20 of the General Statutes and resulting in a conviction of an improper equipment offense, to be remitted to the Statewide Misdemeanor Confinement Fund in the Department of Correction.'

SECTION 31.26.(d) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 7A-311(a) reads as rewritten:

'(a) In a civil action or special proceeding, except for actions brought under Chapter 50B of the General Statutes, the following fees and commissions shall be assessed, collected, and remitted to the county:

(1) a. For each item of civil process served, including summons, subpoenas, notices, motions, orders, writs and pleadings, the sum of ~~fifteen~~ thirty dollars ~~($15.00).~~($30.00). When two or more items of civil process are served simultaneously on one party, only one ~~fifteen-dollar ($15.00)~~thirty-dollar ($30.00) fee shall be charged.

....'

SECTION 31.26.(e) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 7A-313 reads as rewritten:

'**§ 7A-313. Uniform jail fees.**

Persons who are lawfully confined in jail awaiting trial shall be liable to the county or municipality maintaining the jail in the sum of ~~five~~ ten dollars ~~($5.00)~~($10.00) for each 24 hours' confinement, or fraction thereof, except that a person so confined shall not be liable for this fee if the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill.

Persons who are ordered to pay jail fees pursuant to a probationary sentence shall be liable to the county or municipality maintaining the jail at the same per diem rate paid by the Department of Correction to local jails for maintaining a prisoner, as set by the General Assembly in its appropriations acts.'

SECTION 31.26.(f) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 153A-225(a) reads as rewritten:

'(a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;

(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H200-AMCf-18 [v.2]

(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health director after consultation with the area mental health, developmental disabilities, and substance abuse authority, if it is adequate to protect the health and welfare of the prisoners. Upon a determination that the plan is adequate to protect the health and welfare of the prisoners, the plan must be adopted by the governing body.

As a part of its plan, each unit may establish fees of not more than ~~ten dollars ($10.00)~~ twenty dollars ($20.00) per incident for the provision of nonemergency medical care to prisoners. In establishing fees pursuant to this section, each unit shall establish a procedure for waiving fees for indigent prisoners.";

and by adjusting the appropriate totals accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Comm. Amend. 2
Adopted and Engrossed
Pursuant to Rule 45.1
MAY 25 2011
Sarah Clapp

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200

AMENDMENT NO. 3
(to be filled in by Principal Clerk)

H200-ARB-32 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H200-PCS30341-LExf-13

Date May 24 ,2011

Senator Brock

moves to amend the bill on page 364, lines 47-49, by rewriting the lines to read:

"0	$12,750	~~6%~~5.75%
$12,750	$60,000	~~7%~~6.75%
$60,000	NA	~~7.75%~~7.5%".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

Comm. Amend. 3
Adopted and Engrossed
Pursuant to Rule 45.1
MAY 25 2011
Sarah Clapp

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200

AMENDMENT NO. 4
(to be filled in by Principal Clerk)

H200-ARB-33 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H200-PCS30341-LExf-13

Date May 24 ,2011

Senator Brock

moves to amend the bill on page 363, line 20, by deleting the word "TEMPORARILY";

and on page 367, lines 54 and 55, by rewriting those lines to read:
"income under the Code.";

And on page 374, lines 20 through 52, by deleting those lines;

And on page 374, lines 53 and 54, by rewriting the lines to read:
"**SECTION 31A.1.(f)** This section becomes effective for taxable years beginning on or after January 1, 2012.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

Comm. Amend. 4
Adopted and Engrossed
Pursuant to Rule 45.1
MAY 25 2011
Sarah Clapp

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200

AMENDMENT NO. 5
(to be filled in by Principal Clerk)

H200-ASV-13 [v.1]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [NO]
~~Fourth Edition~~ H200-PCS30341-LExf-13 Date May 24 ,2011

Senator Hartsell

59-55 RAR

moves to amend the bill on page 374, lines ~~52-53~~, by inserting the following new section between the lines:

"**SECTION 31A.1(g)** G.S. 105-122(b)(2) reads as rewritten:

"(2) Taxes accrued, dividends declared, and reserves for depreciation of tangible assets and for amortization of intangible assets as permitted for income tax purposes.'";

And by relettering the remaining subsection in that section accordingly.

SIGNED Hutchins L. Hartsell Jr.
Amendment Sponsor

SIGNED RAR
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

H200-ASV-13-V-1

Job Creation Plan ($ in Millions)

Expiring Taxes	Effective Date	FY 11-12	FY 12-13	Total for Biennium
1-cent Sales Tax Increase	07/01/2011	(1,135.0)	(1,183.8)	(2,318.8)
Personal Income Surtax	01/01/2011	(172.1)	(174.2)	(346.3)
Corprorate Income Surtax	01/01/2011	(29.0)	(29.3)	(58.3)
Total Reduction		**(1,336.1)**	**(1,387.3)**	**(2,723.4)**
Jobs Package				
First Step towards modernizing the Personal Income Tax: Begin individual income tax calculation with Federal AGI - simplifies tax form with no change to tax revenue, keep all credits and deductions except as noted	**01/01/2012**			
Income Exemption for Start-up businesses and other small businesses: Exempt first $50,000 of net business income if gross receipts are $825,000 or less, Sunset 12/31/2013	**01/01/2012**			
Cut all Personal Income tax rates by a quarter of a percentage point (7.75% to 7.5%; 7% to 6.75%; 6% to 5.75%), Sunsets 12/31/2013	**01/01/2012**			
Subtotal: Jobs Package		(186.4)	(485.3)	(671.7)
Repeal deduction for Sale of a Manufactured Home Community to Manufactured Home Owners	**01/01/2011**	0.1	0.1	0.2
Repeal deduction for severance wages	**01/01/2011**	16.0	16.4	32.4
Repeal credit for Recycling Oyster Shells	**01/01/2011**	0.1	0.1	0.2
Repeal Energy Star Tax Holiday	**10/01/2011**	1.9	2.0	3.9
Repeal sales tax exemption for nutritional supplements sold by chiropractors	**10/01/2011**	0.3	0.4	0.7
Total: Jobs Package		**(168.0)**	**(466.3)**	**(634.3)**
Reserve for Senate Finance Committee - HB200		230.0	405.0	635.0
Surplus/ Shortfall		**62.0**	**(61.3)**	**0.7**

50k BI Exempt

HB 200 (PCS30341-LExf-13): Fee Adjustments in the Appropriations Act of 2011

EDUCATION

Bill Section	Name	Current Fee	Proposed Fee	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
Capital Projects								
Sec. 30.7 (CAP-S7) (CAP-H8) *Functionally identical	UNC Nonappropriated Capital Projects	N/A	N/A	Provides for capital projects for The University of North Carolina System. This provision is the same as Senate Bill 444, UNC Nonappropriated Capital Projects. (There is no House companion bill to SB 444.) The projects authorized by the section would not be financed with funds appropriated from the State's General Fund; but may be financed with gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, other funds available to the constituent institutions, or a combination of any of those financing methods.		N/A	N/A	7/1/11
Education								
Sec. 7.22 (DPI-S22) (DPI-H26) *Identical	North Carolina Virtual Public Schools Allotment Formula	N/A	See Description	Directs State Board of Education to establish a per student fee structure for out-of-state, private, and home schooled students enrolled in NC Virtual Public Schools. The State Board's policy has been to create a recommended fee schedule, so this provision clarifies that policy directive and places it into session law.	N/A	Unknown	Unknown	7/1/11
Sec. 31.1 (TRANS-S34) (TRANS-H28) *Not identical[1]	Drivers Education Fee	N/A	N/A	Reforms drivers' education. No finance component in Senate counterpart.	N/A	Unknown	Unknown	7/1/11
Sec. 31.2 (FIN-S11) (DOCC-H13) *Identical	GED Fee Increase	$7.50 (with no fee for re-testing)	See Description	Allows State Board of Community College to set GED testing (and retesting) fee. The fee would likely be $25 per test.	1987	At least sufficient to replace $208,533 in GF, but total revenue projected at $397,000	At least sufficient to replace $208,533 in GF, but total revenue projected at $397,000	7/1/11

[1] The House counterpart provision included the same reforms to drivers' education but also included an authorization to the local boards of education to charge up to $75 for drivers' education participants.

NATURAL AND ECONOMIC RESOURCES

Bill Section	Name	Current Fee	Proposed Fee	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
Department of Commerce/Economic Development								
Sec. 31.4 (FIN-S7) (COMM-H2) *Identical	Set Regulatory Fee for Utilities Commission	0.12%	Same	The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. The rate has remained the same since 2003. This rate applies to each public utility's jurisdictional revenues earned during each quarter that begins on or after July 1, 2011.				7/1/11
Sec. 31.4 (FIN-S7) (COMM-H2) *Identical	Set Regulatory Fee for Electric Membership Corporation	$200,000	Same	The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations. This fee has remained the same since it was first imposed in 1999.				7/1/11
Sec. ## (FIN-S10) HOUSE: none	Fee to Advertise in Welcome Centers	$0	$100-$200 per welcome center per year	Imposes an annual fee of $100 for brochures less than 4" in width and less than 9" in length in welcome centers. For all other brochures, the fee is $200/year/center. Fee does not apply to government/public sector entities.				7/1/11
Department of Agriculture & Consumer Services								
Sec. 31.5 (FIN-S2) (AGRIC-H7) *Identical	License Fees for kennels, pet stores, etc.	$50	$75	Increases the license fee for operators of pet shops, public auctions, or boarding kennels and for dealers.	1989	$10,000	$10,000	7/1/11
Sec. 11.2 (AGRIC-S1) Sec. 11.2 & 31.6 (AGRIC-H4) *Identical	Repeal Board of Agriculture Review of Fee Schedules	N/A	N/A	Repeals statutory requirement that Department of Agriculture biennially review all fees under its authority. This requirement was added during the last biennium and has been found to be unnecessary.				7/1/11
Sec. 31.7 (FIN-S1) (AGRIC-H3) *Identical	Fee For Expedited Soil Test	New	$100	New $100 fee for expedited soil test.	N/A	$50,000	$50,000	7/1/11

Sec. 31.7 (FIN-S1) (AGRIC-H3) *Identical	ee for Out-of-State Soil Tests	New	$5.00	fee for out-of-state soil test.	N/A	Minimal	Minimal	
Sec. 31.8 (AGRIC-S4) (AGRIC-H1A) *Not identical[2]	Technical Corrections regarding Commercial Fertilizer Inspection Fee, Pesticide Technician ID Card Renewal Fee, and Pesticide Dealer License Renewal Fee	$0.25 listed/$.50 actual $25 listed/$40 actual $50 listed/$75 actual	N/C to actual	Technical correction for three fees. The General Assembly increased these fees in 2009 and 2010. The legislation failed to make the conforming changes in these statutes.				7/1/11
Sec. 31.9 (FIN-S3) (AGRIC-H6) *Identical	Increase Agricultural Liming Materials Tonnage Fees	$.10	$.50	Increases the tonnage fee paid by manufacturers or registrants to Dept. of Agriculture and Consumer Services for agricultural liming material from $.10 to $.50.	1979	$250,000	$250,000	7/1/11
Sec. 31.10 (FIN-S4) (AGRIC-H5) *Identical	Increase Antifreeze Distribution Registration Fee	$250	$500	Increases license and inspection fee for manufacturers, packagers, or persons named on the label of antifreeze from $250 to $500.		$75,000	$75,000	7/1/11
Environment								
Sec. 2.2(f) (GEN-S10) (ENV-H11) *Identical	Divert Scrap Tire Tax Proceeds to General Fund	1% - 2% of sales price of each new tire	Same	Redirects for FY 11-12 to the GF the proceeds in an amount equal to the cash balance of the Scrap Tire Fund ($1,134,495) within the Solid Waste Management Trust Fund. Excess scrap tire disposal tax proceeds would be deposited into the Scrap Tire Fund and distributed as follows: 8% to the Solid Waste Management Trust Fund, 17% to the Scrap Tire Disposal Account, 2.5% to the Inactive Hazardous Sites Cleanup Fund, 2.5% to the Bernard Allen Memorial Emergency Drinking Water Fund, and 70% to the counties.		N/A	N/A	7/1/11
Sec. 2.2(g) (GEN-S10) (ENV-H12) *Identical	Divert White Good Tax Proceeds to General Fund	$3 for each new white good purchased	Same	Redirects for FY 11-12 to the GF the proceeds in an amount equal to the cash balance of the White Good Fund ($1,131,342) within the Solid Waste Management Trust Fund. Excess white good disposal tax proceeds would be distributed as follows: 8% to the Solid Waste Management Trust Fund, 20% to the White Good Management Account, and 72% to the counties.		N/A	N/A	7/1/11
Sec. 31.11 (FIN-S6) (ENV-H3) *Identical[3]	Reduce Portion of Certificate of Title Fees Credited to Mercury Switch Removal Account	Varies	Varies	An application for certificate of title for a motor vehicle carries a $40 fee. A portion of the fee assessed is credited to the Mercury Switch Removal Account in DENR. The portion credited is reduced by this provision from $1 to $.50.		N/A	N/A	7/1/11

[2] The House counterpart provision does not include the technical change to the pesticide dealer license renewal fee.

Sec. 31.14 (ENV-S18A) (ENV-H2F) *Not identical[4]	Locals to Set and Collect Food and Lodging Fees and Retain Larger Local Portion of These Fees	$75	$75	Establishments that prepare or serve drink or food (other than nutrition programs for the elderly administered by the Division of Aging and Adult Services of the Department of Health and Human Services and public school cafeterias) must be permitted, the annual fee for which is seventy five dollars ($75.00) for each permit issued. Fees collected under this subsection are used for State and local food, lodging, and institution sanitation programs and activities. Under current law, no more than 33.3% of the fees collected under this subsection may be used to support State health programs and activities. This provision would reduce that percentage to 10%.		Unknown	Unknown	7/1/11
Sec. 31.15 (FIN-S8) Sec. 31.15 & 13.5 (ENV-H7) *Identical	Additional Uses of Hazardous Waste Fees	Varies	Same	Adds to the uses permitted for hazardous waste fees (i) to implement/provide oversight of necessary response activities involving inactive hazardous substances or waste disposal sites and (ii) to provide compliance/prevention activities within the solid waste program to ensure hazardous waste is not disposed in solid waste management facilities		N/A	N/A	7/1/11
Department of Labor								
Sec. 12.1 (LAB-S1) (LAB-H1) *Identical	Repeal Statute Requiring Biennial Review of Fees by Department	N/A	N/A	Repeals statutory requirement that Dept. of Labor biennially review all fees under its authority. This requirement was added during the last biennium but was found to be unnecessary		N/A	N/A	7/1/11
Environment & Natural Resources								
Sec. 2.2(h) (GEN-S10) (NATRES-H23) *Not identical[5]	Divert Portion of Deed Stamp Tax Revenue Source for Parks & Recreation Trust Fund	$1 per $500 of value conveyed	Same	Under current law, 75% of the revenue remitted to the State from the deed stamp tax is credited to the Parks and Recreation Trust Fund and used for various capital projects. This provision would redirect $4,217,500 of this amount to the General Fund for fiscal year 2011-12.		N/A	N/A	7/1/11
Sec. 13.11 (ENV-S17) (NATRES-H19) *Identical	Repeal DENR Review of Fee Schedules	N/A	N/A	Repeals statutory requirement that DENR biennially review all fees under its authority. This requirement was added during the last biennium and has been found to be unnecessary.		N/A	N/A	7/1/11

[3] See, also, section 28.30.

[4] Section 31.14, likely to be the House counterpart provision, directs FRD to study the administration and financing of food, lodging, and institution sanitation programs and rules, report the findings, and include the fee amount necessary to cover costs to the State and operating costs of the local health departments as well as the most efficient manner to set, collect, and remit the fee between the State and the local health departments.

[5] The amount redirected in the House counterpart provision was $8,435,000.

Sec. 2.2(i)) (GEN-S10) Sec. 2.2(i) & 31.17 (NATRES-H24A) *Not identical[6]	ivert Portion of Deed Stamp Tax Revenue Source for Natural Heritage Trust Fund	$1 per $500 of value conveyed	Same	current law, 25% of the revenue remitted to the State from the deed stamp tax is credited to the Natural Heritage Trust Fund and used for various land purchases. This provision would redirect $4.5 million of this amount to the General Fund for fiscal year 2011-12. This diversion takes the expected revenue to the Trust Fund not needed for operating expenses and debt service. Any additional revenue that comes into the fund may be used for grants. This diversion does not take the cash balance of the Trust Fund, it diverts revenue expected in FY 2011-12. Funds for existing contracts remain.		N/A	N/A	
Sec. 13,14 (NATRES-S1) Sec. 13.14 & 31.18 (NATRES-H6D) *Not identical[7]	Parks & Recreation Trust Fund; Allocation of Deed Stamp Tax Proceeds Credited to Fund	$1 per $500 of value conveyed	Same	Under current law, 75% of the revenue remitted to the State from the deed stamp tax is credited to the Parks & Recreation Trust Fund & used for various capital projects. This provision would redirect this revenue as follows for fiscal year 2011-12: for operating expenses of Division of Parks & Recreation of DENR $6M; for capital projects, repairs, renovations, debt service, & land acquisition by the State Parks System $9.75M; for grants to local governments for matching requirements $6,345,000; and for Coastal and Estuarine Water Beach Access Program $1,057,500. This diversion leaves money in the Trust Fund to cover the State Park Service debt payment, provide for local government parks and recreation grants and for the Coastal and Estuarine Water Beach Access program. Any additional revenue that comes into the fund may be used for the purposes described in G.S. 113-44.15. This diversion does not take the cash balance of the Trust Fund, it diverts revenue expected in FY 2011-12. Funds for existing contracts remain.		N/A	N/A	7/1/11
Sec. 13.27 (NATRES-S10) Sec. 13.27 & 31.20 (NATRES-H12E) * Not identical[8]	New Funding Source for Wildlife Resource Commission Operating Budget	N/A	N/A	In 1983, the General Assembly transferred a portion of the State sales and use tax revenue derived from hunting and fishing supplies and equipment to the Wildlife Resources Fund. This provision would repeal this transfer and replace it with an appropriation of $16M from the General Fund.		N/A	N/A	7/1/11
Sec. 31.22 (FIN-S5) (NATRES-H1) *Identical	No New Fees for Parking in State Parks	N/A	N/A	Prohibits State Parks from charging not-previously-charged parking fees.		N/A	N/A	7/1/11

[6] The amount redirected in the House counterpart provision was $8,000,000.

[7] The respective amount redirected in the House counterpart provision are $6M (operating expenses); $8M (capital projects, r&r, debt service, land acquisition); $4.23M (local gov't matching reqs.); and $705,000 for Beach Access.

[8] The amount of the appropriation in the House counterpart provision was $18,500,000 and directed that the funds be transferred to a special fund.

Section	Name	Current Cost	Proposed Cost	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
JPS: Court Costs & Contingent Court Costs								
Sec. 31.23 AOC-S19 AOC-H23 *Identical	Superior Court – Civil	$125.00	$180.00	Raised cost (GF, for support of General Court of Justice)		$1,492,315	$1,492,315	7/1/11
Sec. 31.23 AOC-S19 AOC-H23 *Identical	Superior Court – Criminal	$102.50	$154.50	Raised cost (GF, for support of General Court of Justice)	2010	$140,244	$140,244	7/1/11
Sec. 31.23 AOC-S19 AOC-H23 *Identical	District Court – Civil	$80.00	$130.00	Raised cost (GF, for support of General Court of Justice)	2007	$8,004,800	$8,004,800	7/1/11
Sec. 31.23 AOC-S19 AOC-H23 *Not identical	District Court – Criminal	$100.50	$129.50[9]	Raised cost (GF, for support of General Court of Justice)	2010	$23,663,976	$23,663,976	7/1/11
Sec. 31.23 AOC-S19 AOC-H23 *Identical	Magistrate – Civil (Small Claims)	$55.00	$80.00	Raised cost (GF, for support of General Court of Justice)	2010	$6,193,975	$6,193,975	7/1/11
Sec. 31.23 AOC-S19 AOC-H23 *Identical	Special Proceedings	$75.00	$106.00	Raised cost (GF, for support of General Court of Justice)	2009	$465,000	$465,000	7/1/11
Sec. 31.23 AOC-S19 AOC-H23 *Identical	Estates	$75.00	$106.00	Raised cost (GF, for support of General Court of Justice)	2009	$1,085,000	$1,085,000	7/1/11
Sec. 31.23 AOC-S19 AOC-H23 *Identical	Additional Civil Motions	$0.00	$20.00	New cost for all motions other than motions addressed in G.S. 7A-308 (GF, for support of General Court of Justice)	2009	$3,139,860	$3,139,860	7/1/11

[9] The court cost in the House counterpart provision was $124.50.

Section	Name	Current Cost	Proposed Cost	Use/Description	Last Chi	FY 11-12	FY 12-13	e
JPS: Court Costs & Contingent Court Costs								
Sec. 31.23 AOC-S19 AOC-H23 *Identical	Reissuance of Summons	$0.00	$15.00	New cost for alias and pluries summons and all endorsements issues on an original summons, both under G.S. 7A-308 (GF, for support of General Court of Justice)	New	$820,455	$820,455	7/1/11
Sec. 31.23 AOC-S19 AOC-H23 *Identical	Foreclosure	$150.00	$300.00	Raised cost (GF, for support of General Court of Justice)	2009	$8,875,350	$8,875,350	7/1/11
Sec. 31.23 AOC-S19 AOC-H23 *Identical	Counterclaims and cross-claims (except 50B) – magistrate, district court and superior court	$0.00	$180 $130 $80 $12 $16 $4	New costs imposed for counter and cross-claims in the amounts of $180 (Superior Court) / $130 (District Court / $80 (Magistrate) (goes to GF, for support of General Court of Justice), $12 for cases before magistrates or $16 for cases in district or superior court (goes to the counties) and $4 (goes to the Court Information Technology Fund)	New	$1,880,970	$1,880,970	7/1/11
Sec. 31.23 AOC-H23 *Not Identical[10]	Reduce access to CJ Pass-through	$2.05	N/C	No change in Senate counterpart provision AOC-S19				
Sec. 31.24 AOC-S21 AOC-H28 *Identical	Community Mediation Centers Worthless Check Programs	$60	$60	A private, non-profit entity may charge fees for its services. This section codifies this ability for a community mediation center. The General Assembly began encouraging the work of these centers in 1999 as a means of reducing the caseload in the district court system.	New	No change	No changes	7/1/11
Sec. 31.25 AOC-S25 AOC-H29 *Identical	Increase Interstate Compact Transfer Fee	$150	$250	Increases transfer application fee for convicts in this State who make a request for transfer to another state pursuant to the Interstate Compact.	2008	Unknown	Unknown	7/1/11
Sec. 31.26 AOC-S22 AOC-H24 *Identical	Contingent Court Cost Increases for Counties: District Court Facility Fee	$12.00	$30.00	Increases the cost for use of the courtroom and related judicial facilities. The proceeds would remain with the counties. The provision would only become effective if HB 642 (or other requirement that a misdemeanant with a period of confinement of ≤ 6 months serve in a local confinement facility) becomes effective.	Prior to 2000	$19,100,000 (proceeds go to counties)	$19,100,000 (proceeds go to counties)	7/1/11
Sec. 31.26 AOC-S22 AOC-H24 *Identical	Increase Civil Process Fee	$15.00	$30.00	Increases the costs for the service of civil processes. The proceeds would remain with the counties. The provision would only become effective if HB 642 (or other requirement that a misdemeanant with a period of confinement of ≤ 6 months serve in a local confinement facility) becomes effective.	2004	$3,300,000 (proceeds go to counties)	$3,300,000 (proceeds go to counties)	7/1/11

[10] Senate provision AOC-S19 is the Senate counterpart to House provision AOC-H23, which included a reduction to the portion of General Court of Justice costs that were to be remitted to the NC State Bar for legal services programs from $2.05 per cost to $1 per cost.

Section	Name	Current Cost	Proposed Cost	Use/Description	East Change	FY 11-12	FY 12-13	Eff. Date
JPS: Court Costs & Contingent Court Costs								
Sec. 31.26 AOC-S22 AOC-H24 *Identical	Daily Jail Fee	$5.00	$10.00	Increases the costs for daily jail confinement. The proceeds would remain with the counties. The provision would only become effective if HB 642 (or other requirement that a misdemeanant with a period of confinement of ≤ 6 months serve in a local confinement facility) becomes effective.	Prior to 2000	Unknown (proceeds go to counties)	Unknown (proceeds go to counties)	7/1/11
Sec. 31.26 AOC-S22 AOC-H24 *Identical	Improper Equipment	$0.00	$50.00	Would impose an additional costs on a person convicted of an improper equipment violation. The proceeds would remain with the counties. The proceeds would remain with the counties. The provision would only become effective if HB 642 (or other requirement that a misdemeanant with a period of confinement of ≤ 6 months serve in a local confinement facility) becomes effective.	New	$12,430,000 (proceeds go to counties)	$12,430,000 (proceeds go to counties)	7/1/11
Sec. 31.26 AOC-S22 AOC-H24 *Identical	Medical Care for Prisoners	$10	Not more than $20	Would increase the cost for nonemergency medical care to prisoners. The proceeds would remain with the counties. The provision would only become effective if HB 642 (or other requirement that a misdemeanant with a period of confinement of ≤ 6 months serve in a local confinement facility) becomes effective.	Prior 2000	Unknown (proceeds go to counties)	Unknown (proceeds go to counties)	7/1/11
Sec. ## AOC-S23 HOUSE: none	Laboratory Facilities Fee Expansion	$600 for use of SBI lab	$600 for use of SBI or local law enforcement labs	Would expand the $600 fee for use of laboratory facilities from being imposed solely for use of SBI facilities to include imposition of fee for use of local law enforcement lab facilities.				7/1/11

GENERAL GOVERNMENT

Section	Name	Current Fee	Proposed Fee	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
Sec. 31.27 GENGOV-S3 INS-H4 *Identical	Insurance Regulatory Charge	6%	6%	First enacted in 1991 to defray the State's cost of regulating the insurance industry, the charge is a percentage of each insurance company's gross premiums tax liability. The General Assembly must set the rate for this charge each year.	2010			7/1/11
Sec. 31.27A SEC-S1 HOUSE: none	Investment Company Notice Filing Fee	$2000	$1725 + $275 per security	Modifies the annual fee charged to investment companies offering securities in this State from a flat $2000 to $1750 + $275 per security offered.		$1,600,000	$1,600,000	1/1/11
Sec. 31.27B ADMIN-S11A HOUSE: none	Raise Parking Rates	$1/hr.	$2/hr.	Directs the Department of Administration to raise parking rates from $1 per hour to $2 per hour.	2006	$550,000	$550,000	7/1/11

INFORMATION TECHNOLOGY

Section	Name	Current Fee	Proposed Fee	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
Sec. 6A.16 IT-S17 Money Report p. N-2 IT-H16C *Functionally identical	Statewide Information Technology Procurement	N/A	New (schedule of fees TBD)	Allows the Statewide Information Technology Procurement Office to charge a fee to make up a $500,000 shortfall resulting from a reduction in supplemental staffing contracts. In the past, a 4.5% fee on IT contracts has funded the Office. Reductions in supplemental staffing contracts have reduced the amount received from this fee.	N/A	$550,000	$550,000	When bill becomes law

TRANSPORTATION

Section	Name	Current Fee	Proposed Fee	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
Sec. 28.30 TRANS-S26 *Identical	Additional Highway Trust Fund Money for Mobility Fund; Visitor Centers Funding	$40, of which none goes to Mobility Fund	$40, of which $.50 goes to Mobility Fund	An application for certificate of title for a motor vehicle carries a $40 fee. This provision would direct $.50 of that fee to the Mobility Fund				
Sec. 31.29 TRANS-S47 TRANS-H20 *Identical	DMV Bulk (Partial) Data Records	Varies	$.03/record	New per-individual-record fee for non-official license record data.	N/A	$5,050,000	$5,050,000	7/1/11
Sec. 31.30 TRANS-S35 TRANS-H11 *Identical	Toll Ferries	Set by DOT for some routes ($1-$45 (route length, presence/ type of vehicle)	Set by Board of Transportation for all routes	Requires all ferry routes be tolled. Would allow DOT to take into account the needs of commuters and other frequent passengers.	2002	$5,000,000	$7,500,000	4/1/12

PAGES ATTENDING

COMMITTEE: Finance ROOM: 544

DATE: 5-24 TIME: ~~2:30~~ 2:45 or ~~immediately after~~ Session

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Rachel Terrio	Gastonia	Dr. Forester
2 André Elliott	Goldsboro	Pate
3		
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 24, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Carden	
John Bowdish	Astra Zeneca
Jon Alley	BEGINNERS
Jessi Hays	NC HBA
David McAdam	NC Realtors
Elizabeth Robinson	MCCMA
[illegible]	JA
Patrick Bfk	NCAEC
Will Culpepper	NVII
W. Gardner Pulliam III	DCC & Assoc.
R Rogers	CWMTF

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 24, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bob Lamm	RLA
Amy Whited	NCMS
Meg Mills	KCG
Paul Meyer	NCLM
H. Harris	NCDOT
Johanna Reese	DOT
Alexandra Sirota	NC Budget & Tax Center
Bill Rowe	NC Justice Center
Kainbarsress	DENR
Elizabeth Biser	Brooks Pierce
Alex Ward	Research

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 24, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Israel	Research
Mildred Spearman	NCAOC
John Peterson	CAPSTRAT
John Hardin	MFJS
Jemmi Overton	NCDA&CS
Matt Gross	NCPC
John Hanis	NCGA
Debra Horton	NCPTA
Ashley Perkinson	Perkinson Law
Lesley Cates	UNC
Pete Harris	NC Commerce

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 24, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Robert Wilson	SOS
Bobby Haynes	SOS
John McAlister	NC Chamber
Butch Gunnells	NC Beverage A
J GOODMAN	NC CHAMBER
Andy Ellis	NCAA
[illegible]	NCAA
[illegible]	NCMedBoc
Paul Haglund	Infosm Inc
Jamie King	NCEL
Laura Blair	NC State Ports Authority

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 24, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Evelyn Hawthorne	DHGR
Jim Stegall	NC Alliance for Public Charter Schools
Angel Sams	NSS
Whitney Christensen	Jordan Price
Gene Causby	NCSCA
Tracy Pressell, Jr.	N N Ret. School Personnel
[illegible]	NCSBA
[illegible]	MVC.
[illegible]	NWC
Ken Melton	K.M.A.
Paul Shrum	NCFB

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 24, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jim Johnson	BSA
[signature]	[illegible]
Kay Emanuel	Legislative Reporting Services
DAVID BARNES	PS
Chris Cullen	Nelson Mullins
[signature]	"
Paula Hopper	Childress Klein

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 24, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Patricia D. Yancey	APPCNC/LLPP
Linda Dunkley	NCAE
Anita W. Hemmi	UNC GA
Chuck Stone	SEANC
Danielle Mearis	APPCNC/LLPP
Elizabeth Ouzts	Environment North Carolina

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 24, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Hartzell	Environment North Carolina

SENATE FINANCE COMMITTEE
Tuesday, May 31, 2011 at 3:15 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 3:15 PM on May 31, 2011 in room 544 of the Legislative Office Building. Twenty-nine members of the committee were present. Jonathan Glover and Jeremy Glover of Bailey, Thomas Jarrell of High Point, Manraj Singh of Wilson and Eleanor Yarboro of Goldsboro served as pages. Senator Hartsell presided as chair.

H.B. 200 – Appropriations Act of 2011

Senator Harrington was recognized to move to adopt the proposed committee substitute (PCS) for discussion. The motion carried. Cindy Avrette, an attorney with the Research Division, was recognized to explain the finance highlights. The PCS contains a finance package that allows a $50,000 tax deduction for net business income received by individual taxpayers and modifies the franchise tax base. It reduces budget availability by $131.6 million in FY 2011-12 and by $335.6 million in FY 2012-13 for a total finance package of $467.2 million for the biennium. The bill approved by the Finance Committee the week before contained a finance package of $671.7 million for the biennium. This tax relief is in addition to the $1.3 billion in expiring tax revenue. Amna Cameron, an analyst with the Fiscal Research Division, was recognized to answer questions regard ferry tolls. Barry Board, an analyst with the Fiscal Research Division, was recognized to answer business tax exemption questions. Doug Holbrook, an analyst with the Fiscal Research Division, was recognized to answer questions regarding impact on legal aid. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS, the summary and the money report is attached.

The meeting adjourned at 3:32 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 31, 2011	3:15 PM	544 LOB

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, May 31, 2011

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

FAVORABLE

H.B.(SCS #3) **200** Appropriations Act of 2011.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 200

Committee Substitute Favorable 4/26/11
Committee Substitute #2 Favorable 4/28/11
Fourth Edition Engrossed 5/4/11
Senate Finance Committee Substitute Adopted 5/25/11
Senate Pensions & Retirement and Aging Committee Substitute Adopted 5/26/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H200-PCS30000-LEf-17 #3 FAV

Short Title: Appropriations Act of 2011. (Public)

Sponsors:

Referred to:

March 2, 2011

A BILL TO BE ENTITLED

AN ACT TO SPUR THE CREATION OF PRIVATE SECTOR JOBS; REORGANIZE AND REFORM STATE GOVERNMENT; MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS AND INSTITUTIONS; AND TO ENACT BUDGET RELATED AMENDMENTS.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

TITLE

SECTION 1.1. This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2011."

INTRODUCTION

SECTION 1.2. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the State Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the fiscal biennium ending June 30, 2013, according to the following schedule:

Current Operations – General Fund	**2011-2012**	**2012-2013**
EDUCATION		

Community Colleges System Office	$ 985,000,000	$ 985,000,000
Department of Public Instruction	7,464,492,057	7,450,000,000
University of North Carolina – Board of Governors		
Appalachian State University	145,563,319	145,680,676
East Carolina University		
Academic Affairs	247,397,807	247,397,807
Health Affairs	65,196,439	65,196,439
Elizabeth City State University	38,226,042	38,398,361
Fayetteville State University	56,925,951	56,925,951
NC A&T State University	105,355,805	105,794,754
NC Central University	94,342,683	94,342,683
NC State University		
Academic Affairs	434,563,241	434,677,423
Agricultural Research	59,239,461	59,239,461
Agricultural Extension	43,539,609	43,539,609
UNC-Asheville	42,004,444	42,004,444
UNC-Chapel Hill		
Academic Affairs	309,481,584	312,843,120
Health Affairs	219,507,009	222,570,732
AHEC	49,747,851	49,747,851
UNC-Charlotte	216,455,073	217,471,216
UNC-Greensboro	173,180,926	173,180,926
UNC-Pembroke	61,534,005	62,277,254
UNC-School of the Arts	27,796,473	27,796,473
UNC-Wilmington	105,943,181	107,138,757
Western Carolina University	90,591,556	91,070,460
Winston-Salem State University	76,496,951	76,496,950
General Administration	38,186,863	27,628,722
University Institution Programs	(375,153,400)	(383,808,914)
Related Educational Programs	85,679,060	115,272,420
UNC Financial Aid Private Colleges	91,635,664	86,534,065
NC School of Science & Math	18,937,535	18,937,535
UNC Hospitals	18,000,000	18,000,000
Total University of North Carolina – Board of Governors	$ 2,540,375,132	$ 2,551,672,698
HEALTH AND HUMAN SERVICES		
Department of Health and Human Services		
Division of Central Management and Support	$ 50,177,377	$ 44,577,987
Division of Aging and Adult Services	37,019,667	37,019,667
Division of Services for Blind/Deaf/Hard of Hearing	8,389,110	8,372,886
Division of Child Development	266,102,933	266,102,933
Division of Health Service Regulation	16,133,031	16,133,031
Division of Medical Assistance	2,958,388,184	2,907,276,302
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	665,712,232	710,712,232
NC Health Choice	79,452,317	83,717,865
Division of Public Health	190,443,245	157,538,834
Division of Social Services	186,183,068	186,183,068
Division of Vocational Rehabilitation	37,125,788	37,528,128
Total Health and Human Services	$ 4,495,126,952	$ 4,455,162,933
NATURAL AND ECONOMIC RESOURCES		
Department of Agriculture and Consumer Services	$ 65,460,864	$ 62,198,634

Department of Commerce		
Commerce	50,852,340	33,250,463
Commerce State-Aid	32,851,025	30,151,984
NC Biotechnology Center	17,551,710	17,551,710
Rural Economic Development Center	25,376,729	25,376,729
Department of Environment and Natural Resources	165,784,887	148,148,105
DENR Clean Water Management Trust Fund	11,250,000	11,250,000
Department of Labor	15,836,887	15,836,887
Wildlife Resources Commission	18,000,000	17,221,179
JUSTICE AND PUBLIC SAFETY		
Department of Correction	$ 1,337,816,346	$ 1,348,410,793
Department of Crime Control and Public Safety	225,258,795	215,164,518
Judicial Department	438,920,048	435,141,107
Judicial Department – Indigent Defense	110,091,526	112,748,733
Department of Justice	80,704,013	80,864,138
Department of Juvenile Justice and Delinquency Prevention	135,593,692	131,140,565
GENERAL GOVERNMENT		
Department of Administration	$ 63,607,330	$ 65,511,460
Department of State Auditor	11,857,574	10,676,035
Office of State Controller	28,368,957	28,368,957
Department of Cultural Resources		
Cultural Resources	63,524,857	61,697,001
Roanoke Island Commission	1,805,236	1,203,491
State Board of Elections	5,186,603	5,126,603
General Assembly	53,259,495	50,104,208
Office of the Governor		
Office of the Governor	4,741,157	4,741,157
Office of State Budget and Management	5,848,663	5,848,663
OSBM – Reserve for Special Appropriations	1,940,612	440,612
Housing Finance Agency	9,673,051	9,673,051
Department of Insurance		
Insurance	36,393,921	36,393,921
Insurance – Volunteer Safety Workers' Compensation	2,294,000	2,623,654
Office of Lieutenant Governor	695,324	695,324
Office of Administrative Hearings	4,983,871	4,983,871
Department of Revenue	78,199,538	78,199,538

Department of Secretary of State	10,654,563	10,654,563
Department of State Treasurer		
State Treasurer	6,657,031	6,621,750
State Treasurer – Retirement for Fire and Rescue Squad Workers	17,812,114	17,812,114
RESERVES, ADJUSTMENTS, AND DEBT SERVICE		
Contingency and Emergency Fund	$ 5,000,000	$ 5,000,000
State Retirement System Contribution	248,100,000	336,000,000
Judicial Retirement System Contribution	6,800,000	7,800,000
Firemen's & Rescue Squad Workers' Pension Fund	4,318,042	5,366,928
State Health Plan	7,119,541	102,151,104
Information Technology Fund	4,458,142	6,158,142
Reserve for Job Development Investment Grants (JDIG)	15,400,000	27,400,000
Continuation Review Reserve	0	35,576,758
Comprehensive Review of Compensation Plans	2,000,000	0
Compensation Adjustment and Performance Pay Reserve	0	121,105,840
Severance Expenditure Reserve	69,000,000	0
Automated Fraud Detection Development	1,000,000	7,000,000
Controller – Fraud Detection Development	500,000	500,000
Debt Service		
General Debt Service	688,957,188	759,984,974
Federal Reimbursement	1,616,380	1,616,380
TOTAL CURRENT OPERATIONS – GENERAL FUND	**$ 19,678,116,193**	**$ 19,943,327,275**

GENERAL FUND AVAILABILITY STATEMENT

SECTION 2.2.(a) The General Fund availability used in developing the 2011-2013 biennial budget is shown below.

	FY 2011-2012	FY 2012-2013
Unappropriated Balance Remaining	$ 0	$ 13,980,015
Ending Unreserved Fund Balance for FY 2009-2010	236,902,394	0
Anticipated Reversions for FY 2010-2011	537,740,799	0
Anticipated Over-collections from FY 2010-2011	180,800,000	0
Repayment of Medicaid Receipts in FY 2010-2011	(125,000,000)	0
Statutory Earmarks:		
Savings Reserve Account	(185,000,000)	0
Repairs and Renovations Reserve Account	(125,000,000)	0
Beginning Unreserved Fund Balance	**$ 520,443,193**	**$ 13,980,015**
Revenues Based on Existing Tax Structure	**$ 18,129,800,000**	**$ 19,181,900,000**

Nontax Revenues		
Investment Income	$ 59,400,000	$ 76,700,000
Judicial Fees	217,800,000	217,800,000
Disproportionate Share	100,000,000	100,000,000
Insurance	71,400,000	73,500,000
Other Nontax Revenues	182,500,000	182,500,000
Highway Trust Fund/Use Tax Reimbursement Transfer	41,500,000	27,600,000
Highway Fund Transfer	20,230,000	24,080,000
Subtotal Nontax Revenues	**$ 692,830,000**	**$ 702,180,000**
Total General Fund Availability	**$ 19,343,073,193**	**$ 19,898,060,015**
Adjustments to Availability: 2011 Session		
Loss of Estate Tax	$ (57,100,000)	$ (72,200,000)
Small Business Tax Relief Package	(131,600,000)	(335,600,000)
Repeal Wildlife Resources Commission Sales Tax Earmark	22,970,000	23,920,000
Suspend Corporate Income Tax Earmark (Public School Construction)	72,110,000	74,750,000
Increase in Judicial Fees	61,765,715	61,765,715
Increase Investment Company Notice Filing Fee	1,600,000	1,600,000
Increase Parking Fees for Visitors	550,000	550,000
Loss of Revenue from the Town of Butner	(1,213,235)	(1,213,235)
Transfer from E-Commerce Reserve Fund	4,483,526	0
Divert Funds from Parks & Recreation Trust Fund	8,435,000	0
Divert Funds from Recreational/Natural Heritage Trust Fund	8,000,000	0
Transfer from Highway Fund for State Highway Patrol	196,849,542	188,209,049
Transfer Additional Funds from Highway Trust Fund	35,223,642	0
Transfer from Mercury Prevention Pollution Fund	250,000	0
Transfer from Commerce – Enterprise Fund	500,000	0
Divert Funds from Scrap Tire Disposal Account	2,268,989	0
Divert Funds from White Goods Management Account	1,951,465	0
Diversion of Golden LEAF Funds	17,563,760	17,563,760
Master Settlement Agreement Funds	24,668,720	25,580,772
Transfer Health and Wellness Trust Funds to Public Health	32,904,411	0
Department of Revenue – Accounts Receivable Program	25,000,000	25,000,000
Medicaid Disproportionate Share Receipts	15,000,000	15,000,000
Adjust Transfer from Insurance Regulatory Fund	(742,348)	(742,348)
Adjust Transfer from Treasurer's Office	(3,881,172)	(3,916,453)
Transfer from NC Flex FICA Funds	1,000,000	0
Proceeds from the Sale of State Assets	15,000,000	25,000,000
Subtotal Adjustments to Availability: 2011 Session	**$ 353,558,015**	**$ 45,267,260**
Revised General Fund Availability	**$ 19,696,631,208**	**$ 19,943,327,275**
Less General Fund Appropriations	**$ (19,682,651,193)**	**$ (19,943,327,275)**
Unappropriated Balance Remaining	**$ 13,980,015**	**$ 0**

SECTION 2.2.(b) Notwithstanding the provisions of G.S. 105-187.9(b)(1) and G.S. 105-187.9(b)(2), the sum to be transferred from the Highway Trust Fund under those subdivisions for the 2011-2012 fiscal year is seventy-six million seven hundred twenty-three thousand six hundred forty-two dollars ($76,723,642) and for the 2012-2013 fiscal year is twenty-seven million six hundred thousand dollars ($27,600,000).

SECTION 2.2.(c) Notwithstanding the provisions of G.S. 115C-546.1, the Secretary of Revenue shall transfer the corporate income tax funds specified in

G.S. 115C-546.1(b) to the State Controller for deposit in Nontax Budget Code 19978 (Intrastate Transfers) during the 2011-2012 and 2012-2013 fiscal years to offset continued operations of the State's public schools.

SECTION 2.2.(d) Notwithstanding any other provision of law to the contrary, effective July 1, 2011, the following amounts shall be transferred to the State Controller to be deposited in Nontax Budget Code 19878 (Intrastate Transfers) or the appropriate budget code as determined by the State Controller. These funds shall be used to support the General Fund appropriations as specified in this act for the 2011-2012 fiscal year.

Budget Code	Fund Code	Description	Amount
24100	2514	E-Commerce Reserve	$ 4,483,526
54600	5881	Commerce Enterprise Fund	500,000
24300	2119	Mercury Prevention Pollution Fund	250,000

SECTION 2.2.(e) Of the 2011-2012 and the 2012-2013 annual installment payments to the North Carolina State Specific Account that would have been transferred to The Golden L.E.A.F. (Long-Term Economic Advancement Foundation), Inc., pursuant to Section 2(b) of S.L. 1999-2, seventeen million five hundred sixty-three thousand seven hundred sixty dollars ($17,563,760) for the 2011-2012 fiscal year and seventeen million five hundred sixty-three thousand seven hundred sixty dollars ($17,563,760) for the 2012-2013 fiscal year is transferred to the General Fund.

SECTION 2.2.(f) Notwithstanding the provisions of G.S. 105-187.19(b), effective for taxes levied during the 2011-2012 fiscal year, the Secretary of Revenue shall credit to the General Fund the sum of two million two hundred sixty-eight thousand nine hundred eighty-nine dollars ($2,268,989) from the net tax proceeds that G.S. 105-187.19(b) directs the Secretary to credit to the Scrap Tire Disposal Account.

SECTION 2.2.(g) Notwithstanding the provisions of G.S. 105-187.24, effective for taxes levied during the 2011-2012 fiscal year, the Secretary of Revenue shall credit to the General Fund the sum of one million nine hundred fifty-one thousand four hundred sixty-five dollars ($1,951,465) from the net tax proceeds that G.S. 105-187.24 directs the Secretary to credit to the White Goods Management Account.

SECTION 2.2.(h) Notwithstanding the provisions of G.S. 105-228.30(b) and G.S. 113-44.15, effective for taxes levied during the 2011-2012 fiscal year, the Secretary of Revenue shall credit the sum of eight million four hundred thirty-five thousand dollars ($8,435,000) to the General Fund of the net tax proceeds that G.S. 105-228.30(b) directs the Secretary to credit to the Parks and Recreation Trust Fund.

SECTION 2.2.(i) Notwithstanding the provisions of G.S. 105-228.30(b) and G.S. 113-77.9, effective for taxes levied during the 2011-2012 fiscal year, the Secretary of Revenue shall credit the sum of eight million dollars ($8,000,000) to the General Fund of the net tax proceeds that G.S. 105-228.30(b) directs the Secretary to credit to the Natural Heritage Trust Fund.

SECTION 2.2.(j) Of the funds available in the year-end 2010-2011 fiscal year fund balance, the Director of the Budget may use up to one hundred twenty-five million dollars ($125,000,000) to pay Medicaid costs associated with the early draw down of Medicaid funds during the 2009-2010 fiscal year and are thereby appropriated for such purpose. The Director of the Budget shall report the amount of funds used under this section no later than 30 days after payment to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division.

SECTION 2.2.(k) Notwithstanding the provisions of G.S. 143C-4-3, the State Controller shall transfer only one hundred twenty-five million dollars ($125,000,000) from the unreserved fund balance to the Repairs and Renovations Reserve Account on June 30, 2011. This subsection becomes effective June 30, 2011.

SECTION 2.2.(l) Funds transferred under this section to the Repairs and Renovations Reserve Account are appropriated for the 2011-2012 fiscal year to be used in accordance with G.S. 143C-4-3.

SECTION 2.2.(m) Notwithstanding G.S. 143C-4-2, the State Controller shall transfer only one hundred eighty-five million dollars ($185,000,000) from the unreserved fund

balance to the Savings Reserve Account on June 30, 2011. This is not an "appropriation made by law," as that phrase is used in Section 7(1) of Article V of the North Carolina Constitution. This subsection becomes effective June 30, 2011.

SECTION 2.2.(n) Notwithstanding the provisions of Article 6 of Chapter 143C of the General Statute or any other law to the contrary, the State Controller shall transfer one million dollars ($1,000,000) from the NC FICA Account for deposit in the Nontax Budget Code 19878 (Intrastate Transfers) for the 2011-2012 fiscal year.

PART III. CURRENT OPERATIONS/HIGHWAY FUND

CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

SECTION 3.1. Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the fiscal biennium ending June 30, 2013, according to the following schedule:

Current Operations – Highway Fund	**2011-2012**	**2012-2013**
Department of Transportation		
Administration	$ 85,412,594	$ 85,412,594
Division of Highways		
Administration	34,836,793	34,836,793
Construction	87,232,806	86,339,067
Maintenance	1,185,080,215	1,244,588,354
Planning and Research	4,055,402	4,055,402
OSHA Program	372,792	372,792
Ferry Operations	34,189,589	43,538,132
State Aid		
Municipalities	89,373,921	90,187,224
Public Transportation	90,551,575	90,551,575
Airports	18,401,413	22,311,031
Railroads	21,701,153	21,701,153
Governor's Highway Safety	273,093	273,093
Division of Motor Vehicles	90,142,238	43,004,042
Other State Agencies, Reserves, Transfers	292,326,416	351,988,748
Capital Improvements	15,250,000	15,000,000
Total	**$ 2,049,200,000**	**$ 2,134,160,000**

HIGHWAY FUND AVAILABILITY STATEMENT

SECTION 3.2. The Highway Fund availability used in developing the 2011-2013 fiscal biennial budget is shown below:

Highway Fund Availability Statement	**2011-2012**	**2012-2013**
Unappropriated Balance from Previous Year	$ 24,000,000	$ 0
Beginning Credit Balance	0	0
Estimated Revenue	2,025,200,000	2,134,160,000
Total Highway Fund Availability	$ 2,049,200,000	$ 2,134,160,000
Unappropriated Balance	$ 0	$ 0

PART IV. HIGHWAY TRUST FUND APPROPRIATIONS

HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 4.1. Appropriations from the State Highway Trust Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the fiscal biennium ending June 30, 2013, according to the following schedule:

Current Operations – Highway Trust Fund	**2011-2012**	**2012-2013**
Intrastate	$ 460,823,529	$ 487,503,034
Aid to Municipalities	51,216,036	54,043,432
Secondary Roads	43,655,667	49,320,944
Urban Loops	263,587,722	212,957,986
Program Administration	44,774,400	47,107,200
Turnpike Authority	64,000,000	81,500,000
Transfer to General Fund	76,720,918	27,595,861
Transfer to Highway Fund	400,000	400,000
Debt Service	79,231,728	81,481,543
Mobility Fund	31,000,000	0
Reserves	0	45,000,000
GRAND TOTAL CURRENT OPERATIONS	**$ 1,115,410,000**	**$ 1,086,910,000**

HIGHWAY TRUST FUND AVAILABILITY STATEMENT

SECTION 4.2. The Highway Trust Fund availability used in developing the 2011-2013 fiscal biennial budget is shown below:

Highway Trust Fund Availability	**2011-2012**	**2012-2013**
Unappropriated Balance	$ 75,000,000	$ 0
Estimated Revenue	1,040,410,000	1,086,910,000
Total Highway Trust Fund Availability	**$ 1,115,410,000**	**$ 1,086,910,000**

PART V. OTHER APPROPRIATIONS

APPROPRIATION OF OTHER FUNDS

SECTION 5.1.(a) State funds, as defined in G.S. 143C-1-1(d)(25), are appropriated as provided in G.S. 143C-1-2 for the 2011-2013 fiscal biennium, with the adjustments made to the continuation budget as reflected in the Governor's Recommended Budget and Budget Support Document, as follows:

(1) For all budget codes listed in "The State of North Carolina Governor's Recommended Budget, 2011-2013" and in the Budget Support Document, cash balances and receipts are appropriated up to the amounts specified, as adjusted by the General Assembly, for the 2011-2012 fiscal year and the 2012-2013 fiscal year. Funds may be expended only for the programs, purposes, objects, and line items or as otherwise authorized by the General Assembly. Expansion budget funds listed in those documents are appropriated only as otherwise provided in this act.

(2) Notwithstanding the provisions of subdivision (1) of this subsection:

a. Any receipts that are required to be used to pay debt service requirements for various outstanding bond issues and certificates of participation are appropriated up to the actual amounts received for the 2011-2012 fiscal year and the 2012-2013 fiscal year and shall be used only to pay debt service requirements.

b. Other funds, cash balances, and receipts of funds that meet the definition issued by the Governmental Accounting Standards Board of a trust or agency fund are appropriated for and in the amounts required to meet the legal requirements of the trust agreement for the 2011-2012 fiscal year and the 2012-2013 fiscal year.

SECTION 5.1.(b) Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by the State Budget Act. Overrealized receipts are appropriated up to the amounts necessary to implement this subsection.

SECTION 5.1.(c) In addition to the consultation and reporting requirements set out in G.S. 143C-6-4, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division within 30 days after the end of each quarter on any overrealized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount overrealized, the amount authorized for expenditure, and the rationale for expenditure.

SECTION 5.1.(d) Notwithstanding subsections (a) and (b) of this section, there is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year.

OTHER RECEIPTS FROM PENDING GRANT AWARDS

SECTION 5.2.(a) Notwithstanding G.S. 143C-6-4, State agencies may, with approval of the Director of the Budget and after consultation with the Joint Legislative Commission on Governmental Operations, spend funds received from grants awarded subsequent to the enactment of this act.

SECTION 5.2.(b) The Office of State Budget and Management shall work with the recipient State agencies to budget grant awards according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a time-limited basis. The Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to expending any funds received from grant awards. Funds received from such grants are hereby appropriated and shall be incorporated into the authorized budget of the recipient State agency.

SECTION 5.2.(c) Notwithstanding the provisions of this section, no State agency may accept a grant not anticipated in this act if acceptance of the grant would obligate the State to make future expenditures relating to the program receiving the grant or would otherwise result in a financial obligation as a consequence of accepting the grant funds.

SECTION 5.2.(d) Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may spend funds received from the following grants for the 2011-2012 fiscal year awarded subsequent to the enactment of this act for up to the specified amounts:

(1)	Child Nutrition Equipment Assistance	$815,762
(2)	Verizon Thinkfinity State Education Partnership	$ 40,000
(3)	State Abstinence Education Program	$1,585,347.

Neither the approval of the Director of the Budget nor consultation with the Joint Legislative Commission on Governmental Operations is required prior to the expenditure of these funds. The provisions of subsection (b) of this section do not apply to these funds.

CIVIL FORFEITURE FUNDS

SECTION 5.3. Appropriations. – Appropriations are made from the Civil Penalty and Forfeiture Fund for the fiscal biennium ending June 30, 2013, as follows:

	FY 2011-2012	FY 2012-2013
School Technology Fund	$ 18,000,000	$ 18,000,000
State Public School Fund	120,362,790	120,362,790
Total Appropriation	$ 138,362,790	$ 138,362,790

EDUCATION LOTTERY

SECTION 5.4.(a) Notwithstanding G.S. 18C-164, the revenue used to support appropriations made in this act is transferred from the State Lottery Fund in the amount of four hundred twenty-four million nine hundred seventy-three thousand six hundred thirty dollars ($424,973,630) for the 2011-2012 fiscal year.

SECTION 5.4.(b) Notwithstanding G.S. 18C-164, the appropriations made from the Education Lottery Fund for the 2011-2012 fiscal year are as follows:

Teachers in Early Grades	$220,643,188
Prekindergarten Program	$ 63,135,709
Public School Building Capital Fund	$100,000,000
Scholarships for Needy Students	$ 30,450,000
UNC Need-Based Financial Aid	$ 10,744,733
Total Appropriation	$424,973,630

SECTION 5.4.(c) Notwithstanding G.S. 18C-164, the North Carolina State Lottery Commission shall not transfer funds to the Education Lottery Reserve Fund for the 2011-2012 fiscal year or the 2012-2013 fiscal year.

SECTION 5.4.(d) Notwithstanding G.S. 18C-164(c), G.S. 115C-546.2(d), or any other provision of law, funds appropriated in this section to the Public School Building Capital Fund for the 2011-2012 fiscal year shall be allocated to counties on the basis of average daily membership (ADM).

SECTION 5.4.(e) Notwithstanding G.S. 18C-164(c), Article 35A of Chapter 115C of the General Statutes, or any other provision of law, the funds appropriated in this section for UNC Need-Based Financial Aid shall be administered in accordance with the policy adopted by the Board of Governors of The University of North Carolina.

SECTION 5.4.(f) Notwithstanding G.S. 18C-164(f), if the actual net lottery revenues for the 2011-2012 fiscal year exceed the amounts appropriated in subsection (b) of this section, the excess net lottery revenues shall be allocated for school capital on the basis of average daily membership.

SECTION 5.4.(g) Funds appropriated in this section for scholarships for needy students shall be used only for students at the constituent institutions of The University of North Carolina and the constituent institutions of the Community College System.

PART VI. GENERAL PROVISIONS

CLARIFY CERTIFIED BUDGET

SECTION 6.1.(a) The purpose of this section is to clarify the distinction between changes to the budget enacted by the General Assembly in this act and changes made by the Director of the Budget pursuant to other authority.

SECTION 6.1.(b) For the 2011-2013 fiscal biennium, and notwithstanding the provisions of Chapter 143C of the General Statutes or any other provision of law, the certified budget for each State agency shall reflect only the total of all appropriations enacted for each State agency by the General Assembly in this act as modified by this act; therefore, the Director of the Budget shall modify the certified budget only to reflect the following actions and only to the extent that they are authorized by this act:

(1) The allocation of funds set out in reserves.
(2) Government reorganizations.

The Director of the Budget shall set out all other budget modifications in the authorized budget.

CONTINGENCY AND EMERGENCY FUND LIMITATION

SECTION 6.2. For the 2011-2013 fiscal biennium, and notwithstanding the provisions of G.S. 143C-4-4(b), funds appropriated to the Contingency and Emergency Fund may be used only for expenditures required (i) by a court or Industrial Commission order or (ii) to respond to events as authorized under G.S. 166A-5(1)a.9. of the North Carolina Emergency Management Act of 1977. These funds shall not be used for other statutorily authorized purposes or for any other contingencies and emergencies.

ESTABLISHING OR INCREASING FEES UNDER THIS ACT

SECTION 6.3.(a) Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee to the level authorized or anticipated in this act.

SECTION 6.3.(b) Notwithstanding G.S. 150B-21.1A(a), an agency may adopt an emergency rule in accordance with G.S. 150B-21.1A to establish or increase a fee as authorized by this act if the adoption of a rule would otherwise be required under Article 2A of Chapter 150B of the General Statutes.

CONSULTATION REQUIRED BEFORE CREATION OF NEW FUNDS

SECTION 6.4. Notwithstanding G.S. 143C-1-3 or any other provision of law to the contrary, the Office of State Budget and Management and the Office of the State Controller shall consult with the Joint Legislative Commission on Governmental Operations prior to the establishment of a new fund as defined in G.S. 143C-1-3.

INTERIM APPROPRIATIONS COMMITTEES/MEETINGS/CONSULTATION BY GOVERNOR

SECTION 6.5.(a) The General Assembly finds that:

(1) The power of appropriation is vested only with the General Assembly.

(2) Section 7 of Article V of the North Carolina Constitution requires that no money shall be drawn from the State treasury but in consequence of appropriations made by law.

(3) Section 5 of Article III of the North Carolina Constitution requires the Governor to administer the budget as enacted by the General Assembly; and

(4) Proper oversight of public funds and oversight of the execution and administration of the State's budget are tantamount to good stewardship and proper governance.

(5) It is the proper duty of a legislative body to examine and review the expenditure of public funds on an ongoing basis and that the appropriations committees of the General Assembly shall meet as needed to fulfill this duty.

SECTION 6.5.(b) Purpose. – The Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate (the Committees) may meet monthly during the period between legislative sessions to perform ongoing examination and oversight of State agencies' execution and administration of the budget, including review of agency expenditures and collections of receipts, agency compliance with State laws governing the expenditure of public moneys, compliance with legislative policies and intent, and the ongoing fiscal stability and integrity of State government.

SECTION 6.5.(c) The Committees may perform the following:

(1) Review the expenditure of State funds as to:
  a. Conformity with State law.
  b. Conformity with legislative intent.
  c. Necessity with meeting program or purpose objectives.

(2) Conduct zero-based budgeting or another systematic approach to examine the use of State funds on an ongoing basis.

(3) Receive quarterly analyses of the State's revenues and expenditures as prepared by the Fiscal Research Division of the Legislative Services Commission.

(4) Propose legislation that would result in enhanced program accountability.

(5) Provide oversight of fiscal studies.

(6) Provide oversight of justification reviews conducted by the Fiscal Research Division of the Legislative Services Commission, whereby programs are evaluated periodically for continuing appropriations. The results of these justification reviews shall be made to the Appropriations Committees at the beginning of each legislative session.

(7) Evaluate State agencies' plans or proposals regarding the funding of new or expanded programs and services not previously approved by the General Assembly as part of its Appropriations Act.

(8) Produce written reports of findings and recommendations as follows:
  a. To the General Assembly. – If findings arrived at during a study have a potential impact on appropriations deliberations, the findings shall be presented immediately to the Committees. These reports shall contain recommendations for appropriate executive action, and when legislation is considered necessary to effect change, draft legislation for that purpose may be included.
  b. To the Governor. – If findings arrived at during a review have a potential impact on the current budget, the findings shall be

presented immediately to the Governor and shall contain recommendations for appropriate executive action.

SECTION 6.5.(d) The Committees shall be consulted by the Governor prior to any of the following:

(1) Establishment of permanent State positions in the executive branch unless authorized in this act.

(2) Expenditures in excess of the total requirements of a purpose or program as enacted by the General Assembly and as provided by G.S. 143C-6-4.

(3) Extraordinary measures taken under Section 5(3) of Article III of the North Carolina Constitution to effect necessary economies in State expenditures required for balancing the budget due to a revenue shortfall, including, but not limited to, the following: loans among funds, personnel freezes or layoffs, capital project reversions, program eliminations, and use of reserves. However, if the Committees fail to meet within 10 calendar days of a request by the Governor for its consultation, the Governor may proceed to take the appropriate and necessary actions and shall then report those actions at the next meeting of the Committees.

(4) Notwithstanding G.S. 143C-8-7, G.S. 143C-8-12, or any law to the contrary, the Committees shall be consulted by the Governor prior to approval of new capital improvement projects funded from gifts, grants, receipts, special funds, self-liquidating indebtedness, and other funds or any combination of funds for projects not specifically authorized by the General Assembly. The consultation shall include a description for each proposed capital project as delineated in G.S. 143C-8-6(e).

JUSTIFICATION/OPERATIONAL REVIEWS

SECTION 6.6.(a) It is the intent of the General Assembly to subject the operations of State government and the operations of nongovernmental entities receiving State funds to periodic Justification Reviews. The Reviews shall be conducted by the Fiscal Research Division and shall specifically address the following questions:

(1) Is the program or service fulfilling the letter and/or intent of its legislative mandate?

(2) Is that mandate still justified, either in its original form or some modified form?

(3) Does the program follow identified best practices to address its mandate?

(4) Is the program duplicative of other services provided by the public or private sectors?

(5) Is the program effective?

(6) Is the program efficient?

(7) Are there any other obstacles that might limit the program's ability to accomplish its mission?

SECTION 6.6.(b) For the fiscal year 2011-2012, the following programs or services shall be the subject of review:

(1) Lumberton Southeastern Agricultural Center and Farmer's Market – Department of Agriculture and Consumer Services.

(2) DENR Regional Offices – Department of Environment and Natural Resources.

(3) DHHS postsecondary education programs.

(4) Environmental Rating Scales Contract.

SECTION 6.6.(c) By May 1, 2012, the Fiscal Research Division shall report its findings and recommendations to the Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate. The report shall:

(1) Provide a description of each program.

(2) Identify major policy issues that the General Assembly should address.

(3) Explore means to achieve program objectives more efficiently.

(4) Characterize the likely results of alternative funding levels and/or opportunities to save taxpayer dollars.

(5) Identify performance measures that have been established by the agency and the usefulness of those performance measures, as well as the agency's progress toward meeting their established measures.

CONTINUATION REVIEW OF CERTAIN FUNDS/PROGRAMS/DIVISIONS

SECTION 6.7.(a) It is the intent of the General Assembly to periodically and systematically review the funds, agencies, divisions, and programs financed by State government. This process is known as the Continuation Review Program. The Continuation Review Program is intended to assist the General Assembly in determining whether to continue, reduce, or eliminate funding for the State's funds, agencies, divisions, and programs subject to continuation review.

SECTION 6.7.(b) The Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate may review the funds, programs, and divisions listed in this section and shall determine whether to continue, reduce, or eliminate funding for the funds, programs, and divisions, subject to the Continuation Review Program. The Fiscal Research Division may issue instructions to the State departments and agencies subject to continuation review regarding the expected content and format of the reports required by this section. No later than December 1, 2011, the following agencies shall report to the Fiscal Research Division:

(1) Justice and Public Safety. – Family Court.
(2) Education. – Center for Public Television as provided by Section 9.1 of this act.
(3) Natural and Economic Resources. –
  a. Commerce/Office of Science and Technology.
  b. Wildlife Resources Commission/Conservation Education.
(4) Health and Human Services. – Division of Information Resource Management.
(5) General Government. – General Assembly Facility Services.
(6) Transportation. – Division of Motor Vehicles Drivers License Program.

SECTION 6.7.(c) The continuation review reports required in this section shall include the following information:

(1) A description of the fund, agency, division, or program mission, goals, and objectives.
(2) The statutory objectives for the fund, agency, division, or program and the problem or need addressed.
(3) The extent to which the fund, agency, division, or program objectives have been achieved.
(4) The fund's, agency's, division's, or program's functions or programs performed without specific statutory authority.
(5) The performance measures for each fund, agency, division, or program and the process by which the performance measures determine efficiency and effectiveness.
(6) Recommendations for statutory, budgetary, or administrative changes needed to improve efficiency and effectiveness of services delivered to the public.
(7) The consequences of discontinuing funding.
(8) Recommendations for improving services or reducing costs or duplication.
(9) The identification of policy issues that should be brought to the attention of the General Assembly.
(10) Other information necessary to fully support the General Assembly's Continuation Review Program along with any information included in instructions from the Fiscal Research Division.

SECTION 6.7.(d) State departments and agencies identified in subsection (b) of this section shall submit a final report to the General Assembly by March 1, 2012.

STATE GOVERNMENT REORGANIZATION

SECTION 6.8. The Joint Legislative Commission on Governmental Operations (Commission) shall study the feasibility of creating a single department to support State departments, agencies, and offices with services, including, but not limited to, human resource

management, information technology, purchasing, and budget and financial management. The Commission shall report to the House of Representatives and Senate Appropriations Committees on its findings and recommendations upon the convening of the 2012 Regular Session of the 2011 General Assembly.

In the conduct of this study, the Commission may consider the Governor's proposed Department of Management and Administration as included in Executive Order 85, dated March 25, 2011, entitled "Consolidation and Reorganization of Executive Branch Agencies to Improve the Efficiency of State Government."

UTILIZATION REVIEW/PUBLIC SCHOOL AND PUBLIC HEALTH NURSES

SECTION 6.9.(a) Beginning July 1, 2011, the Fiscal Research Division, in consultation with the Department of Public Instruction and the Department of Health and Human Services, shall review all publicly (federal and State) funded public school nurse positions assigned within or connected to those respective organizations in order to determine the most effective and cost-efficient ways to provide needed nursing service to public school students. The review shall identify specific areas where overlaps of service provision may exist. The review shall focus on ways to maximize existing nursing resources and to change prospectively the manner in which local school nurses are allocated to better address the needs of students in the public schools at reasonable cost. Specifically, the review shall examine at least all of the following:

(1) Feasibility of having the money all flow to local public health departments for management and administration purposes to align health-related activities with the local entity best equipped to manage.

(2) Feasibility of using a mix of licensed nurses, both registered nurses (RN) and licensed practical nurses (LPN), to provide health care services in the public schools.

(3) Feasibility of allowing a school nurse to be licensed as an LPN as long as the nurse works under the direct supervision of an RN.

(4) Development of a new allocation formula that considers:

a. Average daily membership.

b. Local match requirement.

c. A base amount for each local school administrative unit.

SECTION 6.9.(b) By May 1, 2012, the Fiscal Research Division shall report to the House and Senate Appropriations Committees.

GLOBAL TRANSPARK DEBT, REPORT, AND STUDY

SECTION 6.10.(a) G.S. 147-69.2(b)(11), as amended by Section 7 of S.L. 2005-144, Section 2 of S.L. 2005-201, Section 28.17 of S.L. 2005-276, Section 27.7 of S.L. 2007-323, and Section 25.2 of S.L. 2009-451, reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

...

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than October 1, ~~2011.~~ 2012. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision."

SECTION 6.10.(b) The Global TransPark Authority shall report to the Program Evaluation Division on its strategic, business, and financial plans. The report shall be made by no later than January 1, 2012, and shall include the Authority's proposed schedule to achieve financial self-sufficiency and proposed schedule to repay to the Escheat Fund the investment authorized under G.S. 147-69.2(b)(11) plus any accumulated interest, both of which totaled forty million sixty-seven thousand nine hundred eighteen dollars and twenty cents ($40,067,918.20) as of March 31, 2011.

SECTION 6.10.(c) The Program Evaluation Division of the General Assembly shall study the feasibility and implications of (i) transferring the entire Global TransPark Authority to another State agency and (ii) transferring functions of the Global TransPark Authority to other State agencies as part of a consolidation. The term "functions of the Global TransPark Authority" includes, but is not limited to, administration, planning, economic development and marketing, property management, and training center functions. The Program Evaluation Division shall report its findings and make a recommendation from this study to the Joint Legislative Program Evaluation Oversight Committee no later than May 1, 2012.

HEALTH AND WELLNESS TRUST FUND AND TOBACCO TRUST FUND/FUTURE MSA PAYMENTS

SECTION 6.11.(a) The Health and Wellness Trust Fund (HWTF) and Health and Wellness Trust Fund Commission are abolished, and Article 6C of Chapter 147 of the General Statutes is repealed.

SECTION 6.11.(b) Funds remaining in the Health and Wellness Trust Fund on June 30, 2011, shall be transferred to the State Controller to be deposited in Nontax Budget code 19878 (Intrastate Transfers) for fiscal year 2011-2012 to be used by the Department for the following purposes:

(1) Up to the sum of twenty-two million dollars ($22,000,000) shall be used to administer grants associated with the following programs and initiatives:
   a. Teen Tobacco Prevention.
   b. ChecKmeds.
   c. Medication Assistance Programs.
   d. Obesity Prevention.

(2) The sum of ten million dollars ($10,000,000) shall be used to reduce the total savings required to be achieved for the Medicaid program by Community Care of North Carolina.

(3) The remainder shall be used to reduce the Medicaid Provider Rate cut.

SECTION 6.11.(c) G.S. 116-29.1(b)(1) reads as rewritten:

"(b) The General Assembly finds that it is imperative that the State provide a minimum of fifty million dollars ($50,000,000) each calendar year to the University Cancer Research Fund; therefore, effective July 1 of each calendar year:

(1) ~~Notwithstanding G.S. 143C-9-3, of~~Of the funds credited to ~~the Tobacco Trust Account,~~Budget Code 69430 in the Department of State Treasurer, the sum of eight million dollars ($8,000,000) is transferred from ~~the Tobacco Trust Account~~Budget Code 69430 to the University Cancer Research Fund and appropriated for this purpose.

...."

SECTION 6.11.(d) Section 6 of S.L. 1999-2 reads as rewritten:

"Section 6. (a) Except as provided in subsection (b) of this section, it ~~It~~ is the intent of the General Assembly that the funds under the Master Settlement Agreement, which is incorporated into the Consent Decree, be allocated as follows:

(1) Fifty percent (50%) to the nonprofit corporation as provided by the Consent Decree.

(2) ~~Twenty-five percent (25%) to a trust fund to be established by the General Assembly~~Fifty percent (50%) shall be allocated as follows:
   a. Debt service as authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-179 and S.L. 2004-124. As soon as practicable after the beginning of each fiscal year, the State Treasurer shall estimate and transfer to Budget Code 69430 the amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004.

b. The sum of eight million dollars ($8,000,000) is credited to Budget Code 69430 and shall be transferred to the University Cancer Research Fund in accordance with G.S. 116-29.1.

c. The balance remaining to be credited to the State General Fund to be used for the following purposes:

1. ~~for the~~The benefit of tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related ~~businesses, with this trust fund to be governed by a board of trustees representing these interests.~~businesses. To carry out this purpose, ~~this trust fund~~funds may provide direct and indirect financial ~~assistance, in accordance with criteria established by the trustees of the trust fund and~~assistance, to the extent allowed by law, to (i) indemnify tobacco producers, allotment holders, and persons engaged in tobacco-related businesses from the adverse economic effects of the Master Settlement Agreement, (ii) compensate tobacco producers and allotment holders for the economic loss resulting from lost quota, and (iii) revitalize tobacco dependent communities.

2. The benefit of health to fund programs and initiatives that include research, education, prevention, and treatment of health problems in North Carolina and to increase the capacity of communities to respond to the public's health needs through programs such as Health Choice and the State's Medicaid program.

~~(3) Twenty-five percent (25%) to a trust fund to be established by the General Assembly for the benefit of health, with this trust fund to be governed by a board of trustees comprised of a broad representation of health interests.~~

(b) Any monies paid into the North Carolina State Specific Account from the Disputed Payments Account on account of the Non-Participating Manufacturers that would have been transferred to The Golden L.E.A.F. (Long-Term Economic Advancement Foundation), Inc., or to the trust funds established in accordance with subdivision (a)(2) of this section shall be deposited in the General Fund Account of the Settlement Reserve Fund."

SECTION 6.11.(e) The funds allocated in subdivision (2)a. of Section 6 of S.L. 1999-2, as rewritten by subsection (d) of this section, are appropriated from the General Fund for fiscal years 2011-2012 and 2012-2013 and shall be expended in accordance with the provisions of subdivision (2)a. of Section 6 of S.L. 1999-2, as amended by subsection (d) of this section.

SECTION 6.11.(f) Notwithstanding the provisions of G.S. 143-717(i), the administrative costs of the Tobacco Trust Fund shall not exceed six hundred twenty-five thousand dollars ($625,000) for fiscal year 2011-2012 and fiscal year 2012-2013.

SECTION 6.11.(g) The fifty percent (50%) of any monies paid into the North Carolina State Specific Account from the Disputed Payments Account on account of the Non-Participating Manufacturers that would have been transferred to The Golden L.E.A.F. (Long-Term Economic Advancement Foundation), Inc., pursuant to Section 2(b) of S.L. 1999-2, is transferred to the General Fund Account within the Settlement Reserve Fund.

SECTION 6.11.(h) The Attorney General shall take all necessary actions to notify the court in the action entitled State of North Carolina v. Philip Morris Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina, and the administrators of the State Specific Account established under the Master Settlement Agreement of this action by the General Assembly redirecting the payments set forth in subsection (g) of this section.

SECTION 6.11.(i) G.S. 143C-9-3(b) and (c) are repealed.

SECTION 6.11.(j) Subsection (a) of this section shall be effective 60 days after this act becomes law or on October 1, 2011, whichever occurs first. Subsection (b) of this section becomes effective on June 30, 2011.

CONSOLIDATION OF AIR SERVICES AND CENTRALIZATION OF AIR MANAGEMENT/STATE-OWNED PASSENGER AND NON-PASSENGER VEHICLES

SECTION 6.13.(a) The State Motor Fleet project in the Work Plan of the Program Evaluation Division approved April 5, 2011, by the Joint Legislative Program Evaluation Oversight Committee is amended as described in this section.

SECTION 6.13.(b) The Program Evaluation Division shall evaluate the consolidation of air services provided by the Department of Transportation, the State Bureau of Investigation, and the University of North Carolina Passenger Mission and shall recommend the most appropriate agency to house the consolidated services. Other air services may be examined for consolidation by the Program Evaluation Division. The study shall evaluate savings through consolidation, including potential savings from the following:

(1) Reduction in aircraft.
(2) Reduction in personnel.
(3) Reduction in State facilities.
(4) An improved level of service.
(5) The potential sale of the DOT Beechcraft B200 aircraft tail number N3NC and if so when the sale should take place.

SECTION 6.13.(c) The Program Evaluation Division shall study the formation of an Aviation Management Authority, as recommended by the Program Evaluation Division's April 2010 Report "Selling 25 Underutilized Aircraft May Yield Up to $8.1 Million and Save $1.5 Million Annually."

SECTION 6.13.(d) The Program Evaluation Division shall study all passenger and non-passenger vehicles owned and operated by all State government departments, institutions, and entities. The study shall include motor fleet fees and associated cash balances, mechanic operations, the use and purpose of assigned vehicles, and State fueling stations and associated fees.

SECTION 6.13.(e) The Program Evaluation Division shall report its findings and recommendations from the State Motor Fleet project described under this section to the Joint Legislative Program Evaluation Oversight Committee no later than May 1, 2012.

TORNADO ASSISTANCE

SECTION 6.14. The General Assembly finds that on April 16, 2011, heavy thunderstorms and powerful tornadoes swept through this State, with 18 counties sustaining the most extensive damage. Those counties are Bertie, Bladen, Craven, Cumberland, Currituck, Greene, Halifax, Harnett, Hertford, Hoke, Johnston, Lee, Onslow, Pitt, Robeson, Sampson, Wake, and Wilson Counties. It is the intent of the General Assembly to provide State matching funds to help mitigate losses, rebuild infrastructure, and aid affected citizens and businesses.

STATE-OWNED DISPOSABLE ASSETS

SECTION 6.15.(a) Definition. – For purposes of this section, the term "State-owned disposable assets" or "assets" means State-owned land, buildings, and other assets that are unused, underused, or do not involve a core function of government.

SECTION 6.15.(b) By September 1, 2011, the Department of Administration, in consultation with all other affected State departments, agencies, and institutions, shall do all of the following:

(1) Implement a system for the sale of State-owned disposable assets, considering the following:
   a. The condition of the asset.
   b. The extent to which the asset meets the purpose for which it was intended.
   c. The future needs of the State to perform the service intended at the location.
   d. The best and most cost-effective manner in which these future needs can be serviced.
   e. The practicability of moving the function of the services performed at a location to another area that might reduce acquisition, construction, and labor costs without diminishing the quality of service.
   f. The manner in which an asset should be (i) sold or retained, (ii) renovated, (iii) expanded for future use, or (iv) sold with a leaseback.
   g. Other factors regarding use of the asset.

(2) Examine current State law to determine amendments to allow for the most efficient and effective disposition of assets.

SECTION 6.15.(c) The Department of Administration shall take the action necessary to effectuate the sale of State-owned disposable assets in accordance with Section 2.2(a) of this act.

SECTION 6.15.(d) By March 31, 2012, the Department of Administration shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on all asset sales made pursuant to this section.

UNEMPLOYMENT INSURANCE/IMPLEMENT THREE-YEAR LOOK BACK

SECTION 6.16.(a) G.S. 96-12.01(a1)(4)c. is amended by adding a new sub-sub-subdivision to read:

"3. This section applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before December 31, 2011, provided that:

I. The average rate of (i) insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in all of the preceding three calendar years and equaled or exceeded five percent (5%) or (ii) total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent (6.5%); and

II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subsection, equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 6.16.(b) G.S. 96-12.01(a1)(4)e. reads as rewritten:

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

...

e. Total extended benefit amount.

1. The total extended benefit amount payment to any eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

I. Fifty percent (50%) of the total amount of regular benefits which were payable to the individual under this Chapter in the individual's applicable benefit year; or

II. Thirteen times the individual's weekly benefit amount that was payable to the individual under this Chapter for a week of total unemployment in the applicable benefit year.

2. I. Effective with respect to weeks beginning in a high unemployment period, sub-subdivision e.1. of this subdivision shall be applied by substituting:

A. "Eighty percent (80%)" for "fifty percent (50%)" in sub-subdivision e.1.I., and
B. "Twenty" for "thirteen" in sub-subdivision e.1.II.

II. For purposes of sub-subdivision 2.I., the term "high unemployment period" means any period during which an extended benefit period would be in effect if sub-subdivision c. of this subdivision were applied by substituting "eight percent (8%)" for six and one-half percent (6.5%)".

3. This subdivision applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before December 31, 2011, provided that:

I. The average rate of total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent (8%); and

II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subdivision equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 6.16.(c) The intent of this section is to allow extended benefits to be paid as provided under the federal Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 so long as the payment of the benefits does not hinder the State's ability to reduce the debt it owes the federal government to pay unemployment benefits. It is not the intent of this section to pay for the extended benefits with contributions paid by employers under Chapter 96 of the General Statutes or with contributions paid by employers under the federal payroll tax that would otherwise be used to pay down the amount borrowed from the federal government by the State to pay unemployment benefits. Nothing in this section obligates the State to pay extended benefits provided by this section with contributions payable under Chapter 96 of the General Statutes or with any other State funds. This section is null and void if the payment of the benefits would divert federal payroll tax revenue payable by North Carolina employers that would otherwise be used to pay down the amount borrowed from the federal government by the State to pay unemployment benefits.

SECTION 6.16.(d) This section becomes effective April 16, 2011, and expires January 1, 2012.

PART VI-A. INFORMATION TECHNOLOGY

INFORMATION TECHNOLOGY FUND/AVAILABILITY

SECTION 6A.1.(a) The availability used to support appropriations made in this act from the Information Technology Fund established in G.S. 147-33.72H is as follows:

	FY 2011-2012	**FY 2012-2013**
Appropriation from General Fund	$4,458,142	$6,158,142
Interest	$ 25,000	$ 25,000
IT Fund Balance June 30	$ 792,000	$ 0
Total Funds Available	**$5,275,142**	**$6,183,142**

Appropriations are made from the Information Technology Fund for the 2011-2013 fiscal biennium as follows:

	FY 2011-2012	FY 2012-2013
Information Technology Operations		
Center for Geographic Information and Analysis	$ 599,347	$ 599,347
Enterprise Security Risk Management	$ 864,148	$ 864,148
Enterprise Project Management Office	$1,473,285	$1,473,285
Architecture and Engineering	$ 581,986	$ 581,986
Criminal Justice Information Network	$ 166,422	$ 166,422
Statewide IT Procurement	$ 0	$ 0
State Web site	$ 100,000	$ 0
ITS Overhead Reduction	($91,486)	($91,486)
Subtotal Information Technology Operations	$3,693,702	$3,593,702
Information Technology Projects		
State Portal	$ 0	$ 0
IT Consolidation	$ 776,440	$ 784,440
Transfer to OSC for E-Forms	$ 500,000	$ 500,000
Subtotal Information Technology Projects	$1,276,440	$1,284,440
Data Integration License Funding Transfer to State Agencies	$ 200,000	$1,200,000
Position Transfer to Office of State Budget and Management	$ 105,000	$ 105,000
Total	**$5,275,142**	**$6,183,142**

SECTION 6A.1.(b) By September 1 of each year, data integration funding in the Information Technology Fund for that State fiscal year shall be transferred to State agencies in proportion to their use of data integration licenses at that point in time. The State Chief Information Officer shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division by September 2 of each year on the status of the transfer.

Any licensing requirements after the 2011-2013 fiscal biennium shall be the responsibility of the participating agency. For the 2012-2013 fiscal year, the State Chief Information Officer shall provide funding in the amount of one million two hundred thousand dollars ($1,200,000) to offset data integration licensing costs and shall charge agencies based on license usage for license costs in excess of one million two hundred thousand dollars ($1,200,000). The State Chief Information Officer shall notify affected agencies of this requirement by September 1, 2011. The State Chief Information Officer shall ensure that agencies choosing to participate after that date are notified prior to agreeing to participate in the data integration license agreement. The State Chief Information Officer shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division by September 2, 2011, on agency notification of their responsibility to fund any data integration license requirements after the 2011-2013 fiscal biennium.

SECTION 6A.1.(c) Unless a change is approved by the State Chief Information Officer after consultation with the Office of State Budget and Management, funds appropriated to the Information Technology Fund shall be spent only as specified in this section. Changes shall not result in any degradation to the operation or project for which the funds were originally appropriated.

Any changes to the specified uses shall be approved in writing by the State Chief Information Officer and shall immediately be reported to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on General Government, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on General Government and Information Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. This report shall include detailed reasons for the changes in use and shall explain why each change does not have any potential impact on the operation or project for which the funding was originally appropriated.

SECTION 6A.1.(d) The Office of the State Controller shall coordinate with the Office of the State Chief Information Officer to identify four positions in the Office of the State Chief Information Officer that shall be used, effective August 1, 2011, to support planning and

implementation of an automated fraud detection capability and an e-forms/digital signature project.

SECTION 6A.1.(e) This section is effective when it becomes law.

INFORMATION TECHNOLOGY OPERATIONS

SECTION 6A.2.(a) Information Technology Internal Service Fund Budget. – Notwithstanding G.S. 147-33.88, the Office of Information Technology Services shall develop an annual budget for review and approval by the Office of State Budget and Management in accordance with a schedule prescribed by the Director of the Office of State Budget and Management. The approved Information Technology Internal Service Fund budget shall be included in the Governor's budget recommendations to the General Assembly.

The Office of State Budget and Management shall ensure that State agencies have an opportunity to adjust their budgets based on any rate changes proposed by the Office of Information Technology Services and approved by the Office of State Budget and Management.

Any uses of the Internal Service Fund not specifically related to the operation of the Office of Information Technology Services shall immediately be reported to the Office of State Budget and Management and the Fiscal Research Division with an explanation as to why it was necessary to use the Fund.

SECTION 6A.2.(b) Enterprise Projects. – The State Chief Information Officer shall consult the respective State agency chief information officer and obtain approval from the Office of State Budget and Management prior to the initiation of any enterprise project or contract. State agency requirements shall be incorporated into any enterprise agreement signed by the State Chief Information Officer or his or her representative. Enterprise projects shall not exceed the participating State agencies' ability to financially support the contracts.

SECTION 6A.2.(c) The State Chief Information Officer shall not enter into any information technology contracts without obtaining written agreements from participating State agencies regarding the apportionment of the contract cost. State agencies agreeing to participate in a contract shall:

(1) Ensure that sufficient funds are budgeted to support their agreed shares of enterprise agreements throughout the life of the contract or project.

(2) Transfer the agreed-upon funds to the Information Technology Internal Service Fund in sufficient time for the Office of Information Technology Services to meet vendor contract requirements.

The State Chief Information Officer shall ensure that enterprise project and contract costs are allocated to participating agencies in an equitable manner.

SECTION 6A.2.(d) Agency Projects. – Prior to initiation, any information technology project, or any segment of a multipart project, costing more than two hundred fifty thousand dollars ($250,000) shall be included in the agency's most recent information technology plan and shall be approved by the General Assembly.

SECTION 6A.2.(e) Three-Year Contracts. – Notwithstanding the cash management provisions of G.S. 147-86.11, the Office of Information Technology Services may procure information technology goods and services for periods of up to a total of three years where the terms of the procurement contract require payment of all, or a portion, of the contract price at the beginning of the contract agreement. All of the following conditions shall be met before payment for these agreements may be disbursed:

(1) Any advance payment can be accomplished within the Information Technology Internal Service Fund budget.

(2) The State Controller receives conclusive evidence that the proposed agreement would be more cost-effective than a multiyear agreement that complies with G.S. 147-86.11.

(3) The procurement complies in all other aspects with applicable statutes and rules.

(4) The proposed agreement contains contract terms that protect the financial interest of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by any other reasonable means that have legally binding effect.

The Office of State Budget and Management shall ensure the savings from any authorized agreement shall be included in the Information Technology Internal Service Fund

rate calculations before the Office of State Budget and Management annually approves proposed rates. Any savings resulting from the agreements shall be returned to agencies included in the contract in the form of reduced rates. The Office of Information Technology Services shall submit a quarterly written report to the Office of State Budget and Management on any State agency budget impacts resulting from multiyear contracts. Under no circumstances shall multiyear contracts result in rate increases for participating agencies. The Office of Information Technology Services shall submit a quarterly written report of any authorizations granted under this section to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division of the North Carolina General Assembly.

SECTION 6A.2.(f) Information Technology Hosting. – State agencies developing and implementing information technology projects/applications shall use the State infrastructure to host their projects. An exception to this requirement may be granted only if approved by both the State Chief Information Officer on the basis of technology requirements and by the Office of State Budget and Management based on cost savings, subject to consultation with the Joint Legislative Commission on Governmental Operations and a report to the Joint Legislative Oversight Committee on Information Technology.

Projects/applications currently hosted outside the State infrastructure shall be returned to State infrastructure not later than the end of any current contract.

By October 1, 2011, the State Chief Information Officer shall report to the Joint Legislative Oversight Committee on Information Technology regarding projects currently hosted outside State infrastructure and a schedule to return those projects to State infrastructure.

SECTION 6A.2.(g) Service Level Agreements. – Service level agreements developed with supported State agencies shall include metrics for the Office of Information Technology Services as well as the supported agencies. When the Office of Information Technology Services or an agency fails to meet metrics established by the service level agreement, a report shall be provided to the Office of State Budget and Management and the Fiscal Research Division of the General Assembly within 10 days, detailing the shortfall and providing a corrective action plan with a time line.

SECTION 6A.2.(h) The Office of Information Technology Services shall assist State agencies in identifying the least expensive source and best value for the purchase of IT goods and services and shall ensure that agencies receive every available discount when purchasing IT goods and services. When the best value and the least expensive sources are different, the Office of Information Technology Services shall report to the Office of State Budget and Management and the Fiscal Research Division on why the least expensive vendor was not the best value.

SECTION 6A.2.(i) Agency Billing and Payments. – The State CIO shall ensure that bills from the Office of Information Technology Services are easily understood and fully transparent. If a State agency fails to pay its IT Internal Service Fund bills within 30 days of receipt, the Office of State Budget and Management may transfer funds from the agency to cover the cost of the bill from that agency to the IT Internal Service Fund.

COORDINATION OF INFORMATION TECHNOLOGY REQUIREMENTS AND GEOGRAPHIC INFORMATION SYSTEM REQUIREMENTS

SECTION 6A.3. The State Chief Information Officer, through the Enterprise Project Management Office, shall develop a plan and adopt measures to avoid the duplication of information technology capabilities and resources across State agencies. When multiple agencies require the same or substantially similar information technology capability, the State Chief Information Officer shall designate one State agency as the lead to coordinate support and to manage that capability for all State agencies requiring the capability, with the State Chief Information Officer maintaining oversight of the effort. Further, the Enterprise Project Management Office shall:

(1) Review all ongoing and future technology projects to determine whether the capabilities required for each project, or the specific requirements comprising a component within a project, already exist in a planned, ongoing, or completed information technology project developed by another State agency. Information Technology Procurement shall work to develop contracts for information technology projects to allow the addition of other agencies' requirements within the terms of the existing contract.

(2) Identify existing projects that can best support a particular requirement for multiple agencies and work to transition agencies to those projects.
(3) When State agencies request approval for new projects, determine if the information technology project has transferable applicability to current or future capabilities required by another State agency.
(4) Upon identifying an existing information technology capability needed by a State agency, assist that agency in determining how best to access existing projects.
(5) Implement the State Chief Information Officer's plan to reduce duplication.
(6) Deny approval for new projects that duplicate existing capabilities within State agencies.
(7) Provide quarterly reports to the Fiscal Research Division of the General Assembly on progress toward eliminating duplication. The report shall include a list of duplicate projects across State agencies, both ongoing and legacy, and shall document explicit efforts to reduce the duplication. It shall specifically address progress during the quarter for which the report is being submitted. It shall also include a list of projects denied approval because of duplication, with a description of the measures taken to access an existing project with the same capabilities.

All State agencies shall coordinate any Geographic Information System (GIS) initiatives through the Center for Geographic Information and Analysis (CGIA) to ensure that they are not duplicating an existing function. The CGIA shall monitor and approve all new GIS-related information technology projects and expansion budget requests. By January 1 of each year, the CGIA shall make a written report to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division of the General Assembly on the results of these efforts.

CRIMINAL JUSTICE LAW ENFORCEMENT AUTOMATED DATA SERVICES (CJLEADS)

SECTION 6A.4.(a) The Office of the State Controller, in cooperation with the State Chief Information Officer, shall:

(1) Continue the implementation of the Criminal Justice Data Integration Pilot Program, which is now known as the Criminal Justice Law Enforcement Automated Data Services (CJLEADS), expanding it throughout the State of North Carolina;
(2) Review plans to transition CJLEADS to the Department of Justice, determining if that is still the best course of action, and identifying an alternative, if required;
(3) By October 1, 2011, provide a recommendation to the Joint Legislative Oversight Committee on Information Technology on the best alternative for managing and hosting CJLEADS, along with a time line for the transition; and
(4) Provide quarterly reports on the status of the Program to the Joint Legislative Oversight Committee on Information Technology beginning October 1, 2011.

SECTION 6A.4.(b) The Office of the State Controller shall administer CJLEADS with the assistance of a Leadership Council consisting of:

(1) The Attorney General;
(2) The Director of the Administrative Office of the Courts;
(3) The Secretary of the Department of Correction;
(4) The Secretary of Crime Control and Public Safety;
(5) The Secretary of the Department of Juvenile Justice and Delinquency Prevention;
(6) The Commissioner of Motor Vehicles, Department of Transportation;
(7) The President of the North Carolina Association of Chiefs of Police;
(8) The President of the North Carolina Sheriffs' Association, Inc.;
(9) A representative of the Federal Bureau of Investigation, who shall be a nonvoting member;
(10) The State Controller; and

(11) The State Chief Information Officer.

SECTION 6A.4.(c) Data that is not classified as a public record under G.S. 132-1 shall not be considered a public record when incorporated into the CJLEADS database.

SECTION 6A.4.(d) To maintain the confidentiality requirements attached to the information provided to CJLEADS by the various State and local agencies, each source agency providing data for CJLEADS shall be the sole custodian of the data for the purpose of any request for inspection or copies thereof under Chapter 132 of the General Statutes. CJLEADS shall only allow access to data from the source agencies in accordance with rules adopted by the respective source agencies.

SECTION 6A.4.(e) Agencies shall use existing resources to provide required support for CJLEADS.

SECTION 6A.4.(f) Section 6.10 of S.L. 2010-31 is repealed.

CONTINUING PILOT PROGRAM TO ALLOW PUBLIC-PRIVATE PARTNERSHIPS TO MEET DEPARTMENT OF REVENUE TECHNOLOGY NEEDS

SECTION 6A.5.(a) To speed the implementation of the Tax Information Management System (TIMS) and the additional components of the Planning and Design Project (PDP) through June 30, 2015, the Secretary of the Department of Revenue may enter into public-private arrangements where (i) the funding of the project under the arrangement comes from revenue generated by the project and (ii) the project is related to the implementation of TIMS and additional components of the PDP. As used in this section, the "additional components of the PDP" are Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services. All such arrangements shall terminate June 30, 2015.

Work under a public-private arrangement may be contracted by requests for proposals, modifications to existing contracts, and purchases using existing contract vehicles.

The Secretary of Revenue shall establish a measurement process to determine the increased revenue attributable to the public-private arrangements. To accomplish this, the Secretary shall consult subject matter experts outside the Department of Revenue, both within State government and from private industry. The measurement process shall include:

(1) Calculation of a revenue baseline against which the increased revenue attributable to the project is measured;

(2) Periodic evaluation to determine if the baseline needs to be modified based on significant measurable changes in the economic environment; and

(3) Monthly calculation of increased revenue attributable to contracts executed under this program.

Of funds generated from collections above the baseline established by subdivision (1) of this subsection, in both the General Fund, Highway Funds, and the State portion of the Unauthorized Substance Tax collections of the Special Revenue Fund, up to forty-five million five hundred thousand dollars ($45,500,000) may be authorized by the Office of State Budget and Management for the purchases related to the implementation of TIMS and the additional components of the PDP, including payment for services from non-State entities. The Department of Revenue may retain an additional six million six hundred forty-six thousand five hundred fifty-seven dollars ($6,646,557) from benefits generated for the General Fund since the beginning of the public-private partnership. These funds shall be used as payment of internal costs for the fiscal biennium, and such funds are hereby appropriated for this purpose.

If the Department of Revenue finds that it cannot generate additional benefits totaling forty-five million five hundred thousand dollars ($45,500,000) through June 30, 2015, or that total costs exceed the total available appropriations and earned benefits, then the Department shall do all of the following: (i) immediately notify the Chairs of the House of Representatives and Senate Appropriations Committees and the Fiscal Research Division, (ii) identify any obligations to vendors, (iii) identify options for meeting obligations to vendors, and (iv) provide costs associated with each option. The Department shall ensure that this notification is made in sufficient time to allow the General Assembly to properly evaluate the options presented.

SECTION 6A.5.(b) Notwithstanding G.S. 114-2.3, the Department of Revenue shall engage the services of private counsel with the pertinent information technology and computer law expertise to review requests for proposals, and to negotiate and review contracts associated with TIMS and the additional components of the Planning and Design Project (PDP)

(Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services).

SECTION 6A.5.(c) There is established within the Department of Revenue the Oversight Committee for reviewing and approving the benefits measurement methodology and calculation process. The Oversight Committee shall review and approve in writing all contracts, including change orders, amendments to contracts, and addendums to contracts, before they are executed under this section. This shall include (i) details of each public-private contract, (ii) the benefits from each contract, and (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including the measurement process established for the Secretary of Revenue. The Oversight Committee shall approve all of the fund transfers for this project. Within five days of entering into a contract, the Department shall provide copies of each contract and all associated information to the Joint Legislative Oversight Committee on Information Technology, the Chairs of the House of Representatives and Senate Committees on Appropriations, and the Fiscal Research Division.

The members of the Committee shall include the following:

(1) The State Budget Director;
(2) The Secretary of the Department of Revenue;
(3) The State Chief Information Officer;
(4) Two persons appointed by the Governor;
(5) One member of the general public having expertise in information technology appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
(6) One member of the general public having expertise in economic and revenue forecasting appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate.

The State Budget Director shall serve as chair of the Committee. The Committee shall set its meeting schedule and adopt its rules of operation by majority vote. A majority of the members constitutes a quorum. Vacancies shall be filled by the appointing authority. Administrative support staff shall be provided by the Department of Revenue. Members of the Committee shall receive reimbursements for subsistence and travel expenses as provided by Chapter 138 of the General Statutes. The Committee shall terminate on June 30, 2015.

The Department shall provide copies of the minutes of each meeting and all associated information to the Joint Legislative Oversight Committee on Information Technology, the Chairs of the House of Representatives and Senate Committees on Appropriations, and the Fiscal Research Division.

SECTION 6A.5.(d) Beginning August 1, 2011, and quarterly thereafter, the Department of Revenue shall submit detailed written reports to the Chairs of the House of Representatives and Senate Committees on Appropriations, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office. The report shall include (i) details of each public-private contract, (ii) the benefits from each contract, (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including cost savings and the acceleration of the project time line, (iv) and any issues associated with the operation of the public-private partnership.

SECTION 6A.5.(e) In addition to the oversight provided by the Oversight Committee established in subsection (c) of this section, the TIMS project shall be subject to existing Information Technology project oversight legislation and the TIMS project management shall comply with all statutory requirements and other requirements established by the State Chief Information Officer and the Office of State Budget and Management for information technology projects. The State Chief Information Officer and the Office of State Budget and Management shall immediately report any failure to do so to the Joint Legislative Oversight Committee on Information Technology, the Chairs of the House of Representatives and Senate Committees on Appropriations, and the Fiscal Research Division.

SECTION 6A.5.(f) Section 6.20 of S.L. 2009-451, as rewritten by Section 2.3 of S.L. 2010-123, is repealed.

INFORMATION TECHNOLOGY PERSONAL SERVICES CONTRACT REQUIREMENTS

SECTION 6A.6.(a) Effective for the 2011-2013 fiscal biennium, and notwithstanding any provision of law to the contrary:

(1) No contract for information technology personal services, or providing personnel to perform information technology functions, may be established or renewed without the express written approval of the Statewide Information Technology Procurement Office.

(2) Before any State agency, department, or institution may renew a contract position for information technology personnel, the State agency must report to the Statewide Information Technology Procurement Office, the Office of State Budget and Management, the Office of State Personnel, the Office of Information Technology Services, and to the Fiscal Research Division. The report shall explain:

a. The proposed duration of the contract position. If the contract is for more than 12 months, why recruitment of a State employee is not feasible.

b. Whether the contract position requires unique skills for which the State has a short-term need.

c. Whether the position is required for a specific information technology project and if the position will be terminated upon completion of the project.

d. The specific work products and completion time lines for the contract position.

(3) All contract positions requiring information technology skills are subject to the provisions of this section. The Office of State Budget and Management may immediately terminate the funding for any information technology contractor position that is filled without following defined procedures.

(4) All information technology personnel contracts shall be competitive and shall be subject to competition each time they expire. Exceptions must be approved by the Office of Information Technology Services, the Office of State Personnel, and the Office of State Budget and Management. Approved exceptions must immediately be reported to the Fiscal Research.

(5) Agencies shall make every effort to convert SAP and Curam contractors supporting permanent requirements to State employees. Beginning October 1, 2011, agencies shall submit written quarterly reports to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division documenting their progress in converting these contractors to State employment.

Contract positions subject to this section shall be reviewed and approved by the Statewide Information Technology Procurement Office and shall be entered into the project portfolio management tool.

The Statewide Information Technology Procurement Office shall determine the market rate for the type of contract required, as well as to determine the comparable cost for a State employee. Agencies may not exceed the market rate determined by the Statewide Information Technology Procurement Office. After the Statewide Information Technology Procurement Office provides cost data, the Office of State Budget and Management must approve funding for the position.

SECTION 6A.6.(b) Whenever a State agency, department, or institution determines that only a contractor can fill a position and the position is required to perform an ongoing function within the agency, the head of the State agency must develop and implement a plan to hire or train a qualified State employee to fill the position within 12 months. Within 60 days of hiring the contractor, this plan shall be forwarded to the Office of State Budget and Management, the Office of State Personnel, the Office of Information Technology Services, and the Fiscal Research Division.

SECTION 6A.6.(c) Beginning August 1, 2011, and monthly thereafter, each State agency, department, and institution employing information technology personal services contractors, or contract personnel performing information technology functions, shall provide a detailed report on those contracts to the Office of State Budget and Management, the Office of State Personnel, the Office of Information Technology Services, the Joint Legislative Oversight

Committee on Information Technology, and the Fiscal Research Division of the General Assembly. Each State agency's report shall include at least the following:

(1) For each contracted information technology position:
  a. The title of the position, a brief synopsis of the essential functions of the position, and how long the position has existed.
  b. The name of the individual filling the position and the vendor company, if any, that regularly employs that individual.
  c. The type of contract, start date, and termination date.
  d. The length of time that the individual filling the contracted position has been employed by the State as a contractor in any position.
  e. The contracted position salary or hourly rate, the number of hours per year, and the total annualized cost of the contracted position.
  f. The salary and benefits cost for a State employee performing the same function.
  g. The purchase order number for the position.
  h. Whether the position can be converted to a State employee position. This determination will be certified by the State Information Technology Purchasing Office.
  i. When the agency anticipates converting the position to a State employee.

(2) The total annual cost for information technology contractors and the total annual salary and benefits cost for filling the contract positions with State employees.

(3) A determination of whether the information technology functions performed by the contractor can be performed by State employees.

(4) All information required by this subsection related to information technology contractors regardless of the contracting source.

SECTION 6A.6.(d) Each State agency shall provide a detailed explanation of any differences between the agency report required by subsection (b) of this section and the Information Technology Expenditures Report published annually by the Office of the State Controller. This report of differences shall be due 30 days after the publication of the Office of the State Controller's report and shall be submitted to the Office of State Budget and Management, the Fiscal Research Division, and the Joint Legislative Oversight Committee on Information Technology.

SECTION 6A.6.(e) This section does not apply to The University of North Carolina and its constituent institutions.

STATE INFORMATION TECHNOLOGY CONSOLIDATION

SECTION 6A.7.(a) By November 1, 2011, the State Chief Information Officer (State CIO), in conjunction with the Office of State Budget and Management (OSBM), shall develop a detailed plan for consolidating the information technology infrastructure and applications of all State agencies, departments, and institutions in the executive branch. Information technology infrastructure includes personal computers, hosting and network environments, the help desk, call centers, and information technology security. Applications include enterprise software, on-demand software, and customized software. At a minimum, the consolidation plan shall include the following:

(1) Defined targets and priorities with a detailed time line for the implementation of consolidation.

(2) The costs of consolidation by fiscal year and by agency.

(3) The anticipated savings to result from consolidation and a time line for actual achievement of those savings.

(4) Technical, policy, or other issues associated with achieving a timely and effective consolidation.

(5) A process to transfer all information technology hardware and software funding to the Office of the State CIO.

(6) Creation of a project management organization to manage all information technology projects.

(7) Review of agency, Office of Information Technology Services, and Office of the State CIO to identify redundant personnel positions.

When setting consolidation targets, the State CIO shall give high priority to infrastructure issues that pose significant risk to agency operations or data, that provide opportunities for immediate cost savings, and where a statewide approach would minimize disruption of services. In carrying out the consolidation, the Office of Information Technology Services shall utilize the authority set out in G.S. 147-33.83.

SECTION 6A.7.(b) Beginning July 1, 2011, the State CIO shall plan and implement an enterprise level grants management system. Similar systems currently under development may be suspended by the State CIO with funding reprogrammed to support development of the enterprise level grants management system.

In coordination with the State CIO, the Department of Health and Human Services shall develop a plan to implement a single case management system throughout that Department, beginning in the 2012-2013 fiscal year, and shall report to the Joint Legislative Oversight Committee on Information Technology by February 1, 2012, on its initiatives to implement the system. The report shall include a detailed time line for completion and an explanation of the costs associated with case management consolidation.

SECTION 6A.7.(c) Beginning September 1, 2011, and quarterly thereafter, the Office of State Budget and Management, in conjunction with the State CIO, shall provide written reports to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division relating to State information technology consolidation.

ITS/INTERNAL SERVICE FUND RATE ESTABLISHMENT/CASH MANAGEMENT

SECTION 6A.8.(a) For each year of the 2011-2013 fiscal biennium, receipts for the Information Technology Internal Service Fund shall not exceed one hundred ninety million dollars ($190,000,000), excluding a 60-day balance for contingencies. Rates established by the Office of State Budget and Management (OSBM) to support the IT Internal Service Fund shall be based on this required fund limit. Established rates shall be adjusted within 30 days in the event the fund exceeds the prescribed limit. In the event that an increase in receipts for the IT Internal Service Fund is required, the Office of Information Technology Services may implement the increase after consultation with the Joint Legislative Commission on Governmental Operations.

SECTION 6A.8.(b) Rates shall be set to support a specific service for which an agency is being charged. Overhead charges to agencies must be consistently applied and must not exceed industry standards. Rate increases shall require approval of the OSBM. Rate reductions shall be immediately implemented following notification of the OSBM.

SECTION 6A.8.(c) Beginning October 1, 2011, the State Chief Information Officer shall submit a quarterly report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on collections for, expenditures from, and the balance of the IT Internal Service Fund. The report shall include all expenditures made from the fund to support the Office of Information Technology Services and the activities of the State Chief Information Officer.

INFORMATION TECHNOLOGY PRIVATIZATION

SECTION 6A.9.(a) Any privatization of any grouping of information technology services, or "towers," identified in the Infrastructure Study and Assessment (INSA) shall require prior approval from the General Assembly. Funding to support any outsourcing of any of these towers shall be specifically appropriated by the General Assembly for that purpose, to include any use of Information Technology Internal Service Fund receipts.

SECTION 6A.9.(b) Before privatizing any major information technology function during the 2011-2013 fiscal biennium, the State Chief Information Officer shall do all of the following:

(1) Develop a detailed plan for implementing any privatization initiative to include the following:
   a. A governance and accountability structure for the privatization effort.
   b. Detailed time line with milestones.
   c. Any costs necessary to accomplish outsourcing with funding sources identified.
   d. Estimated monthly cost for each participating agency for the first five years of privatization.

e. Risks associated with privatization, measures being taken to mitigate those risks, and any costs associated with the mitigation measures.
f. Any security issues associated with outsourcing each application impacted by the outsourcing, with a detailed plan to mitigate those issues.
g. A list of State employees to be terminated with information on their job description and how long they have been employed by the State, a schedule of when the terminations are to occur, the cost of terminating each employee, and plans to assist each terminated employee.

The State Chief Information Officer shall consult the Joint Legislative Commission on Governmental Operations and report to the Joint Legislative Oversight Committee on Information Technology on the completed plan prior to any implementation of privatization.

(2) Have a detailed plan in place, to include associated costs and sources of funding, to return the function to State control in the event privatization fails to provide anticipated cost-savings or required service levels.

(3) Privatize only those individual functions where verifiable market data shows that privatization will result in cost-savings to the State and there is no data identifying alternatives that generate greater savings, ensuring that agencies receive at a minimum the same level of service and functionality as the level prior to privatization.

(4) Document and certify any anticipated savings resulting from privatization by individual function.

(5) Ensure full disclosure of any privatization decisions that combine multiple services or towers into a single contract, including the costs associated with each specific service or tower included in the contract.

(6) Ensure that any changes are made across the entire executive branch.

(7) Consult the Joint Legislative Commission on Governmental Operations and report to the Joint Legislative Oversight Committee on Information Technology regarding the plan for funding any requirements formerly covered by the receipts from the privatized function.

SECTION 6A.9.(c) After privatizing any major information technology function, the State Chief Information Officer shall do all of the following:

(1) Report quarterly on the results of the privatization, including a detailed comparison of projected savings to actual cost, data on whether or not the vendor is meeting service level agreements, and an explanation of the reasons for any deficiency or difference.

(2) Immediately notify the Joint Legislative Commission on Governmental Operations of any outsourcing effort that does not meet projected savings or required service levels for two quarters in a row or during any two quarters of a fiscal year, and develop a corrective action plan.

(3) Terminate any contract where privatization fails to achieve projected savings or meet service levels over a period of 12 months.

STATE PORTAL IMPLEMENTATION AND OPERATION

SECTION 6A.10.(a) The Department of Administration may implement and operate a statewide electronic enterprise portal to increase the convenience of members of the public in conducting online transactions with, and obtaining information from, State government and to facilitate their interactions and communications with government agencies. The portal shall be hosted on State information technology infrastructure.

SECTION 6A.10.(b) Prior to any development or implementation of a State portal, the Department of Administration shall provide all of the following to the General Assembly:

(1) A detailed plan for development and implementation of the portal, to include a list of applications being considered for implementation during the 2011-2013 and 2013-2015 biennia, including:
a. A description of how the portal is to be implemented, to include the use of outside vendors, with detailed information on their

participation and the potential cost to the State, businesses, and anyone doing business with the State.

b. A list of potential services and a time line for implementing each service.

c. Detailed information on the anticipated cost of ownership of the portal and any services proposed for implementation during the period, to include the amount of any payments received by vendors supporting the project.

(2) A funding model for the implementation that does not increase the cost of services for anyone doing business with the State or reduce the receipts or other funding currently available to State agencies or included in appropriations for the 2011-2013 biennium.

(3) If the portal is outsourced, a detailed, fully executable plan to return portal operations to the State, with associated costs.

(4) Identification of internal resources that could potentially be used to develop and implement a State portal.

SECTION 6A.10.(c) All portal services requiring fees shall be approved by the General Assembly, and all funding for the portal, to include fees, shall be appropriated by the General Assembly. Any fees or other charges collected under this section for the State portal or any supporting functions shall be:

(1) Subject to approval by the General Assembly.

(2) Deposited in the General Fund, or in the Highway Fund for fees collected from the Department of Transportation.

The portal shall not increase fees or impose a new fee for services already provided online or through any automated means.

SECTION 6A.10.(d) Participation by State agencies in the portal shall be voluntary.

SECTION 6A.10.(e) There shall be a convenient, free alternative for any online service provided.

SECTION 6A.10.(f) The State portal project shall meet all requirements for project management established by the State Chief Information Officer. Nothing in this section shall exempt the State portal project from the laws governing State information technology and purchasing.

SECTION 6A.10.(g) Notwithstanding G.S. 114-2.3, the Department of Administration shall engage the services of private counsel with the pertinent information technology and computer law expertise to negotiate and review contracts associated with the State portal.

SECTION 6A.10.(h) Each quarter, beginning October 1, 2011, the Department of Administration shall provide detailed information to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on General Government, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on General Government and Information Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management on the total amount of each fee and any other charge collected by the vendor for each service provided, the amount of funding collected by the State for each service and for each participating agency, and any other costs associated with operating the portal.

SECTION 6A.10.(i) Committee Established. – There is established in the Department of Administration the Portal Project Review Committee, which shall review services and applications proposed for inclusion in the State portal.

SECTION 6A.10.(j) Membership. – The Committee shall be composed of seven members as follows:

(1) Two members appointed by the Governor.

(2) Two members appointed by General Assembly, as recommended by the Speaker of the House of Representatives.

(3) Two members appointed by the General Assembly, as recommended by the President Pro Tempore of the Senate.

(4) The State Controller shall be designated as the Chair.

SECTION 6A.10.(k) Vacancies. – Any vacancy on the Committee shall be filled by the appointing authority.

SECTION 6A.10.(l) Expenses of Members. – Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 6A.10.(m) Staff. – Adequate staff shall be provided to the Committee by the Department of Administration.

SECTION 6A.10.(n) Cooperation. – The Committee may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

SECTION 6A.10.(o) Meeting Location. – The Committee shall hold public meetings at various locations around the State for each proposed service or application to allow interested parties and participating agencies to comment on proposed services in order to promote greater public participation in its deliberations. The Department of Administration shall grant adequate meeting space to the Committee in the State Administration Building or other State office facility as needed.

SECTION 6A.10.(p) Approval Authority. – The Committee shall have approval authority for services and applications not requiring a fee or imposing any cost on any State or local agency or anyone doing business with the State. For services or applications supported by fees, the Committee shall make recommendations to the next regular session of the General Assembly on the feasibility of developing and implementing these services or applications.

TRANSFER CRIMINAL JUSTICE INFORMATION NETWORK TO THE OFFICE OF THE STATE CHIEF INFORMATION OFFICER

SECTION 6A.11.(a) The Criminal Justice Information Network (CJIN), as provided in Article 69 of Chapter 143 of the General Statutes, is hereby transferred to the Office of the State Chief Information Officer. The transfer shall have all the elements of a Type II transfer, as defined in G.S. 143A-6.

SECTION 6A.11.(b) G.S. 143-661(a) reads as rewritten:

"(a) The Criminal Justice Information Network Governing Board is established within the ~~Department of Crime Control and Public Safety,~~ Office of the State Chief Information Officer to operate the State's Criminal Justice Information Network, the purpose of which shall be to provide the governmental and technical information systems infrastructure necessary for accomplishing State and local governmental public safety and justice functions in the most effective manner by appropriately and efficiently sharing criminal justice and juvenile justice information among law enforcement, judicial, and corrections agencies. The Board is established within the ~~Department of Crime Control and Public Safety~~ Office of the State Chief Information Officer, for organizational and budgetary purposes only and the Board shall exercise all of its statutory powers in this Article independent of control by the ~~Department of Crime Control and Public Safety.~~Office of the State Chief Information Officer."

SECTION 6A.11.(c) G.S. 143-664(b) reads as rewritten:

"(b) ~~Pending permanent staffing, the Department~~ The staff of the Criminal Justice Information Network shall provide the Board with professional and clerical ~~staff~~ support and any additional support the Board needs to fulfill its mandate. The ~~Board may meet in an area provided by the Department of Crime Control and Public Safety and the~~ Board's staff shall use space provided by the ~~Department.~~Office of the State Chief Information Officer."

INTEGRATED BUDGET INFORMATION SYSTEM

SECTION 6A.12.(a) The Office of State Budget and Management (OSBM) shall create a detailed, comprehensive plan for the development and implementation of the Integrated Budget Information System (IBIS). By August 1, 2011, the IBIS plan shall be submitted to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division. The plan must include at least the following:

(1) A detailed description of the system with a list of the functions.
(2) A projected time line for completion with detailed milestones.
(3) Total cost of the project, including five years of operations and maintenance costs.
(4) Projected costs for the project each month, including how the funding is to be spent.

(5) Funds identified to support the project from its inception, with the amounts and sources of funding.
(6) Personnel involved in the project, their position and responsibilities, their qualifications, the amount of time each devotes to the project, and their cost, including both State employees and contract personnel.
(7) Number and cost of personnel required to operate the system after its completion.
(8) Total number of hours required to complete the project.
(9) Outside vendors supporting the project, their functions, and their total cost.
(10) Implementation plan, to include a time line for fielding it to participating agencies.
(11) A training plan with a time line.
(12) Any risks to the project, with a strategy to mitigate those risks.

SECTION 6A.12.(b) Beginning August 1, 2011, on the first day of each month, the Office of State Budget and Management shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on the status of IBIS. The monthly reports shall be signed by the project sponsor, who shall verify in writing that the information contained in the report is current, complete, and accurate. The monthly report shall include the following:

(1) Project status, to include any issues identified by the Enterprise Project Management Office.
(2) Comparison of project status to the time line, with an explanation of any differences.
(3) Detailed descriptions of milestones to be completed that month and the following month.
(4) Any changes in project cost.
(5) Actual expenditures to date and during that month.
(6) Any variances from projected expenditures and the reasons for the variance.
(7) Any potential funding shortfalls and their impact.
(8) Total hours worked each month and cumulative total hours.
(9) Any variance between projected and actual hours and the reason.
(10) Any issues identified during the month, with a corrective action plan and a time line for resolving them.
(11) Impact of any issues identified on the project schedule.
(12) Impact of any issues identified on project cost.
(13) Any changes to the project.
(14) Any change requests submitted to project vendors and their cost.

SECTION 6A.12.(c) The State Chief Information Officer shall immediately suspend the project if OSBM fails to provide a monthly report required by subsection (b) of this section in a timely manner until such time as the report is submitted.

SECTION 6A.12.(d) If OSBM fails to submit reports to the Enterprise Project Management Office for inclusion in the project portfolio management tool on time, the State CIO shall immediately suspend the project until the information is completed in the tool.

USE OF MOBILE ELECTRONIC COMMUNICATIONS DEVICES

SECTION 6A.14.(a) Every executive branch agency within State government shall develop a policy to limit the issuance and use of mobile electronic devices to the minimum required to carry out the agency's mission. By September 1, 2011, each agency shall provide a copy of its policy to the Chairs of the Appropriations Committee and the Appropriations Subcommittee on General Government of the House of Representatives, the Chairs of the Appropriations/Base Budget Committee and the Appropriations Committee on General Government and Information Technology of the Senate, the Chairs of the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management.

State-issued mobile electronic devices shall be used only for State business. Agencies shall limit the issuance of cell phones, smart phones, and any other mobile electronic devices to employees for whom access to a mobile electronic device is a critical requirement for job performance. The device issued and the plan selected shall be the minimum required to support the employees' work requirements. This shall include considering the use of pagers in

lieu of a more sophisticated device. The requirement for each mobile electronic device issued shall be documented in a written justification that shall be maintained by the agency and reviewed annually. All State agency heads, in consultation with the Office of Information Technology Services and the Office of State Budget and Management, shall document and review all authorized cell phone, smart phone, and other mobile electronic communications device procurement, and related phone, data, Internet, and other usage plans for and by their employees. Agencies shall conduct periodic audits of mobile device usage to ensure that State employees and contractors are complying with agency policies and State requirements for their use.

Beginning October 1, 2011, each agency shall report quarterly to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on General Government, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on General Government and Information Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management on the following:

(1) Any changes to agency policies on the use of mobile devices.
(2) The number and types of new devices issued since the last report.
(3) The total number of mobile devices issued by the agency.
(4) The total cost of mobile devices issued by the agency.
(5) The number of each type of mobile device issued, with the total cost for each type.

SECTION 6A.14.(b) This section does not apply to the legislative branch or the judicial branch of State government.

USE OF DMV INSPECTION PROGRAM ACCOUNT FUND

SECTION 6A.15. G.S. 20-183.7(d) reads as rewritten:

"(d) Inspection Program Account. – The Inspection Program Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to fund the vehicle inspection and maintenance ~~program.~~program and to fund replacement of the State Titling and Registration System and the State Automated Driver License System."

STATEWIDE INFORMATION TECHNOLOGY PROCUREMENT

SECTION 6A.16. Statewide Information Technology Procurement shall be funded through fees charged to agencies using Statewide Information Technology Procurement services. The Office of the State Chief Information Officer shall provide a fee schedule to allow cost recovery to the Office of State Budget and Management.

If agencies fail to pay for services within 30 days of billing, the Office of State Budget and Management shall transfer the unpaid amount to the State Information Technology Procurement Office.

REPLACEMENT OF THE STATE TITLING AND REGISTRATION SYSTEM (STARS) AND THE STATE AUTOMATED DRIVER LICENSE SYSTEM (SADLS)

SECTION 6A.17.(a) The Department of Transportation Division of Motor Vehicles shall begin the replacement of the State Titling and Registration System (STARS) and the State Automated Driver License System (SADLS). By October 1, 2011, the Department shall develop a plan and associated time line for accomplishing the replacement of both systems. The Department shall determine the cost for the replacement of each system and then develop a strategy for funding each. This strategy may include, but is not limited to, funding from statutory sources and bulk data fees.

For the 2011-2013 fiscal biennium, there is appropriated for system replacement (i) the sum of up to twenty-four million dollars ($24,000,000) from the DMV Inspection Program Account Fund and (ii) the sum of up to ten million dollars ($10,000,000) from bulk data fees.

Priority for replacement and for funding shall be to STARS, but the Department may make the decision to concurrently initiate the replacements if sufficient funding can be identified to cover the costs for both during the time frames for each. By October 1, 2011, the Department shall provide the plan and funding strategy to the Joint Legislative Oversight Committee on Information Technology, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division.

SECTION 6A.17.(b) Beginning October 1, 2011, and quarterly thereafter until the systems replacement projects are complete, the Department shall report to the Joint Legislative Oversight Committee on Information Technology, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division on the status of the systems replacement. The report shall include the following for each replacement project:

(1) Current status of the replacement projects.
(2) Any changes in the scope of either project and associated change requests.
(3) Any changes in cost for each project.
(4) Changes in status since the previous report.
(5) Costs during the previous quarter.
(6) Funding sources and uses during the previous quarter.
(7) Anticipated funding and expenditures by quarter for the next two years.
(8) Any issues associated with the system development and identified solutions.

SECTION 6A.17.(c) The Office of the State Chief Information Officer (SCIO) and the Office of Information Technology Services (ITS) shall ensure that the Department receives all required support and that the replacements are not delayed as a result of any action on the part of either office. Requirements for project review and approval shall be expedited. If the Department does not receive project approvals within two weeks after submitting required data, the SCIO shall notify immediately the Office of State Budget and Management, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division. If the SCIO or ITS determines it is necessary to delay or suspend the project based on technical or funding issues, either office, or the Department of Transportation, may request committee review as defined in G.S. 147-33.72D. This review must be completed within five business days.

ENTERPRISE ELECTRONIC FORMS AND DIGITAL SIGNATURES

SECTION 6A.18.(a) Under the direction of the State Controller, the State shall plan, develop, and implement a coordinated enterprise electronic forms and digital signatures capability. In developing this capability, the State Controller shall determine the cost of converting forms to an electronic format, determine priorities for converting forms, and establish milestones for completing this conversion.

The State Controller shall integrate executive branch agencies already in the process of developing electronic forms and digital signatures projects. Before beginning this effort, the State Controller shall determine specific agency requirements and incorporate their requirements into its planning efforts.

SECTION 6A.18.(b) Beginning October 1, 2011, the State Controller shall present quarterly reports on the status of the project to the Joint Legislative Oversight Committee on Information Technology.

EVALUATION OF STATE INFORMATION TECHNOLOGY OPERATIONS

SECTION 6A.19.(a) The General Assembly shall conduct a detailed, comprehensive evaluation of information technology operations, infrastructure, systems, ongoing projects, and applications within State government. This evaluation shall include, but is not limited to, the following:

(1) Documentation of the information technology organization and function within State government and individual agencies.
(2) Development of a complete inventory of information technology assets and resources within the State.
(3) Documentation and review of agencies' information technology operations.
(4) Documentation of actual agency information technology costs.
(5) Identification and documentation of the costs associated with specific information technology projects and support.
(6) Identification and documentation of funding sources.
(7) Identification and documentation of common requirements for information technology infrastructure, systems, projects, or applications.

The General Assembly may enter into any contracts necessary to facilitate completion of this evaluation.

SECTION 6A.19.(b) The chairs of the Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate shall establish a

project team to develop an evaluation plan/methodology and manage the day-to-day operation of the evaluation.

SECTION 6A.19.(c) The project team shall develop a detailed schedule prior to the initiation of the evaluation. The schedule shall provide for the evaluation to be conducted in phases. The initial phase shall include all agencies within the executive branch, both Cabinet and Council of State agencies. The scope of subsequent phases shall be determined by the project team during or immediately following the initial phase.

SECTION 6A.19.(d) Agencies shall provide all requested support for evaluation requirements and deliver accurate, complete, and timely data as required to facilitate the evaluation. The agency head shall verify, in writing, the accuracy, completeness, and timeliness of the data. If any support or data provided by an agency does not meet study standards, the agency's information technology functions shall automatically be subject to a continuation review the next fiscal year.

In instances where an immediate change may create opportunities for savings or efficiencies are identified, the project team may recommend implementation of the change prior to completion of the evaluation.

SECTION 6A.19.(e) The General Assembly shall establish an advisory committee that includes business and information technology subject matter experts to provide advice and assistance during the evaluation. The State Controller shall serve as Chairman of the committee.

The President Pro Tempore of the Senate shall appoint five members to the advisory committee, to include an executive from an information technology company, an executive from a Cabinet agency, a Council of State agency Chief Information Officer, a Cabinet agency Chief Financial Officer, and a representative from the Office of Information Technology Services. The Speaker of the House of Representatives shall appoint five members, to include an executive with a private industry management consulting background, an executive from a Council of State agency, a Cabinet agency Chief Information Officer, a Council of State agency Chief Financial Officer, and a representative from the Office of State Budget and Management.

Staff to the committee shall be provided by the General Assembly and shall include analysts and attorneys with a thorough knowledge of information technology operations within the State.

SECTION 6A.19.(f) The Joint Legislative Oversight Committee on Information Technology shall monitor the progress of the evaluation.

Beginning October 1, 2011, the project team shall provide quarterly reports to the chairs of the Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate, the chairs of the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division.

SECTION 6A.19.(g) Of the funds appropriated to the General Assembly in Section 2.1 of this act, the sum of two million dollars ($2,000,000) for the 2011-2012 fiscal year and the sum of three million dollars ($3,000,000) for the 2012-2013 fiscal year shall be used to implement this section.

COMPREHENSIVE ENTERPRISE-LEVEL DATA INTEGRATION CAPABILITY

SECTION 6A.20.(a) The Office of the State Controller (OSC) shall continue the development of a comprehensive enterprise-level data integration capability, providing broad access to and analysis of information across State government. As part of this development effort, by October 1, 2011, OSC shall update the BEACON Strategic Plan for Data Integration and shall provide the updated plan to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division of the General Assembly. The priority of effort for data integration shall be the Criminal Justice Law Enforcement Automated Data System (CJLEADS).

The strategic plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal or State law shall be limited to appropriate and authorized persons. OSC shall also develop, document, and enforce security requirements for data integration initiatives, to include establishing and monitoring security standards for vendors supporting development and implementation efforts.

SECTION 6A.20.(b) There is created a Data Integration Steering Committee that shall have responsibility for overseeing all data integration efforts in the State. This Committee shall assume all of the BEACON Project Steering Committee roles and responsibilities for

oversight of data integration projects. This Committee shall be chaired by the State Controller and shall include the following six voting members:

(1) One member appointed by the Governor with an information technology background and experience.
(2) One member appointed by the Governor with a background in law enforcement.
(3) One member appointed by the President Pro Tempore of the Senate with a background in government accounting.
(4) One member appointed by the President Pro Tempore of the Senate with government operations experience.
(5) One member appointed by the Speaker of the House of Representatives with a background in information technology.
(6) One member appointed by the Speaker of the House of Representatives with a background in business management.

Members shall not have any association with potential vendors.

The Director of the Office of State Budget and Management, the State Chief Information Officer, the State Treasurer, and the State Auditor shall serve as advisory members.

The Committee shall be housed in and supported by the Office of the State Controller.

SECTION 6A.20.(c) As part of the State's continuing effort to develop a comprehensive enterprise-level data integration capability, the Office of the State Controller shall develop an enterprise process to detect fraud, waste, and improper payments across State agencies. State agencies shall fully support and participate in OSC's efforts to develop an automated fraud detection system.

In support of the automated fraud detection effort, the OSC shall:

(1) Develop a detailed long-range plan to implement an automated fraud detection system within State agencies.
(2) Determine costs, to include vendor costs, for the effort for five years, beginning July 1, 2011.
(3) Coordinate with State agencies to determine interest in participating in the project and to identify potential applications that can be included in an initial request for proposal.
(4) Establish priorities for developing and implementing potential applications.
(5) Evaluate savings resulting from each effort.
(6) Coordinate efforts with the State's data integration vendor to begin the implementation process.
(7) Establish a pilot to begin the implementation process and to identify and resolve issues associated with expansion of the initiative.
(8) Coordinate with participating agencies to ensure that each has the resources and processes necessary to follow up on incidents of fraud identified by the vendor.
(9) Provide recommendations to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division of the General Assembly on potential future initiatives and the cost and savings associated with each.

SECTION 6A.20.(d) Beginning October 1, 2011, the OSC shall provide quarterly reports to the chairs of the Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division of the General Assembly. These reports shall include the following:

(1) Incidents, types, and amounts of fraud identified, by agency.
(2) The amount actually recovered as a result of fraud identification, by agency.
(3) Agency procedural changes resulting from fraud identification and the time line for implementing each.
(4) State costs for fraud detection for the previous quarter.
(5) Payments to the vendor for the previous quarter.

(6) Anticipated costs and vendor payments for each of the next two years from the date of the report.

SECTION 6A.20.(e) The Office of the State Controller is authorized to enter into an enterprise automated fraud detection contract for eight million dollars ($8,000,000) for a two-year contract period. Under the terms of the contract, payments are limited to the following payment schedule:

(1) December 2011–$1,000,000.
(2) July 2012–$3,000,000.
(3) December 2012–$3,000,000.
(4) June 2013–$1,000,000.

Further, payments shall be contingent upon achieving the anticipated schedule of benefits realization. To maximize cost reductions and savings, the Office of the State Controller shall enter into the agreement no later than September 1, 2011. To ensure this is a Public-Private Partnership, the Office of the State Controller shall ensure that the chosen vendor shall contribute resources valued at least five million dollars ($5,000,000) during each of fiscal year 2011-2012 and fiscal year 2012-2013 for the project's success.

SECTION 6A.20(f) The Office of State Controller shall ensure that the State receives an appropriate share of intellectual property ownership or residuals, or both, accruing as a result of subsequent contracts between the vendor and third parties that utilize the innovations developed as a result of this contract.

SECTION 6A.20.(g) Of the funds appropriated from the General Fund to the Office of the State Controller, the sum of one million five hundred thousand dollars ($1,500,000) for the 2011-2012 fiscal year and the sum of seven million five hundred thousand dollars ($7,500,000) for the 2012-2013 fiscal year shall be used to support the enterprise process to detect fraud, waste, and improper payments across State agencies in each year of the biennium. Of these funds, five hundred thousand dollars ($500,000) each year shall be used by the Office of the State Controller to support the initiative. The remainder may be used to fund payments to the vendor.

PART VII. PUBLIC SCHOOLS

EDUCATION REFORM IN NORTH CAROLINA

SECTION 7.1.(a) It is a priority of the General Assembly that high school graduates enter the workforce or higher education fully prepared. To implement this priority, the Joint Education Oversight Committee shall study (i) literacy and (ii) ways to reduce the need for remedial or developmental education in the State's higher education institutions so that students and the State do not pay repeatedly for the same education. The Committee shall report to the 2012 Regular Session of the 2011 General Assembly with a comprehensive plan, including implementation dates and schedules, that addresses the following items:

(1) Implementation of a third grade literacy policy, including the advisability of a program for third grade reading specialists modeled on Florida's reading specialist program.
(2) Ways to hold high schools accountable for the higher education performance of their students, including requiring funding for developmental education to come from high schools.
(3) The most cost-effective way to provide remedial education in higher education, including funding summer term developmental courses at community colleges based on successful course completions, focusing remediation at the community colleges, and redirecting university appropriations for remedial education to the community colleges.

SECTION 7.1.(b) In all cases, any program implemented needs to be structured so that ongoing, evaluable performance and outcome data is available.

SECTION 7.1.(c) Funds appropriated to implement this section may be used by the Committee to hire one or more external consultants to complete these studies.

CAREER AND COLLEGE PROMISE

SECTION 7.1A.(a) The State Board of Education and the North Carolina Community College System shall establish the Career and College Promise program. The purpose of Career and College Promise is to offer structured opportunities for qualified high

school students to dually enroll in community college courses that provide pathways consistent with subsection (b) of this section that lead to a certificate, diploma, or degree as well as provide entry-level jobs skills. Academic credits earned through Career and College Promise shall enable students who continue into postsecondary education after graduating from high school to complete a postsecondary credential in less time than would normally be required. All existing high school transition programs, including Huskins, Concurrent Enrollment, Cooperative and Innovative High Schools, Learn and Earn, and Learn and Earn Online shall be consolidated and replaced by Career and College Promise.

SECTION 7.1A.(b) North Carolina community colleges, subject to approval by the State Board of Community Colleges, may offer the following Career and College pathways aligned with the K-12 curriculum and career and college ready standards adopted by the State Board of Education:

(1) A Career Technical Education Pathway, leading to a certificate or diploma aligned with one or more high school Tech Prep Career Clusters.

(2) A College Transfer Pathway, leading to a college transfer certificate requiring the successful completion of thirty semester hours of transfer courses, including English and mathematics, for qualified junior and senior high school students.

(3) A cooperative innovative high schools program approved under Part 9 of Article 16 of Chapter 115C of the General Statutes.

SECTION 7.1A.(c) Constituent institutions of The University of North Carolina System, subject to approval by the Board of Governors of The University of North Carolina, may offer as a Career and College pathway a cooperative innovative high schools program approved under Part 9 of Article 16 of Chapter 115C of the General Statutes. The pathway must align with the K-12 curriculum and career and college ready standards adopted by the State Board of Education.

SECTION 7.1A.(d) The North Carolina Community College System and the Department of Public Instruction shall jointly develop and implement a program accountability plan to evaluate short-term and long-term outcomes for Career and College Promise. Outcomes to be measured shall include the following items:

(1) The impact of dual enrollment on high school completion.

(2) The academic achievement and performance of dually enrolled high school students.

(3) The number of students who successfully complete college certificates while dually enrolled.

(4) The impact of dual enrollment and certificate completion on enrollment in college.

(5) The persistence and completion rates of students who continue into college programs after high school graduation.

(6) The academic achievement and performance of students who continue into colleges programs after high school graduation.

SECTION 7.1A.(e) Community colleges shall generate budget FTE for instruction provided through Career and College Promise. The Community Colleges System Office shall report to the Joint Education Oversight Committee or, if the General Assembly is in session, to the House and Senate Education Committees no later than February 1 regarding the number and cost of high school FTE served as a result of the Career and College Promise program created by this section.

SECTION 7.1A.(f) G.S. 115D-1.1 and G.S. 115D-1.2 are repealed.

SECTION 7.1A.(g) G.S. 115D-41 reads as rewritten:

"**§ 115D-41. Restrictions on contracts with local school administrative units; use of community college facilities by public school students pursuant to cooperative programs.**

(a) Community college contracts with local school administrative units shall not be used by these agencies to supplant funding for a public school high school teacher providing courses offered pursuant to G.S. 115D-20(4) who is already employed by the local school administrative unit. ~~However, if a community college contracts with a local school administrative unit for a public high school teacher to teach a college level course, the community college shall not generate budget FTE for that course. Its reimbursement in this case shall be limited to the direct instructional costs contained in the contract, plus fifteen~~

~~percent (15%) for administrative costs.~~ In no event shall a community college contract with a local school administrative unit to provide high school level courses.

...."

SECTION 7.1A.(h) G.S. 115D-20 reads as rewritten:

"**§ 115D-20. Powers and duties of trustees.**

The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Community Colleges. The powers and duties of trustees shall include the following:

...

(4) To apply the standards and requirements for admission and graduation of students and other standards established by the State Board of Community Colleges. ~~Provided, notwithstanding~~Notwithstanding any law or administrative rule to the contrary, ~~local administrative boards and local school boards may establish cooperative programs in the areas they serve to provide for college courses to be offered to qualified high school students with college credits to be awarded to those high school students upon the successful completion of the courses. Provided, further, that during~~local community colleges are permitted to offer the following programs:

a. Subject to the approval of the State Board of Community Colleges, local community colleges may collaborate with local school administrative units to offer courses through the following programs:

1. Cooperative innovative high school programs as provided by Part 9 of Article 16 of Chapter 115C of the General Statutes.
2. Academic transition pathways for qualified junior and senior high school students that lead to a career technical education certificate or diploma.
3. College transfer certificates requiring the successful completion of thirty semester credit hours transfer courses, including English and mathematics, for junior and senior high school students.

b. During the summer quarter, persons less than 16 years old may be permitted to take noncredit courses on a self-supporting basis, subject to rules of the State Board of Community Colleges. ~~Provided, further, that high~~

c. High school students may be permitted to take noncredit courses in safe driving on a self-supporting basis during the academic year or the summer.

...."

SECTION 7.1A.(i) The North Carolina Community College System, University of North Carolina General Administration, and the North Carolina Independent Colleges and Universities shall develop a plan for articulation of a college transfer certificate to all UNC institutions and participating independent colleges and universities. North Carolina Independent Colleges and Universities, Inc., shall also be included in the development of the plan if it chooses to participate. College transfer certificates shall require the successful completion of thirty credit hours of college transfer courses, including English and mathematics, for qualified junior and senior high school students.

SECTION 7.1A.(j) Part 9 of Article 16 of Chapter 115C of the General Statutes reads as rewritten:

"Part 9. Cooperative Innovative High School Programs.

"**§ 115C-238.50. Purpose.**

(a) The purpose of this Part is to authorize local boards of education to jointly establish with one or more boards of trustees cooperative innovative programs in high schools and colleges or universities that will expand students' opportunities for educational success through high quality instructional programming. These cooperative innovative high school programs shall ~~target:~~target any of the following groups:

(1) High school students who are at risk of dropping out of school before attaining a high school ~~diploma; or~~diploma.

(2) High school students with parents who did not continue education beyond high school.

~~(2)~~(3) High school students who would benefit from accelerated academic instruction.

(b) All the cooperative innovative high school programs established under this Part shall:

(1) Enable students to concurrently obtain a high school diploma and begin or complete an associate degree program, master a certificate or vocational program, or earn up to two years of college credit within five years.

(1a) Prepare students adequately for future learning in the workforce or in an institution of higher education.

~~(2) Expand students' educational opportunities within the public school system.~~

~~(3) Be centered on the core academic standards represented by the college preparatory or tech prep program of study as defined by the State Board of Education.~~

(4) Encourage the cooperative or shared use of resources, personnel, and facilities between public schools and colleges or universities, or both.

~~(5) Integrate and emphasize both academic and technical skills necessary for students to be successful in a more demanding and changing workplace.~~

(6) Emphasize parental involvement and provide consistent counseling, advising, and parent conferencing so that parents and students can make responsible decisions regarding course taking and can track the students' academic progress and success.

~~(7) Be held accountable for meeting measurable student achievement results.~~

~~(8) Encourage the use of different and innovative teaching methods.~~

~~(9) Establish joint institutional responsibility and accountability for support of students and their success.~~

~~(10) Effectively utilize existing funding sources for high school, college, university, and vocational programs and actively pursue new funding from other sources.~~

(11) Develop methods for early identification of potential participating students in the middle grades and through high ~~school.~~school and provide outreach to those students to promote academic preparation and awareness of the cooperative innovative high school programs.

~~(12) Reduce the percentage of students needing remedial courses upon their initial entry from high school into a college or university.~~

~~(c) Programs developed under this Part that target students who are at risk of dropping out of high school before attaining a high school diploma shall:~~

~~(1) Provide these students with the opportunity to graduate from high school possessing the core academic skills needed for postsecondary education and high-skilled employment.~~

~~(2) Enable students to complete a technical or academic program in a field that is in high demand and has high wages.~~

~~(3) Set and achieve goals that significantly reduce dropout rates and raise high school and college retention, certification, and degree completion rates.~~

~~(4) Enable students who complete these programs to pass employer exams, if applicable.~~

~~(d) Cooperative innovative high school programs that offer accelerated learning programs shall:~~

~~(1) Provide a flexible, customized program of instruction for students who would benefit from accelerated, higher level coursework or early graduation from high school.~~

~~(2) Enable students to obtain a high school diploma in less than four years, to begin or complete an associate degree program, to master a certificate or vocational program, or to earn up to two years of college credit.~~

~~(3) Offer a college preparatory academic core and in-depth studies in a career or technical field that will lead to advanced programs or employment opportunities in engineering, health sciences, or teaching.~~

~~(e) Cooperative innovative high school programs may include the creation of a school within a school, a technical high school, a high school or technical center located on the campus of a college or university, or a five-year career academy operating as part of an existing high school.~~

(f) Students are eligible to attend these programs as early as ninth grade.

"**§ 115C-238.50A. Definitions.**

The following definitions apply in this Part:

(1) Constituent institution. – A constituent institution as defined in G.S. 116-2(4).

(2) Education partner. – An education partner as provided in G.S. 115C-238.52.

(3) Governing board. – The State Board of Education, the State Board of Community Colleges, the Board of Governors of The University of North Carolina, or the Board of the North Carolina Independent Colleges and Universities.

(4) Local board of trustees. – The board of trustees of a community college, constituent institution of The University of North Carolina, or private college located in North Carolina.

(5) Cooperative innovative high school. – A high school that meets the following criteria:

a. It has no more than 100 students per grade level.

b. It partners with an institution of higher education to enable students to concurrently obtain a high school diploma and begin or complete an associate degree program, master a certificate or vocational program, or earn up to two years of college credit within five years.

c. It is located on the campus of the institution of higher education, unless the governing board specifically waives the requirement through adoption of a formal resolution.

"**§ 115C-238.51. Application process.**

(a) A local board of education and at least one local board of trustees shall jointly apply to establish a cooperative innovative high school program under this Part.

...

(e) No additional State funds shall be provided to approved programs unless appropriated by the General Assembly.

...

"**§ 115C-238.54. Funds for programs.**

(a) The Department of Public Instruction shall assign a school code for each program that is approved under this ~~Part, with the exception of a five-year career academy operating as part of an existing high school, which shall continue to use the existing school code. All positions and other State and federal allotments that are generated for this program shall be assigned to that school code.~~ Part. Notwithstanding G.S. 115C-105.25, once ~~funds are assigned to that school code,~~ the program has been assigned a school code, the local board of education may use these funds for the program and may transfer these funds between funding allotment categories.

~~(a1) A five-year career academy operating as part of an existing high school shall maintain records to identify and evaluate students enrolled in the five-year career academy program distinct from the general school population.~~

...."

SECTION 7.1A.(k) Cooperative innovative high schools approved by the State Board of Education prior to July 1, 2011, shall meet the requirements of G.S. 115C-238.50A(5) as enacted by subsection (j) of this section no later than July 1, 2014. Any cooperative innovative high school which fails to meet the requirements by that date shall no longer be authorized as a cooperative innovative high school.

SECTION 7.1A.(l) Subsection (e) of this section takes effect January 1, 2013, and is repealed effective June 30, 2015. The remainder of this section becomes effective January 1, 2012.

CLASS SIZE REDUCTION FOR GRADES 1-3

SECTION 7.1B. The General Assembly finds that educational research has shown that small classes of 15 or fewer students result in marked improvement in learning in grades

1-3, as measured by standardized tests in reading and mathematics, that the advantages gained from being in small classes have been shown to have a lasting benefit into the later years of students' lives, and that these studies have shown that small classes have a particularly beneficial effect on the academic achievement of children from disadvantaged backgrounds. The General Assembly further finds that larger class sizes allow less time to develop relationships with students, colleagues, and parents, and prevent the implementation of new and more dynamic and individualized teaching strategies and techniques. Therefore, it is the intent of the General Assembly to reduce class size in grades 1 through 3 to a class size allotment not exceeding 1:15 as funds become available.

FUNDS FOR CHILDREN WITH DISABILITIES

SECTION 7.2. The State Board of Education shall allocate additional funds for children with disabilities on the basis of three thousand five hundred eighty-five dollars and eighty-eight cents ($3,585.88) per child. Each local school administrative unit shall receive funds for the lesser of (i) all children who are identified as children with disabilities or (ii) twelve and five-tenths percent (12.5%) of its 2011-2012 allocated average daily membership in the local school administrative unit. The dollar amounts allocated under this section for children with disabilities shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve children with disabilities.

FUNDS FOR ACADEMICALLY GIFTED CHILDREN

SECTION 7.3. The State Board of Education shall allocate additional funds for academically or intellectually gifted children on the basis of one thousand one hundred ninety-two dollars and ninety cents ($1,192.90) per child for fiscal year 2011-2012 and one thousand one hundred ninety-two dollars and ninety cents ($1,192.90) per child for fiscal year 2012-2013. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2011-2012 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The dollar amounts allocated under this section for academically or intellectually gifted children shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve academically or intellectually gifted children.

USE OF SUPPLEMENTAL FUNDING IN LOW-WEALTH COUNTIES

SECTION 7.4.(a) Use of Funds for Supplemental Funding. – All funds received pursuant to this section shall be used only (i) to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, school computer technicians, instructional supplies and equipment, staff development, and textbooks and (ii) for salary supplements for instructional personnel and instructional support personnel. Local boards of education are encouraged to use at least twenty-five percent (25%) of the funds received pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II in grades 4 and 7.

SECTION 7.4.(b) Definitions. – As used in this section, the following definitions apply:

(1) "Anticipated county property tax revenue availability" means the county-adjusted property tax base multiplied by the effective State average tax rate.

(2) "Anticipated total county revenue availability" means the sum of the following:

a. Anticipated county property tax revenue availability.

b. Local sales and use taxes received by the county that are levied under Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of Chapter 105 of the General Statutes.

c. Sales tax hold harmless reimbursement received by the county under G.S. 105-521.

d. Fines and forfeitures deposited in the county school fund for the most recent year for which data are available.

(3) "Anticipated total county revenue availability per student" means the anticipated total county revenue availability for the county divided by the average daily membership of the county.

(4) "Anticipated State average revenue availability per student" means the sum of all anticipated total county revenue availability divided by the average daily membership for the State.

(5) "Average daily membership" means average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education. If a county contains only part of a local school administrative unit, the average daily membership of that county includes all students who reside within the county and attend that local school administrative unit.

(6) "County-adjusted property tax base" shall be computed as follows:

a. Subtract the present-use value of agricultural land, horticultural land, and forestland in the county, as defined in G.S. 105-277.2, from the total assessed real property valuation of the county.

b. Adjust the resulting amount by multiplying by a weighted average of the three most recent annual sales assessment ratio studies.

c. Add to the resulting amount the following:

1. Present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2.

2. Value of property of public service companies, determined in accordance with Article 23 of Chapter 105 of the General Statutes.

3. Personal property value for the county.

(7) "County-adjusted property tax base per square mile" means the county-adjusted property tax base divided by the number of square miles of land area in the county.

(8) "County wealth as a percentage of State average wealth" shall be computed as follows:

a. Compute the percentage that the county per capita income is of the State per capita income and weight the resulting percentage by a factor of five-tenths.

b. Compute the percentage that the anticipated total county revenue availability per student is of the anticipated State average revenue availability per student and weight the resulting percentage by a factor of four-tenths.

c. Compute the percentage that the county-adjusted property tax base per square mile is of the State-adjusted property tax base per square mile and weight the resulting percentage by a factor of one-tenth.

d. Add the three weighted percentages to derive the county wealth as a percentage of the State average wealth.

(9) "Effective county tax rate" means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.

(10) "Effective State average tax rate" means the average of effective county tax rates for all counties.

(11) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(12) "Per capita income" means the average for the most recent three years for which data are available of the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis, including any reported modifications for prior years as outlined in the most recent report.

(13) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(14) "State average current expense appropriations per student" means the most recent State total of county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(15) "State average adjusted property tax base per square mile" means the sum of the county-adjusted property tax bases for all counties divided by the number of square miles of land area in the State.

(16) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

(17) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

SECTION 7.4.(c) Eligibility for Funds. – Except as provided in subsection (g) of this section, the State Board of Education shall allocate these funds to local school administrative units located in whole or in part in counties in which the county wealth as a percentage of the State average wealth is less than one hundred percent (100%).

SECTION 7.4.(d) Allocation of Funds. – Except as provided in subsection (f) of this section, the amount received per average daily membership for a county shall be the difference between the State average current expense appropriations per student and the current expense appropriations per student that the county could provide given the county's wealth and an average effort to fund public schools. (To derive the current expense appropriations per student that the county could be able to provide given the county's wealth and an average effort to fund public schools, multiply the county's wealth as a percentage of State average wealth by the State average current expense appropriations per student.) The funds for the local school administrative units located in whole or in part in the county shall be allocated to each local school administrative unit located in whole or in part in the county based on the average daily membership of the county's students in the school units. If the funds appropriated for supplemental funding are not adequate to fund the formula fully, each local school administrative unit shall receive a pro rata share of the funds appropriated for supplemental funding.

SECTION 7.4.(e) Formula for Distribution of Supplemental Funding Pursuant to This Section Only. – The formula in this section is solely a basis for distribution of supplemental funding for low-wealth counties and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for low-wealth counties.

SECTION 7.4.(f) Minimum Effort Required. – Counties that had effective tax rates in the 1996-1997 fiscal year that were above the State average effective tax rate but that had effective rates below the State average in the 1997-1998 fiscal year or thereafter shall receive reduced funding under this section. This reduction in funding shall be determined by subtracting the amount that the county would have received pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws from the amount that the county would have received if qualified for full funding and multiplying the difference by ten percent (10%). This method of calculating reduced funding shall apply one time only. This method of calculating reduced funding shall not apply in cases in which the effective tax rate fell below the statewide average effective tax rate as a result of a reduction in the actual property tax rate. In these cases, the minimum effort required shall be calculated in accordance with Section 17.1(g) of Chapter 507 of the 1995 Session Laws. If the county documents that it has increased the per student appropriation to the school current expense fund in the current fiscal year, the State Board of Education shall include this additional per pupil appropriation when calculating minimum effort pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

SECTION 7.4.(g) Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local

current expense funds and shall not supplant local current expense funds. For the 2011-2013 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if the following apply:

(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and

(2) The county cannot show (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section. The State Board of Education shall adopt rules to implement this section.

SECTION 7.4.(h) Reports. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2012, if it determines that counties have supplanted funds.

SECTION 7.4.(i) Department of Revenue Reports. – The Department of Revenue shall provide to the Department of Public Instruction a preliminary report for the current fiscal year of the assessed value of the property tax base for each county prior to March 1 of each year and a final report prior to May 1 of each year. The reports shall include for each county the annual sales assessment ratio and the taxable values of (i) total real property, (ii) the portion of total real property represented by the present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2, (iii) property of public service companies determined in accordance with Article 23 of Chapter 105 of the General Statutes, and (iv) personal property.

LITIGATION RESERVE FUNDS

SECTION 7.5. The State Board of Education may expend up to five hundred thousand dollars ($500,000) each year for the 2011-2012 and 2012-2013 fiscal years from unexpended funds for certified employees' salaries to pay expenses related to litigation.

UNIFORM EDUCATION REPORTING SYSTEM (UERS) FUNDS

SECTION 7.6.(a) Funds appropriated for the Uniform Education Reporting System shall not revert at the end of the 2010-2011 fiscal year.

SECTION 7.6.(b) This section becomes effective June 30, 2011.

FOCUSED EDUCATION REFORM PROGRAM FUNDS DO NOT REVERT

SECTION 7.7.(a) Funds appropriated for the Focused Education Reform Pilot Program that are unexpended and unencumbered at the end of the 2010-2011 fiscal year shall not revert but shall remain available for expenditure for that purpose through the 2011-2012 fiscal year.

SECTION 7.7.(b) This section becomes effective June 30, 2011.

DISADVANTAGED STUDENT SUPPLEMENTAL FUNDING (DSSF)

SECTION 7.8.(a) Funds appropriated for disadvantaged student supplemental funding shall be used, consistent with the policies and procedures adopted by the State Board of Education, only to:

(1) Provide instructional positions or instructional support positions and/or professional development;

(2) Provide intensive in-school and/or after-school remediation;

(3) Purchase diagnostic software and progress-monitoring tools; and

(4) Provide funds for teacher bonuses and supplements. The State Board of Education shall set a maximum percentage of the funds that may be used for this purpose.

The State Board of Education may require districts receiving funding under the Disadvantaged Student Supplemental Fund to purchase the Education Value Added Assessment System in order to provide in-depth analysis of student performance and help identify strategies for improving student achievement. This data shall be used exclusively for

instructional and curriculum decisions made in the best interest of children and for professional development for their teachers and administrators.

SECTION 7.8.(b) Funds appropriated to a local school administrative unit for disadvantaged student supplemental funding shall be allotted based on (i) the local school administrative unit's eligible DSSF population and (ii) the difference between a teacher-to-student ratio of 1:21 and the following teacher-to-student ratios:

(1) For counties with wealth greater than ninety percent (90%) of the statewide average, a ratio of 1:19.9.

(2) For counties with wealth not less than eighty percent (80%) and not greater than ninety percent (90%) of the statewide average, a ratio of 1:19.4.

(3) For counties with wealth less than eighty percent (80%) of the statewide average, a ratio of 1:19.1.

(4) For LEAs receiving DSSF funds in 2005-2006, a ratio of 1:16. These LEAs shall receive no less than the DSSF amount allotted in 2006-2007.

For the purpose of this subsection, wealth shall be calculated under the low-wealth supplemental formula.

SECTION 7.8.(c) If a local school administrative unit's wealth increases to a level that adversely affects the unit's DSSF allotment ratio, the DSSF allotment for that unit shall be maintained at the prior year level for one additional fiscal year.

TUITION CHARGE FOR GOVERNOR'S SCHOOL

SECTION 7.9. G.S. 115C-12(36) reads as rewritten:

"(36) Duty to Charge Tuition for the Governor's School of North Carolina. – The State Board of Education ~~shall~~ may implement a ~~five hundred dollar ($500.00)~~ tuition charge for students attending the Governor's School of North ~~Carolina.~~Carolina to cover the costs of the School."

SCHOOL CONNECTIVITY INITIATIVE FUNDS

SECTION 7.10.(a) Section 7.9(b) of S.L. 2010-31 reads as rewritten:

"**SECTION 7.9.(b)** Up to three hundred fifty thousand dollars ($350,000) of the funds for the School Connectivity Initiative may be used for ~~this and subsequent fiscal years~~ the 2010-2011 fiscal year by the Office of the Governor for education innovation and the education E-learning portal. These funds may be used to provide services to coordinate e-learning activities across all education agencies and to support the operating of the E-learning portal."

SECTION 7.10.(b) Section 7.6(a) of S.L. 2008-107, as rewritten by Section 7.12(b) of S.L. 2009-451, reads as rewritten:

"**SECTION 7.6.(a)** Up to three hundred thousand dollars ($300,000) may be transferred annually through June 30, ~~2013,~~ 2011, to the Friday Institute at North Carolina State University to evaluate the effectiveness of using technology and its impact on 21st Century Teaching and Learning outcomes approved by the State Board of Education. The Friday Institute shall report annually to the State Board of Education on the evaluation results."

SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING

SECTION 7.12.(a) Funds for Small School Systems. – Except as provided in subsection (b) of this section, the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of fewer than 3,175 students and (ii) to each county school administrative unit with an average daily membership from 3,175 to 4,000 students if the county in which the local school administrative unit is located has a county-adjusted property tax base per student that is below the State-adjusted property tax base per student and if the total average daily membership of all local school administrative units located within the county is from 3,175 to 4,000 students. The allocation formula shall do all of the following:

(1) Round all fractions of positions to the next whole position.

(2) Provide five and one-half additional regular classroom teachers in counties in which the average daily membership per square mile is greater than four and provide seven additional regular classroom teachers in counties in which the average daily membership per square mile is four or fewer.

(3) Provide additional program enhancement teachers adequate to offer the standard course of study.

(4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership.

(5) Provide a base for the consolidated funds allotment of at least seven hundred seventeen thousand three hundred sixty dollars ($717,360), excluding textbooks, for the 2011-2012 fiscal year and a base of seven hundred seventeen thousand three hundred sixty dollars ($717,360) for the 2012-2013 fiscal year.

(6) Allot vocational education funds for grade 6 as well as for grades 7-12. If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fully fund the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula also is not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

SECTION 7.12.(b) Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2011-2013 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if the following apply:

(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and

(2) The county cannot show (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section. The State Board of Education shall adopt rules to implement this section.

SECTION 7.12.(c) Phase-Out Provisions. – If a local school administrative unit becomes ineligible for funding under this formula because of (i) an increase in the population of the county in which the local school administrative unit is located or (ii) an increase in the county-adjusted property tax base per student of the county in which the local school administrative unit is located, funding for that unit shall be continued for seven years after the unit becomes ineligible.

SECTION 7.12.(d) Definitions. – As used in this section, the following definitions apply:

(1) "Average daily membership" means within two percent (2%) of the average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual adopted by the State Board of Education.

(2) "County-adjusted property tax base per student" means the total assessed property valuation for each county, adjusted using a weighted average of the three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.

(3) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(4) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(5) "State-adjusted property tax base per student" means the sum of all county-adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.

(6) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

(7) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued during the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

SECTION 7.12.(e) Reports. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2012, if it determines that counties have supplanted funds.

SECTION 7.12.(f) Use of Funds. – Local boards of education are encouraged to use at least twenty percent (20%) of the funds they receive pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8.

ELIMINATION OF REPORTING REQUIREMENTS

SECTION 7.13.(a) G.S. 115C-12(25) reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(25) Duty to Report to Joint Legislative Education Oversight Committee. – Upon the request of the Joint Legislative Education Oversight Committee, the State Board shall examine and evaluate issues, programs, policies, and fiscal information, and shall make reports to that Committee. Furthermore, beginning October 15, 1997, and annually thereafter, the State Board shall submit reports to that Committee regarding the continued implementation of Chapter 716 of the 1995 Session Laws, 1996 Regular Session. Each report shall include information regarding the composition and activity of assistance teams, schools that received incentive awards, schools identified as low-performing, ~~school improvement plans found to significantly improve student performance,~~ personnel actions taken in low-performing schools, and recommendations for additional legislation to improve student performance and increase local flexibility."

SECTION 7.13.(b) G.S. 115C-47(38) is repealed.

SECTION 7.13.(c) G.S. 115C-84.2(a)(1) reads as rewritten:

"(1) **(See notes)** A minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. ~~Local boards may approve school improvement plans that include days with varying amounts of instructional time.~~ If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather."

SECTION 7.13.(d) G.S. 115C-84.2(a)(5) reads as rewritten:

"(5) The remaining days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes. ~~Before consulting with the local board, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled.~~ Days may be scheduled and planned for different purposes for different

personnel and there is no requirement to schedule the same dates for all personnel. In order to make up days for school closing because of inclement weather, the local board may designate any of the days in this subdivision as additional make-up days to be scheduled after the last day of student attendance."

SECTION 7.13.(e) G.S. 115C-98(b2) reads as rewritten:

"(b2) Local boards of education ~~may:~~

~~(1)~~ ~~Select,~~ may select, procure, and use textbooks that have not been adopted by the State Board of Education for use throughout the local school administrative unit for selected grade levels and ~~courses; and~~courses.

~~(2) Approve school improvement plans developed under G.S. 115C-105.27 that include provisions for using textbooks that have not been adopted by the State Board of Education for selected grade levels and courses.~~

All textbook contracts made under this subsection shall include a clause granting to the local board of education the license to produce braille, large print, and audiocassette tape copies of the textbooks for use in the local school administrative unit."

SECTION 7.13.(f) G.S. 115C-105.20(b)(5) is repealed.

SECTION 7.13.(g) G.S. 115C-105.25 reads as rewritten:

"§ 115C-105.25. Budget flexibility.

...

(b) Subject to the following limitations, local boards of education may transfer and may approve transfers of funds between funding allotment categories:

(1) ~~In accordance with a school improvement plan accepted under G.S. 115C-105.27,~~ State funds allocated for teacher assistants may be transferred only for personnel (i) to serve students only in kindergarten through third grade, ~~or~~ (ii) to serve students primarily in kindergarten through third grade when the personnel are assigned to an elementary school to serve the whole school ~~school. Funds allocated for teacher assistants may be transferred to reduce class size~~ or (iii) to reduce the student-teacher ratio in kindergarten through third grade so long as the affected teacher assistant positions are not ~~filled when the plan is amended or approved by the building-level staff entitled to vote on the plan or the affected teacher assistant positions are not expected to be filled on the date the plan is to be implemented.~~ filled. Any State funds appropriated for teacher assistants that were converted to certificated teachers before July 1, 1995, in accordance with Section 1 of Chapter 986 of the 1991 Session Laws, as rewritten by Chapter 103 of the 1993 Session Laws, may continue to be used for certificated teachers.

(2) ~~In accordance with a school improvement plan accepted under G.S. 115C-105.27, (i)~~ State funds allocated for classroom materials/instructional supplies/equipment may be transferred only for the purchase of ~~textbooks; (ii)~~ textbooks. State funds allocated for textbooks may be transferred only for the purchase of instructional supplies, instructional equipment, or other classroom ~~materials; and (iii)~~materials. State funds allocated for noninstructional support personnel may be transferred only for teacher positions.

...

(8) Funds allocated for academically or intellectually gifted students may be used only (i) for academically or intellectually gifted students; (ii) to implement the plan developed under G.S. 115C-150.7; or (iii) in accordance with an accepted school improvement plan, for any purpose so long as that school demonstrates it is providing appropriate services to academically or intellectually gifted students assigned to that school in accordance with the local plan developed under G.S. 115C-150.7.

...."

SECTION 7.13.(h) G.S. 115C-105.26 reads as rewritten:

"§ 115C-105.26. Waivers of State laws, rules, or policies.

(a) ~~When included as part of a school improvement plan accepted under G.S. 115C-105.27, local~~ Local boards of education shall submit requests for waivers of State

laws, rules, or policies to the State Board of Education. A request for a waiver shall (i) identify the school making the request, (ii) identify the State laws, rules, or policies that inhibit the school's ability to improve student performance, (iii) set out with specificity the circumstances under which the waiver may be used, and (iv) explain how the requested waiver will permit the school to improve student performance. Except as provided in subsection (c) of this section, the State Board shall grant waivers only for the specific schools for which they are requested and shall be used only under the specific circumstances for which they are requested.

(b) ~~When requested as part of a school improvement plan, the~~ The State Board of Education may grant waivers of:

(1) State laws pertaining to class size and teacher certification; and

(2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and G.S. 115C-325, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System.

...."

SECTION 7.13.(i) G.S. 115C-105.27 is repealed.

SECTION 7.13.(j) G.S. 115C-105.30 is repealed.

SECTION 7.13.(k) G.S. 115C-105.31(b)(3) is repealed.

SECTION 7.13.(l) G.S. 115C-105.32 is repealed.

SECTION 7.13.(m) G.S. 115C-105.33 reads as rewritten:

"**§ 115C-105.33. Safe and orderly schools.**

A ~~school improvement team or a~~ parent organization at a school may ask the local board of education to provide assistance in promoting or restoring safety and an orderly learning environment at a school. The ~~school improvement team or~~ parent organization shall file a copy of this request with the State Board. If the local board fails to provide adequate assistance to the school, then the ~~school improvement team or~~ parent organization may ask the State Board to provide an assistance team to the school.

The State Board may provide an assistance team, established under G.S. 115C-105.38, to a school in order to promote or restore safety and an orderly learning environment at that school if one of the following applies:

(1) The local board of education or superintendent requests that the State Board provide an assistance team to a school and the State Board determines that the school needs assistance.

(2) The State Board determines within 10 days after its receipt of the request for assistance from a ~~school improvement team or~~ parent organization of a school that the school needs assistance and that the local board has failed to provide adequate assistance to that school.

If an assistance team is assigned to a school under this section, the team shall spend a sufficient amount of time at the school to assess the problems at the school, assist school personnel with resolving those problems, and work with school personnel and others to develop a long-term plan for restoring and maintaining safety and an orderly learning environment at the school. The assistance team also shall make recommendations to the local board of education and the superintendent on actions the board and the superintendent should consider taking to resolve problems at the school. These recommendations shall be in writing and are public records. If an assistance team is assigned to a school under this section, the powers given to the State Board and the assistance team under G.S. 115C-105.38 and G.S. 115C-105.39 shall apply as if the school had been identified as low-performing under this Article."

SECTION 7.13.(n) G.S. 115C-105.37A(a) reads as rewritten:

"(a) Definition of Continually Low-Performing Schools. – A continually low-performing school is a school that has received State-mandated assistance and has been designated by the State Board as low performing for at least two of three consecutive years. ~~If the State Board identifies a school as continually low performing:~~

~~(1) The school improvement team at that school shall review its school improvement plan to ensure consistency with the plan adopted pursuant to G.S. 115C-105.38(b)(3), and~~

~~(2) The plan must be reviewed and approved by the State Board of Education.~~"

SECTION 7.13.(o) G.S. 115C-105.38(b)(6) reads as rewritten:

"(6) Report, as appropriate, to the local board of education, the community, and the State Board on the school's progress. ~~If an assistance team determines that an accepted school improvement plan developed under G.S. 115C-105.27 is impeding student performance at a school, the team may recommend to the local board that it vacate the relevant portions of that plan and direct the school to revise those portions.~~"

SECTION 7.13.(p) G.S. 115C-105.47(b)(13) is repealed.

SECTION 7.13.(q) G.S. 115C-174.12(a)(3) reads as rewritten:

"(3) No school shall participate in more than two field tests at any one grade level during a school year ~~unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.~~without the approval of the principal of the school."

SECTION 7.13.(r) G.S. 115C-238.31(a) reads as rewritten:

"(a) Local school administrative units are encouraged to implement extended services programs that will expand students' opportunities for educational success through high-quality, integrated access to instructional programming during nonschool hours. ~~Extended services programs may be incorporated into school improvement plans developed in accordance with G.S. 115C-105.27.~~ Calendar alternatives include, but are not limited to, after-school hours, before-school hours, evening school, Saturday school, summer school, and year-round school. Instructional programming may include, but is not limited to, tutoring, direct instruction, enrichment activities, study skills, and reinforcement projects."

SECTION 7.13.(s) G.S. 115C-288(h) reads as rewritten:

"(h) To Make Available School ~~Budgets and School Improvement Plans.~~ Budgets. – The principal shall maintain a copy of the school's current ~~budget and school improvement plan, including any amendments to the plan,~~ budget and shall allow parents of children in the school and other interested persons to review and obtain such documents in accordance with Chapter 132 of the General Statutes."

SECTION 7.13.(t) G.S. 115C-288(l) is repealed.

SECTION 7.13.(u) G.S. 143B-146.6(b)(6) reads as rewritten:

"(6) Report, as appropriate, to the Secretary, the State Board, and the parents on the school's progress. ~~If an assistance team determines that an accepted school improvement plan developed under G.S. 143B-146.12 is impeding student performance at a school, the team may recommend to the Secretary that he vacate the relevant portions of that plan and direct the school to revise those portions.~~"

SECTION 7.13.(v) G.S. 143B-146.12 is repealed.

SECTION 7.13.(w) G.S. 115C-47(32a) reads as rewritten:

"(32a) To Establish Alternative Learning Programs and Develop Policies and Guidelines. – Each local board of education shall establish at least one alternative learning program and shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to long term suspension or expulsion. In developing these guidelines, local boards shall consider the State Board's standards developed under G.S. 115C-12(24). ~~Upon adoption of policies and guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47.~~

The General Assembly urges local boards to adopt policies that prohibit superintendents from assigning to any alternative learning program any professional public school employee who has received within the last three years a rating on a formal evaluation that is less than above standard.

Notwithstanding this subdivision, each local board shall adopt policies based on the State Board's standards developed under G.S. 115C-12(24). These policies shall apply to any new alternative learning program or alternative school that is implemented beginning with the 2006-2007 school

year. Local boards of education are encouraged to apply these standards to alternative learning programs and alternative schools implemented before the 2006-2007 school year.

Local boards shall assess on a regular basis whether the unit's alternative schools and alternative learning programs comply with the State Board's standards developed under G.S. 115C-12(24) and whether they incorporate best practices for improving student academic performance and reducing disruptive behavior, are staffed with professional public school employees who are well trained and provided with appropriate staff development, are organized to provide coordinated services, and provide students with high quality and rigorous academic instruction."

SECTION 7.13.(x) G.S. 115C-105.27(b)(2) reads as rewritten:

"(2) Shall include a plan to address school safety and discipline ~~concerns in accordance with the safe school plan developed under Article 8C of this Chapter;~~concerns."

SECTION 7.13.(y) G.S. 115C-105.46 reads as rewritten:

"**§ 115C-105.46. State Board of Education responsibilities.**

In order to implement this Article, the State Board of Education:

~~(1) Shall adopt guidelines for developing local plans under G.S. 115C-105.47.~~

~~(2) Shall provide, in cooperation with the Board of Governors of The University of North Carolina, ongoing technical assistance to the local school administrative units in the development, implementation, and evaluation of their local plans under G.S. 115C-105.47.~~

~~(3) May require a local board of education to withhold the salary of any administrator or other employee of a local school administrative unit who delays or refuses to prepare and implement local safe school plans in accordance with G.S. 115C-105.47.~~

~~(4) May revoke the certificate of the superintendent, pursuant to G.S. 115C-274(c), for failure to fulfill the superintendent's duties under a local safe school plan.~~

(5) Shall adopt policies that define who is an at-risk student."

SECTION 7.13.(z) G.S. 115C-105.47 is repealed.

SECTION 7.13.(aa) G.S. 115C-102.6C is repealed.

SECTION 7.13.(bb) G.S. 115C-102.6D(d) is repealed.

SECTION 7.13.(cc) G.S. 115C-102.7 reads as rewritten:

"**§ 115C-102.7. Monitoring and evaluation of State and local school system technology plans; reports.**

(a) The Department of Public Instruction shall monitor and evaluate the development and implementation of the State ~~and local school system technology plans.~~ technology plan. The evaluation shall consider the effects of technology on student learning, the effects of technology on students' workforce readiness, the effects of technology on teacher productivity, and the cost-effectiveness of the technology.

(a1) Repealed by Session Laws 1997-18, s. 15(k).

(b) Repealed by Session Laws 2009-451, s. 7.31, effective July 1, 2009.

~~(c) The Department of Public Instruction shall randomly check local school system technology plans to ensure that local school administrative units are implementing their plans as approved. The Department shall report to the State Board of Education on which local school administrative units are not complying with their plans. The report shall include the reasons these local school administrative units are out of compliance and a recommended plan of action to support each of these local school administrative units in carrying out their plans.~~"

SECTION 7.13.(dd) Section 7.61(b) of S.L. 2005-276, as rewritten by Section 7.22(d) of S.L. 2010-31, is repealed.

SECTION 7.13.(ee) G.S. 115C-105.41 is repealed.

RENEWAL OF PROFESSIONAL EDUCATOR'S LICENSE

SECTION 7.13A. The State Board of Education shall not require more than five semester hours or seven and one-half units of renewal credits in order to renew a North Carolina Standard Professional 2 professional educator's license.

SCHOOL BUILDING ADMINISTRATION

SECTION 7.14.(a) A school with less than 100 students in final average daily membership is not entitled to 12 months of employment for a principal.

SECTION 7.14.(b) Local school administrative units may transfer funds for school building administration for any purpose, not otherwise prohibited by the State Board of Education's ABC transfer policy, by submitting an ABC Transfer Form to the Department of Public Instruction. For funds related to principal positions, the salary transferred shall be based on the first step of the principal III salary schedule. For funds related to assistant principal months of employment, the salary transferred shall be based on the first step of the assistant principal salary schedule. No local school administrative unit shall convert certified position allotments to dollars in order to hire the same type of position.

SECTION 7.14.(c) Subsection (a) of this section applies only to schools created after July 1, 2011.

TRANSFER OF FEDERAL AGRICULTURAL EDUCATION FUNDS

SECTION 7.15. The Agricultural Education Program in the Department of Agricultural and Extension Education at North Carolina State University shall develop the secondary agricultural education curricula. The Program shall recommend the curricula and corresponding assessment instruments to the State Board of Education, which shall adopt the curricula for inclusion in the Standard Course of Study. This curricula shall include as part of its core content the Future Farmers of America (FFA) student youth organization and the Supervised Agricultural Experience learning program.

Effective with the 2011 federal grant, the State Board of Education shall transfer a prorated share of funds from all federal Career and Technical Education funds available for State-level usage to the Agricultural Education and FFA Program housed in the Department of Agricultural and Extension Education at North Carolina State University. The transfer of funds shall be a percentage of the total based upon the grades 9-12 duplicated agricultural education enrollment as compared to the total career and technical education grades 9-12 duplicated enrollment. These funds shall be used to support the secondary Agricultural Education Program State-level administration, leadership, curriculum and professional development, operations, innovations and expansions, and the FFA and the Supervised Agricultural Education learning program.

SCHOOL CALENDAR PILOT PROGRAM

SECTION 7.17.(a) The State Board of Education shall establish a school calendar pilot program in the Wilkes County Schools, the Montgomery County Schools, and the Stanly County Schools. The purpose of the pilot program is to determine whether and to what extent a local school administrative unit can save money during this extreme fiscal crisis by consolidating the school calendar.

Notwithstanding G.S. 115C-84.2(a)(1), the school calendar for the 2011-2012 calendar year for the pilot school systems shall include a minimum of 185 days or 1,025 hours of instruction covering at least nine calendar months.

If the local board of education in a pilot school system adds instructional hours to previously scheduled days under this section, the local school administrative unit is deemed to have a minimum of 185 days of instruction, and teachers employed for a 10-month term are deemed to have been employed for the days being made up and shall be compensated as if they had worked the days being made up.

The State Board of Education shall report to the Joint Legislative Education Oversight Committee by March 15, 2012, on the administration of the pilot program, cost savings realized by it, and its impact on student achievement.

SECTION 7.17.(b) If the State Board of Education finds that it will enhance student performance to do so, the State Board may grant a pilot school system a waiver to use up to five instructional days or an equivalent number of instructional hours as teacher workdays.

BUDGET REDUCTIONS/DEPARTMENT OF PUBLIC INSTRUCTION

SECTION 7.19.(a) Notwithstanding G.S. 143C-6-4 or Section 7.14 of S.L. 2009-451, the Department of Public Instruction may, after consultation with the Office of State Budget and Management and the Fiscal Research Division, reorganize if necessary to

implement the budget reductions set out in this act. This consultation shall occur prior to requesting budgetary and personnel changes through the budget revision process. The Department shall provide a current organization chart in the consultation process. The Department shall report to the Joint Legislative Commission on Governmental Operations on any reorganization.

SECTION 7.19.(b) The Department of Public Instruction shall not increase the number of State-funded positions in any Department of Public Instruction divisions identified for reductions in this act.

SECTION 7.19.(c) In implementing budget reductions under this act, the Department of Public Instruction shall make no reduction in funding or positions for the Positive Behavioral Support program.

LEA BUDGET ADJUSTMENT

SECTION 7.20.(a) Within 14 days of the date this act becomes law, the State Board of Education shall notify each local school administrative unit and charter school of the amount the unit or charter school must reduce from the State General Fund appropriations. The State Board shall determine the amount of the reduction for each unit and charter school on the basis of average daily membership.

SECTION 7.20.(b) Each unit or charter school shall report to the Department of Public Instruction on the flexibility budget reductions it has identified for the unit within 30 days of the date this act becomes law.

LEA BUDGETARY FLEXIBILITY

SECTION 7.21.(a) For fiscal years 2011-2012 and 2012-2013, the State Board of Education is authorized to extend its emergency rules, in accordance with G.S. 150B-21.1A, granting maximum flexibility to local school administrative units regarding the expenditure of State funds. These rules shall not be subject to the limitations on transfers of funds between funding allotment categories set out in G.S. 115C-105.25. However, these rules shall not permit the following transfers:

(1) The transfer of funds into central office administration.

(2) The transfer of funds from the classroom teachers allotment to any allotment other than teacher assistants allotment.

(3) The transfer of funds from the teacher assistants allotment to any allotment other than the classroom teachers allotment.

SECTION 7.21.(b) For fiscal years 2011-2012 and 2012-2013, local school administrative units shall make every effort to reduce spending whenever and wherever such budget reductions are appropriate, with the goal of protecting direct classroom services such as teacher assistants and classroom teachers. In making reductions, local school administrative units shall first consider reductions to central office administration and other administrative functions. Notwithstanding G.S. 115C-301 or any other law, local school administrative units shall have the maximum flexibility to use allotted teacher positions to maximize student achievement in grades 4-12. Class size requirements in grades K-3 shall remain unchanged.

NORTH CAROLINA VIRTUAL PUBLIC SCHOOLS

SECTION 7.22.(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

SECTION 7.22.(b) The Director of NCVPS shall ensure that students residing in rural and low-wealth county local school administrative units have access to e-learning course offerings in order to expand available instructional opportunities. E-learning instructional opportunities shall include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

SECTION 7.22.(c) Section 7.4 of S.L. 2010-31 is repealed.

SECTION 7.22.(d) The State Board of Education shall take the following steps to implement an allotment formula for NCVPS beginning with the 2011-2012 school year:

(1) Project NCVPS student enrollment by semester and year-long course types for each local school administrative unit and charter school.

(2) Establish a per course teacher payment structure for the instructional costs of NCVPS. In establishing this payment structure, the Board shall consider the following:
a. The payment structure is based on a total compensation analysis to ensure NCVPS teacher pay has parity with similar programs. The total compensation analysis shall take into account salaries, benefits, and work effort to ensure valid comparisons between occupations.
b. The effects any change in NCVPS teacher payments may have on the attraction and retention of NCVPS teachers.
(3) Develop a per student fee structure for in-State students that is based on the per course teacher pay structure. The fee structure for in-State students shall ensure that the projected cost for local school administrative units and charter schools equals the projected instructional cost for NCVPS courses.
(4) Multiply the per course fees for in-State students by the projected enrollment by course type to determine the total instructional cost for each local school administrative unit and charter school.
(5) Transfer a dollar amount equal to seventy-five percent (75%) of the local school administrative unit's or charter school's projected instructional cost from the classroom teacher allotment to NCVPS.
(6) No later than February 21 of each year, calculate the actual instructional cost for each local school administrative unit and charter school based upon actual NCVPS enrollment as of that date.
(7) Subtract the amount transferred pursuant to subdivision (5) of this subsection from the actual instructional cost for each unit or charter school and transfer the remaining dollar amount owed, up to a maximum of one hundred percent (100%) of the projected cost.
(8) Develop and implement a policy regarding returning funds to local school administrative units and charter schools in cases where the amount transferred pursuant to subdivision (5) of this subsection exceeds the actual instructional costs.

NCVPS shall use funds transferred to it to provide the NCVPS program at no cost to all students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

SECTION 7.22.(e) In establishing the fee structure and payment structure for NCVPS, the State Board shall consider recommendations from the eLearning Commission and the NCVPS Advisory Board.

SECTION 7.22.(f) The State Board shall establish a separate per student tuition for out-of-state students, home-schooled students, and private school students, which shall be adjusted upward from the in-State student fee structure by an amount determined appropriate by the State Board.

SECTION 7.22.(g) The Board shall direct NCVPS to develop a plan to generate revenue from the sale of courses to out-of-state educational entities. Revenue generated by NCVPS shall be used to offset instructional costs to local school administrative units and charter schools. NCVPS shall submit its plan to the Board by September 15, 2011.

SECTION 7.22.(h) Beginning in 2011, the Director of NCVPS shall submit an annual report on NCVPS to the State Board of Education no later than December 1 of each year. The report shall use data from the previous fiscal year and shall include statistics on actual versus projected costs to local school administrative units and charter schools, student enrollment, virtual teacher salaries, and measures of academic achievement.

The Director of NCVPS shall continue to ensure the following:
(1) Course quality standards are established and met.
(2) All e-learning opportunities other than virtual charter schools offered by State-funded entities to public school students are consolidated under the NCVPS program, eliminating course duplication.
(3) All courses offered through NCVPS are aligned to the North Carolina Standard Course of Study.

SECTION 7.22.(i) The State Board of Education shall reduce each local school administrative unit's or charter school's classroom teacher allotment, or other allotment, as determined by the State Board of Education, on the basis of ADM in grades 6-12 to provide the

sum of two million eight hundred sixty-six thousand nine hundred twenty-three dollars ($2,866,923) for the State-level operations and administration of NCVPS for the 2011-2012 fiscal year. The allotment reduction for State-level operations and administration shall continue in future fiscal years and be adjusted annually based upon the percentage growth in NCVPS enrollment, ensuring the expansion of services due to increased virtual student enrollment.

SECTION 7.22.(j) For fiscal year 2011-2012, the State Board of Education shall reduce each local school administrative unit's or charter school's classroom teacher allotment, or other allotment, as determined by the State Board of Education, on the basis of ADM in grades 6-12 to provide the sum of two million dollars ($2,000,000) in order to create an NCVPS enrollment reserve. The NCVPS enrollment reserve shall be used to cover the NCVPS instructional costs of local school administrative units or charter schools with enrollments exceeding projected NCVPS enrollment.

Beginning in fiscal year 2012-2013, and annually thereafter, the State Board of Education shall reduce each local school administrative unit's or charter school's classroom teacher allotment, or other allotment, as determined by the State Board of Education, on the basis of ADM in grades 6-12 an amount that is the difference between two million dollars ($2,000,000) and the balance of the NCVPS enrollment reserve.

Amounts available in the NCVPS enrollment reserve shall not revert.

SECTION 7.22.(k) The State Board shall use only funds provided through the North Carolina Virtual Public Schools Allotment Formula and the NCVPS enrollment reserve as set forth in this section to fund instructional costs of NCVPS.

SECTION 7.22.(l) G.S. 66-58(c) is amended by adding a new subdivision to read:

"(c) The provisions of subsection (a) shall not prohibit:

...

(20) The sale by the State Board of Education of NCVPS courses to home schools, private schools, and out-of-state educational entities."

PERFORMANCE-BASED REDUCTIONS IN FORCE

SECTION 7.23.(a) Local school administrative units shall adopt a Reduction in Force policy that includes the following criteria:

(1) In determining which positions shall be subject to a reduction in force, a local school administrative unit shall consider the following:
   a. Structural considerations, such as identifying positions, departments, courses, programs, operations, and other areas where there are (i) less essential, duplicative, or excess personnel; (ii) job responsibility and/or position inefficiencies; (iii) opportunities for combined work functions; and/or (iv) decreased student or other demands for curriculum, programs, operations, or other services.
   b. Organizational considerations, such as anticipated organizational needs of the school system and program/school enrollment.

(2) In determining which employees in similar positions shall be subject to a reduction in force, a local school administrative unit shall consider work performance.

Each local school administrative unit shall have this policy in place on or before July 15, 2011.

SECTION 7.23.(b) G.S. 115C-325(e)(2) reads as rewritten:

"(2) Reduction in Force. – Before recommending to a board the dismissal or demotion of the career employee pursuant to G.S. 115C-325(e)(1)l., the superintendent shall give written notice to the career employee by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal or demotion is justified. The notice shall include a statement to the effect that if the career employee within 15 days after receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by the board. Within the 15-day period after receipt of the notice, the career employee may file with the superintendent a written request for a hearing before the board within 10 days. If the career employee requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j3) shall be

followed. If no request is made within the 15-day period, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal. Provisions of this section which permit a hearing by a case manager shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1)l.

When a career employee is dismissed pursuant to G.S. 115C-325(e)(1)l. above, his name shall be placed on a list of available career employees to be maintained by the board. ~~Career employees whose names are placed on such a list shall have a priority on all positions in which they acquired career status and for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the local school administrative unit offers the dismissed career employee a position for which he is certified and he refuses it, his name shall be removed from the priority list.~~"

TEACHING FELLOWS ADMINISTRATIVE REDUCTION

SECTION 7.24. G.S. 115C-363.23A(f) reads as rewritten:

"**§ 115C-363.23A. Teaching Fellows Program established; administration.**

...

(f) All funds appropriated to or otherwise received by the Teaching Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a revolving fund. This revolving fund shall be used for scholarship loans granted under the Teaching Fellows Program. With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used for campus and summer program support, and costs related to disbursement of awards and collection of loan repayments.

The Public School Forum, as administrator for the Teaching Fellows Program, may use up to ~~eight hundred ten thousand dollars ($810,000)~~six hundred thousand dollars ($600,000) annually from the fund balance for costs associated with administration of the Teaching Fellows Program."

RESIDENTIAL SCHOOLS

SECTION 7.25.(a) The General Assembly finds that the operation of the Eastern North Carolina School for the Deaf, the Governor Morehead School for the Blind, and the North Carolina School for the Deaf (collectively, the "residential schools") no longer meets the needs of the populations they serve in an efficient and effective manner, and that current levels of utilization of the residential schools can be accommodated with two schools. No later than January 15, 2012, the Department shall report to the Joint Legislative Education Oversight Committee of the General Assembly the residential school it has decided to close and the Department's plan for consolidating the programs with those at the two remaining schools. The Department shall base its choice of the residential school to be closed on the following considerations:

(1) Minimization of impact on services to deaf and blind students currently served by the residential schools.

(2) Minimization of costs of modifications at the two remaining residential schools to accommodate students from the closed school.

(3) Maximization of funds generated or net savings to the State from costs avoided due to the closure of one school and the sale or transfer to other State agencies of the school campus and other physical assets.

(4) Minimization of required travel for students of the school that is closed.

(5) Historical and cultural significance of the school.

Effective July 1, 2012, the Department of Public Instruction shall carry out the closure and consolidation described in its report.

SECTION 7.25.(b) The Department of Public Instruction shall ensure that the residential and instructional schedules for the residential schools that were in effect before

February 8, 2010, shall remain in effect unless the General Assembly approves a material change to the instructional week. Residential students shall have the opportunity to arrive at their respective schools on the evening of the day before commencement of academic instruction for the week. The Department shall also maintain summer school programming at the residential schools in substantially the same manner as in prior years and shall make no material changes to summer school programming without the approval of the General Assembly.

SECTION 7.25.(c) The Department of Public Instruction may create a principal position at each residential school not currently assigned a principal position from funds appropriated in this act for the residential schools.

SECTION 7.25.(d) The position of superintendent for the residential schools within the Department of Public Instruction is eliminated. The Department shall designate one of the directors of the residential schools to serve as the superintendent for the residential schools. Of funds previously appropriated to the Department for the position of superintendent for the residential schools, the sum of twenty thousand dollars ($20,000) shall be used to supplement the salary of the director who also serves as superintendent of residential schools. The remaining funds shall be used to offset other reductions to the residential schools made in this act.

SECTION 7.25.(e) G.S. 115C-325(p) reads as rewritten:

"(p) Section Applicable to Certain Institutions. – Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services, Public Instruction, Correction, or Juvenile Justice and Delinquency Prevention regardless of the age of the students."

DEPARTMENT OF PUBLIC INSTRUCTION RECEIPTS

SECTION 7.27. Notwithstanding G.S. 143C-6-4(b)(3), the Department of Public Instruction may realign receipts among the following General Fund purpose codes on a recurring basis through the budget certification process for the sole purpose of correctly aligning the certified budget with the appropriate purpose or programs as defined in G.S. 143C-1-1(d)(23): 1000, 1100, 1300, 1330, 1430, 1500, 1600, 1640, and 1660.

INCREASE NUMBER OF INSTRUCTIONAL DAYS

SECTION 7.29.(a) G.S. 115C-84.2 reads as rewritten:

"**§ 115C-84.2. School calendar.**

(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) **(See notes)** A minimum of ~~180~~185 days and ~~1,000~~1,025 hours of instruction covering at least nine calendar months. The local board shall designate when the ~~180~~185 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

(1a) Repealed by Session Laws 2004-180, s. 1, effective August 9, 2004.

(2) A minimum of 10 annual vacation leave days.

(3) The same or an equivalent number of legal holidays occurring within the school calendar as those designated by the State Personnel Commission for State employees.

~~(4) Five days, as designated by the local board, for use as teacher workdays. These days shall be protected to allow teachers to complete instructional and classroom administrative duties. The local school administrative unit shall not impose any additional tasks on these days. The local board shall~~

~~schedule one of these days at the beginning of the school year and one at the end of each academic quarter.~~

(5) The remaining days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes. Before consulting with the local board, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled. Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. In order to make up days for school closing because of inclement weather, the local board may designate any of the days in this subdivision as additional make-up days to be scheduled after the last day of student attendance.

If the State Board of Education finds that it will enhance student performance to do so, the State Board may grant a local board of education a waiver to use up to five of the instructional days required by subdivision (1) of this subsection as teacher workdays. For each instructional day waived, the State Board shall waive an equivalent number of instructional hours.

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards shall designate at least ~~seven~~ two days scheduled under ~~subdivisions (4) and~~ subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave. Local boards may designate the remaining days scheduled in ~~subdivisions (4) and~~ subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave, but local boards shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on any of these days. A teacher may elect to waive this notice requirement for one or more of these days.

(b) Limitations. – The following limitations apply when developing the school calendar:

(1) The total number of teacher workdays for teachers employed for a 10 month term shall not exceed 195 days.

(2) The calendar shall include at least 42 consecutive days when teacher attendance is not required unless: (i) the school is a year-round school; or (ii) the teacher is employed for a term in excess of 10 months. At the request of the local board of education or of the principal of a school, a teacher may elect to work on one of the 42 days when teacher attendance is not required in lieu of another scheduled workday.

(3) School shall not be held on Sundays.

(4) Veterans Day shall be a holiday for all public school personnel and for all students enrolled in the public schools.

(c) Emergency Conditions. – During any period of emergency in any section of the State where emergency conditions make it necessary, the State Board of Education may order general, and if necessary, extended recesses or adjournment of the public schools.

(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall not be before August 25, and the closing date for students shall not be after June 10. On a showing of good cause, the State Board of Education may waive this requirement to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means either that:

(1) Schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations; or

(2) Schools in any local school administrative unit in a county have been closed for all or part of eight days per year during any four of the last 10 years

because of severe weather conditions. For purposes of this subdivision, a school shall be deemed to be closed for part of a day if it is closed for two or more hours.

The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar.

(e) Nothing in this section prohibits a local board of education from offering supplemental or additional educational programs or activities outside the calendar adopted under this section."

SECTION 7.29.(b) G.S. 115C-238.29F(d)(1) reads as rewritten:

"(1) The school shall provide instruction each year for at least ~~180~~185 days. If the State Board of Education finds that it will enhance student performance to do so, the State Board may grant a charter school a waiver to use up to five of these instructional days as teacher workdays."

TESTING PROGRAM

SECTION 7.30.(a) G.S. 115C-174.11 reads as rewritten:

"**§ 115C-174.11. Components of the testing program.**

(a) Assessment Instruments for First and Second Grades. – The State Board of Education shall adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests except as required as a condition of receiving federal grants.

(b) Repealed by Session Laws 2009-451, s. 7.20(c), effective July 1, 2009.

(c) Annual Testing Program.

(1) The State Board of Education shall adopt the tests for grades three through 12 that are required by federal law or as a condition of a federal grant. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies for grades nine through 12. Students who do not pass the tests adopted for eighth grade shall be provided remedial instruction in the ninth grade.

(2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states.

(3) The State Board of Education shall continue to participate in the development of the Common Core State Standards in conjunction with the consortium of other states, review all national assessments developed by both multistate consortia, and implement the assessments that the State Board deems most appropriate to assess student achievement on the Common Core State Standards.

(4) To the extent funds are made available, the State Board shall plan for and require the administration of the ACT test for all students in the eleventh grade unless the student has already taken a comparable test and scored at or above a level set by the State Board.

(d) Except as provided in ~~subdivision (2) of~~ subsection (c) of this section, the State Board of Education shall not require the public schools to administer any standardized tests except for those required by federal law or as a condition of a federal grant.

The State Board of Education shall adopt and provide to local school administrative units all tests required by federal law or as a condition of a federal grant."

SECTION 7.30.(b) Article 10A of Chapter 115C of the General Statutes is amended by adding two new Parts to read:

"Part 4. Student Diagnostic Tests.

"**§ 115C-174.20. Tools for student learning.**

To the extent funds are made available for this purpose, the State Board shall plan for and require the administration of diagnostic tests in the eighth and tenth grades that align to the ACT test in order to help diagnose student learning and provide for students an indication of whether they are on track to be remediation-free at a community college or university.

"Part 5. Career Readiness.

"**§ 115C-174.25. WorkKeys.**

To the extent funds are made available for this purpose, the State Board shall plan for and require local school administrative units to make available the appropriate WorkKeys tests for all students who complete the second level of vocational/career courses."

SECTION 7.30.(c) This section applies beginning with the 2011-2012 school year.

PART VIII. COMMUNITY COLLEGES

REORGANIZATION OF THE COMMUNITY COLLEGES SYSTEM OFFICE

SECTION 8.1.(a) Notwithstanding any other provision of law, and consistent with the authority granted in G.S. 115D-3, the President of the North Carolina Community College System may reorganize the System Office in accordance with recommendations and plans submitted to and approved by the State Board of Community Colleges.

SECTION 8.1.(b) This section expires June 30, 2012.

REPEAL OBSOLETE REPORTING REQUIREMENTS

SECTION 8.2.(a) G.S. 115D-4.1(e) reads as rewritten:

"(e) The State Board of Community Colleges shall develop appropriate criteria and standards to regulate the operation of college transfer programs. ~~The criteria and standards shall require all college transfer programs to continue to meet the accreditation standards of the Southern Association of Colleges and Schools.~~

~~The State Board of Community Colleges shall report annually to the General Assembly on compliance of the community colleges with these criteria and standards.~~"

SECTION 8.2.(b) G.S. 115D-5(j) reads as rewritten:

"(j) The State Board of Community Colleges shall use its Board Reserve Fund for feasibility studies, pilot projects, start-up of new programs, and innovative ideas. ~~The State Board shall report to the Joint Legislative Education Oversight Committee on expenditures from the State Board Reserve Fund on January 15 and June 15 each year.~~"

IMPLEMENT ALTERNATIVE FORMULA MODEL

SECTION 8.3.(a) The State Board of Community Colleges shall consolidate the Health Sciences Allotment, the Technical Education Allotment, and the Special High Cost Allotment for Heavy Equipment with formula funds to support curriculum instruction.

SECTION 8.3.(b) The State Board of Community Colleges shall allocate formula funds appropriated to support curriculum instruction and the occupational education component of continuing education through a formula that provides an instructional base allocation to all colleges and allocates remaining funds on a weighted full-time equivalent (FTE) basis. In determining the appropriate weighting, the State Board of Community Colleges shall weigh curriculum courses in high-cost areas such as health care, technical education, and lab-based science courses more heavily than other curriculum courses. The State Board of Community Colleges shall also weigh continuing education courses that lead to a third-party credential or certification and courses providing an industry-designed curriculum more heavily than other occupational extension courses.

USE OF OVERREALIZED RECEIPTS TO SUPPORT ENROLLMENT GROWTH RESERVE RATHER THAN EQUIPMENT RESERVE

SECTION 8.4. G.S. 115D-31(e) reads as rewritten:

"(e) If receipts for community college tuition and fees exceed the amount certified in General Fund Codes at the end of a fiscal year, the State Board of Community Colleges shall transfer the amount of receipts and fees above those budgeted to the ~~Equipment Reserve Fund.~~Enrollment Growth Reserve. Funds in the Enrollment Growth Reserve shall not revert to the General Fund and shall remain available to the State Board until expended. The State Board may allocate funds in this reserve to colleges experiencing an enrollment increase greater than five percent (5%) of budgeted enrollment levels."

BASIC SKILLS PLUS

SECTION 8.5.(a) Notwithstanding any other provision of law, the State Board may authorize a local community college to use up to twenty percent (20%) of the State Literacy Funds allocated to it to provide employability skills, job-specific occupational and technical skills, and developmental education instruction to students concurrently enrolled in a community college course leading to a high school diploma or equivalent certificate.

SECTION 8.5.(b) Notwithstanding any other provision of law, if a community college is authorized by the State Board to provide employability skills, job-specific occupational or technical skills, or developmental education instruction to students concurrently enrolled in a community college course leading to a high school diploma or equivalent certificate, the college may waive the tuition and registration fees associated with this instruction.

CARRYFORWARD OF COLLEGE INFORMATION SYSTEM FUNDS

SECTION 8.6. Of the funds appropriated to the Community Colleges System Office for the 2011-2013 fiscal biennium for the College Information System, up to one million two hundred fifty thousand dollars ($1,250,000) shall not revert at the end of each fiscal year but shall remain available until expended. These funds may be used only to purchase periodic system upgrades.

EQUIPMENT FUNDING

SECTION 8.8.(a) For the 2011-2013 fiscal biennium, community colleges may expend regular equipment allocations on equipment, repairs and renovations of existing facilities, and new construction. Colleges must match funds expended on new construction on an equal matching-fund basis in accordance with G.S. 115D-31. Notwithstanding any other provision of law, community colleges are not required to match funds expended on repairs and renovations of existing facilities.

Colleges must have capital improvement projects approved by the State Board of Community Colleges and any required matching funds identified by June 30, 2013.

SECTION 8.8.(b) Of the funds appropriated to the Community Colleges System Office for the 2011-2012 fiscal year for equipment, the State Board of Community Colleges shall allocate the sum of two hundred fifty thousand dollars ($250,000) to Forsyth Technical Community College. These funds shall be used only for the purpose of building and equipping the Stokes County multicampus site. These funds shall not be considered for a management flexibility reduction.

CLARIFICATION REGARDING EQUIPMENT TITLED TO STATE BOARD

SECTION 8.9. G.S. 115D-15(a) reads as rewritten:

"(a) The board of trustees of any institution organized under this Chapter may, with the prior approval of the North Carolina Community Colleges System Office, convey a right-of-way or easement for highway construction or for utility installations or modifications. When in the opinion of the board of trustees the use of any other real property owned or held by the board of trustees is unnecessary or undesirable for the purposes of the institution, the board of trustees, subject to prior approval of the State Board of Community Colleges, may sell, exchange, or lease the property. The board of trustees may dispose of any personal property owned or held by the board of trustees without approval of the State Board of Community Colleges. Personal property titled to the State Board of Community Colleges consistent with G.S. 115D-14 and G.S. 115D-58.5 may be transferred to another community

college at no cost and without the approval of the Department of Administration, Division of Surplus Property.

Article 12 of Chapter 160A of the General Statutes shall apply to the disposal or sale of any real or personal property under this subsection. Personal property also may be disposed of under procedures adopted by the North Carolina Department of Administration. The proceeds of any sale or lease shall be used for capital outlay purposes, except as provided in subsection (b) of this section."

NO STATE FUNDS FOR INTERCOLLEGIATE ATHLETICS

SECTION 8.10. Article 3 of Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-42.1. Funds for an intercollegiate athletics program.**

No State funds, student tuition receipts, or student aid funds shall be used to create, support, maintain, or operate an intercollegiate athletics program at a community college."

COMMUNITY COLLEGE TUITION WAIVERS

SECTION 8.12.(a) G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds. The State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees ~~for:~~for the following:

(1) Persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent ~~certificate;~~certificate.

(2) ~~Training courses for~~ Courses requested by the following entities that support the organizations' training needs and are on a specialized course list approved by the State Board of Community Colleges:

a. ~~(i) volunteer firemen,~~Volunteer fire departments.

b. ~~(ii) local fire department personnel,~~ Municipal, county, or State fire departments.

c. ~~(iii) volunteer rescue and lifesaving department personnel,~~Volunteer EMS or rescue and lifesaving departments.

d. ~~(iv) local rescue and lifesaving department personnel,~~ Municipal, county, or State EMS or rescue and lifesaving departments.

e. Radio Emergency Associated Citizens ~~Team~~ Teams (REACT) ~~members when the REACT team is~~ under contract to a ~~county as an emergency response agency,~~ county as an emergency response agency.

f. Municipal, county, or State law enforcement agencies.

g. ~~(vii) all full-time custodial employees of the Department of Correction, and~~ The Department of Correction for the training of full-time custodial employees and employees of the Department's Division of Community Corrections required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission.

h. ~~(viii) employees of the Department's Division of Community Corrections and employees of the~~ The Department of Juvenile Justice and Delinquency Prevention for the training of employees required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards ~~Commission;~~Commission.

~~(3) Patients in State alcoholic rehabilitation centers;~~

(4) Trainees enrolled in courses conducted under the Customized Training ~~Program;~~Program.

~~(5) Clients of sheltered workshops;~~

~~(6) Clients of adult developmental activity programs;~~
~~(7) Students in Health and Human Services Development Programs;~~
~~(8) Juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction;~~
~~(9) Members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes;~~
(10) Elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation ~~(CPR);~~(CPR).
(11) Up to six hours of credit instruction and one course of noncredit instruction per academic semester for senior citizens age 65 or older who are qualified as legal residents of North ~~Carolina;~~Carolina.
(12) All curriculum courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this ~~section;~~section.
(13) Human resources development courses for any individual who (i) is unemployed; (ii) has received notification of a pending layoff; (iii) is working and is eligible for the Federal Earned Income Tax Credit (FEITC); or (iv) is working and earning wages at or below two hundred percent (200%) of the federal poverty ~~guidelines; and~~guidelines.
~~(14) Prison inmates.~~

The State Board of Community Colleges shall not waive tuition and registration fees for other individuals."

SECTION 8.12.(b) G.S. 115D-5 is amended by adding a new subsection to read:

"(b1) The State Board of Community Colleges shall not waive tuition and registration fees for community college faculty or staff members. Community colleges may, however, use State or local funds to pay tuition and registration fees for one course per semester for full-time community college faculty or staff members employed for a nine-, ten-, eleven-, or twelve-month term."

SECTION 8.12.(c) The Community Colleges System Office shall transfer funds appropriated for curriculum and continuing education instruction to the Department of Correction. The Department of Correction shall use these funds to pay tuition and fees for prisoners.

The amount transferred shall be calculated by multiplying the number of curriculum and continuing education FTE served in prisons in the 2010-2011 fiscal year by the per capita budgeted receipts for curriculum and continuing education.

This subsection is projected to result in a reduction of up to forty-three percent (43%) in the number of curriculum and continuing education courses provided to prisoners.

SECTION 8.12.(d) G.S. 115D-39(a1) reads as rewritten:

"(a1) In addition, ~~any~~ federal law enforcement ~~officer~~ officers, firefighters, EMS personnel, and rescue and lifesaving personnel whose permanent duty station is within North Carolina shall also be eligible for the State resident community college tuition rate for ~~law enforcement training courses.~~courses that support their organizations' training needs and are approved for this purpose by the State Board of Community Colleges."

FUNDING FOR MULTICAMPUS CENTERS

SECTION 8.13. G.S. 115D-5(o) reads as rewritten:

"(o) The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by December 1 of each year.

All multicampus centers approved by the State Board of Community Colleges shall receive funding under the same formula. The State Board of Community Colleges shall not approve any additional multicampus centers without identified recurring sources of funding."

STUDY COMMUNITY COLLEGE PERFORMANCE MEASURES

SECTION 8.14. The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee by March 1, 2012, on a revised set of accountability measures and performance standards by which to evaluate and measure student progress and student success, including measures of graduation rates and course completions. The report shall include a plan to incorporate these revised accountability measures and performance standards into regular formula funding. These revised accountability measures and performance standards shall also be the basis for the allocation of performance funding, in accordance with G.S. 115D-31.3(g) and (h).

COMMUNITY COLLEGE AUDITS

SECTION 8.15. Article 4A of Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-58.16. Audits.**

(a) Each community college shall be audited a minimum of once every two years. Community colleges may use State funds to contract with the State Auditor or with a certified public accountant to perform the audits. The colleges shall submit the results of the audits to the State Board of Community Colleges.

The State Board of Community Colleges shall ensure that all colleges are audited in accordance with this section.

(b) Notwithstanding the provisions of Chapter 143D of the General Statutes, a community college shall not be subject to the EAGLE program administered by the Office of the State Controller unless (i) there is a finding of internal control problems in the most recent financial audit of the college or (ii) the State Board of Community Colleges determines that a college should be subject to the program."

ENROLLMENT GROWTH

SECTION 8.16.(a) It is the intent of the General Assembly to ensure that there is an increase in funding for community college technology and equipment when enrollment increases; therefore, the continuation budget requirements proposed by the Director of the Budget in accordance with G.S. 143C-3-5 to fund the community college enrollment growth shall include adjustments necessary to fund additional equipment FTE at the prior year's rate.

SECTION 8.16.(b) Beginning with any adjustments to the 2011-2012 fiscal year budget, and annually thereafter, the State Board of Community Colleges' requests for funding enrollment growth shall provide a detailed description of the costs of educating community college students. This request shall be based on the current year's enrollment, listed by college and aggregated for the system as a whole.

SECTION 8.16.(c) Enrollment requests shall include the following information for each community college:

(1) The budgeted enrollment for the current year, divided between the categories of instruction: curriculum, continuing education, and Basic Skills.

(2) The budgeted enrollment for the current year, divided between tiers of instruction, as set forth in Section 8.3 of this act.

(3) The actual enrollment for the two years prior to the current year.

(4) A five-year enrollment projection at each community college by category and tier of instruction.

(5) The projected requirements and anticipated tuition receipts for the growth in regular-term enrollment.

(6) The costs per FTE in each category and tier of instruction, to include the following component parts:

a. Instructional costs, including faculty salaries and other costs.

b. Student support services and other college administrative costs.

EXEMPT COMMUNITY COLLEGES FROM APA

SECTION 8.18.(a) G.S. 150B-1(d)(14) and (19) are repealed.

SECTION 8.18.(b) G.S. 150B-1 is amended by adding a new subsection to read:

"(g) Exemption for the State Board of Community Colleges. – Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to the State Board of Community Colleges."

SECTION 8.18.(b1) G.S. 115D-80 is repealed.

SECTION 8.18.(c) This act is effective when it becomes law.

CAPITAL IMPROVEMENTS AT COMMUNITY COLLEGES

SECTION 8.19.(a) G.S. 115D-9 reads as rewritten:

"**§ 115D-9. Powers of State Board regarding certain fee negotiations, contracts, and capital improvements.**

(a) The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of Community Colleges and the Governor. The expenditure of State funds at any institution herein authorized to be approved by the State Board under G.S. 115D-4 shall be subject to the terms of the State Budget Act unless specifically otherwise provided in this Chapter.

(b) Notwithstanding G.S. 143-341(3), the State Board of Community Colleges may, with respect to design, construction, repair, or renovation of buildings, utilities, and other ~~State or non-State funded~~ State-funded property developments of the North Carolina Community College System requiring the estimated expenditure of public money of ~~one million dollars ($1,000,000)~~ four million dollars ($4,000,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of the North Carolina Community College System and its community colleges to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Use existing plans and specifications for construction projects, where feasible. Prior to designing a project, the State Board shall consult with the Department of Administration on the availability of existing plans and specifications and the feasibility of using them for a project.

(c) The State Board may delegate its authority under subsection (b) of this section to a community college if the community college is qualified under guidelines adopted by the State Board and approved by the State Building Commission and the Director of the Budget.

(d) The North Carolina Community College System shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(e) A contract may not be divided for the purpose of evading the monetary limit under this section.

(f) Notwithstanding any other provision of this Chapter, the Department of Administration shall not be the awarding authority for contracts awarded under subsections (b) or (c) of this section.

(g) The State Board shall annually report to the State Building Commission the following:

(1) A list of projects governed by this section.

(2) The estimated cost of each project along with the actual cost.

(3) The name of each person awarded a contract under this section.

(4) Whether the person or business awarded a contract under this section meets the definition of "minority business" or "minority person" as defined in G.S. 143-128.2(g).

(h) The provisions of G.S. 143-341(3) shall not apply to a capital improvement project funded with non-State funds if the State Board of Community Colleges determines that the college has the expertise necessary to manage the project unless the assistance of the Office of State Construction is requested."

SECTION 8.19.(b) This section is effective when it becomes law and applies to projects initiated on or after that date.

GRANTING COMMUNITY COLLEGES ADDITIONAL FLEXIBILITY WITH REGARD TO INVESTMENTS

SECTION 8.20.(a) G.S. 115D-58.6 reads as rewritten:

"**§ 115D-58.6. Investment of idle cash.**

(a) Definitions. – As used in this section, the following definitions apply:

(1) Cash balance. – The amount equal to all moneys received into institutional fund accounts minus all expenses and withdrawals from those accounts in an official depository of the institution as designated by the local board of trustees consistent with G.S. 115D-58.7.

(2) Official depository. – One or more banks, savings and loan associations, or trust companies in North Carolina that a community college board of trustees has designated consistent with G.S. 115D-58.7.

(a1) Deposits. – The institution may deposit at interest ~~or invest~~ all or part of the cash balance of any fund in an official depository of the institution. ~~The institution shall manage investments subject to whatever restrictions and directions the board of trustees may impose. The institution shall have the power to purchase, sell, and exchange securities on behalf of the board of trustees. The investment program shall be so managed that investments and deposits can be converted into cash when needed.~~ Moneys may be deposited at interest in any official depository of the institution in the form of certificates of deposit or such other forms of time deposits as may be approved for county governments. In addition, moneys may be deposited in the form of certificates of deposit as provided for a local government or public authority in G.S. 159-30(b1). Investment deposits shall be secured as provided in G.S. 159-31(b).

~~(b) Moneys may be deposited at interest in any bank, savings and loan association or trust company in this State in the form of certificates of deposit or such other forms of time deposits as may be approved for county governments. In addition, moneys may be deposited in the form of certificates of deposit as provided for a local government or public authority in G.S. 159-30(b1). Investment deposits shall be secured as provided in G.S. 159-31(b).~~

~~(c) Moneys may be invested in the form of investments pursuant to G.S. 159-30(c) to county governments and no others. Money in endowment funds may be invested pursuant to G.S. 147-69.2. Provided, however, the institution may elect to deposit at interest any local funds with the State Treasurer for investment as special trust funds pursuant to the provisions of G.S. 147-69.3, and the interest thereon shall accrue to the institution as local funds.~~

~~(d) Investment securities may be bought, sold, and traded by private negotiation, and the institutions may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program from local funds. The institution shall be responsible for their safekeeping and for keeping accurate investment accounts and records.~~

(d1) Investments. – The institution may invest all or part of the cash balance of any fund in an official depository of the institution. The institution shall manage investments subject to whatever restrictions and directions the board of trustees may impose. The institution shall have the power to purchase, sell, and exchange securities on behalf of the board of trustees. The investment program shall be so managed that investments and deposits can be converted into cash when needed.

(1) Moneys shall be invested only in the form of investments pursuant to G.S. 159-30(c) to county governments or in any form of investment established or managed by an investment advisor who is registered and in good standing with either the Securities and Exchange Commission or the North Carolina Secretary of State, Securities Division, and is a member of the Securities Investor Protection Corporation. Money in endowment funds may be invested pursuant to G.S. 147-69.2. Provided, however, the institution may elect to deposit at interest any local funds with the State Treasurer for investment as special trust funds pursuant to the provisions of G.S. 147-69.3, and the interest thereon shall accrue to the institution as local funds.

(2) The investment securities listed in G.S. 159-30(c) may be bought, sold, and traded by private negotiation, and the institutions may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program from local funds. The institution shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

(e) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting

principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

(f) Registered securities acquired for investment may be released from registration and transferred by signature of the official designated by the board of ~~trustees."~~trustees.

(g) The board of trustees shall appoint an Investment Committee which shall consist of a minimum of three people who have sufficient financial background to review and evaluate investment options. These individuals should have experience in institutional or retail investment management with knowledge of fixed income and public equities. This committee shall make recommendations to the Board on those investment options, as well as monitor the performance of investments once made.

(h) The board of trustees shall discharge their duties with respect to the management and investment of college funds as follows:

(1) Investment decisions shall be solely in the interest of the college and the students, faculty, and staff of the college.

(2) The investments shall be for the exclusive purpose of providing an adequate return to the college.

(3) Investments shall be made with the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose.

(4) Investment decisions shall be made impartially, taking into account the best interest of the college, with special attention to conflicts of interest or potential conflicts of interest.

(5) Investments shall incur only costs that are appropriate and reasonable."

SECTION 8.20.(b) G.S. 115D-58.7 reads as rewritten:

"**§ 115D-58.7. Selection of depository; deposits to be secured.**

(a) Each board of trustees shall designate as the official depositories of the institution one or more banks, savings and loan associations or trust companies in this State. It shall be unlawful for any money belonging to an institution, other than moneys required to be deposited with the State Treasurer, to be deposited in any place, bank, savings and loan associations, or trust company other than an official depository except as permitted in ~~G.S. 115D-58.6(b).~~G.S. 115D-58.6(a1). However, public moneys may be deposited in official depositories in Negotiable Order of Withdrawal (NOW) accounts where permitted by applicable federal or State regulations.

(b) Money deposited in an official depository or deposited at interest pursuant to ~~G.S. 115D-58.6(b)~~ G.S. 115D-58.6(a1) shall be secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by an institution because of the default or insolvency of the depository."

SECTION 8.20.(c) G.S. 147-69.2 is amended by adding a new subdivision to read:

"(20) Institutional funds of the colleges of the North Carolina Community College System."

PART IX. UNIVERSITIES

CENTER FOR PUBLIC TELEVISION CONTINUATION REVIEW

SECTION 9.1.(a) A continuation review of the Center for Public Television shall be prepared jointly by The University of North Carolina General Administration and The University of North Carolina Center for Public Television. The review shall be submitted to the House of Representatives and Senate Appropriations Subcommittees on Education no later than March 31, 2012. The written report shall include the information listed in subsection (b) of this section.

SECTION 9.1.(b) The continuation review required by this section shall include all of the following information:

(1) A description of the services provided by the Center for Public Television and its mission, goals, and objectives.

(2) The program's statutory objectives and the problem or need addressed.

(3) The extent to which the program's objectives have been achieved.

(4) The program's functions or programs performed without specific statutory authority.
(5) The program's performance measures and the process by which the performance measures determine efficiency and effectiveness.
(6) Recommendations for statutory, budgetary, or administrative changes needed to improve efficiency and effectiveness of services delivered to the public.
(7) The consequences of discontinuing funding.
(8) Recommendations for improving services or reducing costs or duplication.
(9) The identification of policy issues that should be brought to the attention of the General Assembly.
(10) Any other information necessary to fully support the General Assembly's Continuation Review Program, along with any information included in instructions from the Fiscal Research Division.

UNIVERSITY CANCER RESEARCH FUND REPORTING REQUIREMENT

SECTION 9.4. G.S. 116-29.1 is amended by adding a new subsection to read:

"(g) Report. – By November 1 of each year, the Cancer Research Fund Committee shall provide to the Joint Legislative Education Oversight Committee and to the Office of State Budget and Management an annual financial report which shall include the following components:

(1) Accounting of expenditures of State funds related to strategic initiatives, development of infrastructure, and ongoing administrative functions.
(2) Accounting of expenditures of extramural funds related to strategic initiatives, development of infrastructure, and ongoing administrative functions.
(3) Measures of impact to the State's economy in the creation of jobs, intellectual property, and start-up companies.
(4) Other performance measures directly related to the investment of State funds.
(5) Accounting of any fund balances retained by the Fund, along with information about any restrictions on the use of these funds."

UNC BOARD OF GOVERNORS REVIEW OF FACULTY RECRUITMENT AND RETENTION

SECTION 9.5. The Board of Governors of The University of North Carolina shall review its current policies regarding financial incentives to retain faculty. The review shall focus on the prioritization of recruitment and retention funds and the identification of key metrics to measure overall program effectiveness. The Board of Governors shall report its findings and recommendations for changes to the policies, if any, to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division by April 1, 2012.

UNC MANAGEMENT FLEXIBILITY REDUCTION

SECTION 9.6.(a) The management flexibility reduction for The University of North Carolina shall not be allocated by the Board of Governors to the constituent institutions and affiliated entities using an across-the-board method but in a manner that recognizes the importance of the academic mission and differences among The University of North Carolina entities.

Before taking reductions in instructional budgets, the Board of Governors and the campuses of the constituent institutions shall consider all of the following:

(1) Reducing State funding for centers and institutes, speaker series, and other nonacademic activities.
(2) Faculty workload adjustments.
(3) Restructuring of research activities.
(4) Implementing cost-saving span of control measures.
(5) Reducing the number of senior and middle management positions.
(6) Eliminating low-performing, redundant, or low-enrollment programs.

(7) Protecting direct classroom services, including faculty members and adjunct professors.

The Board of Governors and the campuses of the constituent institutions also shall review the institutional trust funds and the special funds held by or on behalf of The University of North Carolina and its constituent institutions to determine whether there are monies available in those funds that can be used to assist with operating costs.

In addition, the campuses of the constituent institutions also shall require their faculty to have a teaching workload equal to the national average in their Carnegie classification.

When implementing personnel reductions, the Board of Governors and the campuses shall make every effort to abolish vacant positions first.

SECTION 9.6.(b) In allocating the management flexibility reduction, State funds shall not be reduced in either fiscal year of the biennium by more than twelve and three-tenths of one percent (12.3%) from the Governor's Recommended Continuation Budget for the 2011-2013 fiscal biennium for any of the following:

(1) Agricultural Extension.
(2) North Carolina Judicial College of the UNC School of Government.

SECTION 9.6.(c) In allocating the management flexibility reduction, no reduction in State funds shall be allocated in either fiscal year of the 2011-2013 biennium to any of the following:

(1) Hickory Metro Higher Education Center.
(2) Joint Graduate School of Nanoscience and Nanoengineering at North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro.
(3) The North Carolina Research Campus.
(4) Center for Turfgrass Environmental Research and Education at North Carolina State University.
(5) Need-Based Financial Aid.
(6) Aid to Private Colleges.
(7) Any special responsibility constituent institution which has been granted a basic type designation of "Special Focus Institution" under the Carnegie Classification of Institutions of Higher Education.
(8) Any special responsibility constituent institution which has been granted a basic type designation of "Baccalaureate Colleges–Arts & Sciences" under the Carnegie Classification of Institutions of Higher Education.
(9) The Coastal Wave Energy Research Project led by the UNC Coastal Studies Institute.

SECTION 9.6.(d) In allocating the management flexibility reduction, State funds shall not be reduced in either fiscal year of the biennium by more than twelve and three-tenths of one percent (12.3%) from the Governor's Recommended Continuation Budget for the 2011-2013 fiscal biennium for Agricultural Research programs, except that State funds shall not be reduced in either fiscal year of the biennium by more than ten percent (10%) from the Governor's Recommended Continuation Budget for the 2011-2013 fiscal biennium for Agricultural Research Stations.

ADVISORY COMMISSION ON MILITARY AFFAIRS/MODIFY MEMBERSHIP

SECTION 9.6A. G.S. 127C-2 reads as rewritten:

"**§ 127C-2. Membership.**

(a) The North Carolina Advisory Commission on Military Affairs shall consist of 21 voting members, who shall serve on the Executive Committee, and ~~15~~17 nonvoting, ex officio members who shall serve by reason of their positions.

(b) The Executive Committee shall be appointed as follows:

(1) Three members appointed by the Speaker of the House of Representatives, one of whom shall be a member of a recognized veterans' organization.
(2) Three members appointed by the President Pro Tempore of the Senate, one of whom shall be a member of a recognized veterans' organization.
(3) Fifteen members appointed by the Governor, consisting of:
a. Three representatives from the Jacksonville community.
b. Three representatives from the Havelock community.

c. Three representatives from the Goldsboro community.
d. Three representatives from the Fayetteville community.
e. Three public members from across the State.

(c) The following members, or their designee, shall serve ex officio:
(1) The Lieutenant Governor.
(1a) Secretary of Crime Control and Public Safety.
(2) Secretary of Commerce.
(2a) The Secretary of Transportation.
(2b) The Secretary of the Department of Environment and Natural Resources.
(3) Commanding General 18th Airborne Corps, Fort Bragg.
(4) Commanding General Marine Corps Base, Camp Lejeune.
(5) Commanding General Marine Corps Air Station, Cherry Point.
(6) Commander 4th FW, Seymour Johnson Air Force Base.
(7) Commander 43rd Airlift Wing, Pope Air Force Base.
(8) Commander of the U.S. Coast Guard Support Center, Elizabeth City.
(9) Adjutant General of the North Carolina National Guard.
(10) The Executive Director of the North Carolina League of Municipalities.
(11) The Executive Director of the North Carolina Association of County Commissioners.
(12) The Assistant Secretary for Veterans Affairs, Department of Administration.
(13) The President of The University of North Carolina.
(14) The President of the North Carolina Community College System.

(d) The Governor shall designate one member of the Executive Committee appointed pursuant to subsection (b) of this section to serve as chair. The Executive Committee shall elect four persons from amongst its membership to serve as vice-chairs.

(e) The terms of the members of the Executive Committee shall be as follows:
(1) The members initially appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall serve terms ending on December 31, 2003.
(2) Seven of the members appointed by the Governor shall serve initial terms ending on December 31, 2002.
(3) Eight of the members appointed by the Governor shall serve initial terms ending on December 31, 2003.

Thereafter, all members shall serve two-year terms."

ALLOW CHANCELLORS OF CONSTITUENT INSTITUTIONS TO APPROVE CERTAIN REPAIR AND MAINTENANCE PROJECTS AND FUND THOSE WITH AVAILABLE OPERATING FUNDS

SECTION 9.6C. G.S. 116-13.1 reads as rewritten:

"**§ 116-13.1. Capital facilities; ~~reports.~~reports; chancellors may authorize certain repair, renovation, and maintenance projects.**

(a) The General Assembly finds that although The University of North Carolina is one of the State's most valuable assets, the current facilities of the University have been allowed to deteriorate due to decades of neglect and have unfortunately fallen into a state of disrepair because of inadequate attention to maintenance. It is the intent of the General Assembly to reverse this trend and to provide a mechanism to assure that the University's capital assets are adequately maintained. The General Assembly commits to responsible stewardship of these assets to protect their value over the years, as follows:
(1) The Board of Governors of The University of North Carolina shall require each constituent and affiliated institution to monitor the condition of its facilities and their needs or repair and renovation, and to assure that all necessary maintenance is carried out within funds available.
(2) The Board of Governors shall report annually to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee on the condition of the University's capital facilities, the repair, renovation, and maintenance projects being undertaken, and all needs for additional funding to maintain the facilities.
(3) It is the intent of the General Assembly to assure that adequate oversight, funding, and accountability are continually provided so that the capital

facilities of the University are properly maintained to preserve the level of excellence the citizens of this State deserve. To this end, the Joint Legislative Education Oversight Committee shall report to the General Assembly annually its recommendations for legislative changes to implement this policy.

(b) Equity in University Improvements. – The Board of Governors of The University of North Carolina shall continue to study and monitor any inequities in funding for capital improvements and facilities needs which may still exist on North Carolina's Public Historically Black Colleges and Universities and North Carolina's Historically American Indian University, the University of North Carolina at Pembroke, beyond the funding of the projects provided for in this act, and shall report annually to the Joint Legislative Commission on Governmental Operations on any remaining inequities found, including recommendations as to how those inequities should be addressed.

(c) Approval of Certain Repair and Maintenance Projects. – Notwithstanding G.S. 143C-8-7, the chancellor of a constituent institution may approve the expenditure of available operating funds in an amount not to exceed one million dollars ($1,000,000) per project for repairs to institution facilities, renovations to institution facilities, maintenance of those facilities, and related equipment purchases. Funds contractually obligated to an approved project shall not revert at the end of the fiscal year and will remain available to fund the completion of the project. Projects approved pursuant to this subsection shall in all other respects accord with applicable laws governing capital improvement projects."

AUTHORIZE BOARD OF GOVERNORS TO PERMIT NORTH CAROLINA STATE UNIVERSITY TO SELF-PERFORM ENERGY CONSERVATION MEASURES AND TO AUTHORIZE ENERGY SAVINGS REALIZED BY NORTH CAROLINA STATE UNIVERSITY TO BE USED AS A SOURCE OF REPAYMENT FOR CERTAIN DEBTS

SECTION 9.6D.(a) Article 3B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-64.17L. Board of Governors may authorize energy conservation measures at constituent institutions.**

(a) Authority. – Notwithstanding the provisions of this Part to the contrary, the Board of Governors of The University of North Carolina may authorize any constituent institution listed in subsection (e) of this section to implement an energy conservation measure without entering into a guaranteed energy savings contract if both of the following conditions are met:

(1) The Board of Governors finds that the energy savings resulting from the implementation of the energy conservation measure shall, according to the energy savings analysis received pursuant to G.S. 143-64.17M(a), equal or exceed the total cost of implementing the measure. If the proposed implementation will be financed with debt, then the energy savings analysis must project sufficient energy savings to pay the debt service on any bonds to be issued. As used in this subdivision, the term 'total cost' shall have the same meaning as it does in G.S. 143-64.17B(d).

(2) The energy conservation measure is for an existing building or utility system.

(b) Scope of Authority. – In implementing an energy conservation measure pursuant to subsection (a) of this section, the Board of Governors may undertake or authorize any constituent institution listed in subsection (e) of this section to undertake any action that (i) could be required of a qualified provider under a guaranteed energy savings contract or (ii) is otherwise permissible under this Part.

(c) Projects Consisting of Multiple Energy Conservation Measures. – The Board of Governors may authorize the implementation of multiple energy conservation measures simultaneously as part of a single project. When doing so, the findings required by subsection (a) of this section may be made with respect to the project as a whole and need not be made with respect to individual energy conservation measures. Similarly, the analyses required by G.S. 143-64.17M may be conducted for the project as a whole instead of for individual energy conservation measures.

(d) Continuing Applicability of Part to Contracts. – If the Board of Governors or a constituent institution implements an energy conservation measure through a guaranteed energy savings contract, that contract shall accord in all respects with the requirements of this Part.

(e) The Board of Governors may authorize North Carolina State University to implement an energy conservation measure without entering into a guaranteed energy savings contract pursuant to this section."

SECTION 9.6D.(b) Article 3B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-64.17M. Energy savings analysis required prior to implementation; post-implementation analyses required.**

(a) Energy Savings Analysis Required Prior to Implementation. – Prior to implementing an energy conservation measure pursuant to G.S. 143-64.17L, an energy savings analysis shall be performed to validate the economic assumptions that purportedly support the implementation of the measure. This analysis shall be performed by a third party selected by the constituent institution and shall include an energy consumption analysis to develop a baseline of previous costs of all utilities' energy consumption for the institution on the assumption that the energy conservation measure was not undertaken. The completed analysis shall be submitted to The University of North Carolina General Administration and to the State Energy Office.

(b) Post-Implementation Analyses Required. – A constituent institution that implements an energy conservation measure pursuant to G.S. 143-64.17L shall retain a third party to perform an annual measurement and verification of energy savings resulting from the energy conservation measure as compared to the baseline of previous costs set forth in the energy savings analysis required by subsection (a) of this section. The third party shall annually provide a reconciliation statement based upon the results of a preagreed upon measurement, monitoring, and verification protocol which shall disclose any shortfall or surplus between the estimated energy usage and operational savings set forth in the energy savings analysis required by subsection (a) of this section and actual, not stipulated, energy usage and operational savings incurred during a given year.

If a reconciliation statement reveals a shortfall in energy savings for a particular year, the constituent institution shall be responsible for and shall pay the shortfall. However, the institution shall not be held responsible for losses due to natural disasters or other emergencies. Any surplus shall be retained by the institution and may be used in the same manner as any other energy savings."

SECTION 9.6D.(c) G.S. 116-30.3B(b) reads as rewritten:

"(b) It is the intent of the General Assembly that appropriations to the Board of Governors on behalf of a constituent institution not be reduced as a result of the institution's realization of energy savings. Instead, the General Assembly intends that the amount of appropriations be determined as if no energy savings had been realized. The Director of the Budget shall not decrease the recommended continuation budget requirements for utilities for constituent institutions by the amount of energy savings realized from implementing energy conservation measures, including savings achieved through a guaranteed energy savings contract."

SECTION 9.6D.(d) G.S. 143-64.17F(b) reads as rewritten:

"(b) The Department of Administration, in consultation with the Department of Commerce through the State Energy Office, shall adopt rules for: (i) agency evaluation of guaranteed energy savings contracts; (ii) establishing time periods for consideration of guaranteed energy savings contracts by the Office of State Budget and Management, the Office of the State Treasurer, and the Council of State, and (iii) setting measurements and verification criteria, including review, audit, and precertification. Prior to adopting any rules pursuant to this section, the Department shall consult with and obtain approval of those rules from the State Treasurer. The rules adopted pursuant to this subsection shall not apply to energy conservation measures implemented pursuant to G.S. 143-64.17L."

SECTION 9.6D.(e) G.S. 143-64.17H reads as rewritten:

"**§ 143-64.17H. Report on guaranteed energy savings contracts entered into by State governmental units.**

A State governmental unit that enters into a guaranteed energy savings contract or implements an energy conservation measure pursuant to G.S. 143-64.17L must report either (i) the contract and the terms of the ~~contract~~ contract or (ii) the implementation of the measure to

the State Energy Office of the Department of Commerce within 30 days of the date the contract is entered ~~into.~~ into or the measure is implemented. In addition, within 60 days after each annual anniversary date of a guaranteed energy savings contract, the State governmental unit must report the status of the contract to the State Energy Office, including any details required by the State Energy Office. The State Energy Office shall compile the information for each fiscal year and report it to the Joint Legislative Commission on Governmental Operations and to the Local Government Commission annually by December 1. In compiling the information, the State Energy Office shall include information on the energy savings expected to be realized from a contract or implementation and shall evaluate whether expected savings have in fact been realized."

SECTION 9.6D.(f) G.S. 142-63 reads as rewritten:

"**§ 142-63. Authorization of financing contract.**

Subject to the terms and conditions set forth in this Article, (i) a State governmental unit that is implementing an energy conservation measure pursuant to G.S. 143-64.17L and financing it pursuant to this Article, (ii) a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or ~~G.S. 143-64.17B or~~ G.S. 143-64.17B, or (iii) the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate outstanding amount payable by the State under financing contracts entered pursuant to this Article shall not exceed five hundred million dollars ($500,000,000) at any one time."

SECTION 9.6D.(g) G.S. 142-64(a) reads as rewritten:

"**§ 142-64. Procedure for incurrence or issuance of financing contract.**

(a) When a State governmental unit (i) is implementing an energy conservation measure pursuant to G.S. 143-64.17L and financing it pursuant to this Article or (ii) has solicited a guaranteed energy conservation measure, the State governmental unit shall request that the State Treasurer approve the State governmental unit's entering into a financing contract to finance the cost of the energy conservation measure. In connection with the request, the State governmental unit shall provide to the State Treasurer any information the State Treasurer requests in order to evaluate the request. In the event that the State Treasurer determines that financing efficiencies will be realized through the combining of financing contracts, then the State Treasurer is authorized to execute and deliver, for and on behalf of the State of North Carolina, subject to the terms and conditions set forth in this Article, a financing contract for the purpose of financing the cost of the multiple energy conservation measures."

SECTION 9.6D.(h) G.S. 116D-22(3) reads as rewritten:

"(3) Obligated resources. – Any sources of income or receipts of the Board of Governors or the institution at which a special obligation bond project is or will be located that are designated by the Board as the security and source of payment for bonds issued under this Article to finance a special obligation bond project, including, without limitation, any of the following:

a. Rents, charges, or fees to be derived by the Board of Governors or the institution from any activities conducted at the institution.

b. Earnings on the investment of the endowment fund of the institution at which a special obligation project will be located, to the extent that the use of the earnings will not violate any lawful condition placed by the donor upon the part of the endowment fund that generates the investment earnings.

c. Funds to be received under a contract or a grant agreement, including "overhead costs reimbursement" under a grant agreement, entered into by the Board of Governors or the institution to the extent the use of the funds is not restricted by the terms of the contract or grant agreement or the use of the funds as provided in this Article does not violate the restriction.

d. Funds appropriated from the General Fund to the Board of Governors on behalf of a constituent institution for utilities of the institution that constitute energy savings as that term is defined in G.S. 143-64.17.

~~Obligated~~ Except as provided in sub-subdivision d. of this subdivision, obligated resources do not include funds appropriated to the Board of Governors or the institution from the General Fund by the General Assembly

from funds derived from general tax and other revenues of the State, and obligated resources do not include tuition payment by students."

AMEND REGULATION OF UNC INSTITUTIONAL TRUST FUNDS AND FUNDS OF UNC HEALTH CARE SYSTEM

SECTION 9.6E.(a) G.S. 116-36.1 reads as rewritten:

"§ 116-36.1. Regulation of institutional trust funds.

(a) The Board is responsible for the custody and management of the trust funds of the University of North Carolina and of each institution. The Board shall adopt uniform policies and procedures applicable to the deposit, investment, and administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the president, to the respective chancellors of the institutions when such delegation is necessary or prudent to enable the institution to function in a proper and expeditious manner.

(b) Trust funds ~~shall be deposited with the State Treasurer who shall hold them in trust in separate accounts in the name of the University of North Carolina and of each institution. The cash balances of these accounts may be pooled for investment purposes, but investment earnings shall be credited pro rata to each participating account. For purposes of distribution of investment earnings, all trust funds of an institution shall be deemed a single account.~~

~~(c) Moneys deposited with the State Treasurer in trust fund accounts pursuant to this section,~~ and investment earnings thereon, are available for expenditure by each institution without further authorization from the General Assembly.

(d) Trust funds are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the State Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143C-8-8 and G.S. 143C-8-9.

(e) Each institution shall submit such reports or other information concerning its trust fund accounts as may be required by the ~~Director of the Budget.~~Board.

(f) Trust funds or the investment income therefrom shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes is appropriated and shall be used to supplement State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(g) As used in this section, "trust funds" means:

(1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;

(2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;

(3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;

(4) Moneys collected by an institution to support extracurricular activities of students of the institution;

(5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;

(6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;

(7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider;

(8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection ~~(g)~~ as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency;

(9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs;

(10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o.;

(11) Moneys deposited to the State Education Assistance Authority Fund pursuant to G.S. 116-209.3.

(h) ~~Notwithstanding the provisions of subsection (b) of this section, the Board may designate as the official depository of the funds identified in subsection (g)(7) of this section one or more banks or trust companies in this State. The amount of funds on deposit in an official depository shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of public deposits generally. The available cash balance of funds deposited pursuant to this subsection shall be invested in interest bearing deposits and investments so that the rate of return equals that realized from the investment of State funds generally.~~The Board may authorize, through the President, that the chancellors may deposit or invest each institution's available trust fund cash balances in interest-bearing accounts and other investments as may be authorized by the Board in the exercise of its sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries.

(i) The cash balances on hand as of June 30, 1978, and all future receipts accruing thereafter, of funds identified in this section are hereby appropriated to the use of the University of North Carolina and its constituent institutions."

SECTION 9.6E.(b) G.S. 116-37(e) reads as rewritten:

"(e) Finances. – The University of North Carolina Health Care System shall be subject to the provisions of the State Budget Act, except for trust funds as provided in G.S. 116-36.1 and G.S. 116-37.2. The Chief Executive Officer, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. All operating funds of the University of North Carolina Health Care System may be budgeted and disbursed through special fund codes, maintaining separate auditable accounts for the University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill. All receipts of the University of North Carolina Health Care System may be deposited directly to the special fund codes, and except for General Fund appropriations, all receipts of the University of North Carolina Hospitals at Chapel Hill may be invested pursuant to ~~G.S. 147-69.2(b3).~~ G.S. 116-37.2(h).General Fund appropriations for support of the University of North Carolina Hospitals at Chapel Hill shall be budgeted in a General Fund code under a single purpose, "Contribution to University of North Carolina Hospitals at Chapel Hill Operations" and be transferable to a special fund operating code as receipts."

SECTION 9.6E.(c) G.S. 116-37.2 reads as rewritten:

"**§ 116-37.2. Regulation of University of North Carolina Hospitals at Chapel Hill Funds.**

(a) As used in this section, "funds" means:

(1) Moneys, or the proceeds of other forms of property, received by the University of North Carolina Hospitals at Chapel Hill as gifts, devises, or bequests.

(2) Moneys received by the University of North Carolina Hospitals at Chapel Hill pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof.

(3) Moneys received by the University of North Carolina Hospitals at Chapel Hill pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the University of North

Carolina Hospitals at Chapel Hill undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training, or public service programs.

(4) Moneys received from or for the operation by the University of North Carolina Hospitals at Chapel Hill of any of its self-supporting auxiliary enterprises, including the Liability Insurance Trust Fund.

(5) Moneys received by the University of North Carolina Hospitals at Chapel Hill in respect to fees and other payments for services it renders in its hospital and/or clinical operations.

(5a) Moneys received by the University of North Carolina Hospitals at Chapel Hill in respect to borrowings for capital equipment or construction projects to further services it renders in either or both of its hospital or clinical operations.

(6) The net proceeds from the disposition effected pursuant to Article 7 of Chapter 146 of the General Statutes of any interest in real property owned by or under the supervision and control of the University of North Carolina Hospitals at Chapel Hill if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection, except the net proceeds from the disposition of an interest in real property first acquired by the University of North Hospitals at Chapel Hill through expenditure of moneys received as a grant from a State agency.

(b) The Board of Directors of the University of North Carolina Health Care System, as established in G.S. 116-37(b), is responsible for the custody and management of the funds of the University of North Carolina Hospitals at Chapel Hill. The Board shall adopt uniform policies and procedures applicable to the deposit, investment, and administration of these funds, which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the Chief Executive Officer of the University of North Carolina Health Care System to the President of the University of North Carolina Hospitals at Chapel Hill, when such delegation is necessary or prudent to enable the University of North Carolina Hospitals at Chapel Hill to function in a proper and expeditious manner.

(c) Funds under this section ~~shall be deposited with the State Treasurer who shall hold them in trust in the name of the University of North Carolina Hospitals at Chapel Hill.~~

~~(d) Funds deposited with the State Treasurer in an account pursuant to this section,~~ and investment earnings ~~thereon,~~ thereon are available for expenditure by the University of North Carolina Hospitals at Chapel Hill without further authorization from the General Assembly.

(e) Funds under this section are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the ~~Executive~~ State Budget Act except for capital improvements projects, which shall be authorized and executed in accordance with ~~G.S. 143-18.1.~~G.S. 143C-8-8 and G.S. 143C-8-9.

(f) The University of North Carolina Hospitals at Chapel Hill shall submit such reports or other information concerning its fund accounts under this section as may be required by the ~~Director of the Budget.~~Board of Directors of the University of North Carolina Health Care System.

(g) Funds under this section, or the investment income therefrom, shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes shall be used to supplement State appropriations to the end that the University of North Carolina Hospitals at Chapel Hill may improve and increase their functions, may enlarge their areas of service, and may become more useful to a greater number of people.

(h) ~~Notwithstanding the provisions of subsection (c) of this section, the Board may designate as the official depository of the funds identified in subdivisions (a)(4), (a)(5), and (a)(6) of this section one or more banks or trust companies in this State for any investments authorized by G.S. 147-69.2(b3).~~The Board of Directors of the University of North Carolina Health Care System may deposit or invest the funds under this section in interest-bearing accounts and other investments in the exercise of its sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries."

UNC/INSTITUTIONAL EXPENDITURE BENCHMARKS

SECTION 9.6F.(a) G.S. 116-31.10 reads as rewritten:

"**§ 116-31.10. Powers of Board regarding certain purchasing contracts.**

(a) Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than five hundred thousand dollars ($500,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

(b) Each institution with an expenditure benchmark greater than two hundred fifty thousand dollars ($250,000) shall comply with this subsection for any purchase greater than ~~two hundred fifty thousand dollars ($250,000)~~the institution's benchmark set by the Board but not greater than five hundred thousand dollars ($500,000). This institution shall submit to the Division of Purchase and Contract for that Division's approval or other action deemed necessary by the Division a copy of all offers received and the institution's recommendation of award or other action. Notice of the Division's decision shall be sent to that institution. The institution shall then proceed with the award of contract or other action recommended by the Division."

SECTION 9.6F.(b) This section becomes effective October 1, 2011.

UNC ASSUME RESPONSIBILITY FOR QUALITY ACCEPTANCE INSPECTION PROCESS

SECTION 9.6G.(a) G.S. 143-60 reads as rewritten:

"**§ 143-60. Rules covering certain purposes.**

The Secretary of Administration may adopt, modify, or abrogate rules covering the following purposes, in addition to those authorized elsewhere in this Article:

(1) Requiring reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.

(2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.

(3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made in compliance with specifications. However, the provisions of this subdivision shall not apply to the constituent institutions of The University of North Carolina. The President of The University of North Carolina shall issue regulations or guidelines for the conducting of quality inspections by constituent institutions to ensure that deliveries have been made in compliance with specifications.

(4) Prescribing the manner in which purchases shall be made in emergencies.

(5) Providing for such other matters as may be necessary to give effect to foregoing rules and provisions of this Article.

(6) Prescribing the manner in which passenger vehicles shall be purchased.

Further, the Secretary of Administration may prescribe appropriate procedures necessary to enable the State, its institutions and agencies, to obtain materials surplus or otherwise available from federal, State or local governments or their disposal agencies."

SECTION 9.6G.(b) This section becomes effective October 1, 2011.

NCSU MAY SELL TIMBER

SECTION 9.6H. Part 1 of Article 3A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-64.06. North Carolina State University may sell timber.**

Notwithstanding any provision of this Part or Chapter 146 of the General Statutes, the Board of Trustees of North Carolina State University may cause to be severed and sold or transferred timber from any unimproved timberlands owned by or allocated to the University without involvement by the State Surplus Property Agency and without being required to pay

any service charge or surcharge to the State Surplus Property Agency. Any such severance shall be reported to the Council of State through the State Property Office. The Board of Trustees may delegate the authority set out above to responsible University officials. The proceeds of any sales or transfers under this section shall be used to support the management of, and programming costs associated with, forest properties owned, allocated, or managed by North Carolina State University."

USE OF ESCHEAT FUND FOR NEED-BASED FINANCIAL AID PROGRAMS

SECTION 9.8.(a) There is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of thirty-two million one hundred twenty-two thousand two hundred forty-two dollars ($32,122,242) for the 2011-2012 fiscal year and the sum of thirty-two million one hundred twenty-two thousand two hundred forty-two dollars ($32,122,242) for the 2012-2013 fiscal year to be used for The University of North Carolina Need-Based Financial Aid Program.

SECTION 9.8.(b) In addition to the appropriation in subsection (a) of this section, there is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of ninety-five million two hundred thirty-one thousand nine hundred twelve dollars ($95,231,912) for the 2011-2012 fiscal year to be used for The University of North Carolina Need-Based Financial Aid Program.

SECTION 9.8.(c) There is appropriated from the Escheat Fund income to the State Board of Community Colleges the sum of sixteen million five hundred thousand dollars ($16,500,000) for the 2011-2012 fiscal year and the sum of sixteen million five hundred thousand dollars ($16,500,000) for the 2012-2013 fiscal year to be used for community college grants.

SECTION 9.8.(d) There is appropriated from the Escheat Fund income to the Department of Administration, Division of Veterans Affairs, the sum of six million five hundred twenty thousand nine hundred sixty-four dollars ($6,520,964) for the 2011-2012 fiscal year and the sum of six million five hundred twenty thousand nine hundred sixty-four dollars ($6,520,964) for the 2012-2013 fiscal year to be used for need-based student financial aid.

SECTION 9.8.(e) The funds appropriated by this section shall be allocated by the State Educational Assistance Authority (SEAA) for need-based student financial aid in accordance with G.S. 116B-7. If the interest income generated from the Escheat Fund is less than the amounts referenced in this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum required in G.S. 116B-6(f). If any funds appropriated under this section remain uncommitted for need-based financial aid as of the end of a fiscal year, the funds shall be returned to the Escheat Fund, but only to the extent the funds exceed the amount of the Escheat Fund income for that fiscal year.

SECTION 9.8.(f) The State Education Assistance Authority shall perform all of the administrative functions necessary to implement this program of financial aid. The SEAA shall conduct periodic evaluations of expenditures of the scholarship programs to determine if allocations are utilized to ensure access to institutions of higher learning and to meet the goals of the respective programs. SEAA may make recommendations for redistribution of funds to The University of North Carolina, Department of Administration, and the President of the Community College System regarding their respective scholarship programs, who then may authorize redistribution of unutilized funds for a particular fiscal year.

SECTION 9.8.(g) The Office of State Budget and Management shall transfer the cash balance of the community college grant program remaining in Budget Code 66801, Fund 6102, to the Escheat Fund.

UNC NEED-BASED FINANCIAL AID PROGRAM FUNDING SCHEDULE

SECTION 9.9.(a) Of the funds appropriated by this act for the 2011-2012 fiscal year for The University of North Carolina Need-Based Financial Aid Program, the sum of fifty-nine million eight hundred fifty-nine thousand five hundred sixty-two dollars ($59,859,562) shall not be used for expenditures in the 2011-2012 fiscal year but shall be carried forward and held in reserve by the State Education Assistance Authority. The funds carried forward and held in reserve pursuant to this subsection may be disbursed by the State

Education Assistance Authority after July 1, 2012, for need-based student financial aid in the 2012-2013 academic year in accordance with G.S. 116B-7.

SECTION 9.9.(b) Of the funds appropriated by this act for the 2012-2013 fiscal year for The University of North Carolina Need-Based Financial Aid Program, the sum of fifty-nine million eight hundred fifty-nine thousand five hundred sixty-two dollars ($59,859,562) shall not be used for expenditures in the 2012-2013 fiscal year but shall be carried forward and held in reserve by the State Education Assistance Authority. The funds carried forward and held in reserve pursuant to this subsection may be disbursed by the State Education Assistance Authority after July 1, 2013, for need-based student financial aid in the 2013-2014 academic year in accordance with G.S. 116B-7.

CONSOLIDATE ASSETS OF MILLENNIUM TEACHING SCHOLARSHIP LOAN PROGRAM AND PROSPECTIVE TEACHERS SCHOLARSHIP LOAN FUND/ GIVE PRIORITY FOR SCHOLARSHIP LOANS FOR PROSPECTIVE TEACHERS TO CERTAIN FORMER TEACHER ASSISTANTS

SECTION 9.10.(a) Effective January 1, 2012, the Millennium Teaching Scholarship Loan Program is abolished.

SECTION 9.10.(b) All financial obligations to any student awarded a scholarship loan from the Millennium Teaching Scholarship Loan Program before January 1, 2012, shall be fulfilled with funds from the Scholarship Loan Fund for Prospective Teachers established under G.S. 116-209.33, provided the student remains eligible under the provisions of the Millennium Teaching Scholarship Loan Program. All contractual agreements between a student awarded a scholarship loan from the Millennium Teaching Scholarship Loan Program before January 1, 2012, and the State Education Assistance Authority regarding the loan remain enforceable.

SECTION 9.10.(c) The assets and liabilities for the Millennium Teaching Scholarship Loan Program shall be transferred as follows:

(1) Five hundred thousand dollars ($500,000) shall be transferred to the Escheat Fund on July 1, 2011.

(2) The remaining balance of the assets and liabilities shall be transferred to the Scholarship Loan Fund for Prospective Teachers established under G.S. 116-209.33 on January 1, 2012.

SECTION 9.10.(d) Notwithstanding the provisions of G.S. 116-209.33 or any other provision of law, when awarding scholarship loans under G.S. 116-209.33, the State Education Assistance Authority shall give priority to any applicant who qualifies for a scholarship loan under G.S. 116-209.33 if the applicant was formerly employed as a teacher assistant at a public school in North Carolina but lost his or her teacher assistant position in the State public school system as a result of a reduction in force.

LIMIT CERTAIN FINANCIAL AID GRANTS TO THE TRADITIONAL TIME PERIOD REQUIRED TO EARN A BACCALAUREATE DEGREE

SECTION 9.11.(a) Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-25.1. Limit receipt of The University of North Carolina need-based financial aid grants to traditional time period required to earn baccalaureate degree.**

(a) Except as otherwise provided by this section, a student shall not receive a grant from The University of North Carolina Need-Based Financial Aid Program for more than nine full-time academic semesters, or its equivalent if enrolled part-time, unless the student is enrolled in a program officially designated by the Board of Governors as a five-year degree program. If a student is enrolled in such a five-year degree program, then the student shall not receive a need-based grant from The University of North Carolina Need-Based Financial Aid Program for more than 11 full-time academic semesters or its equivalent if enrolled part-time.

(b) Upon application by a student, the student may receive a grant for one additional part-time or full-time academic semester as appropriate, if the student demonstrates that any of the following have substantially disrupted or interrupted the student's pursuit of a degree: (i) a military service obligation, (ii) serious medical debilitation, (iii) a short-term or long-term disability, or (iv) other extraordinary hardship, including inability to enroll in the appropriate courses due to reduced course offerings. The Board of Governors shall establish the appropriate procedures to implement the additional semester extension provided by this subsection."

SECTION 9.11.(b) The Fiscal Research Division, in cooperation with The University of North Carolina, the North Carolina Community College System, the North Carolina Independent Colleges and Universities, Inc., and the State Education Assistance Authority shall study how to track and document the receipt of The University of North Carolina need-based grants, North Carolina Community College need-based grants, and the private institutions of higher education need-based scholarships by students who enroll in both public and private institutions of higher education while pursuing a baccalaureate or associate degree so that no student receives a combination of these grants or scholarships that exceeds a cumulative total of nine full-time academic semesters or 11 full-time academic semesters as appropriate. In addition, the study shall (i) consider the need to grant a waiver to the limit imposed on receipt of need-based grants or scholarships for those students who encounter legitimate disruptions or interruptions of the academic pursuit of a degree and (ii) determine the appropriate criteria and procedure for extending the eligibility to receive those types of financial aid for an additional period of time. The study shall also examine any potential impact on college completion rates.

The Fiscal Research Division shall report its findings and recommendations, including any legislative recommendations, by March 1, 2012, to the Joint Legislative Education Oversight Committee and to the Education Appropriation Subcommittees of the House of Representatives and the Senate.

SECTION 9.11.(c) Subsection (a) of this section is effective for the 2012-2013 academic year and each subsequent fiscal year.

ACADEMIC COMMON MARKET

SECTION 9.12.(a) Notwithstanding G.S. 116-43.10, the Board of Governors of The University of North Carolina shall not participate in the Academic Common Market for the purpose of accepting new students for the 2012-2013 academic year, and no new students shall be allowed to enroll through the Academic Common Market program into The University of North Carolina graduate programs for the 2012-2013 academic year.

SECTION 9.12.(b) This section does not affect a student enrolled in The University of North Carolina System under the Academic Common Market program prior to the 2012-2013 academic year; that student may continue to pay in-State tuition as long as the student is enrolled in that graduate program.

ELIMINATE CERTAIN UNC TUITION WAIVERS FOR NONRESIDENT STUDENTS

SECTION 9.13.(a) G.S. 116-143(c) reads as rewritten:

"(c) Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by ~~statute or by the Board of Governors of The University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports. The Board of Governors of The University of North Carolina shall not authorize a reduced rate of tuition for the special talent of athletics.~~statute."

SECTION 9.13.(b) G.S. 116-143.5 is repealed.

SECTION 9.13.(c) The Prospective Teacher Scholars program that was begun as a pilot program under Section 9.9 of S.L. 2002-126 is abolished.

ELIMINATE PRIVATE MEDICAL SCHOOL AID

SECTION 9.14. G.S. 116-21.6 is repealed.

TRANSFER NORTH CAROLINA ARBORETUM RESPONSIBILITIES TO WESTERN CAROLINA

SECTION 9.15.(a) G.S. 116-242 reads as rewritten:

"**§ 116-242. Administration of Arboretum; acceptance of gifts and grants.**

The Arboretum shall be administered by The University of North Carolina and through the Board of Directors established in G.S. 116-243. State funds for the administration of the Arboretum shall be appropriated to The University of North Carolina ~~for the University of North Carolina at Asheville. The~~ for Western Carolina University to administer on behalf of the arboretum. The North Carolina Arboretum and The University of North Carolina may receive gifts and grants to be used for development or operation of the Arboretum."

SECTION 9.15.(b) G.S. 116-243 reads as rewritten:

"**§ 116-243. Board of directors established; appointments.**

A board of directors to govern the operation of the Arboretum is established, to be appointed as follows:

(1) Two by the Governor, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.

(2) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the President Pro Tempore of the Senate, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.

(3) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the Speaker of the House of Representatives, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.

(4) The President of The University of North Carolina or the President's designee to serve ex officio.

(4a) Two by the President of The University of North Carolina. Members shall be appointed for four-year terms, except that the initial terms shall be as provided otherwise by law.

~~(5) The chancellors, chief executive officers, or their designees of the following institutions of higher education: North Carolina State University, Western Carolina University, The University of North Carolina at Asheville, Mars Hill College, and Warren Wilson College, to serve ex officio.~~

~~(6) The President of Western North Carolina Arboretum, Inc., to serve ex officio.~~

(7) ~~Six~~ Eight by the Board of Governors of The University of North Carolina, ~~initially, three for one-year terms, and three for three-year terms. Successors shall be appointed for four-year terms. One shall be an active grower of nursery stock, and one other shall represent the State's garden clubs.~~Members shall be appointed for four-year terms, except that the initial terms shall be as otherwise provided by law.

(8) The executive director of the Arboretum ~~and the Executive Vice President of Western North Carolina Development Association~~ shall serve ex officio as ~~nonvoting members of the board of directors.~~ a nonvoting member of the Board of Directors.

(9) The President of The North Carolina Arboretum Society, Inc., to serve ex officio.

All appointed members may serve two full four-year terms following the initial appointment and then may not be reappointed until they have been absent for at least one year. Members serve until their successors have been appointed. Appointees to fill vacancies serve for the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Initial terms begin ~~July 1, 1986.~~July 1, 2011.

The ~~chairman of the board of directors~~ Chair of the Board of Directors shall be elected biennially by majority vote of the directors.

The ~~executive director~~ Executive Director of the Arboretum shall report to the ~~board of directors.~~President of The University of North Carolina or the President's designee and to the Board of Directors."

SECTION 9.15.(c) G.S. 116-244 reads as rewritten:

"**§ 116-244. Duties of board of directors.**

The ~~board of directors~~ Board of Directors of the Arboretum has the following duties and responsibilities:

(1) Development of the policies and procedures concerning the use of the land and facilities being developed as part of the Western North Carolina Arboretum, Inc.;

(2) Approval of plans for any buildings to be constructed on the facility;

(3) Maintenance and upkeep of buildings and all properties;

(4) Approval of permanent appointments to the staff of the Arboretum;

(5) Recommendations to the General Administration of candidates for ~~executive director~~ Executive Director of the Arboretum;
(6) Recommendations to the General Administration for necessary termination of the ~~executive director~~ Executive Director or other personnel of the Arboretum;
(7) Ensurance of appropriate liaison between the Arboretum and the U. S. Forest Service, the National Park Service, ~~the Western North Carolina Arboretum, Inc.,~~ The North Carolina Arboretum Society, Inc., Bent Creek Institute, Inc., Centers for Environmental and Climatic Interaction, Inc., NOAA Cooperative Institute for Climate and Satellites, and other scientific and economic development agencies and organizations of interest to and involved in the work at the Arboretum;
(8) Development of various policies and directives, including the duties of the ~~executive director,~~ Executive Director, to be prepared jointly by the members of the ~~board of directors and the executive director;~~ Board of Directors and the Executive Director;
(9) Approval of annual expenditures and budget requests to be submitted to ~~the Board of Governors.~~ The University of North Carolina General Administration.

The ~~board of directors~~ Board of Directors shall meet at least twice a year, and more frequently on the call of the ~~chairman~~ Chair or at the request of at least 10 members of the ~~board.~~ Board. Meetings shall be held at the Arboretum, ~~the University of North Carolina at Asheville, or Western Carolina University.~~ any campus of a constituent institution of The University of North Carolina, or at other public locations in support of the Arboretum mission and purposes."

SECTION 9.15.(d) Effective July 1, 2011, the President of The University of North Carolina shall appoint one member pursuant to G.S. 116-243(4a) as enacted by subsection (b) of this section to serve an initial term of two years to end July 1, 2013, and one member to serve an initial term of four years to end July 1, 2015; successors shall be appointed to four-year terms as provided by G.S. 116-243. Effective July 1, 2011, the Board of Governors of The University of North Carolina shall appoint one of the new members to be added to Board of Directors pursuant to G.S. 116-243(7) as amended by subsection (b) of this section to serve an initial term of two years to end July 1, 2013, and the other new member to be added to serve an initial term of four years to end July 1, 2015; successors shall be appointed to four year terms as provided by G.S. 116-243.

SPECIAL RESPONSIBILITY CONSTITUENT INSTITUTION AUDITS

SECTION 9.16. Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-30.8. Special responsibility constituent institutions: annual audit by State Auditor or certified public accountant.**

Each special responsibility constituent institution shall be audited annually. The Chancellor of the special responsibility constituent institution may use State funds to contract with the State Auditor or with a certified public accountant to perform the audit. The audit shall be provided to the Chancellor and Board of Trustees of the special responsibility institution, the Board of Governors of The University of North Carolina, and the State Auditor. The audit shall also be included in the State's Comprehensive Annual Financial Report (CAFR).

The Board of Governors of The University of North Carolina shall ensure that all special responsibility constituent institutions are audited in accordance with this section."

NEED-BASED SCHOLARSHIPS FOR STUDENTS ATTENDING PRIVATE INSTITUTIONS OF HIGHER EDUCATION

SECTION 9.18.(a) Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 34.

"Need-Based Scholarships for Students Attending Private Institutions of Higher Education.

"**§ 116-280. Definitions.**

The following definitions apply to this Article:

(1) Academic year. – A period of time in which a student is expected to complete the equivalent of at least two semesters' or three quarters' academic work.
(2) Authority. – The State Education Assistance Authority created by Article 23 of Chapter 116 of the General Statutes.
(3) Eligible private postsecondary institution. – A school that is any of the following:
a. A nonprofit postsecondary educational institution with a main permanent campus located in this State that is not owned or operated by the State of North Carolina or by an agency or political subdivision of the State or by any combination thereof that satisfies all of the following:
1. Is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of the Association or by the New England Association of Schools and Colleges through its Commission on Institutions of Higher Education.
2. Awards a postsecondary degree as defined in G.S. 116-15.
b. A postsecondary institution owned or operated by a hospital authority as defined in G.S. 131E-16(14) or school of nursing affiliated with a nonprofit postsecondary educational institution as defined in sub-subdivision a. of this subsection.
(4) Main permanent campus. – A campus owned by the eligible private postsecondary institution that provides permanent on-premises housing, food services, and classrooms with full-time faculty members and administration that engages in postsecondary degree activity as defined in G.S. 116-15.
(5) Matriculated status. – Being recognized as a student in a defined program of study leading to a degree, diploma, or certificate at an eligible private postsecondary institution.
(6) Scholarship. – A scholarship for education awarded under this Article.
(7) Title IV. – Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070, et seq.

"**§ 116-281. Eligibility requirements for scholarships.**

In order to be eligible to receive a scholarship under this Article, a student seeking a degree, diploma, or certificate at an eligible private postsecondary institution must meet all of the following requirements:

(1) Only needy North Carolina students are eligible to receive scholarships. For purposes of this subsection, "needy North Carolina students" are those eligible students whose expected family contribution under the federal methodology does not exceed an amount as set annually by the Authority based upon costs of attendance at The University of North Carolina.
(2) The student must meet all other eligibility requirements for the federal Pell Grant, with the exception of the expected family contribution.
(3) The student must qualify as a legal resident of North Carolina and as a resident for tuition purposes in accordance with definitions of residency that may from time to time be adopted by the Board of Governors and published in the residency manual of the Board of Governors.
(4) The student must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status at an eligible private postsecondary institution.
(5) In order to continue to be eligible for a scholarship for the student's second and subsequent academic years, the student must meet achievement standards by maintaining satisfactory academic progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the eligible private postsecondary institution in which the student is enrolled.
(6) A student shall not receive a scholarship under this Article for more than nine full-time academic semesters, or the equivalent if enrolled part-time, unless the student is enrolled in a program officially designated by the

eligible private postsecondary institution as a five-year degree program. If a student is enrolled in such a five-year degree program, then the student shall not receive a scholarship under this Article for more than 11 full-time academic semesters or the equivalent if enrolled part-time.

"**§ 116-282. Scholarship amounts; amounts dependent on availability of funds.**

(a) Subject to the sum appropriated by the General Assembly for an academic year to be awarded as scholarships under this Article, a scholarship awarded under this Article to a student at an eligible private postsecondary institution shall be determined annually by the Authority based upon the enrollment status and expected family contribution of the student, consistent with the methodology for the federal Title IV programs.

(b) The Authority shall have the power to determine the actual scholarship amounts disbursed to students in any given year based on the sum appropriated for purposes of this Article by the General Assembly for that academic year and any unexpended funds that may be available pursuant to G.S. 116-283.

(c) The minimum award of a scholarship under this Article shall be five hundred dollars ($500.00).

"**§ 116-283. Administration; unexpended scholarship funds do not revert.**

(a) The scholarships provided for in this Article shall be administered by the Authority under rules adopted by the Authority in accordance with the provisions of this Article.

(b) The Authority may use up to one and one-half percent (1.5%) of the funds appropriated for scholarships under this Article for administrative purposes.

(c) Scholarship funds unexpended shall remain available for future scholarships to be awarded under this Article."

SECTION 9.18.(b) G.S. 115C-499.1(3) reads as rewritten:

"**§ 115C-499.1. Definitions.**

The following definitions apply to this Article:

...

(3) Eligible postsecondary institution. – A school that is:

a. A constituent institution of The University of North Carolina as defined in G.S. 116-2(4); or

b. A community college as defined in ~~G.S. 115D-2(2);~~G.S. 115D-2(2).

~~c. A nonprofit postsecondary institution as defined in G.S. 116-22(1) or G.S. 116-43.5(a)(1); or~~

~~d. A postsecondary institution owned or operated by a hospital authority as defined in G.S. 131E-16(14) or school of nursing affiliated with a nonprofit postsecondary institution as defined in G.S. 116-22(1).~~

...."

SECTION 9.18.(c) G.S. 116-19, 116-20, 116-21, 116-21.1, 116-21.2, 116-21.3, 116-21.4, 116-22, and 116-43.5 are repealed.

SECTION 9.18.(d) The State Education Assistance Authority shall report no later than June 1, 2013, to the Joint Legislative Education Oversight Committee regarding the implementation of this section. The report shall contain, for the 2012-2013 academic year, the amount of scholarship and grant money disbursed, the number of students eligible for the funds, the number of eligible students receiving the funds, and a breakdown of the eligible private postsecondary institutions that received the funds.

SECTION 9.18.(e) G.S. 90-332.1(a)(4a) reads as rewritten:

"(a) It is not the intent of this Article to regulate members of other regulated professions who do counseling in the normal course of the practice of their profession. Accordingly, this Article does not apply to:

...

(4a) Any person counseling within the scope of employment at: (i) a local community college as defined in G.S. 115D-2(2); (ii) a public higher education institution as defined in G.S. 116-2(4); or (iii) ~~a private higher education institution as defined in G.S. 116-22(1).~~a nonprofit postsecondary educational institution as described in G.S. 116-280."

SECTION 9.18.(f) G.S. 105-278.4(a) reads as rewritten:

"(a) Buildings. – Buildings, the land they actually occupy, and additional land reasonably necessary for the convenient use of any such building shall be exempted from taxation if all of the following requirements are met:

(1) Owned by either of the following:

a. An educational institution; or

b. A nonprofit entity for the sole benefit of a constituent or affiliated institution of The University of North Carolina, ~~an institution as defined in G.S. 116-22,~~ a nonprofit postsecondary educational institution as described in G.S. 116-280, a North Carolina community college, or a combination of these;

...."

SECTION 9.18.(g) G.S. 116-11(10a) reads as rewritten:

"(10a) The Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with ~~private higher education institutions defined in G.S. 116-22(1),~~ nonprofit postsecondary educational institutions shall plan a system to provide an exchange of information among the public schools and institutions of higher education to be implemented no later than June 30, 1995. As used in this section, "institutions of higher education" shall ~~mean~~ mean (i) public higher education institutions defined in G.S. 116-143.1(a)(3), and ~~those private higher education institutions defined in G.S. 116-22(1)~~ (ii) those nonprofit postsecondary educational institutions as described in G.S. 116-280 that choose to participate in the information exchange. The information shall include:

a. The number of high school graduates who apply to, are admitted to, and enroll in institutions of higher education;

b. College performance of high school graduates for the year immediately following high school graduation including each student's: need for remedial coursework at the institution of higher education that the student attends; performance in standard freshmen courses; and continued enrollment in a subsequent year in the same or another institution of higher education in the State;

c. The progress of students from one institution of higher education to another; and

d. Consistent and uniform public school course information including course code, name, and description.

The Department of Public Instruction shall generate and the local school administrative units shall use standardized transcripts in an automated format for applicants to higher education institutions. The standardized transcript shall include grade point average, class rank, end-of-course test scores, and uniform course information including course code, name, units earned toward graduation, and credits earned for admission from an institution of higher education. The grade point average and class rank shall be calculated by a standard method to be devised by the institutions of higher education.

The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1993, and annually thereafter."

SECTION 9.18.(h) G.S. 143-49(6) reads as rewritten:

"(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education

institutions that are ~~defined as "institutions" in G.S. 116-22(1),~~ described as nonprofit postsecondary educational institutions in G.S. 116-280 and to counties, cities, towns, local school administrative units, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract."

SECTION 9.18.(i) Subsections (a), (d), and (i) of this section become effective July 1, 2011. Article 34 of Chapter 116 of the General Statutes, as enacted by subsection (a) of this section, applies to the 2012-2013 academic year and each subsequent academic year, except that the rule-making authority for the State Education Assistance Authority under G.S. 116-283(a) becomes effective immediately on July 1, 2011. Subsections (b), (c), (e), (f), (g), and (h) of this section become effective July 1, 2012.

CONSTITUENT INSTITUTIONS MAY PURCHASE MOTOR VEHICLES INDEPENDENT OF MOTOR FLEET MANAGEMENT

SECTION 9.19. G.S. 143-341(8)i.3. reads as rewritten:

"**§ 143-341. Powers and duties of Department.**

The Department of Administration has the following powers and duties:

...

(8) General Services:

...

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

...

3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway ~~Patrol or~~ Patrol, the State Bureau of ~~Investigation~~ Investigation, or the constituent institutions of The University of North Carolina which are used primarily for law-enforcement purposes, and except those motor vehicles under the ownership, custody or control of the Department of Crime Control and Public Safety for Butner Public Safety which are used primarily for law-enforcement, fire, or emergency purposes."

PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHILD CARE SUBSIDY RATES

SECTION 10.1.(a) The maximum gross annual income for initial eligibility, adjusted biennially, for subsidized child care services shall be seventy-five percent (75%) of the State median income, adjusted for family size.

SECTION 10.1.(b) Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%
4-5	9%
6 or more	8%.

SECTION 10.1.(c) Payments for the purchase of child care services for low-income children shall be in accordance with the following requirements:

(1) Religious-sponsored child care facilities operating pursuant to G.S. 110-106 and licensed child care centers and homes that meet the minimum licensing standards that are participating in the subsidized child care program shall be paid the one-star county market rate or the rate they charge privately paying parents, whichever is lower, unless prohibited by Section 10.7(g) of this act.

(2) Licensed child care centers and homes with two or more stars shall receive the market rate for that rated license level for that age group or the rate they charge privately paying parents, whichever is lower, unless prohibited by Section 10.7(g) of this act.

(3) Nonlicensed homes shall receive fifty percent (50%) of the county market rate or the rate they charge privately paying parents, whichever is lower.

(4) No payments shall be made for transportation services or registration fees charged by child care facilities.

(5) Payments for subsidized child care services for postsecondary education shall be limited to a maximum of 20 months of enrollment.

(6) The Department of Health and Human Services shall implement necessary rule changes to restructure services, including, but not limited to, targeting benefits to employment.

SECTION 10.1.(d) Provisions of payment rates for child care providers in counties that do not have at least 50 children in each age group for center-based and home-based care are as follows:

(1) Except as applicable in subdivision (2) of this subsection, payment rates shall be set at the statewide or regional market rate for licensed child care centers and homes.

(2) If it can be demonstrated that the application of the statewide or regional market rate to a county with fewer than 50 children in each age group is lower than the county market rate and would inhibit the ability of the county to purchase child care for low-income children, then the county market rate may be applied.

SECTION 10.1.(e) A market rate shall be calculated for child care centers and homes at each rated license level for each county and for each age group or age category of enrollees and shall be representative of fees charged to parents for each age group of enrollees within the county. The Division of Child Development shall also calculate a statewide rate and regional market rates for each rated license level for each age category.

SECTION 10.1.(f) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes and facilities operated pursuant to G.S. 110-106 may participate in the program that provides for the purchase of care in child care facilities for minor children of needy families. Except as authorized by Section 10.7(g) of this act, no separate licensing requirements shall be used to select facilities to participate. In addition, child care facilities shall be required to meet any additional applicable requirements of federal law or regulations. Child care arrangements exempt from State regulation pursuant to Article 7 of Chapter 110 of the General Statutes shall meet the requirements established by other State law and by the Social Services Commission.

County departments of social services or other local contracting agencies shall not use a provider's failure to comply with requirements in addition to those specified in this subsection as a condition for reducing the provider's subsidized child care rate.

SECTION 10.1.(g) Payment for subsidized child care services provided with Work First Block Grant funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.1.(h) Noncitizen families who reside in this State legally shall be eligible for child care subsidies if all other conditions of eligibility are met. If all other conditions of eligibility are met, noncitizen families who reside in this State illegally shall be eligible for child care subsidies only if at least one of the following conditions is met:

(1) The child for whom a child care subsidy is sought is receiving child protective services or foster care services.

(2) The child for whom a child care subsidy is sought is developmentally delayed or at risk of being developmentally delayed.

(3) The child for whom a child care subsidy is sought is a citizen of the United States.

CHILD CARE ALLOCATION FORMULA

SECTION 10.2.(a) The Department of Health and Human Services shall allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families. The mandatory thirty percent (30%) Smart Start subsidy allocation under G.S. 143B-168.15(g) shall constitute the base amount for each county's child care subsidy allocation. The Department of Health and Human Services shall use the following method when allocating federal and State child care funds, not including the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation:

(1) Funds shall be allocated to a county based upon the projected cost of serving children under age 11 in families with all parents working who earn less than seventy-five percent (75%) of the State median income.

(2) No county's allocation shall be less than ninety percent (90%) of its State fiscal year 2001-2002 initial child care subsidy allocation.

SECTION 10.2.(b) The Department of Health and Human Services may reallocate unused child care subsidy voucher funds in order to meet the child care needs of low-income families. Any reallocation of funds shall be based upon the expenditures of all child care subsidy voucher funding, including Smart Start funds, within a county.

SECTION 10.2.(c) Notwithstanding subsection (a) of this section, the Department of Health and Human Services shall allocate up to twenty million dollars ($20,000,000) in federal block grant funds and State funds appropriated for fiscal years 2011-2012 and 2012-2013 for child care services. These funds shall be allocated to prevent termination of child care services. Funds appropriated for specific purposes, including targeted market rate adjustments given in the past, may also be allocated by the Department separately from the allocation formula described in subsection (a) of this section.

CHILD CARE FUNDS MATCHING REQUIREMENT

SECTION 10.3. No local matching funds may be required by the Department of Health and Human Services as a condition of any locality's receiving its initial allocation of child care funds appropriated by this act unless federal law requires a match. If the Department reallocates additional funds above twenty-five thousand dollars ($25,000) to local purchasing agencies beyond their initial allocation, local purchasing agencies must provide a twenty percent (20%) local match to receive the reallocated funds. Matching requirements shall not apply when funds are allocated because of a disaster as defined in G.S. 166A-4(1).

CHILD CARE REVOLVING LOAN

SECTION 10.4. Notwithstanding any law to the contrary, funds budgeted for the Child Care Revolving Loan Fund may be transferred to and invested by the financial institution contracted to operate the Fund. The principal and any income to the Fund may be used to make loans, reduce loan interest to borrowers, serve as collateral for borrowers, pay the contractor's cost of operating the Fund, or pay the Department's cost of administering the program.

EXPIRATION OF EARLY EDUCATION CERTIFICATION REQUIREMENT

SECTION 10.4A. Section 2 of S.L. 2010-178 reads as rewritten:

"**SECTION 2.** This act is effective when it becomes ~~law.~~law and expires July 1, 2011."

EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES ENHANCEMENTS

SECTION 10.5.(a) Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. For purposes of this subsection, administrative costs shall include costs associated with partnership oversight, business and financial management, general accounting, human resources, budgeting, purchasing, contracting, and information systems management. The North Carolina Partnership for Children, Inc., shall develop a single statewide contract management system that incorporates features of the required standard fiscal accountability plan described in G.S. 143B-168.12(a)(4). All local partnerships shall be required to participate in the contract management system and shall be directed by the North

Carolina Partnership for Children, Inc., to collaborate, to the fullest extent possible, with other local partnerships to increase efficiency and effectiveness.

SECTION 10.5.(b) G.S. 143B-168.12(a)(5) is repealed.

SECTION 10.5.(c) The North Carolina Partnership for Children, Inc., shall not use more than eighty thousand dollars ($80,000) in funds from the General Fund for the salary of any individual employee. A local partnership shall not use more than sixty thousand dollars ($60,000) in funds from the General Fund for the salary of any individual employee. Nothing in this subsection shall be construed to prohibit the North Carolina Partnership for Children, Inc., or a local partnership from using non-State funds to supplement the salary of an employee employed by the North Carolina Partnership for Children, Inc., or the local partnership.

SECTION 10.5.(d) The North Carolina Partnership for Children, Inc., and all local partnerships shall use competitive bidding practices in contracting for goods and services on contract amounts as follows:

(1) For amounts of five thousand dollars ($5,000) or less, the procedures specified by a written policy to be developed by the Board of Directors of the North Carolina Partnership for Children, Inc.

(2) For amounts greater than five thousand dollars ($5,000), but less than fifteen thousand dollars ($15,000), three written quotes.

(3) For amounts of fifteen thousand dollars ($15,000) or more, but less than forty thousand dollars ($40,000), a request for proposal process.

(4) For amounts of forty thousand dollars ($40,000) or more, a request for proposal process and advertising in a major newspaper.

SECTION 10.5.(e) The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match one hundred percent (100%) of the total amount budgeted for the program in each fiscal year of the biennium. Of the funds the North Carolina Partnership for Children, Inc., and the local partnerships are required to match, contributions of cash shall equal to at least ten percent (10%) and in-kind donated resources equal to no more than three percent (3%) for a total match requirement of thirteen percent (13%) for each fiscal year. The North Carolina Partnership for Children, Inc., may carry forward any amount in excess of the required match for a fiscal year in order to meet the match requirement of the succeeding fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children, Inc., or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

(1) Be verifiable from the contractor's records.

(2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.

(3) Not include expenses funded by State funds.

(4) Be supplemental to and not supplant preexisting resources for related program activities.

(5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives.

(6) Be otherwise allowable under federal or State law.

(7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children, Inc., or the local partnership.

(8) Be reported to the North Carolina Partnership for Children, Inc., or the local partnership by the contractor in the same manner as reimbursable expenses.

Failure to obtain a thirteen percent (13%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for

compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

SECTION 10.5.(f) The Department of Health and Human Services shall continue to implement the performance-based evaluation system.

SECTION 10.5.(g) The Department of Health and Human Services and the North Carolina Partnership for Children, Inc., shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2011-2012 and 2012-2013 shall be administered and distributed in the following manner:

(1) Capital expenditures are prohibited for fiscal years 2011-2012 and 2012-2013. For the purposes of this section, "capital expenditures" means expenditures for capital improvements as defined in G.S. 143C-1-1(d)(5).

(2) Expenditures of State funds for advertising and promotional activities are prohibited for fiscal years 2011-2012 and 2012-2013.

SECTION 10.5.(h) A county may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure pursuant to Article 7 of Chapter 110 of the General Statutes.

SECTION 10.5.(i) For fiscal years 2011-2012 and 2012-2013, the local partnerships shall spend an amount for child care subsidies that provides at least fifty-two million dollars ($52,000,000) for the TANF maintenance of effort requirement and the Child Care Development Fund and Block Grant match requirement.

SECTION 10.5.(j) For fiscal years 2011-2012 and 2012-2013, local partnerships shall not spend any State funds on marketing campaigns, advertising, or any associated materials. Local partnerships may spend any private funds the local partnerships receive on those activities.

SECTION 10.5.(k) The North Carolina Partnership for Children, Inc., and its Board shall establish policies that focus the North Carolina Partnership for Children, Inc.'s mission on improving child care quality in North Carolina for children from birth to five years of age. North Carolina Partnership for Children, Inc.-funded activities shall include assisting child care facilities with (i) improving quality, including helping one- and two-star rated facilities increase their star ratings, and (ii) implementing prekindergarten programs. State funding for local partnerships shall also be used for evidence-based or evidence-informed programs for children from birth to five years of age that do the following:

(1) Increase children's literacy.

(2) Increase the parents' ability to raise healthy, successful children.

(3) Improve children's health.

(4) Assist four- and five-star rated facilities in improving and maintaining quality.

SECTION 10.5.(l) It is the intent of the General Assembly that the North Carolina Partnership for Children, Inc., implement an evidence-based pilot literacy program that improves literacy of children from birth through five years of age and increases children's chances of success in school. An annual evaluation of the pilot literacy program shall access the goals and intended outcomes of the evidence-based pilot literacy program.

SECTION 10.5.(m) The Legislative Research Commission is authorized to study the cost, quality, consumer education, and outcomes of the North Carolina Partnership for Children, Inc.'s activities funded to (i) increase early literacy, (ii) measurably improve families' abilities to raise healthy, productive, and successful children, and (iii) increase access to preventative health care for children from birth to five years of age. The Legislative Services Commission shall evaluate and report on the following:

(1) The types of activities, goals, and intended outcomes of evidence-based early literacy activities that promote phonemic awareness, letter recognition, segmenting words into sounds, and decoding print text.

(2) The types of family support and health activities supported with the North Carolina Partnership for Children, Inc., funds.

(3) The goal and intended outcome of the family support and health activities.

(4) The numbers served and results of the family support and health activities.
(5) Study the match requirements and what constitutes the match requirements.
(6) Any other matter the Commission deems relevant to its charge.

SECTION 10.5.(n) On or before October 1, 2012, the Legislative Research Commission shall make a report of its findings and recommendations, including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

ADMINISTRATIVE ALLOWANCE FOR COUNTY DEPARTMENTS OF SOCIAL SERVICES

SECTION 10.6. The Division of Child Development of the Department of Health and Human Services shall fund the allowance that county departments of social services may use for administrative costs at four percent (4%) of the county's total child care subsidy funds allocated in the Child Care Development Fund Block Grant plan.

CONSOLIDATE MORE AT FOUR PROGRAM INTO DIVISION OF CHILD DEVELOPMENT

SECTION 10.7.(a) The Department of Public Instruction, Office of Early Learning, and the Department of Health and Human Services are directed to consolidate the More At Four program into the Division of Child Development. The Division of Child Development is renamed the Division of Child Development and Early Education (DCDEE). The DCDEE is directed to maintain the More At Four program's high programmatic standards. The Department of Health and Human Services shall assume the functions of the regulation and monitoring system and payment and reimbursement system for the More At Four program.

All regulation and monitoring functions shall begin July 1, 2011. The More At Four program shall be designated as "prekindergarten" on the five-star rating scale. All references to "prekindergarten" in this section shall refer to the program previously titled the "More At Four" program. All references to "non-prekindergarten" shall refer to all four- and five-star rated facilities.

The Office of State Budget and Management shall transfer positions to the Department of Health and Human Services to assume the regulation, monitoring, and accounting functions within the Division of Child Development's Regulatory Services Section. This transfer shall have all the elements of a Type I transfer as defined in G.S. 143A-6. All funds transferred pursuant to this section shall be used for the funding of prekindergarten slots for four-year-olds and for the management of the program. The Department of Health and Human Services shall incorporate eight consultant positions into the regulation and accounting sections of DCDEE, eliminate the remaining positions, and use position elimination savings for the purpose of funding prekindergarten students. DCDEE may use funds from the transfer of the More At Four program for continuing the teacher mentoring program and contracting for the environmental rating scale assessments.

SECTION 10.7.(b) The Childcare Commission shall adopt rules for programmatic standards for regulation of prekindergarten classrooms. The Commission shall review and approve comprehensive, evidenced-based early childhood curricula with a reading component. These curricula shall be added to the currently approved "More At Four" curricula.

SECTION 10.7.(c) G.S. 143B-168.4(a) reads as rewritten:

"(a) The Child Care Commission of the Department of Health and Human Services shall consist of ~~15~~ 17 members. Seven of the members shall be appointed by the Governor and ~~eight~~ 10 by the General Assembly, ~~four~~ five upon the recommendation of the President Pro Tempore of the Senate, and ~~four~~ five upon the recommendation of the Speaker of the House of Representatives. Four of the members appointed by the Governor, two by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on the recommendation of the Speaker of the House of Representatives, shall be members of the public who are not employed in, or providing, child care and who have no financial interest in a child care facility. Two of the foregoing public members appointed by the Governor, one of the foregoing public members recommended by the President Pro Tempore of the Senate, and one of the foregoing public members recommended by the Speaker of the House of Representatives shall be parents of children receiving child care services. Of the remaining two public members appointed by the Governor, one shall be a pediatrician

currently licensed to practice in North Carolina. Three of the members appointed by the Governor shall be child care providers, one of whom shall be affiliated with a for profit child care center, one of whom shall be affiliated with a for profit family child care home, and one of whom shall be affiliated with a nonprofit facility. Two of the members appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on recommendation of the Speaker of the House of Representatives, shall be child care providers, one affiliated with a for profit child care facility, and one affiliated with a nonprofit child care facility. The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two early childhood education specialists. None may be employees of the State."

SECTION 10.7.(d) The additional curricula approved and taught in prekindergarten classrooms shall also be taught in four- and five-star rated facilities in the non-prekindergarten four-year-old classrooms. The Child Care Commission shall increase standards in the four- and five-star-rated facilities for the purpose of placing an emphasis on early reading. The Commission shall require the four- and five-star-rated facilities to teach from the Commission's approved curricula. The Division of Child Development may use funds from the Child Care Development Fund Block Grant to assist with the purchase of curricula or adjust rates of reimbursements to cover increased costs.

SECTION 10.7.(e) The Division of Child Development and Early Education shall adopt a policy to encourage all prekindergarten classrooms to blend private pay families with prekindergarten subsidized children in the same manner that regular subsidy children are blended with private pay children. The Division may implement a waiver or transition period for the public classrooms.

SECTION 10.7.(f) The prekindergarten program may continue to serve at-risk children identified through the existing "child find" methods in which at-risk children are currently served within the Division of Child Development. The Division of Child Development shall serve at-risk children regardless of income. However, the total number of at-risk children served shall constitute no more than twenty percent (20%) of the four-year-olds served within the prekindergarten program. Any age-eligible child who is a child of either of the following shall be eligible for the program: (i) an active duty member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was ordered to active duty by the proper authority within the last 18 months or is expected to be ordered within the next 18 months or (ii) a member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was injured or killed while serving on active duty. Eligibility determinations for prekindergarten participants may continue through local education agencies and local North Carolina Partnership for Children, Inc., partnerships.

SECTION 10.7.(g) The Division of Child Development and Early Education (DCDEE) shall adopt policies that improve the quality of childcare for subsidized children. The DCDEE shall phase in a new policy in which child care subsidies will be paid, to the extent possible, for child care in the higher quality centers and homes only. The DCDEE shall define higher quality, and subsidy funds shall not be paid for one- or two-star-rated facilities. For those counties with an inadequate number of three-, four-, and five-star-rated facilities, the DCDEE shall establish a transition period that allows the facilities to continue to receive subsidy funds while the facilities work on the increased star ratings. The DCDEE may allow exemptions in counties where there is an inadequate number of three-, four-, and five-star-rated facilities for nonstar-rated programs, such as religious programs.

SECTION 10.7.(h) The Division of Child Development and Early Education shall implement a parent co-payment requirement for prekindergarten classrooms the same as what is required of parents subject to regular child care subsidy payments. All at-risk children and age-eligible children of military personnel as described in subsection (g) of this section are exempt from the co-payment requirements of this subsection.

Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%

4-5	9%
6 or more	8%.

SECTION 10.7.(i) All prekindergarten classrooms regulated pursuant to this section shall be required to participate in the Subsidized Early Education for Kids (SEEK) accounting system to streamline the payment function for these classrooms with a goal of eliminating duplicative systems and streamlining the accounting and payment processes among the subsidy reimbursement systems. Prekindergarten funds transferred may be used to add these programs to SEEK.

SECTION 10.7.(j) Based on market analysis and within funds available, the Division of Child Development and Early Education shall establish reimbursement rates based on newly increased requirements of four- and five-star-rated facilities and the higher teacher standards within the prekindergarten class rooms, specifically More At Four teacher standards, when establishing the rates of reimbursements. Additionally, the prekindergarten curriculum day shall cover six and one-half to 10 hours daily and no less than 10 months per year. The public classrooms will have a one-year transition period to become licensed through the Division of Child Development and may continue to operate prekindergarten, formerly "More At Four," classrooms during the 2011-2012 fiscal year.

MENTAL HEALTH CHANGES

SECTION 10.8.(a) For the purpose of mitigating cash flow problems that many nonsingle-stream local management entities (LMEs) experience at the beginning of each fiscal year, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall adjust the timing and method by which allocations of service dollars are distributed to each nonsingle-stream LME. To this end, the allocations shall be adjusted such that at the beginning of the fiscal year the Department shall distribute not less than one-twelfth of the LME's continuation allocation and subtract the amount of the adjusted distribution from the LME's total reimbursements for the fiscal year.

SECTION 10.8.(b) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of twenty-nine million one hundred twenty-one thousand six hundred forty-four dollars ($29,121,644) for the 2011-2012 fiscal year and the sum of twenty-nine million one hundred twenty-one thousand six hundred forty-four dollars ($29,121,644) for the 2012-2013 fiscal year shall be allocated for the purchase of local inpatient psychiatric beds or bed days. In addition, at the discretion of the Secretary of Health and Human Services, existing funds allocated to LMEs for community-based mental health, developmental disabilities, and substance abuse services may be used to purchase additional local inpatient psychiatric beds or bed days. These beds or bed days shall be distributed across the State in LME catchment areas and according to need as determined by the Department. The Department shall enter into contracts with the LMEs and community hospitals for the management of these beds or bed days. The Department shall work to ensure that these contracts are awarded equitably around all regions of the State. Local inpatient psychiatric beds or bed days shall be managed and controlled by the LME, including the determination of which local or State hospital the individual should be admitted to pursuant to an involuntary commitment order. Funds shall not be allocated to LMEs but shall be held in a statewide reserve at the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to pay for services authorized by the LMEs and billed by the hospitals through the LMEs. LMEs shall remit claims for payment to the Division within 15 working days of receipt of a clean claim from the hospital and shall pay the hospital within 30 working days of receipt of payment from the Division. If the Department determines (i) that an LME is not effectively managing the beds or bed days for which it has responsibility, as evidenced by beds or bed days in the local hospital not being utilized while demand for services at the State psychiatric hospitals has not reduced, or (ii) the LME has failed to comply with the prompt payment provisions of this subsection, the Department may contract with another LME to manage the beds or bed days, or, notwithstanding any other provision of law to the contrary, may pay the hospital directly. The Department shall develop reporting requirements for LMEs regarding the utilization of the beds or bed days. Funds appropriated in this section for the purchase of local inpatient psychiatric beds or bed days shall be used to purchase additional beds or bed days not currently funded by or through LMEs and shall not be used to supplant other funds available or

otherwise appropriated for the purchase of psychiatric inpatient services under contract with community hospitals, including beds or bed days being purchased through Hospital Utilization Pilot funds appropriated in S.L. 2007-323. Not later than March 1, 2012, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on a uniform system for beds or bed days purchased (i) with local funds, (ii) from existing State appropriations, (iii) under the Hospital Utilization Pilot, and (iv) purchased using funds appropriated under this subsection.

SECTION 10.8.(c) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for mobile crisis teams, the sum of five million seven hundred thousand dollars ($5,700,000) shall be distributed to LMEs to support 30 mobile crisis teams. The new mobile crisis units shall be distributed over the State according to need as determined by the Department.

SECTION 10.8.(d) The Department of Health and Human Services may create a midyear process by which it can reallocate State service dollars away from LMEs that do not appear to be on track to spend the LMEs' full appropriation and toward LMEs that appear able to spend the additional funds.

JOHNSTON COUNTY LME ADMINISTRATIVE FUNDING

SECTION 10.8A. Notwithstanding G.S. 122C-115(a1), the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall not further reduce the allocation of administrative funding to the Johnston County Area Mental Health, Developmental Disabilities, and Substance Abuse Authority for the 2011-2012 fiscal year as a consequence of the total population of the catchment area served.

MH/DD/SAS HEALTH CARE INFORMATION SYSTEM PROJECT

SECTION 10.9. Of the funds appropriated to the Department of Health and Human Services for the 2011-2013 fiscal biennium, the Department may use a portion of these funds to continue to develop and implement a health care information system for State institutions operated by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. G.S. 143C-6-5 does not apply to this section.

LME FUNDS FOR SUBSTANCE ABUSE SERVICES

SECTION 10.10.(a) Consistent with G.S. 122C-2, the General Assembly strongly encourages Local Management Entities (LMEs) to use a portion of the funds appropriated for substance abuse treatment services to support prevention and education activities.

SECTION 10.10.(b) An LME may use up to one percent (1%) of funds allocated to it for substance abuse treatment services to provide nominal incentives for consumers who achieve specified treatment benchmarks, in accordance with the federal substance abuse and mental health services administration best practice model entitled Contingency Management.

SECTION 10.10.(c) In providing treatment and services for adult offenders and increasing the number of Treatment Accountability for Safer Communities (TASC) case managers, local management entities shall consult with TASC to improve offender access to substance abuse treatment and match evidence-based interventions to individual needs at each stage of substance abuse treatment. Special emphasis should be placed on intermediate punishment offenders, community punishment offenders at risk for revocation, and Department of Correction releasees who have completed substance abuse treatment while in custody.

In addition to the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, to provide substance abuse services for adult offenders and to increase the number of TASC case managers, the Department shall allocate up to three hundred thousand dollars ($300,000) to TASC. These funds shall be allocated to TASC before funds are allocated to LMEs for mental health services, substance abuse services, and crisis services.

SECTION 10.10.(d) In providing drug treatment court services, LMEs shall consult with the local drug treatment court team and shall select a treatment provider that meets all provider qualification requirements and the drug treatment court's needs. A single treatment provider may be chosen for non-Medicaid-eligible participants only. A single provider may be

chosen who can work with all of the non-Medicaid-eligible drug treatment court participants in a single group. During the 52-week drug treatment court program, participants shall receive an array of treatment and aftercare services that meets the participant's level of need, including step-down services that support continued recovery.

MH/DD/SAS COMMUNITY SERVICE FUNDS

SECTION 10.11.(a) The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (as used in this section "the Division") is directed to reduce the Community Service Fund by twenty million dollars ($20,000,000).

SECTION 10.11.(b) The Division is directed, through consultation with LME representatives and stakeholders, to develop a set of standardized covered benefits for recipients of LME Service Funds that shall become the only services paid for by community service funds through LMEs. These services shall be best practices for developmental disabilities, mental illness, and substance abuse.

SECTION 10.11.(c) Effective January 1, 2012, the Division shall implement a co-payment for all mental health, developmental disabilities, and substance abuse services based upon the Medicaid co-payment rates.

SECTION 10.11.(d) The Division is directed to reduce the Community Service Fund by twenty-five million dollars ($25,000,000) for the 2011-2012 fiscal year based on available fund balance reported by the LMEs' 2010 fiscal audit and estimated unspent reserves held by counties of single county LMEs. The Division shall review the designation of reserved or designated fund balance accounts to determine whether accounts may be moved to unreserved, undesignated, in essence increasing the unreserved, undesignated fund balance available for purchase of services. The Division is directed to allocate the reduction among LMEs based on unreserved, undesignated fund balance totals, as of June 30, 2010. This includes an estimate of unspent reserves held by counties of single county LMEs or as necessary to fairly achieve budget reductions in this act for this purpose giving consideration of the LME's unrestricted fund balance and the LME's ability to supplement funding of services without impairing its fiscal stability. LMEs are directed to spend their unreserved, undesignated fund balance on services, commensurate with the reduction directed by the Division pursuant to this subsection.

SECTION 10.11.(e) Quarterly reports shall be submitted to the Division by LMEs to ensure expenditures from fund balance occur at the level required by this law. Additionally, the Division shall review the designation of reserved or designated fund balance accounts to determine whether accounts may be moved to unreserved, undesignated, in essence increasing the unreserved, undesignated fund balance available for purchase of services. If categories of funds are moved into the unreserved/undesignated categories, the affected LMEs are encouraged to spend these funds to minimize their share of the twenty million dollars ($20,000,000) in reductions to services as required in subsection (a) of this section.

SECTION 10.11.(f) The Department of Health and Human Services shall report to the House and Senate Appropriations Subcommittees by December 12, 2011, on the status of implementing this section.

CONSOLIDATION OF FORENSIC HEALTH CARE AT DOROTHEA DIX COMPLEX

SECTION 10.12. The Department of Health and Human Services, Division of State Operated Facilities, shall issue a Request for Proposal for the consolidation of forensic hospital care. The operation shall initially be located at the Dorothea Dix complex. The Secretary of Health and Human Services is authorized to proceed with contracting with a private entity if the Secretary can justify savings through the contract. The Secretary shall compare the Department's total cost to provide forensic care to proposals received and determine whether it is cost-effective to contract for this service. The Secretary may only proceed if the Secretary determines the Department will save money and ensure appropriate safety and quality of care for patients.

The Secretary shall report to the Joint Appropriations Subcommittee for Health and Human Services by October 30, 2011, with cost detail and savings identified from the proposals.

TRANSITION OF UTILIZATION MANAGEMENT OF COMMUNITY-BASED SERVICES TO LOCAL MANAGEMENT ENTITIES

SECTION 10.13. The Department of Health and Human Services shall collaborate with LMEs to enhance their administrative capabilities to assume utilization management responsibilities for the provision of community-based mental health, developmental disabilities, and substance abuse services. The Department may, with approval of the Office of State Budget and Management, use funds available to implement this section.

THIRD-PARTY BILLING FOR STATE FACILITIES

SECTION 10.14. G.S. 122C-55 reads as rewritten:

"**§ 122C-55. Exceptions; care and treatment.**

...

(g) Whenever there is reason to believe that the client is eligible for financial benefits through a governmental agency, a facility may disclose confidential information to State, local, or federal government agencies. Except as provided in ~~G.S.122C-55(a3),~~ G.S. 122C-55(a3) and G.S. 122C-55(g1), disclosure is limited to that confidential information necessary to establish financial benefits for a client. ~~After~~ Except as provided in G.S. 122C-55(g1), after establishment of these benefits, the consent of the client or his legally responsible person is required for further release of confidential information under this subsection.

(g1) A facility may disclose confidential information for the purpose of collecting payment due the facility for the cost of care, treatment, or habilitation.

...."

COLLABORATION AMONG DEPARTMENTS OF ADMINISTRATION, HEALTH AND HUMAN SERVICES, JUVENILE JUSTICE AND DELINQUENCY PREVENTION, AND PUBLIC INSTRUCTION ON SCHOOL-BASED CHILD AND FAMILY TEAM INITIATIVE

SECTION 10.15.(a) School-Based Child and Family Team Initiative Established.

(1) Purpose and duties. – There is established the School-Based Child and Family Team Initiative. The purpose of the Initiative is to identify and coordinate appropriate community services and supports for children at risk of school failure or out-of-home placement in order to address the physical, social, legal, emotional, and developmental factors that affect academic performance. The Department of Health and Human Services, the Department of Public Instruction, the State Board of Education, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and other State agencies that provide services for children shall share responsibility and accountability to improve outcomes for these children and their families. The Initiative shall be based on the following principles:

a. The development of a strong infrastructure of interagency collaboration.
b. One child, one team, one plan.
c. Individualized, strengths-based care.
d. Accountability.
e. Cultural competence.
f. Children at risk of school failure or out-of-home placement may enter the system through any participating agency.
g. Services shall be specified, delivered, and monitored through a unified Child and Family Plan that is outcome-oriented and evaluation-based.
h. Services shall be the most efficient in terms of cost and effectiveness and shall be delivered in the most natural settings possible.
i. Out-of-home placements for children shall be a last resort and shall include concrete plans to bring the children back to a stable permanent home, their schools, and their community.
j. Families and consumers shall be involved in decision making throughout service planning, delivery, and monitoring.

(2) Program goals and services. – In order to ensure that children receiving services are appropriately served, the affected State and local agencies shall do the following:
a. Increase capacity in the school setting to address the academic, health, mental health, social, and legal needs of children.
b. Ensure that children receiving services are screened initially to identify needs and assessed periodically to determine progress and sustained improvement in educational, health, safety, behavioral, and social outcomes.
c. Develop uniform screening mechanisms and a set of outcomes that are shared across affected agencies to measure children's progress in home, school, and community settings.
d. Promote practices that are known to be effective based upon research or national best practice standards.
e. Review services provided across affected State agencies to ensure that children's needs are met.
f. Eliminate cost-shifting and facilitate cost-sharing among governmental agencies with respect to service development, service delivery, and monitoring for participating children and their families.
g. Participate in a local memorandum of agreement signed annually by the participating superintendent of the local LEA, directors of the county departments of social services and health, director of the local management entity, the chief district court judge, and the chief district court counselor.

(3) Local level responsibilities. – In coordination with the North Carolina Child and Family Leadership Council (Council), established in subsection (b) of this section, the local board of education shall establish the School-Based Child and Family Team Initiative at designated schools and shall appoint the Child and Family Team Leaders, who shall be a school nurse and a school social worker. Each local management entity that has any selected schools in its catchment area shall appoint a Care Coordinator, and any department of social services that has a selected school in its catchment area shall appoint a Child and Family Teams Facilitator. The Care Coordinators and Child and Family Team Facilitators shall have as their sole responsibility working with the selected schools in their catchment areas and shall provide training to school-based personnel, as required. The Child and Family Team Leaders shall identify and screen children who are potentially at risk of academic failure or out-of-home placement due to physical, social, legal, emotional, or developmental factors. Based on the screening results, responsibility for developing, convening, and implementing the Child and Family Team Initiative is as follows:
a. School personnel shall take the lead role for those children and their families whose primary unmet needs are related to academic achievement.
b. The local management entity shall take the lead role for those children and their families whose primary unmet needs are related to mental health, substance abuse, or developmental disabilities and who meet the criteria for the target population established by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
c. The local department of public health shall take the lead role for those children and their families whose primary unmet needs are health-related.
d. Local departments of social services shall take the lead for those children and their families whose primary unmet needs are related to child welfare, abuse, or neglect.
e. The chief district court counselor shall take the lead for those children and their families whose primary unmet needs are related to juvenile justice issues. A representative from each named or

otherwise identified publicly supported children's agency shall participate as a member of the Team as needed. Team members shall coordinate, monitor, and assure the successful implementation of a unified Child and Family Plan.

(4) Reporting requirements. – School-Based Child and Family Team Leaders shall provide data to the Council for inclusion in their report to the North Carolina General Assembly. The report shall include the following:

a. The number of and other demographic information on children screened and assigned to a team and a description of the services needed by and provided to these children.

b. The number of and information about children assigned to a team who are placed in programs or facilities outside the child's home or outside the child's county and the average length of stay in residential treatment.

c. The amount and source of funds expended to implement the Initiative.

d. Information on how families and consumers are involved in decision making throughout service planning, delivery, and monitoring.

e. Other information as required by the Council to evaluate success in local programs and ensure appropriate outcomes.

f. Recommendations on needed improvements.

(5) Local advisory committee. – In each county with a participating school, the superintendent of the local LEA shall either identify an existing cross-agency collaborative or council or shall form a new group to serve as a local advisory committee to work with the Initiative. Newly formed committees shall be chaired by the superintendent and one other member of the committee to be elected by the committee. The local advisory committee shall include the directors of the county departments of social services and health; the directors of the local management entity; the chief district court judge; the chief district court counselor; the director of a school-based or school-linked health center, if a center is located within the catchment area of the School-Based Child and Family Team Initiative; and representatives of other agencies providing services to children, as designated by the Committee. The members of the Committee shall meet as needed to monitor and support the successful implementation of the School-Based Child and Family Team Initiative. The Local Child and Family Team Advisory Committee may designate existing cross-agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

SECTION 10.15.(b) North Carolina Child and Family Leadership Council. –

(1) Leadership Council established; location. – There is established the North Carolina Child and Family Leadership Council (Council). The Council shall be located within the Department of Administration for organizational and budgetary purposes.

(2) Purpose. – The purpose of the Council is to review and advise the Governor in the development of the School-Based Child and Family Team Initiative and to ensure the active participation and collaboration in the Initiative by all State agencies and their local counterparts providing services to children in participating counties in order to increase the academic success of and reduce out-of-home and out-of-county placements of children at risk of academic failure.

(3) Membership. – The Superintendent of Public Instruction and the Secretary of Health and Human Services shall serve as cochairs of the Council. Council membership shall include the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chair of the State Board of Education, the Director of the Administrative Office of the Courts, and other members as appointed by the Governor.

(4) The Council shall do the following:

a. Sign an annual memorandum of agreement (MOA) among the named State agencies to define the purposes of the program and to ensure that program goals are accomplished.
b. Resolve State policy issues, as identified at the local level, which interfere with effective implementation of the School-Based Child and Family Team Initiative.
c. Direct the integration of resources, as needed, to meet goals and ensure that the Initiative promotes the most effective and efficient use of resources and eliminates duplication of effort.
d. Establish criteria for defining success in local programs and ensure appropriate outcomes.
e. Develop an evaluation process, based on expected outcomes, to ensure the goals and objectives of this Initiative are achieved.
f. Review progress made on integrating policies and resources across State agencies, reaching expected outcomes, and accomplishing other goals.
g. Report semiannually, on January 1 and July 1, on progress made and goals achieved to the Office of the Governor, the Joint Appropriations Committees and Subcommittees on Education, Justice and Public Safety, and Health and Human Services, and the Fiscal Research Division of the Legislative Services Office. The Council may designate existing cross-agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

SECTION 10.15.(c) Department of Health and Human Services. – The Secretary of the Department of Health and Human Services shall ensure that all agencies within the Department collaborate in the development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

SECTION 10.15.(d) Department of Juvenile Justice and Delinquency Prevention. – The Secretary of the Department of Juvenile Justice and Delinquency Prevention shall ensure that all agencies within the Department collaborate in the development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

SECTION 10.15.(e) Administrative Office of the Courts. – The Director of the Administrative Office of the Courts shall ensure that the Office collaborates in the development and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful.

SECTION 10.15.(f) Department of Public Instruction. – The Superintendent of Public Instruction shall ensure that the Department collaborates in the development and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful.

DHHS POSITION ELIMINATIONS

SECTION 10.16. The Secretary of the Department of Health and Human Services is directed to eliminate up to 250 full-time equivalent positions that have been continuously vacant since July 1, 2010, in order to accomplish a total savings of seven million six hundred six thousand dollars ($7,606,000) in State funds. To the extent possible, the Secretary shall not eliminate positions assigned to the Division of State Operated Healthcare Facilities or the Division of Medical Assistance. In the event that eliminating up to 250 full-time equivalent positions that have been continuously vacant since July 1, 2010, does not achieve the savings specified in this section, the Secretary may eliminate other positions within the Department or achieve the designated savings through other administrative and operational reductions or efficiencies. By September 30, 2011, the Secretary shall submit a report to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the positions eliminated and any other reductions or efficiencies implemented in order to achieve the savings required by this section. The report shall include the total number of positions eliminated, savings generated by each eliminated position, the impact on any federal funds previously

received for the eliminated positions, and any other reductions or efficiencies implemented to achieve the savings required by this section.

DHHS REGULATORY FUNCTIONS STUDY AND PLAN

SECTION 10.17.(a) The Department of Health and Human Services shall examine all regulatory functions performed by each of the divisions within the Department. By January 30, 2012, the Department shall make a report of its findings to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The report shall include all of the following:

(1) A summary of each division's regulatory functions.
(2) The purpose of each of the identified regulatory functions.
(3) The amount of any fee charged for the identified regulatory functions, along with the date and amount of the most recent fee increase.
(4) The number of full-time equivalent positions dedicated to the identified regulatory functions, broken down by division.
(5) Whether there is a federal requirement for, or a federal component to, any of the identified regulatory functions.
(6) Identification of overlap among the divisions within the Department and with other State agencies, with respect to the regulation of providers. For each area of overlap, the report shall specify all of the following:
    a. The name of each division and State agency that performs the regulatory function.
    b. How often each division or State agency performs the regulatory function.
    c. The total amount of funds expended by each division or State agency to perform the regulatory function.

SECTION 10.17.(b) The Department of Health and Human Services shall develop a plan to consolidate regulatory functions performed by the various divisions within the Department. The plan shall identify proposed position eliminations and anticipated savings as a result of the consolidation. The Department shall not implement the plan or consolidate any of its regulatory functions except as directed by an act of the General Assembly.

REDUCE FUNDING FOR NONPROFIT ORGANIZATIONS

SECTION 10.18. For fiscal years 2011-2012 and 2012-2013, the Department of Health and Human Services shall reduce the amount of funds allocated to nonprofit organizations by five million dollars ($5,000,000) on a recurring basis. In achieving the reductions required by this section, the Department (i) shall minimize reductions to funds allocated to nonprofit organizations for the provision of direct services, (ii) shall not reduce funds allocated to nonprofit organizations to pay for direct services to individuals with developmental disabilities, and (iii) shall not reduce funds allocated to the North Carolina High School Athletic Association by more than ten percent (10%).

PROHIBIT USE OF ALL FUNDS FOR PLANNED PARENTHOOD ORGANIZATIONS

SECTION 10.19. For fiscal years 2011-2012 and 2012-2013, the Department of Health and Human Services may not provide State funds or other funds administered by the Department for contracts or grants to Planned Parenthood, Inc., and affiliated organizations.

LIABILITY INSURANCE

SECTION 10.20.(a) The Secretary of the Department of Health and Human Services, the Secretary of the Department of Environment and Natural Resources, and the Secretary of the Department of Correction may provide medical liability coverage not to exceed one million dollars ($1,000,000) per incident on behalf of employees of the Departments licensed to practice medicine or dentistry, on behalf of all licensed physicians who are faculty members of The University of North Carolina who work on contract for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for incidents that occur in Division programs, and on behalf of physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by

the Department of Health and Human Services. This coverage may include commercial insurance or self-insurance and shall cover these individuals for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment or training.

SECTION 10.20.(b) The coverage provided under this section shall not cover any individual for any act or omission that the individual knows or reasonably should know constitutes a violation of the applicable criminal laws of any state or the United States or that arises out of any sexual, fraudulent, criminal, or malicious act or out of any act amounting to willful or wanton negligence.

SECTION 10.20.(c) The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing contractual service to the Department of Health and Human Services, the Department of Environment and Natural Resources, or the Department of Correction, with the exception that coverage may include physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services and licensed physicians who are faculty members of The University of North Carolina who work for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

CHANGES TO COMMUNITY-FOCUSED ELIMINATING HEALTH DISPARITIES INITIATIVE

SECTION 10.21.(a) Funds appropriated in this act from the General Fund to the Department of Health and Human Services (Department) for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI) shall be used to provide a maximum of 12 grants-in-aid to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians as compared to the health status of white persons. These grants-in-aid shall focus on the use of measures to eliminate or reduce health disparities among minority populations in this State with respect to heart disease, stroke, diabetes, obesity, asthma, HIV/AIDS, and cancer. The Office of Minority Health shall coordinate and implement the grants-in-aid program authorized by this section.

SECTION 10.21.(b) In implementing the grants-in-aid program authorized by subsection (a) of this section, the Department shall ensure all of the following:

(1) The amount of any grant-in-aid is limited to three hundred thousand dollars ($300,000).

(2) Only community-based organizations, faith-based organizations, local health departments, hospitals, and CCNC networks located in urban and rural areas of the western, eastern, and Piedmont areas of this State are eligible to apply for these grants-in-aid. No more than four grants-in-aid shall be awarded to applicants located in any one of the three areas specified in this subdivision.

(3) Each eligible applicant shall be required to demonstrate substantial participation and involvement with all other categories of eligible applicants, in order to ensure an evidence-based medical home model that will affect change in health and geographic disparities.

(4) Eligible applicants shall select one or more of the following chronic illnesses or conditions specific to the applicant's geographic area as the basis for applying for a grant-in-aid under this section to affect change in the health status of African-Americans, Hispanics/Latinos, or American Indians:
   a. Heart Disease
   b. Stroke
   c. Diabetes
   d. Obesity
   e. Asthma
   f. HIV/AIDS
   g. Cancer

(5) The minimum duration of the grant period for any grant-in-aid is two years.

(6) The maximum duration of the grant period for any grant-in-aid is three years.

(7) If approved for a grant-in-aid, the grantee (i) shall not use more than eight percent (8%) of the grant funds for overhead costs and (ii) shall be required

at the end of the grant period to demonstrate significant gains in addressing one or more of the health disparity focus areas identified in subsection (a) of this section.

(8) An independent panel with expertise in the delivery of services to minority populations, health disparities, chronic illnesses and conditions, and HIV/AIDS shall conduct the review of applications for grants-in-aid. The Department shall establish the independent panel required by this section.

SECTION 10.21.(c) The grants-in-aid awarded under this section shall be awarded in honor of the memory of the following recently deceased members of the General Assembly: Bernard Allen, John Hall, Robert Holloman, Howard Hunter, Jeanne Lucas, Vernon Malone, William Martin, and Pete Cunningham. These funds shall be used for concerted efforts to address large gaps in health status among North Carolinians who are African-American, as well as disparities among other minority populations in North Carolina.

SECTION 10.21.(d) By October 1, 2012, and annually thereafter, the Department shall submit a report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on funds appropriated to the CFEHDI. The report shall include specific activities undertaken pursuant to subsection (a) of this section to address large gaps in health status among North Carolinians who are African-American and other minority populations in this State, and shall also address all of the following:

(1) Which community-based organizations, faith-based organizations, local health departments, hospitals, and CCNC networks received CFEHDI grants-in-aid.

(2) The amount of funding awarded to each grantee.

(3) Which of the minority populations were served by each grantee.

(4) Which community-based organizations, faith-based organizations, local health departments, hospitals, and CCNC networks were involved in fulfilling the goals and activities of each grant-in-aid awarded under this section and what activities were planned and implemented by the grantee to fulfill the community focus of the CFEHDI program.

(5) How the activities implemented by the grantee fulfilled the goal of reducing health disparities among minority populations, and the specific success in reducing particular incidences.

FUNDS FOR SCHOOL NURSES

SECTION 10.22.(a) All funds appropriated in this act for the School Nurse Funding Initiative shall be used to supplement and not supplant other State, local, or federal funds appropriated or allocated for this purpose. Communities shall maintain their current level of effort and funding for school nurses. These funds shall not be used to fund nurses for State agencies. These funds shall be distributed to local health departments according to a formula that includes all of the following:

(1) School nurse-to-student ratio.

(2) Percentage of students eligible for free or reduced meals.

(3) Percentage of children in poverty.

(4) Per capita income.

(5) Eligibility as a low-wealth county.

(6) Mortality rates for children between 1 and 19 years of age.

(7) Percentage of students with chronic illnesses.

(8) Percentage of county population consisting of minority persons.

SECTION 10.22.(b) The Division of Public Health shall ensure that school nurses funded with State funds (i) do not assist in any instructional or administrative duties associated with a school's curriculum and (ii) perform all of the following with respect to school health programs:

(1) Serve as the coordinator of the health services program and provide nursing care.

(2) Provide health education to students, staff, and parents.

(3) Identify health and safety concerns in the school environment and promote a nurturing school environment.

(4) Support healthy food services programs.

(5) Promote healthy physical education, sports policies, and practices.
(6) Provide health counseling, assess mental health needs, provide interventions, and refer students to appropriate school staff or community agencies.
(7) Promote community involvement in assuring a healthy school and serve as school liaison to a health advisory committee.
(8) Provide health education and counseling and promote healthy activities and a healthy environment for school staff.
(9) Be available to assist the county health department during a public health emergency.

REPLACEMENT OF RECEIPTS FOR CHILD DEVELOPMENT SERVICE AGENCIES

SECTION 10.23. Receipts earned by the Child Development Service Agencies (CDSAs) from any public or private third-party payer shall be budgeted on a recurring basis to replace reductions in State appropriations to CDSAs.

HEALTH INFORMATION TECHNOLOGY

SECTION 10.24.(a) The Department of Health and Human Services, in cooperation with the State Chief Information Officer, shall coordinate health information technology (HIT) policies and programs within the State of North Carolina. The Department's goal in coordinating State HIT policy and programs shall be to avoid duplication of efforts and to ensure that each State agency, public entity, and private entity that undertakes health information technology activities does so within the area of its greatest expertise and technical capability and in a manner that supports coordinated State and national goals, which shall include at least all of the following:

(1) Ensuring that patient health information is secure and protected, in accordance with applicable law.
(2) Improving health care quality, reducing medical errors, reducing health disparities, and advancing the delivery of patient-centered medical care.
(3) Providing appropriate information to guide medical decisions at the time and place of care.
(4) Ensuring meaningful public input into HIT infrastructure development.
(5) Improving the coordination of information among hospitals, laboratories, physicians' offices, and other entities through an effective infrastructure for the secure and authorized exchange of health care information.
(6) Improving public health services and facilitating early identification and rapid response to public health threats and emergencies, including bioterrorist events and infectious disease outbreaks.
(7) Facilitating health and clinical research.
(8) Promoting early detection, prevention, and management of chronic diseases.

SECTION 10.24.(b) The Department of Health and Human Services shall establish and direct a HIT management structure that is efficient and transparent and that is compatible with the Office of the National Health Coordinator for Information Technology (National Coordinator) governance mechanism. The HIT management structure shall be responsible for all of the following:

(1) Developing a State plan for implementing and ensuring compliance with national HIT standards and for the most efficient, effective, and widespread adoption of HIT.
(2) Ensuring that (i) specific populations are effectively integrated into the State plan, including aging populations, populations requiring mental health services, and populations utilizing the public health system; and (ii) unserved and underserved populations receive priority consideration for HIT support.
(3) Identifying all HIT stakeholders and soliciting feedback and participation from each stakeholder in the development of the State plan.
(4) Ensuring that existing HIT capabilities are considered and incorporated into the State plan.
(5) Identifying and eliminating conflicting HIT efforts where necessary.

(6) Identifying available resources for the implementation, operation, and maintenance of health information technology, including identifying resources and available opportunities for North Carolina institutions of higher education.
(7) Ensuring that potential State plan participants are aware of HIT policies and programs and the opportunity for improved health information technology.
(8) Monitoring HIT efforts and initiatives in other states and replicating successful efforts and initiatives in North Carolina.
(9) Monitoring the development of the National Coordinator's strategic plan and ensuring that all stakeholders are aware of and in compliance with its requirements.
(10) Monitoring the progress and recommendations of the HIT Policy and Standards Committee and ensuring that all stakeholders remain informed of the Committee's recommendations.
(11) Monitoring all studies and reports provided to the United States Congress and reporting to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on the impact of report recommendations on State efforts to implement coordinated HIT.

SECTION 10.24.(c) Beginning October 1, 2011, the Department of Health and Human Services shall provide quarterly written reports on the status of HIT efforts to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The reports due each January 1 and July 1 shall consist of updates to substantial initiatives or challenges that have occurred since the most recent comprehensive report. The reports due each October 1 and April 1 shall be comprehensive and shall include all of the following:

(1) Current status of federal HIT initiatives.
(2) Current status of State HIT efforts and initiatives among both public and private entities.
(3) A breakdown of current public and private funding sources and dollar amounts for State HIT initiatives.
(4) Department efforts to coordinate HIT initiatives within the State and any obstacles or impediments to coordination.
(5) HIT research efforts being conducted within the State and sources of funding for research efforts.
(6) Opportunities for stakeholders to participate in HIT funding and other efforts and initiatives during the next quarter.
(7) Issues associated with the implementation of HIT in North Carolina and recommended solutions to these issues.

FUNDS FOR STROKE PREVENTION

SECTION 10.25.(a) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Public Health, the sum of four hundred thousand dollars ($400,000) in nonrecurring funds for the 2011-2012 fiscal year and the sum of four hundred thousand dollars ($400,000) in nonrecurring funds for the 2012-2013 fiscal year is allocated to the Heart Disease and Stroke Prevention Branch for continuation of community education campaigns and communication strategies, in partnership with the American Heart Association/American Stroke Association, on stroke signs and symptoms and the importance of immediate response.

SECTION 10.25.(b) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Public Health, the sum of fifty thousand dollars ($50,000) in nonrecurring funds for the 2011-2012 fiscal year and the sum of fifty thousand dollars ($50,000) in nonrecurring funds for the 2012-2013 fiscal year is allocated for continued operations of the Stroke Advisory Council.

AIDS DRUG ASSISTANCE PROGRAM

SECTION 10.26. The Department of Health and Human Services (DHHS) shall work with the Department of Correction (DOC) to use DOC funds to purchase pharmaceuticals

for the treatment of DOC inmates with HIV/AIDS in a manner that allows these funds to be accounted for as State matching funds in DHHS' drawdown of federal Ryan White funds.

MEN'S HEALTH

SECTION 10.26A. The Department of Health and Human Services, Division of Public Health, shall delegate to the Chronic Disease Prevention and Control Office the responsibility for ensuring attention to the prevention of disease and improvement in the quality of life for men over their entire lifespan. The Department shall develop strategies for achieving these goals, which shall include (i) developing a strategic plan to improve health care services, (ii) building public health awareness, (iii) developing initiatives within existing programs, and (iv) pursuing federal and State funding for the screening, early detection, and treatment of prostate cancer and other diseases affecting men's health.

NC HEALTH CHOICE MEDICAL POLICY

SECTION 10.27. Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of NC Health Choice health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds one million dollars ($1,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed medical policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding one million dollars ($1,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. For medical policy changes exceeding one million dollars ($1,000,000) in total requirements for a given fiscal year that are required for compliance with federal law, the Department shall submit the proposed medical policy or policy interpretation change with a five-year fiscal analysis to the Office of State Budget and Management prior to implementing the change. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than one million dollars ($1,000,000).

COMMUNITY CARE OF NORTH CAROLINA

SECTION 10.28.(a) The Department of Health and Human Services (Department) shall submit a report annually from a qualified entity with proven experience in conducting actuarial and health care studies on the Medicaid cost-savings achieved by the CCNC networks, which shall include children, adults, and the aged, blind, and disabled, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.28.(b) The Department and the Division of Medical Assistance (DMA) shall enter into a three-party contract between North Carolina Community Care Networks, Inc., (NCCCN, Inc.) and each of the 14 participating local CCNC networks and shall require NCCCN, Inc., to provide standardized clinical and budgetary coordination, oversight, and reporting for a statewide Enhanced Primary Care Case Management System for Medicaid enrollees. The contracts shall require NCCCN, Inc., to build upon and expand the existing successful CCNC primary care case management model to include comprehensive statewide quantitative performance goals and deliverables which shall include all of the following areas: (i) service utilization management, (ii) budget analytics, (iii) budget forecasting methodologies, (iv) quality of care analytics, (v) participant access measures, and (vi) predictable cost containment methodologies.

SECTION 10.28.(c) NCCCN, Inc., shall report quarterly to the Department and to the Office of State Budget and Management (OSBM) on the development of the statewide Enhanced Primary Care Case Management System and its defined goals and deliverables as agreed upon in the contract. NCCCN, Inc., shall submit biannual reports to the Secretary of Health and Human Services, OSBM, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the progress and results of

implementing the quantitative, analytical, utilization, quality, cost containment, and access goals and deliverables set out in the contract. NCCCN, Inc., shall conduct its own analysis of the CCNC system to identify any variations from the development plan for the Enhanced Primary Care Case Management System and its defined goals and deliverables set out in the contract between DMA and NCCCN, Inc. Upon identifying any variations, NCCCN, Inc., shall develop and implement a plan to address the variations. NCCCN, Inc., shall report the plan to DMA within 30 days after taking any action to implement the plan.

SECTION 10.28.(d) By January 1, 2012, the Department and OSBM shall assess the performance of NCCCN, Inc., and CCNC regarding the goals and deliverables established in the contract. Based on this assessment, the Department and DMA shall expand, cancel, or alter the contract with NCCCN, Inc., and CCNC effective April 1, 2012. Expansion or alteration of the contract may reflect refinements based on clearly identified goals and deliverables in the areas of quality of care, participant access, cost containment, and service delivery.

SECTION 10.28.(e) By July 1, 2012, the Department, DMA, and NCCCN, Inc., shall finalize a comprehensive plan that establishes management methodologies which include all of the following: (i) quality of care measures, (ii) utilization measures, (iii) recipient access measures, (iv) performance incentive models in which past experience indicates a benefit from financial incentives, (v) accountable budget models, (vi) shared savings budget models, and (vii) budget forecasting analytics as agreed upon by the Department, DMA, and NCCCN, Inc. In the development of these methodologies, the Department, DMA, and NCCCN, Inc., shall consider options for shared risk. The Department and DMA shall provide assistance to NCCCN, Inc., in meeting the objectives of this section.

MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS) FUNDS/IMPLEMENTATION OF MMIS

SECTION 10.29.(a) By August 1, 2011, the Secretary of the Department of Health and Human Services shall provide detailed cost information on the replacement Medicaid Management Information System (MMIS) to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Appropriations Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and Base Budget and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. This information shall include the following:

(1) The original total cost of MMIS, by year, to include five years of operations and maintenance.

(2) The current total cost of MMIS, to include five years of operations and maintenance.

(3) Detailed information on costs associated with each MMIS project, to include the original cost, the current cost, and the reasons for any changes.

(4) A list of change requests and amendments to the original contract and the costs associated with each.

(5) Costs for continuing the legacy MMIS beyond the original completion date for the new MMIS, with detailed information on funding sources for those costs.

(6) Original costs for each vendor associated with the contract, the current costs for each, and the reasons for any increases in cost.

SECTION 10.29.(b) The Secretary may utilize prior year earned revenue received for the replacement MMIS in the amount of three million two hundred thirty-two thousand three hundred four dollars ($3,232,304) in fiscal year 2011-2012 and twelve million dollars ($12,000,000) in fiscal year 2012-2013. The Department shall utilize prior year earned revenues received for the procurement, design, development, and implementation of the replacement MMIS. In the event the Department does not receive prior year earned revenues in the amounts authorized by this section, or funds are insufficient to advance the project, the Department is authorized, with approval of the Office of State Budget and Management (OSBM), and after consulting with the Joint Legislative Commission on Governmental Operations, to utilize overrealized receipts and funds appropriated to the Department to achieve the level of funding specified in this section for the replacement MMIS. If the department

requires funding beyond the prior year earned revenue specified in this section, the Department shall immediately report to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. The report shall include the following:

(1) The amount of the shortfall.

(2) The sources of funding the Department plans to use to make up for the shortfall.

(3) The impact on the programs or operations from which the funding is to be taken.

SECTION 10.29.(c) The Department shall make full development of the replacement MMIS a top priority. During the development and implementation of the replacement MMIS, the Department shall develop plans to ensure the timely and effective implementation of enhancements to the system to provide the following capabilities:

(1) Receiving and tracking premiums or other payments required by law.

(2) Compatibility with the Health Information System.

SECTION 10.29.(d) The Department shall make every effort to expedite the implementation of the enhancements. The contract between the Department and each contract vendor shall contain an explicit provision requiring the replacement MMIS to have the capability to fully implement the administration of NC Health Choice, NC Kids' Care, Ticket to Work, Families Pay Part of the Cost of Services under the CAP-MR/CC, CAP Children's Program, and all relevant Medicaid waivers and the Medicare 646 waiver as it applies to Medicaid eligibles. The Department must have detailed cost information for each requirement before signing the contract and must immediately provide that cost information to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. Any sole source contract must meet all State requirements and must have the written approval of the State CIO. Any decision to sole source any portion of the contract shall immediately be reported to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management.

SECTION 10.29.(e) The Office of the State Chief Information Officer (SCIO) and the Office of Information Technology Services (ITS) shall work in cooperation with the Department to ensure the timely and effective implementation of the replacement MMIS and enhancements. The SCIO shall ensure that the replacement MMIS meets all State requirements for project management and shall immediately report any failure to meet State project management requirements to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. The SCIO shall also immediately report if any replacement MMIS project, or portion of a project, is listed as red in the project portfolio management tool.

SECTION 10.29.(f) Notwithstanding G.S. 114-2.3, the Department shall engage the services of private counsel with pertinent information technology and computer law expertise to review requests for proposals and to negotiate and review contracts associated with the replacement MMIS. This shall include amendments exceeding ten million dollars ($10,000,000). The counsel engaged by the Department shall review the replacement MMIS contracts and amendments between the Department and the vendor to ensure that the

requirements of subsection (d) of this section are met in their entirety and that the terms of the contract are in the State's best interest.

SECTION 10.29.(g) By August 1, 2011, the Department shall develop a revised comprehensive schedule for the development and implementation of the replacement MMIS that fully incorporates federal and State project management and review standards. The Department shall ensure that the schedule is accurate. Any changes to the design, development, and implementation schedule shall be reported as part of the Department's monthly MMIS reporting requirements. The Department shall submit the schedule to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. This submission shall include a detailed explanation of schedule changes that have occurred since the initiation of the project and the cost associated with each change. Any changes to key milestones shall be immediately reported to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management, with a full explanation of the reason for the change and any associated costs.

SECTION 10.29.(h) Beginning July 1, 2011, the Department shall make quarterly reports on the progress of the development and implementation of the replacement MMIS. This report shall include any changes, or anticipated changes, in the scope, functionality, or projected costs. This report shall include any changes to any replacement MMIS vendor contracts and shall provide a detailed explanation of those changes and the associated cost increases. Each report shall be made to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management. A copy of the final report on each contract or amendment award shall also be submitted to the Joint Legislative Oversight Commission on Governmental Operations.

SECTION 10.29.(i) Upon initiation of the NC MMIS Program Reporting and Analytics Project, and the Division of Health Services Regulation Project, the Department shall submit all reports regarding functionality, schedule, and cost in the next regular cycle of reports identified in this section. The Department shall ensure that the solution developed in the Reporting and Analytics Project supports the capability, in its initial implementation, to interface with the State Health Plan for Teachers and State Employees. The costs for this capability shall be negotiated prior to the award of the Reporting and Analytics Project contract. The Reporting and Analytics Project solution must be completed simultaneously with the replacement MMIS.

NORTH CAROLINA FAMILIES ACCESSING SERVICES THROUGH TECHNOLOGY (NC FAST) FUNDS

SECTION 10.30. Of the funds appropriated in this act to the Department of Health and Human Services (Department), the nonrecurring sum of nine million five hundred ninety-two thousand three hundred thirty-two dollars ($9,592,332) for fiscal year 2011-2012 and the nonrecurring sum of nine million five hundred ninety-two thousand three hundred thirty-two dollars ($9,592,332) for fiscal year 2012-2013 shall be used to support the NC FAST project. These funds shall be (i) deposited to the Department's information technology budget code and (ii) used to match federal funds for the project. In addition, the Department shall utilize prior year earned revenues received in the amount of eight million seven hundred sixty-seven thousand six hundred ninety-six dollars ($8,767,696) in fiscal year 2011-2012 for the NC FAST project. Funds appropriated to the Department by this act shall be used to expedite the development and implementation of the Global Case Management and Food and Nutrition Services and the Eligibility Information System (EIS) components of the North Carolina Families Accessing Services through Technology (NC FAST) project. In the event

that the Department does not receive prior year earned revenues in the amount authorized by this section, the Department is authorized, with approval of the Office of State Budget and Management, to utilize other overrealized receipts and funds appropriated to the Department to achieve the level of funding specified in this section for the NC FAST project. The Department shall not obligate any of its overrealized receipts or funds for this purpose without (i) prior written approval from the United States Department of Agriculture Food and Nutrition Service, the United States Department of Health and Human Services Administration for Children and Families, the Centers for Medicare and Medicaid Services, and any other federal partner responsible for approving changes to the annual Advance Planning Document update (APDu) for the NC FAST Program and (ii) prior review and approval from the Office of Information Technology Services (ITS) and the Office of State Budget and Management (OSBM). The Department shall report any changes to the NC FAST Program to the Joint Legislative Oversight Committee on Information Technology, the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than 30 days after receiving all the approvals required by this section.

MEDICAID

SECTION 10.31.(a) Use of Funds, Allocation of Costs, Other Authorizations. –

(1) Use of funds. – Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy.

(2) Allocation of nonfederal cost of Medicaid. – The State shall pay one hundred percent (100%) of the nonfederal costs of all applicable services listed in this section. In addition, the State shall pay one hundred percent (100%) of the federal Medicare Part D clawback payments under the Medicare Modernization Act of 2004.

(3) Use of funds for development and acquisition of equipment and software. – If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Health and Human Services, may use funds that are identified to support the cost of development and acquisition of equipment and software and related operational costs through contractual means to improve and enhance information systems that provide management information and claims processing. The Department of Health and Human Services shall identify adequate funds to support the implementation and first year's operational costs that exceed funds allocated for the new contract for the fiscal agent for the Medicaid Management Information System.

(4) Reports. – Unless otherwise provided, whenever the Department of Health and Human Services is required by this section to report to the General Assembly, the report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division of the Legislative Services Office. Reports shall be submitted on the date provided in the reporting requirement.

(5) Medicaid as secondary payor claims. – The Department shall apply Medicaid medical policy to recipients who have primary insurance other than Medicare, Medicare Advantage, and Medicaid. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services. The Department may disregard application of this policy in cases where application of the policy would adversely affect patient care.

SECTION 10.31.(b) Policy. –

(1) Volume purchase plans and single source procurement. – The Department of Health and Human Services, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume

purchase plans, single source procurement, or other contracting processes in order to improve cost containment.

(2) Cost-containment programs. – The Department of Health and Human Services, Division of Medical Assistance, may undertake cost-containment programs, including contracting for services, preadmissions to hospitals, and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

(3) Fraud and abuse. – The Division of Medical Assistance, Department of Health and Human Services, shall provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.

(4) Medical policy. – Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds three million dollars ($3,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed medical policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding three million dollars ($3,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. For medical policy changes exceeding three million dollars ($3,000,000) in total requirements for a given fiscal year that are required for compliance with federal law, the Department shall submit the proposed medical policy or policy interpretation change with the five-year fiscal analysis to the Office of State Budget and Management prior to implementing the change. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than three million dollars ($3,000,000).

(5) Posting of notices of changes on Department Web site. – For any public notice of change required pursuant to the provisions of 42 C.F.R. § 447.205, the Department shall, no later than seven business days after the date of publication, publish the same notice on its Web site on the same Web page as it publishes State Plan amendments, and the notice shall remain on the Web site continuously for 90 days.

(6) Electronic transactions. – Medicaid providers shall follow the Department's established procedures for securing electronic payments, and the Department shall not provide routine provider payments by check. Medicaid providers shall file claims electronically, except that nonelectronic claims submission may be required when it is in the best interest of the Department. Medicaid providers shall submit Preadmission Screening and Annual Resident Reviews (PASARR) through the Department's Web-based tool or through a vendor with interface capability to submit data into the Web-based PASARR.

Providers shall submit requests for prior authorizations electronically via the vendor's Web site. Providers shall access their authorizations via online portals rather than receiving hard copies by mail. Recipients shall continue to receive adverse decisions via certified mail. Providers shall receive copies electronically. Once Web portal is live for provider enrollment, providers shall submit their provider enrollment applications online. Thereafter, the Department shall accept electronic signatures, rather than require receipt of signed hard copies.

SECTION 10.31.(c) Eligibility. – Eligibility for Medicaid shall be determined in accordance with the following:

(1) Medicaid and Work First Family Assistance. –

a. Income eligibility standards. – The maximum net family annual income eligibility standards for Medicaid and Work First Family Assistance and the Standard of Need for Work First Family Assistance shall be as follows:

	CATEGORICALLY NEEDY – WFFA*		**MEDICALLY NEEDY**
Family Size	Standard of Need & Families and Children Income Level	WFFA* Payment Level	Children & AA, AB, AD* Income Level
1	$4,344	$2,172	$2,900
2	5,664	2,832	3,800
3	6,528	3,264	4,400
4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

*Work First Family Assistance (WFFA); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

b. The payment level for Work First Family Assistance shall be fifty percent (50%) of the standard of need. These standards may be changed with the approval of the Director of the Budget.

c. The Department of Health and Human Services shall provide Medicaid coverage to 19- and 20-year-olds in accordance with federal rules and regulations.

d. Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets.

(2) For the following Medicaid eligibility classifications for which the federal poverty guidelines are used as income limits for eligibility determinations, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines. The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to the following:

a. All elderly, blind, and disabled people who have incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines.

b. Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines and without regard to resources. Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy.

c. Infants under the age of one with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines and without regard to resources.

d. Children aged one through five with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines and without regard to resources.

e. Children aged six through 18 with family incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines and without regard to resources.

f. Family planning services to men and women of childbearing age with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines and without regard to resources.

g. Workers with disabilities described in G.S. 108A-54.1 with unearned income equal to or less than one hundred fifty percent (150%) of the federal poverty guidelines.

(3) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to adoptive children with special or rehabilitative needs, regardless of the adoptive family's income.

(4) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to "independent foster care adolescents," ages 18, 19, and 20, as defined in section 1905(w)(1) of the Social Security Act (42 U.S.C. § 1396d(w)(1)), without regard to the adolescent's assets, resources, or income levels.

(5) ICF and ICF/MR work incentive allowances. – The Department of Health and Human Services may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR services who are regularly engaged in work activities as part of their developmental plan and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

Monthly Net Wages	**Monthly Incentive Allowance**
$1.00 to $100.99	Up to $50.00
$101.00 to $200.99	$80.00
$201.00 to $300.99	$130.00
$301.00 and greater	$212.00

(6) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to women who need treatment for breast or cervical cancer and who are defined in 42 U.S.C. § 1396a.(a)(10)(A)(ii)(XVIII).

SECTION 10.31.(d) Services and Payment Bases. – The Department shall spend funds appropriated for Medicaid services in accordance with the following schedule of services and payment bases. Unless otherwise provided, services and payment bases will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

The Department of Health and Human Services (DHHS) shall operate and manage the Medicaid program within the annual State appropriation. DHHS shall establish policies, practices, rates, and expenditure procedures that are in compliance with CMS regulations and approved State Plans, State laws, and regulations.

Additionally, the Department shall be required to use the Physician's Advisory Group for review and will collaborate with other stakeholder groups in the adoption and implementation of all clinical and payment policies, including all public notice and posting provisions in use as of the effective date of this provision.

(1) **Mandatory Services.** – In order to manage the Medicaid program within the annual State appropriation, the Secretary shall have the authority to submit State Plan amendments and establish temporary rules affecting the amount of service and payment rate for the following mandatory services:

a. Hospital inpatient. – Payment for hospital inpatient services will be prescribed by the State Plan as established by the Department of Health and Human Services.

b. Hospital outpatient. – Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.

c. Nursing facilities. – Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare.

d. Physicians, certified nurse midwife services, nurse practitioners, physician assistants. – Fee schedules as developed by the Department of Health and Human Services.

e. EPSDT screens. – Payments in accordance with rate schedule developed by the Department of Health and Human Services.

f. Home health and related services, durable medical equipment. – Payments according to reimbursement plans developed by the Department of Health and Human Services.

g. Rural health clinical services. – Provider-based, reasonable cost, nonprovider-based, single-cost reimbursement rate per clinic visit.

h. Family planning. – Negotiated rate for local health departments. For other providers see specific services, e.g., hospitals, physicians.

i. Independent laboratory and X-ray services. – Uniform fee schedules as developed by the Department of Health and Human Services.

j. Medicare Buy-In. – Social Security Administration premium.

k. Ambulance services. – Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.

l. Medicare crossover claims. – The Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services. The Department may disregard application of this policy in cases where application of the policy would adversely affect patient care.

m. Pregnancy-related services. – Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits as described in clinical policy.

n. Mental health services. – Coverage is limited to children eligible for EPSDT services provided by:

1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and

2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.

(2) **Optional Services.** – In order to manage the Medicaid program within the annual State appropriation, the Secretary shall have the authority to submit State Plan amendments and establish temporary rules affecting the amount of service, payment rate, or elimination of the following optional services:

a. Certified registered nurse anesthetists.
b. Community Alternative Programs.
c. Hearing aids. – Wholesale cost plus dispensing fee to provider.
d. Ambulatory surgical centers.
e. Private duty nursing, clinic services, prepaid health plans.
f. Intermediate care facilities for the mentally retarded.
g. Chiropractors, podiatrists, optometrists, dentists.
h. Dental coverage. – Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.
i. Optical supplies. – Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.
j. Physical therapy, occupational therapy, and speech therapy. – Services for adults. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services.
k. Personal care services. – Payment in accordance with the State Plan developed by the Department of Health and Human Services.
l. Case management services. – Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.
m. Hospice and palliative care.
n. Medically necessary prosthetics or orthotics. – In order to be eligible for reimbursement, providers must be licensed or certified by the occupational licensing board or the certification authority having authority over the provider's license or certification. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.
o. Health insurance premiums.
p. Medical care/other remedial care. – Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals.
q. Bariatric surgeries. – Covered as described in clinical policy 1A-15, Surgery for Clinically Severe Obesity. In order to raise the standard of bariatric care in North Carolina, approval for these procedures shall be granted only to those providers (facilities and surgeons) who are designated as a Bariatric Surgery Center of Excellence (BSCOE) by the American Society for Metabolic and Bariatric Surgery (ASMBS). Providers must then submit to NC Medicaid documentation of their designation as a BSCOE, as well as verify their continued annual participation.
r. Drugs. –
1. Reimbursements. – Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human

Services, consistent with federal reimbursement regulations. The professional services fee shall be established by the Department. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

2. Limitations on quantity. – The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid program. The Department may impose prior authorization requirements on brand-name drugs for which the phrase "medically necessary" is written on the prescription.

3. Dispensing of generic drugs. – Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary." An initial prescription order for a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. Notwithstanding this subdivision to the contrary, the Secretary of Health and Human Services may prevent substitution of a generic equivalent drug, including a generic equivalent that is on the State maximum allowable cost list, when the net cost to the State of the brand-name drug, after consideration of all rebates, is less than the cost of the generic equivalent. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. § 352(e)(3).

4. Specialty drug provider network. – The Department of Health and Human Services shall work with specialty drug providers, manufacturers of specialty drugs, Medicaid recipients who are prescribed specialty drugs, and the medical professionals that treat Medicaid recipients who are prescribed specialty drugs to develop ways to ensure that best practices and the prevention of overutilization are maintained in the delivery and utilization of specialty drugs.

5. Lock controlled substances prescriptions into single pharmacy/provider. – The Department of Health and Human Services, Division of Medical Assistance, shall lock Medicaid enrollees into a single pharmacy and provider when the Medicaid enrollee's utilization of selected controlled

substance medications meets the lock-in criteria approved by the North Carolina Physicians Advisory Group, as follows:

I. Enrollees may be prescribed selected controlled substance medications by only one prescribing physician and may not change the prescribing physician at any time without prior approval or authorization by the Division.

II. Enrollees may have prescriptions for selected controlled substance medications filled at only one pharmacy and may not change to another pharmacy at any time without prior approval or authorization by the Division.

5A. Prior authorization. – The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of (i) mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, major depressive disorder or (ii) HIV/AIDS. Medications prescribed for the treatment of mental illness shall be included on the Preferred Drug List (PDL). The Department of Health and Human Services, Division of Medical Assistance, may initiate prior authorization for the prescribing of drugs specified for the treatment of mental illness by providers who fail to prescribe those drugs in accordance with indications and dosage levels approved by the federal Food and Drug Administration. The Department may require retrospective clinical justification for the use of multiple psychotropic drugs for a Medicaid patient. For individuals 18 years of age and under who are prescribed three or more psychotropic medications, the Department shall implement clinical edits that target inefficient, ineffective, or potentially harmful prescribing patterns. When such patterns are identified, the Medical Director for the Division of Medical Assistance and the Chief of Clinical Policy for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall require a peer-to-peer consultation with the target prescribers. Alternatives discussed during the peer-to-peer consultations shall be based upon:

a. Evidence-based criteria available regarding efficacy or safety of the covered treatments; and

b. Policy approval by a majority vote of the North Carolina Physicians Advisory Group (NCPAG).

The target prescriber has final decision-making authority to determine which prescription drug to prescribe or refill.

6. Preferred Drug List. – The Department of Health and Human Services shall establish and implement a preferred drug list program under the Division of Medical Assistance. Medications prescribed for the treatment of mental illness shall be included on the Preferred Drug List (PDL).

The pharmaceutical and therapeutics committee of the Physician's Advisory Group (PAG) shall provide ongoing review of the preferred drug list, including the implementation of prior authorization on identified drugs. Members of the committee shall submit conflict of interest disclosure statements to the Department and shall have an ongoing duty to disclose conflicts of interest not included in the original disclosure.

The Department, in consultation with the PAG, shall adopt and publish policies and procedures relating to the preferred drug list, including the following:

I. Guidelines for the presentation and review of drugs for inclusion on the preferred drug list.

II. The manner and frequency of audits of the preferred drug list for appropriateness of patient care and cost-effectiveness.

III. An appeals process for the resolution of disputes.

IV. Such other policies and procedures as the Department deems necessary and appropriate.

The Department and the pharmaceutical and therapeutics committee shall consider all therapeutic classes of prescription drugs for inclusion on the preferred drug list, except medications for treatment of human immunodeficiency virus or acquired immune deficiency syndrome shall not be subject to consideration for inclusion on the preferred drug list.

The Department shall maintain an updated preferred drug list in electronic format and shall make the list available to the public on the Department's Internet Web site.

The Department shall (i) enter into a multistate purchasing pool; (ii) negotiate directly with manufacturers or labelers; (iii) contract with a pharmacy benefit manager for negotiated discounts or rebates for all prescription drugs under the medical assistance program; or (iv) effectuate any combination of these options in order to achieve the lowest available price for such drugs under such program.

The Department may negotiate supplemental rebates from manufacturers that are in addition to those required by Title XIX of the Social Security Act. The committee shall consider a product for inclusion on the preferred drug list if the manufacturer provides a supplemental rebate. The Department may procure a sole source contract with an outside entity or contractor to conduct negotiations for supplemental rebates.

The Secretary of the Department of Health and Human Services shall establish a Preferred Drug List (PDL) Policy Review Panel within 60 days after the effective date of this section. The purpose of the PDL Policy Review Panel is to review the Medicaid PDL recommendations from the Department of Health and Human Services, Division of Medical Assistance, and the Physician Advisory Group Pharmacy and Therapeutics (PAG P&T) Committee.

The Secretary shall appoint the following individuals to the review panel: (i) the Director of Pharmacy for the Division of Medical Assistance, (ii) a representative from the PAG P&T Committee, (iii) a representative from the Old North State Medical Society, (iv) a representative from the North Carolina Association of Pharmacists, (v) a representative from Community Care of North Carolina, (vi) a representative from the North Carolina Psychiatric Association, (vii) a representative from the North Carolina Pediatric Society, (viii) a representative from the North Carolina Academy of Family Physicians, (ix) a representative from the North Carolina Chapter of the American College of Physicians, (x) a representative from a research-based pharmaceutical company, (xi) a representative from a hospital-based pharmacy.

Individuals appointed to the Review Panel, except for the Division's Director of Pharmacy, shall serve only a two-year term.

After the Department, in consultation with the PAG P&T Committee, publishes a proposed policy or procedure related to the Medicaid PDL, the Review Panel shall hold an open meeting to review the recommended policy or procedure along with any written public comments received as a result of the posting. The Review Panel shall provide an opportunity for public comment at the meeting. After the conclusion of the meeting, the Review Panel shall submit policy recommendations about the proposed Medicaid PDL policy or procedure to the Secretary.

The Department may establish a Preferred Drug List for the North Carolina Health Choice for Children program and pursue negotiated discounts or rebates for all prescription drugs under the program in order to achieve the lowest available price for such drugs under such program. The Department may procure a sole source contract with an outside entity or contractor to conduct negotiations for these discounts or rebates. The PAG P&T Committee and Preferred Drug List Policy Review Panel will provide recommendations on policies and procedures for the NC Health Choice Preferred Drug List.

s. Incentive Payments as outlined in the State Medicaid Health Information Plan for Electronic Health Records.

t. Other mental health services. – Unless otherwise covered by this section, coverage is limited to the following:

1. Services as established by the Division of Medical Assistance in consultation with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services, not to exceed the upper limits established in federal regulations.

2. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and licensed clinical supervisors may be self-referred.

3. Payments made for services rendered in accordance with this subdivision shall be qualified providers in accordance with approved policies and the State Plan. Nothing in sub-sub-subdivisions 1. or 2. of this sub-subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-sub-subdivisions 1. or 2. of this sub-subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services established by the Division of Medical Assistance in consultation with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivision a. and sub-sub-subdivision b.2. of this subdivision shall be established by the Division of Medical Assistance.

u. Experimental/investigational medical procedures. – Coverage is limited to services, supplies, drugs, or devices recognized as standard medical care for the condition, disease, illness, or injury being treated as determined by nationally recognized scientific professional organizations or scientifically based federal organizations such as the Food and Drug Administration, the National Institutes of Health, the Centers for Disease Control, or the Agency for Health Care Research and Quality.

v. Clinical trials. – The Division of Medical Assistance shall develop clinical policy for the coverage of routine costs in clinical trial services for life-threatening conditions using resources such as coverage criteria from Medicare, NC State Health Plan, and the input of the Physicians Advisory Group.

w. Organ transplants.

(3) Never Events and Hospital Acquired Conditions (HACs) shall not be reimbursed. Medicaid will adhere to Medicare requirements for definition of events and conditions.

SECTION 10.31.(e) Provider Performance Bonds and Visits. –

(1) Subject to the provisions of this subdivision, the Department may require Medicaid-enrolled providers to purchase a performance bond in an amount not to exceed one hundred thousand dollars ($100,000) naming as beneficiary the Department of Health and Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may require the purchase of a performance bond or the submission of an executed letter of credit or financial instrument as a condition of initial enrollment, reenrollment, or reinstatement if:

a. The provider fails to demonstrate financial viability.

b. The Department determines there is significant potential for fraud and abuse.

c. The Department otherwise finds it is in the best interest of the Medicaid program to do so.

The Department shall specify the circumstances under which a performance bond or executed letter of credit will be required.

(1a) The Department may waive or limit the requirements of this subsection for individual Medicaid-enrolled providers or for one or more classes of Medicaid-enrolled providers based on the following:

a. The provider's or provider class's dollar amount of monthly billings to Medicaid.

b. The length of time an individual provider has been licensed, endorsed, certified, or accredited in this State to provide services.

c. The length of time an individual provider has been enrolled to provide Medicaid services in this State.

d. The provider's demonstrated ability to ensure adequate record keeping, staffing, and services.

e. The need to ensure adequate access to care.

In waiving or limiting requirements of this subsection, the Department shall take into consideration the potential fiscal impact of the waiver or limitation

on the State Medicaid Program. The Department shall provide to the affected provider written notice of the findings upon which its action is based and shall include the performance bond requirements and the conditions under which a waiver or limitation apply. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.

(2) Reimbursement is available for up to 30 visits per recipient per fiscal year for the following professional services: physicians, nurse practitioners, nurse midwives, physician assistants, clinics, health departments, optometrists, chiropractors, and podiatrists. The Department of Health and Human Services shall adopt medical policies in accordance with G.S. 108A-54.2 to distribute the allowable number of visits for each service or each group of services consistent with federal law. In addition, the Department shall establish a threshold of some number of visits for these services. The Department shall ensure that primary care providers or the appropriate CCNC network are notified when a patient is nearing the established threshold to facilitate care coordination and intervention as needed.

Prenatal services, all EPSDT children, emergency room visits, and mental health visits subject to independent utilization review are exempt from the visit limitations contained in this subdivision. Subject to appropriate medical review, the Department may authorize exceptions when additional care is medically necessary. Routine or maintenance visits above the established visit limit will not be covered unless necessary to actively manage a life-threatening disorder or as an alternative to more costly care options.

SECTION 10.31.(f) Exceptions and Limitations on Services; Authorization of Co-Payments and Other Services. –

(1) Exceptions to service limitations, eligibility requirements, and payments. – Service limitations, eligibility requirements, and payment bases in this section may be waived by the Department of Health and Human Services, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, contracting for services, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services or when the Department determines that such a waiver or innovation projects will result in a reduction in the total Medicaid costs.

(2) Co-payment for Medicaid services. – The Department of Health and Human Services may establish co-payments up to the maximum permitted by federal law and regulation.

(3) Provider enrollment fee. – Effective September 1, 2009, the Department of Health and Human Services, Division of Medical Assistance, shall charge an enrollment fee of one hundred dollars ($100.00), or the amount federally required, to each provider enrolling in the Medicaid program for the first time. The fee shall be charged to all providers at recredentialing every three years.

SECTION 10.31.(g) Rules, Reports, and Other Matters. –

Rules. – The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. The Department of Health and Human Services shall adopt rules requiring providers to attend training as a condition of enrollment and may adopt temporary or emergency rules to implement the training requirement.

Prior to the filing of the temporary or emergency rules authorized under this subsection with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

MEDICAID PROVIDER ASSESSMENTS

SECTION 10.31A. The Secretary of Health and Human Services may implement a Medicaid assessment program for any willing provider category allowed under federal regulations, except for hospital providers subject to the assessments authorized in Session Law 2011-11, up to the maximum percentage allowed by federal regulation. The Department may retain up to sixty-five percent (65%) of the amount from an assessment program implemented after December 31, 2010, that can be used by the Department to support Medicaid expenditures. Any assessment funds not retained by the Department shall be used to draw federal Medicaid matching funds for implementing increased rates or new reimbursement plans for each provider category being assessed.

Receipts from the assessment program are hereby appropriated for the 2011-2012 fiscal year and the 2012-2013 fiscal year for the purposes set out in this section.

DMA CONTRACT SHORTFALL

SECTION 10.32.(a) Budget approval is required by the Office of State Budget and Management prior to the Department of Health and Human Services, Division of Medical Assistance, entering into any new contract or the renewal or amendment of existing contracts that exceed the current contract amounts.

SECTION 10.32.(b) The Division of Medical Assistance shall make every effort to effect savings within its operational budget and use those savings to offset its contract shortfall. Notwithstanding G.S. 143C-6-4(b)(3), the Department may use funds appropriated in this act to cover the contract shortfall in the Division of Medical Assistance if insufficient funds exist within the Division.

MEDICAID COST CONTAINMENT ACTIVITIES

SECTION 10.33.(a) The Department of Health and Human Services may use up to five million dollars ($5,000,000) in the 2011-2012 fiscal year and up to five million dollars ($5,000,000) in the 2012-2013 fiscal year in Medicaid funds budgeted for program services to support the cost of administrative activities when cost-effectiveness and savings are demonstrated. The funds shall be used to support activities that will contain the cost of the Medicaid Program, including contracting for services, hiring additional staff, funding pilot programs, Health Information Exchange and Health Information Technology (HIE/HIT) administrative activities, or providing grants through the Office of Rural Health and Community Care to plan, develop, and implement cost containment programs.

Medicaid cost containment activities may include prospective reimbursement methods, incentive-based reimbursement methods, service limits, prior authorization of services, periodic medical necessity reviews, revised medical necessity criteria, service provision in the least costly settings, plastic magnetic-stripped Medicaid identification cards for issuance to Medicaid enrollees, fraud detection software or other fraud detection activities, technology that improves clinical decision making, credit balance recovery and data mining services, and other cost containment activities. Funds may be expended under this section only after the Office of State Budget and Management has approved a proposal for the expenditure submitted by the Department. Proposals for expenditure of funds under this section shall include the cost of implementing the cost containment activity and documentation of the amount of savings expected to be realized from the cost containment activity.

SECTION 10.33.(b) The Department shall report annually on the expenditures under this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The report shall include the methods used to achieve savings and the amount saved by these methods. The report is due to the House and Senate Appropriations Subcommittees on Health and Human Services and the Fiscal Research Division not later than December 1 of each year for the activities of the previous State fiscal year.

MEDICAID SPECIAL FUND TRANSFER

SECTION 10.34. Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143C-9-1, there is appropriated from the Medicaid Special Fund to the Department of Health and Human Services the sum of forty-three million dollars ($43,000,000) for the 2011-2012 fiscal year and the sum of forty-three million dollars ($43,000,000) for the 2012-2013 fiscal year. These funds shall be allocated as

prescribed by G.S. 143C-9-1(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143C-9-1(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act. The Department may also use funds in the Medicaid Special Fund to fund the settlement of the Disproportionate Share Hospital payment audit issues between the Department of Health and Human Services and the federal government related to fiscal years 1997-2002, and funds are appropriated from the Fund for the 2011-2012 fiscal year for this purpose.

ACCOUNTING FOR MEDICAID RECEIVABLES AS NONTAX REVENUE

SECTION 10.35.(a) Receivables reserved at the end of the 2011-2012 and 2012-2013 fiscal years shall, when received, be accounted for as nontax revenue for each of those fiscal years.

SECTION 10.35.(b) For the 2011-2012 fiscal year, the Department of Health and Human Services shall deposit from its revenues one hundred fifteen million dollars ($115,000,000) with the Department of State Treasurer to be accounted for as nontax revenue. For the 2012-2013 fiscal year, the Department of Health and Human Services shall deposit from its revenues one hundred fifteen million dollars ($115,000,000) with the Department of State Treasurer to be accounted for as nontax revenue. These deposits shall represent the return of General Fund appropriations, nonfederal revenue, fund balances or other resources from State owned and operated hospitals which are used to provide indigent and non-indigent care services. The return from State owned and operated hospitals to DHHS will be made from nonfederal resources in an amount equal to the amount of the payments from the Division of Medical Assistance for uncompensated care. The treatment of any revenue derived from federal programs shall be in accordance with the requirements specified in the Code of Federal Regulations, Title 2, Part 225.

FAMILIES PAY PART OF THE COST OF SERVICES UNDER THE CAP-MR/DD PROGRAM AND THE CAP-CHILDREN'S PROGRAM BASED ON FAMILY INCOME

SECTION 10.36.(a) Subject to approval from the Centers for Medicare and Medicaid Services (CMS), the Department of Health and Human Services, Division of Medical Assistance, shall, in consultation with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and Community Alternatives Program (CAP) stakeholders, develop a schedule of cost-sharing requirements for families of children with incomes above the Medicaid allowable limit to share in the costs of their child's Medicaid expenses under the CAP-MR/DD (Community Alternatives Program for Mental Retardation and Developmentally Disabled) and the CAP-C (Community Alternatives Program for Children). The cost-sharing amounts shall be based on a sliding scale of family income and shall take into account the impact on families with more than one child in the CAP programs. In developing the schedule, the Department shall also take into consideration how other states have implemented cost-sharing in their CAP programs. The Division of Medical Assistance may establish monthly deductibles as a means of implementing this cost-sharing. The Department shall provide for at least one public hearing and other opportunities for individuals to comment on the imposition of cost-sharing under the CAP program schedule.

SECTION 10.36.(b) The Division of Medical Assistance shall also, in collaboration with the Controller's Office of the Department of Health and Human Services, the Division of Information Resource Management (DIRM), and the new vendor of the replacement Medicaid Management Information System, develop business rules, program policies, and procedures and define relevant technical requirements.

SECTION 10.36.(c) Implementation of this provision shall be delayed until the implementation of the new Medicaid Management Information System.

AUTHORIZE THE DIVISION OF MEDICAL ASSISTANCE TO TAKE CERTAIN STEPS TO EFFECTUATE COMPLIANCE WITH BUDGET REDUCTIONS IN THE MEDICAID PROGRAM

SECTION 10.37.(a) The Department of Health and Human Services, Division of Medical Assistance, may take the following actions, notwithstanding any other provision of this act or other State law or rule to the contrary:

(1) In-Home Care provision. – In order to enhance in-home aide services to Medicaid recipients, the Department of Health and Human Services, Division of Medical Assistance, shall:

a. No longer provide services under PCS and PCS-Plus the later of January 1, 2012, or whenever CMS approves the elimination of the PCS and PCS-Plus programs and the implementation of the following two new services:

1. In-Home Care for Children (IHCC). – Services to assist families to meet the in-home care needs of children, including those individuals under the age of 21 receiving comprehensive and preventive child health services through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program.

2. In-Home Care for Adults (IHCA). – Services to meet the eating, dressing, bathing, toileting, and mobility needs of individuals 21 years of age or older who, because of a medical condition, disability, or cognitive impairment, demonstrate unmet needs for, at a minimum, (i) three of the five qualifying activities of daily living (ADLs) with limited hands-on assistance; (ii) two ADLs, one of which requires extensive assistance; or (iii) two ADLs, one of which requires assistance at the full dependence level. The five qualifying ADLs are eating, dressing, bathing, toileting, and mobility. IHCA shall serve individuals at the highest level of need for in-home care who are able to remain safely in the home.

b. Establish, in accordance with G.S. 108A-54.2, a Medical Coverage Policy for each of these programs, to include:

1. For IHCC, up to 60 hours per month in accordance with an assessment conducted by DMA or its designee and a plan of care developed by the service provider and approved by DMA or its designee. Additional hours may be authorized when the services are required to correct or ameliorate defects and physical and mental illnesses and conditions in this age group, as defined in 42 U.S.C. § 1396d(r)(5), in accordance with a plan of care approved by DMA or its designee.

2. For IHCA, up to 80 hours per month in accordance with an assessment conducted by DMA or its designee and a plan of care developed by the service provider and approved by DMA or its designee.

c. Implement the following program limitations and restrictions to apply to both IHCC and IHCA:

1. Additional services to children required under federal EPSDT requirements shall be provided to qualified recipients in the IHCC Program.

2. Services shall be provided in a manner that supplements, rather than supplants, family roles and responsibilities.

3. Services shall be authorized in amounts based on assessed need of each recipient, taking into account care and services provided by the family, other public and private agencies, and other informal caregivers who may be available to assist the family. All available resources shall be utilized fully, and services provided by such agencies and individuals shall be disclosed to the DMA assessor.

4. Services shall be directly related to the hands-on assistance and related tasks to complete each qualifying ADL in accordance with the IHCC or IHCA assessment and plan of care, as applicable.

5. Services provided under IHCC and IHCA shall not include household chores not directly related to the qualifying ADLs,

nonmedical transportation, financial management, and non-hands-on assistance such as cueing, prompting, guiding, coaching, or babysitting.

6. Essential errands that are critical to maintaining the health and welfare of the recipient may be approved on a case-by-case basis by the DMA assessor when there is no family member, other individual, program, or service available to meet this need. Approval, including the amount of time required to perform this task, shall be documented on the recipient's assessment form and plan of care.

d. Utilize the following process for admission to the IHCC and IHCA programs:

1. The recipient shall be seen by his or her primary or attending physician, who shall provide written authorization for referral for the service and written attestation to the medical necessity for the service.

2. All assessments for admission to IHCC and IHCA, continuation of these services, and change of status reviews for these services shall be performed by DMA or its designee. The DMA designee may not be an owner of a provider business or provider of in-home or personal care services of any type.

3. DMA or its designee shall determine and authorize the amount of service to be provided on a "needs basis," as determined by its review and findings of each recipient's degree of functional disability and level of unmet needs for hands-on personal assistance in the five qualifying ADLs.

e. Take all appropriate actions to manage the cost, quality, program compliance, and utilization of services provided under the IHCC and IHCA programs, including, but not limited to:

1. Priority independent reassessment of recipients before the anniversary date of their initial admission or reassessment for those recipients likely to qualify for the restructured IHCC and IHCA programs.

2. Priority independent reassessment of recipients requesting a change of service provider.

3. Targeted reassessments of recipients prior to their anniversary dates when the current provider assessment indicates they may not qualify for the program or for the amount of services they are currently receiving.

4. Targeted reassessment of recipients receiving services from providers with a history of program noncompliance.

5. Provider desk and on-site reviews and recoupment of all identified overpayments or improper payments.

6. Recipient reviews, interviews, and surveys.

7. The use of mandated electronic transmission of referral forms, plans of care, and reporting forms.

8. The use of mandated electronic transmission of uniform reporting forms for recipient complaints and critical incidents.

9. The use of automated systems to monitor, evaluate, and profile provider performance against established performance indicators.

10. Establishment of rules that implement the requirements of 42 C.F.R. § 441.16.

f. Time line for implementation of new IHCC and IHCA programs.

1. Subject to approvals from CMS, DMA shall make every effort to implement the new IHCC and IHCA programs by January 1, 2013.

2. DMA shall ensure that individuals who qualify for the IHCC and IHCA programs shall not experience a lapse in service and, if necessary, shall be admitted on the basis of their current provider assessment when an independent reassessment has not yet been performed and the current assessment documents that the medical necessity requirements for the IHCC or IHCA program, as applicable, have been met.
3. Prior to the implementation date of the new IHCC and IHCA programs, all recipients in the PCS and PCS-Plus programs shall be notified pursuant to 42 C.F.R. § 431.220(b) and discharged, and the Department shall no longer provide services under the PCS and PCS-Plus programs, which shall terminate. Recipients who qualify for the new IHCC and IHCA programs shall be admitted and shall be eligible to receive services immediately.

(2) Clinical coverage. – The Department of Health and Human Services, Division of Medical Assistance, shall amend applicable clinical policies and submit applicable State Plan amendments to Centers for Medicare and Medicaid Services (CMS) to implement the budget reductions authorized in the following clinical coverage areas in this act:
a. Eliminate or limit adult physical therapy, occupational therapy, and speech therapy visits to three visits per calendar year.

(3) MH/DD/SAS personal care and personal assistance services provision. – A denial, reduction, or termination of Medicaid-funded personal care services or in-home care services shall result in a similar denial, reduction, or termination of State-funded MH/DD/SAS personal care and personal assistance services.

(4) Community Support Team. – Authorization for a Community Support Team shall be based upon medical necessity as defined by the Department and shall not exceed 18 hours per week.

(5) MH residential. – The Department of Health and Human Services shall restructure the Medicaid child mental health, developmental disabilities, and substance abuse residential services to ensure that total expenditures are within budgeted levels. All restructuring activities shall be in compliance with federal and State law or rule. The Divisions of Medical Assistance and Mental Health, Developmental Disabilities, and Substance Abuse Services shall establish a team inclusive of providers, LMEs, and other stakeholders to assure effective transition of recipients to appropriate treatment options. The restructuring shall address all of the following:
a. Submission of the therapeutic family service definition to CMS.
b. The Department shall reexamine the entrance and continued stay criteria for all residential services. The revised criteria shall promote least restrictive services in the home prior to residential placement. During treatment, there must be inclusion in community activities and parent or legal guardian participation in treatment.
c. Require all existing residential providers or agencies to be nationally accredited within one year of enactment of this act. Any providers enrolled after the enactment of this act shall be subject to existing endorsement and nationally accrediting requirements. In the interim, providers who are nationally accredited will be preferred providers for placement considerations.
d. Before a child can be admitted to Level III or Level IV placement, an assessment shall be completed to ensure the appropriateness of placement, and one or more of the following shall apply:
1. Placement shall be a step down from a higher level placement such as a psychiatric residential treatment facility or inpatient facility.

2. Multisystemic therapy or intensive in-home therapy services have been unsuccessful.
3. The Child and Family Team has reviewed all other alternatives and recommendations and recommends Level III or Level IV placement due to maintaining health and safety.
4. Transition or discharge plan shall be submitted as part of the initial or concurrent request.

e. Length of stay is limited to no more than 180 days. Any exceptions granted will require (i) for non-CABHAs, an independent psychological or psychiatric assessment, (ii) for CABHAs, a psychological or psychiatric assessment that may be completed by the CABHA, and (iii) for both, a Child and Family Team review of goals and treatment progress, that family or discharge placement setting are actively engaged in treatment goals and objectives, and active participation of the prior authorization of vendor.

f. Submission of discharge plan is required in order for the request for authorization for Level III or Level IV services to be considered complete, but the authorization approval is not conditional upon the receipt of the signature of the system of care coordinator. The LME will designate appropriate individuals who can sign the discharge plan within 24 hours of receipt of the discharge plan. Failure to submit a complete discharge plan will result in the request being returned as unable to process.

g. Any residential provider that ceases to function as a provider shall provide written notification to DMA, the Local Management Entity, recipients, and the prior authorization vendor 30 days prior to closing of the business.

h. Record maintenance is the responsibility of the provider and must be in compliance with record retention requirements. Records shall also be available to State, federal, and local agencies.

i. Failure to comply with notification, recipient transition planning, or record maintenance shall be grounds for withholding payment until such activity is concluded. In addition, failure to comply shall be conditions that prevent enrollment for any Medicaid or State-funded service. A provider (including its officers, directors, agents, or managing employees or individuals or entities having a direct or indirect ownership interest or control interest of five percent (5%) or more as set forth in Title XI of the Social Security Act) that fails to comply with the required record retention may be subject to sanctions, including exclusion from further participation in the Medicaid program, as set forth in Title XI.

(6) Reduce Medicaid rates. – Subject to the prior approval of the Office of State Budget and Management, the Secretary shall reduce Medicaid provider rates to accomplish the reduction in funds for this purpose enacted in this act. The reductions authorized by this subdivision are subject to the following additional limitations:

a. The Secretary of Health and Human Services shall reduce Medicaid provider rates for all Medicaid providers by an annualized two percent (2%) except as follows:
1. Physician services. – The provider rate for physicians shall not be reduced.
2. Hospital inpatient services. – The provider rate for inpatient hospital services shall be reduced in the aggregate by an annualized amount not to exceed seven and thirty-two hundredths percent (7.32%). The provider rates for non-State-owned freestanding psychiatric and rehabilitation hospitals are not included in this exception.
3. The Secretary shall consider the impact on access to care through primary care providers and critical access hospitals

and may adjust the rates accordingly. Medicaid rates predicated on Medicare fee schedules shall follow Medicare reductions but not Medicare increases unless federally required.

4. Exceptions for certain providers. – The rate reduction applies to all Medicaid private and public providers with the following exceptions:
   I. Federally qualified health centers.
   II. Rural health centers.
   III. State institutions.
   IV. Hospital outpatient.
   V. Pharmacies.
   VI. The State Public Health Laboratory.
   VII. The noninflationary components of the case-mix reimbursement system for nursing facilities.
   VIII. Adult care homes.
   IX. Local health departments.
   X. Critical Access Behavioral Health Agencies.
5. Notwithstanding any other provision of law, no inflationary increases shall be made to Medicaid provider rates during the 2011-2013 fiscal biennium, except that inflationary increases for health care providers paying provider fees or assessments may occur if the State share of the increases can be funded with provider fees or assessments.

b. The rate reductions required by this section shall take effect in accordance with the following schedule:
   1. On or Before October 1, 2011. – The provider rate reductions required by sub-subdivision a. of this subdivision shall take effect on or before October 1, 2011. However, the reductions shall be adjusted by a percentage sufficient to yield savings as if the reductions had taken effect on July 1, 2011.
   2. July 1, 2012. – On July 1, 2012, the provider rate reductions required by sub-sub-subdivision a.2. of this subdivision and any other rate reductions implemented pursuant to sub-subdivision a. of this subdivision, but not implemented by July 1, 2011, shall be adjusted to the level at which they would have been without the adjustment required by sub-sub-subdivision 1. of this sub-subdivision.

c. No other adjustments to the provider rates or payment methodologies shall be made for physician services, critical access hospital services, hospital inpatient services or hospital outpatient services, non-State-owned freestanding psychiatric and rehabilitation hospitals, nursing homes, and adult care homes except as provided in sub-subdivision a. of this subdivision and except as authorized by Section 10.47(d) of this act.

(7) Medicaid identification cards. – The Department shall issue Medicaid identification cards to recipients on an annual basis with updates as needed.

(8) The Department of Health and Human Services shall develop a plan for the consolidation of case management services utilizing CCNC. The plan shall address the time line and process for implementation, the identification of savings, and the Medicaid recipients affected by the consolidation. Consolidation under this subdivision does not apply to HIV case management. By December 1, 2012, the Department shall report on the plan to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

(9) For the purpose of promoting cost-effective utilization of outpatient mental health services for children, DMA shall require prior authorization for services following the 16th visit.

(10) Provision of Medicaid Private Duty Nursing (PDN). – DMA shall change the Medicaid Private Duty Nursing program provided under the State Medicaid Plan, as follows:
  a. Restructure the current PDN program to provide services that are:
    1. Provided only to qualified recipients under the age of 21.
    2. Authorized by the recipient's primary care or attending physician.
    3. Limited to 16 hours of service per day, unless additional services are required to correct or ameliorate defects and physical and mental illnesses and conditions as defined in 42 U.S.C. § 1396d(r)(5).
    4. Approved, based on an initial assessment and continuing need reassessments performed by an Independent Assessment Entity (IAE) that does not provide PDN services, and authorized in amounts that are medically necessary based on the recipient's medical condition, amount of family assistance available, and other relevant conditions and circumstances, as defined by the Medicaid Clinical Coverage Policy for this service.
    5. Provided in accordance with a plan of care approved by DMA or its designee.
  b. Develop and submit to CMS a 1915(c) Home and Community Based Services Waiver for individuals dependent on technology to substitute for a vital body function.
  c. Once approved by CMS and upon approval of the Medicaid Clinical Coverage Policy, transition all qualified recipients age 21 and older currently receiving PDN to waiver services provided under the Technology Dependent Waiver.

(11) Medicaid service modifications and eliminations. – Subject to the prior approval of the Centers for Medicare and Medicaid Services where required, the Division of Medical Assistance shall make the following eliminations of or modifications to Medicaid services:
  a. Optical. –
    1. Eliminate adult routine eye exams. Eye exams shall be restricted to cases in which a specific optical problem exists.
    2. Eliminate optical services and supplies.
  b. Durable medical equipment. – The Department may adjust the rate paid for incontinence supplies or reduce cost through a negotiated single source contract with a manufacturer for incontinence supply procurement, notwithstanding any other provision of law. The contract shall provide that suppliers may use the contract but are also free to take advantage of better prices available elsewhere. The Department may effectuate any combination of these options in order to achieve the lowest available cost for incontinence supply procurement.
  c. Specialized therapies. – For evaluations and reevaluations, as well as physical, occupational, speech, respiratory, and audiological services, reduce the maximum number of allowable services by one per year.
  d. Home health. – Restrict usage of the miscellaneous T199 code. All billing must be for a specific service.
  e. Pregnancy Home Model Initiative.
  f. Dental. –
    1. Eliminate composite fillings for back teeth fillings.
    2. Limit the number of surfaces that can be filled to four per tooth.
    3. Limit frequency of scaling and replaning to once every two years.
    4. Raise the threshold for eligibility for replaning to 5mm from 4mm.

5. Eliminate cast dentures for partial dentures only and replace with acrylic dentures. Change the frequency of replacement from every 10 years to every eight years.
6. Require prior authorization for oral excision of gum tissue.

g. Miscellaneous. –

1. Restrict usage of evaluation and management billing as well as of unlisted codes and strengthen supporting documentation requirements. Billing shall use specific service codes for specific services as a prerequisite to reimbursement.
2. Restrict circumcision coverage to medically necessary procedures.
3. Utilize Bloodhound, Inc., software, or comparable software, to examine billing codes that are duplicative or inconsistent with evidence-based practices.
4. Require prior authorization for back surgery for selective diagnoses and require that all other therapies have been exhausted prior to granting authorization.
5. Require prior authorization for capsule endoscopy but not traditional endoscopy.
6. Require prior authorization for selected medical procedures and services, including elective cardiac procedures, chronic pain management, and related procedures.
7. Negotiate a single source contract for genetic testing, notwithstanding any other provision of law.

SECTION 10.37.(b) At least 30 days prior to the adoption of new or amended medical coverage policies necessitated by the reductions to the Medicaid program enacted in this act, the Department shall:

(1) Publish the proposed new or amended medical coverage policies via the Medicaid Bulletin published on the Department's Web site, which shall include an invitation to readers to send written comments on the proposed new or amended policies to the Department's mailing address, including e-mail.
(2) Notify via direct mail the members of the Physician Advisory Group (PAG) of the proposed policies.
(3) Update the policies published on the Web site to reflect any changes made as a result of written comments received from the PAG and others.
(4) Provide written notice to recipients about changes in policy.

SECTION 10.37.(c) The Department of Health and Human Services shall not implement any actions directed by this act if the Department determines that such actions would jeopardize the receipt of federal funds appropriated or allocated to the Department.

MEDICAID WAIVER FOR ASSISTED LIVING

SECTION 10.38.(a) The Department of Health and Human Services, Division of Medical Assistance (Division), shall develop and implement a home- and community-based services program under Medicaid State Plan 1915(i) authority in order to continue Medicaid funding of personal care services to individuals living in adult care homes. Providers who do not accept reimbursement for residents' personal care services through Medicaid or do not accept reimbursement through the State-County Special Assistance program shall not be subject to the provisions, requirements, or conditions of the Medicaid waiver pursuant to this section.

SECTION 10.38.(b) The Division shall implement the program upon approval of the application by the Centers for Medicare and Medicaid Services.

SECTION 10.38.(c) On or before April 1, 2012, the Division shall provide a report on the status of approval and implementation of the program to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

PROGRAM INTEGRITY

SECTION 10.39. In order to ensure all claims presented by a provider for payment by the Department of Health and Human Services meet the Department's medical necessity criteria and all other applicable Medicaid, Health Choice, or other federal or State documentation requirements, a provider may be required to undergo prepayment claims review by DHHS. Claims reviews conducted pursuant to this section shall be in accordance with the provisions of the Patient Protection and Affordable Care Act, P.L. 111-148, and any implementing regulations.

TRANSFER TO OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 10.40. From funds available to the Department of Health and Human Services (Department) for the 2011-2012 fiscal year, the sum of one million dollars ($1,000,000), and for the 2012-2013 fiscal year the sum of one million dollars ($1,000,000), shall be transferred by the Department of Health and Human Services to the Office of Administrative Hearings (OAH). These funds shall be allocated by the OAH for mediation services provided for Medicaid applicant and recipient appeals and to contract for other services necessary to conduct the appeals process. OAH shall continue the Memorandum of Agreement (MOA) with the Department for mediation services provided for Medicaid recipient appeals and contracted services necessary to conduct the appeals process. The MOA will facilitate the Department's ability to draw down federal Medicaid funds to support this administrative function. Upon receipt of invoices from OAH for covered services rendered in accordance with the MOA, the Department shall transfer the federal share of Medicaid funds drawn down for this purpose.

NC HEALTH CHOICE

SECTION 10.41.(a) G.S. 108A-54.3 is amended by adding a new subdivision to read:

"**§ 108A-54.3. Procedures for changing medical policy.**

The Department shall develop, amend, and adopt medical coverage policy in accordance with the following:

...

(5) Any changes in medical policy that require an amendment to the Health Choice State Plan will be submitted by the Department upon approval of the proposed policy."

SECTION 10.41.(b) G.S. 108A-70.21(b) reads as rewritten:

"(b) Benefits. – All health benefits changes of the Program shall meet the coverage requirements set forth in this subsection. Except as otherwise provided for eligibility, fees, deductibles, copayments, and other cost sharing charges, health benefits coverage provided to children eligible under the Program shall be equivalent to coverage provided for dependents under ~~the Predecessor Plan.~~ North Carolina Medicaid Program except for the following:

(1) No services for long-term care.

(2) No nonemergency medical transportation.

(3) No EPSDT.

(4) Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.

In addition to the benefits provided under the ~~Predecessor Plan,~~ North Carolina Medicaid Program, the following services and supplies are covered under the Health Insurance Program for Children established under this Part:

~~(1) Oral examinations, teeth cleaning, and topical fluoride treatments twice during a 12-month period, full mouth X-rays once every 60 months, supplemental bitewing X-rays showing the back of the teeth once during a 12-month period, sealants, extractions, other than impacted teeth or wisdom teeth, therapeutic pulpotomies, space maintainers, root canal therapy for permanent anterior teeth and permanent first molars, prefabricated stainless steel crowns, and routine fillings of amalgam or other tooth colored filling material to restore diseased teeth.~~

~~(1a) Orthognathic surgery to correct functionally impairing malocclusions when orthodontics was approved and initiated while the child was covered by Medicaid and the need for orthognathic surgery was documented in the orthodontic treatment plan.~~

(2) Vision: Scheduled routine eye examinations once every 12 months, eyeglass lenses or contact lenses once every 12 months, routine replacement of eyeglass frames once every 24 months, and optical supplies and solutions when needed. ~~Optical~~ NCHC recipients must obtain optical services, supplies, and solutions ~~must be obtained~~ from NCHC enrolled, licensed or certified ophthalmologists, optometrists, or ~~optical dispensing laboratories.~~ opticians. In accordance with G.S. 148-134, NCHC providers must order complete eyeglasses, eyeglass lenses, and ophthalmic frames through Nash Optical Plant. Eyeglass lenses are limited to NCHC-approved single vision, bifocal, trifocal, or other complex lenses necessary for a Plan enrollee's visual welfare. Coverage for oversized lenses and frames, designer frames, photosensitive lenses, tinted contact lenses, blended lenses, progressive multifocal lenses, coated lenses, and laminated lenses is limited to the coverage for single vision, bifocal, trifocal, or other complex lenses provided by this subsection. Eyeglass frames are limited to ~~those~~ NCHC-approved frames made of zylonite, metal, or a combination of zylonite and metal. All visual aids covered by this subsection require prior approval. Requests for medically necessary complete eyeglasses, eyeglass lenses, and ophthalmic frames outside of the NCHC-approved selection require prior approval. Requests for medically necessary fabrication of complete eyeglasses or eyeglass lenses outside of Nash Optical Plant require prior approval. Upon prior approval refractions may be covered more often than once every 12 months.

(3) ~~Hearing: Auditory diagnostic testing services and hearing aids and accessories when provided by a licensed or certified audiologist, otolaryngologist, or other approved hearing aid specialist. Prior approval is required for hearing aids, accessories, earmolds, repairs, loaners, and rental aids.~~ Under the North Carolina Health Choice Program for Children, the co-payment for nonemergency visits to the emergency room for children whose family income is at or below one hundred fifty percent (150%) of the federal poverty level is ten dollars ($10.00). The co-payment for children whose family income is between one hundred fifty-one percent (151%) and two hundred percent (200%) of the federal poverty level is twenty-five dollars ($25.00).

(4) Over the counter medications: Selected over the counter medications provided the medication is covered under the State Medical Assistance Plan. Coverage shall be subject to the same policies and approvals as required under the Medicaid program.

(5) Routine diagnostic examinations and tests: annual routine diagnostic examinations and tests, including x-rays, blood and blood pressure checks, urine tests, tuberculosis tests, and general health check-ups that are medically necessary for the maintenance and improvement of individual health are covered.

No benefits are to be provided for services and materials under this subsection that do not meet the standards accepted by the American Dental Association.

The Department shall provide services to children enrolled in the NC Health Choice Program through Community Care of North Carolina (CCNC) and shall pay Community Care of North Carolina providers ~~for these services~~ the per member, per month fees as allowed under Medicaid. ~~The Department shall pay for these services only if sufficient information is available to the Department for utilization management of the services provided through CCNC.~~"

SECTION 10.41.(c) G.S. 108A-70.23 is repealed.

SECTION 10.41.(d) G.S. 108A-70.27(c) reads as rewritten:

"(c) ~~The Executive Administrator and Board of Trustees of the North Carolina Teachers' and State Employees' Major Medical Plan ("Plan")~~ The Division of Medical Assistance shall provide to the Department data required under this section that are collected by the Plan. Data shall be reported by the Plan in sufficient detail to meet federal reporting requirements under Title XXI. The Plan shall report periodically to the Joint Legislative Health Care Oversight Committee claims processing data for the Program and any other information the Plan or the

Committee deems appropriate and relevant to assist the Committee in its review of the Program."

SECTION 10.41.(e) G.S. 108A-70.29 is amended by adding a new subsection to read:

"(f) Additional Rule-Making Authority. – The Department of Health and Human Services shall have the authority to adopt rules for the transition and operation of the North Carolina Health Choice Program. Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes for enrolling providers to participate in the NC Health Choice Program, for regulating provider participation in the NC Health Choice Program, and for other operational issues regarding the NC Health Choice Program."

SECTION 10.41.(f) Effective July 1, 2011, the Department shall begin planning to transition all health benefit changes of the Program to meet the coverage requirements set forth in subsection (b) of this section with implementation to begin no later than October 1, 2011, and completed no later than March 12, 2012.

MEDICATION THERAPY MANAGEMENT PILOT

SECTION 10.42.(a) The Department of Health and Human Services shall develop a two-year medication therapy management pilot program to be administered through Community Care of North Carolina (CCNC) in order to determine (i) the best method of adapting the ChecKmedsNC program to the Medicaid program and CCNC's Medical Homes and (ii) the most effective and efficient role for community-based pharmacists as active members of CCNC's care management teams. The pilot program created pursuant to this section shall consist of the following components:

(1) Identification of at least 20 community-based pharmacies that are geographically distributed and sufficiently representative to generalize pilot findings among pharmacies that dedicate pharmacist time to work with patients, their care team members, and their Medical Home practices to improve patient outcomes. To the extent that available resources allow, other types of community-based pharmacists may be involved, including those working with long-term care residents or their attending physicians.

(2) Targeting of Medicaid recipients with co-occurring illnesses or conditions that are especially susceptible to poor patient outcomes when medication is underused, misused, or poorly coordinated.

(3) Allowing pharmacists identified pursuant to subdivision (1) of this section to have access to CCNC's Web-based Pharmacy Portal, which allows CCNC to establish and monitor patients' prescriptions and to communicate with other care team members.

SECTION 10.42.(b) On January 1, 2012, and every six months thereafter, CCNC shall report to the Department of Health and Human Services, the House and Senate Appropriations Subcommittees on Health and Human Services, and the Fiscal Research Division on the development and implementation of this pilot program. This reporting requirement shall terminate with the filing of the third report on January 1, 2013. In addition to any other information, the reports required by this section shall include the following additional information:

(1) The July 1, 2012, report shall include an interim evaluation of the pharmacists' demonstrated use of the CCNC Pharmacy Home Model and the pharmacists' role in intervening and successfully managing the medication therapy of Medicaid recipients with chronic illnesses.

(2) The January 1, 2013, report shall include an evaluation of the pharmacists' role in CCNC's management of Medicaid recipients with mental health diagnoses or who receive Home Health or Nursing Home care, and a determination of the appropriate per member/per month pharmacists should receive for participating in the Medical Home Model of CCNC.

SECTION 10.42.(c) Funding for this pilot program shall be made available through the Enhanced Federal Funding for Health Homes for the Chronically Ill.

MEDICAID RECIPIENT APPEALS

SECTION 10.44. The Department of Health and Human Services shall review the appeals process for adverse Medicaid determinations for Medicaid recipients to examine whether it conforms with, or exceeds, the requirements of federal law.

DEPARTMENT TO DETERMINE COST-SAVINGS FOR MEDICAID THAT WOULD RESULT FROM PROVISION OF MUSCULOSKELETAL HEALTH SERVICES

SECTION 10.45.(a) The Department of Health and Human Services shall study and determine the cost-savings that would result for Medicaid if the following measures were implemented:

(1) Healthcare providers who have expertise in musculoskeletal conditions and who are willing to assist emergency departments were identified.

(2) Evidence-based medical criteria were developed, implemented, and supported for high-cost/high-risk elective musculoskeletal procedures.

(3) Patient management services were provided to primary care and emergency department physicians who provided musculoskeletal services.

SECTION 10.45.(b) The Department shall report its findings to the House and Senate Appropriations Subcommittees on Health and Human Services and to the Fiscal Research Division on or before October 1, 2011.

DHHS SAVINGS THROUGH CCNC

SECTION 10.47.(a) The Department of Health and Human Services, in conjunction with Community Care of North Carolina (CCNC) Networks and North Carolina Community Care, Inc., shall obtain savings totaling ninety million dollars ($90,000,000) for the 2011-2012 fiscal year and ninety million dollars ($90,000,000) for the 2012-2013 fiscal year through cooperation and effective cost savings on the part of various health care providers.

SECTION 10.47.(b) The Department of Health and Human Services shall monitor the performance of the CCNC Networks and the expenditures of various health care providers to determine the extent to which the savings required by subsection (a) of this section are being achieved.

SECTION 10.47.(c) On or before October 1, 2011, and quarterly thereafter, the Department shall report to the House and Senate Appropriations Subcommittees on Health and Human Services and to the Fiscal Research Division on the savings being achieved pursuant to this section.

SECTION 10.47.(d) If, by October 1, 2011, or anytime thereafter, savings are not being achieved at a rate sufficient to yield savings in the amount required by subsection (a) of this section, the Secretary of Health and Human Services shall, to the extent required in order to achieve savings at the required rate, take whatever actions are necessary, including the following to be effective January 1, 2012:

(1) Reduce Medicaid provider rates by up to two percent (2%), provided that any reductions implemented pursuant to this subdivision shall be implemented at an equal percentage rate for all Medicaid providers. This reduction shall be in addition to other provider rate reductions in this act.

(2) Eliminate or reduce the level or duration of optional Medicaid services.

SECTION 10.47.(e) The Department of Health and Human Services, in collaboration with Community Care of North Carolina and Local Management Entities (LMEs) shall ensure the effective integration of behavioral health and physical health services for Medicaid recipients. The Department shall amend the contracts between the Department and LMEs and between the Department and Community Care of North Carolina to include effectiveness measures with regard to data sharing, roles and responsibilities, best practices, and budgetary savings to address integration and collaboration of behavioral and physical health.

INCREASE GENERIC DRUG DISPENSING RATE IN MEDICAID BY REVISING PHARMACY DISPENSING FEES FOR PHARMACISTS THAT DISPENSE HIGH PROPORTIONS OF GENERIC DRUGS

SECTION 10.48.(a) The Department of Health and Human Services shall revise its pharmacy dispensing fees under the Medicaid Program in order to encourage a greater proportion of prescriptions dispensed to be generic prescriptions and thereby achieve savings of

fifteen million dollars ($15,000,000) in the 2011-2012 fiscal year and twenty-four million dollars ($24,000,000) in the 2012-2013 fiscal year.

SECTION 10.48.(b) The Department shall report its progress in achieving the savings required by subsection (a) of this section on November 1, 2011, January 1, 2012, and quarterly thereafter to the House and Senate Appropriations Subcommittees on Health and Human Services and to the Fiscal Research Division. If any report required by this subsection reveals that those savings are not being achieved, the Department shall reduce prescription drug rates by an amount sufficient to achieve the savings.

NC NOVA

SECTION 10.49. The Department of Health and Human Services, Division of Health Service Regulation, may use up to thirty-eight thousand dollars ($38,000) for fiscal year 2011-2012 and up to thirty-eight thousand dollars ($38,000) for fiscal year 2012-2013 of existing resources to continue the NC New Organizational Vision Award special licensure designation program established under G.S. 131E-154.14. The Division shall use federal civil monetary penalty receipts as a source of support for this initiative, when appropriate.

HOME CARE AGENCY LICENSURE MORATORIUM IN-HOME AIDE SERVICES

SECTION 10.49A. Beginning July 1, 2011, and for a period of three years thereafter, the Department of Health and Human Services shall not issue any licenses for home care agencies as defined in G.S. 131E-136(2) that intend to offer in-home aide services. The prohibition shall not restrict the Department from issuing licenses to certified home health agencies as defined in G.S. 131E-176(12) that intend to offer in-home aide services or to agencies that need a new license for an existing home care agency being acquired. The Secretary may at any time license a new home care agency in any area of the State if access to care becomes an issue during the time frame set forth above. Companion and Sitter services are exempt from this restriction.

INTENSIVE FAMILY PRESERVATION SERVICES FUNDING AND PERFORMANCE ENHANCEMENTS

SECTION 10.50.(a) Notwithstanding the provisions of G.S. 143B-150.6, the Intensive Family Preservation Services (IFPS) Program shall provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and to children and families in cases of abuse where a child is not at imminent risk of removal. The Program shall be developed and implemented statewide on a regional basis. The IFPS shall ensure the application of standardized assessment criteria for determining imminent risk and clear criteria for determining out-of-home placement.

SECTION 10.50.(b) The Department of Health and Human Services shall require that any program or entity that receives State, federal, or other funding for the purpose of IFPS shall provide information and data that allows for the following:

(1) An established follow-up system with a minimum of six months of follow-up services.
(2) Detailed information on the specific interventions applied, including utilization indicators and performance measurement.
(3) Cost-benefit data.
(4) Data on long-term benefits associated with IFPS. This data shall be obtained by tracking families through the intervention process.
(5) The number of families remaining intact and the associated interventions while in IFPS and 12 months thereafter.
(6) The number and percentage, by race, of children who received IFPS compared to the ratio of their distribution in the general population involved with Child Protective Services.

SECTION 10.50.(c) The Department shall establish a performance-based funding protocol and shall only provide funding to those programs and entities providing the required information specified in subsection (b) of this section. The amount of funding shall be based on the individual performance of each program.

FOSTER CARE AND ADOPTION ASSISTANCE PAYMENT RATES

SECTION 10.51. Part 4 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-49.1. Foster care and adoption assistance payment rates.**

(a) The maximum rates for State participation in the foster care assistance program are established on a graduated scale as follows:

(1) $475.00 per child per month for children from birth through five years of age.

(2) $581.00 per child per month for children six through 12 years of age.

(3) $634.00 per child per month for children 13 through 18 years of age.

(b) The maximum rates for the State adoption assistance program are established consistent with the foster care rates as follows:

(1) $475.00 per child per month for children from birth through five years of age.

(2) $581.00 per child per month for children six through 12 years of age.

(3) $634.00 per child per month for children 13 through 18 years of age.

(c) The maximum rates for the State participation in human immunodeficiency virus (HIV) foster care and adoption assistance are established on a graduated scale as follows:

(1) $800.00 per child per month with indeterminate HIV status.

(2) $1,000 per child per month with confirmed HIV infection, asymptomatic.

(3) $1,200 per child per month with confirmed HIV infection, symptomatic.

(4) $1,600 per child per month when the child is terminally ill with complex care needs.

In addition to providing board payments to foster and adoptive families of HIV-infected children, any additional funds remaining that are appropriated for purposes described in this subsection shall be used to provide medical training in avoiding HIV transmission in the home.

(d) The State and a county participating in foster care and adoption assistance shall each contribute fifty percent (50%) of the nonfederal share of the cost of care for a child placed by a county department of social services or child-placing agency in a family foster home or residential child care facility. A county shall be held harmless from contributing fifty percent (50%) of the nonfederal share of the cost for a child placed in a family foster home or residential child care facility under an agreement with that provider as of October 31, 2008, until the child leaves foster care or experiences a placement change."

CHILD CARING INSTITUTIONS

SECTION 10.52. Until the Social Services Commission adopts rules setting standardized rates for child caring institutions as authorized under G.S. 143B-153(8), the maximum reimbursement for child caring institutions shall not exceed the rate established for the specific child caring institution by the Department of Health and Human Services, Office of the Controller. In determining the maximum reimbursement, the State shall include county and IV-E reimbursements.

REPEAL STATE ABORTION FUND

SECTION 10.53. Section 93 of Chapter 479 of the 1985 Session Laws, as amended by Section 75 of Chapter 738 of the 1987 Session Laws, Section 72 of Chapter 500 of the 1989 Session Laws, Section 79 of Chapter 1066 of the 1989 Session Laws, Section 106 of Chapter 689 of the 1991 Session Laws, Section 259.1 of Chapter 321 of the 1993 Session Laws, Section 23.27 of Chapter 324 of the 1995 Session Laws, and Section 23.8A of Chapter 507 of the 1995 Session Laws, is repealed.

CHILD WELFARE POSTSECONDARY SUPPORT PROGRAM

SECTION 10.54.(a) Of the funds appropriated from the General Fund to the Department of Health and Human Services, the sum of one million five hundred eighty-four thousand one hundred twenty-five dollars ($1,584,125) for the 2011-2012 fiscal year and one million five hundred eighty-four thousand one hundred twenty-five dollars ($1,584,125) for the 2012-2013 fiscal year shall be used to support the child welfare postsecondary support program for the educational needs of foster youth aging out of the foster care system and special needs children adopted from foster care after age 12 by providing assistance with the "cost of attendance" as that term is defined in 20 U.S.C. § 1087ll.

Funds appropriated by this subsection shall be allocated by the State Education Assistance Authority.

SECTION 10.54.(b) Of the funds appropriated from the General Fund to the Department of Health and Human Services, the sum of fifty thousand dollars ($50,000) for the 2011-2012 fiscal year and the sum of fifty thousand dollars ($50,000) for the 2012-2013 fiscal year shall be allocated to the North Carolina State Education Assistance Authority (SEAA). The SEAA shall use these funds only to perform administrative functions necessary to manage and distribute scholarship funds under the child welfare postsecondary support program.

SECTION 10.54.(c) Of the funds appropriated from the General Fund to the Department of Health and Human Services, the sum of three hundred thirty-nine thousand four hundred ninety-three dollars ($339,493) for the 2011-2012 fiscal year and the sum of three hundred thirty-nine thousand four hundred ninety-three dollars ($339,493) for the 2012-2013 fiscal year shall be used to contract with an entity to administer the child welfare postsecondary support program described under subsection (a) of this section, which administration shall include the performance of case management services.

SECTION 10.54.(d) Funds appropriated to the Department of Health and Human Services for the child welfare postsecondary support program shall be used only for students attending public institutions of higher education in this State.

TANF BENEFIT IMPLEMENTATION

SECTION 10.55.(a) The General Assembly approves the plan titled "North Carolina Temporary Assistance for Needy Families State Plan FY 2010-2012," prepared by the Department of Health and Human Services and presented to the General Assembly. The North Carolina Temporary Assistance for Needy Families State Plan covers the period October 1, 2010, through September 30, 2012. The Department shall submit the State Plan, as revised in accordance with subsection (b) of this section, to the United States Department of Health and Human Services, as amended by this act or any other act of the 2011 General Assembly.

SECTION 10.55.(b) The counties approved as Electing Counties in the North Carolina Temporary Assistance for Needy Families State Plan FY 2010-2012, as approved by this section are Beaufort, Caldwell, Catawba, Lenoir, Lincoln, Macon, and Wilson.

SECTION 10.55.(c) Counties that submitted the letter of intent to remain as an Electing County or to be redesignated as an Electing County and the accompanying county plan for fiscal year 2011 through 2012, pursuant to G.S. 108A-27(e), shall operate under the Electing County budget requirements effective July 1, 2009. For programmatic purposes, all counties referred to in this subsection shall remain under their current county designation through September 30, 2012.

SECTION 10.55.(d) For the 2011-2012 fiscal year, Electing Counties shall be held harmless to their Work First Family Assistance allocations for the 2010-2011 fiscal year, provided that remaining funds allocated for Work First Family Assistance and Work First Diversion Assistance are sufficient for payments made by the Department on behalf of Standard Counties pursuant to G.S. 108A-27.11(b).

SECTION 10.55.(e) In the event that departmental projections of Work First Family Assistance and Work First Diversion Assistance for the 2011-2012 fiscal year indicate that remaining funds are insufficient for Work First Family Assistance and Work First Diversion Assistance payments to be made on behalf of Standard Counties, the Department is authorized to deallocate funds, of those allocated to Electing Counties for Work First Family Assistance in excess of the sums set forth in G.S. 108A-27.11, up to the requisite amount for payments in Standard Counties. Prior to deallocation, the Department shall obtain approval by the Office of State Budget and Management. If the Department adjusts the allocation set forth in subsection (d) of this section, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

PAYMENTS FOR LIEAP/CIP

SECTION 10.56.(a) Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-25.4. Use of payments under the Low-Income Energy Assistance Program and Crisis Intervention Program.**

(a) The Low-Income Energy Assistance Program Plan developed by the Department of Health and Human Services (Department) and submitted to the U.S. Department of Health and Human Services shall focus the annual energy assistance payments on the elderly population age 60 and above with income up to one hundred thirty percent (130%) of the federal poverty level and disabled persons receiving services through the Division of Aging and Adult Services. The energy assistance payment shall be paid directly to the service provider by the county department of social services. The Plan for Crisis Intervention Program (CIP) shall provide assistance for vulnerable populations who meet income eligibility criteria established by the Department. The CIP payment shall be paid directly to the service provider by the county department of social services and shall not exceed six hundred dollars ($600.00) per household in a fiscal year.

(b) The Department shall submit the Plan for each program to the U.S. Department of Health and Human Services no later than September 1 of each year and implement the Plan no later than October 1 of each year."

SECTION 10.56.(b) Beginning September 1, 2011, on or before September 1 of each year and for a period of three years thereafter, the Department of Health and Human Services shall submit a copy of the Plan to the House Appropriations Subcommittee on Health and Human Services and Senate Appropriations Committee on Health and Human Services.

NON-MEDICAID REIMBURSEMENT CHANGES

SECTION 10.58.(a) Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no higher than those under the North Carolina Medical Assistance Program.

The Department of Health and Human Services may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of this section, the Department of Health and Human Services may negotiate with providers of medical services under the various Department of Health and Human Services programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services that cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

DSB Medical Eye Care	125% FPL
DSB Independent Living <55	125% FPL
DSB Independent Living 55>	200% FPL
DSB Vocational Rehabilitation	125% FPL
DVR Independent Living	125% FPL
DVR Vocational Rehabilitation	125% FPL

The Department of Health and Human Services shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department.

SECTION 10.58.(b) Subject to the prior approval of the Office of State Budget and Management, the Secretary shall reduce provider rates for services rendered for the Medical Eye Care, Independent Living, and Vocational Rehabilitation programs within the Division of Services for the Blind, and Independent Living and Vocational Rehabilitation programs within the Division of Vocational Rehabilitation to accomplish the reduction in funds for this purpose enacted in this act.

STATE-COUNTY SPECIAL ASSISTANCE

SECTION 10.59.(a) The maximum monthly rate for residents in adult care home facilities shall be one thousand one hundred eighty-two dollars ($1,182) per month per resident unless adjusted by the Department in accordance with subsection (d) of this section. The eligibility of Special Assistance recipients residing in adult care homes on September 30, 2009,

shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from the adoption of this maximum monthly rate, provided these recipients are otherwise eligible.

SECTION 10.59.(b) The maximum monthly rate for residents in Alzheimer/Dementia special care units shall be one thousand five hundred fifteen dollars ($1,515) per month per resident unless adjusted by the Department in accordance with subsection (d) of this section.

SECTION 10.59.(c) Notwithstanding any other provision of this section, the Department of Health and Human Services shall review activities and costs related to the provision of care in adult care homes and shall determine what costs may be considered to properly maximize allowable reimbursement available through Medicaid personal care services for adult care homes (ACH-PCS) under federal law. As determined, and with any necessary approval from the Centers for Medicare and Medicaid Services (CMS), and the approval of the Office of State Budget and Management, the Department may transfer necessary funds from the State-County Special Assistance program within the Division of Social Services to the Division of Medical Assistance and may use those funds as State match to draw down federal matching funds to pay for such activities and costs under Medicaid's personal care services for adult care homes (ACH-PCS), thus maximizing available federal funds. The established rate for State-County Special Assistance set forth in subsections (b) and (c) of this section shall be adjusted by the Department to reflect any transfer of funds from the Division of Social Services to the Division of Medical Assistance and related transfer costs and responsibilities from State-County Special Assistance to the Medicaid personal care services for adult care homes (ACH-PCS). Subject to approval by the Centers for Medicare and Medicaid Services (CMS) and prior to implementing this section, the Department may disregard a limited amount of income for individuals whose countable income exceeds the adjusted State-County Special Assistance rate. The amount of the disregard shall not exceed the difference between the Special Assistance rate prior to the adjustment and the Special Assistance rate after the adjustment and shall be used to pay a portion of the cost of the ACH-PCS and reduce the Medicaid payment for the individual's personal care services provided in an adult care home. In no event shall the reimbursement for services through the ACH-PCS exceed the average cost of the services as determined by the Department from review of cost reports as required and submitted by adult care homes. The Department shall report any transfers of funds and modifications of rates to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.59.(d) The Department of Health and Human Services shall recommend rates for State-County Special Assistance and for Adult Care Home Personal Care Services. The Department may recommend rates based on appropriate cost methodology and cost reports submitted by adult care homes that receive State-County Special Assistance funds and shall ensure that cost reporting is done for State-County Special Assistance and Adult Care Home Personal Care Services to the same standards as apply to other residential service providers.

DHHS BLOCK GRANTS

SECTION 10.60.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2012, according to the following schedule:

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) FUNDS

Local Program Expenditures

Division of Social Services		
01.	Work First Family Assistance	$ 72,680,370
02.	Work First County Block Grants	94,453,315
03.	Work First Electing Counties	2,378,213

04.	Adoption Services – Special Children's Adoption Fund	3,609,355
05.	Family Violence Prevention	2,200,000
06.	Child Protective Services – Child Welfare Workers for Local DSS	14,452,391
07.	Child Welfare Collaborative	754,115
	Division of Child Development	
08.	Subsidized Child Care Program	67,439,721
	Division of Public Health	
09.	Teen Pregnancy Initiatives	450,000
	DHHS Administration	
10.	Division of Social Services	1,093,176
11.	Office of the Secretary	75,392
	Transfers to Other Block Grants	
	Division of Child Development	
12.	Transfer to the Child Care and Development Fund	79,437,674
13.	Transfer to Social Services Block Grant for Child Protective Services – Child Welfare Training in Counties	1,300,000
14.	Transfer to Social Services Block Grant for Foster Care Services	650,829
15.	Transfer to Social Services Block Grant for Child Protective Services	5,040,000
16.	Transfer to Social Services Block Grant for Adult Protective Services	1,191,925
17.	Transfer to Social Services Block Grant for County Departments of Social Services	4,148,001
	TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) FUNDS	$ 351,354,477
	TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS	
	Local Program Expenditures	
	Division of Social Services	
01.	NC FAST	$ 1,664,936
02.	Work First – Boys and Girls Clubs	2,500,000

03.	Maternity Homes	943,002
03A.	Continuation of Subsidized Employment Initiative	6,114,959
	Division of Public Health	
04.	Teen Pregnancy Initiatives	2,500,000
	DHHS Administration	
05.	Division of Social Services	1,389,084
	TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS	$ 15,111,981

SOCIAL SERVICES BLOCK GRANT

	Local Program Expenditures	
	Divisions of Social Services and Aging and Adult Services	
01.	County Departments of Social Services (Transfer from TANF $4,148,001)	$ 30,288,783
02.	Child Protective Services (Transfer from TANF)	5,040,000
03.	Adult Protective Services (Transfer from TANF)	1,191,925
04.	State In-Home Services Fund	2,101,113
05.	State Adult Day Care Fund	2,155,301
06.	Child Protective Services/CPS Investigative Services-Child Medical Evaluation Program	609,455
07.	Foster Care Services (Transfer from TANF $650,829)	2,147,967
08.	Special Children Adoption Incentive Fund	500,000
09.	Child Protective Services-Child Welfare Training for Counties (Transfer from TANF)	1,300,000
10.	Home and Community Care Block Grant (HCCBG)	1,834,077
11.	Child Advocacy Centers	375,000
11A.	Food Banks	3,773,001
	Division of Central Management and Support	
12.	ALS Association Jim "Catfish" Hunter Chapter	400,000
	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	
13.	Mental Health Services Program	422,003

14.	Developmental Disabilities Services Program	5,000,000
15.	Mental Health Services-Adult and Child/Developmental Disabilities Program/ Substance Abuse Services-Adult	3,234,601
	Division of Public Health	
16.	Prevent Blindness	150,000
	Division of Vocational Rehabilitation	
17.	Vocational Rehabilitation Services – Easter Seal Society/UCP Community Health Program	188,263
	DHHS Program Expenditures	
	Division of Aging and Adult Services	
18.	UNC-CARES Training Contract	247,920
	Division of Services for the Blind	
19.	Independent Living Program	3,633,077
20.	Accessible Electronic Information for Blind and Disabled Persons	75,000
	Division of Health Service Regulation	
21.	Adult Care Licensure Program	411,897
22.	Mental Health Licensure and Certification Program	205,668
	DHHS Administration	
23.	Division of Aging and Adult Services	688,436
24.	Division of Social Services	892,624
25.	Office of the Secretary/Controller's Office	138,058
26.	Office of the Secretary/DIRM	87,483
27.	Division of Child Development	15,000
28.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	29,665
29.	Division of Health Service Regulation	235,625
30.	Office of the Secretary-NC Interagency Council for Coordinating Homeless Programs	250,000
31.	Office of the Secretary	48,053
	Transfers to Other Block Grants	
	Division of Public Health	

32. Transfer to Preventive Health Services Block Grant for HIV/STD Prevention and Community Planning	145,819
TOTAL SOCIAL SERVICES BLOCK GRANT	$ 67,815,814
LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT	
Local Program Expenditures	
Division of Social Services	
01. Low-Income Energy Assistance Program (LIEAP)	$ 11,862,617
02. Crisis Intervention Program (CIP)	48,569,233
02A. NC FAST Implementation	4,732,667
Local Administration	
Division of Social Services	
03. County DSS Administration	5,604,940
DHHS Administration	
04. Office of the Secretary/DIRM	276,784
05. Office of the Secretary/Controller's Office	12,332
Transfers to Other State Agencies	
Department of Commerce	
06. Weatherization Program	500,000
07. Heating Air Repair and Replacement Program (HARRP)	4,744,344
08. Local Residential Energy Efficiency Service Providers – Weatherization	25,000
09. Local Residential Energy Efficiency Service Providers – HARRP	227,038
10. Department of Commerce Administration – Weatherization	25,000
11. Department of Commerce Administration – HARRP	227,038
Department of Administration	
12. N.C. Commission on Indian Affairs	110,638
TOTAL LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT	$ 76,917,631
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT	

Local Program Expenditures		
Division of Child Development		
01.	Subsidized Child Care Services (CCDF)	$ 158,004,959
02.	Electronic Tracking System	3,336,345
03.	Subsidized Child Care Services (Transfer from TANF)	79,437,674
04.	Quality and Availability Initiatives (TEACH Program $3,800,000)	25,948,434
Division of Social Services		
05.	Local Subsidized Child Care Services Support (4% Administrative Allowance)	16,471,587
DHHS Administration		
Division of Child Development		
06.	DCD Administrative Expenses	6,539,277
Division of Central Administration		
07.	DHHS Central Administration – DIRM Technical Services	774,317
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT		$ 290,512,593

MENTAL HEALTH SERVICES BLOCK GRANT

Local Program Expenditures		
01.	Mental Health Services – Adult	$ 6,656,212
02.	Mental Health Services – Child	5,121,991
03.	Administration	100,000
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT		$ 11,878,203

SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT

Local Program Expenditures		
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services		
01.	Substance Abuse Services – Adult	$ 20,008,541
02.	Substance Abuse Treatment Alternative for Women	8,107,303
03.	Substance Abuse – HIV and IV Drug	5,116,378
04.	Substance Abuse Prevention – Child	7,186,857

05.	Substance Abuse Services – Child	4,940,500
06.	Institute of Medicine	250,000
07.	Administration	250,000
	Division of Public Health	
08.	Risk Reduction Projects	633,980
09.	Aid-to-Counties	209,576
	TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT	$ 46,703,135

MATERNAL AND CHILD HEALTH BLOCK GRANT

	Local Program Expenditures	
	Division of Public Health	
01.	Children's Health Services	$ 8,528,156
02.	Women's Health	8,510,783
03.	Oral Health	42,268
	DHHS Program Expenditures	
	Division of Public Health	
04.	Children's Health Services	1,417,087
05.	Women's Health	136,628
06.	State Center for Health Statistics	164,318
07.	Quality Improvement in Public Health	1,636
08.	Health Promotion	89,374
09.	Office of Minority Health	40,141
	DHHS Administration	
	Division of Public Health	
10.	Division of Public Health Administration	631,966
	TOTAL MATERNAL AND CHILD HEALTH BLOCK GRANT	$ 19,562,357

PREVENTIVE HEALTH SERVICES BLOCK GRANT

	Local Program Expenditures	
	Division of Public Health	
01.	NC Statewide Health Promotion	$ 1,730,653

02.	Services to Rape Victims	89,152
03.	HIV/STD Prevention and Community Planning (Transfer from Social Services Block Grant)	145,819

DHHS Program Expenditures

Division of Public Health

04.	State Center for Health Statistics	55,040
05.	NC Statewide Health Promotion	947,056
06.	Oral Health	70,000
07.	State Laboratory of Public Health	16,600
08.	Services to Rape Victims	107,960

TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT $ 3,162,280

COMMUNITY SERVICES BLOCK GRANT

Local Program Expenditures

Office of Economic Opportunity

01.	Community Action Agencies	$ 18,075,488
02.	Limited Purpose Agencies	1,004,194

DHHS Administration

03.	Office of Economic Opportunity	1,004,194

TOTAL COMMUNITY SERVICES BLOCK GRANT $ 20,083,876

GENERAL PROVISIONS

SECTION 10.60.(b) Information to Be Included in Block Grant Plans. – The Department of Health and Human Services shall submit a separate plan for each Block Grant received and administered by the Department, and each plan shall include the following:

(1) A delineation of the proposed allocations by program or activity, including State and federal match requirements.
(2) A delineation of the proposed State and local administrative expenditures.
(3) An identification of all new positions to be established through the Block Grant, including permanent, temporary, and time-limited positions.
(4) A comparison of the proposed allocations by program or activity with two prior years' program and activity budgets and two prior years' actual program or activity expenditures.
(5) A projection of current year expenditures by program or activity.
(6) A projection of federal Block Grant funds available, including unspent federal funds from the current and prior fiscal years.

SECTION 10.60.(c) Changes in Federal Fund Availability. – If the Congress of the United States increases the federal fund availability for any of the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase proportionally across the program and activity appropriations identified for that Block Grant in this section. In allocating an increase in federal fund

availability, the Office of State Budget and Management shall not approve funding for new programs or activities not appropriated in this section.

If the Congress of the United States decreases the federal fund availability for any of the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall develop a plan to adjust the block grants based on reduced federal funding.

Prior to allocating the change in federal fund availability, the proposed allocation must be approved by the Office of State Budget and Management. If the Department adjusts the allocation of any Block Grant due to changes in federal fund availability, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.60.(d) Appropriations from federal Block Grant funds are made for the fiscal year ending June 30, 2012, according to the schedule enacted for State fiscal year 2011-2012 or until a new schedule is enacted by the General Assembly.

SECTION 10.60.(e) All changes to the budgeted allocations to the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations for review prior to implementing the changes. The report shall include an itemized listing of affected programs, including associated changes in budgeted allocations. All changes to the budgeted allocations to the Block Grants shall be reported immediately to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. This subsection does not apply to Block Grant changes caused by legislative salary increases and benefit adjustments.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) FUNDS

SECTION 10.60.(e1) The sum of ninety-four million four hundred fifty-three thousand three hundred fifteen dollars ($94,453,315) appropriated in this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used for Work First County Block Grants. The Division shall certify these funds in the appropriate State level services based on prior year actual expenditures. The Division has the authority to realign the authorized budget for these funds among the State level services based on current year actual expenditures.

SECTION 10.60.(f) The sum of one million ninety-three thousand one hundred seventy-six dollars ($1,093,176) appropriated in this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used to support administration of TANF-funded programs.

SECTION 10.60.(g) The sum of two million two hundred thousand dollars ($2,200,000) appropriated under this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used to provide domestic violence services to Work First recipients. These funds shall be used to provide domestic violence counseling, support, and other direct services to clients. These funds shall not be used to establish new domestic violence shelters or to facilitate lobbying efforts. The Division of Social Services may use up to seventy-five thousand dollars ($75,000) in TANF funds to support one administrative position within the Division of Social Services to implement this subsection.

Each county department of social services and the local domestic violence shelter program serving the county shall develop jointly a plan for utilizing these funds. The plan shall include the services to be provided and the manner in which the services shall be delivered. The county plan shall be signed by the county social services director or the director's designee and the domestic violence program director or the director's designee and submitted to the Division of Social Services by December 1, 2011. The Division of Social Services, in consultation with the Council for Women, shall review the county plans and shall provide consultation and technical assistance to the departments of social services and local domestic violence shelter programs, if needed.

The Division of Social Services shall allocate these funds to county departments of social services according to the following formula: (i) each county shall receive a base allocation of five thousand dollars ($5,000) and (ii) each county shall receive an allocation of the remaining funds based on the county's proportion of the statewide total of the Work First caseload as of July 1, 2011, and the county's proportion of the statewide total of the individuals receiving domestic violence services from programs funded by the Council for Women as of July 1, 2011. The Division of Social Services may reallocate unspent funds to counties that submit a written request for additional funds.

SECTION 10.60.(h) The sum of fourteen million four hundred fifty-two thousand three hundred ninety-one dollars ($14,452,391) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in TANF funds for the 2011-2012 fiscal year for child welfare improvements shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and post-adoption services for eligible families.

SECTION 10.60.(i) The sum of three million six hundred nine thousand three hundred fifty-five dollars ($3,609,355) appropriated in this section in TANF funds to the Department of Health and Human Services, Special Children Adoption Fund, for the 2011-2012 fiscal year shall be used in accordance with G.S. 108A-50.2, as enacted in Section 10.48 of S.L. 2009-451. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

SECTION 10.60.(j) The sum of seven hundred fifty-four thousand one hundred fifteen dollars ($754,115) appropriated in this section to the Department of Health and Human Services in TANF funds for the 2011-2012 fiscal year shall be used to continue support for the Child Welfare Collaborative.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) CONTINGENCY FUNDS

SECTION 10.60.(k) The sum of two million five hundred thousand dollars ($2,500,000) appropriated in this section to the Department in TANF funds for Boys and Girls Clubs for the 2011-2012 fiscal year shall be used to make grants for approved programs. The Department of Health and Human Services, in accordance with federal regulations for the use of TANF Contingency funds, shall administer a grant program to award funds to the Boys and Girls Clubs across the State in order to implement programs that improve the motivation, performance, and self-esteem of youths and to implement other initiatives that would be expected to reduce gang participation, school dropout, and teen pregnancy rates. The Department shall facilitate collaboration between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs and encourage them to submit joint applications for the funds if appropriate.

SECTION 10.60.(l) The sum of one million three hundred eighty-nine thousand eighty-four dollars ($1,389,084) appropriated in this section in TANF Contingency funds to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used to support administration of TANF-funded programs.

SOCIAL SERVICES BLOCK GRANT

SECTION 10.60.(l1) The sum of thirty million two hundred eighty-eight thousand seven hundred eighty-three dollars ($30,288,783) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used for County Block Grants. The Division shall certify these funds in the appropriate State level services based on prior year actual expenditures. The Division has the authority to realign the authorized budget for these funds among the State level services based on current year actual expenditures.

SECTION 10.60.(m) The sum of one million three hundred thousand dollars ($1,300,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used to support various child welfare training projects as follows:

(1) Provide a regional training center in southeastern North Carolina.
(2) Provide training for residential child caring facilities.
(3) Provide for various other child welfare training initiatives.

SECTION 10.60.(n) The sum of two million one hundred forty-seven thousand nine hundred sixty-seven dollars ($2,147,967) appropriated in this section in the Social Services Block Grant for child caring agencies for the 2011-2012 fiscal year shall be allocated in support of State foster home children.

SECTION 10.60.(o) The Department of Health and Human Services is authorized, subject to the approval of the Office of State Budget and Management, to transfer Social Services Block Grant funding allocated for departmental administration between divisions that have received administrative allocations from the Social Services Block Grant.

SECTION 10.60.(p) Social Services Block Grant funds appropriated for the Special Children's Adoption Incentive Fund will require a fifty percent (50%) local match.

SECTION 10.60.(q) The sum of four hundred twenty-two thousand three dollars ($422,003) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2011-2012 fiscal year shall be used to continue a Mental Health Services Program for children.

SECTION 10.60.(r) The sum of five million forty thousand dollars ($5,040,000) appropriated in this section in the Social Services Block Grant for the 2011-2012 fiscal year shall be allocated to the Department of Health and Human Services, Division of Social Services. The Division shall allocate these funds to local departments of social services to replace the loss of Child Protective Services State funds that are currently used by county government to pay for Child Protective Services staff at the local level. These funds shall be used to maintain the number of Child Protective Services workers throughout the State. These Social Services Block Grant funds shall be used to pay for salaries and related expenses only and are exempt from 10A NCAC 71R .0201(3) requiring a local match of twenty-five percent (25%).

SECTION 10.60.(s) The sum of four hundred thousand dollars ($400,000) appropriated in this section in the Social Services Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Central Management and Support, shall be allocated to the ALS Association, Jim "Catfish" Hunter Chapter, to be used to provide patient care and community services to persons with ALS and their families. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.60.(t) The sum of one hundred fifty thousand dollars ($150,000) appropriated in this section in the Social Services Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Public Health, shall be allocated to Prevent Blindness North Carolina to be used for direct service programs. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.60.(u) The sum of seventy-five thousand dollars ($75,000) appropriated in this section in the Social Services Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Services for the Blind, shall be used to provide accessible electronic information for blind and disabled persons. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.60.(v) The sum of three hundred seventy-five thousand dollars ($375,000) appropriated in this section in the Social Services Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Social Services, shall be used to continue support for the Child Advocacy Centers and are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.60.(w) Social Services Block Grant funds allocated to the North Carolina Inter-Agency Council for the 2011-2012 fiscal year for coordinating homeless programs and child medical evaluations are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.60.(w1) The sum of three million seven hundred seventy-three thousand one dollars ($3,773,001) appropriated in this section in the Social Services Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division

of Social Services, shall be allocated to North Carolina Food Bank agencies to be used to purchase and distribute food staples for emergency food assistance. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT

SECTION 10.60.(x) Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Commission on Governmental Operations. Additional funds received shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Commission on Governmental Operations.

SECTION 10.60.(y) The sum of eleven million eight hundred sixty-two thousand six hundred seventeen dollars ($11,862,617) appropriated in this section in the Low-Income Home Energy Assistance Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Social Services, shall be used for energy assistance payments for the households of (i) elderly persons age 60 and above with income up to one hundred thirty percent (130%) of the federal poverty level and (ii) disabled persons eligible for services funded through the Division of Aging and Adult Services. County departments of social services shall submit to the Division of Social Services an outreach plan for targeting households with 60-year-old household members no later than August 1 of each year.

SECTION 10.60.(y1) The sum of four million seven hundred thirty-two thousand six hundred sixty-seven dollars ($4,732,667) appropriated in this section in the Low-Income Home Energy Assistance Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Central Management and Support Division, shall be used to continue the implementation of the NC FAST program. The U.S. Department of Health and Human Services has authorized the use of the LIEAP program service funds to continue the implementation of the NC FAST program. This meets the required participation based on the federally approved cost allocation plan. In order to advance the implementation of NC FAST, which creates a single portal of entry for the Department of Health and Human Services programs, these federal funds are critical; otherwise State funds will have to be identified.

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT

SECTION 10.60.(z) Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.60.(aa) If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT

SECTION 10.60.(bb) The sum of two hundred fifty thousand dollars ($250,000) appropriated in this section in the Substance Abuse Prevention and Treatment Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2011-2012 fiscal year for the North Carolina Institute of Medicine (NCIOM) shall be used to continue its Task Force on the mental health, social, and emotional needs of young children and their families. In addition to the issues identified in Section 16.1 of S.L. 2010-152, the Task Force shall study the impact of parents' substance use problems on the mental health and social and emotional well-being of children from conception through age five. The NCIOM shall make an interim report to the General Assembly no later than January 15, 2012, which may include legislative and other recommendations, and shall issue its final report with findings, recommendations, and any proposed legislation to the 2013 General Assembly upon its convening.

MATERNAL AND CHILD HEALTH BLOCK GRANT

SECTION 10.60.(cc) The sum of one million four hundred ninety-seven thousand dollars ($1,497,000) appropriated in this section in the Maternal and Child Health Block Grant for the 2011-2012 fiscal year to the Department of Health and Human Services, Division of Public Health, shall be used to fund the following activities as indicated:

(1) March of Dimes to provide folic acid and education for women before pregnancy to reduce birth defects and infant mortality, the sum of three hundred fifty thousand dollars ($350,000).

(2) Teen Pregnancy Prevention, the sum of six hundred fifty thousand dollars ($650,000).

(3) Healthy Start/Safe Sleep, the sum of two hundred forty-seven thousand dollars ($247,000).

(4) Perinatal Quality Collaborative of North Carolina, the sum of two hundred fifty thousand dollars ($250,000).

SECTION 10.60.(dd) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2011-2012 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an abstinence until marriage education program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4) and (4a). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

SECTION 10.60.(ee) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

PART XI. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

REPEAL BOARD OF AGRICULTURE REVIEW OF FEE SCHEDULES

SECTION 11.2. G.S. 106-6.1(b) is repealed.

RECLASSIFY VACANT POSITION WITHIN DACS TO ANIMAL WELFARE PROGRAM

SECTION 11.7. The Department of Agriculture and Consumer Services shall reclassify one vacant position within the Department and shall fill this reclassified position in a timely manner in order to provide support for the Animal Welfare Program within the Department.

PART XII. DEPARTMENT OF LABOR

LABOR/REPEAL STATUTE REQUIRING BIENNIAL REVIEW OF FEES BY DEPARTMENT

SECTION 12.1. G.S. 95-14.1 is repealed.

PART XIII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

ABOLISH, TRANSFER TO OTHER DEPARTMENTS, OR CONSOLIDATE WITHIN DENR ALL ENVIRONMENTAL HEALTH PROGRAMS UNDER DENR

SECTION 13.3.(a) The Vector Control Program and the Tick Control Program within the Division of Environmental Health of the Department of Environment and Natural Resources are abolished. Further, any equipment that the State loaned to any local health department as part of the Vector Control Program that is in the possession of the local health department shall be retained by that local health department, and the ownership of that equipment shall be transferred from the State to that local health department.

SECTION 13.3.(b) All functions, powers, duties, and obligations previously vested in the Grade "A" Milk Sanitation Program within the Division of Environmental Health of the Department of Environment and Natural Resources are transferred to and vested in the Food and Drug Protection Division of the Department of Agriculture and Consumer Services by a Type I transfer, as defined in G.S. 143A-6.

SECTION 13.3.(c) All functions, powers, duties, and obligations previously vested in the Sleep Products Program within the Public Health Pest Management Section of the Division of Environmental Health of the Department of Environment and Natural Resources are transferred to and vested in the Department of Agriculture and Consumer Services by a Type I transfer, as defined in G.S. 143A-6.

SECTION 13.3.(d) The following sections of the Division of Environmental Health that support programs implemented through local health departments and programs primarily focused on food safety and other public health concerns are, subject to subsection (b) of this section, transferred from the Department of Environment and Natural Resources to the Division of Public Health of the Department of Health and Human Services with all the elements of a Type I transfer, as defined by G.S. 143A-6:

(1) Environmental Health Services Section.
(2) On-Site Water Protection Section.
(3) Office of Education and Training.

SECTION 13.3.(e) All functions, powers, duties, and obligations previously vested in the Radiation Protection Section within the Division of Environmental Health of the Department of Environment and Natural Resources are transferred to and vested in the Division of Health Safety Regulation of the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6.

SECTION 13.3.(f) The Public Water Supply Section of the Division of Environmental Health of the Department of Environment and Natural Resources shall be transferred to the Division of Water Resources of the Department of Environment and Natural Resources with all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 13.3.(g) The Shellfish Sanitation and Recreational Water Quality Section of the Division of Environmental Health of the Department of Environment and Natural Resources shall be transferred to the Division of Marine Fisheries of the Department of Environment and Natural Resources with all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 13.3.(h) The Division of Environmental Health of the Department of Environment and Natural Resources is abolished, and the Public Health Pest Management Section of the Division of Environmental Health of the Department of Environment and Natural Resources is abolished.

SECTION 13.3.(i) G.S. 143B-279.3(c)(3) is repealed.

SECTION 13.3.(j) Part 1 of Article 12 of Chapter 130A of the General Statutes is repealed.

SECTION 13.3.(k) G.S. 143-300.8 reads as rewritten:

"**§ 143-300.8. Defense of local sanitarians.**

Any local health department sanitarian enforcing rules of the Commission for Public Health ~~or of the Environmental Management Commission~~ under the supervision of the Department of ~~Environment and Natural Resources~~Health and Human Services pursuant to G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Public ~~Health or of the Environmental Management Commission.~~Health. The Department of Environment and Natural Resources shall pay any judgment against the sanitarian, or any settlement made on his behalf, subject to the provisions of G.S. 143-300.6."

SECTION 13.3.(l) Part 9 of Article 8 of Chapter 130A of the General Statutes is recodified as Article 28C of Chapter 106 of the General Statutes, to be entitled "Grade 'A' Milk Sanitation"; G.S. 130A-274 is recodified as G.S. 106-266.30; G.S. 130A-275 is recodified as G.S. 106-266.31; G.S. 130A-276 is recodified as G.S. 106-266.32; G.S. 130A-277 is recodified as G.S. 106-266.33; G.S. 130A-278 is recodified as G.S. 106-266.34; and G.S. 130A-279 is recodified as G.S. 106-266.35.

SECTION 13.3.(m) G.S. 106-266.30, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-266.30. Definitions.**

The following definitions shall apply throughout this ~~Part:~~Article:

(1) "Grade 'A' milk" means fluid milk and milk products which have been produced, transported, handled, processed and distributed in accordance with the provisions of the rules adopted by the ~~Commission.~~Board of Agriculture.
(2) "Milk" means the lacteal secretion practically free from colostrum obtained by the milking of one or more cows, goats, or other lactating animals."

SECTION 13.3.(n) G.S. 106-266.31, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-266.31. ~~Commission~~ Board to adopt rules.**

~~Notwithstanding the provisions of G.S. 106-267 et seq., the Commission is authorized and directed to~~The Board of Agriculture shall adopt rules relating to the sanitary production, transportation, processing and distribution of Grade "A" milk. The rules, in order to protect and promote the public health, shall provide definitions and requirements for: (i) the sanitary production and handling of milk on Grade "A" dairy farms; (ii) the sanitary transportation of Grade "A" raw milk for processing; (iii) the sanitary processing of Grade "A" milk; (iv) the sanitary handling and distribution of Grade "A" milk; (v) the requirements for the issuance, suspension and revocation of permits; and (vi) the establishment of quality standards for Grade "A" milk. The rules shall be no less stringent than the 1978 Pasteurized Milk Ordinance recommended by the U.S. Public Health Service/Food and Drug Administration as amended effective January 1, 1982. The ~~Commission~~ Board of Agriculture may adopt by reference the U.S. Public Health Service/Food and Drug Administration 1978 Pasteurized Milk ~~Ordinance, and any amendment thereto~~Ordinance, as amended."

SECTION 13.3.(o) G.S. 106-266.32, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-266.32. Permits required.**

No person shall produce, transport, process, or distribute Grade "A" milk without first having obtained a valid permit from the ~~Department.~~Department of Agriculture and Consumer Services."

SECTION 13.3.(p) G.S. 106-266.33, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-266.33. Duties of the Department.**

The Department of Agriculture and Consumer Services shall enforce the rules of the ~~Commission~~ Board of Agriculture governing Grade "A" milk by making sanitary inspections of Grade "A" dairy farms, Grade "A" processing plants, Grade "A" milk haulers and Grade "A" distributors; by determining the quality of Grade "A" milk; and by evaluating methods of handling Grade "A" milk to insure compliance with the provisions of the rules of the ~~Commission.~~Board of Agriculture. The Department of Agriculture and Consumer Services shall issue permits for the operation of Grade "A" dairy farms, processing plants and haulers in accordance with the provisions of the rules of the ~~Commission~~ Board of Agriculture and shall suspend or revoke permits for violations in accordance with the rules."

SECTION 13.3.(q) G.S. 106-266.34, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-266.34. Certain other authorities of Department of Agriculture and Consumer Services not replaced.**

This ~~Part~~ Article shall not repeal or limit the Department of Agriculture and Consumer Services' authority to carry out labeling requirements, required butterfat testing, aflatoxin testing, pesticide testing, other testing performed by the Department of Agriculture and Consumer ~~Services~~ Services, and any other function of the Department of Agriculture and Consumer Services concerning Grade "A" milk ~~which~~ under any other Article under this Chapter that is not inconsistent with this Article."

SECTION 13.3.(r) G.S. 106-266.35, as recodified under subsection (l) of this section, reads as rewritten:

"**§ 106-266.35. Sale or dispensing of milk.**

Only milk that is Grade "A" pasteurized milk may be sold or dispensed directly to consumers for human consumption. Raw milk and raw milk products shall be sold or dispensed only to a permitted milk hauler or to a processing facility at which the processing of milk is permitted, graded, or regulated by a local, State, or federal agency. The ~~Commission~~ Board of Agriculture may adopt rules to provide exceptions for dispensing raw milk and raw milk products for nonhuman consumption. Any raw milk or raw milk product dispensed as animal feed shall include on its label the statement "NOT FOR HUMAN CONSUMPTION" in letters

at least one-half inch in height. Any raw milk or raw milk product dispensed as animal feed shall also include on its label the statement "IT IS NOT LEGAL TO SELL RAW MILK FOR HUMAN CONSUMPTION IN NORTH CAROLINA." "Sale" or "sold" shall mean any transaction that involves the transfer or dispensing of milk and milk products or the right to acquire milk and milk products through barter or contractual arrangement or in exchange for any other form of compensation including, but not limited to, the sale of shares or interest in a cow, goat, or other lactating animal or herd."

SECTION 13.3.(s) G.S. 130A-21(b) is recodified as a new section G.S. 106-266.36 in Article 28 of Chapter 106 of the General Statutes, as recodified by subsection (l) of this section, to have the catchline "Milk embargo."

SECTION 13.3.(t) G.S. 106-266.36, as recodified in subsection (s) of this section, reads as rewritten:

"**§ 106-266.36. Milk embargo.**

If the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture or a local health director has probable cause to believe that any milk designated as Grade "A" milk is misbranded or does not satisfy the milk sanitation rules adopted pursuant to ~~G.S. 130A-275,~~G.S. 106-266.31, the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture or a local health director may detain or embargo the milk by affixing a tag to it and warning all persons not to remove or dispose of the milk until permission for removal or disposal is given by the official by whom the milk was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed milk without that permission.

The official by whom the milk was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the milk is detained or embargoed for an order for condemnation of the article. If the court finds that the milk is misbranded or that it does not satisfy the milk sanitation rules adopted pursuant to ~~G.S. 130A-275,~~G.S. 106-266.31, either the milk shall be destroyed under the supervision of the petitioner or the petitioner shall ensure that the milk will not be used for human consumption as Grade "A" milk. All court costs and fees, storage, expenses of carrying out the court's order and other expense shall be taxed against the claimant of the milk. If, the milk, by proper labelling or processing, can be properly branded and will satisfy the milk sanitation rules adopted pursuant to ~~G.S. 130A-275,~~G.S. 106-266.31, the court, after the payment of all costs, fees, and expenses and after the claimant posts an adequate bond, may order that the milk be delivered to the claimant for proper labelling and processing under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court either that the milk is no longer mislabelled or in violation of the milk sanitation rules adopted pursuant to ~~G.S. 130A-275,~~G.S. 106-266.31, or that the milk will not be used for human consumption, and that in either case the expenses of supervision have been paid."

SECTION 13.3.(u) G.S. 106-143 reads as rewritten:

"**§ 106-143. Article construed supplementary.**

Nothing in this Article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the Commission for Public Health or the Department of Environment and Natural Resources or any local health department in their sanitary work in connection with public and private water supplies, sewerage, meat, ~~milk, milk products, shellfish, finfish,~~ or other foods, or food products, or the production, handling, or processing of these items."

SECTION 13.3.(v) Part 8 of Article 8 of Chapter 130A of the General Statutes is recodified as Article 4H of Chapter 106 of the General Statutes, to be entitled "Bedding"; G.S. 130A-261 is recodified as G.S. 106-65.95; G.S. 130A-262 is recodified as G.S. 106-65.96; G.S. 130A-263 is recodified as G.S. 106-65.97; G.S. 130A-264 is recodified as G.S. 106-65.98; G.S. 130A-265 is recodified as G.S. 106-65.99; G.S. 130A-266 is recodified as G.S. 106-65.100; G.S. 130A-267 is recodified as G.S. 106-65.101; G.S. 130A-268 is recodified as G.S. 106-65.102; G.S. 130A-269 is recodified as G.S. 106-65.103; G.S. 130A-270 is recodified as G.S. 106-65.104; G.S. 130A-271 is recodified as G.S. 106-65.105; G.S. 130A-272 is recodified as G.S. 106-65.106; and G.S. 130A-273 is recodified as G.S. 106-65.107.

SECTION 13.3.(w) G.S. 106-65.95, as recodified under subsection (v) of this section, reads as rewritten:

"**§ 106-65.95. Definitions.**

The following definitions shall apply throughout this ~~Part:~~Article:

...."

SECTION 13.3.(x) G.S. 106-65.96, as recodified under subsection (v) of this section, reads as rewritten:

"**§ 106-65.96. Sanitizing.**

(a) No person shall sell any renovated bedding or secondhand bedding unless it is sanitized in accordance with rules adopted by the ~~Commission.~~Board of Agriculture.

(b) A sanitizing apparatus or process shall not be used for sanitizing bedding or material required to be sanitized under this ~~Part~~ Article until the apparatus is approved by the ~~Department.~~Department of Agriculture and Consumer Services.

(c) A person who sanitizes bedding shall attach to the bedding a yellow tag containing information required by the rules of the ~~Commission.~~Board of Agriculture.

(d) A person who sanitizes material or bedding for another person shall keep a complete record of the kind of material and bedding which has been sanitized. The record shall be subject to inspection by the ~~Department.~~Department of Agriculture and Consumer Services.

(e) A person who receives used bedding for renovation or storage shall attach to the bedding a tag on which is legibly written the date of receipt and the name and address of the owner."

SECTION 13.3.(y) G.S. 106-65.98, as recodified under subsection (v) of this section, reads as rewritten:

"**§ 106-65.98. Storage of used materials.**

No establishment shall store any unsanitized previously used materials in the same room with bedding or materials that are new or have been sanitized unless the new or sanitized bedding or materials are completely segregated from the unsanitized materials in a manner approved by the rules of the ~~Commission.~~Board of Agriculture."

SECTION 13.3.(z) G.S. 106-65.99, as recodified under subsection (v) of this section, reads as rewritten:

"**§ 106-65.99. Tagging requirements.**

(a) A tag of durable material approved by the ~~Commission~~ Board of Agriculture shall be sewed securely to all bedding. The tag shall be at least two inches by three inches in size.

(b) The following shall be plainly stamped or printed upon the tag with ink in English:

(1) The name and kind of material or materials used to fill the bedding which are listed in the order of their predominance;

(2) A registration number obtained from the ~~Department;~~Department of Agriculture and Consumer Services; and

(3) In letters at least one-eighth inch high the words "made of new material", if the bedding contains no previously used material; or the words "made of previously used materials", if the bedding contains any previously used material; or the word "secondhand" on any bedding which has been used but not remade.

(4) Repealed by Session Laws 1987, c. 456, s. 4.

(c) A white tag shall be used for manufactured bedding and a yellow tag for renovated or sanitized bedding.

(d) The tag must be sewed to the outside covering before the filling material has been inserted. No trade name, advertisement nor any other wording shall appear on the tag."

SECTION 13.3.(aa) G.S. 106-65.100, as recodified under subsection (v) of this section, reads as rewritten:

"**§ 106-65.100. Altering tags prohibited.**

No person, other than one purchasing bedding for personal use or a representative of the Department of Agriculture and Consumer Services shall remove, deface or alter the tag required by this ~~Part.~~Article."

SECTION 13.3.(bb) G.S. 106-65.101, as recodified under subsection (v) of this section, reads as rewritten:

"**§ 106-65.101. Selling regulated.**

(a) No person shall sell any bedding in this State (whether manufactured within or without this State) which has not been manufactured, tagged, and labeled in the manner required by this ~~Part~~ Article and which does not otherwise comply with the provisions of this ~~Part.~~Article.

(b) This ~~Part~~ Article shall not apply to bedding sold by the owner and previous user from the owner's home directly to a purchaser for the purchaser's own personal use unless the bedding has been exposed to an infectious or communicable disease.

(c) Possession of any bedding in any store, warehouse, itinerant vendor's conveyance or place of business, other than a private home, hotel or other place where these articles are ordinarily used, shall constitute prima facie evidence that the item is possessed with intent to sell. No secondhand bedding shall be possessed with intent to sell for a period exceeding 60 days unless it has been sanitized."

SECTION 13.3.(cc) G.S. 106-65.102, as recodified under subsection (v) of this section, reads as rewritten:

"**§ 106-65.102. Registration numbers.**

(a) All persons manufacturing or sanitizing bedding in this State or manufacturing bedding to be sold in this State shall apply for a registration number on a form prescribed by the ~~Secretary.~~Commissioner of Agriculture. Upon receipt of the completed application and applicable fees, the Department of Agriculture and Consumer Services shall issue to the applicant a certificate of registration showing the person's name and address, registration number and other pertinent information required by the rules of the ~~Commission.~~Board of Agriculture."

SECTION 13.3.(dd) G.S. 106-65.103, as recodified under subsection (v) of this section, reads as rewritten:

"**§ 106-65.103. Payment of fees; licenses.**

(c) The Department of Agriculture and Consumer Services shall administer and enforce this ~~Part.~~Article. A person who has done business in this State throughout the preceding calendar year shall obtain a license by paying a fee to the Department of Agriculture and Consumer Services in an amount determined by the total number of bedding units manufactured, sold, or sanitized in this State by the applicant during the calendar year immediately preceding, at the rate of five and two tenths cents (5.2¢) per bedding unit. However, if this amount is less than fifty dollars ($50.00), a minimum fee of fifty dollars ($50.00) shall be paid to the ~~Department.~~Department of Agriculture and Consumer Services.

(d) A person who has not done business in this State throughout the preceding calendar year shall obtain a license by paying an initial fee to the Department of Agriculture and Consumer Services in the amount of seven hundred twenty dollars ($720.00) for the first year in which business is done in this State, prorated in accordance with the quarter of the calendar year in which the person begins doing business. After submission of proof of business volume in accordance with subsection (h) of this section for the part of the preceding calendar year in which the person did business in this State, the Department of Agriculture and Consumer Services shall determine the amount of fee for which the person is responsible for that time period by using a rate of five and two tenths cents (5.2¢) for each bedding unit. However, if this amount is less than fifty dollars ($50.00), then the amount of the fee for which the person is responsible shall be fifty dollars ($50.00). If the person's initial payment is more than the amount of the fee for which the person is responsible, the Department of Agriculture and Consumer Services shall make a refund or adjustment to the cost of the fee due for the next year in the amount of the difference. If the initial payment is less than the amount of the fee for which the person is responsible, the person shall pay the difference to the ~~Department.~~Department of Agriculture and Consumer Services.

(d1) Payments, refunds, and adjustments shall be made in accordance with rules adopted by the ~~Commission.~~Board of Agriculture.

(d2) Upon payment of the fees charged pursuant to subsections (c) and (d), or the first installment thereof as provided by rules adopted by the ~~Commission,~~Board of Agriculture, the Department of Agriculture and Consumer Services shall issue a license to the person. Licenses shall be kept conspicuously posted in the place of business of the licensee at all times. The ~~Secretary~~ Commissioner of Agriculture may suspend a license for a maximum of six months for two or more serious violations of this ~~Part~~ Article or of the rules of the ~~Commission,~~Board of Agriculture within any 12-month period.

(e) A maximum fee of seven hundred fifty dollars ($750.00) shall be charged for units of bedding manufactured in this State but not sold in this State.

(f) For the sole purpose of computing fees for which a person is responsible, the following definitions shall apply: One mattress is defined as one bedding unit; one upholstered spring is defined as one bedding unit; one pad is defined as one bedding unit; one sleeping bag

is defined as one bedding unit; five comforters, pillows or decorative pillows are defined as one bedding unit; and any other item is defined as one bedding unit.

(g) An application for license must be submitted on a form prescribed by the ~~Secretary.~~Commissioner of Agriculture. No license may be issued to a person unless the person complies with the rules of the ~~Commission~~ Board of Agriculture governing the granting of licenses.

(h) The ~~Commission~~ Board of Agriculture shall adopt rules for the proper enforcement of this section. The rules shall include provisions governing the type and amount of proof which must be submitted by the applicant to the Department of Agriculture and Consumer Services in order to establish the number of bedding units that were, during the preceding calendar year:

(1) Manufactured and sold in this State;

(2) Manufactured outside of this State and sold in this State; and

(3) Manufactured in this State but not sold in this State.

(i) The ~~Commission~~ Board of Agriculture may provide in its rules for additional proof of the number of bedding units sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer is incomplete, misleading or incorrect."

SECTION 13.3.(ee) G.S. 106-65.104, as recodified under subsection (v) of this section, reads as rewritten:

"§ 106-65.104. Bedding Law Account.

The Bedding Law Account is established as a nonreverting account within the ~~Department.~~Department of Agriculture and Consumer Services. All fees collected under this ~~Part~~ Article shall be credited to the Account and applied to the following costs:

(1) Salaries and expenses of inspectors and other employees who enforce this ~~Part.~~Article.

(2) Expenses directly connected with the enforcement of this ~~Part,~~Article, including attorney's fees, which are expressly authorized to be incurred by the ~~Secretary~~ Commissioner of Agriculture without authority from any other source when in the ~~Secretary's opinion~~opinion of the Commissioner of Agriculture it is advisable to employ an attorney to prosecute any persons."

SECTION 13.3.(ff) G.S. 106-65.105, as recodified under subsection (v) of this section, reads as rewritten:

"§ 106-65.105. Enforcement by the ~~Department.~~Department of Agriculture and Consumer Services.

(a) The Department of Agriculture and Consumer Services shall enforce the provisions of this ~~Part~~ Article and the rules adopted by the ~~Commission.~~Board of Agriculture.

(b) The ~~Secretary~~ Commissioner of Agriculture may prohibit sale and place an "off sale" tag on any bedding which is not made, sanitized, or tagged as required by this ~~Part~~ Article and the rules of the ~~Commission.~~Board of Agriculture. The bedding shall not be sold or otherwise removed until the violation is remedied and the ~~Secretary~~ Commissioner of Agriculture has reinspected it and removed the "off sale" tag.

(c) A person supplying material to a bedding manufacturer shall furnish an itemized invoice of all furnished material. Each material entering into willowed or other mixtures shall be shown on the invoice. The bedding manufacturer shall keep the invoice on file for one year subject to inspection by the ~~Department.~~Department of Agriculture and Consumer Services.

(d) When the ~~Secretary~~ Commissioner of Agriculture has reason to believe that bedding is not tagged or filled as required by this ~~Part,~~Article, the ~~Secretary~~ Commissioner of Agriculture shall have authority to open a seam of the bedding to examine the filling, and, if unable after this examination to determine if the filling is of the kind stated on the tag, shall have the authority to examine purchase or other records necessary to determine definitely the kind of material used in the bedding. The ~~Secretary~~ Commissioner of Agriculture shall have authority to seize and hold for evidence any records and any bedding or bedding material which in the ~~Secretary's opinion~~opinion of the Commissioner of Agriculture is made, possessed or offered for sale in violation of this ~~Part~~ Article or the rules of the ~~Commission.~~Board of Agriculture. The ~~Secretary~~ Commissioner of Agriculture shall have authority to take a sample of any bedding or bedding material for the purpose of examination or for evidence."

SECTION 13.3.(gg) G.S. 106-65.106, as recodified under subsection (v) of this section, reads as rewritten:

"§ 106-65.106. Exemptions for blind persons and State institutions.

(a) In cases where bedding is manufactured, sanitized or renovated in a plant or place of business which has qualified as a nonprofit agency for the blind or severely handicapped under P.L. 92-28, as amended, the responsible person shall satisfy the provisions of this ~~Part~~ Article and the rules of the ~~Commission.~~Board of Agriculture. However, the responsible persons at these plants or places of business shall not be required to pay fees in accordance with ~~G.S. 130A-269.~~G.S. 106-65.103.

(b) State institutions engaged in the manufacture, renovation or sanitizing of bedding for their own use or that of another State institution are exempted from all provisions of this ~~Part.~~Article."

SECTION 13.3.(hh) G.S. 106-65.107, as recodified under subsection (v) of this section, reads as rewritten:

"**§ 106-65.107. Rules.**

The ~~Commission~~ Board shall adopt rules required by this ~~Part~~ Article in order to protect the public health."

SECTION 13.3.(ii) G.S. 90A-51 reads as rewritten:

"**§ 90A-51. Definitions.**

The words and phrases defined below shall when used in this Article have the following meaning unless the context clearly indicates otherwise:

...

(2a) "Environmental health practice" means the provision of environmental health services, including administration, organization, management, education, enforcement, and consultation regarding environmental health services provided to or for the public. These services are offered to prevent environmental hazards and promote and protect the health of the public in the following areas: food, lodging, and institutional sanitation; on-site wastewater treatment and disposal; ~~milk and dairy sanitation; shellfish sanitation; recreational water quality;~~ public swimming pool sanitation; childhood lead poisoning prevention; well permitting and inspection; tattoo parlor sanitation; and all other areas of environmental health requiring the delegation of authority by the Division of ~~Environmental~~ Public Health of the Department of Health and Human Services to State and local environmental health professionals to enforce rules adopted by the Commission for Public ~~Health or the Environmental Management Commission.~~Health. The definition also includes local environmental health professionals enforcing rules of local boards of health for on-site wastewater systems and wells.

...."

SECTION 13.3.(jj) G.S. 90A-55(a) reads as rewritten:

"(a) Board Membership. – The Board shall consist of 12 members who shall serve staggered terms: the Secretary of ~~Environment and Natural Resources,~~Health and Human Services, or the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Division of ~~Environmental~~ Public Health of the Department of ~~Environment and Natural Resources,~~Health and Human Services, and seven practicing environmental health specialists who qualify by education and experience for registration under this Article, six of whom shall represent the Western, Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board."

SECTION 13.3.(kk) G.S. 90A-55(c) reads as rewritten:

"(c) The Environmental Health Section of the North Carolina Public Health Association, Inc., shall submit a recommended list of Board member candidates to the Governor for the Governor's consideration in appointments, except for the two representatives of the Department of ~~Environment and Natural Resources~~Health and Human Services recommended by the Secretary of ~~Environment and Natural Resources~~Health and Human Services and the local health director recommended by the North Carolina Local Health Directors Association."

SECTION 13.3.(ll) G.S. 90A-71(4) reads as rewritten:

"(4) "Department" means the Department of ~~Environment and Natural Resources.~~Health and Human Services."

SECTION 13.3.(mm) G.S. 90A-73(a)(3) reads as rewritten:

"(3) One member appointed by the Governor who is ~~an employee of the Division of Environmental Health of the Department~~a registered professional engineer licensed under Chapter 89C of the General Statutes and whose work experience includes the design of on-site wastewater systems to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three."

SECTION 13.3.(nn) G.S. 90A-81(b) reads as rewritten:

"(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certified contractor or inspector or any work performed by a certified contractor or inspector, or conflicts involving any certified contractor or inspector and the Division of ~~Environmental~~ Public Health of the Department or a local health department."

SECTION 13.3.(oo) G.S. 106-307.2(b) reads as rewritten:

"(b) The State Veterinarian shall notify the State Health Director and the Director of the Division of ~~Environmental~~ Public Health in the Department of ~~Environment and Natural Resources~~Health and Human Services when the State Veterinarian receives a report indicating an occurrence or potential outbreak of anthrax, arboviral infections, brucellosis, epidemic typhus, hantavirus infections, murine typhus, plague, psittacosis, Q fever, hemorrhagic fever, virus infections, and any other disease or condition transmissible to humans that the State Veterinarian determines may have been caused by a terrorist act."

SECTION 13.3.(pp) G.S. 130A-4(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of ~~Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter and the rules of the Commission."

SECTION 13.3.(qq) G.S. 130A-12 reads as rewritten:

"**§ 130A-12. Confidentiality of records.**

All records containing privileged patient medical information, information protected under 45 Code of Federal Regulations Parts 160 and 164, and information collected under the authority of Part 4 of Article 5 of this Chapter that are in the possession of the Department of Health and Human ~~Services, the Department of Environment and Natural Resources,~~Services or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Information contained in the records may be disclosed only when disclosure is authorized or required by State or federal law. Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment, payment, or health care operations. For purposes of this section, the terms "treatment," "payment," and "health care operations" have the meanings given those terms in 45 Code of Federal Regulations § 164.501."

SECTION 13.3.(rr) G.S. 130A-17(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of ~~Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter."

SECTION 13.3.(ss) G.S. 130A-18(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of ~~Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter."

SECTION 13.3.(tt) G.S. 130A-19(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of ~~Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter."

SECTION 13.3.(uu) G.S. 130A-20(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of ~~Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter."

SECTION 13.3.(vv) G.S. 130A-21(a) reads as rewritten:

"(a) In addition to the authority of the Department of Agriculture and Consumer Services pursuant to G.S. 106-125, the Secretary ~~of Environment and Natural Resources~~ or a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when the food or drink is in an establishment that is subject to regulation by the Department of ~~Environment and Natural Resources~~Health and Human Services pursuant to this Chapter, that is subject to rules adopted by the Commission, or that is

the subject of an investigation pursuant to G.S. 130A-144; however, no such action shall be taken in any establishment or part of an establishment that is under inspection or otherwise regulated by the Department of Agriculture and Consumer Services or the United States Department of Agriculture other than the part of the establishment that is subject to regulation by the Department of ~~Environment and Natural Resources~~Health and Human Services pursuant to this Chapter. Any action under this section shall only be taken by, or after consultation with, Department of ~~Environment and Natural Resources~~Health and Human Services regional environmental health specialists, or the Director of the Division of ~~Environmental~~ Public Health or the Director's designee, in programs regulating food and drink pursuant to this Chapter or in programs regulating food and drink that are subject to rules adopted by the Commission. Authority under this section shall not be delegated to individual environmental health specialists in local health departments otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When any action is taken pursuant to this section, the Department of ~~Environment and Natural Resources~~Health and Human Services or the local health director shall immediately notify the Department of Agriculture and Consumer Services. For the purposes of this subsection, all duties and procedures in G.S. 106-125 shall be carried out by the Secretary of ~~the Department of Environment and Natural Resources~~Health and Human Services or the local health director and shall not be required to be carried out by the Department of Agriculture and Consumer Services. It shall be unlawful for any person to remove or dispose of the food or drink by sale or otherwise without the permission of a Department of ~~Environment and Natural Resources~~Health and Human Services regional environmental health specialist, the Director of the Division of ~~Environmental~~ Public Health or the Director's designee, the local health director, or a duly authorized agent of the Department of Agriculture and Consumer Services, or by the court in accordance with the provisions of G.S. 106-125."

SECTION 13.3.(ww) G.S. 130A-21(d) reads as rewritten:

"(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture and Consumer Services. The Department of ~~Environment and Natural Resources~~Health and Human Services and the Department of Agriculture and Consumer Services are authorized to enter agreements respecting the duties and responsibilities of each agency in the exercise of their embargo authority."

SECTION 13.3.(xx) G.S. 130A-22(c) reads as rewritten:

"(c) The Secretary ~~of Environment and Natural Resources~~ may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling."

SECTION 13.3.(yy) G.S. 130A-23(e) reads as rewritten:

"(e) The Secretary of Environment and Natural Resources shall have all of the applicable rights enumerated in this section to enforce the provisions of ~~Articles 8, 9, 10, 11, and 12~~Articles 9 and 10 of this Chapter."

SECTION 13.3.(zz) G.S. 130A-34.1(a) reads as rewritten:

"(a) The Local Health Department Accreditation Board is established within the North Carolina Institute for Public Health. The Board shall be composed of 17 members appointed by the Secretary of the Department of Health and Human Services as follows:

(1) Four shall be county commissioners recommended by the North Carolina Association of County Commissioners, and four shall be members of a local board of health as recommended by the Association of North Carolina Boards of Health.
(2) Three local health directors.
(3) ~~Two~~ Three staff members from the Division of Public Health, Department of Health and Human Services.

~~(4) One staff member from the Division of Environmental Health, recommended by the Secretary of Environment and Natural Resources.~~

(5) Three at large."

SECTION 13.3.(aaa) G.S. 130A-227(b) reads as rewritten:

"(b) The following definitions shall apply throughout this Article:

(1) "Department" means the Department of ~~Environment and Natural Resources.~~Health and Human Services.

(2) "Secretary" means the Secretary of ~~Environment and Natural Resources.~~Health and Human Services."

SECTION 13.3.(bbb) G.S. 130A-334(1a) reads as rewritten:

"(1a) "Department" means the Department of ~~Environment and Natural Resources.~~Health and Human Services."

SECTION 13.3.(ccc) G.S. 104E-5 reads as rewritten:

"§ 104E-5. Definitions.

Unless a different meaning is required by the context, the following terms as used in this Chapter shall have the meanings hereinafter respectively ascribed to them:

...

(6) "Department" means the ~~State Department of Environment and Natural Resources.~~Department of Health and Human Services.

...."

SECTION 13.3.(ddd) G.S. 104E-8(c) reads as rewritten:

"(c) The 10 ex officio members shall be appointed by the Governor, shall be members or employees of the following State agencies or their successors, and shall serve at the Governor's pleasure:

...

(6) The Division of ~~Environmental~~ Health Safety Regulation of the Department.

...."

SECTION 13.3.(eee) G.S. 104E-9 reads as rewritten:

"§ 104E-9. Powers and functions of Department of ~~Environment and Natural Resources.~~ Health and Human Services.

(a) The Department of ~~Environment and Natural Resources~~Health and Human Services is authorized:

...

(b) The Division of ~~Environmental~~ Health Safety Regulation of the Department shall develop a training program for tanning equipment operators that meets the training rules adopted by the Commission. If the training program is provided by the Department, the Department may charge each person trained a reasonable fee to recover the actual cost of the training program."

SECTION 13.3.(fff) G.S. 120-70.33(3) reads as rewritten:

"§ 120-70.33. Powers and duties.

The Joint Select Committee shall have the following powers and duties:

...

(3) To evaluate actions of the Radiation Protection Commission, the radiation protection programs administered by the Division of ~~Environmental~~ Health Safety Regulation of the Department of ~~Environment and Natural Resources,~~Health and Human Services, and of any other board, commission, department, or agency of the State or local government as such actions relate to low-level radioactive waste management;

...."

SECTION 13.3.(ggg) G.S. 159G-20 reads as rewritten:

"§ 159G-20. Definitions.

The following definitions apply in this Chapter:

...

~~(4) Division of Environmental Health. – The Division of Environmental Health of the Department of Environment and Natural Resources.~~

(5) Division of Water Quality. – The Division of Water Quality of the Department of Environment and Natural Resources.

(5a) Division of Water Resources. – The Division of Water Resources of the Department of Environment and Natural Resources.

...."

SECTION 13.3.(hhh) G.S. 159G-23 reads as rewritten:

"**§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking Water Reserve.**

The criteria in this section apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Division of Water Quality and the Division of ~~Environmental Health~~Water Resources must each establish a system of assigning points to applications based on the following criteria:

...."

SECTION 13.3.(iii) G.S. 159G-26(a) reads as rewritten:

"(a) Requirement. – The Department must publish a report each year on the accounts in the Water Infrastructure Fund that are administered by the Division of Water Quality or the Division of ~~Environmental Health.~~Water Resources. The report must be published by 1 November of each year and cover the preceding fiscal year. The Department must make the report available to the public and must give a copy of the report to the Environmental Review Commission and the Fiscal Research Division of the General Assembly."

SECTION 13.3.(jjj) G.S. 159G-30 reads as rewritten:

"**§ 159G-30. Department's responsibility.**

The Department, through the Division of Water Quality and the Division of ~~Environmental Health,~~Water Resources, administers loans and grants made from the CWSRF, the DWSRF, the Wastewater Reserve, and the Drinking Water Reserve. The Division of Water Quality administers loans and grants from the CWSRF and the Wastewater Reserve. The Division of ~~Environmental Health~~Water Resources administers loans and grants from the DWSRF and the Drinking Water Reserve."

SECTION 13.3.(kkk) G.S. 159G-37 reads as rewritten:

"**§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water Reserve.**

An application for a loan or grant from the CWSRF or the Wastewater Reserve must be filed with the Division of Water Quality of the Department. An application for a loan or grant from the DWSRF or the Drinking Water Reserve must be filed with the Division of ~~Environmental Health~~Water Resources of the Department. An application must be submitted on a form prescribed by the Division and must contain the information required by the Division. An applicant must submit to the Division any additional information requested by the Division to enable the Division to make a determination on the application. An application that does not contain information required on the application or requested by the Division is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this Article."

SECTION 13.3.(lll) G.S. 159G-38(b) reads as rewritten:

"(b) Division Review. – If, after reviewing an application, the Division of Water Quality or the Division of ~~Environmental Health,~~Water Resources, as appropriate, determines that a project requires an environmental assessment, the assessment must be submitted before the Division continues its review of the application. If, after reviewing an environmental assessment, the Division concludes that an environmental impact statement is required, the Division may not continue its review of the application until a final environmental impact statement has been completed and approved as provided in the North Carolina Environmental Policy Act."

SECTION 13.3.(mmm) G.S. 159G-38(c) reads as rewritten:

"(c) Hearing. – The Division of Water Quality or the Division of ~~Environmental Health,~~Water Resources, as appropriate, may hold a public hearing on an application for a loan or grant under this Article if it determines that holding a hearing will serve the public interest. An individual who is a resident of any county in which a proposed project is located may submit a written request for a public hearing. The request must set forth each objection to the proposed project or other reason for requesting a hearing and must include the name and address of the individual making the request. The Division may consider all written objections to the proposed project, any statement submitted with the hearing request, and any significant adverse effects the proposed project may have on the environment. The Division's decision on whether to hold a hearing is conclusive. The Division must keep all written requests for a hearing on an application as part of the records pertaining to the application."

SECTION 13.3.(nnn) G.S. 159G-39(a) reads as rewritten:

"(a) Point Assignment. – The Division of Water Quality or the Division of ~~Environmental Health,~~Water Resources, as appropriate, must review all applications filed for a loan or grant under this Article for an application period. The Division must rank each application in accordance with the points assigned to the evaluation criteria. The Division must make a written determination of an application's rank and attach the determination to the application. The Division's determination of rank is conclusive."

SECTION 13.3.(ooo) G.S. 166A-6.1(b) reads as rewritten:

"(b) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Crime Control and Public Safety, for the use of the ~~Division of Environmental Health of the Department of Environment and Natural Resources,~~Radiation Protection Section of the Division of Public Health of the Department of Health and Human Services, an annual fee of thirty-six thousand dollars ($36,000) for each fixed nuclear facility that is located within this State or that has a Plume Exposure Pathway Emergency Planning Zone any part of which is located within this State. This fee shall be applied only to the costs of planning and implementing emergency response activities as required by the Federal Emergency Management Agency for the operation of nuclear facilities. This fee is to be paid no later than July 31 of each year."

SECTION 13.3.(ppp) Part 3 of Article 8 of Chapter 130A of the General Statutes is repealed, except G.S. 130A-230 is recodified as G.S. 113-221.2 in Article 17 of Chapter 113 of the General Statutes.

SECTION 13.3.(qqq) G.S. 113-221.2, as recodified in subsection (ppp) of this section, reads as rewritten:

"**§ 113-221.2. ~~Commission to adopt rules; enforcement of rules.~~Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea.**

For the protection of the public health, the Marine Fisheries Commission shall adopt rules establishing sanitation requirements for the harvesting, processing and handling of scallops, ~~shellfish~~ shellfish, and crustacea of in-State origin. The rules of the Marine Fisheries Commission may also regulate scallops, ~~shellfish~~ shellfish, and crustacea shipped into North Carolina. The Department is authorized to enforce the rules and may issue and revoke permits according to the rules."

SECTION 13.3.(rrr) Part 3A of Article 8 of Chapter 130A of the General Statutes is repealed, except G.S. 130A-233.1 is recodified as G.S. 113-221.3 in Article 17 of Chapter 113 of the General Statutes.

SECTION 13.3.(sss) G.S. 113-221.3, as recodified in subsection (rrr) of this section, reads as rewritten:

"**§ 113-221.3. Monitoring program for State coastal fishing and recreation waters; ~~development and implementation of program.~~removal or destruction of warning signs.**

(a) For the protection of the public health of swimmers and others who use the State's coastal fishing waters for recreational activities, the Department shall develop and implement a program to monitor the State's coastal fishing waters for contaminants. The monitoring program shall cover all coastal fishing waters up to the point where those waters are classified as inland fishing waters.

(b) The Marine Fisheries Commission shall adopt rules to provide for a water quality monitoring program for the coastal recreation waters of the State and to allow the Department to implement the federal Beaches Environmental Assessment and Coastal Health Act of 2000 (Pub. L. No. 106-284; 114 Stat. 870, 875; 33 U.S.C. §§ 1313, 1362). The rules shall address, but are not limited to, definitions, surveys, sampling, action standards, and posting of information on the water quality of coastal recreation waters.

(c) No person shall remove, destroy, damage, deface, mutilate, or otherwise interfere with any sign posted by the Department pursuant to subsection (b) of this section. No person, without just cause or excuse, shall have in his or her possession any sign posted by the Department pursuant to subsection (b) of this section. Any person who violates this section is guilty of a Class 2 misdemeanor.

(d) As used in this section, coastal recreation waters has the same meaning as in 33 U.S.C. § 1362."

SECTION 13.3.(ttt) G.S. 130A-21(c) is recodified as a new section G.S. 113-221.4 in Article 17 of Chapter 113 of the General Statutes to be entitled "Embargo."

SECTION 13.3.(uuu) G.S. 113-221.4, as recodified in subsection (ttt) of this section, reads as rewritten:

"**§ 113-221.4. Embargo.**

(a) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any scallops, ~~shellfish~~ shellfish, or crustacea is adulterated or misbranded, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the article by affixing a tag to it and warning all persons not to remove or dispose of the article until permission for removal or disposal is given by the official by whom it was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed article without that permission.

(b) The official by whom the scallops, ~~shellfish~~ shellfish, or crustacea was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the court finds that the article is adulterated or misbranded, that article shall be destroyed under the supervision of the petitioner. All court costs and fees, storage and other expense shall be taxed against the claimant of the article. If, the article, by proper labelling can be properly branded, the court, after the payment of all costs, fees, expenses, and an adequate bond, may order that the article be delivered to the claimant for proper labelling under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court that the article is no longer mislabelled and that the expenses of supervision have been paid."

SECTION 13.3.(vvv) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

SECTION 13.3.(www) The transfers under this section become effective July 1, 2011, and funds transferred shall be net of any changes enacted by this section. Any references in this act to any program, office, section, division, or department that is transferred under this section shall be construed to be consistent with the transfer under this section.

REQUIRE DENR TO USE DWQ'S GROUNDWATER INVESTIGATION UNIT'S WELL DRILLING SERVICES IN OTHER DENR DIVISIONS

SECTION 13.4.(a) The purposes of this section are (i) to assure that the Groundwater Investigation Unit well drilling staff are fully utilized by establishing a procedure whereby the Groundwater Investigation Unit may bid to contract to provide well drilling services to other divisions of the Department of Environment and Natural Resources and by providing funding support by these divisions for the Unit's costs and travel expenses and (ii) to reduce the need for the Department of Environment and Natural Resources to enter into contracts with private well drilling companies.

SECTION 13.4.(b) During the 2011-2012 fiscal year and the 2012-2013 fiscal year, the Groundwater Investigation Unit of the Division of Water Quality of the Department of Environment and Natural Resources shall bid to contract to perform well drilling services for any division within the Department of Environment and Natural Resources that needs to have wells drilled to monitor groundwater, as part of remediating a contaminated site, or as part of any other division or program responsibility, except for a particular instance when this would be impracticable. The provisions of Article 3 of Chapter 143 of the General Statutes apply to any contract entered into under this section.

SECTION 13.4.(c) The terms of any contract entered into under this section may include a provision whereby the division within the Department of Environment and Natural Resources that contracts for the well drilling services of the Groundwater Investigation Unit may use available receipts for the 2011-2012 fiscal year and for the 2012-2013 fiscal year, as applicable, for the costs of the Groundwater Investigation Unit well drilling staff that are incurred to perform the well drilling services under the contract.

DENR CIVIL PENALTY ASSESSMENTS

SECTION 13.6. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.16. Civil penalty assessments.**

(a) The purpose of this section is to provide to the person receiving a notice of violation of an environmental statute or an environmental rule a greater opportunity to understand what

corrective action is needed, receive technical assistance from the Department of Environment and Natural Resources, and to take the needed corrective action. It is also the purpose of this section to provide to the person receiving the notice of violation a greater opportunity for informally resolving matters involving any such violation.

(b) In order to fulfill the purpose set forth in subsection (a) of this section, the Department of Environment and Natural Resources shall, effective July 1, 2011, extend the period of time by 10 days between the time the violator is sent a notice of violation of an environmental statute or an environmental rule and the subsequent date the violator is sent an assessment of the civil penalty for the violation."

WATER AND AIR QUALITY ACCOUNT REVERTS

SECTION 13.7. G.S. 143-215.3A(a) reads as rewritten:

"(a) The Water and Air Quality Account is established as ~~a nonrevertingan~~ account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. 105-449.43, G.S. 105-449.125, and G.S. 105-449.136 shall be used to administer the air quality program. Any funds credited to the Account from fees collected for laboratory facility certifications under G.S. 143-215.3(a)(10) that are not expended at the end of each fiscal year for the purposes for which these fees may be used under G.S. 143-215.3(a)(10) shall revert. Any other funds credited to the Account that are not expended at the end of each fiscal year shall not revert. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

(1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.
(2) Fees credited to the Title V Account.
(3) Repealed by Session Laws 2005-454, s. 7, effective January 1, 2006.
(4) Fees collected under G.S. 143-215.28A.
(5) Fees collected under G.S. 143-215.94C shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund."

FUNDS FOR CLEANUP AND MONITORING OF TEXFI SITE CONTAMINATION

SECTION 13.10A. Reduce the operating expenditures of the Solid Waste Management Trust Fund by the sum of fifty thousand dollars ($50,000) for the 2011-2012 fiscal year and provide funding in the sum of fifty thousand dollars ($50,000) to be used for the 2011-2012 fiscal year for the cleanup and monitoring of the groundwater and other contamination located at the Texfi site in Fayetteville and for any emergency cleanup activities needed at that site.

FUNDS FOR RECYCLING PROGRAMS FOR PRODUCTS THAT CONTAIN MERCURY

SECTION 13.10B.(a) Effective July 1, 2011, until December 31, 2017, G.S. 130A-310.54 reads as rewritten:

"**§ 130A-310.54. Mercury ~~Switch Removal Account.~~Pollution Prevention Fund.**

(a) The Mercury ~~Switch Removal Account~~Pollution Prevention Fund is established in the Department. Revenue is credited to the ~~Account~~ Fund from the certificate of title fee under G.S. 20-85.

(b) Revenue in the Mercury ~~Switch Removal Account~~Pollution Prevention Fund shall be used ~~to~~ for the following purposes:

(1) To reimburse the Department and others for costs incurred in implementing the mercury switch removal program.
(2) To establish and implement recycling programs for products containing mercury, including at least recycling programs for light bulbs and thermostats.

(b1) The reimbursable costs under subdivision (1) of subsection (b) of this section are:

(1) Five dollars ($5.00) for each mercury switch removed by a vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility pursuant to this Article and sent to destination facilities in accordance with the NVMSRP for recycling or disposal.

(2) Costs incurred by the Department in administering the program.

(c) The Department shall reimburse vehicle crushers, vehicle dismantlers, vehicle recyclers, and scrap vehicle processing facilities based on a reimbursement request that attests to the number of switches sent to destination facilities for recycling or disposal in accordance with the NVMSRP. Each reimbursement request shall be verified against information posted on the Internet site provided by the vehicle manufacturers in accordance with the NVMSRP, or against other information that verifies the reimbursement requested to the satisfaction of the Department. The vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall provide the Department with any information requested by the Department to verify the accuracy of a reimbursement request. Each vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall maintain accurate records that support each reimbursement request for a minimum of three years from the date the reimbursement request is approved."

SECTION 13.10B.(b) Effective December 31, 2017, G.S. 130A-310.54, as amended by Sections 4 and 9 of S.L. 2007-142, reads as rewritten:

"**§ 130A-310.54. Funds to implement plan.**

(a) The Mercury Pollution Prevention ~~Account~~ Fund is established in the Department. Revenue is credited to the ~~Account~~ Fund from the certificate of title fee under G.S. 20-85.

(b) Revenue in the Mercury Pollution Prevention ~~Account~~ Fund shall be used ~~to~~ for the following purposes:

(1) To reimburse the Department and others for costs incurred in implementing the mercury minimization plan.

(2) To establish and implement recycling programs for products containing mercury, including at least recycling programs for light bulbs and thermostats.

(b1) The reimbursable costs under subdivision (1) of subsection (b) of this section are:

(1) Five dollars ($5.00) for each mercury switch removed by a vehicle recycler or scrap metal recycling facility pursuant to this Article.

(2) Costs incurred by the Department in administering the plan.

(c) The Department shall reimburse vehicle recyclers and scrap metal recycling facilities based on the quarterly reports submitted under G.S. 130A-310.53. The Department may request any information needed to determine the accuracy of the reports."

REPEAL DENR REVIEW OF FEE SCHEDULES

SECTION 13.11. G.S. 143B-279.2(4) is repealed.

DWSRF LOANS AND GRANTS TO INVESTOR-OWNED DRINKING WATER CORPORATIONS

SECTION 13.11A.(a) G.S. 159G-20 reads as rewritten:

"**§ 159G-20. Definitions.**

The following definitions apply in this Chapter:

...

(10a) Investor-owned drinking water corporation. – A corporation owned by investors and incorporated solely for the purpose of providing drinking water services for profit.

...."

SECTION 13.11A.(b) G.S. 159G-31 reads as rewritten:

"**§ 159G-31. Entities eligible to apply for loan or grant.**

A local government unit or a nonprofit water corporation is eligible to apply for a loan or grant from the CWSRF, the DWSRF, the Wastewater Reserve, or the Drinking Water Reserve. An investor-owned drinking water corporation is also eligible to apply for a loan or grant from the DWSRF. Other entities are not eligible for a loan or grant from these accounts."

SECTION 13.11A.(c) G.S. 159G-40 reads as rewritten:

"**§ 159G-40. Terms of loan and execution of loan documents.**

(a) Approval by Local Government Commission. – The Department may not award a loan under this Article unless the Local Government Commission approves the award of the loan and the terms of the loan. The terms of a loan awarded from the CWSRF and the DWSRF must be consistent with federal law. In reviewing a proposed loan to a local government unit, the Local Government Commission must consider the loan as if it were a bond proposal and

review the proposed loan in accordance with the factors set out in G.S. 159-52 for review of a proposed bond issue. The Local Government Commission must review a proposed loan to a nonprofit water corporation and to an investor-owned drinking water corporation in accordance with the factors set out in G.S. 159-153.

...

(d) Debt Instrument. – A local government ~~unit and~~unit, a nonprofit water ~~corporation~~ corporation, and an investor-owned drinking water corporation may execute a debt instrument payable to the State to evidence an obligation to repay the principal of and interest on a loan awarded under this Article. The Treasurer, with the assistance of the Local Government Commission, must develop debt instruments for use by local government ~~units and~~units, nonprofit water ~~corporations~~ corporations, and investor-owned drinking water corporations under this section. The Local Government Commission must develop procedures for loan recipients to deliver debt instruments to the State without public bidding."

SECTION 13.11A.(d) G.S. 159G-43(b) reads as rewritten:

"(b) Disqualification. – An individual may not perform an inspection of a project under this section if the individual meets any of the following criteria:

(1) Is an officer or employee of the local government ~~unit or~~unit, nonprofit water ~~corporation~~ corporation, or investor-owned drinking water corporation that received the loan or grant award for the project.

(2) Is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan or grant was made."

SECTION 13.11A.(e) G.S. 159-153 is amended by adding a new subsection to read:

"(a2) Investor-Owned Drinking Water Corporation. – A loan from the DWSRF, an account within the Water Infrastructure Fund, to an investor-owned drinking water corporation, as defined in G.S. 159G-20, is subject to approval by the Commission under this section."

REGULATORY REFORM FOR DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF LABOR, AND DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

SECTION 13.11B.(a) Article 1 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-14.2. Limitation on rule-making authority.**

(a) Federal Analog. – The Department may not adopt a rule that imposes a more restrictive standard or limitation than those imposed by federal law or rule if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is permitted by this subsection. It is the intent of the General Assembly that the standards and limitations adopted by the Department shall be no more restrictive than the most nearly applicable federal standards and limitations. Adoption of a rule with more restrictive standards or limitations is permitted to respond to at least one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) An act of the General Assembly or United States Congress that expressly requires the Department to adopt rules.

(3) A change in federal or State budgetary policy.

(4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.

(5) A court order.

(b) No Federal Analog. – Before the Department publishes in the North Carolina Register the proposed text of a permanent rule change with no federal analog, the Department shall prepare and submit into the record of the rule making an evaluation of costs and benefits. The evaluation shall include estimates of the economic and social costs of compliance with the proposed rule to commerce and industry, units of local government, and any other entities affected by the rule, as well as estimates of the benefits of the proposed rule to public health, safety, and welfare and to the environment. The evaluation shall present relevant data, assumptions, analyses, and calculations in sufficient detail to allow the calculation of a ratio of quantifiable costs to quantifiable benefits for the proposed rule. Benefits and costs which cannot be quantified may be expressed in qualitative terms. For purposes of this subsection "no federal analog" means that there is no federal regulation, standard, or requirement pertaining to

the same subject matter or activity. This subsection does not apply to a rule required by an act of the General Assembly or the United States Congress that expressly requires the Department to adopt rules."

SECTION 13.11B.(b) Part 3 of Article 1 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-22.6. Limitation on rule-making authority.**

(a) Federal Analog. – The Department may not adopt a rule that imposes a more restrictive standard or limitation than those imposed by federal law or rule if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is permitted by this subsection. It is the intent of the General Assembly that the standards and limitations adopted by the Department shall be no more restrictive than the most nearly applicable federal standards and limitations. Adoption of a rule with more restrictive standards or limitations is permitted to respond to at least one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) An act of the General Assembly or United States Congress that expressly requires the Department to adopt rules.
(3) A change in federal or State budgetary policy.
(4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.
(5) A court order.

(b) No Federal Analog. – Before the Department publishes in the North Carolina Register the proposed text of a permanent rule change with no federal analog, the Department shall prepare and submit into the record of the rule making an evaluation of costs and benefits. The evaluation shall include estimates of the economic and social costs of compliance with the proposed rule to commerce and industry, units of local government, and any other entities affected by the rule, as well as estimates of the benefits of the proposed rule to public health, safety, and welfare and to the environment. The evaluation shall present relevant data, assumptions, analyses, and calculations in sufficient detail to allow the calculation of a ratio of quantifiable costs to quantifiable benefits for the proposed rule. Benefits and costs which cannot be quantified may be expressed in qualitative terms. For purposes of this subsection "no federal analog" means that there is no federal regulation, standard, or requirement pertaining to the same subject matter or activity. This subsection does not apply to a rule required by an act of the General Assembly or the United States Congress that expressly requires the Department to adopt rules."

SECTION 13.11B.(c) Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.16. Limitation on rule-making authority.**

(a) Federal Analog. – An agency, as defined in G.S. 150B-2 and created under this Article, may not adopt a rule that imposes a more restrictive standard or limitation than those imposed by federal law or rule if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is permitted by this subsection. It is the intent of the General Assembly that the standards and limitations adopted by such agency shall be no more restrictive than the most nearly applicable federal standards and limitations. Adoption of a rule with more restrictive standards or limitations is permitted to respond to at least one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) An act of the General Assembly or United States Congress that expressly requires such agency to adopt rules.
(3) A change in federal or State budgetary policy.
(4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.
(5) A court order.

(b) No Federal Analog. – Before the agency publishes in the North Carolina Register the proposed text of a permanent rule change with no federal analog, the agency shall prepare and submit into the record of the rule making an evaluation of costs and benefits. The evaluation shall include estimates of the economic and social costs of compliance with the proposed rule to commerce and industry, units of local government, and any other entities affected by the rule, as well as estimates of the benefits of the proposed rule to public health, safety, and welfare and to the environment. The evaluation shall present relevant data,

assumptions, analyses, and calculations in sufficient detail to allow the calculation of a ratio of quantifiable costs to quantifiable benefits for the proposed rule. Benefits and costs which cannot be quantified may be expressed in qualitative terms. For purposes of this subsection "no federal analog" means that there is no federal regulation, standard, or requirement pertaining to the same subject matter or activity. This subsection does not apply to a rule required by an act of the General Assembly or the United States Congress that expressly requires the agency to adopt rules."

PARKS AND RECREATION TRUST FUND; ALLOCATION OF DEED STAMP TAX PROCEEDS CREDITED TO FUND

SECTION 13.11C.(a) Notwithstanding the provisions of G.S. 113-44.15(b), effective for taxes levied during the 2011-2012 fiscal year, the net tax proceeds that are credited to the Parks and Recreation Trust Fund by the Secretary of Revenue pursuant to G.S. 105-228.30(b) shall be allocated as follows:

(1) Six million dollars ($6,000,000) shall be used for the operating expenses of the Division of Parks and Recreation of the Department of Environment and Natural Resources;

(2) Up to eight million dollars ($8,000,000) shall be used for the State Parks System for capital projects, repairs and renovations of park facilities, land acquisition, and to retire debt incurred for these purposes under Article 9 of Chapter 142 of the General Statutes;

(3) Up to four million two hundred thirty thousand dollars ($4,230,000) shall be used for grants to local government units consistent with the match and other requirements set forth in G.S. 113-44.14(b)(2); and

(4) Up to seven hundred five thousand dollars ($705,000) shall be used for the Coastal and Estuarine Water Beach Access Program.

SECTION 13.11C.(b) Any funds that become available to the Parks and Recreation Trust Fund during the 2011-2012 fiscal year that are in excess of the funds allocated under subsection (a) of this section shall be used as provided in G.S. 113-44.15(b).

NATURAL HERITAGE TRUST FUND USED FOR COSTS TO ADMINISTER PLANT CONSERVATION PROGRAM/CONSERVATION PLANNING & COMMUNITY AFFAIRS PROGRAM

SECTION 13.16. G.S. 113-77.9(c) reads as rewritten:

"(c) Other Purposes. – The Trustees may authorize expenditures from the Fund to pay for the inventory of natural areas conducted under the Natural Heritage Program established pursuant to the Nature Preserves Act, Article 9A of Chapter 113A of the General Statutes. The Trustees may also authorize expenditures from the Fund to pay for conservation and protection planning and for informational programs for owners of natural areas, as defined in G.S. 113A-164.3. The Trustees shall authorize expenditures from the Fund not to exceed seventy-five thousand dollars ($75,000) to pay the cost of the Department of Agriculture and Consumer Services to administer the Plant Conservation Program. The Trustees shall authorize expenditures from the Fund not to exceed three hundred twenty-five thousand dollars ($325,000) to pay the cost of supporting staff in the Office of Conservation Planning and Community Affairs of the Department of Environment and Natural Resources."

OYSTER SANCTUARY PROGRAM SUPPORT

SECTION 13.18. G.S. 113-175.1(c) reads as rewritten:

"(c) The Marine Fisheries Commission and the Wildlife Resources Commission may authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income only to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The Marine Fisheries Commission and the Wildlife Resources Commission are encouraged to consider supporting the Oyster Sanctuary Program managed by the Division of Marine Fisheries. The Marine Fisheries Commission and the Wildlife Resources Commission may not authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income to establish positions without specific authorization from the General Assembly. All proposals to the Marine Fisheries Commission and the Wildlife Resources Commission for the disbursement of funds from the Marine Resources Fund shall be made by and through the Fisheries Director. Expenditure of

the assets of the Marine Resources Fund shall be made through the State budget accounts of the Division of Marine Fisheries in accordance with the provisions of the Executive Budget Act. The Marine Resources Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes."

MARINE FISHERIES ENCOURAGED TO CONTRACT WITH PRIVATE SECTOR FOR OYSTER SANCTUARY RESTORATION

SECTION 13.18A. The Division of Marine Fisheries of the Department of Environment and Natural Resources is encouraged to contract with private sector businesses for any oyster sanctuary restoration projects in the Pamlico Sound that are funded in whole or in part with State funds, State fees, State grants, or revenue generated from any license issued by the State.

DIVISION OF MARINE FISHERIES TO USE DIVISION OF FOREST RESOURCES MECHANICS FOR AIRCRAFT MAINTENANCE

SECTION 13.18B.(a) The Division of Marine Fisheries of the Department of Environment and Natural Resources shall use mechanics employed by the Division of Forest Resources of the Department of Environment and Natural Resources for the purpose of performing aircraft maintenance for all aircraft of the Division of Marine Fisheries except for a particular instance when this would be impracticable.

SECTION 13.18B.(b) The Division of Forest Resources of the Department of Environment and Natural Resources shall perform aircraft maintenance using its mechanics for all aircraft of the Division of Marine Fisheries, except for a particular instance when this would be impracticable. The Division of Forest Resources shall develop a process to establish priorities for the aviation maintenance needs of all the aircraft in both the Division of Forest Resources and the Division of Marine Fisheries.

END PILOT PROGRAM FOR ANNUAL INSPECTIONS OF CERTAIN ANIMAL OPERATIONS

SECTION 13.21.(a) Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, Section 5 of S.L. 2001-254, Section 1.1 of S.L. 2002-176, Section 6.1 of S.L. 2003-340, Section 12.7(a) of S.L. 2005-276, Section 2 of S.L. 2007-536, and Section 1 of S.L. 2009-84, reads as rewritten:

"**SECTION 1.** Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, Section 5 of S.L. 2001-254, Section 1.1 of S.L. 2002-176, Section 6.1 of S.L. 2003-340, Section 12.7(a) of S.L. 2005-276, and Section 2 of S.L. 2007-536, reads as rewritten:

'(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 November 1997, and to terminate ~~1 September 2011,~~June 30, 2011, regarding the annual inspections of animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this ~~pilot~~ program. In addition, Brunswick County and Pender County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes in these four counties at least once a year to determine whether any animal waste management system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in each of these four counties shall be located in an office in the county in which that person will be conducting inspections. As part of this ~~pilot~~ program, the Department of Environment and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the four counties are used for the quick response to complaints and reported problems previously referred only to the Division of Water Quality of the Department of Environment and Natural Resources.'"

SECTION 13.21.(b) The section becomes effective June 30, 2011.

END DSWC ROLE REGARDING ANIMAL WASTE MANAGEMENT SYSTEMS

SECTION 13.22.(a) G.S. 143-215.10A reads as rewritten:

"**§ 143-215.10A. Legislative findings and intent.**

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical ~~assistance, through operations reviews,~~assistance will be provided by the Division of Soil and Water Conservation. ~~Permitting, inspection,~~Inspection and enforcement will be ~~vested in~~provided by the Division of Water Quality."

SECTION 13.22.(b) G.S. 143-215.10D is repealed.

TRANSFER DIVISION OF SOIL AND WATER CONSERVATION AND SOIL AND WATER CONSERVATION COMMISSION TO DACS

SECTION 13.22A.(a) The Division of Soil and Water Conservation is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 13.22A.(b) All functions, powers, duties, and obligations previously vested in the State Soil and Water Conservation Commission are transferred to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 13.22A.(c) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.~~

...."

SECTION 13.22A.(d) G.S. 143B-279.3(b) reads as rewritten:

"(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

...

~~(21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.~~

...."

SECTION 13.22A.(e) Part 7 of Article 7 of Chapter 143B of the General Statutes is recodified as Article 71 of Chapter 106 of the General Statutes, and accordingly G.S. 143B-294 through G.S. 143B-297.1 are recodified as G.S. 106-840 through G.S. 106-844.

SECTION 13.22A.(f) G.S. 106-840, as recodified by subsection (e) of this section, reads as rewritten:

"**§ 106-840. Soil and Water Conservation Commission – creation; powers and duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation districts.

b. To approve application for watershed plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee or agent has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, shall be guilty of a Class 1 misdemeanor."

SECTION 13.22A.(g) G.S. 106-841, as recodified by subsection (e) of this section, reads as rewritten:

"**§ 106-841. Soil and Water Conservation Commission – members; selection; removal; compensation; quorum; services.**

(a) The Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

...

(g) All clerical and other services required by the Commission shall be supplied by the ~~Secretary of Environment and Natural Resources.~~ Department of Agriculture and Consumer Services."

SECTION 13.22A.(h) G.S. 139-3(4) reads as rewritten:

"(4) "Commission" or "Soil and Water Conservation Commission" means the Soil and Water Conservation Commission created by G.S. ~~143B-294.~~106-840."

SECTION 13.22A.(i) G.S. 139-4(d) reads as rewritten:

"(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

...

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~Part 9 of Article 21 of Chapter 143~~Article 72 of Chapter 106 of the General Statutes and the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control or the Community Conservation Assistance Program as provided by G.S. 139-8(b).

(11) To develop and implement a program for the approval of water quality and animal waste management systems technical specialists.

(12) To develop and approve best management practices for the Agriculture Cost Share Program for Nonpoint Source Pollution Control and for use in the water quality protection programs of the Department of Environment and Natural Resources and to adopt rules that establish criteria governing approval of these best management practices."

SECTION 13.22A.(j) G.S. 139-4(e) reads as rewritten:

"(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control and the Community Conservation Assistance Program if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and

(2) The application is approved by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 13.22A.(k) G.S. 139-5(d) reads as rewritten:

"(d) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted."

SECTION 13.22A.(l) G.S. 139-5(e) reads as rewritten:

"(e) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district."

SECTION 13.22A.(m) G.S. 139-7 reads as rewritten:

"**§ 139-7. District board of supervisors – appointive members; organization of board; certain powers and duties.**

The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the board of supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons from the district to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the office shall be deemed vacant on the date the term is set to expire and the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the

appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not required to, appoint two persons from the district without recommendation from the board of supervisors, to serve as district supervisors along with the elected members of the board of supervisors. Such appointments shall be made at the same time other appointments are made under this section, and the persons appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. In any given year, if the supervisors provide for an internal audit, and the supervisor serving as chairman certifies, under oath, that this internal audit is a true and accurate reflection of the accounts of receipts and disbursements, then the supervisors shall not be required, notwithstanding the provisions of G.S. 159-34, to provide for an audit of the accounts of receipts and disbursements by a certified public accountant or by an accountant certified by the Local Government Commission. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

~~All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948.~~"

SECTION 13.22A.(n) G.S. 139-8(a)(13) reads as rewritten:

"(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~G.S. 143-215.74~~G.S. 106-850 and to assist in the implementation and supervision of any other program intended to protect water quality or quantity administered by the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services by providing

technical assistance, allocating available grant monies, and providing any other assistance that may ~~by~~ be required or authorized by any provision of federal or State law."

SECTION 13.22A.(o) G.S. 139-13 reads as rewritten:

"**§ 139-13. Discontinuance of districts.**

At any time after five years after the organization of a district under the provisions of this Chapter, any 25 occupiers of land lying within the boundaries of such districts may file a petition with the Soil and Water Conservation Commission praying that the operations of the district be terminated and the existence of the district discontinued. The Commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the Commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the Soil and Water Conservation Commission of a certification that the Commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificates of the Soil and Water Conservation Commission setting forth the determination of the Commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or

supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Soil and Water Conservation Commission shall be substituted for the district or supervisors as party to such contracts. The Commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of G.S. 139-11, nor the pendency of any action instituted under the provisions of such section, and the Commission shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The Soil and Water Conservation Commission shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this Chapter, more often than once in five years."

SECTION 13.22A.(p) G.S. 143-215.10A reads as rewritten:

"**§ 143-215.10A. Legislative findings and intent.**

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance, through operations reviews, will be provided by the Division of Soil and Water ~~Conservation.~~Conservation of the Department of Agriculture and Consumer Services. Permitting, inspection, and enforcement will be vested in the Division of Water Quality."

SECTION 13.22A.(q) G.S. 143-215.10C(e)(6) reads as rewritten:

"(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be a rate-determining element. Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission of the Department of Agriculture and Consumer Services and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels."

SECTION 13.22A.(r) G.S. 143-215.10D reads as rewritten:

"**§ 143-215.10D. Operations review.**

(a) The Division, in cooperation with the Division of Soil and Water ~~Conservation,~~Conservation of the Department of Agriculture and Consumer Services, shall develop a reporting procedure for use by technical specialists who conduct operations reviews of animal operations. The reporting procedure shall be consistent with the Division's inspection procedure of animal operations and with this Part. The report shall include any corrective action recommended by the technical specialist to assist the owner or operator of the animal operation in complying with all permit requirements. The report shall be submitted to the Division within 10 days following the operations review unless the technical specialist observes a violation described in G.S. 143-215.10E. If the technical specialist finds a violation described in G.S. 143-215.10E, the report shall be filed with the Division immediately.

(b) As part of its animal waste management plan, each animal operation shall have an operations review at least once a year. The operations review shall be conducted by a technical specialist employed by the Division of Soil and Water Conservation of the

~~Department,~~Department of Agriculture and Consumer Services, a local Soil and Water Conservation District, or the federal Natural Resources Conservation Services working under the direction of the Division of Soil and Water Conservation.

(c) Operations reviews shall not be performed by technical specialists with a financial interest in any animal operation."

SECTION 13.22A.(s) G.S. 143-215.10M(a) reads as rewritten:

"(a) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on or before 1 October of each year as required by this section. Each report shall include:

...

(2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services has conducted since the last report.

(3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services that have been conducted since the last report.

(4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

(5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

...."

SECTION 13.22A.(t) Part 9 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 72 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74, 143-215.74A, and 143-215.74B are recodified as G.S. 106-850, 106-851, and 106-852.

SECTION 13.22A.(u) G.S. 106-850(b)(9), as recodified under subsection (t) of this section, reads as rewritten:

"(9) When the applicant is either (i) a limited-resource farmer, (ii) a beginning farmer, or (iii) a person farming land that is located in an enhanced voluntary agricultural district and is subject to a conservation agreement under G.S. 106-743.2 that remains in effect, State funding shall be limited to ninety percent (90%) of the average cost for each practice with the assisted farmer providing ten percent (10%) of the cost, which may include in-kind support of the practice, with a maximum of one hundred thousand dollars ($100,000) per year to each applicant. The following definitions apply in this subdivision:

a. Beginning farmer. – A farmer who has not operated a farm or who has operated a farm for not more than 10 years and who will materially and substantially participate in the operation of the farm.

a1. Enhanced voluntary agricultural district. – A district established by a county or a city by ordinance under Part 3 of Article 61 of ~~Chapter 106 of the General Statutes.~~this Chapter.

...."

SECTION 13.22A.(v) G.S. 106-850(c), as recodified under subsection (t) of this section, reads as rewritten:

"(c) The program shall be reviewed, prior to implementation, by the Committee created by ~~G.S. 143-215.74B.~~G.S. 106-852. The Technical Review Committee shall meet quarterly to review the progress of this program."

SECTION 13.22A.(w) G.S. 106-850(e), as recodified under subsection (t) of this section, reads as rewritten:

"(e) The Soil and Water Conservation Commission shall report on or before 31 January of each year to the Environmental Review ~~Commission~~Commission, the Department of Agriculture and Consumer Services, and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any

recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 13.22A.(x) Part 11 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 73 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74M is recodified as G.S. 106-860.

SECTION 13.22A.(y) G.S. 106-860(a), as recodified under subsection (x) of this section, reads as rewritten:

"(a) Program Established. – There is established the Community Conservation Assistance Program. The Program shall be implemented and supervised by the Soil and Water Conservation ~~Commission.~~Commission of the Department of Agriculture and Consumer Services."

SECTION 13.22A.(z) G.S. 106-860(d), as recodified under subsection (x) of this section, reads as rewritten:

"(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by the Community Conservation Assistance Program Advisory Committee. The Advisory Committee shall meet quarterly to review the progress of the Program. The Advisory Committee shall consist of the following members:

(1) The Director of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services or the Director's designee, who shall serve as the Chair of the Advisory Committee.
(2) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
(3) The Director of the Cooperative Extension Service at North Carolina State University or the Director's designee.
(4) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
(5) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
(6) The State Conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or the State Conservationist's designee.
(7) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.
(8) The President of the North Carolina Conservation District Employees Association or the President's designee.
(9) The President of the North Carolina Association of Resource Conservation and Development Councils or the President's designee.
(10) The Director of the Division of Water Quality of the Department of Environment and Natural Resources or the Director's designee.
(11) The Director of the Division of Forest Resources of the Department of Environment and Natural Resources or the Director's designee.
(12) The Director of the Division of Land Resources of the Department of Environment and Natural Resources or the Director's designee.
(13) The Director of the Division of Coastal Management of the Department of Environment and Natural Resources or the Director's designee.
(14) The Director of the Division of Water Resources of the Department of Environment and Natural Resources or the Director's designee.
(15) The President of the Carolinas Land Improvement Contractors Association or the President's designee."

SECTION 13.22A.(aa) G.S. 106-860(e), as recodified under subsection (x) of this section, reads as rewritten:

"(e) Report. – The Soil and Water Conservation Commission shall report no later than 31 January of each year to the Environmental Review ~~Commission~~Commission, the Department of Agriculture and Consumer Services, and the Fiscal Research Division. The report shall include a summary of projects that received State funding pursuant to the Program, the results of the evaluation conducted pursuant to subdivision (5) of subsection (b) of this section, findings regarding the effectiveness of each project to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 13.22A.(bb) G.S. 113-291.10(a) reads as rewritten:

"(a) There is established the Beaver Damage Control Advisory Board. The Board shall consist of nine members, as follows:

...

(4) The Director of the Division of Soil and Water Conservation of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, or a designee;

...."

SECTION 13.22A.(cc) G.S. 106-743.4(b) reads as rewritten:

"(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is eligible under G.S. ~~143-215.74(b)~~106-850(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to ~~Part 9 of Article 21 of Chapter 143 of the General Statutes~~Article 72 of this Chapter for funds to benefit that farmland."

SECTION 13.22A.(dd) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under subsections (a) and (b) of this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and any other conforming changes necessitated by this section.

AGRICULTURAL WATER RESOURCES ASSISTANCE PROGRAM/CONFORMING CHANGES; FUNDS TO PROMOTE WATER SUPPLY DEVELOPMENT

SECTION 13.23.(a) Chapter 139 of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Agricultural Water Resources Assistance Program.

"**§ 139-60. Agricultural Water Resources Assistance Program.**

(a) Program Established. – The Agricultural Water Resources Assistance Program is established. The purpose of the Program shall be to assist farmers and landowners in doing any one or more of the following:

(1) Identify opportunities to increase water use efficiency, availability, and storage.

(2) Implement best management practices to conserve and protect water resources.

(3) Increase water use efficiency.

(4) Increase water storage and availability for agricultural purposes.

(b) Program Administration. – The Agricultural Water Resources Assistance Program shall be implemented by the Soil and Water Conservation Commission through the soil and water conservation districts in the same manner as the Agriculture Cost Share Program for Nonpoint Source Pollution Control under Part 9 of Article 21 of Chapter 143 of the General Statutes. The Soil and Water Conservation Commission shall supervise and administer this Program as provided in this section and as provided in Part 9 of Article 21 of Chapter 143 of the General Statutes for the Agriculture Cost Share Program for Nonpoint Source Pollution Control. At least once each calendar year, the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources and the Commissioner of Agriculture shall meet with stakeholders for the purpose of advising the Soil and Water Conservation Commission on the development and administration of the Program, including the development of annual goals for the Program.

(c) Program Functions. – Under the Agricultural Water Resources Assistance Program, the Soil and Water Conservation Commission shall do the following:

(1) Within funds available for this Program, provide cost-share funds subject to all of the following limitations and requirements:

a. Except as provided in G.S. 143-215.74(b)(9), State funding shall be limited to:

1. Seventy-five percent (75%) of the average cost for each project, with the assisted person providing twenty-five percent (25%) of the project cost, which may include in-kind support of the project.

2. A maximum of seventy-five thousand dollars ($75,000) per year to each applicant.

b. Applicants shall be limited to farmers who have an adjusted gross income in each of the previous two years that is at or below two hundred fifty thousand dollars ($250,000), unless at least seventy-five percent (75%) of this adjusted gross income is derived directly from farming, ranching, or forestry operations.

c. The requirements and limitations under subdivisions (1), (2), (5), (7), and (8) of subsection (b) of G.S. 143-215.74 do not apply. All other limitations and requirements set out in Part 9 of Article 21 of Chapter 143 of the General Statutes, as modified by this section, apply.

(2) Approve best management practices eligible for cost-share funds under this Program.

(3) Establish criteria to allocate funds to local soil and water conservation districts.

(4) Develop a process for soliciting and reviewing applications and for selecting farmers to participate in the Program.

(5) Investigate and pursue other funding sources to supplement State funds, including federal, local, and private funding sources.

(6) Provide technical assistance to participating persons to assist with the projects that are eligible for cost-share funds under subsection (a) of this section and to facilitate the timely transfer of technology among participating persons.

(7) Adopt temporary and permanent rules as necessary to implement this Program.

(d) Report. – No later than January 31 of each year, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall prepare a comprehensive report on the implementation of subsections (a) through (c) of this section. The report shall be submitted to the Environmental Review Commission as a part of the report required by G.S. 143-215.74(e)."

SECTION 13.23.(b) G.S. 14-234(d3) reads as rewritten:

"(d3) Subsection (a) of this section does not apply to an application for or the receipt of a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to Part 9 of Article 21 of Chapter 143 of the General ~~Statutes or~~Statutes, the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General ~~Statutes~~ Statutes, or the Agricultural Water Resources Assistance Program created pursuant to Article 5 of Chapter 139 of the General Statutes by a member of the Soil and Water Conservation Commission if the requirements of G.S. 139-4(e) are met, and does not apply to a district supervisor of a soil and water conservation district if the requirements of G.S. 139-8(b) are met."

SECTION 13.23.(c) G.S. 139-4(d) reads as rewritten:

"(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

...

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to Part 9 of Article 21 of Chapter 143 of the General ~~Statutes and~~ Statutes, the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General ~~Statutes.~~Statutes, and the Agricultural Water Resources Assistance Program created pursuant to Article 5 of this Chapter.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution ~~Control or~~Control, the Community Conservation Assistance ~~Program~~ Program, or the Agricultural Water Resources Assistance Program as provided by G.S. 139-8(b)."

SECTION 13.23.(d) G.S. 139-4(e) reads as rewritten:

"(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution ~~Control and~~Control, the Community Conservation Assistance ~~Program~~ Program, or the Agricultural Water Resources Assistance Program if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and
(2) The application is approved by the Secretary of Environment and Natural Resources."

SECTION 13.23.(e) G.S. 139-8(b) reads as rewritten:

"(b) A district supervisor may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to Part 9 of Article 21 of Chapter 143 of the General ~~Statutes or~~Statutes, the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General ~~Statutes~~ Statutes, or the Agricultural Water Resources Assistance Program created pursuant to Article 5 of this Chapter if:

1. The district supervisor does not vote on the application or attempt to influence the outcome of any action on the application; and
2. The application is approved by the Commission."

SECTION 13.23.(f) The stakeholders that the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources and the Commissioner of Agriculture shall meet with, as required under G.S. 139-60, as enacted by subsection (a) of this section, shall be the stakeholders involved in identifying and developing best management practices for water conservation and water efficiency by agricultural water users pursuant to S.L. 2010-149.

SECTION 13.23.(g) The first report required by G.S. 139-60, as enacted by subsection (a) of this section, shall be submitted to the Environmental Review Commission no later than January 31, 2013.

SECTION 13.23.(h) Of the funds available to the Department of Environment and Natural Resources for Water Resource Projects, the sum of one million dollars ($1,000,000) shall be transferred to the Department of Environment and Natural Resources, Division of Soil and Water Conservation, for the 2011-2012 fiscal year to implement the Agricultural Water Resources Assistance Program established in Article 5 of Chapter 139 of the General Statutes, as enacted by subsection (a) of this section. The Soil and Water Conservation Commission may use up to fifteen percent (15%) of these funds for the costs of the Division of Soil and Water Conservation and the costs of the Soil and Water Conservation Districts to provide engineering assistance, to provide technical assistance, and to administer the Agricultural Water Resources Assistance Program. Any of these funds that are not expended or encumbered as of June 30, 2012, shall not revert and shall remain available for purposes set forth in this subsection until expended.

CONTRACT TO OUTSOURCE GIFT SHOPS AT NC ZOO TO DIRECT PROFITS TO ZOO FUND

SECTION 13.24. The Department of Environment and Natural Resources shall enter into a contract for the operation of at least three of the gift shops located at the North Carolina Zoological Park during the 2011-2012 fiscal year and the 2012-2013 fiscal year, and this contract shall provide that any profits that result from operating these gift shops during the 2011-2012 fiscal year and the 2012-2013 fiscal year are credited at the end of each quarter to the Special Zoo Fund created under G.S. 143B-336.1. The provisions of Article 3 and Article 8 of Chapter 143 of the General Statutes apply to any contract entered into under this section.

TRANSFER FORESTRY DIVISION AND FORESTRY COUNCIL FROM DENR TO DACS

SECTION 13.25.(a) The Division of Forest Resources is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer as defined by G.S. 143A-6.

SECTION 13.25.(b) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(6) Forest Resources Division, Department of Natural Resources and Community Development.~~

...."

SECTION 13.25.(c) Article 7 of Chapter 143A of the General Statutes is amended by adding a new section to read:

"**§ 143A-65.1. Division of Forest Resources.**

The Department of Agriculture and Consumer Services shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests and State recreational forests."

SECTION 13.25.(d) All functions, powers, duties, and obligations previously vested in the Forestry Council are transferred from the Department of Environment and Natural Resources to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 13.25.(e) G.S. 143B-279.3(b)(13) is repealed.

SECTION 13.25.(f) Part 12 of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-308, 143B-309, and 143B-310) is recodified in Article 7 of Chapter 143A of the General Statutes as G.S. 143A-66.1, 143A-66.2, and 143A-66.3.

SECTION 13.25.(g) G.S. 143A-66.1, as recodified in subsection (f) of this section, reads as rewritten:

"**§ 143A-66.1. Forestry Council – creation; powers and duties.**

There is hereby created the Forestry Council of the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. The Forestry Council shall have the following functions and duties:

(1) To advise the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture with respect to all matters concerning the protection, management, and preservation of State-owned, privately owned, and municipally owned forests in the State, including but not limited to:
   a. Profitable use of the State's forests consistent with the principles of sustained productivity.
   b. Best management practices, including those for protection of soil, water, wildlife, and wildlife habitat, to be used in managing the State's forests and their resources.
   c. Restoration of forest ecosystems and protection of rare and endangered species occurring in the State's private forests consistent with principles of private ownership of land.

(2) To maintain oversight of a continuous monitoring and planning process, to provide a long-range, comprehensive plan for the use, management, and sustainability of North Carolina's forest resources, and to report regularly on progress made toward meeting the objectives of the plan.

(3) To provide a forum for the identification, discussion, and development of recommendations for the resolution of conflicts in the management of North Carolina's forests.

(4) To undertake any other studies, make any reports, and advise the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture on any matter as the ~~Secretary~~ Commissioner may direct."

SECTION 13.25.(h) G.S. 143A-66.2, as recodified in subsection (f) of this section, reads as rewritten:

"**§ 143A-66.2. Forestry Council – members; chairperson; selection; removal; compensation; quorum.**

(a) The Forestry Advisory Council of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall consist of 18 members appointed as follows:

(1) Three persons who are registered foresters and who represent the primary forest products industry, one each from the Mountains, Piedmont and Coastal Plain.
(2) One person who represents the secondary wood-using industry.
(3) One person who represents the logging industry.
(4) Four persons who are nonindustrial woodland owners actively involved in forest management, one of whom has agricultural interests, and at least one each from the Mountains, Piedmont, and Coastal Plain.

(5) Three persons who are members of statewide environmental or wildlife conservation organizations.
(6) One consulting forester.
(7) Two persons who are forest scientists with knowledge of the functioning and management of forest ecosystems.
(8) One person who represents a banking institution that manages forestland.
(9) One person with expertise in urban forestry.
(10) One person with active experience in city and regional planning.

...

(h) All clerical and other services required by the Council, including the support required to carry out studies it is requested to make, shall be supplied by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 13.25.(i) G.S. 106-22 is amended by adding new subdivisions to read:

"(18) Forests. – Have charge of forest maintenance, forest fire protection, reforestation, and the protection of the forests.
(19) State forests. – Have charge of all State forests and measures for forest fire prevention.
(20) State recreational forests. – Have charge of all State recreational forests."

SECTION 13.25.(j) G.S. 113-8 reads as rewritten:

"**§ 113-8. Powers and duties of the Department.**

The Department shall make investigations of the natural resources of the State, and take such measures as it may deem best suited to promote the conservation and development of such resources.

It shall have ~~charge of the work of forest maintenance, forest fire prevention, reforestation, and~~ the protection of lands and water ~~supplies by the preservation of forests;~~supplies; it shall also have the care of State ~~forests and~~ parks, and other recreational areas now owned or to be acquired by the State, including the lakes referred to in G.S. 146-7.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State, and take such measures as it may consider necessary to promote their development.

It shall have the duty of enforcing all laws relating to the conservation of marine and estuarine resources.

The Department may take such other measures as it may deem advisable to obtain and make public a more complete knowledge of the State and its resources, and it is authorized to cooperate with other departments and agencies of the State in obtaining and making public such information.

The Department may acquire such real and personal property as may be found desirable and necessary for the performance of the duties and functions of the Department and pay for same out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired shall be in the name of the State of North Carolina for the use and benefit of the Department."

SECTION 13.25.(k) G.S. 113-22 is repealed.

SECTION 13.25.(l) G.S. 106-22 is amended by adding new subdivisions to read:

"(18) Forests. – Have charge of forest maintenance, forest fire protection, reforestation, and the protection of the forests.
(19) State forests. – Have charge of all State forests and measures for forest fire prevention.
(20) Property for State forests. – Acquire real and personal property as desirable and necessary for the performance of the duties and functions of the Department under subdivision (19) of this section and pay for the property out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired under this subdivision shall be in the name of the State of North Carolina for the use and benefit of the Department.
(21) State recreational forests. – Have charge of all State recreational forests.

(22) Property for State recreational forests. – Acquire real and personal property as desirable and necessary for the performance of the duties and functions of the Department under subdivision (21) of this section and pay for the property out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired under this subdivision shall be in the name of the State of North Carolina for the use and benefit of the Department."

SECTION 13.25.(m) The title of Subchapter II of Chapter 113 of the General Statutes reads as rewritten:

"**SUBCHAPTER II. STATE ~~FORESTS AND~~ PARKS.**"

SECTION 13.25.(n) Article 2 of Chapter 113 of the General Statutes reads as rewritten:

"Article 2.

"Acquisition and Control of State ~~Forests and~~ Parks.

"**§ 113-29. ~~Policy and plan to be inaugurated by Department of Environment and Natural Resources.~~Definitions.**

~~(a)~~ In this Article, unless the context requires otherwise, "Department" means the Department of Environment and Natural Resources; and "Secretary" means the Secretary of Environment and Natural Resources.

~~(b) The Department of Environment and Natural Resources shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:~~

~~(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.~~

~~(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.~~

~~(3) To furnish trained and experienced experts in forest management, to inspect private forestlands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.~~

~~(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.~~

~~(5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department as State demonstration forests for experiment and demonstration in forest management.~~

~~"§ 113-29.1. Growing of timber on unused State lands authorized.~~

~~The Department of Administration may allocate to the Department, for management as a State forest, any vacant and unappropriated lands, any marshlands or swamplands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as research stations shall not be subject to the provisions of this section. The Department shall plant timber producing trees on all lands allocated to it for that purpose by the Department of Administration. The Secretary may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Secretary, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Department.~~

~~"§ 113-30. Use of lands acquired by counties through tax foreclosures as demonstration forests.~~

~~The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department title to such tax delinquent lands as may have~~

~~been acquired by said counties under tax sale and as in the judgment of the Secretary may be suitable for the purposes named in G.S. 113-29, subdivision (5).~~

~~**"§ 113-31. Procedure for acquisition of delinquent tax lands from counties.**~~

~~In the carrying out of the provisions of G.S. 113-30, the several boards of county commissioners shall furnish forthwith on written request of the Department a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list the Secretary shall have the lands examined and if any one or more of these properties is in his judgment suitable for the purposes set forth in G.S. 113-30, request shall be made to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined.~~

~~**"§ 113-32. Purchase of lands for use as demonstration forests.**~~

~~Where no suitable tax-delinquent lands are available and in the judgment of the Department the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in G.S. 113-29 to 113-33 shall allow the Department to acquire land under the right of eminent domain.~~

~~**"§ 113-33. Forest management appropriation.**~~

~~Necessary funds for carrying out the provisions of G.S. 113-29 and 113-30 to 113-33 shall be set up in the regular budget as an item entitled "forest management.~~

"§ 113-34. Power to acquire lands as State ~~forests,~~ parks, and other recreational areas; donations or leases by United States; leases for recreational purposes.

(a) ~~The Governor may, upon recommendation of the Department, accept gifts of land to the State to be held, protected, and administered by the Department as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. The gifts of land must be absolute except in cases where the mineral interest on the land has previously been sold. The Department may purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, park, and protection purposes, using for these purposes any special appropriations or funds available.~~ The Department may acquire by gift, purchase, or condemnation under the provisions of Chapter 40A of the General Statutes, areas of land in different sections of the State that may in the opinion of the Department be necessary for the purpose of establishing or developing ~~State forests,~~ State parks, and other areas and developments essential to the effective operation of the ~~State forestry and~~ State park activities under its charge. Condemnation proceedings shall be instituted and prosecuted in the name of the State, and any property so acquired shall be administered, developed, and used ~~for experiment and demonstration in forest management,~~ for public ~~recreation,~~recreation and for other purposes authorized or required by law. Before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where the property is located. The Attorney General shall ensure that all deeds to the State for land acquired under this section are properly executed before the gift is accepted or payment of the purchase money is made.

(b) The Department may accept as gifts to the State any ~~forest and~~ submarginal farmland acquired by the federal government that is suitable for the purpose of creating and maintaining ~~State forests,~~ game refuges, public shooting grounds, State parks, State lakes, and other recreational areas, or to enter into longtime leases with the federal government for the areas and administer them with funds secured from their administration in the best interest of longtime public use, supplemented by any appropriations made by the General Assembly. The Department may segregate revenue derived from State hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of State ~~forests,~~ game refuges, public shooting grounds, State parks, State lakes, and other recreational areas to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

(c) The Department, with the approval of the Governor and Council of State, may enter into leases of lands and waters for State parks, State lakes, and recreational purposes.

(d), (e) Repealed by Session Laws 2003-284, s. 35.1(a), effective July 1, 2003.

(f) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"§ 113-34.1. Power to acquire conservation lands not included in the State Parks System.

The Department of Administration may acquire and allocate to the Department of Environment and Natural Resources for management by the Division of Parks and Recreation lands that the Department of Environment and Natural Resources finds are important for conservation purposes but which are not included in the State Parks System. Lands acquired pursuant to this section are not subject to Article 2C of Chapter 113 of the General Statutes and may be traded or transferred as necessary to protect, develop, and manage the Mountains to Sea State Park Trail, other State parks, or other conservation lands. This section does not expand the power granted to the Department of Environment and Natural Resources under G.S. 113-34(a) to acquire land by condemnation.

"§ 113-35. ~~State timber may be sold by Department; forest nurseries; control~~Control over State parks; operation of public service facilities; concessions to private concerns; authority to charge fees and adopt rules.

(a) ~~Timber and other products of State forests may be sold, cut, and removed under rules of the Department. The Department may establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules adopted by the Department. When the Secretary determines that a surplus of seedlings or seed exists, this surplus may be sold, and the sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either within or outside of this State.~~ The Department shall make reasonable rules governing the use by the public of ~~State forests,~~ State ~~parks, State lakes, game refuges, and public shooting grounds~~parks and State lakes under its charge. These rules shall be posted in conspicuous places on and adjacent to the properties of the State and at the courthouse of the county or counties in which the properties are located. A violation of these rules is punishable as a Class 3 misdemeanor.

(a1) The Department may adopt rules under which the Secretary may issue a special-use permit authorizing the use of pyrotechnics in State parks in connection with public exhibitions. The rules shall require that experts supervise the use of pyrotechnics and that written authorization for the use of pyrotechnics be obtained from the board of commissioners of the county in which the pyrotechnics are to be used, as provided in G.S. 14-410. The Secretary may impose any conditions on a permit that the Secretary determines to be necessary to protect public health, safety, and welfare. These conditions shall include a requirement that the permittee execute an indemnification agreement with the Department and obtain general liability insurance covering personal injury and property damage that may result from the use of pyrotechnics with policy limits determined by the Secretary.

(b) The Department may construct, operate, and maintain within the ~~State forests,~~ State parks, State lakes, and other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for each of the following:

(1) The erection, maintenance, and use of docks, piers, and any other structures permitted in or on State lakes under rules adopted by the Department.

(2) ~~Hunting privileges on State forests and fishing~~Fishing privileges in ~~State forests, State parks,~~parks and State lakes, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(3) Vehicle access for off-road driving at the beach at Fort Fisher State Recreation Area.

(4) The erection, maintenance, and use of a marina at Carolina Beach.

(b1) Members of the public who pay a fee under subsection (b) of this section for access to Fort Fisher State Recreation Area may have 24-hour access to Fort Fisher State Recreation Area from September 15 through March 15 of each year.

(c) The Department may make reasonable rules for the operation and use of boats or other craft on the surface of the waters under its charge. The Department may charge and collect reasonable fees for the use of boats and other watercraft that are purchased and maintained by the Department; however, the Department shall not charge a fee for the use or operation of any other boat or watercraft on these waters.

(d) The Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest. The Department may adopt reasonable rules for the regulation of the use by the public of the lands and waters under its charge and of the public service facilities and conveniences authorized under this section. A violation of these rules is punishable as a Class 3 misdemeanor.

(e) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

~~**"§ 113-36. Applications of proceeds from sale of products.**~~

~~(a) Application of Proceeds Generally. Except as provided in this section, all money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Secretary.~~

~~(b) Tree Cone and Seed Purchase Fund. A percentage of the money obtained from the sale of seedlings and remaining unobligated at the end of a fiscal year, shall be placed in a special, continuing and nonreverting Tree Cone and Seed Purchase Fund under the control and direction of the Secretary. The percentage of the sales placed in the fund shall not exceed ten percent (10%). At the beginning of each fiscal year, the Secretary shall select the percentage for the upcoming fiscal year depending upon the anticipated costs of tree cones and seeds which the department must purchase. Money in this fund shall not be allowed to accumulate in excess of the amount needed to purchase a four-year supply of tree cones and seed, and shall be used for no purpose other than the purchase of tree cones and seeds.~~

~~(c) Forest Seedling Nursery Program Fund. The Forest Seedling Nursery Program Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. Except as provided in subsection (b) of this section, this Fund shall consist of receipts from the sale of seed and seedlings as authorized in G.S. 113-35 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Forest Seedling Nursery Program.~~

~~(d) Bladen Lakes State Forest Fund. The Bladen Lakes State Forest Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. This Fund shall consist of receipts from the sale of forest products from Bladen Lakes State Forest as authorized in G.S. 113-35 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Bladen Lakes State Forest.~~

"§ 113-37. Legislative authority necessary for payment.

Nothing in this Article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly.

~~**"§ 113-38. Distribution of funds from sale of forestlands.**~~

~~All funds paid by the National Forest Commission, by authority of act of Congress, approved May 23, 1908 (35 Stat., 260), for the Counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school district or districts in which said national forestlands shall be located.~~

~~All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed.~~

"§ 113-39. License fees for hunting and fishing on government-owned property unaffected.

No wording in G.S. 113-307.1(a), or any other North Carolina statute or law, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park to be ~~excepted~~ exempt from this section.

"§ 113-40. Donations of property for ~~forestry or~~ park purposes; agreements with federal government or agencies for acquisition.

The Department is hereby authorized and empowered to accept gifts, donations or contributions of land suitable for ~~forestry or~~ park purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the Department are desirable for ~~State forests or~~ State parks.

"§ 113-41. Expenditure of funds for development, etc.; disposition of products from lands; rules.

When lands are acquired or leased under G.S. 113-40, the Department is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules as may be necessary to carry out the purposes of G.S. 113-40 to 113-44.

"§ 113-42. Disposition of revenues received from lands acquired.

All revenues derived from lands now owned or later acquired under the provisions of G.S. 113-40 to 113-44 shall be set aside for the use of the Department in acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty percent (50%) of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe, and fifty percent (50%) shall be paid into the school fund to be used in the county or counties in which lands are located.

"§ 113-43. State not obligated for debts created hereunder.

Obligations for the acquisition of land incurred by the Department under the authority of G.S. 113-40 to 113-44 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State.

"§ 113-44. Disposition of lands acquired.

The Department shall have full power and authority to sell, exchange or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of ~~State forests and~~ State parks: Provided, however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into."

SECTION 13.25.(o) Chapter 106 of the General Statutes is amended by adding a new Article to read:

"Article 71.

"Acquisition and Control of State Forests and State Recreational Forests.

"§ 106-840. Policy and plan to be inaugurated by Department of Agriculture and Consumer Services.

(a) In this Article, unless the context requires otherwise, "Department" means the Department of Agriculture and Consumer Services and "Commissioner" means Commissioner of Agriculture.

(b) For purposes of this Chapter, "State recreational forest " means a forest managed primarily for natural resource preservation, scenic enjoyment, and recreational purposes.

(c) The Department shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:

(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.

(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.

(3) To furnish trained and experienced experts in forest management, to inspect private forestlands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting, and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.

(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.

(5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department as State demonstration forests for experiment and demonstration in forest management.

"**§ 106-841. Growing of timber on unused State lands authorized.**

The Department of Administration may allocate to the Department, for management as a State forest, any vacant and unappropriated lands, any marshlands or swamplands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as research stations shall not be subject to the provisions of this section. The Department shall plant timber-producing trees on all lands allocated to it for that purpose by the Department of Administration. The Commissioner may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Commissioner, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Department.

"**§ 106-842. Use of lands acquired by counties through tax foreclosures as demonstration forests.**

The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department title to such tax-delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the Commissioner may be suitable for the purposes named in subdivision (5) of subsection (b) of G.S. 106-840.

"**§ 106-843. Procedure for acquisition of delinquent tax lands from counties.**

In the carrying out of the provisions of G.S. 106-842, the several boards of county commissioners shall furnish forthwith on written request of the Department a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list, the Commissioner shall have the lands examined and, if any one or more of these properties is in the Commissioner's judgment suitable for the purposes set forth in G.S. 106-842, request shall be made to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request, the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee-simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined.

"**§ 106-844. Purchase of lands for use as demonstration forests.**

Where no suitable tax-delinquent lands are available and, in the judgment of the Department, the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed-upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in G.S. 106-840 to G.S. 106-845 shall allow the Department to acquire land under the right of eminent domain.

"**§ 106-845. Forest management appropriation.**

Necessary funds for carrying out the provisions of G.S. 106-840 and G.S. 106-842 to G.S. 106-845 shall be set up in the regular budget as an item entitled "forest management."

"**§ 106-846. Power to acquire lands as State forests; donations or leases by United States; leases for recreational purposes.**

(a) The Governor may, upon recommendation of the Department, accept gifts of land to the State to be held, protected, and administered by the Department as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. The gifts of land must be absolute except in cases where the mineral interest on the land has previously been sold. The Department may purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, and protection purposes, using for these purposes any special appropriations or funds available. The Department may acquire by condemnation under the provisions of Chapter 40A of the General Statutes areas of land in different sections of the State that may in the opinion of the Department be necessary for the purpose of establishing or developing State forests and other areas and developments essential to the effective operation of the State forestry activities under its charge. Condemnation proceedings shall be instituted and prosecuted in the name of the State, and any property so acquired shall be administered, developed, and used for experiment and demonstration in forest management, for public recreation, and for other purposes authorized or required by law. Before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where the property is located. The Attorney General shall ensure that all deeds to the State for land acquired under this section are properly executed before the gift is accepted or payment of the purchase money is made.

(b) The Department may accept as gifts to the State any forest and submarginal farmland acquired by the federal government that is suitable for the purpose of creating and maintaining State forests or enter into longtime leases with the federal government for the areas and administer them with funds secured from their administration in the best interest of longtime public use, supplemented by any appropriations made by the General Assembly. The Department may segregate revenue derived from State hunting and fishing licenses, use permits, and concessions, and other proper revenue secured through the administration of State forests, to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

(c) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"**§ 106-847. State timber may be sold by Department; forest nurseries; operation of public service facilities; concessions to private concerns; authority to charge fees and adopt rules.**

(a) Timber and other products of State forests may be sold, cut, and removed under rules of the Department. The Department may establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules adopted by the Department. When the Commissioner determines that a surplus of seedlings or seed exists, this surplus may be sold, and the sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either within or outside of this State. The Department shall make reasonable rules governing the use by the public of State forests under its charge. These rules shall be posted in conspicuous places on and adjacent to the properties of the State and at the courthouse of the county or counties in which the properties are located. A violation of these rules is punishable as a Class 3 misdemeanor.

(b) The Department may construct, operate, and maintain within the State forests and other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for hunting privileges on State forests and fishing privileges in State forests, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(c) The Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest. The Department may adopt reasonable rules for the regulation of the use by the public of the lands and waters under its charge and of the public service facilities and conveniences authorized under this section. A violation of these rules is punishable as a Class 3 misdemeanor.

(d) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"**§ 106-848. Applications of proceeds from sale of products.**

(a) Application of Proceeds Generally. – Except as provided in this section, all money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Commissioner.

(b) Tree Cone and Seed Purchase Fund. – A percentage of the money obtained from the sale of seedlings and remaining unobligated at the end of a fiscal year shall be placed in a special, continuing, and nonreverting Tree Cone and Seed Purchase Fund under the control and direction of the Commissioner. The percentage of the sales placed in the Fund shall not exceed ten percent (10%). At the beginning of each fiscal year, the Commissioner shall select the percentage for the upcoming fiscal year depending upon the anticipated costs of tree cones and seeds which the Department must purchase. Money in this Fund shall not be allowed to accumulate in excess of the amount needed to purchase a four-year supply of tree cones and seed and shall be used for no purpose other than the purchase of tree cones and seeds.

(c) Forest Seedling Nursery Program Fund. – The Forest Seedling Nursery Program Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. Except as provided in subsection (b) of this section, this Fund shall consist of receipts from the sale of seed and seedlings as authorized in G.S. 106-847 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Forest Seedling Nursery Program.

(d) Bladen Lakes State Forest Fund. – The Bladen Lakes State Forest Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. This Fund shall consist of receipts from the sale of forest products from Bladen Lakes State Forest as authorized in G.S. 106-847 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Bladen Lakes State Forest.

"**§ 106-849. Legislative authority necessary for payment.**

Nothing in this Article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly.

"**§ 106-850. Distribution of funds from sale of forestlands.**

All funds paid by the National Forest Commission, by authority of an act of Congress, approved May 23, 1908, (35 Stat. 260), for the Counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school administrative unit in which said national forestlands shall be located.

All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed.

"**§ 106-851. License fees for hunting and fishing on government-owned property unaffected.**

No wording in G.S. 113-307.1(a), or any other North Carolina public, local, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State, or nonresident hunters or

fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park are exempt from this section.

"**§ 106-852. Donations of property for forestry purposes; agreements with federal government or agencies for acquisition.**

The Department may accept gifts, donations, or contributions of land suitable for forestry purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the Department are desirable for State forests and State recreational forests.

"**§ 106-853. Expenditure of funds for development, etc.; disposition of products from lands; rules.**

When lands are acquired or leased under G.S. 106-852, the Department may make expenditures from any funds not otherwise obligated, for the management, development, and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules as may be necessary to carry out the purposes of G.S. 106-852 to G.S. 106-856.

"**§ 106-854. Disposition of revenues received from lands acquired.**

All revenues derived from lands now owned or later acquired under the provisions of G.S. 106-852 to G.S. 106-856 shall be set aside for the use of the Department in acquisition, management, development, and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty percent (50%) of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe and fifty percent (50%) shall be paid into the school fund to be used in the county or counties in which lands are located.

"**§ 106-855. State not obligated for debts created hereunder.**

Obligations for the acquisition of land incurred by the Department under the authority of G.S. 106-852 to G.S. 106-856 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State.

"**§ 106-856. Disposition of lands acquired.**

The Department shall have full power and authority to sell, exchange, or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of State forests: Provided, however, said sale, lease, or exchange shall not be contrary to the terms of any contract that it has entered into.

"**§ 106-857. Management of DuPont State Recreational Forest.**

(a) DuPont State Forest is designated as a State Recreational Forest. The Department shall manage DuPont State Recreational Forest: (i) primarily for natural resource preservation, scenic enjoyment and recreational purposes, including horseback riding, hiking, bicycling, hunting, and fishing; (ii) so as to provide an exemplary model of scientifically sound, ecologically based natural resource management for the social and economic benefit of the forest's diverse community of users; and (iii) consistent with the grant agreement between the Natural Heritage Trust Fund and the Division of Forest Resources, which grant designates a portion of the forest as a North Carolina Nature Preserve. In addition, the Department may use the forest for the demonstration of different forest management and resource protection techniques for local landowners, natural resource professionals, students, and other forest visitors.

(b) The Department shall adopt a land management plan for DuPont State Recreational Forest, which shall be periodically revised as needed, to (i) provide the ecological context within which management of the forest will be conducted; (ii) describe the desired future condition of natural resources throughout the forest toward which management will be directed; and (iii) outline appropriate management techniques to achieve those desired future conditions.

(c) Notwithstanding subsection (a) of G.S. 106-847, with respect to DuPont State Recreational Forest, the Department may cut and remove timber for forest management purposes only, including for the purposes of fire, pest, and disease prevention and control. The Department may cut, remove, and sell timber for the purpose of revenue generation only upon approval of the Governor and the Council of State.

(d) Notwithstanding G.S. 106-856, with respect to property comprising DuPont State Recreational Forest, the Department may sell, lease, or exchange such property only upon approval of the Governor and the Council of State.

(e) The Department may acquire inholdings or lands adjacent to DuPont State Recreational Forest for recreational purposes, natural resource protection or scenic enjoyment purposes, and other purposes described in G.S. 106-846 as appropriate for a recreational forest, and such acquisitions shall be made in accordance with the provisions of G.S. 106-846.

(f) In accordance with subsection (b) of G.S. 106-847, the Department may construct, operate, and maintain within DuPont State Recreational Forest suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for hunting and fishing privileges in the forest, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(g) In accordance with subsection (c) of G.S. 106-847, the Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest.

(h) The Department shall adopt rules for operation and management of DuPont State Recreational Forest in consultation with interested parties, including, but not limited to, local governments with jurisdiction over the area, the Friends of DuPont Forest, and other stakeholders with interests in the property for recreation and protection of its wildlife populations, water quality, biodiversity, or historical and cultural value.

(i) The Department shall report no later than October 1 of each year to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission on the Department's management activities at DuPont State Recreational Forest during the preceding fiscal year and plans for management of DuPont State Recreational Forest for the upcoming fiscal year."

SECTION 13.25.(p) Article 4 of Chapter 113 of the General Statutes (G.S. 113-51, 113-52, 113-53.1, 113-54, 113-55, 113-55.1, 113-55.2, 113-56, 113-56.1, 113-57, 113-58, 113-59, 113-60, 113-60.1, 113-60.2, and 113-60.3) is recodified as a new Article 72 of Chapter 106 of the General Statutes, G.S. 106-860 through G.S. 106-875.

SECTION 13.25.(q) Article 72 of Chapter 106 of the General Statutes, as recodified under subsection (p) of this section, reads as rewritten:

"Article 72.

"Protection and Development of Forests; Fire Control.

"**§ 106-860. Powers of Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.**

(a) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this State, and it is hereby authorized to enter into an agreement with the Secretary of Agriculture of the United States for the protection of the forested watersheds of streams in this State.

(b) In this Article, unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of Agriculture.

~~(1)~~(2) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

~~(2) "Secretary" means the Secretary of Environment and Natural Resources.~~

"**§ 106-861. Forest rangers.**

The ~~Secretary~~ Commissioner may appoint one county forest ranger and one or more deputy forest rangers in each county of the State in which, after careful investigation, the amount of forestland and the risks from forest fires shall, in his judgment, warrant the establishment of a forest fire organization.

"**§ 106-862. Forest laws defined.**

The forest laws consist of:

(1) G.S. 14-136 to G.S. 14-140;

(2) Articles ~~2, 4, 4A, 4C, and 6A~~71 through 79 of this Chapter;

(3) G.S. 77-13 and G.S. 77-14;

(4) Other statutes enacted for the protection of forests and woodlands from fire, insects, or disease and concerning obstruction of streams and ditches in forests and woodlands; and

(5) Regulations and ordinances adopted under the authority of the above statutes.

"§ 106-863. Duties of forest rangers; payment of expenses by State and counties.

Forest rangers shall have charge of measures for controlling forest fires, protection of forests from pests and diseases, and the development and improvement of the forests for maximum production of forest products; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the ~~Secretary;~~Commissioner; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the ~~Secretary;~~Commissioner; and shall perform such other acts and duties as shall be considered necessary by the ~~Secretary~~ Commissioner in the protection, development and improvement of the forested area of each of the counties within the State. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the ~~Secretary;~~Commissioner; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the ~~Secretary~~ Commissioner shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one month after receipt of such statement from the ~~Secretary.~~Commissioner. Appropriations made by a county for the purposes set out in Articles ~~4, 4A, 4C and 6A~~72, 73, 75, and 79 of this Chapter in the cooperative forest protection, development and improvement work are not to replace State and federal funds which may be available to the ~~Secretary~~ Commissioner for the work in said county, but are to serve as a supplement thereto. Funds appropriated to the Department for a fiscal year for the purposes set out in Articles ~~4, 4A, 4C and 6A~~72, 73, 75, and 79 of this Chapter shall not be expended in a county unless that county shall contribute at least twenty-five percent (25%) of the total cost of the forestry program.

"§ 106-864. Powers of forest rangers to prevent and extinguish fires; authority to issue citations and warning tickets.

(a) Forest rangers shall prevent and extinguish forest fires and shall have control and direction of all persons and equipment while engaged in the extinguishing of forest fires. During a season of drought, the ~~Secretary~~ Commissioner or his designate may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland, the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or deputy forest ranger may summon any resident between the ages of 18 and 45 years, inclusive, to assist in extinguishing fires and may require the use of crawler tractors and other property needed for such purposes; any person so summoned and who is physically able who refuses or neglects to assist or to allow the use of equipment and such other property required shall be guilty of a Class 3 misdemeanor and upon conviction shall only be subject to a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00). No action for trespass shall lie against any forest ranger, deputy forest ranger, or person summoned by him for crossing lands, backfiring, burning out or performing his duties as a forest ranger or deputy forest ranger.

(b) Forest rangers are authorized to issue and serve citations under the terms of G.S. 15A-302 and warning tickets under the terms of ~~G.S. 113-55.2~~G.S. 106-866 for offenses under the forest laws. This subsection may not be interpreted to confer the power of arrest on forest rangers, and does not make them criminal justice officers within the meaning of G.S. 17C-2.

"§ 106-865. Powers of forest law-enforcement officers.

The ~~Secretary~~ Commissioner is authorized to appoint as many forest law-enforcement officers as he deems necessary to carry out the forest law-enforcement responsibilities of the Department. Forest law-enforcement officers shall have all the powers and the duties of a forest ranger enumerated in ~~G.S. 113-54 and 113-55.~~G.S. 106-863 and G.S. 106-864. Forest law-enforcement officers shall, in addition to their other duties, have the powers of peace officers to enforce the forest laws. Any forest law-enforcement officer may arrest, without warrant, any person or persons committing any crime in his presence or whom such officer has probable cause for believing has committed a crime in his presence and bring such person or persons forthwith before a district court or other officer having jurisdiction. Forest

law-enforcement officers shall also have authority to obtain and serve warrants including warrants for violation of any duly promulgated rule of the Department.

"§ 106-866. Warning tickets for violations of the forest laws.

(a) To encourage the cooperation of the public in achieving the objectives of the forest laws, the ~~Secretary~~ Commissioner may provide for the issuance of warning tickets instead of the initiation of criminal prosecution by forest rangers and forest law-enforcement officers. Issuance of the warning tickets shall be in accordance with criteria administratively promulgated by the ~~Secretary~~ Commissioner within the requirements of this section. These criteria are exempt from Article 2A of Chapter 150B of the General Statutes.

(b) No warning ticket may be issued unless all of the following conditions are met:

(1) The forest ranger or the forest law-enforcement officer must be convinced that the offense was not committed intentionally.

(2) The offense is not one, or a type of offense, for which the ~~Secretary~~ Commissioner has prohibited the issuance of warning tickets.

(3) At the time of the violation it was not reasonably foreseeable that the conduct of the offender could result in any significant destruction of forests or woodlands or constitute a hazard to the public.

(c) A warning ticket may not be issued if the offender has previously been charged with, or issued a warning ticket for, the same or a similar offense within the preceding three years. A list of persons who have been issued warning tickets under this section within the preceding three years shall be maintained and periodically updated by the ~~Secretary.~~Commissioner.

(d) This section does not entitle any person who has committed an offense to the right to be issued a warning ticket, and the issuance of a warning ticket does not prohibit the later initiation of criminal prosecution for the same offense for which the warning ticket was issued.

"§ 106-867. Compensation of forest rangers.

Forest rangers shall receive compensation from the Department at a reasonable rate to be fixed by said Department for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in the performance of their duties, according to an itemized statement to be rendered the ~~Secretary~~ Commissioner every month, and approved by him. Forest rangers shall render to the ~~Secretary~~ Commissioner a statement of the services rendered by the men employed by them or their deputy rangers, as provided in this Article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the ~~Secretary.~~Commissioner. If said bill be duly approved by the ~~Secretary,~~Commissioner, it shall be paid by direction of the Department out of any funds provided for that purpose.

"§ 106-868. Overtime compensation for forest fire fighting.

The Department shall, within funds appropriated to the Department, provide overtime compensation to the professional employees of the Division of Forest Resources involved in fighting forest fires.

"§ 106-869. Woodland defined.

For the purposes of this Article, woodland is taken to include all forest areas, both timber and cutover land, and all second-growth stands on areas that have at one time been cultivated.

"§ 106-870. Misdemeanor to destroy posted forestry notice.

Any person who shall maliciously or willfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the ~~Secretary,~~Commissioner, under the provisions of this Article, or any other act which may be passed for the purpose of protecting and developing the forests in this State, shall be guilty of a Class 3 misdemeanor.

"§ 106-871. Cooperation between counties and State in forest protection and development.

The board of county commissioners of any county is hereby authorized and empowered to cooperate with the Department in the protection, reforestation, and promotion of forest management of their own forests within their respective counties, and to appropriate and pay out of the funds under their control such amount as is provided in ~~G.S. 113-54.~~G.S. 106-863.

"§ 106-872. Instructions on forest preservation and development.

(a) It shall be the duty of all district, county, township rangers, and all deputy rangers provided for in this Chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire rangers all such tracts, books, periodicals and

other literature that may, from time to time, be sent out to such rangers by the State and federal forestry agencies touching or dealing with forest preservation, development, and forest management.

(b) It shall be the duty of the various rangers herein mentioned under the direction of the ~~Secretary;~~Commissioner, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, the development and scientific management of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do.

"§ 106-873. Authority of Governor to close forests and woodlands to hunting, fishing and trapping.

During periods of protracted drought or when other hazardous fire conditions threaten forest and water resources and appear to require extraordinary precautions, the Governor of the State, upon the joint recommendation of the ~~Secretary~~ Commissioner and the Executive Director of the North Carolina Wildlife Resources Commission, may by official proclamation:

(1) Close any or all of the woodlands and inland waters of the State to hunting, fishing and trapping for the period of the emergency.

(2) Forbid for the period of the emergency the building of campfires and the burning of brush, grass or other debris within 500 feet of any woodland in any county, counties, or parts thereof.

(3) Close for the period of the emergency any or all of the woodlands of the State to such other persons and activities as he deems proper under the circumstances, except to the owners or tenants of such property and their agents and employees, or persons holding written permission from any owner or his recognized agent to enter thereon for any lawful purpose other than hunting, fishing or trapping.

"§ 106-874. Publication of proclamation; annulment thereof.

Such proclamation shall become effective 24 hours after certified time of issue, and shall be published in such newspapers and posted in such places and in such manner as the Governor may direct. It shall be annulled in the same manner by another proclamation by the Governor when he is satisfied, upon joint recommendation of the ~~Secretary~~ Commissioner and the Executive Director of the North Carolina Wildlife Resources Commission, that the period of the emergency has passed.

"§ 106-875. Violation of proclamation a misdemeanor.

Any person, firm or corporation who enters upon any woodlands or inland waters of the State for the purpose of hunting, fishing or trapping, or who builds a campfire or burns brush, grass or other debris within 500 feet of any woodland, after a proclamation has been issued by the Governor forbidding such activities, or who violates any other provisions of the Governor's proclamation with regard to permissible activities in closed woodlands shall be guilty of a Class 1 misdemeanor."

SECTION 13.25.(r) Article 4A of Chapter 113 of the General Statutes (G.S. 113-60.4, 113-60.5, 113-60.6, 113-60.7, 113-60.8, 113-60.9, 113-60.10) is recodified as a new Article 73 of Chapter 106 of the General Statutes, G.S. 106-880 through G.S. 106-886.

SECTION 13.25.(s) Article 73 of Chapter 106 of the General Statutes, as recodified under subsection (r) of this section, reads as rewritten:

"Article 73.

"Protection of Forest Against Insect Infestation and Disease.

"§ 106-880. Purpose and intent.

(a) The purpose of this Article is to place within the Department of ~~Environment and Natural Resources;~~Agriculture and Consumer Services the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicate outbreaks of forest insect pests and tree diseases.

(b) In this Article, unless the context requires otherwise, the expression "Department" means the Department of ~~Environment and Natural Resources; "Secretary"~~Agriculture and

Consumer Services, and "Commissioner" means the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture.

"§ 106-881. Authority of the Department.

The authority and responsibility for carrying out the purpose, intent and provisions of this Article are hereby delegated to the Department. The administration of the provisions of this Article shall be under the general supervision of the ~~Secretary.~~Commissioner. ~~The provisions of this Article shall not abrogate or change any power or authority as may be vested in the North Carolina Department of Agriculture and Consumer Services under existing statutes.~~

"§ 106-882. Definitions.

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

(1) "Control zone" means an area of potential or actual infestation or infection, boundaries of which are fixed and clearly described in a manner to definitely identify the zone.

(2) "Forestland" means land on which forest trees occur.

(3) "Forest trees" means only those trees which are a part and constitute a stand of potential immature or mature commercial timber trees, provided that the term "forest trees" shall be deemed to include shade trees of any species around houses, along highways, and within cities and towns, if the same constitute insect and disease menaces to nearby timber trees or timber stands.

(4) "Infection" means attack by any disease affecting forest trees which is declared by the ~~Secretary~~ Commissioner to be dangerously injurious thereto.

(5) "Infestation" means attack by means of any insect, which is by the ~~Secretary~~ Commissioner declared to be dangerously injurious to forest trees.

"§ 106-883. Action against insects and diseases.

Whenever the ~~Secretary,~~Commissioner, or his agent, determines that there exists an infestation of forest insect pests or an infection of forest tree diseases, injurious or potentially injurious to the timber or forest trees within the State of North Carolina, and that said infestation or infection is of such a character as to be a menace to the timber or forest growth of the State, the ~~Secretary~~ Commissioner shall declare the existence of a zone of infestation or infection and shall declare and fix boundaries so as to definitely describe and identify said zone of infestation or infection, and the ~~Secretary~~ Commissioner or his agent shall give notice in writing by mail or otherwise to each forest landowner within the designated control zone advising him of the nature of the infestation or infection, the recommended control measures, and offer him technical advice on methods of carrying out controls.

"§ 106-884. Authority of ~~Secretary~~ Commissioner and his agents to go upon private land within control zones.

The ~~Secretary~~ Commissioner or his agents shall have the power to go upon the land within any zone of infestation or infection and take measures to control, suppress or eradicate the insect, infestation or disease infection. If any person refuses to allow the ~~Secretary~~ Commissioner or his agents to go upon his land, or if any person refuses to adopt adequate means to control or eradicate the insect, infestation or disease infection, the ~~Secretary~~ Commissioner may apply to the superior court of the county in which the land is located for an injunction or other appropriate remedy to restrain the landowner from interfering with the ~~Secretary~~ Commissioner or his agents in entering the control zone and adopting measures to control, suppress or eradicate the insect infestation or disease infection, provided the cost of court or control thereof shall not be a liability against the forest landowner nor constitute a lien upon the real property of such infested area.

"§ 106-885. Cooperative agreements.

In order to more effectively carry out the purposes of this Article, the Department is ~~hereby~~ authorized to enter into cooperative agreement with the federal government and other public and private agencies, and with the owners of forestland.

"§ 106-886. Annulment of control zone.

Whenever the ~~Secretary~~ Commissioner determines that the forest insect or disease control work within a designated control zone is no longer necessary or feasible, then the ~~Secretary~~ Commissioner shall declare the zone of infestation or infection no longer pertinent to the purposes of this Article and such zone will then no longer be recognized."

SECTION 13.25.(t) Article 4B of Chapter 113 of the General Statutes (G.S. 113-60.11, 113-60.12, 113-60.13, 113-60.14, and 113-60.15) is recodified as a new Article 74 of Chapter 106 of the General Statutes, G.S. 106-890 through G.S. 106-894.

SECTION 13.25.(u) G.S. 106-893, as recodified in subsection (t) of this section, reads as rewritten:

"**§ 106-893. Compact Administrator; North Carolina members of advisory committee.**

The ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture is hereby designated as Compact Administrator for this State and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

At some time before the adjournment of each regular session of the General Assembly, the Governor shall choose one person from the membership of the House of Representatives, and shall choose one person from the membership of the Senate, who shall serve on the advisory committee of the Southeastern Interstate Forest Fire Protection Compact as provided for in Article III of said Compact. At the time of the selection of the House and Senate members of such advisory committee, the Governor shall choose one alternate member from the House of Representatives and one from the Senate who shall serve on such advisory committee in case of the death, absence or disability of the regular members so chosen."

SECTION 13.25.(v) G.S. 106-894, as recodified in subsection (t) of this section, reads as rewritten:

"**§ 106-894. Agreements with noncompact states.**

The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services is hereby authorized to enter into written agreements with the State forest fire control agency of any other state or any province of Canada which is party to a regional forest fire protection compact. The provisions of any written agreement entered into pursuant to this Article shall be substantially in the form of the authority heretofore granted under the provisions of this Article, Southeastern Interstate Forest Fire Protection Compact."

SECTION 13.25.(w) Article 4C of Chapter 113 of the General Statutes (G.S. 113-60.21, 113-60.22, 113-60.23, 113-60.24, 113-60.25, 113-60.26, 113-60.27, 113-60.28, 113-60.29, 113-60.30, and 113-60.31) is recodified as a new Article 75 of Chapter 106 of the General Statutes, G.S. 106-900 through G.S. 106-910.

SECTION 13.25.(x) Article 75 of Chapter 106 of the General Statutes, as recodified by subsection (w) of this section, reads as rewritten:

"Article 75.

"Regulation of Open Fires.

"**§ 106-900. Purpose and findings.**

The purpose of this Article is to regulate certain open burning in order to protect the public from the hazards of forest fires and air pollution and to adapt such regulation to the needs and circumstances of the different areas of North Carolina. The General Assembly finds that open burning in proximity to woodlands must be regulated in all counties to protect against forest fires and air pollution. The General Assembly further finds that in certain counties a high percentage of the land area contains organic soils or forest types which may pose greater problems of forest fire and air pollution controls, and that in counties in which a great amount of land-clearing operations is taking place on these organic soils or these forest types, additional control of open burning is required. The counties subject to the need for additional control are classified as high hazard counties for purpose of this Article.

"**§ 106-901. Definitions.**

As used in this Article:

(1) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(2) "Forest ranger" means the county forest ranger or deputy forest ranger designated under ~~G.S. 113-52.~~G.S. 106-861.

(3) "Person" means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.

(4) "Woodland" means woodland as defined in ~~G.S. 113-57.~~G.S. 106-869.

"**§ 106-902. High hazard counties; permits required; standards.**

(a) The provisions of this section apply only to the counties of Beaufort, Bladen, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Duplin, Gates, Hyde, Jones,

Onslow, Pamlico, Pasquotank, Perquimans, Tyrrell, and Washington which are classified as high hazard counties in accordance with ~~G.S. 113-60.21.~~G.S. 106-900.

(b) It is unlawful for any person to willfully start or cause to be started any fire in any woodland under the protection of the Department or within 500 feet of any such woodland without first having obtained a permit from the Department. Permits for starting fires may be obtained from forest rangers or other agents authorized by the county forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled in accordance with ~~G.S. 113-60.25 or 113-60.27.~~G.S. 106-904 or G.S. 106-906.

(c) It is unlawful for any person to willfully burn any debris, stumps, brush or other flammable materials resulting from ground clearing activities and involving more than five contiguous acres, regardless of the proximity of the burning to woodland and on which such materials are placed in piles or windrows without first having obtained a special permit from the Department. Areas less than five acres in size will require a regular permit in accordance with ~~G.S. 113-60.23(b).~~G.S. 106-902(b).

(1) Prevailing winds at the time of ignition must be away from any city, town, development, major highway, or other populated area, the ambient air of which may be significantly affected by smoke, fly ash, or other air contaminates from the burning.

(2) The location of the burning must be at least 1,000 feet from any dwelling or structure located in a predominately residential area other than a dwelling or structure located on the property on which the burning is conducted unless permission is granted by the occupants.

(3) The amount of dirt or organic soil on or in the material to be burned must be minimized and the material arranged in a way suitable to facilitate rapid burning.

(4) Burning may not be initiated when it is determined by a forest ranger, based on information supplied by a competent authority that stagnant air conditions or inversions exist or that such conditions may occur during the duration of the burn.

(5) Heavy oils, asphaltic material, or items containing natural or synthetic rubber may not be used to ignite the material to be burned or to promote the burning of such material.

(6) Initial burning may be commenced only between the hours of 9:00 A.M. and 3:00 P.M. and no combustible material may be added to the fire between 3:00 P.M. on one day and 9:00 A.M. on the following day, except that when favorable meteorological conditions exist, any forest ranger authorized to issue the permit may authorize in writing a deviation from the restrictions.

"§ 106-903. Open burning in non-high hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties not designated as high hazard counties in ~~G.S. 113-60.23(a).~~G.S. 106-902(a).

(b) It shall be unlawful for any person to start or cause to be started any fire or ignite any material in any woodland under the protection of the Department or within 500 feet of any such woodland during the hours starting at midnight and ending at 4:00 P.M. without first obtaining a permit from the Department. Permits may be obtained from forest rangers or other agents authorized by the forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled under ~~G.S. 113-60.25 or 113-60.27.~~G.S. 106-904 or G.S. 106-906.

"§ 106-904. Open burning prohibited statewide.

During periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, the ~~secretary~~ Commissioner is authorized to prohibit all open burning regardless of whether a permit is required under ~~G.S. 113-60.23 or 113-60.24.~~G.S. 106-902 or G.S. 106-903. The ~~secretary~~ Commissioner shall issue a press release containing relevant details of the prohibition to news media serving the area affected.

"§ 106-905. Permit conditions.

Permits issued under this Article shall be issued in the name of the person undertaking the burning and shall specify the specific area in which the burning is to occur, the type and

amount of material to be burned, the duration of the permit, and such other factors as are necessary to identify the burning which is allowed under the permit.

"§ 106-906. Permit suspension and cancellation.

Upon a determination that hazardous forest fire conditions exist the ~~secretary~~ Commissioner is authorized to cancel any permit issued under this Article and suspend the issuance of any new permits. Upon a determination by the Environmental Management Commission or its agent that open burning permitted under this Article is causing significant contravention of ambient air quality standards or that an air pollution episode exists pursuant to Article 21B of Chapter 143 of the General Statutes, the ~~secretary~~ Commissioner shall cancel any permits issued under authority of this Article and shall suspend the issuance of any new permits.

"§ 106-907. Control of existing fires.

(a) If a fire is set without a permit required by ~~G.S. 113-60.23, 113-60.24 or 113-60.25~~G.S. 106-902, 106-903, or 106-904, and is set in an area in which permits are prohibited or cancelled at the time the fire is set, the person responsible for setting the fire or causing the fire to be set shall immediately extinguish the fire or take such other action as directed by any forest ranger authorized to issue permits under ~~G.S. 113-60.23(c).~~G.S. 106-902(c). In the event that the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(b) If a fire requiring a permit under ~~G.S. 113-60.23(c)~~G.S. 106-902(c) is set without a permit and a forest ranger authorized to issue such permits determines that a permit would not have been issued for the fire at the time it was set, the person responsible for setting the fire or causing the fire to be set shall immediately take such action as the forest ranger directs to extinguish or control the fire. In the event the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(c) If a fire is set in accordance with a permit but the burning is taking place contrary to the conditions of the permit, any forest ranger with authority to issue permits in the area in question may order the permittee in writing to undertake the steps necessary to comply with the conditions of his permit. If the permittee is not making a reasonable effort to comply with the order, the forest ranger may enter the property and take reasonable steps to extinguish or control the fire and the permittee shall reimburse the Department for the expenses incurred by the Department.

"§ 106-908. Penalties.

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under ~~G.S. 113-60.28.~~G.S. 106-907.

"§ 106-909. Effect on other laws.

This Article shall not be construed as affecting or abridging the lawful authority of local governments to pass ordinances relating to open burning within their boundaries. Nothing in this Article shall relieve any person from compliance with the provisions of Article 21B of Chapter 143 of the General Statutes and regulations adopted thereunder. In the event that permits are required for open burning associated with land clearing under the authority of Article 21B of Chapter 143 of the General Statutes, the authority to issue such permits shall be delegated to forest rangers who are authorized to issue permits under ~~G.S. 113-60.23(c).~~G.S. 106-902(c).

"§ 106-910. Exempt fires; no permit fees.

(a) This Article shall not apply to any fires started, or caused to be started, within 100 feet of an occupied dwelling house if such fire shall be confined (i) within an enclosure from which burning material may not escape or (ii) within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.

(b) No charge shall be made for the granting of any permit required by this Article."

SECTION 13.25.(y) Article 4D of Chapter 113 of the General Statutes (G.S. 113-60.32 and G.S. 113-60.33) is recodified as a new Article 76 of Chapter 106 of the General Statutes, G.S. 106-915 and G.S. 106-916.

SECTION 13.25.(z) Article 76 of Chapter 106 of the General Statutes, as recodified by subsection (y) of this section, reads as rewritten:

"Article 76.

"Fire Fighters on Standby Duty.

"§ 106-915. Definitions.

As used in this Article:

(1) "Fire fighter" means an employee of the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services who engages in fire suppression duties.

(2) "Fire suppression duties" means involvement in on-site fire suppression, participation in Project Fire Team while it is mobilized, Operations Room duty during on-going fires or when required by high readiness plans, mop-up activities to secure fire sites, scouting and detecting forest fires, performance of standby duty, and any other activity that directly contributes to the detection, response to, and control of fires.

"§ 106-916. Standby duty.

(a) Standby duty is time during which a fire fighter is required to remain within 25 miles of his duty station and be available to return to the duty station on call. The Department of Agriculture and Consumer Services shall provide each fire fighter on standby duty with an electronic paging device that makes the wearer accessible to his duty station.

(b) Notwithstanding subsection (a) of this section, for at least two out of 14 consecutive days that a fire fighter is on duty, the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall permit the fire fighter to be more than 25 miles from his duty station so long as the fire fighter gives the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services a telephone number where he can be reached; each month, the days the fire fighter is permitted to be more than 25 miles from his duty station shall include one full weekend. On the days the fire fighter is permitted to be more than 25 miles from his duty station, the Department of ~~Environment and Natural Resources~~ Agriculture and Consumer Services may call him only when there is a bona fide emergency."

SECTION 13.25.(aa) Article 4E of Chapter 113 of the General Statutes (G.S. 113-60.40, 113-60.41, 113-60.42, 113-60.43, 113-60.44, and 113-60.45) is recodified as a new Article 77 of Chapter 106 of the General Statutes, G.S. 106-920 through G.S. 106-925.

SECTION 13.25.(bb) Article 77 of Chapter 106 of the General Statutes, as recodified by subsection (aa) of this section, reads as rewritten:

"Article 77.

"North Carolina Prescribed Burning Act.

"§ 106-920. Legislative findings.

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. The General Assembly finds that the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire-prone forestlands, referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of wildfires that cause damage.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Prescribed burning

benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage and an area for escape and brooding and that satisfy other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) Prescribed burning enhances the resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife, recreation, and other purposes.

As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable. By recognizing the benefits of prescribed burning and by adopting requirements governing prescribed burning, the General Assembly helps to educate the public, avoid misunderstandings, and reduce complaints about this valuable management tool.

"§ 106-921. Definitions.

As used in this Article:

(1) "Certified prescribed burner" means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(2) "Prescribed burning" means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and safe environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) "Prescription" means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burning.

"106-922. Immunity from liability.

(a) Any prescribed burning conducted in compliance with ~~G.S. 113-60.43~~G.S. 106-923 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burning in compliance with ~~G.S. 113-60.43~~G.S. 106-923 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) Notwithstanding subsections (a) and (b), this section does not apply when a nuisance or damage results from a negligently or improperly conducted prescribed burning.

"§ 106-923. Prescribed burning.

(a) Prior to conducting a prescribed burning, the landowner shall obtain a prescription for the prescribed burning prepared by a certified prescribed burner and filed with the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. A copy of the prescription shall be provided to the landowner. A copy of this prescription shall be in the possession of the responsible burner on site throughout the duration of the prescribed burning. The prescription shall include:

(1) The landowner's name and address.

(2) A description of the area to be burned.

(3) A map of the area to be burned.

(4) An estimate in tons of the fuel located on the area.

(5) The objectives of the prescribed burning.

(6) A list of the acceptable weather conditions and parameters for the prescribed burning sufficient to minimize the likelihood of smoke damage and fire escaping onto adjacent areas.

(7) The name of the certified prescribed burner responsible for conducting the prescribed burning.

(8) A summary of the methods that are adequate for the particular circumstances involved to be used to start, control, and extinguish the prescribed burning.

(9) Provision for reasonable notice of the prescribed burning to be provided to nearby homes and businesses to avoid effects on health and property.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with a prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning. A landowner may conduct a prescribed burning without being a certified prescribed burner if the landowner is burning a tract of forestland of 50 acres or less owned by that landowner and is following all conditions established in a prescription prepared by a certified prescribed burner.

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. This open-burning permit must remain in effect throughout the period of the prescribed burning. The prescribed burning shall be conducted in compliance with all the following:

(1) The terms and conditions of the open-burning permit under ~~Article 4C~~Article 75 of this Chapter.

(2) The State's air pollution control statutes under Article 21 and Article 21B of Chapter 143 of the General Statutes and any rules adopted pursuant to these statutes.

(3) Any applicable local ordinances relating to open burning.

(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(5) Any rules adopted by the Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, to implement this Article.

"§ 106-924. Adoption of rules.

The Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, may adopt rules that govern prescribed burning under this Article.

"§ 106-925. Exemption.

This Article does not apply when the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture has cancelled burning permits pursuant to ~~G.S. 113-60.27~~G.S. 106-906 or prohibited all open burning pursuant to ~~G.S. 113-60.25.~~G.S. 106-904."

SECTION 13.25.(cc) Article 5 of Chapter 113 of the General Statutes (G.S. 113-61, 113-62, 113-63, 113-64, 113-65, 113-66, 113-67, 113-68, 113-69, 113-70, 113-71, 113-72, 113-73, 113-74, 113-75, 113-76, and 113-77) is recodified as a new Article 78 of Chapter 106 of the General Statutes, G.S. 106-930 through G.S. 106-946.

SECTION 13.25.(dd) Article 78 of Chapter 106 of the General Statutes, as recodified by subsection (cc) of this section, reads as rewritten:

"Article 78.

"Corporations for Protection and Development of Forests.

"§ 106-930. Private limited dividend corporations may be formed.

(a) In this Article, unless the context requires otherwise, "Department" means the Department of ~~Environment and Natural Resources; and "Secretary"~~Agriculture and Consumer Services, and "Commissioner" means the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture.

(b) Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the Secretary shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article.

"§ 106-931. Manner of organizing.

A corporation formed under this Article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article. The certificate of

organization of any such corporation shall contain a statement that it is organized under the provisions of this Article and that it consents to be and shall be at all times subject to the rules and supervision of the Secretary, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules from time to time imposed by the Secretary.

"§ 106-932. Directors.

There shall not be less than three directors, one of whom shall always be a person designated by the Secretary, which one need not be a stockholder.

"§ 106-933. Duties of supervision by ~~Secretary of Environment and Natural Resources.~~Commissioner.

Corporations formed under this Article shall be regulated by the ~~Secretary~~ Commissioner in the manner provided in this Article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this Article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties which cannot be fairly charged to any particular corporation or corporations shall be charged to, and paid by, all the corporations then organized and existing under this Article pro rata according to their respective stock capitalizations. The ~~Secretary~~ Commissioner shall:

(1) Adopt rules to implement this Article and to protect and develop forests subject to its jurisdiction.

(2) Order all corporations organized under this Article to do such acts as may be necessary to comply with the provisions of law and the rules adopted by the ~~Secretary,~~Commissioner, or to refrain from doing any acts in violation thereof.

(3) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the ~~Secretary.~~Commissioner.

(4) Require every such corporation to file with the ~~Secretary~~ Commissioner annual reports and, if the ~~Secretary~~ Commissioner shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the ~~Secretary~~ Commissioner may require.

"§ 106-934. Powers of ~~Secretary.~~Commissioner.

The ~~Secretary~~ Commissioner may:

(1) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(2) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The ~~Secretary~~ Commissioner shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(3) Enforce the provisions of this Article, a rule implementing this Article, or an order issued under this Article by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief.

"§ 106-935. Provision for appeal by corporations to Governor.

If any corporation organized under this Article is dissatisfied with or aggrieved at any rule or order imposed upon it by the ~~Secretary,~~Commissioner, or any valuation or appraisal of any of its property made by the ~~Secretary,~~Commissioner, or any failure of or refusal by the ~~Secretary~~ Commissioner to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the Governor by filing with him a claim of appeal upon which the decision of the Governor shall be final. Such determination, if other than a

dismissal of the appeal, shall be set forth by the Governor in a written mandate to the ~~Secretary,~~Commissioner, who shall abide thereby and take such actions as the same may direct.

"§ 106-936. Limitations as to dividends.

The shares of stock of corporations organized under this Article shall have a par value and, except as provided in ~~G.S. 113-69~~G.S. 106-938 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum (6%) per annum on stock having a preference as to dividends, or eight per centum (8%) per annum on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest.

"§ 106-937. Issuance of securities restricted.

No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the State of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the ~~Secretary.~~Commissioner.

"§ 106-938. Limitation on bounties to stockholders.

Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in ~~G.S. 113-67~~G.S. 106-936 except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof.

"§ 106-939. Earnings above dividend requirements payable to State.

Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in ~~G.S. 113-67~~G.S. 106-936 shall be paid over to the State of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the ~~Secretary~~ Commissioner shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered.

"§ 106-940. Dissolution of corporation.

Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the State of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within 20 years of the date of its organization unless the same is accompanied by a certificate of the ~~Secretary~~ Commissioner consenting to such dissolution.

"§ 106-941. Cutting and sale of timber.

Any such corporation may cut and sell the timber on its land or permit the cutting thereof, but all such cuttings shall be in accordance with the rules, restrictions and limitations imposed by the ~~Secretary,~~Commissioner, who shall impose such rules, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time.

"§ 106-942. Corporation may not sell or convey without consent of ~~Secretary,~~Commissioner, or pay higher interest rate than 6%.

No such corporation ~~shall:~~shall do any of the following:

(1) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the ~~Secretary~~ Commissioner of the terms of such sale, transfer or assignment, and unless the ~~Secretary~~ Commissioner shall consent thereto, and if the ~~Secretary~~ Commissioner shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the rules and supervision of the ~~Secretary~~ Commissioner for such period as the latter may ~~require;~~require.

(2) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum (6%) per annum without the consent of the ~~Secretary;~~Commissioner.

(3) Mortgage any real property without first having obtained the consent of the ~~Secretary.~~Commissioner.

"§ 106-943. Power to borrow money limited.

Any such corporation formed under this Article may, subject to the approval of the ~~Secretary,~~Commissioner, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the ~~Secretary,~~Commissioner, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the rules of the ~~Secretary~~ Commissioner for such period as the mortgage or trust indenture may specify.

"§ 106-944. ~~Secretary~~ Commissioner to approve development of forests.

No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the ~~Secretary,~~Commissioner, and such approval shall not be given unless:

(1) The ~~Secretary~~ Commissioner shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the ~~Secretary~~ Commissioner shall require of the activities to be included in the project, such statement to set forth the proposals as to
   a. Fire prevention and protection,
   b. Protection against insects and tree diseases,
   c. Protection against damage by livestock and game,
   d. Means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and
   e. Planting and spacing of trees.

(2) There shall be submitted to the ~~Secretary~~ Commissioner a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the ~~Secretary~~ Commissioner as to where such funds are to be secured.

(3) The ~~Secretary~~ Commissioner shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained-yield basis except insofar as the ~~Secretary~~ Commissioner shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the ~~Secretary,~~Commissioner, and that it will at all times comply with such rules concerning the project as the ~~Secretary~~ Commissioner shall from time to time impose.

"§ 106-945. Application of corporate income.

The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the ~~Secretary~~ Commissioner to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus, and/or to the payment of dividends not exceeding the maximum fixed by this Article; third, the balance, if any, in reduction of debts.

"§ 106-946. Reorganization of corporations.

Reorganization of corporations organized under this Article shall be subject to the supervision of the ~~Secretary~~ Commissioner and no such reorganization shall be had without the authorization of the ~~Secretary.~~Commissioner."

SECTION 13.25.(ee) Article 6A of Chapter 113 of the General Statutes (G.S. 113-81.1, 113-81.2, and 113-81.3) is recodified as a new Article 79 of Chapter 106 of the General Statutes, G.S. 106-950 through G.S. 106-952.

SECTION 13.25.(ff) Article 79 of Chapter 106 of the General Statutes, as recodified by subsection (ee) of this section, reads as rewritten:

"Article 79.

"Forestry Services and Advice for Owners and Operators of Forestland.

"§ 106-950. Authority to render scientific forestry services.

(a) In this Article, unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of Agriculture.

~~(1)~~(2) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

~~(2) "Secretary" means the Secretary of Environment and Natural Resources.~~

(b) The Department is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. The Department is also authorized to cooperate with landowners of the State and with counties, municipalities and State agencies by making available forestry services consisting of specialized equipment and operators, or by renting such equipment, and to perform such labor and services as may be necessary to carry out approved forestry practices, including site preparation, forest planting, prescribed burning, and other appropriate forestry practices. For such services or rentals, a reasonable fee representing the ~~Secretary's~~ Commissioner's estimate of not less than the costs of such services or rentals shall be charged, provided however, when the ~~Secretary~~ Commissioner deems it in the public interest, said services may be provided without charge, for the purpose of encouraging the use of approved scientific forestry practice on the private or other forestlands within the State, or for the purpose of providing practical demonstrations of said practices. Receipts from these activities and rentals shall be credited to the budget of the Department for the furtherance of these activities.

"§ 106-951. Services under direction of ~~Secretary;~~Commissioner; compensation; when services without charge.

(a) The administration of the provisions of this Article shall be under the direction of the ~~Secretary.~~Commissioner. The ~~Secretary,~~Commissioner, or his authorized agent, upon receipt of a request from a forest landowner or operator for technical forestry assistance or service, may designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products by blazing, spotting with paint or otherwise designating in an approved manner; he may measure or estimate the commercial volume contained in the trees designated; he may furnish the landowner or operator with a statement of the volume of the trees so designated and estimated; he may assist in finding a suitable market for the products so designated, and he may offer general forestry advice concerning the management of the forest.

(b) For such designating, measuring or estimating services the ~~Secretary~~ Commissioner may make a charge, on behalf of the Department, in an amount not to exceed five percent (5%) of the sale price or fair market value of the stumpage so designated and measured or estimated. Upon receipt from the ~~Secretary~~ Commissioner of a statement of such charges, the landowner or operator or his agent shall make payment to the ~~Secretary~~ Commissioner within 30 days.

(c) In those cases where the ~~Secretary~~ Commissioner deems it desirable to so designate and measure or estimate trees without charge, such services shall be given for the purpose of encouraging the use of approved scientific forestry principles on the private or other forestlands within the State, and to establish practical demonstrations of said principles.

"§ 106-952. Deposit of receipts with State treasury.

All moneys paid to the ~~Secretary~~ Commissioner for services rendered under the provisions of this Article shall be deposited into the State treasury to the credit of the Department."

SECTION 13.25.(gg) Article 11 of Chapter 113A of the General Statutes (G.S. 113A-176, 113A-177, 113A-178, 113A-179, 113A-180, 113A-180.1, 113A-181, 113A-182, and 113A-183) is recodified as a new Article 80 of Chapter 106 of the General Statutes, G.S. 106-955 through G.S. 106-963.

SECTION 13.25.(hh) Article 80 of Chapter 106 of the General Statutes, as recodified by subsection (gg) of this section, reads as rewritten:

"Article 80.

"Forest Development Act.

"§ 106-955. Title.

This Article shall be known as the "Forest Development Act."

"§ 106-956. Statement of purpose.

(a) The General Assembly finds that:

(1) It is in the public interest of the State to encourage the development of the State's forest resources and the protection and improvement of the forest environment.

(2) Unfavorable environmental impacts, particularly the rapid loss of forest land to urban development, are occurring as a result of population growth. It is in

the State's interest that corrective action be developed now to offset forest land losses in the future.

(3) Regeneration of potentially productive forest land is a high-priority problem requiring prompt attention and action. Private forest land will become more important to meet the needs of the State's population.

(4) Growing demands on forests and related land resources cannot be met by intensive management of public and industrial forest lands alone.

(b) The purpose of this Article is to direct the ~~Secretary~~ Commissioner of Agriculture to implement a forest development program to:

(1) Provide financial assistance to eligible landowners to increase the productivity of the privately owned forests of the State through the application of forest renewal practices and other practices that improve tree growth and overall forest health.

(2) Insure that forest operations in the State are conducted in a manner designed to protect the soil, air, and water resources, including but not limited to streams, lakes and estuaries through actions of landowners on lands for which assistance is sought under provisions in this Article.

(3) Implement a program of voluntary landowner participation through the use of a forest development fund to meet the above goals.

(c) It is the intent of the General Assembly that in implementing the program under this Article, the ~~Secretary~~ Commissioner will cause it to be coordinated with other related programs in such a manner as to encourage the utilization of private agencies, firms and individuals furnishing services and materials needed in the application of practices included in the forest development program.

"**§ 106-957. Definitions.**

As used in this Article:

(1) "Approved forest management plan" means the forest management plan submitted by the eligible landowner and approved by the ~~Secretary.~~Commissioner. Such plan shall include forest management practices to insure both maximum forest productivity and environmental protection of the lands to be treated under the management plan.

(2) "Approved practices"' mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature timber, or of insuring maximum growth potential of forest stands to commercial production levels. Such practices shall include those required to accomplish site preparation, natural and artificial forestation, noncommercial removal of residual stands for silvicultural purposes, cultivation of established young growth of desirable trees for silvicultural purposes, and improvement of immature forest stands for silvicultural purposes. In each case, approved practices will be determined by the needs of the individual forest stand. These practices shall include existing practices and such practices as are developed in the future to insure both maximum forest productivity and environmental protection.

(2a) "Commissioner" means the Commissioner of Agriculture.

(3) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(3a) "Eligible land" means land owned by an eligible landowner.

(4) "Eligible landowner" means a private individual, group, association or corporation owning land suitable for forestry purposes. Where forest land is owned jointly by more than one individual, group, association or corporation, as tenants in common, tenants by the entirety, or otherwise, the joint owners shall be considered, for the purpose of this Article, as one eligible landowner and entitled to receive cost-sharing payments as provided herein only once during each fiscal year.

(5) Recodified as § 113A-178(3a).

(6) "Forest development assessment" means an assessment on primary forest products from timber severed in North Carolina for the funding of the provisions of this Article, as authorized by the General Assembly.

(7) "Forest development cost-sharing payment" means financial assistance to partially cover the costs of implementing approved practices in such amounts as the ~~Secretary~~ Commissioner shall determine, subject to the limitations of this Article.

(8) "Forest development fund" means the Forest Development Fund created by ~~G.S. 113A-183.~~G.S. 106-963.

(8a) "Maintain" means to retain the reforested area as forestland for a 10-year period and to comply with the provisions in the approved forest management plan.

~~(9) "Secretary" means the Secretary of Environment and Natural Resources.~~

"§ 106-958. Powers and duties.

(a) The ~~Secretary~~ Commissioner shall have the powers and duties to administer the provisions of this Article.

(b) The Department shall serve as the disbursing agency for funds to be expended from and deposited to the credit of the Forest Development Fund.

(c) Subject to the limitations set forth in ~~G.S. 113A-183(d),~~G.S. 106-963(d), the ~~Secretary~~ Commissioner is authorized to employ administrative, clerical and field personnel to support the program created by this Article and to compensate such employees from the Forest Development Fund for services rendered in direct support of the program.

(d) The ~~Secretary~~ Commissioner is authorized to purchase equipment for the implementation of this program from the Forest Development Fund subject to the limitations of ~~G.S. 113A-183(e).~~G.S. 106-963(e). All equipment purchased with these funds will be assigned to and used only for the forest development program, except for emergency use in forest fire suppression and other activities relating to the protection of life or property. The Forest Development Fund will be reimbursed from other program funds for equipment costs incurred during such emergency use.

"§ 106-959. Administration of cost sharing.

The ~~Secretary~~ Commissioner shall have authority to administer the cost sharing provisions of this Article, including but not limited to the following:

(1) Prescribe the manner and requirements of making application for cost sharing funds.

(2) Identify those approved forestry practices as defined in ~~G.S. 113A-178(2)~~G.S. 106-957(2) which shall be approved for cost sharing under the provisions of this Article.

(3) Review periodically the cost of forest development practices and establish allowable ranges for cost sharing purposes for approved practices under varying conditions throughout the State.

(4) Determine, prior to approving forest development cost sharing payments to any landowner, that all proposed practices are appropriate and are comparable in cost to the prevailing cost of those practices in the general area in which the land is located. Should the ~~Secretary~~ Commissioner determine that the submitted cost of any practice is excessive, he shall approve forest development cost sharing payments based upon an allowable cost established under ~~G.S. 113A-180(3).~~G.S. 106-959(3).

(5) Determine, prior to approving forest development cost sharing payments, that an approved forest management plan as defined in ~~G.S. 113A-178(1)~~G.S. 106-957(1) for the eligible land has been filed with the ~~Secretary~~ Commissioner and that the landowner has indicated in writing his intent to comply with the terms of such management plan.

(6) Determine, prior to approving forest development cost sharing payments, that the approved practices for which payment is requested have been completed in a satisfactory manner, conform to the approved forest management plan submitted under ~~G.S. 113A-180(5),~~G.S. 106-959(5), and otherwise meet the requirements of this Article.

(7) Disburse from the Forest Development Fund to eligible landowners cost sharing payments for satisfactory completion of practices provided for by

this Article and the ~~Secretary~~ Commissioner shall, insofar as is practicable, disburse the funds from the State's appropriation on a matching basis with the funds generated by the Primary Forest Product Assessment.

"§ 106-960. Cost-share agreements.

(a) In order to receive forest development cost-share payments, an eligible landowner shall enter into a written agreement with the Department describing the eligible land, setting forth the approved practices implemented for the area and covered by the approved forest management plan, and agreeing to maintain those practices for a 10-year period.

(b) In the absence of Vis major or Act of God or other factors beyond the landowner's control, a landowner who fails to maintain the practice or practices for a 10-year period in accordance with the agreement set forth in subsection (a) of this section shall repay to the Fund all cost-sharing funds received for that area.

(c) If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner shall:

(1) Obtain a written statement, or a form approved by the Department, from the new owner or transferee in which the new owner or transferee agrees to maintain the approved practices for the remainder of the 10-year period; or

(2) Repay to the Fund all cost-sharing funds received for implementing the approved practices on the land.

If a written statement is obtained from the new owner or transferee, the original landowner will no longer be responsible for maintaining the approved practices or repaying the cost-sharing funds. The responsibility for maintaining those practices for the remainder of the 10 years shall devolve to the new owner or transferee.

"§ 106-961. Limitation of payments.

(a) An eligible landowner may receive forest development cost sharing payments for satisfactory completion of approved practices as determined by the ~~Secretary,~~Commissioner, except that the ~~Secretary~~ Commissioner shall approve no assistance in an amount exceeding the lesser of (i) a sum equal to sixty percent (60%) of the landowner's actual per acre cost incurred in implementing the approved practice or (ii) a sum equal to sixty percent (60%) of the prevailing per acre cost as determined by the ~~Secretary~~ Commissioner under ~~G.S. 113A-180(3)~~G.S. 106-959(3) for implementing that approved practice.

(b) The maximum amount of forest development cost sharing funds allowed to any landowner in one fiscal year will be the amount required to complete all approved practices on 100 acres of land at the prevailing cost sharing rate established under ~~G.S. 113A-181(a).~~G.S. 106-961(a).

(c) Eligible landowners may not use State cost sharing funds if funds from any federal cost sharing program are used on the same acreage for forestry practices during the same fiscal year.

"§ 106-962. Participation by government political subdivisions.

No governmental agency, federal, State or local, will be eligible for forest development payments under the provision of this Article.

"§ 106-963. Forest Development Fund.

(a) The Forest Development Fund is created in the Department ~~of Environment and Natural Resources~~ as a special fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to it. The Fund is created to provide revenue to implement this Article. The Fund consists of the following revenue:

(1) Assessments on primary forest products collected under ~~Article 12 of Chapter 113A~~Article 81 of Chapter 106 of the General Statutes.

(2) General Fund appropriations.

(3) Gifts and grants made to the Fund.

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Processor Assessment Act may be used for program support under the provisions of ~~G.S. 113A-179(c).~~G.S. 106-958(c).

(e) Funds used for the purchase of equipment under the provisions of ~~G.S. 113A-179(d)~~ G.S. 106-958(d) shall be limited to appropriations from the General Fund to the Forest Development Fund designated specifically for equipment purchase."

SECTION 13.25.(ii) Article 12 of Chapter 113A of the General Statutes (G.S. 113A-189, 113A-190, 113A-191, 113A-192, 113A-193, 113A-194, 113A-195, and

113A-196) is recodified as a new Article 81 of Chapter 106 of the General Statutes, G.S. 106-965 through G.S. 106-972.

SECTION 13.25.(jj) Article 81 of Chapter 106 of the General Statutes, as recodified by subsection (ii) of this section, reads as rewritten:

"Article 81.

"Primary Forest Product Assessment Act.

"§ 106-965. Short title.

This Article shall be known as the Primary Forest Product Assessment Act.

"§ 106-966. Statement of purpose.

(a) The purpose of this Article is to create an assessment on primary forest products processed from North Carolina timber to provide a source of funds to finance the forestry operations provided for in the Forest Development Act of 1977.

(b) All assessments levied under the provisions of this Article shall be used only for the purposes specified in ~~G.S. 113A-193(c)~~G.S. 106-969(c) and in the Forest Development ~~Act.~~Act, Article 11 of this Chapter.

"§ 106-967. Definitions.

The following words, terms and phrases hereinafter used for the purpose of this Article are defined as follows:

(1) "Primary forest product" shall include those products of the tree after it is severed from the stump and cut to its first roundwood product for further conversion. These products include but are not limited to whole trees for chipping, whole tree logs, sawlogs, pulpwood, veneer bolts, and posts, poles and piling.

(2) "Processor" shall mean the individual, group, association, or corporation that procures primary forest products at their initial point of concentration for conversion to secondary products or for shipment to others for such conversion.

(3) "Forest Development Fund" shall mean the special fund established by ~~the Forest Development Act of 1977.~~G.S. 106-963.

(4) For the purpose of this Article, the following are not considered "primary forest products":

a. Christmas trees and associated greens;

b. Material harvested from an individual's own land and used on said land for the construction of fences, buildings or other personal use developments;

c. Fuel wood harvested for personal use or use in individual homes.

"§ 106-968. Operation of assessment system.

(a) The General Assembly hereby levies an assessment on all primary forest products harvested from lands within the State of North Carolina.

(b) This assessment shall be at the rates as established in ~~G.S. 113A-194(b)~~G.S. 106-970(b) and the proceeds of such assessment shall be deposited in the Forest Development Fund.

"§ 106-969. Duties.

(a) The Secretary, Department of Revenue, shall:

(1) Develop the necessary administrative procedures to collect the assessment;

(2) Collect the assessment from the primary forest product processors;

(3) Deposit funds collected from the assessment in the Forest Development Fund;

(4) Audit the records of processors to determine compliance with the provisions of this Article.

(b) The ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture shall:

(1) Provide to the Secretary, Department of Revenue, lists of processors subject to the assessment;

(2) Advise the Secretary, Department of Revenue, of the appropriate methods to convert measurements of primary forest products by other systems to those authorized in this Article;

(3) Establish in November prior to those sessions in which the General Assembly considers the State budget, the estimated total assessment that will be collectible in the next budget period and so inform the General Assembly;
(4) Within 30 days of certification of the State budget, notify the Secretary, Department of Revenue, of the need to collect the assessment for those years covered by the approved budget.
(5) By January 15 of each odd-numbered year, report to the General Assembly on the number of acres reforested, type of owners assisted, geographic distribution of funds, the amount of funds encumbered and other matters. The report shall include the information by forestry district and statewide and shall be for the two fiscal years prior to the date of the report.

(c) The Secretary of Revenue shall be reimbursed for those actual expenditures incurred as a cost of collecting the assessment for the Forest Development Fund. This amount shall be transferred from the Forest Development Fund in equal increments at the end of each quarter of the fiscal year to the Department of Revenue. This amount shall not exceed five percent (5%) of the total assessments collected on primary forest products during the preceding fiscal year.

"§ 106-970. Assessment rates.

(a) The assessment rates shall be based on the following standards:
(1) For primary forest products customarily measured in board feet, the "International 1/4 Inch Log Rule" or equivalent will be used;
(2) For primary forest products customarily measured in cords, the standard cord of 128 cubic feet or equivalent will be used;
(3) For any other type of forest product separated from the soil, the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture shall determine a fair unit assessment rate, based on the cubic foot volume of one thousand foot board measure, International 1/4 Inch Log Rule or one standard cord, 128 cubic feet.

(b) The assessment levied on primary forest products shall be at the following rates:
(1) Fifty cents (50¢) per thousand board feet for softwood sawtimber, veneer logs and bolts, and all other softwood products normally measured in board feet;
(2) Forty cents (40¢) per thousand board feet for hardwood and bald cypress sawtimber, veneer, and all other hardwood and bald cypress products normally measured in board feet;
(3) Twenty cents (20¢) per cord for softwood pulpwood and other softwood products normally measured in cords;
(4) Twelve cents (12¢) per cord for hardwood pulpwood and other hardwood and bald cypress products normally measured in cords;
(5) All material harvested within North Carolina for shipment outside the State for primary processing will be assessed at a percentage of the invoice value. This percentage will be established to yield rates equal to those if the material were processed within the State.

"§ 106-971. Collection of assessment.

(a) The assessment shall be levied against the processor of the primary forest product.

(b) The assessment shall be submitted on a quarterly basis of the State's fiscal year due and payable the last day of the month following the end of each quarter.

(c) The assessment shall be remitted to the Secretary, Department of Revenue, by check or money order, with such production reports as may be required by said Secretary.

(d) The processor shall maintain for a period of three fiscal years and make available to the Secretary, Department of Revenue, such production records necessary to verify proper reporting and payment of revenue due the Forest Development Fund.

(e) The production reports of the various processors shall be used only for assessment purposes. Production information will not be made a part of the public record on an individual processor basis.

(f) Any official or employee of the State who discloses information obtained from a production report, except as may be necessary for administration and collection of the assessment, or in the performance of official duties, or in administration or judicial proceedings related to the levy or collection of the assessment, shall be guilty of a Class 3 misdemeanor punishable only by a fine not to exceed fifty dollars ($50.00).

"**§ 106-972. Enforcement of collection.**

The Secretary of Revenue shall enforce collection of the primary forest product assessment in accordance with the remedies and procedures contained in Article 9 of Chapter 105 of the General Statutes."

SECTION 13.25.(kk) G.S. 1-339.17(c1) reads as rewritten:

"(c1) When the public sale is a sale of timber by sealed bid, the notice shall also be given in writing, not less than 21 days before the date on which bids are opened, to a reasonable number of prospective timber buyers, which in all cases shall include the timber buyers listed in the office of the Division of Forest Resources of the Department of Agriculture and Consumer Services for the county or counties in which the timber to be sold is located."

SECTION 13.25.(ll) G.S. 20-81.12(b35) reads as rewritten:

"(b35) First in Forestry. – The Division must receive 300 or more applications for the First in Forestry plate before the plate may be developed. The Division shall transfer quarterly one-half of the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the First in Forestry plates to the Division of Forest Resources of the Department of Agriculture and Consumer Services for a State forests and forestry education program and shall transfer quarterly one-half of the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the First in Forestry plates to the Forest Education and Conservation Foundation for their programs."

SECTION 13.25.(mm) G.S. 97-2(2) reads as rewritten:

"(2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina National Guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation's specifically excluding such executive officer in such contract of insurance, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term "employee" shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State-approved mission pursuant to Article 11 of Chapter 143B of the General Statutes.

"Employee" shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

"Employee" shall include an authorized pickup firefighter of the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources. As used in this section, "authorized pickup firefighter" means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the Division of Forest Resources for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

It shall be a rebuttable presumption that the term "employee" shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person."

SECTION 13.25.(nn) G.S. 105-259(b)(41) reads as rewritten:

"(41) To furnish the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services pertinent contact and financial information concerning companies that are involved in the primary processing of timber products so that the Secretary of Environment and Natural Resources is able to comply with G.S. 113A-193 under the Primary Forest Product Assessment Act."

SECTION 13.25.(oo) G.S. 105-277.7(a)(2) reads as rewritten:

"(2) A representative of the Division of Forest Resources of the Department of ~~Environment and Natural Resources;~~Agriculture and Consumer Services, designated by the Director of that Division."

SECTION 13.25.(pp) G.S. 105-296(j) reads as rewritten:

"(j) The assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Division of Forest Resources of the Department of ~~Environment and Natural Resources;~~Agriculture and Consumer Services, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

SECTION 13.25.(qq) G.S. 106-202.14(b)(3) reads as rewritten:

"(3) The Division of Forest Resources, Department of ~~Environment and Natural Resources;~~Agriculture and Consumer Services;".

SECTION 13.25.(rr) G.S. 113-291.10(a)(3) reads as rewritten:

"(3) The Director of the Division of Forest Resources of the Department of ~~Environment and Natural Resources;~~Agriculture and Consumer Services, or a designee;"

SECTION 13.25.(ss) G.S. 143-166.2(d) reads as rewritten:

"(d) The term "law-enforcement officer", "officer", or "fireman" shall mean a sheriff and all law-enforcement officers employed full-time, permanent part-time, or temporarily by a sheriff, the State of North Carolina or any county or municipality thereof, whether paid or unpaid; and all full-time custodial employees and probation and parole officers of the North Carolina Department of Correction; and all full time institutional and full-time, permanent part-time, and temporary detention employees of the Department of Juvenile Justice and Delinquency Prevention and full-time, permanent part-time, and temporary detention officers employed by any sheriff, county or municipality, whether paid or unpaid. The term "firemen" shall mean both "eligible firemen" as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the ~~North Carolina~~ Division of Forest Resources, Department of ~~Environment and Natural Resources;~~Agriculture and Consumer Services, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated; and shall mean all otherwise eligible persons who, while actively engaged as firefighters or rescue squad workers, are acting in the capacity of a fire or rescue instructor outside their own department or squad. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human

suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-491(a). The term "fireman" shall also mean county fire marshals when engaged in the performance of their county duties. The term "rescue squad worker" shall also mean county emergency services coordinators when engaged in the performance of their county duties."

SECTION 13.25.(tt) G.S. 143-166.7 reads as rewritten:

"**§ 143-166.7. Applicability of Article.**

The provisions of this Article shall apply and be in full force and effect with respect to any law-enforcement officer, fireman, rescue squad worker or senior Civil Air Patrol member killed in the line of duty on or after May 13, 1975. The provisions of this Article shall apply with respect to full-time, permanent part-time and temporary employees of ~~North Carolina~~ Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, killed in line of duty on or after July 1, 1975. The provisions of this Article shall apply to county fire marshals and emergency services coordinators killed in the line of duty on and after July 1, 1988."

SECTION 13.25.(uu) G.S. 143-214.25A(a) reads as rewritten:

"(a) The Division of Water Quality of the Department shall develop a program to train and certify individuals to determine the presence of surface waters that would require the application of rules adopted by the Commission for the protection of riparian buffers. The Division may train and certify employees of the Division as determined by the Director of the Division of Water Quality; employees of units of local government to whom responsibility for the implementation and enforcement of the riparian buffer protection rules is delegated pursuant to G.S. 143-214.23; and Registered Foresters under Chapter 89B of the General Statutes who are employees of the Division of Forest Resources of the Department of Agriculture and Consumer Services as determined by the Director of the Division of Forest Resources. The Director of the Division of Water Quality may review the determinations made by individuals who are certified pursuant to this section, may override a determination made by an individual certified under this section, and, if the Director of the Division of Water Quality determines that an individual is failing to make correct determinations, revoke the certification of that individual."

SECTION 13.25.(vv) G.S. 143-215.74M(d)(11) reads as rewritten:

"(11) The Director of the Division of Forest Resources of the Department of Agriculture and Consumer Services or the Director's designee."

SECTION 13.25.(ww) G.S. 166A-18 reads as rewritten:

"**§ 166A-18. Division of Forest Resources designated as emergency response agency.**

The Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services is designated an emergency response agency of the State of North Carolina for purposes of:

(1) Supporting the Division of Emergency Management of the Department of Crime Control and Public Safety in responding to all-risk incidents.
(2) Receipt of any applicable State or federal funding.
(3) Training of other State and local agencies in disaster and emergency management.
(4) Any other disaster and emergency response roles for which the Division has special training or qualifications."

SECTION 13.25.(xx) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under this section. The Revisor of Statutes may

correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

SECTION 13.25.(yy) The transfers under this section become effective July 1, 2011, and funds transferred shall be net of any changes enacted by this section.

SECTION 13.25.(zz) Any references in this act to the Division of Forest Resources of the Department of Environment and Natural Resources shall be construed to refer to the Division of Forest Resources of the Department of Agriculture and Consumer Services. Any references in this act to the Forestry Council of the Department of Environment and Natural Resources shall be construed to refer to the Forestry Council of the Department of Agriculture and Consumer Services.

OTHER MATTERS REGARDING THE TRANSFER OF TWO DENR DIVISIONS TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

SECTION 13.25A.(a) Concurrently with the transfer under this act of the Division of Forest Resources and the Division of Soil and Water Conservation from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services, the Department of Environment and Natural Resources shall transfer at least four vacant positions in the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services to be reclassified by the Department of Agriculture and Consumer Services for the central business office of the Department of Agriculture and Consumer Services. The Department of Environment and Natural Resources, the Department of Agriculture and Consumer Services, the Office of State Budget and Management, and the Office of State Personnel shall jointly determine if any additional positions from the Department of Environment and Natural Resources should be transferred to the Department of Agriculture and Consumer Services due to the transfer of the Division of Forest Resources and the Division of Soil and Water Conservation from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services under this section.

SECTION 13.25A.(b) The Attorney General shall continue to provide legal counsel and legal support to the Division of Forest Resources and the Division of Soil and Water Conservation after these divisions are transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services under this act.

SECTION 13.25A.(c) Subsequent to the transfer of the Division of Forest Resources and the Division of Soil and Water Conservation from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services under this act, the Division of Forest Resources and the Division of Soil and Water Conservation, including the staff and equipment of these two divisions, may continue to occupy the office space that these two divisions occupied prior to the transfer under this act, and the Department of Environment and Natural Resources shall cooperate with this continued use of the office space.

SECTION 13.25A.(d) The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services shall enter into a memorandum of understanding concerning the sharing of existing databases and any software programs used in the administration of the programs of the Division of Forest Resources and the Division of Soil and Water Conservation and any other matters addressed in this section in order to assure the uninterrupted continuation of services under these programs during and after the transfer of the Division of Forest Resources and the Division of Soil and Water Conservation from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services under this act.

CLEAN WATER MANAGEMENT TRUST FUND

SECTION 13.26.(a) G.S. 113A-253.1 is repealed.

SECTION 13.26.(b) G.S. 113A-253(a) reads as rewritten:

"(a) Fund Established. – The Clean Water Management Trust Fund is established as a special revenue fund. The Fund receives revenue from the following sources and may receive revenue from other sources:

(1) Annual ~~appropriations under G.S. 143-15.3B.~~appropriations.

(2) Scenic River special registration plates under G.S. 20-81.12."

SECTION 13.26.(c) The funds appropriated in this act to the Clean Water Management Trust Fund shall be allocated as follows:

(1) Notwithstanding the provisions of G.S. 113A-253(d), the sum of three million dollars ($3,000,000) shall be used for the 2011-2012 fiscal year and for the 2012-2013 fiscal year for the costs of administering the Clean Water Management Trust Fund, including costs to support the Board of Trustees of the Clean Water Management Trust Fund and its staff, the operating costs of the Board of Trustees of the Clean Water Management Trust Fund and its staff, and the costs of making debt payments to retire debt as provided under G.S. 113A-253(c);

(2) Notwithstanding the provisions of G.S. 113A-253(c) and G.S. 113A-254, the sum of one million five hundred thousand dollars ($1,500,000) shall be used for the 2011-2012 fiscal year and for the 2012-2013 fiscal year for State matching funds for the Readiness and Environmental Protection Initiative and any other United States Department of Defense program that provides for military buffers and protects the overall military training mission; and

(3) The sum of six million two hundred thousand dollars ($6,250,000) shall be used for the 2011-2012 fiscal year and for the 2012-2013 fiscal year for the costs for wastewater projects, water quality restoration projects, minigrants, conservation easements, and stormwater projects consistent with the provisions of Article 18 of Chapter 113A of the General Statutes.

SECTION 13.26.(d) The funds allocated under subdivision (1) and subdivision (3) of subsection (c) of this section shall not be used for land acquisition; however, the funds allocated under subdivision (3) of subsection (c) of this section may be used to purchase conservation easements. Notwithstanding the provisions of G.S. 113A-253(c) and G.S. 113A-254, the funds allocated under subdivision (2) of subsection (c) of this section may be used for land acquisition.

SECTION 13.26.(e) Any funds that become available to the Clean Water Management Trust Fund during the 2011-2012 fiscal year and the 2012-2013 fiscal year that are in excess of the funds allocated under subsection (c) of this section for that fiscal year shall be used as provided in subdivision (1) and subdivision (3) of subsection (c) of this section.

NEW FUNDING SOURCE FOR WILDLIFE RESOURCE COMMISSION BUDGET

SECTION 13.27.(a) G.S. 105-164.44B is repealed.

SECTION 13.27.(b) The Office of State Budget and Management, the State Controller, and the Wildlife Resources Commission shall jointly effectuate, beginning with the Wildlife Resources Commission's budget for the 2011-2012 fiscal year, the transition from the Wildlife Resources Commission receiving sales tax proceeds to fund its budget to the Wildlife Resources Commission receiving an appropriation of eighteen million dollars ($18,000,000) from the General Fund to fund its budget. The funds appropriated under this section shall be transferred to the Wildlife Resources Fund, as provided under G.S. 143-250, and shall be used for personal services expenditures only.

ANNUAL REPORT TO GOV OPS ON WILDLIFE RESOURCES FUND EXPENDITURES

SECTION 13.28.(a) G.S. 143-250 reads as rewritten:

"**§ 143-250. Wildlife Resources Fund.**

All moneys in the game and fish fund or any similar State fund when this Article becomes effective shall be credited forthwith to a special fund in the office of the State Treasurer, and the State Treasurer shall deposit all such moneys in said special fund, which shall be known as the Wildlife Resources Fund.

All unexpended appropriations made to the Department of Conservation and Development, the Board of Conservation and Development, the Division of Game and Inland Fisheries or to any other State agency for any purpose pertaining to wildlife and wildlife resources shall also be transferred to the Wildlife Resources Fund.

Except as otherwise specifically provided by law, all moneys derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, including the income received and accruing from the investment of license revenues, and all funds thereafter received from whatever sources shall be deposited to the credit of the Wildlife Resources Fund and made available to the Commission until expended subject to the provisions of this Article. License revenues include the proceeds from the sale of hunting, fishing, trapping, and related

licenses, from the sale, lease, rental, or other granting of rights to real or personal property acquired or produced with license revenues, and from federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is being made. For purposes of this section, real property includes lands, buildings, minerals, energy resources, timber, grazing rights, and animal products. Personal property includes equipment, vehicles, machines, tools, and annual crops. The Wildlife Resources Fund herein created shall be subject to the provisions of the State Budget Act, Chapter 143C of the General Statutes of North Carolina as amended, and the provisions of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, Chapter 143, Article 2 of the General Statutes of North Carolina as amended.

All moneys credited to the Wildlife Resources Fund shall be made available to carry out the intent and purposes of this Article in accordance with plans approved by the North Carolina Wildlife Resources Commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this Article, Chapter 75A, Article 1, and Chapter 113, Subchapter IV of the General Statutes of North Carolina. ~~The~~ No later than October 1 of each year, the Wildlife Resources Commission shall report to the Joint Legislative Commission on Governmental Operations ~~before expending from the Wildlife Resources Fund more than the amount authorized in the budget enacted by the General Assembly for the fiscal period.~~ on the expenditures from the Wildlife Resources Fund during the fiscal year that ended the previous July 1 of that year and on the planned expenditures for the current fiscal year.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina Wildlife Resources Commission the Governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned."

SECTION 13.28.(b) The first report required under G.S. 143-250, as amended by subsection (a) of this section, is due no later than October 1, 2011.

ANNUAL APPROPRIATIONS FOR BEAVER DAMAGE CONTROL PROGRAM FROM FUNDS AVAILABLE TO THE WILDLIFE RESOURCES COMMISSION

SECTION 13.29. G.S. 113-291.10(f) reads as rewritten:

"(f) Each county that volunteers to participate in this program for a given fiscal year shall provide written notification of its wish to participate no later than September 30 of that year and shall commit the sum of four thousand dollars ($4,000) in local funds no later than September 30 of that year. ~~At least three hundred forty-nine thousand dollars ($349,000)~~ Funds, as appropriated for this program each fiscal year of the ~~biennium~~ biennium, shall be paid from funds available to the Wildlife Resources Commission to provide the State share necessary to support this program, provided the sum of at least twenty-five thousand dollars ($25,000) in federal funds is available each fiscal year of the biennium to provide the federal share."

PART XIV. DEPARTMENT OF COMMERCE

NER BLOCK GRANTS

SECTION 14.1.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2012, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT

01.	State Administration	$ 1,000,000
02.	State Technical Assistance	450,000
03.	Scattered Site Housing	8,000,000
04.	Economic Development	7,210,000
05.	Small Business/Entrepreneurship	3,000,000
06.	NC Catalyst	5,000,000

07. Infrastructure	19,740,000
08. Capacity Building	600,000
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT – 2012 Program Year	$ 45,000,000

SECTION 14.1.(b) Decreases in Federal Fund Availability. – If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

SECTION 14.1.(c) Increases in Federal Fund Availability for Community Development Block Grant. – Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

SECTION 14.1.(d) Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars ($1,000,000) may be used for State Administration; up to four hundred fifty thousand dollars ($450,000) may be used for State Technical Assistance; up to eight million dollars ($8,000,000) may be used for Scattered Site Housing; up to seven million two hundred ten thousand dollars ($7,210,000) may be used for Economic Development; up to three million dollars ($3,000,000) may be used for Small Business/Entrepreneurship; up to five million dollars ($5,000,000) shall be used for NC Catalyst; up to nineteen million seven hundred forty thousand dollars ($19,740,000) may be used for Infrastructure; up to six hundred thousand dollars ($600,000) may be used for Capacity Building. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

SECTION 14.1.(e) The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

(1) A reallocation is required because of an emergency that poses an imminent threat to public health or public safety, the Director of the Budget may authorize the reallocation without consulting the Commission. The Department of Commerce shall report to the Commission on the reallocation no later than 30 days after it was authorized and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(2) The State will lose federal block grant funds or receive less federal block grant funds in the next fiscal year unless a reallocation is made, the Department of Commerce shall provide a written report to the Commission on the proposed reallocation and shall identify the reason that failure to take action will result in the loss of federal funds. If the Commission does not hear the issue within 30 days of receipt of the report, the Department may take the action without consulting the Commission.

SECTION 14.1.(f) By September 1, 2011, the Division of Community Assistance, Department of Commerce, shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of Community Development Block Grant Funds appropriated in the prior fiscal year. The report shall include the following:

(1) A discussion of each of the categories of funding and how the categories were selected, including information on how a determination was made that there was a statewide need in each of the categories.

(2) Information on the number of applications that were received in each category and the total dollar amount requested in each category.

(3) A list of grantees, including the grantee's name, county, category under which the grant was funded, the amount awarded, and a narrative description of the project.

SECTION 14.1.(g) For purposes of this section, eligible activities under the category of Infrastructure in subsection (a) of this section are limited to the installation of public water or sewer lines and improvements to water or sewer treatment plants that have specific problems such as being under moratoriums or special orders of consent. Notwithstanding the provisions of subsection (e) of this section, funds allocated to the Infrastructure category in subsection (a) of this section shall not be reallocated to any other category.

ONE NORTH CAROLINA FUND

SECTION 14.2.(a) Of the funds appropriated in this act to the One North Carolina Fund for the 2011-2012 fiscal year, the Department of Commerce may use up to two hundred fifty thousand dollars ($250,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs during the 2011-2012 fiscal year. The Department of Commerce shall not use more than two hundred fifty thousand dollars ($250,000) for administrative costs in any one fiscal year.

SECTION 14.2.(b) G.S. 143B-437.07 reads as rewritten:

"**§ 143B-437.07. Economic development grant reporting.**

(a) Report. – The Department of Commerce must publish on or before March 1 of each year the ~~following information,~~ information required by this subsection, itemized by business entity, ~~for all grant programs administered by the Department that disbursed or awarded grant monies to businesses during the previous calendar year:~~ for each business or joint private venture to which the State has, in whole or in part, granted one or more economic development incentives during the previous five calendar years. The Department must provide the General Assembly with updated supplemental information consistent with this subsection on a quarterly basis in the form and manner requested by the General Assembly. The information in the report must include all of the following:

~~(1) The amount of grant monies awarded during the previous year.~~

~~(2) The amount of grant monies disbursed during the previous year.~~

~~(3) The amount of grant monies that were disbursed in earlier years to business entities that received grant monies during the previous year.~~

~~(4) The amount of potential future liability under the grant program.~~

~~(5) The number, type, and wage level of jobs created or retained during the previous year as a result of a grant.~~

~~(6) A description of any other financial assistance received during the previous year from all economic development incentive programs administered by the Department.~~

~~(7) Any amount recaptured from the business entity during the previous year for failure to comply with the grant agreement or applicable law.~~

(1) A unique project identification number and a unique descriptor or title.

(2) The date of the award agreement.

(3) The name, mailing address, telephone number, and Web site of the business recipient, or recipients if a joint venture, and the physical location of the site receiving the incentive. If the physical location of the site is undecided, then the name of the county in which the site will be located.

(4) The development tier designation of the county in which the site is located on the date the incentive is awarded.

(5) The NAICS six-digit code and NAICS category of business receiving the incentive. The term 'NAICS' has the same meaning as defined in G.S. 105-164.3.

(6) The sources and dollar value of eligible State incentives by program name.

(7) The sources and dollar value of local government funds provided by any locality and the nature of the local funding. Examples of the nature of local funding include cash, fee-waivers, in-kind services, and donation of land, buildings, or other assets.

(8) The intended use of the incentive by any category or categories to which State law restricts or limits uses of incentive funds. If the use of the incentive funds is not restricted, then the intended purpose of the funds.
(9) The amount of incentive monies disbursed taken during the period.
(10) The amount of potential future liability under the applicable incentive program.
(11) The number, type, and wage level of jobs required to be created or retained to receive a disbursement of incentive monies.
(12) The actual full-time equivalent jobs employed by the recipient during the period.
(13) The projected cost per job created or retained, including State and local funds.
(14) Any amount recaptured from the business entity during the period for failure to satisfy the terms of the grant agreement.

(b) Online Posting. – The Department of Commerce must post on its Internet Web site a summary of the report compiled in subsection (a) of this section. The summary report must include the information required by subdivisions (2), (9), (11), and (12) of subsection (a) of this section.

(c) Economic Development Incentive. – An economic development incentive includes any grant program administered by the Department of Commerce that disburses or awards monies to businesses. Examples of these grant programs include the Job Development Investment Grant Program, the Job Maintenance and Capital Development Fund, One North Carolina Fund, and the Industrial Development Fund, including the Utility Account. The State also incents economic development through the use of tax expenditures in the form of tax credits and refunds. The Department of Revenue must report annually on these statutory economic development incentives, as required under G.S. 105-256."

SECTION 14.2.(c) Notwithstanding G.S. 143B-437.07, as amended by this act, the Department of Commerce is not required to include information in its annual report relating to economic development incentives provided by local governments prior to July 1, 2011.

EXTEND DEADLINE FOR TWENTY PERCENT REDUCTION ON PETROLEUM PRODUCTS USE FOR STATE FLEETS/CLARIFY REPORTING REQUIREMENT

SECTION 14.2B.(a) Section 19.5(a) of S.L. 2005-276, as amended by Section 14.14(a) of S.L. 2009-451, reads as rewritten:

"**SECTION 19.5.(a)** All State agencies, universities, and community colleges that have State-owned vehicle fleets shall develop and implement plans to improve the State's use of alternative fuels, synthetic lubricants, and efficient vehicles. The plans shall achieve a twenty percent (20%) reduction or displacement of the current petroleum products consumed by ~~July 1, 2011.~~July 1, 2016. Before implementation of any plan, all affected agencies shall report their plan to the State Energy Office within the Department of Commerce. The State Energy Office shall compile a report on the plans submitted and report to the Joint Legislative Commission on Governmental Operations. Agencies shall implement their plans by January 1, 2006. Reductions may be met by petroleum or oils displaced through the use of biodiesel, ethanol, synthetic oils or lubricants, other alternative fuels, the use of hybrid electric vehicles, other fuel-efficient or low-emission vehicles, or additional methods as may be approved by the State Energy Office, thereby reducing the amount of harmful emissions. The plan shall not impede mission fulfillment of the agency and shall specifically address a long-term cost-benefit analysis, allowances for changes in vehicle usage, total miles driven, and exceptions due to technology, budgetary limitations, and emergencies."

SECTION 14.2B.(b) Section 19.5(c) of S.L. 2005-276, as amended by Section 14.14(b) of S.L. 2009-451, reads as rewritten:

"**SECTION 19.5.(c)** Agencies shall report by September 1, 2006, and annually thereafter through ~~September 1, 2011,~~September 1, 2016, to the State Energy Office within the Department of Commerce on the efforts undertaken to achieve the reductions. The State Energy Office shall compile and forward a report to the Joint Legislative Commission on Governmental Operations by November 1, 2006, and annually thereafter through ~~November 1, 2011,~~November 1, 2016, on the agencies' progress in meeting their plans."

STATUS OF TRAVEL AND TOURISM INDUSTRY IN NC/ANNUAL REPORT

SECTION 14.3. G.S. 143B-434.2(d) reads as rewritten:

"(d) The Department of Commerce, and the Division of Tourism, Film, and Sports Development within that Department, shall implement the policies set forth in this section. The Division of Tourism, Film, and Sports Development shall make an annual report to the General Assembly regarding the status of the travel and tourism industry in North Carolina; the report shall be submitted to the General Assembly by ~~January 15~~October 15 of each year beginning ~~January 15, 1992.~~October 15, 2011. The duties and responsibilities of the Department of Commerce through the Division of Tourism, Film, and Sports Development shall be to:

...."

NORTH CAROLINA WINERIES & TOURISM/OPERATING COMMITTEES

SECTION 14.3A.(a) There is established an operating committee for the Vinifera Group and an operating committee for the Muscadines Group. The purpose of the operating committees is to promote North Carolina wineries and tourism related to the wineries. Each operating committee shall consist of five members, who shall be appointed by the Commissioner of Agriculture to serve two-year terms, which shall be staggered. The members appointed shall be chosen from among individuals who have education or experience in the wine industry or in the field of tourism. No member of an operating committee may serve for more than two consecutive terms. Initial terms shall commence September 1, 2011.

SECTION 14.3A.(b) Each operating committee shall meet at least twice each calendar year to discuss ways in which to promote and advertise North Carolina wineries and ways in which to improve, use, and distribute State maps showing winery locations. Notwithstanding any other provision of law, committee members shall receive no salary, per diem, subsistence, travel reimbursement, or other stipend or reimbursement as a result of serving on their respective committees.

SECTION 14.3A.(c) Each operating committee shall elect from the membership of the committee a chair and vice-chair. Vacancies resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term. A majority of the members of each committee shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of each committee shall be necessary for action to be taken by the committee.

WINE AND GRAPE GROWERS COUNCIL ELIMINATED

SECTION 14.3B. Part 2J of Article 10 of Chapter 143B of the General Statutes is repealed.

21ST CENTURY COMMUNITIES PROGRAM ELIMINATED/CONFORMING CHANGES

SECTION 14.3C. Part 2K of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 2K. North Carolina Certified Retirement Community Program.

"**§ 143B-437.100. North Carolina Certified Retirement Community Program – creation; powers and duties.**

(a) Program. – There is established the North Carolina Certified Retirement Community Program as part of the ~~21st Century Communities program of the~~ North Carolina Department of Commerce. The Department shall coordinate the development and planning of the North Carolina Certified Retirement Community Program with other State and local groups interested in participating in and promoting the North Carolina Certified Retirement Community Program. The Department shall adopt administrative rules to implement the provisions of this Part. For purposes of this Part, "Department" means the North Carolina Department of Commerce, and "Program" means the North Carolina Certified Retirement Community Program.

(b) Purpose. – The purpose of the Program is to encourage retirees and those planning to retire to make their homes in North Carolina. In order to further this purpose, the Department shall engage in the following activities:

(1) Promote the State as a retirement destination to retirees and those persons and families who are planning retirement both in and outside of North Carolina.

(2) Assist North Carolina communities in their efforts to market themselves as retirement locations and to develop communities that retirees would find attractive for a retirement lifestyle.
(3) Assist in the development of retirement communities and continuing care facilities under Article 64 of Chapter 58 of the General Statutes in order to promote economic development and a potential workforce to enrich North Carolina communities.
(4) Encourage mature market travel and tourism to North Carolina to evaluate future retirement desirability and to visit those who have chosen to retire in North Carolina.

(c) Factors. – The Department shall identify factors that are of interest to retirees or potential retirees in order to inform them of the benefits of living in North Carolina. These factors shall be used to develop a scoring system to determine whether an applicant will qualify as a North Carolina certified retirement community and may include the following:
(1) North Carolina's State and local tax structure.
(2) Housing opportunities and cost.
(3) Climate.
(4) Personal safety.
(5) Working opportunities.
(6) Health care and continuing care services.
(7) Transportation.
(8) Continuing education.
(9) Leisure living.
(10) Recreation.
(11) The performing arts.
(12) Festivals and events.
(13) Sports.
(14) Other services and facilities necessary to enable persons to age in the community with a minimum of restrictions.

(d) Certification. – The Department shall establish criteria for qualifying as a North Carolina certified retirement community. To be eligible to obtain certification as a North Carolina certified retirement community, the community shall meet each of the following requirements:
(1) Be located within 30 miles of a hospital and of emergency medical services.
(2) Take steps to gain the support of churches, clubs, businesses, media, and other entities whose participation will increase the Program's success in attracting retirees or potential retirees.
(3) Establish a retiree attraction committee. The retiree attraction committee shall fulfill or create subcommittees to fulfill each of the following:
a. Conduct a retiree desirability assessment analyzing the community with respect to each of the factors identified by the Department and submit a report of the analysis to the Department.
b. Send a representative of the retirement attraction committee to attend State training meetings conducted by the ~~21st Century Communities program~~ Department during the certification process.
c. Raise funds necessary to run the Program, organize special events, and promote and coordinate the Program with local entities.
d. Establish a community image, evaluate target markets, and develop a marketing and public relations plan designed to accomplish the purpose of the Program.
e. Develop a system that identifies and makes contact with existing and prospective retirees, that provides tour guides when prospects visit the community, and that responds to inquiries, logs contacts made, invites prospects to special community events, and maintains continual contact with prospects until the prospect makes a retirement location decision.
(4) Remit an application fee to the ~~21st Century Communities program~~Department equal to the greater of ten thousand dollars ($10,000) or

the product of fifty cents (50¢) multiplied by the population of the community, as determined by the most recent census.

(5) Submit the completed marketing and public relations plan designed to accomplish the purpose of the Program to the Department.

(6) Submit a long-term plan outlining the steps the community will undertake to maintain or improve its desirability as a destination for retirees, including corrections to any services or facilities identified in the retiree desirability assessment.

"§ 143B-437.101. North Carolina Certified Retirement Community Program – administration.

(a) Administration and Support. – Upon being certified as a North Carolina certified retirement community, the ~~21st Century Communities program~~Department shall provide the following assistance to the community:

(1) Assistance in the training of local Program staff and volunteers.

(2) Ongoing oversight and guidance in marketing and updating on national retirement trends.

(3) Inclusion in the State's national advertising and public relations campaigns and travel show promotions, including a prominent feature on the Department's Web site.

(4) Eligibility for State financial assistance for brochures, support material, and advertising.

(5) An annual evaluation and progress assessment on maintaining and improving the community's desirability as a home for retirees.

(b) Expiration. – A community's certification under this section expires on the fifth anniversary of the date the initial certification is issued. To be considered for recertification by the ~~21st Century Communities program,~~Department, an applicant community shall submit the following:

(1) A completed new application in accordance with the requirements of this Part.

(2) Data demonstrating the success or failure of the community's efforts to market and promote itself as a desirable location for retirees and potential retirees.

(3) The fee required by G.S. 143B-437.100(d)(4)."

EMPLOYMENT SECURITY COMMISSION FUNDS

SECTION 14.4.(a) Funds from the Employment Security Commission Reserve Fund shall be available to the Employment Security Commission of North Carolina to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security Commission Reserve Fund surcharge. The total administrative costs paid with funds from the Reserve in the 2011-2012 fiscal year shall not exceed two million five hundred thousand dollars ($2,500,000).

SECTION 14.4.(b) There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina the sum of twenty million dollars ($20,000,000) for the 2011-2012 fiscal year to be used for the following purposes:

(1) $19,500,000 for the operation and support of local Employment Security Commission offices.

(2) $200,000 to operate the system that tracks former participants in State education and training programs.

(3) $300,000 to maintain compliance with Chapter 96 of the General Statutes, which directs the Commission to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs.

SECTION 14.4.(c) There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina an amount not to exceed one million dollars ($1,000,000) for the 2011-2012 fiscal year to fund State initiatives not currently funded through federal grants.

SECTION 14.4.(d) There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of one million dollars

($1,000,000) for the 2011-2012 fiscal year to fund "Opportunity NC," which provides work-based training opportunities to recipients of unemployment insurance benefits. Opportunity NC must meet all of the following factors:

(1) The training, even though it includes actual operation of the facilities of the employer, is similar to what would be given in a vocational school or academic educational instruction.
(2) The training is for the benefit of the trainee.
(3) The trainees do not displace regular employees, but work under their close observation.
(4) The employer who provides the training derives no immediate advantage from the activities of the trainees, and, on occasion, the employer's operations may actually be impeded.
(5) The trainees are not necessarily entitled to a job at the conclusion of the training period.
(6) The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

SECTION 14.4.(e) Of the funds credited to and held in the State of North Carolina's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act and pursuant to Title II of Division B of P.L. 111-5, the Assistance for Unemployed Workers and Struggling Families Act, the Employment Security Commission of North Carolina may expend the sum of two hundred five million sixty-three thousand five hundred fifty-two dollars ($205,063,552) as follows: (i) one hundred million dollars ($100,000,000) shall be used to design and build the integrated unemployment insurance benefit and tax accounting system and (ii) the remaining funds shall be used for the operation of the unemployment insurance program.

TRANSFER EMPLOYMENT SECURITY COMMISSION TO DEPARTMENT OF COMMERCE

SECTION 14.5.(a) The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Employment Security Commission are transferred to the Department of Commerce with all of the elements of a Type I transfer as defined by G.S. 143A-6.

SECTION 14.5.(b) This section becomes effective November 1, 2011.

AGRICULTURAL EMPLOYEES/UNEMPLOYMENT INSURANCE

SECTION 14.5B. G.S. 96-8(5)n. reads as rewritten:

"n. With respect to employment on and after January 1, 1978, any person or employing unit who (a) during any calendar quarter in the current calendar year or the preceding calendar year paid wages of ~~twenty thousand dollars ($20,000)~~fifty thousand dollars ($50,000) or more for agricultural labor, or (b) on each of some 20 days during the current or preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day. Provided, that with respect to agricultural labor performed by a crew on and after January 1, 1978, the crew leader shall be deemed an employer if (1) either of the requirements set forth in the first sentence of this paragraph are met; and (2) the crew members are not employed by another person within the meaning of the first sentence of this paragraph; (3) and if the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by the crew leader. For purposes of this paragraph, the term "crew leader" means an individual who (1) furnishes individuals to perform agricultural labor for any other person, (2) pays (either on his behalf or on behalf of such other person) the individuals so furnished by

him for the agricultural labor performed by them, and (3) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person. The farm operator shall be deemed to be the employer of any worker hired by the farm operator; any assignment to work with a crew or under a crew leader notwithstanding. All the workers shall be deemed the employees of the farm operator when the crew leader does not qualify as the employer under the provisions set out in this paragraph."

DEPARTMENT OF COMMERCE/CONTRACTS RELATED TO EMPLOYMENT SECURITY ORGANIZATIONAL REFORM

SECTION 14.5C. Notwithstanding any other provision of law to the contrary, the Department of Commerce may enter into contracts or, as necessary, enter into sole source contracts to timely obtain recommendations to achieve employment security organizational reform recommendations and savings.

TRANSFER STATE PORTS AUTHORITY FROM DEPARTMENT OF COMMERCE TO DEPARTMENT OF TRANSPORTATION

SECTION 14.6.(a) The North Carolina State Ports Authority, as contained in Part 10 of Article 10 of Chapter 143B of the General Statutes, is hereby transferred by a Type II transfer to the Department of Transportation. The North Carolina State Ports Authority shall use the State's budgeting, accounting, and human resources systems and shall comply with laws and policies related to submitting budget requests to the Office of State Budget and Management.

SECTION 14.6.(b) Part 10 of Article 10 of Chapter 143B of the General Statutes is recodified as Article 20 of Chapter 136 of the General Statutes, G.S. 136-260 through G.S. 136-275.

SECTION 14.6.(c) G.S. 120-123 reads as rewritten:

"**§ 120-123. Service by members of the General Assembly on certain boards and commissions.**

No member of the General Assembly may serve on any of the following boards or commissions:

...

(26) The North Carolina State Ports Authority, as established by ~~G.S. 143B-452.~~ G.S. 136-260.

...."

SECTION 14.6.(d) G.S. 143-166.13 reads as rewritten:

"**§ 143-166.13. Persons entitled to benefits under Article.**

(a) The following persons who are subject to the Criminal Justice Training and Standards Act are entitled to benefits under this Article:

...

(15) North Carolina Ports Authority Police, Department of ~~Commerce;~~Transportation;

...."

SECTION 14.6.(e) G.S. 143B-346 reads as rewritten:

"**§ 143B-346. Department of Transportation – purpose and functions.**

The general purpose of the Department of Transportation is to provide for the necessary planning, construction, maintenance, and operation of an integrated statewide transportation system for the economical and safe transportation of people and goods as provided for by law. The Department shall also provide and maintain an accurate register of transportation vehicles as provided by statutes, and the Department shall enforce the laws of this State relating to transportation safety assigned to the Department. The Department of Transportation shall be responsible for all of the transportation functions of the executive branch of the State as provided by law except those functions delegated to the Utilities ~~Commission, the State Ports Authority,~~ Commission and the Commissioners of Navigation and Pilotage as provided for by Chapter 76. The major transportation functions include aeronautics, highways, mass transportation, motor vehicles, and transportation safety as provided for by State law. The

Department of Transportation shall succeed to all functions vested in the Board of Transportation and the Department of Motor Vehicles on July 1, 1977."

SECTION 14.6.(f) G.S. 143B-431 reads as rewritten:

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

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

(1) All of the executive functions of the State in relation to economic development including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, ~~the development of our State's ports,~~and energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:

a. The State Board of Alcoholic Control,
b. The North Carolina Utilities Commission,
c. The Employment Security Commission,
d. The North Carolina Industrial Commission,
e. State Banking Commission and the Commissioner of Banks,
f. Savings Institutions Division,
g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
h. Credit Union Commission,
i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17, 2004.
j. The North Carolina Mutual Burial Association Commission,
k. The North Carolina Rural Electrification Authority,
~~l. The North Carolina State Ports Authority,~~

all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and

(3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of Commerce by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this ~~Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article.~~Chapter.

...."

SECTION 14.6.(g) G.S. 143B-433 reads as rewritten:

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

The Department of Commerce shall be organized to include:

(1) The following agencies:

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

l. The North Carolina Rural Electrification Authority.
m. Repealed by Session Laws 1985, c. 757, s. 179(d).
n. North Carolina Science and Technology Research Center.
~~o. The North Carolina State Ports Authority.~~
p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2, 2010.
q. Economic Development Board.
r. Labor Force Development Council.
s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective September 30, 2000.
u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
v. Repealed by Session Laws 1993, c. 321, s. 313b.

...."

SECTION 14.6.(h) G.S. 143B-452, recodified as G.S. 136-260 in subsection (b) of this section, reads as rewritten:

"**§ 136-260. Creation of Authority. – membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.**

(a) The North Carolina State Ports Authority is hereby ~~created.~~created within the Department of Transportation and shall be subject to and under the direct supervision of the Secretary of Transportation. It shall be governed by a board composed of nine members and hereby designated as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11 members and hereby designated as the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. Members of the North Carolina Board of Transportation may be appointed to the Authority. The Governor shall appoint seven members to the Authority, and the General Assembly shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall consist of seven persons appointed by the Governor, and four persons appointed by the General Assembly. Effective ~~July 1, 1989,~~July 1, 2011, the Governor shall appoint six members to the Authority, in addition to the Secretary of ~~Commerce,~~Transportation, who shall serve as a voting member of the Authority by virtue of his office. The Secretary of ~~Commerce~~ Transportation shall fill the first vacancy occurring after ~~July 1, 1989,~~July 1, 2011, in a position on the Authority over which the Governor has appointive power.

...."

SECTION 14.6.(i) G.S. 146-65 reads as rewritten:

"**§ 146-65. Exemptions from Chapter.**

This Chapter does not apply to any of the following:

(1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation or the North Carolina Turnpike Authority.
(2) The North Carolina State Ports Authority in exercising its powers under ~~G.S. 143B-452 through G.S. 143B-467.~~G.S. 136-260 through G.S. 136-275."

SECTION 14.6.(j) G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(11) The North Carolina State Ports Authority with respect to fees established pursuant to ~~G.S. 143B-454(a)(11).~~G.S. 136-262(a)(11).

...."

SECTION 14.6.(k) The Revisor of Statutes shall make any other conforming statutory changes that are necessary to reflect the transfer under subsection (a) of this section.

STUDY COSTS OF SERVICES PROVIDED BY DEPARTMENT OF COMMERCE TO AGENCIES IN THE DEPARTMENT OF COMMERCE

SECTION 14.7.(a) In consultation with the Fiscal Research Division, the Department of Commerce and the ABC Commission, State Banking Commission, Credit

Union Division, Cemetery Commission, Utilities Commission, Utilities Commission Public Staff, and the Rural Electrification Authority shall study the following: (i) the types of services provided by the Department of Commerce to each of the agencies during each fiscal year; and (ii) formulas or methods to be used to determine the costs of the services, including the advantages and disadvantages of each formula or method. The Department of Commerce and each of the agencies shall prepare a joint recommendation as to which formula or method to determine the costs of the services should be used. In addition, the Department of Commerce and each of the agencies shall develop a memorandum of understanding that details the services to be provided by the Department of Commerce during each fiscal year.

SECTION 14.7.(b) By May 1, 2012, the Department of Commerce shall report the results of the study, including formula or method recommendations, required under subsection (a) of this section, to the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division. By May 1, 2012, the Department of Commerce shall also submit a copy of each memorandum of understanding required under subsection (a) of this section to the Fiscal Research Division.

INDUSTRIAL COMMISSION FEES/COMPUTER SYSTEM REPLACEMENT

SECTION 14.8. The North Carolina Industrial Commission may retain the additional revenue generated as a result of an increase in the fee charged to parties for the filing of compromised settlements. These funds shall be used for the purpose of replacing existing computer hardware and software used for the operations of the Commission. These funds may also be used to prepare any assessment of hardware and software needs prior to purchase and to develop and administer the needed databases and new Electronic Case Management System, including the establishment of two time-limited positions for application development and support and mainframe migration. The Commission may not retain any fees under this section unless they are in excess of the former two-hundred-dollar ($200.00) fee charged by the Commission for filing a compromised settlement.

UTILITIES COMMISSION/TERMS OF COMMISSIONERS

SECTION 14.8A.(a) G.S. 62-10 reads as rewritten:

"**§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.**

(a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be ~~eight~~ six years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the ~~eighth~~ sixth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975, one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for ~~eight~~ six years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then current session of the General Assembly.

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner and that of the commissioner designated as chairman shall be set by the General Assembly in the Current Operations Appropriations Act. In lieu of merit and other increment raises paid to regular State employees, each commissioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. "Service" means service as a member of the Utilities Commission.

(h1) In addition to compensation for their services, each member of the Commission who lives at least 50 miles from the City of Raleigh shall be paid a weekly travel allowance for each week the member travels to the City of Raleigh from the member's home for business of the Commission. The allowance shall be calculated for each member by multiplying the actual round-trip mileage from that member's home to the City of Raleigh by the rate-per-mile which is the business standard mileage rate set by the Internal Revenue Service in Rev. Proc. 93-51, December 27, 1993.

(i) The standards of judicial conduct provided for judges in Article 30 of Chapter 7A of the General Statutes shall apply to members of the Commission. Members of the Commission shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.

(j) Except as provided in subsection (h1) of this section, members of the Commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a)."

SECTION 14.8A.(b) This section becomes effective January 1, 2012, and applies to all vacancies on the Utilities Commission occurring on or after that date.

STATE-AID REPORTING REQUIREMENTS

SECTION 14.10.(a) Ag in the Classroom, Councils of Government, Defense & Security Technology Accelerator, FFA Foundation, High Point Market Authority, Indian Economic Development Initiative, Johnson & Wales University, Land Loss Prevention Project, North Carolina Association of Community Development Corporations, North Carolina Institute of Minority Economic Development, Inc., North Carolina Community Development Initiative, Inc., North Carolina Minority Support Center, and Partnership for the Sounds, Inc., shall do the following:

(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives,

and accomplishments and prior State fiscal year itemized expenditures and fund sources.

(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.10.(b) Remaining allotments after September 1 shall not be released to any nonprofit organization that does not satisfy the reporting requirements provided in subsection (a) of this section.

SECTION 14.10.(c) Beginning in fiscal year 2012-2013, no more than one hundred twenty thousand dollars ($120,000) in State funds shall be used for the annual salary of any one employee of an entity named in subsection (a) of this section.

GRASSROOTS SCIENCE PROGRAM

SECTION 14.11.(a) The Grassroots Science Program within the Department of Environment and Natural Resources is transferred to the Department of Commerce.

SECTION 14.11.(b) Of the funds appropriated in this act to the Department of Commerce for State Aid, the sum of two million eight hundred ninety-nine thousand eight hundred eighty-five dollars ($2,899,885) for the 2011-2012 fiscal year and the sum of two million eight hundred ninety-nine thousand eight hundred eighty-five dollars ($2,899,885) for the 2012-2013 fiscal year is allocated as grants-in-aid for each fiscal year as follows:

	2011-2012	2012-2013
Aurora Fossil Museum	$49,000	$49,000
Cape Fear Museum	$132,125	$132,125
Carolina Raptor Center	$92,050	$92,050
Catawba Science Center	$120,100	$120,100
Colburn Earth Science Museum, Inc.	$61,170	$61,170
Core Sound Waterfowl Museum	$49,000	$49,000
Discovery Place	$543,945	$543,945
Eastern NC Regional Science Center	$49,000	$49,000
Fascinate-U	$66,530	$66,530
Granville County Museum Commission, Inc.–Harris Gallery	$49,000	$49,000
Greensboro Children's Museum	$110,845	$110,845
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	$127,695	$127,695
Highlands Nature Center	$65,050	$65,050
Imagination Station	$70,600	$70,600
The Iredell Museums, Inc.	$50,310	$50,310
Kidsenses	$66,700	$66,700
Museum of Coastal Carolina	$64,025	$64,025
The Natural Science Center of Greensboro, Inc.	$152,920	$152,920
North Carolina Museum of Life and Science	$311,685	$311,685
Pisgah Astronomical Research Institute	$49,000	$49,000
Port Discover: Northeastern North Carolina's Center for Hands-On Science, Inc.	$49,000	$49,000
Rocky Mount Children's Museum	$59,290	$59,290
Schiele Museum of Natural History and Planetarium, Inc.	$188,370	$188,370
Sci Works Science Center and Environmental Park of Forsyth County	$120,215	$120,215
Sylvan Heights Waterfowl Park and Eco-Center	$49,000	$49,000
Western North Carolina Nature Center	$92,630	$92,630
Wilmington Children's Museum	$60,630	$60,630

Total	$2,899,885	$2,899,885

SECTION 14.11.(c) No later than March 1, 2012, the Department of Commerce shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

(1) The actual operating budget for the 2010-2011 fiscal year.
(2) The proposed operating budget for the 2011-2012 fiscal year.
(3) The total attendance at the museum during the 2011 calendar year.

SECTION 14.11.(d) No later than March 1, 2013, the Department of Commerce shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

(1) The actual operating budget for the 2011-2012 fiscal year.
(2) The proposed operating budget for the 2012-2013 fiscal year.
(3) The total attendance at the museum during the 2012 calendar year.

SECTION 14.11.(e) As a condition for qualifying to receive funding under this section, all of the following documentation shall, no later than November 1 of each year of the 2011-2013 fiscal biennium, be submitted for each museum under this section to the Department of Commerce for fiscal years ending between July 1, 2009, and June 30, 2010, and only those costs that are properly documented under this subsection are allowed by the Department in calculating the distribution of funds under this section:

(1) Each museum under this section shall submit its IRS (Internal Revenue Service) Form 990 to show its annual operating expenses, its annual report, and a reconciliation that explains any differences between expenses as shown on the IRS Form 990 and the annual report.
(2) Each friends association of a museum under this section shall submit its IRS Form 990 to show its reported expenses for the museum, its annual report, and a reconciliation that explains any differences between expenses as shown on the IRS Form 990 and the annual report, unless the association does not have both an IRS Form 990 and an annual report available, in which case, it shall submit either an IRS Form 990 or an annual report.
(3) The chief financial officer of each county or municipal government that provides funds for the benefit of the museum shall submit a detailed signed statement of documented costs spent for the benefit of the museum that includes documentation of the name, address, title, and telephone number of the person making the assertion that the museum receives funds from the county or municipality for the benefit of the museum.
(4) The chief financial officer of each county or municipal government or each friends association that provides indirect or allocable costs that are not directly charged to a museum under this section but that benefit the museum shall submit in the form of a detailed statement enumerating each cost by type and amount that is verified by the financial officer responsible for the completion of the documentation and that includes the name, address, title, and telephone number of the person making the assertion that the county, municipality, or association provides indirect or allocable costs to the museum.

SECTION 14.11.(f) As used in subsection (e) of this section, "friends association" means a nonprofit corporation established for the purpose of supporting and assisting a museum that receives funding under this section.

SECTION 14.11.(g) Beginning fiscal year 2012-2013, no more than one hundred twenty thousand dollars ($120,000) in State funds shall be used for the annual salary of any one employee of an entity named in subsection (b) of this section.

WAKE FOREST INSTITUTE FOR REGENERATIVE MEDICINE/PROFIT SHARING WITH STATE

SECTION 14.12.(a) Wake Forest University Health Sciences (hereinafter "Wake Forest") shall reimburse the State for State funds appropriated to the Wake Forest Institute of Regenerative Medicine (hereinafter "Institute") by returning to the State five percent (5%) of the royalty revenue received by the Institute from inventions arising under those research projects to which State funds were allocated by the Institute, subject to the following:

(1) The total amount to be reimbursed to the State shall be limited to the amount of State funds appropriated to the Institute plus simple interest at the rate of four percent (4%) annually from the time of disbursement until reimbursement commences;
(2) Wake Forest shall be entitled to deduct the expenses reasonably incurred in prosecuting, defending, and enforcing patent rights for the invention, except to the extent the expenses are recovered from a third party, before calculating the amount to be paid to the State;
(3) Calculation of the payments to the State shall be based upon royalty revenue proportionate to the State funds used in the research, with budgets developed consistent with federal research funding accounting guidelines; and
(4) Payments shall be used by the State in a manner consistent with Title 35 of the United States Code, section 202, subdivision (c)(7).

SECTION 14.12.(b) The Institute shall comply with the following reporting requirements:

(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.
(2) Provide to the Fiscal Research Division a copy of the Institute's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.12.(c) Remaining allotments after September 1 shall not be released to the Institute if it does not satisfy the reporting requirements provided in subsection (b) of this section.

SECTION 14.12.(d) Beginning fiscal year, 2012-2013, no more than one hundred twenty thousand dollars ($120,000) in State funds shall be used for the annual salary of any one employee of the Institute.

COUNCIL OF GOVERNMENT FUNDS

SECTION 14.12A.(a) Of the funds appropriated in this act to the Department of Commerce, the sum of three hundred forty-three thousand one hundred eighty-seven dollars ($343,187) for the 2011-2012 fiscal year and the sum of three hundred forty-three thousand one hundred eighty-seven dollars ($343,187) for the 2012-2013 fiscal year shall be used only as provided by this section. Each regional council of government or lead regional organization is allocated up to twenty-five thousand dollars ($25,000) for the 2011-2012 and the 2012-2013 fiscal years.

SECTION 14.12A.(b) A regional council of government may use funds allocated to it by this section only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other activities as deemed appropriate by the member governments.

SECTION 14.12A.(c) Funds allocated by this section shall be paid by electronic transfer in two equal installments each fiscal year. Upon receipt of the report required by subsection (e) of this section, the first installment shall be paid no later than September 15 of each year.

SECTION 14.12A.(d) Funds allocated by this section shall not be used for payment of dues or assessments by the member governments and shall not supplant funds appropriated by the member governments.

SECTION 14.12A.(e) By September 1 of each year, and more frequently as requested, each council of government or lead regional organization shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources. Each council of government or lead regional organization shall provide to the Fiscal Research Division of the General Assembly a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

RTI INTERNATIONAL/REPORTING REQUIREMENTS; USE OF STATE FUNDS

SECTION 14.12B.(a) RTI International shall do the following:

(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.12B.(b) Remaining allotments after September 1 shall not be released to RTI International if the organization does not satisfy the reporting requirements provided in subsection (a) of this section.

SECTION 14.12B.(c) Funds appropriated in this act to RTI International shall be used to support new research that is conducted in the State of North Carolina. Funds appropriated to RTI International for the 2011-2012 fiscal year that are unexpended and unencumbered as of June 30, 2012, shall revert to the General Fund on June 30, 2012.

SECTION 14.12B.(d) Beginning fiscal year 2012-2013, no more than one hundred twenty thousand dollars ($120,000) in State funds shall be used for the annual salary of any one employee of RTI International.

E-NC AUTHORITY TO TRANSFER FEDERAL GRANT FOR BROADBAND MAPPING TO DEPARTMENT OF COMMERCE

SECTION 14.12C. The e-NC Authority shall consult with the National Telecommunications and Information Administration to determine the manner in which an orderly transfer of grant funds awarded to the e-NC Authority under the State Broadband Data and Development grant program may be made to the Department of Commerce. The e-NC Authority and the Department of Commerce shall comply with the requirements of the National Telecommunications and Information Administration to ensure that the grant funds are transferred as quickly and as efficiently as possible to prevent any significant disruption in the North Carolina mapping and planning project currently titled NC BRIM, NC Broadband-Rigor in Mapping.

REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS ALLOCATIONS

SECTION 14.13.(a) Funds appropriated in this act to the Department of Commerce for regional economic development commissions shall be allocated to the following commissions in accordance with subsection (b) of this section: Western North Carolina Regional Economic Development Commission, Research Triangle Regional Partnership, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, North Carolina's Eastern Region Economic Development Partnership, and Carolinas Partnership, Inc.

SECTION 14.13.(b) Funds appropriated pursuant to subsection (a) of this section shall be allocated to each regional economic development commission as follows:

(1) First, the Department shall establish each commission's allocation by determining the sum of allocations to each county that is a member of that commission. Each county's allocation shall be determined by dividing the county's development factor by the sum of the development factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this subdivision, the term "development factor" means a county's development factor as calculated under G.S. 143B-437.08; and

(2) Next, the Department shall subtract from funds allocated to the North Carolina's Eastern Region Economic Development Partnership the sum of one hundred seventy-four thousand eight hundred ninety dollars ($174,890) in the 2011-2012 fiscal year, which sum represents (i) the total interest earnings in the prior fiscal year on the estimated balance of the seven million five hundred thousand dollars ($7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws and (ii) the total interest earnings in the prior fiscal year on loans made from the seven million five hundred thousand dollars

($7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and

(3) Next, the Department shall redistribute the sum of one hundred seventy-four thousand eight hundred ninety dollars ($174,890) in the 2011-2012 fiscal year to the seven regional economic development commissions named in subsection (a) of this section. Each commission's share of this redistribution shall be determined according to the development factor formula set out in subdivision (1) of this subsection. This redistribution shall be in addition to each commission's allocation determined under subdivision (1) of this subsection.

SECTION 14.13.(c) No more than one hundred thousand dollars ($100,000) in State funds shall be used for the annual salary of any one employee of a regional economic development commission.

SECTION 14.13.(d) The General Assembly finds that successful economic development requires the collaboration of the State, regions of the State, counties, and municipalities. Therefore, the regional economic development commissions are encouraged to seek supplemental funding from their county and municipal partners to continue and enhance their efforts to attract and retain business in the State.

BIOFUELS CENTER OF NORTH CAROLINA

SECTION 14.14.(a) Of the funds appropriated in this act to the Biofuels Center of North Carolina (Center), the sum of four million five hundred thousand dollars ($4,500,000) for each fiscal year in the 2011-2013 biennium shall be allocated as follows:

	2011-2012	2012-2013
General Administration	$1,010,197	$1,010,197
Administration – Projects & Program Delivery	$732,113	$732,113
Communications & Public Information	$143,100	$143,100
Grant Program	$1,613,790	$1,613,790
Targeted Projects & Accelerated Initiatives	$1,000,800	$1,000,800

SECTION 14.14.(b) Except to provide administrative flexibility, up to ten percent (10%) of each of the allocations in subsection (a) of this section may be reallocated to one or more of the other allocations in subsection (a) of this section if, in the judgment of Center management, the reallocation will advance the mission of the Center.

SECTION 14.14.(c) The Center shall comply with the following reporting requirements:

(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

(2) Provide to the Fiscal Research Division a copy of the Center's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.14.(d) Remaining allotments after September 1 shall not be released to the Center if it does not satisfy the reporting requirements provided in subsection (b) of this section.

SECTION 14.14.(e) Beginning fiscal year 2012-2013, no more than one hundred twenty thousand dollars ($120,000) in State funds shall be used for the annual salary of any one employee of the Center.

NORTH CAROLINA BIOTECHNOLOGY CENTER

SECTION 14.15.(a) Of the funds appropriated in this act to the North Carolina Biotechnology Center (Center), the sum of seventeen million five hundred fifty-one thousand seven hundred ten dollars ($17,551,710) for each fiscal year in the 2011-2013 biennium shall be allocated as follows:

(1) Job Creation: Ag Biotech Initiative, Economic and Industrial Development, Regional Offices and Statewide Development, and related activities – $3,779,721;

(2) Science and Commercialization: Science and Technology Development, Centers of Innovation, Business and Technology Development, Education and Training, and related activities – $11,360,700; and

(3) Center Operations: Administration, Professional and Technical Assistance and Oversight, Corporate Communications, Human Resource Management, Financial and Grant Administration, Legal, and Accounting – $2,411,289.

SECTION 14.15.(b) Except to provide administrative flexibility, up to ten percent (10%) of each of the allocations in subsection (a) of this section may be reallocated to one or more of the other allocations in subsection (a) of this section if, in the judgment of Center management, the reallocation will advance the mission of the Center.

SECTION 14.15.(c) The Center shall comply with the following reporting requirements:

(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

(2) Provide to the Fiscal Research Division a copy of the Center's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.15.(d) Remaining allotments after September 1 shall not be released to the Center if it does not satisfy the reporting requirements provided in subsection (b) of this section.

SECTION 14.15.(e) Beginning in fiscal year 2012-2013, no more than one hundred twenty thousand dollars ($120,000) in State funds shall be used for the annual salary of any one employee of the Center.

RURAL ECONOMIC DEVELOPMENT CENTER

SECTION 14.16.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc., (Rural Center) the sum of three million five hundred eighty-three thousand six hundred ninety-one dollars ($3,583,691) for each year in the 2011-2013 biennium shall be allocated as follows:

	2011-2012	2012-2013
Center Administration, Technical Assistance, & Oversight	$1,302,173	$1,302,173
Research and Demonstration Grants	$294,120	$294,120
Institute for Rural Entrepreneurship	$114,570	$114,570
Community Development Grants	$844,250	$844,250
Microenterprise Loan Program	$155,610	$155,610
Water/Sewer/Business Development Matching Grants	$701,955	$701,955
Statewide Water/Sewer Database	$ 79,523	$ 79,523
Agricultural Advancement Consortium	$ 91,490	$ 91,490.

SECTION 14.16.(b) Funds allocated in subsection (a) of this section for community development grants shall support development projects and activities within the State's communities. Any new or previously funded community development corporation, as that term is defined in subsection (c) of this section, is eligible to apply for community development grant funds. However, no community development grant funds shall be released to a community development corporation unless the corporation can demonstrate that there are no outstanding or proposed assessments or other collection actions against the corporation for any State or federal taxes, including related penalties, interest, and fees.

SECTION 14.16.(c) For purposes of this section, the term "community development corporation" means a nonprofit corporation:

(1) Chartered pursuant to Chapter 55A of the General Statutes;

(2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;

(3) Whose primary mission is to develop and improve low-income communities and neighborhoods and Tier 1 counties through economic and related development;

(4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and

(5) Whose primary function is to act as deal maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the targeted community.

SECTION 14.16.(d) The Rural Center shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests.

SECTION 14.16.(e) In awarding grants under this section, the Rural Center shall give preference to a resident company. For purposes of this section, the term "resident company" means a company that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State. An application for a project that serves an economically distressed area shall have priority over a project that does not. A grant to assist with water infrastructure needs is not subject to the provisions of G.S. 143-355.4.

SECTION 14.16.(f) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

SECTION 14.16.(g) Beginning Fiscal Year 2012-2013, no more than one hundred twenty thousand dollars ($120,000) in State funds shall be used for the annual salary of any one employee of the Rural Center.

RURAL ECONOMIC DEVELOPMENT CENTER/INFRASTRUCTURE PROGRAM

SECTION 14.17.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of sixteen million five hundred five thousand seven hundred fifty-eight dollars ($16,505,758) for each year in the 2011-2013 biennium shall be allocated as follows:

(1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. The grants under this Program shall not be subject to the provisions of G.S. 143-355.4.

(2) To provide matching grants or loans to local governments in distressed areas that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.

(3) To provide grants and technical assistance to reinvigorate the economies of towns with populations of less than 7,500, and to invest in economic innovation that stimulates business and job growth in distressed areas.

(4) Recipients of grant funds appropriated under this section shall contribute a cash match for the grant that is equivalent to at least five percent (5%) of the grant amount. The cash match shall come from local resources and may not be derived from other State or federal grant funds or from funds provided by the Rural Center.

SECTION 14.17.(b) In awarding grants under this section, the Rural Center shall give preference to a resident company. For purposes of this section, the term "resident company" means a company that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State. An application for a project that serves an economically distressed area shall have priority over a project that does not. A grant to assist with water infrastructure needs is not subject to the provisions of G.S. 143-355.4.

SECTION 14.17.(c) During each year of the 2011-2013 biennium, the Rural Center may use up to three hundred twenty-nine thousand one hundred seventy-eight dollars ($329,178) of the funds appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

SECTION 14.17.(d) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental

Operations and the Fiscal Research Division concerning the progress of the North Carolina Economic Infrastructure Program in the prior State fiscal year.

OPPORTUNITIES INDUSTRIALIZATION CENTERS FUNDS

SECTION 14.18.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of two hundred eighty-seven thousand two hundred eighty dollars ($287,280) for each year in the 2011-2013 biennium shall be equally distributed among the certified Opportunities Industrialization Centers (OI Centers).

SECTION 14.18.(b) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on OI Centers receiving funds pursuant to subsection (a) of this section. The report shall include data for each OI Center on all itemized expenditures and all fund sources for the prior State fiscal year. The report shall also contain a written narrative on prior fiscal year program activities, objectives, and accomplishments that were funded with funds appropriated in subsection (a) of this section.

SECTION 14.18.(c) The Rural Center shall ensure that each OI Center complies with the audit and reporting requirements prescribed by G.S. 143C-6-232 and Section 09 North Carolina Administrative Code 03M .0101.

SECTION 14.18.(d) No funds appropriated under this act shall be released to an OI Center listed in subsection (a) of this section if the OI Center has any overdue tax debts, as that term is defined in G.S. 105-243.1, at the federal or State level.

RURAL CENTER/RURAL JOBS FUND

SECTION 14.20.(a) Appropriation. – There is appropriated from the General Fund to the North Carolina Rural Economic Development Center, Inc., (Rural Center) the sum of five million dollars ($5,000,000) for the 2011-2012 fiscal year in nonrecurring funds and the sum of five million dollars ($5,000,000) for the 2012-2013 fiscal year in nonrecurring funds to be used to provide grants to local government units for infrastructure needs as provided in this section.

SECTION 14.20.(b) Definitions. – The following definitions shall apply in this section, unless otherwise provided:

(1) Economically distressed area. – An economically distressed county as defined in G.S. 143B-437.01.

(2) Private sector jobs. – Jobs that are located in or will be created in private, for-profit enterprises.

(3) Rural county. – Any of the 85 rural counties served by the Rural Center.

SECTION 14.20.(c) Eligible Applicants; Eligible Projects. – A local government unit is eligible for a Rural Jobs Infrastructure Grant under the provisions of this section if it meets the eligibility requirements provided in subsection (d) of this section. The funds appropriated in this section may be used to provide grants that meet the requirements of subsections (d) and (e) of this section. Projects addressing the following infrastructure needs are eligible for receiving a Rural Jobs Infrastructure Grant under the provisions of this section:

(1) Public wastewater collection system upgrade, extension, improvements.

(2) Public wastewater treatment works.

(3) Public water system upgrade, extension, improvements.

(4) Natural gas availability.

(5) Fiber availability.

(6) Building restoration or upfits.

(7) Other infrastructure needs as may be determined by the Rural Center's Board of Directors.

SECTION 14.20.(d) Rural Jobs Infrastructure Grants. – A Rural Jobs Infrastructure Grant is available to supplement other funds to be applied to the construction or installation costs of an eligible project. Other funds contributed to the project may include federal funds, State funds, and local funds, including contributions from private sector enterprises that may benefit from the proposed improvements. A Rural Jobs Infrastructure Grant is subject to the following provisions:

(1) Eligibility. – A local government unit is eligible for a Rural Jobs Infrastructure Grant if it is a rural county or is located in a rural county.

(2) Maximum grant amount. – Grant funds shall be available based upon the number of private sector jobs to be created as a result of the investment from the Rural Jobs Infrastructure Grant Fund. An applicant for a grant may request up to five thousand dollars ($5,000) per job to be created. An applicant for a Rural Jobs Infrastructure Grant shall not receive more than five hundred thousand dollars ($500,000) for a proposed infrastructure project.

(3) Matching funds. – A local government unit shall match a Rural Jobs Infrastructure Grant on a dollar-for-dollar basis. As part of the matching funds, recipients of grant funds under the provisions of this section shall contribute a cash match for the grant that is equivalent to at least five percent (5%) of the grant amount. The required applicant cash-matching contribution shall come from local resources and may not be derived from other State or federal grant funds or from funds provided by the Rural Center.

SECTION 14.20.(e) Criteria for Grants. – All requests for Rural Jobs Infrastructure Grants shall do all of the following:

(1) Document the infrastructure needs that the project will address.

(2) Specify the number of jobs that will be created as a result of the infrastructure improvements proposed for funding assistance.

(3) Document the availability of all matching funds.

(4) Identify the private enterprises that will be creating the jobs and provide documentation that the enterprises will agree to contract to produce the number of jobs promised.

(5) Provide any additional documentation requested by the Rural Center to complete its review.

As part of its review of grant applications, the Rural Center shall determine that the private sector jobs to be created through the investment of the Rural Jobs Infrastructure Grant Fund will not compete unfairly with existing businesses. An application for a project that serves an economically distressed area shall have priority over a project that does not. A Rural Jobs Infrastructure Grant to assist with water infrastructure needs is not subject to the provisions of G.S. 143-355.4. The Board of Directors of the Rural Center may establish additional criteria to effectively allocate the funds appropriated in this section.

SECTION 14.20.(f) Grant Applications. – Any application for a grant under the provisions of this section shall be submitted by the local government unit to the Rural Center. An application shall be submitted on a form prescribed by the Rural Center and shall contain the information required by or subsequently requested by the Rural Center in order to make a determination on the application. An application that does not contain information required for the application or requested by the Rural Center is incomplete and is not eligible for consideration.

SECTION 14.20.(g) Administrative Costs. – The Rural Center may use up to four percent (4%) of the funds appropriated in this section to cover administrative costs for the life of the grant program created under the provisions of this section.

SECTION 14.20.(h) Loans Prohibited. – The Rural Center shall not use the funds appropriated in this section to make loans.

SECTION 14.20.(i) Reports. – By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the emergency Rural Jobs Infrastructure Grant program created under the provisions of this section.

PART XV. JUDICIAL DEPARTMENT

GRANT FUNDS

SECTION 15.1. Notwithstanding G.S. 143C-6-9, the Administrative Office of the Courts may use up to the sum of one million five hundred thousand dollars ($1,500,000) from funds available to the Department to provide the State match needed in order to receive grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the

House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

TRANSFER OF EQUIPMENT AND SUPPLY FUNDS

SECTION 15.2. Funds appropriated to the Judicial Department in the 2011-2013 fiscal biennium for equipment and supplies shall be certified in a reserve account. The Administrative Office of the Courts may transfer these funds to the appropriate programs and between programs as the equipment priorities and supply consumptions occur during the operating year. These funds shall not be expended for any other purpose.

REIMBURSEMENT FOR USE OF PERSONAL VEHICLES

SECTION 15.3. Notwithstanding the provisions of G.S. 138-6(a)(1), the Judicial Department, during the 2011-2013 fiscal biennium, may elect to establish a per-mile reimbursement rate for transportation by privately owned vehicles at a rate less than the business standard mileage rate set by the Internal Revenue Service.

COLLECTION OF WORTHLESS CHECK FUNDS

SECTION 15.4. Notwithstanding the provisions of G.S. 7A-308(c), the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on June 30, 2011, for the purchase or repair of office or information technology equipment during the 2011-2012 fiscal year. Prior to using any funds under this section, the Judicial Department shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the equipment to be purchased or repaired and the reasons for the purchases.

DISPUTE RESOLUTION FEES

SECTION 15.5. G.S. 7A-38.2(d) reads as rewritten:

"(d) An administrative fee, not to exceed two hundred dollars ($200.00), may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediation training programs operating under this Article. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. Notwithstanding the provisions of G.S. 143C-1-2(b), certification and renewal fees collected by the Dispute Resolution Commission are nonreverting and are only to be used at the direction of the Commission."

WORKLOAD FORMULA FOR SUPERIOR COURT JUDGES/MINUTES MAINTAINED BY THE CLERK OF SUPERIOR COURT TO RECORD CONVENING AND ADJOURNMENT OR RECESS OF COURT

SECTION 15.6.(a) The Administrative Office of the Courts shall use funds available to contract with the National Center for State Courts to develop a workload formula for superior court judges. The results of this formula shall be submitted to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by December 1, 2011.

SECTION 15.6.(b) G.S. 7A-109 is amended by adding a new section to read:

"(a1) The minutes maintained by the clerk pursuant to this subsection shall record the date and time of each convening of court, as well as the date and time of each recess or adjournment of court with no further business before the court."

SECTION 15.6.(c) The Administrative Office of the Courts shall provide on a monthly basis the records of the dates and times of convening, recess, and adjournment of court collected by each clerk of superior court pursuant to G.S. 7A-109, as enacted by subsection (b) of this section, to the National Center for State Courts, the Fiscal Research Division, and the Study Committee on Consolidation of Judicial and Prosecutorial Districts created in Section 15.11 of this act.

STUDY FEASIBILITY OF OFFICE OF PROSECUTORIAL SERVICES

SECTION 15.7.(a) The School of Government at the University of North Carolina at Chapel Hill shall study the feasibility and cost of creating an Office of Prosecutorial Services

within the judicial branch. The study shall compare North Carolina's judicial branch structure to that of other states in terms of organizational placement of prosecutorial and defense services within the context of the unified court system and shall also determine the necessary resources and costs required to make an Office of Prosecutorial Services viable as an independent agency under the judicial branch. The School of Government shall submit the report by April 1, 2012, to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety.

SECTION 15.7.(b) The Conference of District Attorneys may use funds available during the 2011-2012 fiscal year to contract for fiscal management and analysis services to analyze the differences between budgeted and actual position and associated costs in prosecutors' offices.

ENSURE MINIMUM NUMBER OF CLERK OF COURT STAFF

SECTION 15.8. G.S. 7A-102(a) reads as rewritten:

"(a) The numbers and salaries of assistant clerks, deputy clerks, and other employees in the office of each clerk of superior court shall be determined by the Administrative Officer of the Courts after consultation with the clerk concerned. However, no office of clerk of superior court shall have fewer than five total staff positions in addition to the elected clerk of superior court. All personnel in the clerk's office are employees of the State. The clerk appoints the assistants, deputies, and other employees in the clerk's office to serve at his or her pleasure. Assistant and deputy clerks shall take the oath of office prescribed for clerks of superior court, conformed to the office of assistant or deputy clerk, as the case may be. Except as provided by subsection (c2) of this section, the job classifications and related salaries of each employee within the office of each superior court clerk shall be subject to the approval of the Administrative Officer of the Courts after consultation with each clerk concerned and shall be subject to the availability of funds appropriated for that purpose by the General Assembly."

STUDY INFRACTIONS AND WAIVABLE OFFENSES

SECTION 15.9. The Revenue Laws Study Committee shall study the penalties and fines for infractions and waivable offenses and determine whether the current amounts are at a level appropriate for the associated offenses. The Committee shall report its findings, together with any recommended legislation, to the 2012 Regular Session of the 2011 General Assembly upon its convening.

WAIVER OF CRIMINAL COURT COSTS ONLY WHEN JUDGE MAKES FINDING OF JUST CAUSE TO GRANT WAIVER

SECTION 15.10.(a) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and ~~collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no~~collected. No costs may be assessed when a case is dismissed. Costs under this section may not be waived unless the judge makes a written finding of just cause to grant such a waiver.

...."

SECTION 15.10.(b) The Administrative Office of the Courts shall make the necessary modifications to its information systems to maintain records of all cases in which the judge makes a finding of just cause to grant a waiver of criminal court costs under G.S. 7A-304(a) and shall report on those waivers to the Joint Legislative Commission on Governmental Operations by October 1 of each year.

STUDY CONSOLIDATION OF JUDICIAL AND PROSECUTORIAL DISTRICTS

SECTION 15.11.(a) Creation. – There is created the Study Committee on Consolidation of Judicial and Prosecutorial Districts. The Committee shall consist of 10 members to be appointed as follows:

(1) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) Four members of the Senate appointed by the President Pro Tempore of the Senate.

(3) Two members who are knowledgeable about the operations of district attorneys' offices, one appointed by the Speaker of the House of Representatives and one appointed by the President Pro Tempore of the Senate.

The Speaker of the House of Representatives shall designate one representative as cochair, and the President Pro Tempore of the Senate shall designate one senator as cochair. Vacancies on the Committee shall be filled by the same appointing authority making the initial appointment.

The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may meet at any time upon the joint call of the cochairs. The Committee may meet in the Legislative Building or the Legislative Office Building.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 15.11.(b) Duties. – The Committee shall study the number and structure of judicial and prosecutorial districts in the State and shall make recommendations to reduce those districts by consolidation to increase efficiency and improve the quality of justice. Those recommendations shall, to the extent deemed feasible by the Committee, provide for judicial and prosecutorial district plans that are identical.

SECTION 15.11.(c) Report. – The Committee may make a final report, including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly upon its convening. The Committee shall terminate upon filing its final report or upon the convening of the 2012 Regular Session of the 2011 General Assembly, whichever is earlier.

STATEWIDE ADMINISTRATIVE COURT SESSIONS

SECTION 15.11A. The Administrative Office of the Courts shall develop protocols to offer regular Administrative Court sessions in each district court district in the State for the purpose of hearing Chapter 20 infractions. Each district shall offer Administrative Court regularly by October 1, 2011. The Administrative Office of the Courts shall report to the Joint Legislative Commission on Governmental Operations on the scheduling and deployment of resources by February 1, 2012.

OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS/EXPANSION OF PUBLIC DEFENDER OFFICES

SECTION 15.16.(a) The Judicial Department, Office of Indigent Defense Services, may use up to the sum of two million one hundred fifty thousand dollars ($2,150,000) in appropriated funds during the 2011-2012 fiscal year for the expansion of existing offices currently providing legal services to the indigent population under the oversight of the Office of Indigent Defense Services, for the creation of new public defender offices within existing public defender programs, or for the establishment of regional public defender programs. Notwithstanding the defender districts established by G.S. 7A-498.7, the Office of Indigent Defense Services may use a portion of these funds to create positions within existing public defender programs to handle cases in adjacent counties or districts. These funds may be used to create up to 50 new attorney positions and 25 new support staff positions during the 2011-2012 fiscal year and for the salaries, benefits, equipment, and related expenses for these positions in both years of the biennium. Positions creation will be staggered across the two years of the biennium. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion.

SECTION 15.16.(b) G.S. 7A-498.7(b) reads as rewritten:

"(b) For each new term, and to fill any vacancy, public defenders shall be appointed from a list of not less than two and not more than three names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to rules adopted by the Commission on Indigent Defense Services. The appointment shall be made by the ~~senior resident superior court~~

~~judge of the superior court district or set of districts as defined in G.S. 7A-41.1 that includes the county or counties of the defender district for which the public defender is being appointed.~~Commission on Indigent Defense Services."

SECTION 15.16.(c) The Office of Indigent Defense Services shall issue a request for proposals from private law firms or not-for-profit legal representation organizations for the provision of all legal services for indigent clients in all judicial districts. The Office of Indigent Defense Services shall report on the issuance of this request for proposals to the Joint Legislative Commission on Governmental Operations by October 1, 2011. In cases where the proposed contract can provide representation services more efficiently than current costs, the Office of Indigent Defense Services shall use private assigned counsel funds to enter into contracts for this purpose.

OFFICE OF INDIGENT DEFENSE SERVICES REPORT

SECTION 15.17. The Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on:

(1) The volume and cost of cases handled in each district by assigned counsel or public defenders;

(2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program;

(3) Plans for changes in rules, standards, or regulations in the upcoming year; and

(4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services, including any recommendations concerning the feasibility and desirability of establishing regional public defender offices.

AUDIT OF FARMWORKER LEGAL AID PROGRAM

SECTION 15.18. The State Auditor shall conduct a financial audit of the Farmworker Legal Aid program of Legal Aid of North Carolina. The audit shall include assessments of compliance with all State and federal mandates regarding use of funds under the Access to Civil Justice Act and shall assess whether State and federal funds are commingled in the administration and operation of this legal aid program. The State Auditor shall publish this audit not later than October 1, 2011.

LIMIT COMPENSATION RATE PAID TO EXPERT WITNESSES BY THE OFFICE OF INDIGENT DEFENSE SERVICES

SECTION 15.20. G.S. 7A-498.5(f) reads as rewritten:

"(f) The Commission shall establish policies and procedures with respect to the distribution of funds appropriated under this Article, including rates of compensation for appointed counsel, schedules of allowable expenses, appointment and compensation of expert witnesses, and procedures for applying for and receiving compensation. The rate of compensation set for expert witnesses may be no greater than the rate set by the Administrative Office of the Courts under G.S. 7A-314(d)."

TRIAL COURT ADMINISTRATOR POSITIONS

SECTION 15.21. Notwithstanding any other provision of this act, there shall be a trial court administrator position in the following judicial districts: 4, 5, 7B/7C, 10, 12, 14, 18, 21, 26, and 28.

PART XVI. DEPARTMENT OF JUSTICE

USE OF SEIZED AND FORFEITED PROPERTY TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES BY THE FEDERAL GOVERNMENT

SECTION 16.1.(a) Assets transferred to the Departments of Justice, Correction, and Crime Control and Public Safety during the 2011-2013 fiscal biennium pursuant to applicable federal law shall be credited to the budgets of the respective departments and shall result in an increase of law enforcement resources for those departments. The Departments of

Justice, Correction, and Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations upon receipt of the assets and, before using the assets, shall report on the intended use of the assets and the departmental priorities on which the assets may be expended.

SECTION 16.1.(b) The General Assembly finds that the use of assets transferred pursuant to federal law for new personnel positions, new projects, acquisition of real property, repair of buildings where the repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods. Therefore, the Department of Justice, the Department of Correction, and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly.

SECTION 16.1.(c) Nothing in this section prohibits North Carolina law enforcement agencies from receiving funds from the United States Department of Justice, the United States Department of the Treasury, and the United States Department of Health and Human Services.

PURCHASE OF TIME MANAGEMENT SOFTWARE

SECTION 16.2. The Department of Justice shall use funds available to purchase, or purchase licenses for, time management software to be used to ensure adequate record keeping and management of Department attorneys' time. The software shall be of a quality and type generally used by attorneys in the private sector.

PRIVATE PROTECTIVE SERVICES AND ALARM SYSTEMS LICENSING BOARDS PAY FOR USE OF STATE FACILITIES AND SERVICES

SECTION 16.3.(a) G.S. 74C-4 is amended by adding a new subsection to read:

"(h) The Board shall pay the appropriate State agency for the use of physical facilities and services provided to it by the State."

SECTION 16.3.(b) G.S. 74D-4 is amended by adding a new subsection to read:

"(h) The Board shall pay the appropriate State agency for the use of physical facilities and services provided to it by the State."

CERTAIN LITIGATION EXPENSES TO BE PAID BY CLIENTS

SECTION 16.4. G.S. 114-8.2 reads as rewritten:

"**§ 114-8.2. Charges for legal services.**

The Department of Justice shall charge State boards and commissions that are totally supported by receipts from fees or surcharges for legal services rendered by the Department to the board or commission. Client State departments, agencies, boards, and commissions shall reimburse the Department of Justice for reasonable court fees, attorney travel and subsistence costs, and other costs directly related to litigation in which the Department of Justice is representing the department, agency, or board."

HIRING OF SWORN STAFF POSITIONS FOR THE STATE BUREAU OF INVESTIGATION

SECTION 16.5. The Department of Justice may hire sworn personnel to fill vacant positions in the State Bureau of Investigation only in the following circumstances: (i) the position's regular responsibilities involve warrant executions, property searches, criminal investigations, or arrest activities that are consistent in frequency with the responsibilities of other sworn agents; (ii) the position is a promotion for a sworn agent who was employed at the State Bureau of Investigation prior to July 1, 2007; (iii) the position is a forensic drug chemist position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; (iv) the position is a forensic impressions analyst position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; or (v) the position primarily involves supervising sworn personnel.

CRIMINAL INFORMATION DATABASE STUDY

SECTION 16.6. The Department of Justice shall issue a request for information to determine the cost to have a private company maintain the software required for criminal information databases managed by the Criminal Information Division. The Department of Justice shall report the results of this request for information to the Chairs of the House and

Senate Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division by March 1, 2012.

PART XVII. DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS

SECTION 17.1. Funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the 2011-2012 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention regarding the criteria for awarding federal funds. The Office of State Budget and Management, the Governor's Crime Commission, and the Department of Juvenile Justice and Delinquency Prevention shall report to the Appropriations Committees of the Senate and House of Representatives and the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the 2011-2012 fiscal year, the amount of funds anticipated for the 2012-2013 fiscal year, and the allocation of funds by program and purpose.

ANNUAL EVALUATION OF COMMUNITY PROGRAMS

SECTION 17.2. The Department of Juvenile Justice and Delinquency Prevention shall conduct an evaluation of the wilderness camp programs and of multipurpose group homes.

In conducting the evaluation of each of these programs, the Department shall consider whether participation in each program results in a reduction of court involvement among juveniles. The Department also shall identify whether the programs are achieving the goals and objectives of the Juvenile Justice Reform Act, S.L. 1998-202. The Department shall report the results of the evaluation to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the chairs of the Senate and House of Representatives Appropriations Committees and the chairs of the Subcommittees on Justice and Public Safety of the Senate and House of Representatives Appropriations Committees by March 1 of each year.

ALLOCATE REALIZED SAVINGS OF WILDERNESS CAMPS TO FUND CERTAIN LEVEL 2 INTERMEDIATE DISPOSITIONAL ALTERNATIVES FOR JUVENILES

SECTION 17.3.(a) If any funds appropriated by this act to the Department of Juvenile Justice and Delinquency Prevention for the 2011-2013 fiscal biennium for wilderness camps are not required for or expended for wilderness camps, then those funds shall be allocated to the Juvenile Crime Prevention Council grants fund to be used for the Level 2 intermediate dispositional alternatives for juveniles listed in G.S. 7B-2506(13) through (23).

SECTION 17.3.(b) The Department of Juvenile Justice and Delinquency Prevention shall submit an electronic report by October 1, 2011, on all expenditures made from the miscellaneous contract line in Fund Code 1310 to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Fiscal Research Division of the General Assembly. The report shall include all of the following: an itemized list of the contracts that have been executed, the amount of each contract, the date the contract was executed, the purpose of the contract, the number of juveniles that will be served and the manner in which they will be served, the amount of money transferred to the Juvenile Crime Prevention Council fund, and an itemized list of grants allocated from the funds transferred to the Juvenile Crime Prevention Council fund.

JUVENILE CRIME PREVENTION COUNCIL FUNDS

SECTION 17.4.(a) On or before October 1 of each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from

funds appropriated to the Department for local Juvenile Crime Prevention Council (JCPC) grants, including the following:

(1) The amount of the grant awarded.
(2) The membership of the local committee or council administering the award funds on the local level.
(3) The type of program funded.
(4) A short description of the local services, programs, or projects that will receive funds.
(5) Identification of any programs that received grant funds at one time but for which funding has been eliminated by the Department.
(6) The number of at-risk, diverted, and adjudicated juveniles served by each county.
(7) The Department's actions to ensure that county JCPCs prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.
(8) The total cost for each funded program, including the cost per juvenile and the essential elements of the program.

An electronic copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly.

SECTION 17.4.(b) Of the funds appropriated by this act for the 2011-2012 fiscal year to the Department of Juvenile Justice and Delinquency Prevention for Juvenile Crime Prevention Council grants, the sum of one hundred twenty-one thousand six hundred dollars ($121,600) shall be transferred to Project Challenge North Carolina, Inc., to be used for the continued support of Project Challenge programs throughout the State.

FUNDING FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION EDUCATION PROGRAMMING

SECTION 17.5. The Department of Juvenile Justice and Delinquency Prevention shall work with the Department of Public Instruction to identify all education fund sources that can be used to cover education programming costs of the Department of Juvenile Justice and Delinquency Prevention.

The Department of Juvenile Justice and Delinquency Prevention shall report by March 1, 2012, to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee regarding its findings and recommendations.

DJJDP AND DOC JOINT EFFORT TO MAKE IN-HOME MONITORING AVAILABLE AS ALTERNATIVE TO DETENTION FOR JUVENILES

SECTION 17.6. It is the intent of the General Assembly to reduce the State's reliance on detention facilities and youth development centers in the Department of Juvenile Justice and Delinquency Prevention as correctional options for juveniles by increasing the use of community-based alternatives whenever possible. Therefore, the Department of Juvenile Justice and Delinquency Prevention and the Department of Correction shall work together to increase the use of in-home monitoring as an alternative to detention for juveniles. The Department of Correction and the Department of Juvenile Justice and Delinquency Prevention shall assess the monitoring needs for both the adult and juvenile systems, identify the contracts that the Department of Correction currently has for monitoring services, and determine which contracts, if any, may be negotiated or renegotiated to cover monitoring services for both the adult and juvenile systems. The Department of Juvenile Justice and Delinquency Prevention and the Department of Correction may also identify other options to increase the use of in-home monitoring as an alternative to detention for juveniles that may work well and be cost-effective.

The Department of Juvenile Justice and Delinquency Prevention and the Department of Correction shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Fiscal Research Division regarding their findings and recommendations by September 1, 2011.

TREATMENT STAFFING MODEL AT YOUTH DEVELOPMENT CENTERS

SECTION 17.7. The Department shall implement the staffing treatment model presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee as part of the Department's November 14, 2006, report regarding the joint use with the Department of Correction of the Swannanoa Youth Development Center campus.

The staffing levels of the new youth development centers shall be capped at 66 staff for a 32-bed facility and 198 staff for the 96-bed facility for the 2011-2013 fiscal biennium. Staffing ratios shall be no more than 2.1 staff per every juvenile committed at every other existing youth development center.

YOUTH DEVELOPMENT CENTER ANNUAL REPORT

SECTION 17.8. The Department of Juvenile Justice and Delinquency Prevention shall report by October 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Fiscal Research Division on the Youth Development Center (YDC) population, staffing, and capacity in the preceding fiscal year. Specifically, the report shall include all of the following:

(1) The on-campus population of each YDC, including the county the juveniles are from.
(2) The housing capacity of each YDC.
(3) A breakdown of staffing for each YDC, including number, type of position, position title, and position description.
(4) The per-bed and average daily population cost for each facility.
(5) The operating cost for each facility, including personnel and nonpersonnel items.
(6) A brief summary of the treatment model, education, services, and plans for reintegration into the community offered at each facility.
(7) The average length of stay in the YDCs.
(8) The number of incidents of assaults/attacks on staff at each facility.

DJJDP FACILITY MONTHLY COMMITMENT REPORT

SECTION 17.9. The Department of Juvenile Justice and Delinquency Prevention shall report electronically on the first day of each month to the Fiscal Research Division regarding each juvenile correctional facility and the average daily population for the previous month. The report shall include (i) the average daily population for each detention center and (ii) the monthly summary of the Committed Youth Report.

USE OF INMATE LABOR FOR REPAIR AND RENOVATION OF YOUTH DEVELOPMENT CENTERS

SECTION 17.10.(a) The Department of Juvenile Justice and Delinquency Prevention and the Department of Correction in consultation with the Governor's Crime Commission shall establish policies regarding the appropriate use of inmate construction crews provided by the Department of Correction for repair and renovation projects located on property owned or controlled by the Department of Juvenile Justice and Delinquency Prevention. The policies shall require that a sight and sound barrier be maintained between the adults and juveniles at the center at any time that inmate construction crews are used for repair and renovation projects on property owned or controlled by the Department of Juvenile Justice and Delinquency Prevention. The policies shall be developed and ready for implementation by September 1, 2011.

SECTION 17.10.(b) Effective September 1, 2011, and notwithstanding G.S. 148-26(f), the Department of Juvenile Justice and Delinquency Prevention and the Department of Correction may use inmate construction crews provided by the Department of Correction for repair and renovation projects located on property owned or controlled by the Department of Juvenile Justice and Delinquency Prevention pursuant to the policies developed and implemented under subsection (a) of this section.

ALLOCATE FUNDS FOR REPAIRS AND RENOVATIONS TO STONEWALL JACKSON AND C.A. DILLON YOUTH DEVELOPMENT CENTERS

SECTION 17.11. Of the funds appropriated by this act to the Department of Juvenile Justice and Delinquency Prevention for the 2011-2012 fiscal year, the sum of two million three hundred thirty thousand nine hundred dollars ($2,330,900) shall be allocated to the Stonewall Jackson Youth Development Center, and the sum of one million five hundred thirty-one thousand dollars ($1,531,000) shall be allocated to the C.A. Dillon Youth Development Center to be used for repairs and renovations that (i) will increase operational capacity at those facilities and (ii) satisfy the requirements of G.S. 143C-4-3(b). This allocation is separate from and in addition to any allocation of funds that might be made pursuant to Section 30.5 of this act.

JUVENILE ASSESSMENT CENTER FUNDS

SECTION 17.12. Of the funds appropriated by this act for the 2011-2012 fiscal year and for the 2012-2013 fiscal year to the Department of Juvenile Justice and Delinquency Prevention for the operation of the Cumberland Regional Juvenile Detention Center the sum of one hundred twenty-four thousand seventy-five dollars ($124,075) shall be used for the Juvenile Assessment Center in each fiscal year.

PART XVIII. DEPARTMENT OF CORRECTION

FEDERAL GRANT REPORTING

SECTION 18.1. The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant.

FEDERAL GRANT MATCHING FUNDS

SECTION 18.2. Notwithstanding the provisions of G.S. 143C-6-9, the Department of Correction may use up to the sum of one million two hundred thousand dollars ($1,200,000) during the 2011-2012 fiscal year and up to the sum of one million two hundred thousand dollars ($1,200,000) during the 2012-2013 fiscal year from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

USE OF CLOSED PRISON FACILITIES

SECTION 18.3. In conjunction with the closing of prison facilities, including small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located, with the elected State and local officials, and with State and federal agencies about the possibility of converting that unit to other use. The Department may also consult with any private for-profit or nonprofit firm about the possibility of converting the unit to other use. In developing a proposal for future use of each unit, the Department shall give priority to converting the unit to other criminal justice use. Consistent with existing law and the future needs of the Department of Correction, the State may provide for the transfer or the lease of any of these units to counties, municipalities, State agencies, federal agencies, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from one security custody level to another, where that conversion would be cost-effective. A prison unit under lease to a county

pursuant to the provisions of this section for use as a jail is exempt for the period of the lease from any of the minimum standards adopted by the Secretary of Health and Human Services pursuant to G.S. 153A-221 for the housing of adult prisoners that would subject the unit to greater standards than those required of a unit of the State prison system.

LIMIT USE OF OPERATIONAL FUNDS

SECTION 18.4. Funds appropriated in this act to the Department of Correction for operational costs for additional facilities shall be used for personnel and operating expenses set forth in the budget approved by the General Assembly in this act. These funds shall not be expended for any other purpose, except as provided for in this act, and shall not be expended for additional prison personnel positions until the new facilities are within 120 days of projected completion, except that the Department may establish critical positions prior to 120 days of completion representing no more than twenty percent (20%) of the total estimated number of positions.

REIMBURSE COUNTIES FOR HOUSING AND EXTRAORDINARY MEDICAL COSTS FOR INMATES, PAROLEES, AND POST-RELEASE SUPERVISEES AWAITING TRANSFER TO STATE PRISON SYSTEM

SECTION 18.5. Notwithstanding G.S. 143C-6-9, the Department of Correction may use funds available to the Department for the 2011-2013 fiscal biennium to pay the sum of forty dollars ($40.00) per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog.

CENTER FOR COMMUNITY TRANSITIONS/CONTRACT AND REPORT

SECTION 18.6. The Department of Correction may continue to contract with The Center for Community Transitions, Inc., a nonprofit corporation, for the purchase of prison beds for minimum security female inmates during the 2011-2013 fiscal biennium. The Center for Community Transitions, Inc., shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the annual cost per inmate and the average daily inmate population compared to bed capacity using the same methodology as that used by the Department of Correction.

PAROLE ELIGIBILITY REPORT/MUTUAL AGREEMENT PAROLE PROGRAM/MEDICAL RELEASE PROGRAM

SECTION 18.7.(a) The Post-Release Supervision and Parole Commission shall, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, analyze the amount of time each inmate who is eligible for parole on or before July 1, 2012, has served compared to the time served by offenders under Structured Sentencing for comparable crimes. The Commission shall determine if the person has served more time in custody than the person would have served if sentenced to the maximum sentence under the provisions of Article 81B of Chapter 15A of the General Statutes. The "maximum sentence," for the purposes of this section, shall be calculated as set forth in subsection (b) of this section.

SECTION 18.7.(b) For the purposes of this section, the following rules apply for the calculation of the maximum sentence:

(1) The offense upon which the person was convicted shall be classified as the same felony class as the offense would have been classified if committed after the effective date of Article 81B of Chapter 15A of the General Statutes.

(2) The minimum sentence shall be the maximum number of months in the presumptive range of minimum durations in Prior Record Level VI of G.S. 15A-1340.17(c) for the felony class determined under subdivision (1)

of this subsection. The maximum sentence shall be calculated using G.S. 15A-1340.17(d), (e), or (e1).

(3) If a person is serving sentences for two or more offenses that are concurrent in any respect, then the offense with the greater classification shall be used to determine a single maximum sentence for the concurrent offenses. The fact that the person has been convicted of multiple offenses may be considered by the Commission in making its determinations under subsection (a) of this section.

SECTION 18.7.(c) The Post-Release Supervision and Parole Commission shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2012. The report shall include the following: the class of the offense for which each parole-eligible inmate was convicted and whether an inmate had multiple criminal convictions. The Commission shall reinitiate the parole review process for each offender who has served more time than that person would have under Structured Sentencing as provided by subsections (a) and (b) of this section.

The Commission shall also report on the number of parole-eligible inmates reconsidered in compliance with this section and the number who were actually paroled.

SECTION 18.7.(d) The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates enrolled in the mutual agreement parole program, the number completing the program and being paroled, and the number who enrolled but were terminated from the program. The information should be based on the previous calendar year.

SECTION 18.7.(e) The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates proposed for release, considered for release, and granted release under Chapter 84B of Chapter 15A of the General Statutes, providing for the medical release of inmates who are either permanently and totally disabled, terminally ill, or geriatric.

CRIMINAL JUSTICE PARTNERSHIP

SECTION 18.8.(a) Notwithstanding any other provision of law, a county may use funds appropriated pursuant to the Criminal Justice Partnership Act, Article 6A of Chapter 143B of the General Statutes, to provide more than one community-based corrections program.

SECTION 18.8.(b) Effective July 1, 2011, the Department of Correction shall recalculate the county allocation funding formula mandated under G.S. 143B-273.15 using updated data.

SECTION 18.8.(c) Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

SECTION 18.8.(d) The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

SECTION 18.8.(e) The Department of Correction shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

(1) The amount of funds carried over from the prior fiscal year;

(2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;
(3) Any counties the Department anticipates will submit requests for new implementation grants;
(4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;
(5) An analysis of offender participation data received, including data on each program's utilization and capacity;
(6) An analysis of comparable programs prepared by the Division of Research and Planning, Department of Correction, including a comparison of programs in each program type on selected outcome measures developed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Division of Research and Planning, and a summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards;
(7) A review of whether each sentenced offender program is meeting established program goals developed by the Division of Community Corrections in consultation with the Division of Research and Planning and the State Criminal Justice Partnership Advisory Board;
(8) The number of community offenders and intermediate offenders served by each county program;
(9) The amount of Criminal Justice Partnership funds spent on community offenders and intermediate offenders; and
(10) A short description of the services and programs provided by each partnership, including who the service providers are and the amount of funds each service provider receives.

SWANNANOA CORRECTIONAL CENTER FOR WOMEN

SECTION 18.9. The Department of Correction shall relocate the fence at Swannanoa Correctional Center for Women so that the school building is located on the side of the campus housing the Department of Correction facilities, and the Department shall retain the sight and sound barrier between the adults and juveniles at the center.

INMATE MEDICAL COST CONTAINMENT

SECTION 18.10.(a) The Department of Correction shall reimburse those providers and facilities providing approved inmate medical services outside the correctional facility the lesser amount of either a rate of seventy percent (70%) of the provider's then-current prevailing charge or two times the then-current Medicaid rate for any given service. The Department shall have the right to audit any given provider to determine the actual prevailing charge to ensure compliance with this provision.

This section does apply to vendors providing services that are not billed on a fee-for-service basis, such as temporary staffing. Nothing in this section shall preclude the Department from contracting with a provider for services at rates that provide greater documentable cost avoidance for the State than do the rates contained in this section or at rates that are less favorable to the State but that will ensure the continued access to care.

SECTION 18.10.(b) The Department of Correction shall make every effort to contain inmate medical costs by making use of its own hospital and health care facilities to provide health care services to inmates. To the extent that the Department of Correction must utilize other facilities and services to provide health care services to inmates, the Department shall make reasonable efforts to make use of hospitals or other providers with which it has a contract or, if none is reasonably available, hospitals with available capacity or other health care facilities in a region to accomplish that goal. The Department shall make reasonable efforts to equitably distribute inmates among all hospitals or other appropriate health care facilities. With respect to any single hospital, the Department of Correction shall continue to make its best effort to seek admission of the number of inmates representing no more than nine percent (9%) of all inmates requiring hospitalization or hospital services on an annual basis beginning in the 2011-2012 fiscal year, unless the failure to do so would jeopardize the health of an inmate or unless a higher level is agreed to by contract. The Department shall also give

preference to those hospitals or other health care facilities in the same county or an adjoining county to the correctional facility where an inmate requiring hospitalization is incarcerated. The Department will continue these efforts until it has reached a number which represents no more than five percent (5%) of all inmates requiring hospitalization or hospital services on an annual basis at any single hospital by July 1, 2013, unless the failure to do so would jeopardize the health of an inmate or unless a higher level is agreed to by contract.

SECTION 18.10.(c) G.S. 131E-77 is amended by adding a new subsection to read:

"(a1) As a condition of licensure, hospitals licensed under this Article shall treat inmates in the custody of the Department of Correction, unless a hospital lacks the capacity or capability to provide such treatment."

SECTION 18.10.(d) The Department of Correction shall report to the Joint Legislative Commission on Governmental Operations no later than November 1, 2011, and quarterly thereafter on:

(1) The volume of services provided by community medical providers that can be scheduled in advance and, of that volume, the percentage of those services that are provided by contracted providers; and

(2) The volume of services provided by community medical providers that cannot be scheduled in advance and, of that volume, the percentage of those services that are provided by contracted providers.

DEPARTMENT OF CORRECTION RULES FOR INMATE LABOR

SECTION 18.12. G.S. 148-26 is amended by adding a new subsection to read:

"(g) The Department of Correction shall establish rules, standards, and procedures for establishing inmate labor services contracts with any county or municipality expressing interest in contracting for inmate labor."

REPORT ON PROBATION AND PAROLE CASELOADS

SECTION 18.13.(a) The Department of Correction shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on caseload averages for probation and parole officers. The report shall include:

(1) Data on current caseload averages and district averages for probation/parole officer positions;

(2) Data on current span of control for chief probation officers;

(3) An analysis of the optimal caseloads for these officer classifications;

(4) An assessment of the role of surveillance officers;

(5) The number and role of paraprofessionals in supervising low-risk caseloads;

(6) An update on the Department's implementation of the recommendations contained in the National Institute of Correction study conducted on the Division of Community Corrections in 2004 and 2008;

(7) The process of assigning offenders to an appropriate supervision level based on a risk assessment and an examination of other existing resources for assessment and case planning, including the Sentencing Services Program in the Office of Indigent Defense Services and the range of screening and assessment services provided by the Division of Mental Health, Developmental Disability, and Substance Abuse Services in the Department of Health and Human Services; and

(8) Data on cases supervised solely for the collection of court-ordered payments.

SECTION 18.13.(b) The Department of Correction shall conduct a study of probation/parole officer workload. The study shall include analysis of the type of offenders supervised, the distribution of the probation/parole officers' time by type of activity, the caseload carried by the officers, and comparisons to practices in other states. The study shall be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of the offenders supervised and the time required to supervise those offenders.

SECTION 18.13.(c) The Department of Correction shall report the results of the study and recommendations for any adjustments to caseload goals to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by January 1, 2013.

SECTION 18.13.(d) The Department of Correction shall report by March 1 of each year to the Chairs of the House and Senate Appropriations Committees, the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the following:

(1) The number of sex offenders enrolled on active and passive GPS monitoring.
(2) The caseloads of probation officers assigned to GPS-monitored sex offenders.
(3) The number of violations.
(4) The number of absconders.
(5) The projected number of offenders to be enrolled by the end of the 2011-2012 fiscal year and the end of the 2012-2013 fiscal year.

REMOVE SUNSET ON CORRECTION ENTERPRISES STATE AND LOCAL EMPLOYEE/RETIREE PURCHASE ALLOWANCE

SECTION 18.14. Section 6 of S.L. 2007-280 reads as rewritten:

"**SECTION 6.** This act becomes effective ~~August 1, 2007, but the first sentence of G.S. 148-127(5) as enacted by this act expires on July 1, 2012.~~August 1, 2007."

PART XIX. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

CONSOLIDATE THE DEPARTMENT OF CORRECTION, THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY, AND THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION INTO THE DEPARTMENT OF PUBLIC SAFETY

CREATION OF DEPARTMENT

SECTION 19.1.(a) The Department of Public Safety is established as a new executive department. All functions, powers, duties, and obligations vested in the following departments and agencies are transferred to, vested in, and consolidated within the Department of Public Safety by a Type I transfer, as defined in G.S. 143A-6:

(1) The Department of Correction.
(2) The Department of Crime Control and Public Safety.
(3) The Department of Juvenile Justice and Delinquency Prevention.

SECTION 19.1.(b) Chapter 143B of the General Statutes is amended by adding a new Article to read:

"Article 5A.
"Department of Public Safety.
"Part 1. General Provisions.

"**§ 143B-259. Organization.**

(a) There is established the Department of Public Safety. The head of the Department of Public Safety is the Secretary of Public Safety, who shall be known as the Secretary. The Department shall consist of seven divisions and an Office of External Affairs as follows:

(1) The Division of Adult Correction, which shall consist of the former Department of Correction. The head of the Division of Adult Correction shall be a chief deputy secretary, who shall be responsible for prisons, community corrections, and correction enterprises.
(2) The Division of Juvenile Justice, which shall consist of the former Department of Juvenile Justice and Delinquency Prevention. The head of the Division of Juvenile Justice shall be a chief deputy secretary, who shall be responsible for youth detention centers, court services, community programs, and youth development centers.
(3) The Division of Law Enforcement, which shall consist of the following former divisions of the Department of Crime Control and Public Safety and the Department of Justice: the State Highway Patrol, the Alcohol Law Enforcement Division, the Butner Public Safety Division, and the State Capitol Police Division. The head of the Division of Law Enforcement shall be a chief deputy secretary.

(4) The Division of Emergency Management, which shall consist of the former Division of Emergency Management of the Department of Public Safety and the Civil Air Patrol.
(5) The National Guard.
(6) The Division of Administration, the head of which shall be a deputy secretary responsible for all administrative functions, including fiscal, auditing, information technology, purchasing, human resources, training, engineering, and facility management functions for the Department. Within the Division, there is established a Grants Management Section, which shall consist of the Governor's Crime Commission, the Criminal Justice Partnership Program, and the Juvenile Crime Prevention Council Fund.
(7) The Office of External Affairs, which shall be responsible for federal and State liaison activities, victim services, and public affairs.

(b) The powers and duties of the deputy secretaries and the respective divisions shall be subject to the direction and control of the Secretary of Public Safety.

"**§ 143B-259.1. Powers and duties of the Department of Public Safety.**

It shall be the duty of the Department of Public Safety to do all of the following:

(1) Provide assigned law enforcement and emergency services to protect the public against crime and against natural and man-made disasters.
(2) To plan and direct a coordinated effort by the law enforcement agencies of State government and to ensure maximum cooperation between State and local law enforcement agencies in the fight against crime.
(3) To prepare annually a State plan for the State's criminal justice system.
(4) To serve as the State's chief coordinating agency to control crime, to ensure the safety of the public, and to ensure an effective and efficient State criminal justice system.
(5) To have charge of investigations of criminal matters particularly set forth in this Article and of such other crimes and areas of concern in the criminal justice system as the Governor may direct.
(6) To regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State.
(7) To provide National Guard troops trained by the State to federal standards.
(8) To ensure the preparation, coordination, and currency of military and civil preparedness plans and the effective conduct of emergency operations by all participating agencies to sustain life and prevent, minimize, or remedy injury to persons and damage to property resulting from disasters caused by enemy attack or other hostile actions or from disasters due to natural or man-made causes.
(9) To develop a plan for a coordinated and integrated electronic communications system for State government and cooperating local agencies, including coordination and integration of existing electronic communications systems.
(10) To carry out the relevant provisions of Part 2 of this Article, Chapter 148 of the General Statutes, Chapter 15 of the General Statutes, Chapter 15A of the General Statutes, and other provisions of the General Statutes governing the provision of necessary custody, supervision, and treatment to control and rehabilitate criminal offenders and thereby reduce the rate and cost of crime and delinquency.
(11) To carry out the relevant provisions of Part 3 of this Article, Chapter 7B of the General Statutes, and other provisions of the General Statutes governing juvenile justice and the prevention of delinquent acts by juveniles.

"**§ 143B-259.2. Powers and duties of the Secretary of Public Safety.**

The Secretary of Public Safety shall have the powers and duties as are conferred on the Secretary by this Article, delegated to the Secretary by the Governor, and conferred on the Secretary by the Constitution and laws of this State. These powers and duties include the following:

(1) Provision of assistance to other agencies. – The Secretary, through appropriate subunits of the Department, shall, at the request of the Governor,

provide assistance to State and local law enforcement agencies, district attorneys, and judges when called upon by them and so directed.

(2) Coordination of government subunits emergencies. – In the event that the Governor, in the exercise of the Governor's constitutional and statutory responsibilities, shall deem it necessary to utilize the services of more than one subunit of State government to provide protection to the people from natural or man-made disasters or emergencies, including, but not limited to, wars, insurrections, riots, civil disturbances, or accidents, the Secretary, under the direction of the Governor, shall serve as the chief coordinating officer for the State between the respective subunits so utilized.

(3) Allocation of State resources during emergencies. – Whenever the Secretary exercises the authority provided in subdivision (2) of this section, the Secretary shall be authorized to utilize and allocate all available State resources as are reasonably necessary to cope with the emergency or disaster, including directing of personnel and functions of State agencies or units thereof for the purpose of performing or facilitating the initial response to the disaster or emergency. Following the initial response, the Secretary, in consultation with the heads of the State agencies which have or appear to have the responsibility for dealing with the emergency or disaster, shall designate one or more lead agencies to be responsible for subsequent phases of the response to the emergency or disaster. Pending an opportunity to consult with the heads of such agencies, the Secretary may make interim lead agencies designations.

(4) Reporting of emergencies to the Secretary. – Every department of State government is required to report to the Secretary, by the fastest means practicable, all natural or man-made disasters or emergencies, including, but not limited to, wars, insurrections, riots, civil disturbances, or accidents which appear likely to require the utilization of the services of more than one subunit of State government.

(5) Rule making. – The Secretary is authorized to adopt rules and procedures for the implementation of this section.

(6) Powers of Governor and Council of State not superseded. – Nothing contained in this section shall be construed to supersede or modify those powers granted to the Governor or the Council of State to declare and react to a state of disaster as provided in Chapter 166A of the General Statutes, the Constitution, or elsewhere.

(7) Reporting required prior to grant awards. – Prior to any notification of proposed grant awards to State agencies for use in pursuing the objectives of the Governor's Crime Commission pursuant to sub-subdivisions a. through g. of subdivision (8) of this section, the Secretary shall report to the Senate and House of Representatives Appropriations Committees for review of the proposed grant awards.

(8) Other powers and duties. – The Secretary shall have the following additional powers and duties:

a. Accepting gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting the work of the Governor's Crime Commission.

b. Making grants for use in pursuing the objectives of the Governor's Crime Commission.

c. Adopting rules as may be required by the federal government for federal grants-in-aid for criminal justice purposes and to implement and carry out the regulatory and enforcement duties assigned to the Department of Public Safety as provided by the various commercial vehicle, oversize/overweight, motor carrier safety, motor fuel, and mobile and manufactured home statutes.

d. Ascertaining the State's duties concerning grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice, and developing and administering a plan to ensure that the State fulfills its duties.

e. Administering the Assistance Program for Victims of Rape and Sex Offenses.

f. Appointing, with the Governor's approval, a special police officer to serve as Chief of the State Capitol Police Section of the Division of Law Enforcement.

g. Appointing an employee of the Division of Administration to be the central point of contact for any federal surplus property or purchasing programs."

CREATION OF STATUTORY PARTS AND SUBPARTS

SECTION 19.1.(c) Article 5A of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 4. Division of Law Enforcement."

SECTION 19.1.(e) Article 5A of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 5. Division of Emergency Management."

SECTION 19.1.(f) Article 5A of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 6. Division of Administration."

SECTION 19.1.(f1) Article 5A of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 7. Office of External Affairs."

CHANGES TO STATUTORY REFERENCES TO AGENCIES

SECTION 19.1.(g) The following statutes are amended by deleting the language "Crime Control and Public Safety" wherever it appears and substituting "Public Safety": G.S. 7A-343.1, 8-50.2, 14-86.1, 14-309.7, 14-309.11, 15B-3, 15B-6, 17C-3, 17C-6, 18B-101, 18B-110, 19-2.1, 20-17.7, 20-39.1, 20-49, 20-79.5, 20-81.12, 20-116, 20-118, 20-119, 20-125, 20-178.1, 20-183.9, 20-183.10, 20-184, 20-185, 20-187, 20-187.1, 20-187.3, 20-188, 20-189, 20-190, 20-191, 20-192, 20-195, 20-196, 20-196.3, 20-196.4, 20-377, 20-379, 20-380, 20-381, 20-382.2, 20-383, 20-387, 20-389, 20-390, 20-391, 20-392, 20-393, 20-396, 20-397, 58-32-1, 58-78-1, 66-165, 66-168, 104E-8, 105-259, 105-269.3, 105-449.44, 120-12.1, 120-70.94, 122C-408, 122C-409, 122C-411, 122C-414, 126-5, 127A-17.1, 127A-19, 127A-20, 127A-21, 127A-22, 127A-35, 127A-40, 127A-42, 127A-43, 127A-54, 127A-57, 127A-80, 127A-81, 127A-107, 127A-139, 127A-161, 127A-162, 127A-163, 127A-164, 127C-2, 130A-475, 143-166.13, 143-215.52, 143-215.56, 143-215.93A, 143-215.94GG, 143-215.94HH, 143-341, 143-355.1, 143-651, 143-652.1, 143-652.2, 143-654, 143-655, 143-658, 143-661, 143-664, 143-726, 143A-79.2, 143A-239, 143A-240, 143A-241, 143A-242, 143A-243, 143A-244, 143A-245, 143B-2, 143B-6, 143B-181, 143B-394.15, 143B-417, 143B-426.22, 143B-477, 143B-478, 143B-479, 143B-480, 143B-480.1, 143B-480.2, 143B-480.3, 143B-490, 143B-491, 143B-492, 143B-495, 143B-496, 143B-497, 143B-498, 143B-499, 143B-499.2, 143B-499.4, 143B-499.7, 143B-508, 143B-508.1, Parts 8 and 9 of Article 11 of Chapter 143B of the General Statutes, 143B-510, 146-30, 147-12, 150B-1, 161-11.4, 164-37, 166A-5, 166A-6, 166A-6.03, 166A-6.1, 166A-14, 166A-18, 166A-21, 166A-26, 166A-28, 166A-60, 166A-61, and 166A-62. In all other instances in which the term "Crime Control and Public Safety" appears in the General Statutes, the Revisor of Statutes shall replace that term with "Public Safety".

SECTION 19.1.(h) Except for instances in which language is rewritten pursuant to subsection (i) of this section, the following statutes are amended by deleting the language "Department of Correction" wherever it appears and substituting "Division of Adult Correction of the Department of Public Safety" and by deleting the word "Department" when it refers to the Department of Correction and substituting "Division": G.S. 1-110, 7A-109.3, 7A-313, 7A-451, 7A-474.3, 7A-474.18, 7A-498.3, 7B-2204, 7B-2517, 7B-3000, 7B-3001, 7B-3100, 13-1, 14-202, 14-208.6, 14-208.20, 14-208.22, 14-208.40, 14-208.43, 14-208.45, 14-258.1, 14-258.3, 14-258.4, 14-415.10, 15-6.1, 15-10.1, 15-194, 15-196.3, 15-203, 15-204, 15-205, 15-206, 15-209, 15A-145, 15A-145.1, 15A-146, 15A-147, 15A-149, 15A-150, 15A-544.3, 15A-544.5, 15A-615, 15A-821, 15A-830, 15A-832, 15A-1332, 15A-1340.13, 15A-1340.16, 15A-1340.20, 15A-1342, 15A-1343, 15A-1343.2, 15A-1343.3, 15A-1344, 15A-1351, 15A-1352, 15A-1353, 15A-1354, 15A-1355, 15A-1368, 15A-1368.2, 15A-1368.3,

15A-1368.4, 15A-1368.6, 15A-1369, 15A-1374, 15A-1376, 15A-2000, 15B-21, 15B-31, 15B-32, 17C-3, 20-19, 20-81.12, 20-179, 65-4, 66-58, 97-13, 105-259, 108A-14, 114-10.1, 114-14, 115C-106.3, 115C-108.1, 115C-296.2, 115D-5, 120-12.1, 120-70.94, 122C-22, 122C-55, 122C-62, 122C-311, 122C-312, 122C-313, 122C-402, 122C-421, 126-5, 127A-54, 130A-25, 131E-98, 131E-184, 131E-214.1, 143-63.1, 143-134, 143-166.2, 143-166.13, 143-300.7, 143-599, 143B-2, 143B-6, 143B-179, 143B-260 through 143B-267, 143B-270, 143B-271, 143B-272, 143B-273.2, 143B-273.5, 143B-273.8, 143B-273.15, 143B-273.15A, 143B-394.15, 143B-417, 143B-476, 143B-478, 146-33, 147-12, 148-2 through 148-4.1, 148-6, 148-10 through 148-10.3, 148-12, 148-18 through 148-19.1, 148-22, 148-22.1, 148-23 through 148-24, 148-26, 148-26.5, 148-28, 148-29, 148-32.1 through 148-33.2, 148-36, 148-37, 148-37.2, 148-37.3, 148-40, 148-41, 148-45, 148-46.1, 148-53, 148-54, 148-57, 148-59, 148-64, 148-64.1, 148-65.7, 148-66, 148-67, 148-70, 148-74, 148-77, 148-78, 148-118.1, 148-118.2, 148-118.4, 148-118.5, 148-118.6, 148-118.8, 148-128, 148-134, 150B-1, 153A-221, 153A-230.1, 153A-230.2, 153A-230.3, 153A-230.5, 162-39, 163-82.20A, 164-40, 164-42, and 164-47. In any other instances in which the term "Department of Correction" appears in the General Statutes, the Revisor of Statutes shall replace "Department of Correction" with "Division of Adult Correction", and in any other instances in which the word "Department" is used to refer to the Department of Correction, the Revisor of Statutes shall delete the word "Department" and substitute the word "Division".

SECTION 19.1.(i) The following statutes are amended by deleting the language "Secretary of Correction" or "Secretary of the Department of Correction" wherever it appears and substituting "Secretary of Public Safety": G.S. 15-10.2, 15-10.3, 15-194, 15-203 through 15-207, 15-209, 15A-1340.36, 15A-1371, 17C-3, 20-79.5, 115C-112.1, 122C-312, 130A-25, 143B-261.2, 143B-262.1, 143B-262.4, 143B-263, 143B-265, 143B-266, 143B-267, 143B-270, 143B-271, 143B-273.2, 143B-394.15, 143B-478, 148-4, 148-4.1, 148-5, 148-10.1, 148-11, 148-13, 148-18.1, 148-19, 148-20, 148-22, 148-22.1, 148-24, 148-25, 148-26, 148-26.5, 148-28, 148-33, 148-33.1, 148-33.2, 148-36, 148-37, 148-37.2, 148-41, 148-45, 148-46, 148-46.2, 148-57, 148-65.6, 148-65.9, 148-74, 148-78, 148-118.6, 148-118.8, 148-118.9, 148-121, 148-122, 162-39, 164-37, and 164-40. In any other instances in which the term "Secretary of Correction" appears in the General Statutes, the Revisor of Statutes shall replace "Secretary of Correction" with "Secretary of Public Safety".

SECTION 19.1.(j) The following statutes are amended by deleting the language "Division of Prisons" wherever it appears and substituting "Section of Prisons of the Division of Adult Correction": G.S. 14-208.6, 14-208.40C, 14-258.2, 15A-1343, 17C-3, 66-58, 130A-25, 143B-262.1, 143B-262.2, 143B-264, 143B-478, 148-11, 148-18, 148-29, and 148-130. In any other instances in which the term "Division of Prisons" appears in the General Statutes, the Revisor of Statutes shall replace "Division of Prisons" with "Section of Prisons of the Division of Adult Correction". The following statutes are amended by deleting the language "Division of Correction Enterprises" wherever it appears and substituting "Section of Correction Enterprises of the Division of Adult Correction": G.S. 14-208.6, 14-208.40C, 14-258.2, 15A-1343, 17C-3, 66-58, 130A-25, 143B-262.1, 143B-262.2, 143B-264, 143B-478, 148-11, 148-18, 148-29, and 148-130. In any other instances in which the term "Division of Correction Enterprises" appears in the General Statutes, the Revisor of Statutes shall replace "Division of Correction Enterprises" with "Section of Correction Enterprises of the Division of Adult Correction".

SECTION 19.1.(k) The following statutes are amended by deleting the language "Division of Community Corrections" wherever it appears and substituting "Section of Community Corrections of the Division of Adult Correction": G.S. 7B-3000, 7B-3001, 7B-3100, 14-208.40C, 14-208.41, 15A-837, 15A-1340.11, 15A-1342, 15A-1343, 15A-1343.2, 15A-1368.4, 15A-1369.4, 15A-1371, 17C-3, 20-179.3, 105-259, 115D-5, 143B-262, 143B-262.4, 143B-273.4, 143B-478, and 148-65.6. In any other instances in which the term "Division of Community Corrections" appears in the General Statutes, the Revisor of Statutes shall replace "Division of Community Corrections" with "Section of Prisons of the Division of Adult Correction".

SECTION 19.1.(l) Except for instances in which language is rewritten pursuant to subsection (m) of this section, the following statutes are amended by deleting the language "Department of Juvenile Justice and Delinquency Prevention" wherever it appears and substituting "Division of Juvenile Justice of the Department of Public Safety": G.S. 7A-302, 7B-1501, 7B-3100, 7B-4002, 14-239, 14-258.4, 14-316.1, 66-58, 114-12.1, 114-19.6,

115C-106.3, 115C-107.6, 115C-108.1, 115C-296.2, 115D-1, 115D-5, 120-70.94, 120-216, 122C-113, 122C-117, 126-5, 143-166.2, 143-166.13, 143-661, 143B-2, 143B-6, 143B-152.14, 143B-153, 143B-417, 143B-478, 143B-511 through 143B-550, 148-26, 164-37, 164-40, and 164-43. In all other instances in which the term "Department of Juvenile Justice and Delinquency Prevention" appears in the General Statutes, the Revisor of Statutes shall replace "Department of Juvenile Justice and Delinquency Prevention" with "Division of Juvenile Justice" and in all other instances in which the word "Department" is used to refer to the Department of Juvenile Justice and Delinquency Prevention, the Revisor of Statutes shall delete the word "Department" and substitute the word "Division", or, make other appropriate changes to the General Statutes to reference the Division rather than the Department.

SECTION 19.1.(m) The following statutes are amended by deleting the language "Secretary of Juvenile Justice and Delinquency Prevention" wherever it appears and substituting "Secretary of Public Safety": G.S. 17C-3, 20-79.5, 115C-112.1, and 143B-515. In all other instances in which the term "Secretary of Juvenile Justice and Delinquency Prevention" appears in the General Statutes, the Revisor of Statutes shall replace "Secretary of Juvenile Justice and Delinquency Prevention" with "Secretary of Public Safety".

SECTION 19.1.(n) The following statutes are amended by deleting the language "Alcohol Law Enforcement Division" and "Division of Alcohol Law Enforcement" wherever it appears and substituting "Alcohol Law Enforcement Section" and by deleting the word "Division" when it refers to the Alcohol Law Enforcement Division and substituting "Section": G.S. 18B-903, 19-2.1, 105-259, 143-652.1, 143-652.2, 143-654, 143-655, and 143-656. In all other instances in which the terms "Alcohol Law Enforcement Division" or "Division of Alcohol Law Enforcement" appear in the General Statutes, the Revisor of Statutes shall replace those terms with "Alcohol Law Enforcement Section", and in all other instances in which the word "Division" is used to refer to the Alcohol Law Enforcement Division, the Revisor of Statutes shall delete the word "Division" and substitute the word "Section".

SECTION 19.1.(p) The following statutes are amended by deleting the language "State Highway Patrol Division" wherever it appears and substituting "State Highway Patrol Section"; by deleting the word "Division" wherever it appears when it refers to the State Highway Patrol Division and substituting "Section"; and by deleting the language "Division of the State Highway Patrol" wherever it appears and substituting "State Highway Patrol Section": G.S. 20-185, 20-195, and 20-196. In all other instances in which the term "State Highway Patrol Division" appears in the General Statutes, the Revisor of Statutes shall replace that term with "State Highway Patrol Section", and in all other instances in which the word "Division" is used to refer to the State Highway Patrol Division, the Revisor of Statutes shall delete the word "Division" and substitute the word "Section".

SECTION 19.1.(q) The following statutes are amended by deleting the language "ALE Division" wherever it appears and substituting "ALE Section": G.S. 18B-201, 18B-202, 18B-203, 18B-504, 18B-805, 18B-902, and 18B-904. In any other instances in which the term "ALE Division" appears in the General Statutes, the Revisor of Statutes shall replace "ALE Division" with "ALE Section".

SECTION 19.1.(q1) The following statutes are amended by deleting the word "Director" wherever it appears and substituting "Chief": G.S. 114-13, 114-14, 114-14.1, 114-15, 114-15.1, 114-15.3, 114-20, and 114-20.1.

RECODIFICATION OF AFFECTED STATUTES

SECTION 19.1.(r) Both of the following apply to any recodification pursuant to subsections (s) through (x) of this section:

(1) Statutory sections of the former statutes that were reserved for future codification shall have corresponding sections that are reserved for future codification in the recodified statutes.

(2) The recodifications are of the affected statutes as rewritten by subsections (g) through (q) of this section, as applicable.

SECTION 19.1.(s) Division of Adult Correction. – Article 6 of Chapter 143B of the General Statutes is recodified as Part 2 of Article 5A of Chapter 143B of the General Statutes, "Division of Adult Correction", but the statutory numbering shall remain unchanged, and the various Parts of former Article 6 shall be redesignated as Subparts of Part 2 of Article 5A of the General Statutes.

SECTION 19.1.(t) Division of Juvenile Justice. – Article 12 of Chapter 143B of the General Statutes, except for G.S. 143B-550, is recodified as Part 3 of Article 5A of Chapter 143B of the General Statutes, "Division of Juvenile Justice and Delinquency Prevention", G.S. 143B-272.1 through G.S. 143B-272.43. The various Parts of former Article 12 shall be redesignated as Subparts of Part 3 of Article 5A of the General Statutes.

SECTION 19.1.(u) Division of Law Enforcement. – Parts 1 and 7 of Article 11 of Chapter 143B of the General Statutes are repealed. Part 9 of Article 11 of Chapter 143B of the General Statutes is recodified as Subpart A of Part 4 of Article 5A of Chapter 143B of the General Statutes, G.S. 143B-272.45.

SECTION 19.1.(w) Division of Emergency Management. – Part 8 of Article 11 of Chapter 143B of the General Statutes is recodified as Subpart A of Part 5 of Article 5A of Chapter 143B of the General Statutes and renumbered as G.S. 143B-272.52. Part 5A of Article 11 of Chapter 143B of the General Statutes is recodified as Subpart B of Part 5 of Article 5A of Chapter 143B of the General Statutes, G.S. 143B-272.60 through G.S. 143B-272.72. Part 5 of Article 11 of Chapter 143B of the General Statutes is recodified as Subpart C of Part 5 of Article 5A of Chapter 143B of the General Statutes, G.S. 143B-272.73A through G.S. 143B-272.73C.

SECTION 19.1.(x) Division of Administration. – Part 3 of Article 11 of Chapter 143B of the General Statutes is recodified as Subpart A of Part 6 of Article 5A of Chapter 143B of the General Statutes, "Grants Management Section", G.S. 143B-272.75 through G.S. 143B-272.77. G.S. 143B-477 and G.S. 143B-550 are recodified under that Subpart as G.S. 143B-272.78 and G.S. 143B-272.79, respectively. Article 6A of Chapter 143B of the General Statutes is recodified as Subpart B of Part 6 of Article 5A of Chapter 143B of the General Statutes, G.S. 143B-272.80 through G.S. 143B-272.101.

SECTION 19.1.(x1) Office of External Affairs. – Part 3A of Article 11 of Chapter 143B of the General Statutes is recodified as Part 7 of Article 5A of Chapter 143B of the General Statutes, "Victims' Services Section", G.S. 143B-272.103 through G.S. 143B-272.104.

OTHER SUBSTANTIVE CHANGES

SECTION 19.1.(y) Part 9 of Article 11 of Chapter 143B of the General Statutes, as rewritten by subsection (g) of this section, and recodified by subsection (u) of this section, reads as rewritten:

"Subpart A. State Capitol Police ~~Division.~~Section.

"**§ 143B-272.45. State Capitol Police ~~Division~~ Section – powers and duties.**

(a) ~~Division~~Section Established. – There is hereby established, within the Law Enforcement Division of the Department of Public Safety, the State Capitol Police ~~Division,~~Section, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) Purpose. – The State Capitol Police ~~Division~~ Section shall serve as a special police agency of the Department of Public Safety. The ~~Director~~ Chief of the State Capitol Police, appointed by the Secretary pursuant to ~~G.S. 143B-476(6),~~ G.S. 143B-259.2, with the approval of the Governor, may appoint as special police officers such reliable persons as he may deem necessary.

(c) Appointment of Officers. – Special police officers appointed pursuant to this section may not exercise the power of arrest until they shall take an oath, to be administered by any person authorized to administer oaths, as required by law.

(d) Jurisdiction of Officers. – Each special police officer of the State Capitol Police shall have the same power of arrest as the police officers of the City of Raleigh. Such authority may be exercised within the same territorial jurisdiction as exercised by the police officers of the City of Raleigh, and in addition thereto the authority of a deputy sheriff may be exercised on property owned, leased, or maintained by the State located in the County of Wake.

(e) Reserved for future codification purposes.

(f) Public Safety. – The ~~Director~~ Chief of the State Capitol Police, or the ~~Director's~~ Chief's designee, shall exercise at all times those means that, in the opinion of the ~~Director~~ Chief or the designee, may be effective in protecting all State buildings and grounds, except for the State legislative buildings and grounds as defined in G.S. 120-32.1(d), and the persons within those buildings and grounds from fire, bombs, bomb threats, or any other emergency or potentially hazardous conditions, including both the ordering and control of the evacuation of those buildings and grounds. The ~~Director,~~Chief, or the ~~Director's~~ Chief's designee, may

employ the assistance of other available law enforcement agencies and emergency agencies to aid and assist in evacuations of those buildings and grounds."

SECTION 19.1.(z) G.S. 18B-500 reads as rewritten:

"**§ 18B-500. Alcohol law-enforcement agents.**

(a) Appointment. – The ~~Secretary of Crime Control and Public Safety~~ Secretary of the Department of Public Safety shall appoint alcohol law-enforcement agents and other enforcement personnel. The ~~Secretary of Crime Control and Public Safety~~ Secretary of the Department of Public Safety may also appoint regular employees of the Commission as alcohol law-enforcement agents. Alcohol law-enforcement agents shall be designated as "alcohol law-enforcement agents". Persons serving as reserve alcohol law-enforcement agents are considered employees of the ~~Division of Alcohol Law Enforcement~~ Alcohol Law Enforcement Section for workers' compensation purposes while performing duties assigned or approved by the Director of Alcohol Law Enforcement Section or the Director's designee.

(b) Subject Matter Jurisdiction. – After taking the oath prescribed for a peace officer, an alcohol law-enforcement agent shall have authority to arrest and take other investigatory and enforcement actions for any criminal offense. The primary responsibility of an agent shall be enforcement of the ABC laws, lottery laws, and Article 5 of Chapter 90 (The Controlled Substances Act); however, an agent may perform any law-enforcement duty assigned by the ~~Secretary of Crime Control and Public Safety~~Secretary of the Department of Public Safety or the Governor.

(c) Territorial Jurisdiction. – An alcohol law-enforcement agent is a State officer with jurisdiction throughout the State.

(d) Service of Commission Orders. – Alcohol law-enforcement agents may serve and execute notices, orders, or demands issued by the Alcoholic Beverage Control Commission or the North Carolina State Lottery Commission for the surrender of permits or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, alcohol law-enforcement agents shall have all the power and authority possessed by law-enforcement officers when executing an arrest warrant.

(e) Discharge. – Alcohol law-enforcement agents are subject to the discharge provisions of G.S. 18B-202.

(f) Repealed by Session Laws 1995, c. 507, s. 6.2(a)."

SECTION 19.1.(aa) Part 8 of Article 11 of Chapter 143B of the General Statutes, as rewritten by subsection (g) of this section and recodified as Subpart A of Part 5 of Article 5A of that Chapter by subsection (w) of this section, reads as rewritten:

"Subpart A. Emergency Management Division.

"**§ 143B-272.52. Division of Emergency Management of the Department of Public Safety.**

(a) There is established, within the Department of Crime Control and Public Safety, the Division of Emergency Management, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) The Division of Emergency Management shall have the following powers and duties:

~~(1) To exercise the powers and duties exercised prior to the enactment of this section, in accordance with G.S. 143B-475(a)(11).~~

(2) To exercise the powers and duties conferred on it by Chapter 166A of the General Statutes.

(3) To exercise any other powers vested by law."

SECTION 19.1.(bb) Part 7 of Article 11 of Chapter 143B of the General Statutes is repealed, and the Law Enforcement Support Services Division of the Department of Crime Control and Public Safety is abolished.

SECTION 19.1.(bb1) Part 5 of Article 11 of Chapter 143B of the General Statutes, as rewritten by subsection (d) of this section, is recodified as Subpart B of Part 6 of Article 5A of Chapter 143B of the General Statutes, G.S. 143B-272.55 through G.S. 143B-272.57.

SECTION 19.1.(bb2) G.S. 143B-490, as rewritten by subsection (d) of this section and recodified by subsection (cc) of this section, reads as rewritten:

"**§ 143B-272.55. Civil Air Patrol ~~Division~~ Section – powers and duties.**

(a) There is hereby established, within the Department of Public Safety the Civil Air Patrol ~~Division,~~ Section, which shall be organized and staffed in accordance with this ~~Part~~ Subpart and within the limits of authorized appropriations.

(b) The Civil Air Patrol ~~Division~~ Section shall:

(1) Receive and supervise the expenditure of State funds provided by the General Assembly or otherwise secured by the State of North Carolina for the use and benefit of the North Carolina Wing-Civil Air Patrol;
(2) Supervise the maintenance and use of State provided facilities and equipment by the North Carolina Wing-Civil Air Patrol;
(3) Receive, from State and local governments, their agencies, and private citizens, requests for State approval for assistance by the North Carolina Wing-Civil Air Patrol in natural or man-made disasters or other emergency situations. Such State requested and approved missions shall be approved or denied by the Secretary of Public Safety or his designee under such rules, terms and conditions as are adopted by the Department."

SECTION 19.1.(cc) The evidence warehouse that was operated by the Law Enforcement Support Services Division of the Department of Crime Control and Public Safety prior to the effective date of this section, and all State-owned personal property located in or associated with the warehouse, is hereby reallocated to the North Carolina State Crime Laboratory of the Department of Justice. The Department of Justice shall assume any lease to which the warehouse is subject at the time this section becomes effective.

CONFORMING CHANGES

SECTION 19.1.(dd) G.S. 7A-343.1, as rewritten by subsection (g) of this section, reads as rewritten:

"**§ 7A-343.1. Distribution of copies of the appellate division reports.**

...

~~Juvenile Justice and Delinquency Prevention, Department of~~Juvenile Justice, Division of ....."

SECTION 19.1.(dd1) G.S. 14-16.9 reads as rewritten:

"**§ 14-16.9. Officers-elect to be covered.**

Any person who has been elected to any office covered by this Article but has not yet taken the oath of office shall be considered to hold the office for the purpose of this Article and ~~G.S. 114-15.~~G.S. 143B-272.46F."

SECTION 19.1.(ee) G.S. 15A-1342(j) reads as rewritten:

"(j) Immunity for Injury to Defendant Performing Community Service. – Immunity from liability for injury to a defendant performing community service shall be as set forth in ~~G.S. 143B-475.1(d).~~G.S. 143B-262.4(d)."

SECTION 19.1.(gg) G.S. 18B-101(5), as rewritten by subsection (g) of this section, reads as rewritten:

"(5) ~~'ALE Division'~~ 'ALE Section' means the Alcohol Law Enforcement ~~Division~~ Section of the Department of Public Safety."

SECTION 19.1.(hh) G.S. 20-184, as rewritten by subsection (g) of this section, reads as rewritten:

"**§ 20-184. Patrol under supervision of Department of Public Safety.**

The Secretary of Public Safety, under the direction of the Governor, shall have supervision, direction and control of the State Highway Patrol. The Secretary shall establish in the Department of Public Safety a State Highway Patrol ~~Division,~~Section, prescribe regulations governing ~~said Division,~~the Section, and assign to the ~~Division~~ Section such duties as ~~he~~the Secretary may deem proper."

SECTION 19.1.(ii) G.S. 120-70.94(2a), as rewritten by subsection (g) of this section, reads as rewritten:

"(2a) Examine the effectiveness of the Department of Public Safety in implementing the duties and responsibilities charged to the Department in ~~G.S. 143B-474~~ G.S. 143B-259.1(1) through (9) and the overall effectiveness and efficiency of law enforcement in the State;".

SECTION 19.1.(jj) G.S. 122C-408, as rewritten by subsection (g) of this section, reads as rewritten:

"**§ 122C-408. Butner Public Safety ~~Division~~ Section of the Department of Public Safety; jurisdiction; fire and police district.**

(a) The Secretary of Public Safety may employ special police officers for the territory of the Butner Reservation. The Secretary of Public Safety shall contract with the Town of Butner to provide fire and police protection to those areas within the incorporated limits of the

Town of Butner. The territorial jurisdiction of these officers shall consist of the property shown on a map produced May 20, 2003, by the Information Systems Division of the North Carolina General Assembly and kept on file in the office of the Butner Town Manager and in the office of Director of the Butner Public Safety ~~Division~~ Section of the Department of Public Safety and such additional areas which are within the incorporated limits of the Town of Butner as shown on a map to be kept in the office of the Butner Town Manager and in the office of Director of the Butner Public Safety ~~Division~~ Section of the Department of Public Safety. The Secretary of Public Safety may organize these special police officers into a public safety department for that territory and may establish it as a division within that principal department as permitted by Chapter 143B of the General Statutes.

(b) After taking the oath of office required for law-enforcement officers, the special police officers authorized by this section shall have the authority of deputy sheriffs of Durham and Granville Counties in those counties respectively. Within the territorial jurisdiction stated in subsection (a) of this section, the special police officers have the primary responsibility to enforce the laws of North Carolina, the ordinances of the Town of Butner, and any rule applicable to the Butner Reservation adopted under authority of this Part or under G.S. 143-116.6 or G.S. 143-116.7 or under the authority granted any other agency of the State and also have the powers set forth for firemen in Articles 80, 82 and 83 of Chapter 58 of the General Statutes. Any civil or criminal process to be served on any individual confined at any State facility within the territorial jurisdiction described in subsection (a) of this section shall be forwarded by the sheriff of the county in which the process originated to the Director of the Butner Public Safety ~~Division.~~Section. Special police officers authorized by this section shall be assigned to transport any individual transferred to or from any State facility within the territorial jurisdiction described in subsection (a) of this section to or from the psychiatric service of the University of North Carolina Hospitals at Chapel Hill.

(c) The contract between the Town of Butner and the Department of Public Safety shall provide that:

(1) The Butner Public Safety ~~Division~~ Section of the Department of Public Safety shall provide the same level of service to the incorporated area known as the Town of Butner as provided to those areas of the Town of Butner served by Butner Public Safety on January 1, 2007;

(2) The Town of Butner shall pay to the State Treasurer, on or before May 1 of each year, for deposit in the General Fund an amount equal to the amount that actually would have been collected from real and personal property ad valorem taxes due January 5, 2007, in the area incorporated as the Town of Butner effective July 1, 2007, assuming a tax of twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in said area increased effective July 1 of each year by the increase in the percentage change in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, for the southeast region, all urban consumers (or if that data shall no longer be available, the closest equivalent substitute then in publication by the United States Government) for the previous year ended December 31st;

(3) If additional areas are added to the incorporated limits of the Town of Butner, the payments due under the contract shall be increased by an amount equal to the amount that actually would have been collected from real and personal property ad valorem taxes due January 5 of the year of incorporation of such area if said incorporation occurs on or before May 1 or the amount collected for the preceding year if said incorporation occurs prior to May 1 of the then current year assuming a tax of twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in said area and increased yearly as set out above; and

(4) The Town of Butner and the Department of Public Safety may by mutual agreement modify the amounts required to be paid by the Town of Butner pursuant to subdivisions (2) and (3) of this subsection."

SECTION 19.1.(kk) G.S. 122C-414, as rewritten by subsection (g) of this section, reads as rewritten:

"**§ 122C-414. Butner Fire and Police Commission.**

...

(b) The Butner Fire and Police Commission shall consist of seven members, three appointed by the Town of Butner, two appointed by the Secretary, one appointed by the Secretary of Public Safety, and one appointed by the Granville County Board of Commissioners. All members appointed by the Town of Butner shall reside within the Town of Butner or its extraterritorial jurisdiction or the Butner Reservation. All members appointed by the Secretary or the Secretary of Public Safety shall either work at or have responsibility for one of the State-run institutions located within the Butner Reservation or shall reside within the Town of Butner and its extraterritorial jurisdiction or the Butner Reservation. The Director of the Butner Public Safety ~~Division~~ Section of the Department of Public Safety shall serve as an ex officio member of the Butner Fire and Police Commission. No active member of the Butner Public Safety ~~Division~~ Section of the Department of Public Safety may serve on the Butner Fire and Police Commission.

(c) The Butner Fire and Police Commission has the following duties and responsibilities:

(1) To periodically review, and recommend changes to, the operational policy for the Butner Public Safety ~~Division~~ Section of the Department of Public Safety.

(2) To consult with the Secretary of the Department of Public Safety in the Department's hiring of the Director of the Butner Public Safety ~~Division~~ Section of the Department of Public Safety. Such consultation shall include, but not be limited to, the Commission reviewing and providing its comments to the Secretary of the Department of Public Safety on the credentials of the applicants for said position. In performing its functions under this subsection, the Commission members shall have the same access to the applicants' personnel records pursuant to Article 7, Chapter 126 of the General Statutes as the Secretary of the Department of Public Safety and shall be subject to the same restraints concerning the personnel information as set out in said article.

(3) To review and make recommendations to the Secretary of Public Safety concerning the recommended needs of the Butner Public Safety ~~Division~~ Section of the Department of Public Safety.

(4) To receive and forward citizen complaints received by the Commission concerning the Butner Public Safety ~~Division~~ Section of the Department of Public Safety to the Director of the Butner Public Safety ~~Division~~ Section of the Department of Public Safety and the Secretary of the Department of Public Safety as the Commission determines is appropriate.

(5) To perform all such other functions assigned to it by the General Assembly or the Secretary of the Department of Public Safety.

...."

SECTION 19.1.(ll) G.S. 131D-10.4(3) reads as rewritten:

"**§ 131D-10.4. Exemptions.**

This Article shall not apply to:

...

(3) Secure detention facilities as specified in ~~Article 12~~Part 3 of Article 5A of Chapter 143B of the General Statutes;".

SECTION 19.1.(mm) G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. – The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
...	
~~Office of Juvenile Justice~~Division of Juvenile Justice of the Department of Public Safety	1

...."

SECTION 19.1.(oo) G.S. 143B-273.4(b), as recodified by subsection (x) of this section, reads as rewritten:

"(b) The priority populations for programs funded under this ~~Article~~ Subpart shall be offenders sentenced to intermediate punishments."

SECTION 19.1.(pp) G.S. 143B-273.7, as recodified as G.S. 143B-272.87 by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.87. Duties of State Criminal Justice Partnership Advisory Board.**

The State Criminal Justice Partnership Advisory Board has the following duties:

...

(5) To coordinate community-based corrections programs administered by the state agencies and programs funded under this ~~Article;~~Subpart;

...

(8) To evaluate the effects of categories of programs funded by this ~~Article~~ Subpart and prepare a written report."

SECTION 19.1.(qq) G.S. 143B-273.9, as recodified as G.S. 143B-272.89 by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.89. Election to apply for funding.**

A county may elect to apply for funding under this ~~Article~~ Subpart by a vote of the board of county commissioners approving the decision to apply, and by appointing a county criminal justice partnership advisory board. Two or more counties, by vote of the board of county commissioners of each county, may agree to create a multicounty board instead of a county board. A multicounty board shall perform the same functions as a county board for each county that participates in establishing the multicounty board. The board or boards of county commissioners shall notify the Secretary of the intent to apply for funds within 60 days of receiving notification of the availability of funds and may request technical assistance to develop the community-based corrections plan."

SECTION 19.1.(rr) G.S. 143B-273.12(c), as recodified as G.S. 143B-272.89 by subsection (x) of this section, reads as rewritten:

"(c) The proposed program shall target eligible offenders as defined in ~~G.S. 143B-273.4.~~G.S. 143B-272.84."

SECTION 19.1.(ss) G.S. 143B-273.14, as recodified as G.S. 143B-273.94 by subsection (x) of this section, reads as rewritten:

"**§ 143B-273.94. Fundable programs; community-based corrections programs.**

(a) Fundable programs under this ~~Article~~ Subpart shall include community-based corrections programs which are operated under a county community-based corrections plan and funded by the State subsidy provided in this ~~Article.~~Subpart. Based on the prioritized populations in ~~G.S. 143B-273.4,~~ G.S. 143B-272.84, the programs may include, but are not limited to, the following:

...

(a1) Funding provided under this ~~Article~~ Subpart for personnel for satellite substance abuse centers shall only be used for personnel who provide direct services to offenders.

(b) Community-based corrections funds may be used to operate programs and may also be used to construct, acquire, or renovate community facilities established to provide the programs and services set forth in subsection (a) of this section. Construction and renovation funds may not be used for jails. Construction and renovation funds may not be used to reimburse expenses for any facilities renovated before the effective date of this ~~Article.~~Subpart.

(c) When a county receives more than fifty thousand dollars ($50,000) in community-based corrections funds, then that county shall use at least fifty percent (50%) of those funds to develop programs for offenders who receive intermediate punishments."

SECTION 19.1.(tt) G.S. 143B-273.16(a), as recodified by subsection (x) of this section, reads as rewritten:

"(a) To continue to receive funding under this ~~Article,~~Subpart, a county shall submit an updated application for implementation funding to the Secretary at the beginning of each fiscal year."

SECTION 19.1.(uu) G.S. 143B-273.17, as recodified as G.S. 143B-272.98 by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.98. Termination of participation in program.**

A county receiving financial aid under this ~~Article~~ Subpart may terminate its participation by delivering a resolution of the board or boards of county commissioners to the Secretary at

the beginning of any calendar quarter. Upon withdrawal from the program, the board or boards of county commissioners may adopt a resolution stating that it is in the best interests of the county that the county community corrections advisory board be dissolved, whereupon the county commissioners shall pay and discharge any debts or liabilities of the advisory board, collect and distribute assets of the advisory board under the laws of North Carolina, and pay over any remaining proceeds or property to the proper fund."

SECTION 19.1.(vv) G.S. 143B-273.19, as recodified as G.S. 143B-272.100 by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.100. Prohibited uses of funds.**

(a) Counties may not use funds received under this ~~Article~~ Subpart to supplant or replace existing funds or other resources from the federal, State, or county government for existing community-based corrections programs.

(b) Counties may not use funds received under this ~~Article~~ Subpart for indirect costs associated with a program."

SECTION 19.1.(ww) G.S. 143B-477, as recodified as G.S. 143B-272.78 by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.78. ~~Crime Control Division of the Department of Public Safety.~~Additional duties of the Grants Management Section.**

~~(a) There is hereby established, within the Department of Public Safety, the Crime Control Division, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.~~

(b) The ~~Crime Control Division shall provide clerical and professional services required by the Governor's Crime Commission and~~ Grants Management Section shall administer the State Law Enforcement Assistance Program and such additional related programs as may be established by or assigned to the ~~Commission~~Section. It shall serve as the single State planning agency for purposes of the Crime Control Act of 1976 (Public Laws 94-503). Administrative responsibilities shall include, but are not limited to, the following:

(1) Compiling data, establishing needs and setting priorities for funding and policy recommendations for the Governor's Crime Commission;

(2) Preparing and revising statewide plans for adoption by the Governor's Crime Commission which are designed to improve the administration of criminal justice and to reduce crime in North Carolina;

(3) Advising State and local interests of opportunities for securing federal assistance for crime reduction and for improving criminal justice administration and planning within the State of North Carolina;

(4) Stimulating and seeking financial support from federal, State, and local government and private sources for programs and projects which implement adopted criminal justice administration improvement and crime reduction plans;

(5) Assisting State agencies and units of general local government and combinations thereof in the preparation and processing of applications for financial aid to support improved criminal justice administration, planning and crime reduction;

(6) Encouraging and assisting coordination at the federal, State, and local government levels in the preparation and implementation of criminal justice administration improvements and crime reduction plans;

(7) Applying for, receiving, disbursing, and auditing the use of funds received for the program from any public and private agencies and instrumentalities for criminal justice administration, planning, and crime reduction purposes;

(8) Entering into, monitoring, and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;

(9) Providing technical assistance to State and local law-enforcement agencies in developing programs for improvement of the law-enforcement and criminal justice system; and

(10) Taking such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities.

~~(c) The Crime Control Division shall also provide professional and clerical staff services to the adjunct committees of the Governor's Crime Commission established in G.S. 143B-480.~~"

SECTION 19.1.(xx) G.S. 143B-479(a)(10), as recodified by subsection (x) of this section, reads as rewritten:

"(10) To serve as a coordinating committee and forum for discussion of recommendations from its adjunct committees formed pursuant to ~~G.S. 143B-480;~~ G.S. 143B-272.77; and".

SECTION 19.1.(yy) G.S. 143B-499.1, as recodified as G.S. 143B-272.65 by subsection (w) of this section, reads as rewritten:

"**§ 143B-272.65. Dissemination of missing persons data by law-enforcement agencies.**

A law-enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, legal custodian, or person responsible for the supervision of the missing individual shall immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to all appropriate law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center. No law enforcement agency shall establish or maintain any policy which requires the observance of any waiting period before accepting a missing person report.

If the report involves a missing child and the report meets the criteria established in ~~G.S. 143B-499.7(b),~~ G.S. 143B-272.71(b), as soon as practicable after receipt of the report, the law enforcement agency shall notify the Center and the National Center for Missing and Exploited Children of the relevant data about the missing child."

SECTION 19.1.(zz) G.S. 143B-499.2(6a), as recodified by subsection (w) of this section, reads as rewritten:

"(6a) Develop and maintain the AMBER Alert System as created by ~~G.S. 143B-499.7;~~G.S. 143B-272.71."

SECTION 19.1.(aaa) G.S. 143B-499.4(5), as rewritten by subsection (g) of this section and recodified by subsection (w) of this section, reads as rewritten:

"(5) Any other person authorized by the Secretary of the Department of Public Safety pursuant to ~~G.S. 143B-498(1).~~G.S. 143B-272.63."

SECTION 19.1.(bbb) G.S. 143B-499.5, as recodified as G.S. 143B-272.69 by subsection (w) of this section, reads as rewritten:

"**§ 143B-272.69. Provision of toll-free service; instructions to callers; communication with law-enforcement agencies.**

The Center shall provide a toll-free telephone line for anyone to report the disappearance of any individual or the sighting of any missing child or missing person. The Center personnel shall instruct the caller, in the case of a report concerning the disappearance of an individual, of the requirements contained in ~~G.S. 143B-499~~ G.S. 143B-272.64 of first having to submit a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing. Any law-enforcement agency may retrieve information imparted to the Center by means of this phone line. The Center shall directly communicate any report of a sighting of a missing person or a missing child to the law-enforcement agency having jurisdiction in the area of disappearance or sighting."

SECTION 19.1.(ccc) G.S. 143B-515(3), as recodified by subsection (t) of this section, reads as rewritten:

"(3) County Councils. – Juvenile Crime Prevention Councils created under ~~G.S. 143B-544.~~G.S. 143B-272.33."

SECTION 19.1.(ddd) G.S. 143B-535, as recodified as G.S. 143B-272.24 by subsection (t) of this section, reads as rewritten:

"**§ 143B-272.24. Duties and powers of chief court counselors.**

The chief court counselor in each district appointed under ~~G.S. 143B-516(b)(15)~~ G.S. 143B-272.6(b)(15) may:

(1) Appoint juvenile court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.

(2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district.
(3) Provide in-service training for staff as required by the Department.
(4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services.
(5) Delegate to a juvenile court counselor or supervisor the authority to carry out specified responsibilities of the chief court counselor to facilitate the effective operation of the district.
(6) Designate a juvenile court counselor in the district as acting chief court counselor, to act during the absence or disability of the chief court counselor."

SECTION 19.1.(eee) G.S. 143B-543, as recodified as G.S. 143B-272.105 by subsection (x) of this section, reads as rewritten:

"**§ 143B-272.105. Legislative intent.**

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this ~~Part~~ Subpart is to develop community-based alternatives to youth development centers and to provide community-based delinquency, substance abuse, and gang prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils."

SECTION 19.1.(fff) G.S. 143B-545, as recodified as G.S. 143B-272.34 by subsection (t) of this section, reads as rewritten:

"**§ 143B-272.34. Terms of appointment.**

Each member of a County Council shall serve for a term of two years, except for initial terms as provided in this section. Each member's term is a continuation of that member's term under G.S. 147-33.62. Members may be reappointed. The initial terms of appointment began January 1, 1999. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of ~~G.S. 143B-544(a)~~G.S. 143B-272.33(a) were appointed for an initial term ending on June 30, 2000. The initial term of the second member added to each County Council pursuant to ~~G.S. 143B-544(a)(12)~~ G.S. 143B-272.33(a)(12) shall begin on July 1, 2001, and end on June 30, 2002. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of ~~G.S. 143B-544(a)~~ G.S. 143B-272.33(a) shall be appointed for two-year terms, beginning on July 1. All other persons appointed to the Council were appointed for an initial term ending on June 30, 2001, and, after those initial terms, persons shall be appointed for two-year terms beginning on July 1."

SECTION 19.1.(ggg) G.S. 143B-550, as recodified as G.S. 143B-272.79 by subsection (x) of this section and as rewritten by subsection (l) of this section, reads as rewritten:

"**§ 143B-272.79. Funding for programs.**

(a) Annually, the ~~Department~~ Division of Administration shall develop and implement a funding mechanism for programs that meet the standards developed under ~~this Part.~~Subpart F of Part 3 of Article 5A of Chapter 143B of the General Statutes. The ~~Department~~ Division shall ensure that the guidelines for the State and local partnership's funding process include the following requirements:

(1) Fund effective programs. – The ~~Department~~ Division shall fund programs that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded.
(2) Use a formula for the distribution of funds. – A funding formula shall be developed that ensures that even the smallest counties will be able to provide the basic prevention and alternative services to juveniles in their communities.

(3) Allow and encourage local flexibility. – A vital component of the State and local partnership established by this section is local flexibility to determine how best to allocate prevention and alternative funds.

(4) Combine resources. – Counties shall be allowed and encouraged to combine resources and services.

(b) The ~~Department~~ Division shall adopt rules to implement this section. The ~~Department~~ Division shall provide technical assistance to County Councils and shall require them to evaluate all State-funded programs and services on an ongoing and regular basis.

(c) The Division of Juvenile Justice of the Department of Public Safety shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety no later than March 1, 2006, and annually thereafter, on the results of the alternatives to commitment demonstration programs funded by Section 16.7 of S.L. 2004-124. The 2007 report and all annual reports thereafter shall also include projects funded by Section 16.11 of S.L. 2005-276 for the 2005-2006 fiscal year. Specifically, the report shall provide a detailed description of each of the demonstration programs, including the numbers of juveniles served, their adjudication status at the time of service, the services/treatments provided, the length of service, the total cost per juvenile, and the six- and 12-month recidivism rates for the juveniles after the termination of program services."

SECTION 19.1.(hhh) G.S. 166A-14(a1)(1)a., as rewritten by subsection (g) of this section, reads as rewritten:

"a. Emergency management services are provided at any place in this State during a state of disaster or state of emergency declared by the Governor pursuant to this Article or G.S. 14-288.15, and the services are provided under the direction and control of the Secretary of the Department of Public Safety pursuant to G.S. 166A-5, 166A-6, and ~~143B-476,~~ 143B-259.2, or the Governor."

LIMITED AUTHORITY TO RECLASSIFY AND ELIMINATE CERTAIN POSITIONS

SECTION 19.1.(hhh1) Notwithstanding any other provision of law, subject to the approval of the Director of the Budget, the Office of State Budget and Management or the Secretary of the Department of Public Safety may reclassify or eliminate existing administrative positions that are not specifically addressed in this act as needed for the efficient operation of the Department.

CREATION OF REGIONAL OFFICES

SECTION 19.1.(hhh2) The Department of Public Safety shall, in addition to the headquarters offices, create eight regional offices in the Division of Law Enforcement at each of which shall be collocated personnel and property of the Alcohol Law Enforcement Section and the State Highway Patrol. Specifically, each regional office shall house one district of personnel and equipment for the Alcohol Law Enforcement Section, and headquarters personnel and equipment for each State Highway Patrol Section troop headquarters. These regional offices shall be operational by July 1, 2012, and on or before March 1, 2012, the Department shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the following:

(1) The amount of savings the Department anticipates achieving as a result of collocating personnel and property of the Alcohol Law Enforcement Section and the State Highway Patrol at the eight regional offices.

(2) The counties that will be included in each district and the regional office that will serve each district.

(3) The staffing levels anticipated at each regional office.

(4) Any statutory or regulatory changes that will be required as a prerequisite to or consequence of housing personnel and property of the Alcohol Law Enforcement Section and the State Highway Patrol within the same regional offices.

REPORTING AND EFFECTIVE DATE

SECTION 19.1.(iii) The Office of State Budget and Management, in consultation with the Department of Juvenile Justice and Delinquency Prevention, the Department of Crime Control and Public Safety, and the Department of Correction, shall make the following reports

on progress implementing this section to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee:

(1) An interim report on or before October 1, 2011.

(2) A final report on or before January 15, 2012. This report shall include information about any reclassifications of positions or reductions in force pursuant to subsection (hhh1) of this section and may include any recommendations for changes to the statutes that organize the Department of Public Safety.

SECTION 19.1.(jjj) Other than subsection (iii) of this section, this section becomes effective January 1, 2012. On and after that date, any references or directives in this act to the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention, or the Department of Crime Control and Public Safety shall be construed to apply to the appropriate division of the Department of Public Safety pursuant to the departmental consolidation enacted by this section.

CONSOLIDATE BUDGET CODES FOR DEPARTMENT OF PUBLIC SAFETY

SECTION 19.2. The Office of State Budget and Management and the State Controller, in consultation with the Fiscal Research Division, shall consolidate the budget codes for the Department of Crime Control and Public Safety, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction into a single budget code for the Department of Public Safety. Fund codes within that budget code shall align with the new organizational structure of the Department of Public Safety. The new budget code shall be established by July 1, 2012.

MODIFY THE REMITTANCE OF TAXES BASED ON VALUATION OF PROPERTY IN THE BUTNER FIRE AND POLICE PROTECTION DISTRICT

SECTION 19.3.(a) Section 1(b) of Chapter 830 of the 1983 Session Laws, as rewritten by Section 43.3 of S.L. 2005-276, reads as rewritten:

"(b) The territorial jurisdiction set forth in subsection (a) of this section shall constitute the Butner Fire and Police Protection District. The tax collectors of Durham and Granville Counties shall annually collect a tax of twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in the portions of said district in their respective counties from year to year which tax shall be collected as county taxes are collected and shall remit the same to the ~~State Treasurer for deposit in the General Fund.~~Town of Butner."

SECTION 19.3.(b) G.S. 122C-408(c) reads as rewritten:

"**§ 122C-408. Butner Public Safety Division of the Department of Crime Control and Public Safety; jurisdiction; fire and police district.**

...

(c) The contract between the Town of Butner and the Department of Crime Control and Public Safety shall provide ~~that:~~for each of the following:

(1) The Butner Public Safety Division of the Department of Crime Control and Public Safety shall provide the same level of service to the incorporated area known as the Town of Butner as provided to those areas of the Town of Butner served by Butner Public Safety on January 1, ~~2007;~~2007.

~~(2) The Town of Butner shall pay to the State Treasurer, on or before May 1 of each year, for deposit in the General Fund an amount equal to the amount that actually would have been collected from real and personal property ad valorem taxes due January 5, 2007, in the area incorporated as the Town of Butner effective July 1, 2007, assuming a tax of twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in said area increased effective July 1 of each year by the increase in the percentage change in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, for the southeast region, all urban consumers (or if that data shall no longer be available, the closest equivalent substitute then in publication by the United States Government) for the previous year ended December 31st;~~

~~(3) If additional areas are added to the incorporated limits of the Town of Butner, the payments due under the contract shall be increased by an amount~~

~~equal to the amount that actually would have been collected from real and personal property ad valorem taxes due January 5 of the year of incorporation of such area if said incorporation occurs on or before May 1 or the amount collected for the preceding year if said incorporation occurs prior to May 1 of the then current year assuming a tax of twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in said area and increased yearly as set out above; and~~

(4) The Town of Butner and the Department of Crime Control and Public Safety may by mutual agreement modify the amounts required to be paid by the Town of ~~Butner pursuant to subdivisions (2) and (3) of this subsection.~~Butner."

SECTION 19.3.(c) G.S. 122C-411 reads as rewritten:

"**§ 122C-411. Fire protection contracts.**

The Department of Crime Control and Public Safety may contract with industries in the vicinity of Butner to provide fire protection to those industries. Those contracts shall provide for a payment by any contracting industry calculated on the basis of ~~twenty~~twenty-five cents ~~(20¢)~~ (25¢) per one hundred dollars ($100.00) of assessed valuation."

REPORTS ON LAW ENFORCEMENT ACCREDITATION SERVICES

SECTION 19.4. The State Highway Patrol, Alcohol Law Enforcement Division, State Capitol Police, and State Bureau of Investigation shall report by March 1, 2012, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety, and to the Fiscal Research Division on any national associations that provide accreditation services for those law enforcement agencies, including, but not limited to, the Commission on Accreditation for Law Enforcement Agencies. The report shall include an itemization of the personnel and other costs associated with the service, a summary of the accreditation process, and a summary of the benefits gained from the services.

STUDY THE FEASIBILITY OF ASSESSING A FEE FOR PROVIDING TRAFFIC CONTROL BY THE STATE HIGHWAY PATROL AT SPECIAL EVENTS

SECTION 19.5.(a) The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall study the feasibility of assessing a fee for services provided by the State Highway Patrol for certain special events. In conducting this study, the Committee shall determine the costs associated with providing traffic control devices and personnel to provide traffic control and direction at special functions and events. The Committee shall also develop criteria to determine events, if any, for which a fee will be assessed and criteria to determine the amount of the fee, if any, that should be assessed.

SECTION 19.5.(b) The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall make a report to the 2012 Regular Session of the 2011 General Assembly no later than June 1, 2012, detailing the information required by this section and shall provide any recommended changes in current legislation or proposed new legislation if required.

PART XX. DEPARTMENT OF ADMINISTRATION

STATE ENTITIES TO USE AGENCY FOR PUBLIC TELECOMMUNICATIONS

SECTION 20.1. Part 22 of Article 9 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-426.11A. Use of Agency for Public Telecommunications required.**

Notwithstanding any other provision of law, the Agency for Public Telecommunications shall be the primary party with whom all State agencies, departments, and institutions other than The University of North Carolina System and the Community College System may contract for media placement and the creation of the media to be placed. Agencies, departments, and institutions may use another party only if the Agency for Public Telecommunications determines that the Agency for Public Telecommunications cannot fulfill the agency's, department's, or institution's needs. Any contract entered into contrary to the provisions of this section is voidable at the discretion of the Governor and the Council of State."

TRANSFER OF NC HUMAN RELATIONS COMMISSION FROM DEPARTMENT OF ADMINISTRATION TO OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 20.1A.(a) The North Carolina Human Relations Commission created pursuant to G.S. 143B-391, other than the administration of the Martin Luther King, Jr. Commission created pursuant to G.S. 143B-426.34A, is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, from the Department of Administration to the Office of Administrative Hearings.

SECTION 20.1A.(b) Part 9 of Article 9 of Chapter 143B of the General Statutes, G.S. 143B-391 and G.S. 143B-392, is recodified as G.S. 7A-761 and G.S. 7A-762 in Article 60 of the General Statutes.

SECTION 20.1A.(c) G.S. 7A-761, as recodified by this section, reads as rewritten:

"**§ 7A-761. North Carolina Human Relations Commission – creation; powers and duties.**

There is hereby created the North Carolina Human Relations Commission of the ~~Department of Administration.~~Office of Administrative Hearings. The North Carolina Human Relations Commission shall have the following functions and duties:

...

(7) To receive on behalf of the ~~Department of Administration~~Office of Administrative Hearings and to recommend expenditure of gifts and grants from public and private donors;

...

(10) To advise the ~~Secretary of Administration~~ Director of the Office of Administrative Hearings upon any matter the ~~Secretary~~ Director may refer to it;

...."

SECTION 20.1A.(d) G.S. 7A-762, as recodified by this section, reads as rewritten:

"**§ 7A-762. North Carolina Human Relations Commission – Members; selection; quorum; compensation.**

(a) The Human Relations Commission of the ~~Department of Administration~~Office of Administrative Hearings shall consist of 22 members. The Governor shall appoint one member from each of the 13 congressional districts, plus five members at large, including the chairperson. The Speaker of the North Carolina House of Representatives shall appoint two members to the Commission. The President Pro Tempore of the Senate shall appoint two members to the Commission. The terms of four of the members appointed by the Governor shall expire June 30, 1988. The terms of four of the members appointed by the Governor shall expire June 30, 1987. The terms of four of the members appointed by the Governor shall expire June 30, 1986. The terms of four of the members appointed by the Governor shall expire June 30, 1985. The terms of the members appointed by the Speaker of the North Carolina House of Representatives shall expire June 30, 1986. The terms of the members appointed by the Lieutenant Governor shall expire June 30, 1986. The initial term of office of the person appointed to represent the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996. At the end of the respective terms of office of the initial members of the Commission, the appointment of their successors shall be for terms of four years. No member of the commission shall serve more than two consecutive terms. A member having served two consecutive terms shall be eligible for reappointment one year after the expiration of his second term. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be filled in the manner of the original appointment for the unexpired term.

...

(d) All clerical and support services required by the Commission shall be supplied by the ~~Secretary of the Department of Administration.~~Director of the Office of Administrative Hearings."

STUDY BY THE LEGISLATIVE RESEARCH COMMISSION OF THE DUTIES AND SERVICES OF THE NORTH CAROLINA HUMAN RELATIONS COMMISSION AND THE CIVIL RIGHTS DIVISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 20.2.(a) The Legislative Research Commission is authorized to study the duties and services of the North Carolina Human Relations Commission and the Civil

Rights Division of the Office of Administrative Hearings to determine whether there is unnecessary overlap and duplication of services and recommend the placement of the Commission and Division in the appropriate agency or agencies.

SECTION 20.2.(b) The Legislative Research Commission may make an interim report to the 2011 General Assembly when it reconvenes in 2012 and shall make its final report to the 2013 General Assembly.

SECTION 20.2.(c) This section is effective when it becomes law.

DOMESTIC VIOLENCE CENTER FUNDS

SECTION 20.3. The Department of Administration, in administering the Domestic Violence Center Fund, G.S. 50B-9, shall adhere to the requirements of the law and shall not limit the number of grantees that are eligible in each county, or by any other geographic limitation. Every domestic violence center that was in operation by the preceding July 1, offers the services described in the statute, and is a nonprofit corporation or a local government entity shall receive an amount that is equal to that received by all other grantees of the Fund.

USE OF CAPITAL PROJECT CONTINGENCY FUNDS TO INCREASE THE SPEED AND EFFICIENCY OF THE STATE CONSTRUCTION OFFICE

SECTION 20.4.(a) Contingency reserve funds appropriated for capital improvement projects that are subject to the Department of Administration's review authority under G.S. 143-341(3)a. shall be placed in a statewide capital reserve administered by the Office of State Budget and Management to ensure optimal management and administration of funds needed for new construction and repairs and renovations projects.

Notwithstanding any other provision of law, upon a request of the administration of a State agency, and after consultation with the Office of State Construction, the Director of the Budget may, when it is in the best interest of the State to do so, allocate funds from the reserve to the requesting agency to be used for any of the purposes for which contingency funds may permissibly be used. Under no circumstances, may funds disbursed from the statewide capital reserve be used for a capital improvement project not previously authorized by the General Assembly.

SECTION 20.4.(b) Each fiscal year of the biennium, the Director of the Budget may reallocate a portion of the funds deposited in the reserve not to exceed eight hundred seventy-five thousand dollars ($875,000) in any fiscal year to the State Construction Office in the Department of Administration to be used to support the staffing needs of the Office in connection with carrying out its design and plan review, construction, building code compliance, inspection, and related duties imposed by G.S. 143-341(3) and other sections of the General Statutes to ensure timely and complete responses in an effort to reduce the need for the use of contingency fees.

SECTION 20.4.(c) This section is effective when it becomes law and applies to all open and active capital improvement projects, regardless of the source of funds.

OFFICE OF STATE PERSONNEL/STUDY CENTRALIZED HUMAN RESOURCES FOR COUNCIL OF STATE OFFICES

SECTION 20.5. By the convening of the 2012 Regular Session of the 2011 General Assembly, the Office of State Personnel (OSP), in conjunction with the Office of State Budget and Management, shall report to the General Assembly and to the Fiscal Research Division on the feasibility of transferring the human resources management functions currently divided among the various Council of State offices and departments to be centralized under the Office of State Personnel. At a minimum, the report shall include the following:

(1) A detailed analysis of the costs to the State of maintaining separate human resources offices in Council of State offices and departments.

(2) An estimate of potential cost savings that would accrue to the State if all human resources management functions were under the OSP.

(3) Recommendations on State law changes required to effectuate centralization of all human services resources management functions under the OSP.

HUMAN RESOURCES DEVELOPMENT

SECTION 20.5A. During the 2011-2013 fiscal biennium, notwithstanding the provisions of G.S. 143C-6-10, 126-95, 116-17.2, or any other law to the contrary, the sum of

one million five hundred thousand dollars ($1,500,000) from the savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be transferred from the NCFlex FICA Fund to the Office of State Personnel to support program components of the HCM System.

ELIMINATE FUNDING FOR DEVELOPMENT OF SMART CARDS

SECTION 20.7. Notwithstanding Section 6.19 of S.L. 2010-31, funds in the amount of one million dollars ($1,000,000) shall be transferred from the E-Commerce Reserve Fund to the General Fund to support appropriations made in this act.

PART XXI. DEPARTMENT OF CULTURAL RESOURCES

TRANSPORTATION MUSEUM SPECIAL FUND

SECTION 21.1. Article 1 of Chapter 121 of the General Statutes is amended by adding a new section to read:

"**§ 121-7.6. North Carolina Transportation Museum special fund.**

(a) Fund Established. – The North Carolina Transportation Museum Fund is created as a special interestbearing, nonreverting enterprise fund in the Department of Cultural Resources. The Fund shall be used to pay all costs associated with the operation and maintenance of the North Carolina Transportation Museum.

(b) Monies Credited to the Fund. – Notwithstanding Chapter 146 of the General Statutes, all receipts derived from the lease, rental, or other disposition of structures or products of the land, as well as all admissions and fees, gifts, donations, grants, and bequests, shall be credited to the Fund. The Fund shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(c) Emergency Reserve. – The Department of Cultural Resources shall establish, out of existing unobligated funds including lapsed salaries and unobligated special funds, an emergency reserve fund in the amount of three hundred thousand dollars ($300,000). Any use of the emergency reserve will require reimbursement from museum receipts.

(d) Audit. – The Fund shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. The Fund shall reimburse the State Auditor for the cost of any audit."

ROANOKE ISLAND COMMISSION FUNDING/HISTORIC ROANOKE ISLAND FUND

SECTION 21.2.(a) The Roanoke Island Commission shall receive State funds through the 2011-2012 fiscal year. Beginning with the 2012-2013 fiscal year, the Roanoke Island Commission shall be self-supporting.

SECTION 21.2.(b) All funds and assets in the Outer Banks Island Farm Fund are transferred to the Roanoke Island Commission Fund established in G.S. 143B-131.8.

SECTION 21.2.(c) G.S. 143B-131.8 is amended by adding the following new subsections:

"(c) Notwithstanding subsection (b) of this section, the Commission may expend and use funds from the principal and from the remaining twenty percent (20%) of the interest generated by the principal of the Roanoke Island Commission Endowment Fund if (i) the Commission has insufficient cash flow to meet its financial obligations as they become due and (ii) those financial obligations are critical to the operation and maintenance of the Commission or the properties operated by the Commission. The Commission shall not use funds from the principal or the remaining twenty percent (20%) of the interest generated by the principal of the Roanoke Island Endowment Fund for capital expenditures.

(d) The Department of Cultural Resources shall pay to the Commission on a monthly basis a pro rata share of the utilities, maintenance, and operating expenses of the Outer Banks History Center, which is located in the facility owned by the Commission. The funds received pursuant to this subsection shall be credited to the Roanoke Island Commission Fund.

(e) The Department of Cultural Resources shall credit to the Roanoke Island Commission Fund all rental proceeds received by the Department from the rental properties located near the Outer Banks Island Farm."

SECTION 21.2.(d) G.S. 143B-131.2(b)(1) reads as rewritten:

"(1) To advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the appearance, maintenance, and aesthetic quality of U.S. Highway 64/264 and the U.S. 64/264 Bypass travel corridor on Roanoke Island and the grounds on Roanoke Island Festival Park. However, the local government that has jurisdiction over the affected portion of the travel corridor shall process the applications for and issue the certificates of appropriateness and shall be responsible for the enforcement of those certificates and any rules adopted pursuant to this subdivision that apply to the portion of the travel corridor within the jurisdiction of the local government. No reimbursement shall be made by the Commission to the local government for the processing of applications or issuance of certificates of appropriateness, or the enforcement of those certificates or the rules."

SECTION 21.2.(e) G.S. 143B-131.2(b)(10) reads as rewritten:

"(10) ~~To establish and maintain a separate fund composed of moneys which may come into its hands from~~ To accept gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may ~~also~~ establish a reserve fund to be maintained and used for contingencies and emergencies. ~~Funds appropriated to the Commission may be transferred to the Friends of Elizabeth II, Inc., a private, nonprofit corporation.~~ The Friends of Elizabeth II, Inc., shall use the balance of any unencumbered funds that were transferred to it ~~to carry out the purposes of this Part.~~ pursuant to this subdivision only for expenses of the Commission or the properties operated by the Commission that are identified as operating or for maintenance costs by the Commission and that are requested by the Commission."

SECTION 21.2.(f) Effective July 1, 2012, all funds held by the Roanoke Island Commission, including all balances credited to the Roanoke Island Commission Endowment Fund, shall be transferred to the Historic Roanoke Island Fund established in G.S. 143B-131.8A.

SECTION 21.2.(g) Effective July 1, 2012, G.S. 143B-131.1 reads as rewritten:

"**§ 143B-131.1. Commission established.**

There is established the Roanoke Island Commission. The Commission shall be an ~~independent~~ independent, self-supporting commission, but shall be located within the Department of Cultural Resources for historic resource management, organizational, and budgetary purposes."

SECTION 21.2.(h) Effective July 1, 2012, G.S. 143B-131.2(b)(14) reads as rewritten:

"(14) To administer the ~~Roanoke Island Commission Fund and the Roanoke Island Commission Endowment Fund as provided in G.S. 143B-131.8.~~ Historic Roanoke Island Fund as provided in G.S. 143B-131.8A."

SECTION 21.2.(i) Effective July 1, 2012, G.S. 143B-131.8 is repealed.

SECTION 21.2.(j) Effective July 1, 2012, Part 27A of Article 2 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-131.8A. Historic Roanoke Island Fund.**

(a) The Historic Roanoke Island Fund is established as a nonreverting enterprise fund and shall be administered by the Roanoke Island Commission. All operating revenues generated by the Roanoke Island Commission, including revenues collected from any property operated by the Roanoke Island Commission, together with all gifts, grants, donations, or other financial assets of whatever kind received or held by the Roanoke Island Commission shall be credited to the Historic Roanoke Island Fund and shall be used only (i) for the expenses of operating and maintaining the Roanoke Island Commission and the properties managed by the Roanoke Island Commission, (ii) to carry out any of the other duties and purposes set out by this Part, or (iii) for capital expenditures for the properties operated by the Commission.

(b) The Department of Cultural Resources shall pay to the Commission on a monthly basis a pro rata share of the utilities, maintenance, and operating expenses of the Outer Banks History Center, which is located in the facility owned by the Commission. The funds received pursuant to this subsection shall be credited to the Historic Roanoke Island Fund.

(c) The Department of Cultural Resources shall credit to the Historic Roanoke Island Fund all rental proceeds received by the Department from the rental properties located near the Outer Banks Island Farm."

TRYON PALACE FUNDING

SECTION 21.3. Beginning with the 2014-2015 fiscal year, it is the intent of the General Assembly that no State funds will be used to support Tryon Palace Historic Sites and Gardens. By May 1, 2012, the Department of Cultural Resources shall report to the General Assembly on how the site will become financially self-sufficient.

PART XXII. GENERAL ASSEMBLY

PED STUDYING ADMINISTRATION OF STATE ATTRACTIONS

SECTION 22.1.(a) The Program Evaluation Division shall study and review State operations considered attractions in the State, such as State Historic Sites, Museums, State Parks, Aquariums, and the North Carolina Zoo, and recommend whether administration of such attractions can be consolidated in one Department or administrative unit. In conducting its study, the Program Evaluation Division shall review all sources of revenue generated by these attractions, including admission fees, donations, and concession sales, and shall review daily visitation trends for these attractions to determine optimal operating schedules.

SECTION 22.1.(b) The Program Evaluation Division shall report its findings by March 30, 2012, to the full chairs of the House of Representatives and Senate Appropriations Committees, the chairs of the House of Representatives Appropriations Subcommittee on General Government, the chairs of the Senate Appropriations Committee on General Government and Information Technology, and the Fiscal Research Division.

ACCOMMODATING FEDERAL LAW FLEXIBILITY

SECTION 22.3. G.S. 120-30.9B(b) reads as rewritten:

"**§ 120-30.9B. Statewide statutes; State Board of Elections.**

(a) The Executive Director of the State Board of Elections or, in the discretion of the Legislative Services Commission, a person designated by the Legislative Services Commission shall seek approval as required by 42 U.S.C. § 1973c for all of the following:

(1) Within 30 days of the time they become laws all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 163 of the General Statutes or any other statewide legislation, except relating to Chapter 7A of the General Statutes or as provided in subsection (b) of this section, which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965; and

(2) Within 30 days all alterations of precinct boundaries under G.S. 163-132.2(c) in counties covered by Section 5 of the Voting Rights Act of 1965.

(b) With respect to acts of the General Assembly that amend, delete, add to, modify, or repeal any provision relating to apportioning or redistricting of State legislative or congressional districts, the Attorney General of North Carolina or, in the discretion of the Legislative Services Commission, a person designated by the Legislative Services Commission shall seek approval of the plan as required by 42 U.S.C. § 1973c."

CLIENT DECISIONS

SECTION 22.4. G.S. 147-17 is amended by adding a new subsection to read:

"(d) In those instances when a department, officer, agency, institution, commission, bureau, or other organized activity of the State which receives support in whole or in part from the State shall employ counsel other than the Attorney General as permitted by law, such employed counsel shall allocate authority between counsel and the State client in conformance with Rule 1.2 of the North Carolina Rules of Professional Conduct. In those instances where more than one counsel is providing legal representation, counsel, or service on a legal matter on behalf of a State client, the client shall designate in writing which of its legal counsel possesses final decision-making authority on behalf of the State client, and other co-counsel shall, consistent with the Rules of Professional Conduct, cooperate with such designated lead counsel."

CONFORMING CHANGE

SECTION 22.5. G.S. 120-32.6 reads as rewritten:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. ~~147-17~~ 147-17(a) through (c) shall not apply to the General Assembly."

PART XXIII. DEPARTMENT OF INSURANCE

PERMISSABLE USE OF INSURANCE REGULATORY FUND

SECTION 23.1. The Department of Insurance shall not expend funds from the Insurance Regulatory Fund created under G.S. 58-6-25 for any purpose other than to reimburse the General Fund for appropriations from that fund to the Department.

NO BUDGET REDUCTION FOR CERTAIN STATE FIRE PROTECTION GRANT FUND RECIPIENTS

SECTION 23.2. Notwithstanding any other provision of this act, there shall be no reduction in funding under G.S. 58-85A-1 during the 2011-2013 fiscal biennium for local fire districts and political subdivisions of the State that receive grant funding of one thousand dollars ($1,000) or less under that statute.

PART XXIV. OFFICE OF ADMINISTRATIVE HEARINGS

ACCESS TO REGISTER AND CODE

SECTION 24.1. G.S. 150B-21.24 reads as rewritten:

"**§ 150B-21.24. Access to Register and Code.**

(a) Register. – The Codifier of Rules shall make available the North Carolina Register on the Internet at no charge. ~~Upon request the Codifier shall provide a free copy of the current volume of the Register to any person who receives a free copy of the North Carolina Administrative Code or any member of the General Assembly.~~

(b) Code. – The Codifier of Rules shall make available the North Carolina Administrative Code on the Internet at no charge. ~~The Codifier shall distribute copies of the North Carolina Administrative Code as soon after publication as practical, without charge, to the following:~~

~~(1) One copy to the board of commissioners of each county that specifically requests a printed copy, to be placed at the county clerk of court's office or at another place selected by the board of commissioners. The Codifier of Rules is not required to provide a copy of the Administrative Code to any board of county commissioners unless a request is made.~~

~~(2) One copy to the Commission.~~

~~(3) One copy to the Clerk of the Supreme Court and to the Clerk of the Court of Appeals of North Carolina.~~

~~(4) One copy to the Supreme Court Library and one copy to the library of the Court of Appeals.~~

~~(5) One copy to the Administrative Office of the Courts.~~

~~(6) One copy to the Governor.~~

~~(7) One copy to the Legislative Services Commission for the use of the General Assembly.~~

~~(8) Repealed by Session Laws 2002-97, s. 1, effective August 29, 2002.~~

~~(9) One copy to the Division of State Library of the Department of Cultural Resources pursuant to G.S. 125-11.7.~~"

PART XXV. OFFICE OF STATE BUDGET AND MANAGEMENT

TRANSFER STATE FIRE PROTECTION GRANT FUND

SECTION 25.1. Article 85A of Chapter 58 of the General Statutes reads as rewritten:

"Article 85A.
"State Fire Protection Grant Fund.

"§ 58-85A-1. Creation of Fund; allocation to local fire districts and political subdivisions of the State.

(a) There is created in the ~~Office of State Budget and Management~~Department of Insurance the State Fire Protection Grant Fund. The purpose of the Fund is to compensate local fire districts and political subdivisions of the State for providing local fire protection to State-owned buildings and their contents.

(b) The ~~Office of State Budget and Management~~Department of Insurance shall develop and implement an equitable and uniform statewide method for distributing any funds to the State's local fire districts and political subdivisions.

~~Upon the request of the Director of the Budget, the Department of Insurance shall provide the Office of State Budget and Management all information necessary to develop and implement the formula.~~

(c) It is the intent of the General Assembly to appropriate annually to the State Fire Protection Grant Fund up to four million one hundred eighty thousand dollars ($4,180,000) from the General Fund, one hundred fifty-eight thousand dollars ($158,000) from the Highway Fund, and one million three hundred forty-five thousand dollars ($1,345,000) from University of North Carolina receipts. Funds received from the General Fund shall be allocated only for providing local fire protection for State-owned property supported by the General Fund; funds received from the Highway Fund shall be allocated only for providing local fire protection for State-owned property supported by the Highway Fund; and funds received from University of North Carolina receipts shall be allocated only for providing local fire protection for State-owned property supported by University of North Carolina receipts."

NC SYMPHONY FUNDING

SECTION 25.2.(a) Of the funds appropriated in this act to the Office of State Budget and Management-Special Appropriations, the sum of one million five hundred thousand dollars ($1,500,000) in nonrecurring funds for the 2011-2012 fiscal year shall be allocated to the North Carolina Symphony in accordance with this section.

SECTION 25.2.(b) It is the intent of the General Assembly that the NC Symphony achieve its goal of raising the sum of eight million dollars ($8,000,000) in non-State funding to support the operations of the Symphony. To that end, upon demonstrating to the Office of State Budget and Management that the NC Symphony has reached fund-raising targets in the amounts set forth in this subsection, the NC Symphony shall receive allocations from the Office of State Budget and Management as follows:

(1) Upon raising the initial sum of four million dollars ($4,000,000) in non-State funding, the NC Symphony shall receive the sum of five hundred thousand dollars ($500,000).

(2) Upon raising an additional sum of two million dollars ($2,000,000) in non-State funding for a total amount of six million dollars ($6,000,000) in non-State funds, the NC Symphony shall receive the sum of five hundred thousand dollars ($500,000).

(3) Upon raising an additional sum of two million dollars ($2,000,000) in non-State funding for a total sum of eight million dollars ($8,000,000) in non-State funds, the NC Symphony shall receive the final sum of five hundred thousand dollars ($500,000) for the 2011-2012 fiscal year.

SECTION 25.2.(c) Funds allocated pursuant to this section are in addition to any other funds allocated to the NC Symphony in this act.

PART XXVI. STATE BOARD OF ELECTIONS

NO EXPENDITURE OF HAVA TITLE II FUNDS FOR STATE FY 2011-2012

SECTION 26.1. The State Board of Election shall not expend any Help America Vote Funds (HAVA) Title II Funds for the 2011-2012 fiscal year and, unless prohibited by federal law, shall retain those funds until Maintenance of Effort funds are appropriated.

ALLOWING COUNTY BOARDS OF ELECTION TO EMPLOY PERSONNEL TO MAINTAIN VOTING SYSTEMS

SECTION 26.3.(a) G.S. 163-165.9 reads as rewritten:

"§ 163-165.9. Voting systems: powers and duties of county board of elections.

(a) Before approving the adoption and acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

(1) Recommend to the board of county commissioners which type of voting system should be acquired by the county.

(2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the type of voting system to be recommended and also witness a demonstration of at least one other type of voting system certified by the State Board of Elections.

(3) Test, during an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted.

(b) After the acquisition of any voting system, the county board of elections shall comply with any requirements of the State Board of Elections regarding training and support of the voting system by completing all of the following:

(1) The county board of elections shall comply with all specifications of its voting system vendor for ballot printers. The county board of elections is authorized to contract with noncertified ballot printing vendors, so long as the noncertified ballot printing vendor meets all specifications and all quality assurance requirements as set by the State Board of Elections.

(2) The county board of elections shall annually maintain software license and maintenance agreements necessary to maintain the warranty of its voting system. A county board of elections may employ qualified personnel to maintain a voting system in lieu of entering into maintenance agreements necessary to maintain the warranty of its voting system. The State Board of Elections ~~shall not~~is not required to provide routine maintenance to any county board of elections that does not maintain the warranty of its voting system. If the State Board of Elections provides any maintenance to a county that has not maintained the warranty of its voting system, the county shall reimburse the State for the cost.

(3) The county board of elections shall not replace any voting system, or any portion thereof, without approval of the State Board of Elections.

(4) The county board of elections may have its voting system repaired pursuant to its maintenance agreement but shall notify the State Board of Elections at the time of every repair, according to guidelines that shall be provided by the State Board of Elections."

SECTION 26.3.(b) This section becomes effective July 1, 2011.

PART XXVI-A. STATE CONTROLLER

OVERPAYMENTS AUDIT

SECTION 26A.1.(a) During the 2011-2013 biennium, receipts generated by the collection of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors as required by G.S. 147-86.22(c) are to be deposited in Special Reserve Account 24172.

SECTION 26A.1.(b) For each year of the 2011-2013 biennium, five hundred thousand dollars ($500,000) of the funds transferred from Special Reserve Account 24172 shall be used by the Office of the State Controller for data processing, debt collection, or e-commerce costs.

SECTION 26A.1.(c) All funds available in Special Reserve Account 24172 on July 1 of each year of the 2011-2013 biennium are transferred to the General Fund on that date.

SECTION 26A.1.(d) Any unobligated funds in Special Reserve Account 24172 that are realized above the allowance in subsection (b) of this section are subject to appropriation by the General Assembly.

SECTION 26A.1.(e) The State Controller shall report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the revenue deposited into Special Reserve Account 24172 and the disbursement of that revenue.

PART XXVII. DEPARTMENT OF THE STATE TREASURER

LOCAL GOVERNMENT UNIT POSITIONS

SECTION 27.1.(a) G.S. 105-501(b) reads as rewritten:

"(b) Deductions. – The costs incurred by the State to provide the functions listed in this subsection that support local governments are deductible from the collections to be allocated each month for distribution.

(1) The Department's cost of the following for the preceding month must be deducted and credited to the Department:

a. ~~Performing the duties imposed by Article 15 of this Chapter.~~The Local Government Division.

b. The Property Tax Commission.

(1a) The Department of State Treasurer's costs for personnel and operations of the Local Government Commission.

(2) One-twelfth of the costs of the following for the preceding fiscal year must be deducted and credited to the General Fund:

a. The School of Government at the University of North Carolina at Chapel Hill in operating a training program in property tax appraisal and assessment.

b. The personnel and operations provided by the Department of State Treasurer for the Local Government Commission.

c. Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter."

SECTION 27.1.(b) G.S. 105-501(b), as rewritten by subsection (a) of this section, reads as rewritten:

"(b) Deductions. – The costs incurred by the State to provide the functions listed in this subsection that support local governments are deductible from the collections to be allocated each month for distribution.

(1) The Department's cost of the following for the preceding month must be deducted and credited to the Department:

a. The Local Government Division.

b. The Property Tax Commission.

(1a) The Department of State Treasurer's costs for personnel and operations of the Local Government Commission.

(2) One-twelfth of the costs of the following for the preceding fiscal year must be deducted and credited to the General Fund:

a. The School of Government at the University of North Carolina at Chapel Hill in operating a training program in property tax appraisal and assessment.

~~b. The personnel and operations provided by the Department of State Treasurer for the Local Government Commission.~~

c. Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter."

SECTION 27.1.(c) Subsection (b) of this section becomes effective July 1, 2012.

PART XXVIII. DEPARTMENT OF TRANSPORTATION

CASH FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATION

SECTION 28.1.(a) The General Assembly authorizes and certifies anticipated revenues for the Highway Fund as follows:

For Fiscal Year 2013-2014	$2,125.4 million
For Fiscal Year 2014-2015	$2,238.0 million
For Fiscal Year 2015-2016	$2,352.3 million
For Fiscal Year 2016-2017	$2,470.9 million

SECTION 28.1.(b) The General Assembly authorizes and certifies anticipated revenues for the Highway Trust Fund as follows:

For Fiscal Year 2013-2014	$1,084.0 million
For Fiscal Year 2014-2015	$1,169.8 million
For Fiscal Year 2015-2016	$1,232.6 million

For Fiscal Year 2016-2017 $1,256.7 million

CHANGES TO HIGHWAY FUND CERTIFIED BUDGET TO INCREASE TRANSPARENCY

SECTION 28.2. Notwithstanding G.S. 143C-6-4(b), the Office of State Budget and Management, in consultation with the Department of Transportation, the Office of the State Controller, and the Fiscal Research Division, shall execute changes to the Department of Transportation's Highway Fund (Budget Code 84210) 2012-2013 Fiscal Year Certified Budget to increase transparency. The Adjusted 2012-2013 Fiscal Year Certified Budget for Budget Code 84210 shall include object detail using the North Carolina Accounting System Uniform Chart of Accounts prescribed by the Office of the State Controller to provide a more detailed accounting of the proposed budgets and receipts and actual expenditures and revenue collections. This includes, but is not limited to, applying object detail at the four-digit level for all acounts to full-time and part-time positions, to operating expenditures and receipts, and to intrafund transfers. In addition, work order positions shall be budgeted within existing fund codes. These readjustments to the enacted budget are for the sole purpose of correctly aligning authorized positions and associated operating costs with the appropriate purposes and definitions as defined in G.S. 143C-1-1. The Office of State Budget and Management shall change the certified budget to reflect these adjustments only after reporting the proposed adjustments to the Chairs of the Senate Appropriations Committee on Department of Transportation and the Chairs of the House Appropriations Subcommittee on Transportation and to the Fiscal Research Division no later than March 1, 2012. It is the intent of the General Assembly that these changes in the certified budget for Budget Code 84210 shall begin with the 2012-2013 fiscal year and shall be used in subsequent fiscal years.

REMOVE PILOT DESIGNATION FOR PUBLIC-PRIVATE PARTNERSHIPS

SECTION 28.3. G.S. 136-28.1 reads as rewritten:

"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

...

(l) The Department of Transportation may enter into ~~as many as two pilot~~ contracts for ~~public-private~~ public-private participation in providing litter removal from State right-of-way. Selection of firms to perform this work shall be made using a best value procurement process and shall be without regard to other provisions of law regarding the Adopt-A-Highway Program administered by the Department. Acknowledgement of sponsors may be indicated by appropriate signs that shall be owned by the Department of Transportation. The size, style, specifications, and content of the signs shall be determined in the sole discretion of the Department of Transportation. The Department of Transportation may issue ~~rules~~ guidelines, rules, and policies necessary to ~~implement~~ administer this ~~section.~~ subsection.

(m) The Department of Transportation may enter into ~~as many as two pilot~~ contracts for public-private participation ~~in providing real-time traveler information~~ at State-owned rest areas. Selection of firms ~~to perform this work~~ shall be made using a best value procurement process. Recognition of sponsors in the program may be indicated by appropriate acknowledgment for any services provided. The size, style, specifications, and content of the acknowledgment shall be determined in the sole discretion of the Department. Revenues generated pursuant to a contract initiated under this subsection shall be shared with Department of Transportation at a predetermined percentage or rate, and shall be earmarked by the Department to maintain the State owned rest areas from which the revenues are generated. The Department of Transportation may issue guidelines, rules, and policies necessary to administer ~~a pilot program initiated under~~ this subsection."

REMOVE CAP ON DESIGN-BUILD PROJECTS

SECTION 28.4. G.S. 136-28.11(a) reads as rewritten:

"(a) Design-Build Contracts Authorized. – Notwithstanding any other provision of law, the Board of Transportation may award contracts ~~for up to 25 projects~~ each fiscal year for construction of transportation projects on a design-build basis."

REQUEST FOR INFORMATION RELATED TO SPONSORSHIPS

SECTION 28.5. The Department of Transportation shall issue a request for information from potential sponsors of welcome centers, visitor centers, rest areas, ferry

welcome centers, ferries, and Incident Management Assistance Patrols. The Department shall report to the Joint Legislative Transportation Oversight Committee no later than March 1, 2012, on the results of its request for information and shall provide the Joint Legislative Transportation Oversight Committee the following information:

(1) The current cost of the suggested activities to be sponsored.
(2) The potential receipts that could reasonably be collected through sponsorships.
(3) Suggested guidelines and process for selecting reputable sponsors.
(4) What sponsorships might look like once implemented, including mock-ups of potential sponsors' signage on materials, buildings, vehicles, vessels, or other locations.
(5) What administrative, statutory, or regulatory changes may be necessary to effect the Department's proposed sponsorship changes.

SMALL CONSTRUCTION AND CONTINGENCY FUNDS

SECTION 28.6. Of the funds appropriated in this act to the Department of Transportation:

(1) Seven million dollars ($7,000,000) shall be allocated in each fiscal year for small construction projects recommended by the State Highway Administrator in consultation with the Chief Operating Officer and approved by the Secretary of the Department of Transportation. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for small construction projects.
(2) Twelve million dollars ($12,000,000) shall be allocated statewide in each fiscal year for rural or small urban highway improvements and related transportation enhancements to public roads and public facilities, industrial access roads, and spot safety projects, including pedestrian walkways that enhance highway safety. Projects funded pursuant to this subdivision shall be approved by the Secretary of Transportation.

None of these funds used for rural secondary road construction are subject to the county allocation formulas in G.S. 136-44.5(b) and (c).

These funds are not subject to G.S. 136-44.7.

The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to construction. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

ADJUST SECONDARY ROAD CONSTRUCTION AND SECONDARY ROAD MAINTENANCE

SECTION 28.7.(a) Notwithstanding G.S. 136-44.2A, the amount allocated from the Highway Fund for secondary road construction and secondary road maintenance under G.S. 136-44.2A shall not increase over the amounts allocated in the fiscal year 2011-2012 and fiscal year 2012-2013 base budgets. Notwithstanding G.S. 136-44.2A or any other provision of law, the difference between the amounts that would have been allocated from the Highway Fund for secondary road construction and secondary road maintenance pursuant to G.S. 136-44.2A if not for this section and the amounts allocated in the base budgets for fiscal year 2011-2012 and fiscal year 2012-2013 shall be allocated to highway maintenance.

SECTION 28.7.(b) Notwithstanding G.S. 136-176(b)(4), the amount allocated from the Highway Trust Fund for secondary roads pursuant to G.S. 136-176(b)(4) shall not increase over the amounts allocated in the fiscal year 2011-2012 and fiscal year 2012-2013 base budgets. Notwithstanding G.S. 136-176(b) or any other provision of law, the difference between the amounts that would have been allocated to secondary roads pursuant to G.S. 136-176(b)(4) if not for this section and the amounts allocated in the base budgets for fiscal year 2011-2012 and fiscal year 2012-2013 shall be allocated to urban loop projects.

SYSTEM PRESERVATION FUNDS PREFERENCE FOR DEFICIENT BRIDGES

SECTION 28.8. The funds allocated to the system preservation program (Budget Code 84240-7839) for fiscal years 2011-2012 and 2012-2013 shall be used for bridge improvements on structurally deficient bridges.

INCREASE DOT PRIVATIZATION

SECTION 28.9. The Department of Transportation shall seek to increase the use of contracts to further privatize design and engineering work where practical and economical. In doing so, the Department of Transportation shall do the following:

(1) Identify State-funded professional service contracts of two hundred fifty thousand dollars ($250,000) or less that are likely to attract increased participation by Small Professional Services Firms and then direct the solicitation of applicable contracts to those firms.

(2) Expand the use of multiple contract awards for maintenance and repair projects.

(3) Increase the outsourcing of preliminary engineering projects to fifty percent (50%) of the total funds in the annual work plan.

STATE STREET-AID TO MUNICIPALITIES (POWELL BILL) ADJUSTMENTS

SECTION 28.10.(a) G.S. 136-41.1(a) reads as rewritten:

"(a) There is annually appropriated out of the State Highway Fund a sum equal to the net amount after refunds that was produced during the fiscal year by a one and three-fourths cents (1 3/4¢) tax on each gallon of motor fuel taxed under Article 36C of Chapter 105 of the General Statutes and on the equivalent amount of alternative fuel taxed under Article 36D of that Chapter. ~~The~~ One-half of the amount appropriated shall be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. The second one-half of the amount appropriated shall be allocated in cash on or before January 1 of each year to the cities and towns of the State in accordance with this section. In addition, as provided in G.S. 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the cities and towns of this State to be used for the same purposes and distributed in the same manner as the revenue appropriated to them under this section from the Highway Fund. Like the appropriation from the Highway Fund, the appropriation from the Highway Trust Fund shall be based on revenue collected during the fiscal year preceding the date the distribution is made.

...."

SECTION 28.10.(b) Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-41.2B. Eligibility for funds; municipalities with no road miles ineligible.**

No municipality shall be eligible to receive funds under G.S. 136-41.1 unless the municipality maintains public streets that (i) are within its jurisdiction and (ii) do not form a part of the State highway system."

SECTION 28.10.(c) Unexpended and unencumbered funds previously allocated to municipalities made ineligible to receive funds by subsection (b) of this section shall be reallocated to eligible municipalities in accordance with G.S. 136-41.1.

SECTION 28.10.(d) G.S. 136-41.3 reads as rewritten:

"**§ 136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.**

...

No funds allocated to municipalities pursuant to G.S. 136-41.1 and 136-41.2 shall be permitted to accumulate for a period greater than permitted by this section. Interest on accumulated funds shall be used only for the purposes permitted by the provisions of G.S. 136-41.3. ~~Any~~ Except as otherwise provided in this section, any municipality having accumulated an amount greater than the sum of the past 10 allocations made, shall have an amount equal to such excess deducted from the next allocation after receipt of the report required by this section. Such deductions shall be carried over and added to the amount to be allocated to municipalities for the following year. Notwithstanding the other provisions of this section, the Department shall adopt a policy to allow small municipalities to apply to the Department to be allowed to accumulate up to the sum of the past 20 allocations if a municipality's allocations are so small that the sum of the past 10 allocations would not be sufficient to accomplish the purposes of this section.

...."

STATE AID TO RAILROADS TRANSPARENCY

SECTION 28.12. G.S. 136-44.20(d) is repealed.

PROGRAM EVALUATION DIVISION TO STUDY NORTH CAROLINA RAILROAD

SECTION 28.12A. The Program Evaluation Division of the General Assembly shall conduct a comprehensive evaluation of the North Carolina Railroad Company, a North Carolina corporation of which the State is the sole shareholder and which is a discretely reported component unit of the State as defined by the Governmental Accounting Standards Board. The evaluation shall address, at a minimum, the following issues:

(1) Whether the corporation is adhering to its stated corporate mission of maximizing the value of the corporation for the people of the State.

(2) What economic development benefits have been provided by the corporation and for what costs.

(3) An evaluation of the use of available cash by the corporation, including the purchase of real property used for investment purposes rather than paying dividends to the State.

(4) The approximate value of the corporation's assets, based on a market valuation rather than historic or book value of assets.

(5) The approximate value of the entire corporation as a going concern.

(6) The effectiveness of the provisions of Chapter 124 of the General Statutes to allow the State to exercise its shareholder rights and to provide effective shareholder oversight of the corporation.

(7) Whether the ownership of the corporation provides the State a reasonable return on its investment, attempting to consider both the tangible and intangible value provided by the corporation.

(8) Whether the corporation should be sold, transferred under the jurisdiction of the Department of Transportation or another State agency, or maintain its corporate structure.

(9) Whether the General Assembly should consider the possibility of repealing the corporate charter of the corporation by a special act, as allowed under Section 1 of Article VIII of the North Carolina Constitution.

For the purposes of this evaluation, the terms "State agency" or "agency" as used under Article 7C of Chapter 120 of the General Statutes shall include the North Carolina Railroad Company.

For the purposes of this evaluation, the Program Evaluation Division is hereby granted authority to exercise the State's shareholder right to inspect the corporate books and records of the North Carolina Railroad Company on behalf of the State.

The Program Evaluation Division may hire consultants to aid it in its evaluation, including experts in appraisal and valuation.

The Program Evaluation Division shall report the results of its study to the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Transportation Oversight Committee no later than May 1, 2012.

STATE AID TO SHORT-LINE RAILROADS

SECTION 28.13. Article 2D of Chapter 136 is amended by adding a new section to read as follows:

"**§ 136-44.39. Department to provide State and federal financial assistance to short-line railroads.**

The Department of Transportation is authorized to provide assistance to short-line railroads to continue and enhance rail service in the State so as to assist in economic development and access to ports and military installations. Assistance under this section may involve both the Rail Industrial Access Program and the Short Line Infrastructure Access Program, as well as other innovative programs. Grants under this section shall not exceed fifty percent (50%) of the nonfederal share and must be matched by equal or greater funding from the applicant."

REPORT, CONSULTATION, AND APPROVAL OF RAIL PROJECTS

SECTION 28.15. G.S. 136-44.36 reads as rewritten:

"**§ 136-44.36. Department of Transportation designated as agency to administer federal and State railroad revitalization programs.**

(a) The General Assembly hereby designates the Department of Transportation as the agency of the State of North Carolina responsible for administering all State and federal railroad revitalization programs. The Department of Transportation is authorized to develop, and the Board of Transportation is authorized to adopt, a State railroad plan, and the Department of Transportation is authorized to do all things necessary under applicable State and federal legislation to properly administer State and federal railroad revitalization programs within the State. Such authority shall include, but shall not be limited to, the power to receive federal funds and distribute and expend federal and State funds for rail programs designed to cover the costs of acquiring, by purchase, lease or other manner as the department considers appropriate, a railroad line or other rail property to maintain existing or to provide future rail service; the costs of rehabilitating and improving rail property on railroad lines to the extent necessary to permit safe, adequate and efficient rail service on such lines; and the costs of constructing rail or rail related facilities for the purpose of improving the quality, efficiency and safety of rail service. The Department shall also have the authority to preserve railroad corridors for future railroad use and interim compatible uses and may lease such corridors for interim compatible uses. Such authority shall also include the power to receive and administer federal financial assistance without State financial participation to railroad companies to cover the costs of local rail service continuation payments, of rail line rehabilitation, and of rail line construction as listed above. This Article shall not be construed to grant to the department the power or authority to operate directly any rail line or rail facilities.

(b) Notwithstanding subsection (a) of this section, the acceptance of federal funds by the Department of Transportation for rail programs shall be subject to the following:

(1) Report. – For any project under subsection (a) of this section, the Department of Transportation shall report the project details, including the amounts of federal funds and any State matching funds, as well as the expected annual maintenance and operational costs to the State of the project for the next 25 years, to the Joint Legislative Transportation Oversight Committee if the General Assembly is not in session, or to the House Appropriations Subcommittee on Transportation and the Senate Committee on Appropriations on Department of Transportation if the General Assembly is in session.

(2) Consultation. – If either the amount of State matching funds required by the federal grant or the amount of future annual maintenance and operational costs of the project are reasonably expected to exceed three million dollars ($3,000,000), then the Department shall not accept the federal funds prior to consultation with the Joint Legislative Transportation Oversight Committee if the General Assembly is not in session, or with the House Appropriations Subcommittee on Transportation and the Senate Committee on Appropriations on Department of Transportation if the General Assembly is in session. Failure of the Joint Legislative Transportation Oversight Committee, the House Appropriations Subcommittee on Transportation, or the Senate Committee on Appropriations on Department of Transportation to hold a meeting with the Department of Transportation within 60 days of a written request for a meeting from the Department of Transportation shall be deemed a waiver of consultation by the committee.

(3) Approval. – If either the amount of State matching funds required by the federal grant or the amount of future annual maintenance and operational costs of the project are reasonably expected to exceed five million dollars ($5,000,000), then the Department's acceptance of funds shall be subject to approval of the project by an act of the General Assembly. If 30 days have passed since consultation or the expiration of the consultation period under subdivision (2) of this subsection, then the inaction of the General Assembly, including the lack of an extra session to address the project, shall be deemed an approval of the project, and the Department may accept the funds without an act of the General Assembly.

For purposes of this subsection, the terms "State matching funds" and "annual maintenance and operational costs to the State" shall not include funds that may pass through the Department of Transportation but that originally came from a non-State source."

PROHIBIT RAIL DIVISION FROM PROVIDING CONVENIENCE ITEMS FREE OF CHARGE ON ALL PASSENGER RAIL SERVICE

SECTION 28.16. The Department of Transportation, Rail Division, shall not provide convenience items to passengers free of charge unless the items are donated to the State. These items include bottled or canned drink products, excluding water, newspapers, or other items of convenience. The Department of Transportation may charge a nominal fee for such items through vending machines or through other mechanisms.

ELIMINATE AERONAUTICS COUNCIL, BICYCLE COMMITTEE, AND RAIL COUNCIL

SECTION 28.17.(a) The Aeronautics Council of the Department of Transportation is eliminated. G.S. 143B-356 and G.S. 143B-357 are repealed.

SECTION 28.17.(b) The North Carolina Bicycle Committee within the Department of Transportation is eliminated. G.S. 136-71.13 is repealed.

SECTION 28.17.(c) The North Carolina Rail Council of the Department of Transportation is eliminated. Part 9 of Article 8 of Chapter 143B of the General Statutes is repealed.

AVIATION DIVISION APPROPRIATION

SECTION 28.17A. Notwithstanding G.S. 136-16.4, the continuing aviation appropriation from the Highway Fund to the Department of Transportation shall be reduced as provided in this act.

FLEXIBLE USE OF FUNDS TO LEVERAGE FEDERAL FUNDS FOR RURAL PUBLIC TRANSPORTATION

SECTION 28.18. In order to ensure maximum receipts of funding and to facilitate the use of funds available to the Department, the Department of Transportation, Public Transportation Division, shall have the flexibility to transfer funding from the consolidated capital program of its rural funding programs for vehicles, technology, and facilities to the operating programs, based on the Department's ability to leverage all additional federal funds to meet the capital needs of rural transportation systems. This section applies only to fiscal years 2011-2012 and 2012-2013.

MAXIMIZE LEVERAGE OF FEDERAL PUBLIC TRANSPORTATION OPERATING AND CAPITAL FUNDS FOR LOCAL PUBLIC TRANSPORTATION SYSTEMS

SECTION 28.19. The Department of Transportation, Public Transportation Division, shall provide local public transportation systems with maximum flexibility to use State operating funds from the "urban and regional maintenance," "elderly and disabled," "work first and transportation employment," and "urban technology, human service transportation management, and rural general public" grant programs to leverage all eligible federal transit operating assistance funds. This section applies only to fiscal years 2011-2012 and 2012-2013.

STREAMLINE GRANT PROCESS AND CONSOLIDATE GRANTS FOR PUBLIC TRANSPORTATION

SECTION 28.20.(a) The Department of Transportation, Public Transportation Division, shall work with stakeholders to streamline the grant application process, determine levels for funding distributions, and make recommendations to the General Assembly to maximize the use of these grant funds. The Department of Transportation shall report these findings to the Joint Legislative Transportation Oversight Committee no later than March 1, 2012.

SECTION 28.20.(b) The Department of Transportation and the Office of State Budget and Management are directed to combine grant funding to the "elderly and disabled," "work first and transportation employment," and the human service transportation management and rural general public grant programs within the "urban technology, human service transportation management and rural general public" grant programs. The Highway Fund

Budget Code 84210, Fund Code 7831, shall be changed to reflect these consolidations and the separation of the "urban technology, human service transportation management and rural general public" grant program. The grant categories and respective formulas shall remain unchanged. The Department shall determine an appropriate distribution for funds based upon the needs of the local governments.

Consolidating the funding sources should enable the Department to increase utilization of all available funds based on documented local needs, reduce program administration at the State and local levels, and increase flexibility for regional systems to apply and expend funds for multicounty transit needs.

SECTION 28.20.(c) Subsection (b) of this section becomes effective July 1, 2012.

STUDY REGIONAL CONSOLIDATION OF TRANSIT SYSTEMS

SECTION 28.21. The Department of Transportation, Public Transportation Division, is directed to study the feasibility and appropriateness of developing regional transit systems with the goals of (i) providing increased mobility between existing transit systems within one county and between counties, (ii) improving planning and coordination to better meet public demand, (iii) maximizing funding, and (iv) developing centralized professional staff that will create operational and administrative efficiencies. This study shall examine both (i) the consolidation of transit service planning and delivery based on regional travel patterns and (ii) the consolidation of single-county transit systems, where applicable. The Department of Transportation, Public Transportation Division, shall report the results of its study to the Joint Legislative Transportation Oversight Committee no later than March 1, 2012.

FLEXIBLE USE OF FUNDS FOR DIVISION OF MOTOR VEHICLES FOR FISCAL YEARS 2011-2012 AND 2012-2013

SECTION 28.23. Of the funds appropriated in this act to the Department of Transportation, Division of Motor Vehicles:

(1) One hundred five thousand dollars ($105,000) may be used for contractual security services at the Division of Motor Vehicles Registration and International Registration Plan (IRP) office in the City of Charlotte.

(2) Two hundred twenty-five thousand thirty dollars ($225,030) may be used for the purpose of staffing the dedicated commercial drivers license skills testing sites located in the City of Lumberton and under construction in Iredell County. The Division is authorized to reclassify five existing, vacant positions for this purpose.

CONFORMING CHANGES RELATED TO DMV AUDITORS AND CHANGES RELATED TO DMV HEARINGS

SECTION 28.23B.(a) G.S. 20-183.8F reads as rewritten:

"**§ 20-183.8F. Requirements for giving license holders notice of violations and for taking summary action.**

~~(a) Finding of Violation. – When an auditor of the Division finds that a violation has occurred that could result in the suspension or revocation of an inspection station license, a self-inspector license, a mechanic license, or the registration of a person engaged in the business of replacing windshields, the auditor must give the affected license holder written notice of the finding. The notice must be given within five business days after the completion of the investigation that resulted in the discovery of the violation. The notice must state the period of suspension or revocation that could apply to the violation and any monetary penalty that could apply to the violation. The notice must also inform the license holder of the right to a hearing if the Division charges the license holder with the violation.~~

(b) Notice of Charges. – When the Division decides to charge an inspection station, a self-inspector, or a ~~mechanic, or a person who is engaged in the business of replacing windshields~~mechanic with a violation that could result in the suspension or revocation of the person's license, ~~an auditor of~~ the Division must deliver a written statement of the charges to the affected license holder. The statement of charges must inform the license holder of ~~this right,~~the right to request a hearing, instruct the person on how to obtain a hearing, and inform the license holder of the effect of not requesting a hearing. The license holder has the right to a hearing before the license is suspended or revoked. ~~G.S. 20-183.8E~~G.S. 20-183.8G sets out the procedure for obtaining a hearing.

(c) Exception for Summary Action. – The right granted by subsection (b) of this section to have a hearing before a license is suspended or revoked does not apply if the Division summarily suspends or revokes the license after a judge has reviewed and authorized the proposed action. A license issued to an inspection station, a self-inspector, or a mechanic is a substantial property interest that cannot be summarily suspended or revoked without judicial review.

(d) A notice or statement prepared pursuant to this section or an order of the Division that is directed to a mechanic may be served on the mechanic by delivering a copy of the notice, statement, or order to the station or to the place of business of the self-inspector where the mechanic is employed. Delivery under this section to any person may be made via certified mail or by hand delivery."

SECTION 28.23B.(b) G.S. 20-183.8G(b) reads as rewritten:

"(b) Hearing After Statement of Charges. – When a license holder receives a statement of charges of a violation that could result in the suspension or revocation of the person's license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within ~~10 business~~30 days after receiving the request. The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing."

STUDY EXEMPTING MOTOR VEHICLES FROM EMISSIONS INSPECTIONS

SECTION 28.24.(a) The Department of Transportation, Division of Motor Vehicles, shall lead a study to examine exempting from the emissions inspection required for motor vehicles under G.S. 20-183.2(b) (i) the three newest model year vehicles and (ii) all vehicles. As part of this study, the Department of Environment and Natural Resources, Division of Air Quality, in coordination with the Department of Transportation, Division of Motor Vehicles, shall evaluate the potential impacts of exempting these motor vehicles on emissions levels and air quality. In evaluating these potential impacts, the Division of Air Quality shall consider all of the following:

(1) Whether North Carolina would be in jeopardy of the United States Environmental Protection Agency (USEPA) finding that the State failed to implement its State Implementation Plan; if so, what specific alternative programs would result in emissions reductions that would be equivalent to any increased emissions resulting from exempting these motor vehicles from emissions testing; and what approvals, demonstrations, documentation, or other requirements is the State subject to in order to comply with federal law and to assure that the State does not lose eligibility to secure federal transportation funds.

(2) Whether air quality standards would be violated based on (i) existing air quality standards adopted under Article 21B of Chapter 143 of the General Statutes and (ii) revised air quality standards, including a revised standard for ozone, that are currently being considered for adoption by the United States Environmental Protection Agency.

(3) Whether the State would be in jeopardy of being found to be out of conformity such that its State and local transportation plans would interfere with the State's ability to attain federal air standards, resulting in loss of future federal transportation funds.

(4) What new or amended rules would be necessary regarding any recommendation of this study and the time frame for adopting such new or amended rules.

(5) What fiscal impacts would result for motor vehicle owners, licensed inspection stations, the Department of Transportation, and the Department of Environment and Natural Resources.

(6) Any other issues pertinent to the study under this section.

SECTION 28.24.(b) No later than March 1, 2012, the Department of Transportation and Department of Environment and Natural Resources shall submit a joint report of the results of the study under this section, including the findings, recommendations, and any legislative or administrative proposals, to the Joint Legislative Transportation Oversight Committee, the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the House Appropriations Subcommittee on Transportation, and the Senate Committee on Appropriations on Department of Transportation.

DEPARTMENT OF REVENUE TO REPORT ON MOTOR FUELS TAX AUDITOR AND INVESTIGATOR PERFORMANCE

SECTION 28.25. The Department of Revenue, Motor Fuels Division and the Tax Enforcement Division, shall report on the performance of auditor and investigator collection and enforcement activities as it relates to its administration of the motor fuels, alternative fuels, motor carrier, and inspection tax laws. The report will overview the Department's collection and enforcement activities and include recommendations to improve these efforts. This Department shall develop a methodology to compare performance by employees and include these results in the report. The Department of Revenue shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative Commission on Governmental Operations by March 1, 2012.

REDUCE ADMINISTRATIVE TRANSFERS AND REDIRECT LEAKING UNDERGROUND STORAGE TANK FUNDING TO HIGHWAY FUND FOR SYSTEM PRESERVATION

SECTION 28.25A.(a) Notwithstanding G.S. 119-18(b) or any other provision of law, the amount of allowable costs of administering Chapter 119 of the General Statutes for the Department of Agriculture and Consumer Services shall be reduced by a recurring two hundred sixty-one thousand eight hundred eighty-eight dollars ($261,888). Notwithstanding G.S. 119-18(b) or any other provision of law, the amount of allowable costs of administering Subchapter V of Chapter 105 of the General Statutes for the Department of Revenue shall be reduced by a recurring one million twenty-four thousand five hundred forty-four dollars ($1,024,544).

SECTION 28.25A.(b) G.S. 119-18(b) reads as rewritten:

"(b) Proceeds. – The proceeds of the inspection tax levied by this section shall be applied first to the costs of administering this Article and Subchapter V of Chapter 105 of the General Statutes. The remainder of the proceeds shall be credited on a monthly basis to ~~the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is at least five million dollars ($5,000,000), one-half of the remainder of the proceeds shall be credited to the Noncommercial Fund and one-half of the remainder of the proceeds shall be credited to the Commercial Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is less than this threshold amount, all of the remainder of the proceeds shall be credited to the Noncommercial Fund.~~the Highway Fund to be used for system preservation under the Department of Transportation in the highway maintenance program."

STUDY REIMBURSEMENT PROCESS FOR DEPARTMENT OF CORRECTION LITTER PICKUP

SECTION 28.26. The Office of State Budget and Management, in consultation with the Department of Correction and Department of Transportation, shall study performance-based reimbursement as an alternative to the current funding mechanism for inmate litter pickup, which consists of a direct appropriation from the Department of Transportation's Highway Fund budget to the Department of Correction. Measures for an alternative funding mechanism may include reimbursements based on total mileage of highways cleaned, per hour reimbursements for non-litter pickup activities, or other factors, as appropriate.

The Office of State Budget and Management shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative Commission on Governmental Operations no later than March 1, 2012. It is intended that the report contain recommendations for reimbursement rates that have been agreed upon by the Department of Correction and the Department of Transportation and that the recommended rate structure will be included in the report. The report shall also include any statutory changes to be considered by the General Assembly in relation to this report.

STATE HIGHWAY PATROL FUNDS TRANSFER

SECTION 28.27.(a) In fiscal year 2011-2012, the State Treasurer shall transfer one hundred ninety-six million eight hundred forty-nine thousand five hundred forty-two dollars ($196,849,542) of the funds allocated to the Highway Fund under G.S. 105-449.125 to the General Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue.

SECTION 28.27.(b) In fiscal year 2012-2013, the State Treasurer shall transfer one hundred eighty-eight million two hundred nine thousand forty-nine dollars ($188,209,049) of the funds allocated to the Highway Fund under G.S. 105-449.125 to the General Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue.

SECTION 28.27.(c) The Office of State Budget and Management and the Office of State Controller shall discontinue use of the Crime Control and Public Safety – Highway Fund budget code (Budget Code 24960) and shall certify funds appropriated by this act for the State Highway Patrol under a separate fund code within the Crime Control and Public Safety – General Fund budget code (Budget Code 14900). The Department of Transportation, Office of State Budget and Management, and Office of State Controller shall certify and account for State matching funds for Motor Carrier Safety Assistance Program grants, federal funds, and other receipts budgeted for State Highway Patrol programs, as necessary.

SECTION 28.27.(d) G.S. 20-194 reads as rewritten:

"**§ 20-194. ~~Expense of administration; defense~~Defense of members and other State law-enforcement officers in civil actions; payment of judgments.**

~~(a) All expenses incurred in carrying out the provisions of this Article shall be paid out of the highway fund.~~

...."

STATE HIGHWAY PATROL POSITIONS AND MANAGEMENT FLEXIBILITY

SECTION 28.28.(a) The Administrative Services Section of the State Highway Patrol is hereby eliminated. The Secretary of the Department of Crime Control and Public Safety shall consolidate remaining Administrative Services Section positions and organizational units with other functions of the Department.

SECTION 28.28.(b) The following State Highway Patrol positions are hereby eliminated:

Position ID	Position Title
60084611	Program Assistant V
60084615	Attorney
60085385	Sergeant
60084952	First Sergeant
60085315	W/A First Sergeant
60084628	Assessment Analyst
60084772	Office Assistant
60084779	Budget Analyst
60085953	Major
60084998	First Sergeant
60084947	Captain
60085945	W/A Captain
60085302	Lieutenant
60084755	Office Assistant
60084858	Office Assistant

60084686 Deputy Secretary

SECTION 28.28.(c) In addition to the other budgetary reductions required by this act, the Department of Crime Control and Public Safety, State Highway Patrol, shall have management flexibility to achieve savings in the Patrol's operation of two million three hundred twenty-five thousand four hundred eighty-four dollars ($2,325,484), recurring, in fiscal year 2011-2012 and ten million three hundred seventy-three thousand three hundred fifty dollars ($10,373,350), recurring, in fiscal year 2012-2013. The Department of Crime Control and Public Safety, State Highway Patrol, is authorized to eliminate positions to achieve this budgetary reduction but is encouraged to find efficiencies and savings elsewhere in the Patrol's administrative structure. Additionally, the Department of Crime Control and Public Safety, State Highway Patrol, may eliminate filled positions but shall not eliminate sworn law enforcement officer positions assigned to districts for the purposes of traffic and commercial motor vehicle enforcement, unless the State Highway Patrol has first achieved twenty-five percent (25%) of the requisite savings elsewhere in the operation of the Patrol, including through staffing reductions in its administrative structure and areas other than district-level enforcement operations. If the State Highway Patrol must eliminate district-level enforcement positions to meet the savings required by this section, then the Patrol shall maintain balanced law enforcement coverage among the troops and is authorized to move trooper positions from one troop to another to maintain balanced coverage.

SECTION 28.28.(d) The Commander of the State Highway Patrol shall report on the number of positions eliminated for fiscal year 2011-2012. The report shall identify the position number and type; assignment area or organizational unit; whether the position was filled or vacant; personnel savings achieved; and any severance paid. The report shall also include alternatives considered to the implemented reductions in force. The Commander shall submit the report to the House of Representatives Appropriations Subcommittee on Justice and Public Safety, the Senate Appropriations Committee on Justice and Public Safety, and the Joint Legislative Crime Control and Public Safety Oversight Committee no later than March 1, 2012.

HIGHWAY TRUST FUND MONEY FOR VISITOR CENTERS; SPECIAL REGISTRATION PLATES MONEY FOR VISITOR CENTERS

SECTION 28.30.(a) G.S. 20-85.1(a1), as amended by Section 31.11 of this act, reads as rewritten:

"(a1) One dollar ($1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of this section shall be credited to the North Carolina Highway Fund. The Division shall use the fees derived from transactions with the Division for technology improvements. The Division shall use the fees derived from transactions with commission contract agents for the payment of compensation to commission contract agents. An additional fifty cents ($.50) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited to the Mercury Switch Removal Account in the Department of Environment and Natural Resources. An additional fifty cents (50¢) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited as follows:

(1) The first four hundred thousand dollars ($400,000) collected shall be credited to the Reserve for Visitor Centers in the Highway Fund.

(2) Any additional funds collected shall be credited to the Highway Fund and, notwithstanding G.S. 136-176(b), shall be allocated and used for urban loop projects."

SECTION 28.30.(b) G.S. 20-79.7(c)(2) reads as rewritten:

"(2) From the funds remaining in the Special Registration Plate Account after the deductions in accordance with subdivision (1) of this subsection, there is annually appropriated from the Special Registration Plate Account the sum of ~~one million two hundred thousand dollars ($1,200,000)~~ one million three hundred thousand dollars ($1,300,000) to provide operating assistance for the Visitor Centers:

a. on U.S. Highway 17 in Camden County, ($100,000);
b. on U.S. Highway 17 in Brunswick County, ($100,000);
c. on U.S. Highway 441 in Macon County, ($100,000);
d. in the Town of Boone, Watauga County, ($100,000);
e. on U.S. Highway 29 in Caswell County, ($100,000);

f. on U.S. Highway 70 in Carteret County, ($100,000);
g. on U.S. Highway 64 in Tyrrell County, ($100,000);
h. at the intersection of U.S. Highway 701 and N.C. 904 in Columbus County, ($100,000);
i. on U.S. Highway 221 in McDowell County, ($100,000);
j. on Staton Road in Transylvania County, ($100,000);
k. in the Town of Fair Bluff, Columbus County, near the intersection of U.S. Highway 76 and N.C. 904, ~~($100,000); and~~ ($100,000);
l. on U.S. Highway 421 in Wilkes County, ~~($100,000).~~ ($100,000); and
m. at the intersection of Interstate 73 and Interstate 74 in Randolph County, ($100,000)."

MAINTAIN CURRENT LEVEL OF ADMINISTRATIVE FUNDING FROM HIGHWAY TRUST FUND; SEND SAVINGS TO URBAN LOOPS

SECTION 28.31. Notwithstanding G.S. 136-176(b), the amount of allowable expenses to administer the Highway Trust Fund shall not increase over the amounts allocated in the fiscal year 2011-2012 and fiscal year 2012-2013 base budgets. Notwithstanding G.S. 136-176(b), the difference between what would have been the amount of allowable expenses to administer the Highway Trust Fund if not for this section and the amounts allocated in the base budgets for fiscal year 2011-2012 and fiscal year 2012-2013 shall be allocated to urban loop projects.

ADMINISTRATIVE FUND BALANCE TRANSFERRED TO URBAN LOOPS

SECTION 28.31A. Notwithstanding G.S. 136-176(b) or any other provision of law, twenty-five million dollars ($25,000,000) of the accumulated fund balance for administrative costs associated with the Highway Trust Fund is hereby reallocated to urban loop projects.

SCHOOL BUS FUNDING FROM UNEXPENDED MID-CURRITUCK BRIDGE GAP FUNDS AND URBAN LOOP FUNDS; REDUCE GARDEN PARKWAY GAP FUNDS AND TRANSFER FUNDING TO URBAN LOOPS PROGRAM

SECTION 28.32.(a) Any funds appropriated to the North Carolina Turnpike Authority under G.S. 136-176(b2) to cover debt service or related financing costs for the Mid-Currituck Bridge project and that remain unencumbered at the end of fiscal year 2010-2011 are hereby transferred to the General Fund for the purpose of replacing school buses for local school districts. Notwithstanding G.S. 136-176(b), the sum of five million two hundred twenty-three thousand six hundred forty-two dollars ($5,223,642) of the funds for fiscal year 2011-2012 that would have been used for urban loop projects shall instead be transferred to the General Fund for the purpose of replacing school buses for local school districts.

SECTION 28.32.(b) Any funds appropriated to the North Carolina Turnpike Authority under G.S. 136-176(b2) to cover debt service or related financing costs for the Garden Parkway project and that remain unencumbered at the end of fiscal year 2010-2011 are hereby transferred to the Highway Trust Fund to be used for urban loop projects.

SECTION 28.32.(c) G.S. 136-176(b2), as amended by Section 28.7(g) of S.L. 2010-31, reads as rewritten:

"(b2) There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of ~~ninety-nine million dollars ($99,000,000).~~ sixty-four million dollars ($64,000,000). Of the amount allocated by this subsection, twenty-five million dollars ($25,000,000) shall be used to pay debt service or related financing costs and expenses on revenue bonds or notes issued for the construction of the Triangle Expressway, twenty-four million dollars ($24,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Monroe Connector/Bypass, and fifteen million dollars ($15,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Mid-Currituck ~~Bridge, and thirty-five million dollars ($35,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Garden Parkway.~~ Bridge. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue

bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations made in this subsection at any time to decrease or eliminate the amount annually appropriated to the Authority. Funds transferred from the Highway Trust Fund to the Authority pursuant to this subsection are not subject to the equity formula in G.S. 136-17.2A."

SECTION 28.32.(d) Effective for the 2012-2013 fiscal year only, G.S. 136-176(b2), as amended by subsection (c) of this section, reads as rewritten:

"(b2) There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of ~~sixty-four million dollars ($64,000,000).~~eighty-one million five hundred thousand dollars ($81,500,000). Of the amount allocated by this subsection, twenty-five million dollars ($25,000,000) shall be used to pay debt service or related financing costs and expenses on revenue bonds or notes issued for the construction of the Triangle Expressway, twenty-four million dollars ($24,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Monroe Connector/Bypass, ~~and~~ fifteen million dollars ($15,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Mid-Currituck ~~Bridge.~~Bridge, and seventeen million five hundred thousand dollars ($17,500,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Garden Parkway. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations made in this subsection at any time to decrease or eliminate the amount annually appropriated to the Authority. Funds transferred from the Highway Trust Fund to the Authority pursuant to this subsection are not subject to the equity formula in G.S. 136-17.2A."

SECTION 28.32.(e) G.S. 136-189.183(a)(2) reads as rewritten:

"(2) To study, plan, develop, and undertake preliminary design work on up to ~~nine~~ eight Turnpike Projects. At the conclusion of these activities, the Turnpike Authority is authorized to design, establish, purchase, construct, operate, and maintain the following projects:

a. Triangle Expressway, including segments also known as N.C. 540, Triangle Parkway, ~~and~~ Western Wake Freeway in Wake and Durham Counties, and Southeast Extension in Wake and Johnston Counties, except that ~~segment known as the Triangle Expressway~~ no portion of the Southeast Extension ~~which~~ shall ~~not~~ be located north of an existing protected corridor established by the Department of Transportation circa 1995, except in the area of Interstate 40 East.

b. Gaston East-West Connector, also known as the Garden Parkway.

c. Monroe Connector/Bypass.

d. Cape Fear Skyway.

e. A bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia, pursuant to G.S. 136-89.183A.

f. Repealed by Session Laws 2008-225, s. 4, effective August 17, 2008.

Any other project proposed by the Authority in addition to the projects listed in this subdivision must be approved by the General Assembly prior to construction.

A Turnpike Project selected for construction by the Turnpike Authority shall be included in any applicable locally adopted comprehensive transportation plans and shall be shown in the current State Transportation Improvement Plan prior to the letting of a contract for the Turnpike Project."

MOBILITY FUND PROJECT SELECTION CRITERIA ADJUSTMENT; MOBILITY FUND MONEY PLACED IN RESERVE ACCOUNT FOR FY 2012-2013 AND FUTURE FISCAL YEARS

SECTION 28.33.(a) Section 28.7(b) of S.L. 2010-31, as rewritten by Section 8.2 of S.L. 2010-123, reads as rewritten:

"**SECTION 28.7.(b)** The Department of Transportation shall develop selection criteria under G.S. 136-188, as enacted by this act, and shall report to the Joint Legislative Transportation Oversight Committee on its development of the selection criteria. A preliminary report on the selection criteria for projects is due to the Joint Legislative Transportation Oversight Committee by October 1, 2010. A final report is due to the Joint Legislative Transportation Oversight Committee by December 15, 2010. ~~When developing the project criteria and selection process, the Department shall give preferential consideration to projects qualified to receive State grants from the Congestion Relief and Intermodal Transportation 21st Century Fund under Article 19 of Chapter 136 of the General Statutes. When developing the project criteria and selection process, the Department shall involve the public and other stakeholders, including, but not limited to, the North Carolina Association of Metropolitan Planning Organizations, the North Carolina Association of Rural Planning Organizations, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the North Carolina Metropolitan Mayors Coalition, and the North Carolina Council of Regional Governments.~~"

SECTION 28.33.(b) The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee on its development of the selection criteria, taking into account the modification by subsection (a) of this section, by October 15, 2011.

SECTION 28.33.(c) Effective July 1, 2012, G.S. 105-187.9(c) reads as rewritten:

"(c) ~~Mobility Fund~~Prioritization Reserve Transfer. – In each fiscal year, the State Treasurer shall transfer forty-five million dollars ($45,000,000) from the taxes deposited in the Trust Fund to the ~~Mobility Fund.~~ DOT Prioritization Reserve account within the Trust Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue."

SECTION 28.33.(d) Effective July 1, 2013, G.S. 105-187.9(c) as amended by subsection (c) of this section reads as rewritten:

"(c) Prioritization Reserve Transfer. – In each fiscal year, the State Treasurer shall transfer ~~forty-five million dollars ($45,000,000)~~ fifty-eight million ($58,000,000) from the taxes deposited in the Trust Fund to the DOT Prioritization Reserve account within the Trust Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue."

REMOVE URBAN LOOP PROJECTS FROM STATUTE AND ALLOW DEPARTMENT OF TRANSPORTATION TO DEFINE AND PRIORITIZE URBAN LOOP PROJECTS

SECTION 28.34.(a) G.S. 136-180 reads as rewritten:

"**§ 136-180. Urban loops.**

~~(a)~~ ~~Funds~~ allocated from the Trust Fund for urban loops may be used only for ~~the following urban loops:~~urban loops as designated and prioritized by the Department of Transportation.

~~Loop~~	~~Description~~	~~Affected Counties~~
~~Asheville Western Loop~~	~~Multilane facility on new~~	~~Buncombe~~

	~~location from I-26 west of Asheville to US-19/23 north of Asheville for the purpose of connecting these roads. The funds may be used to improve existing corridors.~~	
~~Charlotte Outer Loop~~	~~Multilane facility encircling City of Charlotte including 6-laning of the portion from Johnston Road/US-521 south to I-77 south of Charlotte including widening, resurface, and interchange~~	~~Mecklenburg~~
~~Durham Northern Loop~~	~~The projects listed below are eligible for funding under this section as part of the Durham Northern Loop. The priorities for planning and constructing these projects will be established by mutual agreement of the Metropolitan Planning Organization (MPO) and the Department of Transportation through the federally mandated Transportation Improvement Program development process. The cross sections for these projects will be established by mutual agreement of the MPO and the Department of Transportation through the State and federal environmental review process. (1) East end connector, from N.C. 147 to U.S. 70 East. (2) U.S. 70, from Lynn Rd. to the Northern Durham Parkway. (3) I-85, from U.S. 70 to Red Mill Rd. (4) Northern Durham Parkway, Section B, from Old Oxford Rd. to I-85. (5) Northern Durham Parkway, Section A, from I-85 to I-540. (6) Northern Durham Parkway, Section C, from Old Oxford Rd. to Roxboro Rd. (7) Roxboro Rd. from Duke St. to Goodwin Rd.~~	~~Durham, Wake~~
~~Fayetteville Western Outer Loop~~	~~Multilane facility on new location from US-401 north of Fayetteville to I-95 south of Hope Mills~~	~~Cumberland~~
~~Gastonia Loop~~	~~Multilane facility known as the Garden Parkway, on a new location beginning at I-485, extending west across southern Gaston County~~	~~Gaston, Mecklenburg~~

	~~to I-85, and continuing north to US 321~~	
~~Greensboro Loop~~	~~Multilane facility on new-location encircling City of Greensboro including interchanges with Cone Boulevard Extension and Lewiston-Fleming Road Extension~~	~~Guilford~~
~~Greenville Loop~~	~~Multilane extension of the Greenville Loop from US 264 west of Greenville to NC 11 south of Winterville~~	~~Pitt~~
~~Raleigh Outer Loop~~	~~Multilane facility on new-location encircling City of Raleigh~~	~~Wake, Durham, Johnston~~
~~Wilmington Bypass~~	~~Multilane facility on new-location from US 17 northeast of Wilmington to US 421 in southern Wilmington, continuing from US 421 in southern Wilmington northeast along Independence Blvd., and extending to Martin Luther King, Jr. Parkway, and including the Blue Clay Road interchange~~	~~New Hanover~~
~~Winston-Salem Northbelt~~	~~Multilane facility on new-location from I-40 west of Winston-Salem northerly to US 311/Future I-74 in eastern Forsyth County~~	~~Forsyth~~

~~(b) The Board of Transportation may, by official resolution, accept a new interstate or freeway as the revised termini of an urban loop described in subsection (a) of this section, and the revised project shall be eligible for funding with funds described in G.S. 136-176(b)(2) if the following conditions are met:~~

~~(1) The Department of Transportation has constructed a new interstate or freeway facility since 1989 and has changed the official route designation from the termini described in subsection (a) of this section to the new facility.~~

~~(2) The Board of Transportation finds that the purposes of the urban loop facility, specifically including reduced congestion and high-speed, safe, regional through-travel service, would be enhanced by the action.~~"

SECTION 28.34.(b) In removing the statutory listing of urban loop projects, it is not the intent of the General Assembly to interfere with the acceleration of the following urban loop projects announced in March 2011:

(1) Charlotte I-485 widening.
(2) Greensboro Western Loop, Part C (Bryan Boulevard to Battleground Avenue) and Part D (Battleground Avenue to Lawndale Drive).
(3) Greensboro Eastern Loop, Part B (US 70 to US 29).
(4) Wilmington US 17 Bypass, Part B (US 74/76 to US 421).

MODIFY DEPARTMENT OF TRANSPORTATION REPORTING REQUIREMENTS

SECTION 28.35.(a) G.S. 136-12(a1), 136-12.2, 136-89.193(e), 136-93.1(g), and 136-125.2 are repealed.

SECTION 28.35.(b) G.S. 136-44.2 reads as rewritten:

"**§ 136-44.2. Budget and appropriations.**

...

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. ~~No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first reported to the Joint Legislative Commission on Governmental Operations.~~ For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

...."

SECTION 28.35.(c) G.S. 136-89.182 reads as rewritten:

"**§ 136-89.182. North Carolina Turnpike Authority.**

...

(j) Bylaws. – The Authority Board shall adopt, change, or amend bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational, staffing, and administrative matters as the Authority Board may determine. Any bylaws, or subsequent changes or amendments to the bylaws, shall be ~~submitted to the Board of Transportation and the Joint Legislative Transportation Oversight Committee for review and comment at least 45 days prior to adoption by the Authority Board.~~ included in the Annual Report as required by G.S. 136-89.193.

(k) Executive Director and Administrative Employees. – The Authority Board shall appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its pleasure. The Executive Director shall be the Authority's chief administrative officer and shall be responsible for the daily administration of the toll roads and bridges constructed, maintained, or operated pursuant to this Article. The Executive Director or his designee shall appoint, employ, dismiss, and, within the limits approved by the Authority Board, fix the compensation of administrative employees as the Executive Director deems necessary to carry out this Article. ~~The Authority shall report the hiring of all administrative employees to the Joint Legislative Transportation Oversight Committee within 30 days of the date of employment.~~

...."

COST-EFFICIENT TIRE RETREADS ON STATE VEHICLES AND SCHOOL BUSES

SECTION 28.36.(a) Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read as follows:

"**§ 143-63.2. Purchase of tires for State vehicles; repair or refurbishment of tires for State vehicles.**

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

(1) State vehicle. – Any vehicle owned, rented, or leased by the State, or an institution, department, or agency of the State, that is driven on a public road consistently at speeds greater than 30 miles per hour.

(2) Critical tire information. – Tire brand name, tire line name, tire identification numbers, load and pressure markings, tire size designation, service descriptions such as load and speed ratings, and other information and specifications placed on the original tire sidewall by the original tire manufacturer.

(b) Forensic Tire Standards. – In order to preserve critical tire information, the Secretary of Administration and any institution, department, or agency of the State shall only procure and install tires for State vehicles that possess the original, unaltered, and uncovered tire sidewall. Furthermore, neither the Secretary of Administration nor any institution, department, or agency of the State shall execute a contract for the repair or refurbishment of tires for State vehicles that provides for the removal, covering, or other alteration in any manner of the critical tire information contained on the original tire sidewall.

(c) Tire Purchase and Contract Standards Applicability. – All contracts for the purchase, repair, or refurbishment of tires for State vehicles, or contracts for the purchase of products or services related to the repair or refurbishment of tires for State vehicles, executed on or after the date this section becomes effective shall comply with the provisions of this section.

(d) Exemption. – Notwithstanding the provisions of this section, the State or any institution, department, or agency of the State that owns or has a legally binding contract in place for the future purchase of tires having altered or covered sidewalls prior to the date that

this section becomes effective shall perform its existing contractual obligations related thereto and may continue to use those tires on State vehicles for the useful life of the retreaded tire."

SECTION 28.36.(b) Article 17 of Chapter 115C of the General Statutes is amended by adding a new section to read as follows:

"**§ 115C-249.1. Purchase of tires for school buses; repair or refurbishment of tires for school buses.**

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

(1) Critical tire information. – Tire brand name, tire line name, tire identification numbers, load and pressure markings, tire size designation, service descriptions such as load and speed ratings, and other information and specifications placed on the original tire sidewall by the original tire manufacturer.

(2) School bus. – A vehicle as defined in G.S. 20-4.01(27)d3. and G.S. 20-4.01(27)d4. that is owned, rented, or leased by a local board of education.

(b) Forensic Tire Standards. – In order to preserve critical tire information, a local board of education shall procure and install for school buses only tires that possess the original, unaltered, and uncovered tire sidewall. Furthermore, a local board of education shall not execute a contract for the repair or refurbishment of tires for school buses that provides for the removal, covering, or other alteration in any manner of the critical tire information contained on the original tire sidewall.

(c) Tire Purchase and Contract Standards Applicability. – All contracts for the purchase, repair, or refurbishment of tires for school buses, or contracts for the purchase of products or services related to the repair or refurbishment of tires for school buses, executed on or after the date this section becomes effective shall comply with the provisions of this section.

(d) Exemption. – Notwithstanding the provisions of this section, a local board of education that owns or has a legally binding contract in place for the future purchase of tires having altered or covered sidewalls prior to the date that this section becomes effective shall perform its existing contractual obligations related thereto and may continue to use those tires on school buses for the useful life of the retreaded tire."

DRIVER EDUCATION REFORM

SECTION 28.37.(a) G.S. 115C-215 reads as rewritten:

"**§ 115C-215. ~~Instruction in driver training and safety education.~~Administration of driver education program by the Department of Public Instruction.**

~~There shall be organized and administered under the general supervision of the Superintendent of Public Instruction a program of driver training and safety education in the public schools of this State, said courses to be noncredit courses taught by instructors who meet the requirements established by the State Board of Education. Instructors shall not be required to hold teacher certificates.~~

(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a standardized program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State or are receiving instruction through a home school as provided by Part 3 of Article 39 of Chapter 115 C of the General Statutes, and (iv) have not previously enrolled in the program. The State Board of Education shall use for this purpose all funds appropriated to it for this purpose and may use all other funds that become available for its use for this purpose.

(b) The driver education curriculum shall include the following:

(1) Instruction on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the "international symbol of accessibility" and other symbols and devices as provided in Article 2A of Chapter 20 of the General Statutes.

(2) At least six hours of instruction on the offense of driving while impaired and related subjects.

(3) At least six hours of actual driving experience. To the extent practicable, this experience may include at least one hour of instruction on the techniques of defensive driving.

(4) At least one hour of motorcycle safety awareness training.

(c) The State Board of Education shall establish and implement a strategic plan for the driver education program. At a minimum, the strategic plan shall consist of goals and performance indicators, including the number of program participants as compared to the number of persons projected to be eligible to participate in the program, the implementation of a standard curriculum for the program, expenditures for the program, and the success rate of program participants in receiving a drivers license as reported by the Division of Motor Vehicles. The strategic plan shall also outline specific roles and duties of an advisory committee consisting of employees of the Division of Motor Vehicles and the Department of Public Instruction and other stakeholders in driver education.

(d) The State Board of Education shall adopt a salary range for driver education instructors who are public school employees and who are not licensed teachers.

Driver education instructors who are public school employees and who are licensed teachers shall be paid on the teacher salary schedule. A day of employment for driver education instructors who hold teacher certificates shall be the same number of hours required of all regular classroom teachers as established by the local board of education.

(e) The State Board of Education shall adopt rules to permit local boards of education to enter contracts with public or private entities to provide a program of driver education at public high schools. All driver education instructors shall meet the requirements established by the State Board of Education; provided, however, driver education instructors shall not be required to hold teacher certificates."

SECTION 28.37.(b) G.S. 115C-216 reads as rewritten:

"§ 115C-216. Boards of education required to provide courses in operation of motor vehicles.

(a) Course of Training and Instruction Required in Public High Schools. – ~~The State Board of Education and local~~ Local boards of education ~~are required to provide as a part of the program of the public high schools in this State a course of training and instruction in the operation of motor vehicles, in accordance with G.S. 20-88.1.~~shall offer noncredit driver education courses in high schools using the standardized curriculum provided by the Department of Public Instruction.

(b) Inclusion of Expense in Budget. – The local boards of education ~~of every local school administrative unit are hereby authorized to~~shall include as an item of instructional service and as a part of the current expense fund of the budget of the ~~several~~ high schools under their supervision, the expense necessary ~~to install and maintain such a course of training and instructing eligible persons in such schools in the operation of motor vehicles.~~to offer the driver education course.

(c) to (f) Repealed by Session Laws 1991, c. 689, s. 32(c)."

SECTION 28.37.(c) G.S. 20-88.1 reads as rewritten:

"§ 20-88.1. Driver education.

~~(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds that become available for its use for said purpose.~~

~~The driver education program established pursuant to this section must include the following:~~

~~(1) Instruction on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the "international symbol of accessibility" and other symbols and devices as provided in Article 2A of this Chapter.~~

~~(2) At least six hours of instruction on the offense of driving while impaired and related subjects.~~

~~(3) At least six hours of actual driving experience. To the extent practicable, this experience may include at least one hour of instruction on the techniques of defensive driving.~~

~~(b) The State Board of Education shall adopt a salary range for driver education instructors who are public school employees and who do not hold teacher certificates.~~

~~Driver education instructors who are public school employees and who hold teacher certificates shall be paid on the teacher salary schedule. A day of employment for driver education instructors who hold teacher certificates shall be the same number of hours required of all regular classroom teachers as established by the local board of education.~~

~~(b1) The State Board of Education shall adopt rules to permit local boards of education to enter contracts with public or private entities to provide a program of driver education at public high schools. All driver education instructors shall meet the requirements established by the State Board of Education; provided, however, driver education instructors shall not be required to hold teacher certificates.~~

(c) ~~All expenses~~Expenses incurred by the State in carrying out the provisions of ~~this section~~the driver education program administered by the Department of Public Instruction in accordance with G.S. 115C-215 shall be paid out of the Highway ~~Fund.~~Fund based on an annual appropriation by the General Assembly.

(d) The Division shall prepare a driver license handbook that explains the traffic laws of the State and shall periodically revise the handbook to reflect changes in these laws. At the request of the Department of ~~Education,~~ Public Instruction, the Division shall provide free copies of the handbook to that Department for use in the program of driver education offered at public high schools."

SECTION 28.37.(d) G.S. 20-11(b) reads as rewritten:

"(b) Level 1. – A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in ~~G.S. 20-88.1~~ G.S. 115C-215 or a course of driver instruction at a licensed commercial driver training school.

(2) Passes a written test administered by the Division.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent."

SECTION 28.37.(e) G.S. 20-322(b) reads as rewritten:

"(b) Regulations adopted by the Commissioner shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond or other security in such sum and with such provisions as the Commissioner deems necessary to protect adequately the interests of the public, and such other matters as the Commissioner may prescribe. A driver education course offered to prepare an individual for a limited learner's permit or another provisional license must meet the requirements set in ~~G.S. 20-88.1~~ G.S. 115C-215 for the program of driver education offered in the public schools."

SECTION 28.37.(f) The State Board of Education shall report to the Joint Legislative Program Evaluation Oversight Committee by July 15, 2011, on the status of the implementation of Section 7.12 of S.L. 2010-31, which mandates the creation of a standard curriculum to be used for the driver education program in the Department of Public Instruction.

SECTION 28.37.(g) For the 2011-2012 school year, no State funds shall be used for driver education programs that do not use the standard driver education curriculum created in accordance with Section 7.12 of S.L. 2010-31.

SECTION 28.37.(h) The State Board of Education shall establish a pilot program to deliver driver education by electronic means. At least five local school administrative units shall participate in the pilot program. Funds appropriated for driver education shall be used to implement the pilot program. The State Board shall report on the implementation of the pilot program to the Joint Legislative Education Oversight Committee and the Joint Legislative Program Evaluation Oversight Committee by June 15, 2012. The report shall include the cost per student of delivering the instruction and the success rate of program participants in receiving a drivers license.

SECTION 28.37.(i) The State Board of Education shall report to the Joint Legislative Education Oversight Committee and to the Joint Legislative Program Evaluation Oversight Committee by June 15, 2012, on the following:

(1) The most cost-effective method of delivering driver education in the short- and long-term. In making this determination, the State Board of Education shall consider the results of the pilot program implemented pursuant to Section 5 of this act.

(2) The strategic plan adopted by the State Board of Education in accordance with G.S. 115C-215.

ROAD IMPROVEMENTS FOR LAWYERS ROAD IN MECKLENBURG AND UNION COUNTIES

SECTION 28.38. Of the funds appropriated to the Department of Transportation, except for funds for maintenance of highways, up to two million dollars ($2,000,000) shall be used for road improvements for Lawyers Road located in Mecklenburg and Union Counties between NC Highway 51 and Interstate 485.

PART XXIX. SALARIES AND BENEFITS

GOVERNOR AND COUNCIL OF STATE

SECTION 29.1.(a) Effective for the 2011-2013 fiscal biennium, the salary of the Governor set by G.S. 147-11(a) in the amount of one hundred thirty-nine thousand five hundred ninety dollars ($139,590) annually, payable monthly, shall remain unchanged.

SECTION 29.1.(b) Effective for the 2011-2013 fiscal biennium, the annual salaries for the members of the Council of State, payable monthly, for the 2011-2013 fiscal biennium shall remain unchanged as follows:

Council of State	Annual Salary
Lieutenant Governor	$123,198
Attorney General	123,198
Secretary of State	123,198
State Treasurer	123,198
State Auditor	123,198
Superintendent of Public Instruction	123,198
Agriculture Commissioner	123,198
Insurance Commissioner	123,198
Labor Commissioner	123,198

NONELECTED DEPARTMENT HEAD

SECTION 29.2.(a) Effective for the 2011-2013 fiscal biennium, the salaries set by G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments remain unchanged as follows:

Nonelected Department Heads	Annual Salary
Secretary of Administration	$120,363
Secretary of Correction	120,363
Secretary of Crime Control and Public Safety	120,363
Secretary of Cultural Resources	120,363
Secretary of Commerce	120,363
Secretary of Environment and Natural Resources	120,363
Secretary of Health and Human Services	120,363
Secretary of Juvenile Justice and Delinquency Prevention	120,363
Secretary of Revenue	120,363
Secretary of Transportation	120,363.

SECTION 29.2.(b) Effective January 1, 2012, subsection (a) of this section reads as rewritten:

"**SECTION 29.2.(a)** Effective for the 2011-2013 fiscal biennium, the salaries set by G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments remain unchanged as follows:

Nonelected Department Heads	Annual Salary
Secretary of Administration	$120,363
~~Secretary of Correction~~	~~120,363~~
~~Secretary of Crime Control and Public Safety~~	~~120,363~~
Secretary of Cultural Resources	120,363
Secretary of Commerce	120,363
Secretary of Environment and Natural Resources	120,363
Secretary of Health and Human Services	120,363
~~Secretary of Juvenile Justice and Delinquency Prevention~~	~~120,363~~
Secretary of Public Safety	120,363
Secretary of Revenue	120,363
Secretary of Transportation	120,363".

CERTAIN EXECUTIVE BRANCH OFFICIALS

SECTION 29.3. Effective for the 2011-2013 fiscal biennium, the annual salaries, payable monthly, for the following executive branch officials shall remain unchanged as follows:

Executive Branch Officials	Annual Salary
Chairman, Alcoholic Beverage Control Commission	$109,553
State Controller	153,319
Commissioner of Motor Vehicles	109,553
Commissioner of Banks	123,198
Chairman, Employment Security Commission	120,363
State Personnel Director	120,363
Chairman, Parole Commission	100,035
Members of the Parole Commission	46,178
Chairman, Utilities Commission	137,203
Members of the Utilities Commission	123,198
Executive Director, Agency for Public Telecommunications	92,356
Director, Museum of Art	112,256
Executive Director, North Carolina Agricultural Finance Authority	106,635
State Chief Information Officer	153,227

JUDICIAL BRANCH

SECTION 29.4.(a) Effective for the 2011-2013 fiscal biennium, the annual salaries, payable monthly, for specified judicial branch officials shall remain unchanged as follows:

Judicial Branch Officials	Annual Salary
Chief Justice, Supreme Court	$140,932
Associate Justice, Supreme Court	137,249
Chief Judge, Court of Appeals	135,061
Judge, Court of Appeals	131,531
Judge, Senior Regular Resident Superior Court	127,957
Judge, Superior Court	124,382
Chief Judge, District Court	112,946
Judge, District Court	109,372
District Attorney	119,305
Administrative Officer of the Courts	126,738
Assistant Administrative Officer of the Courts	115,763
Public Defender	119,305

Director of Indigent Defense Services	123,022

SECTION 29.4.(b) Effective for the 2011-2013 fiscal biennium, the annual salaries of employees of the Judicial Department shall remain unchanged as follows:

(1) The annual salaries of permanent full-time and part-time employees of the Judicial Department whose salaries are not itemized in this act shall remain unchanged.

(2) Notwithstanding anything to the contrary, the annual salaries of clerks of superior court under G.S. 7A-101(a) shall not change when a county changes from one population group to another.

(3) The annual salaries of assistant and deputy clerks of court set under G.S. 7A-102(c1) shall remain unchanged for the 2011-2013 fiscal biennium.

(4) The annual salaries of magistrates set under G.S. 7A-171.1(a) or G.S. 7A-171.1(a1)(1) shall remain unchanged.

GENERAL ASSEMBLY

SECTION 29.5. Effective for the 2011-2013 fiscal biennium, salaries in the legislative branch shall remain unchanged, as follows:

(1) The salaries of members and officers of the General Assembly shall remain unchanged at the amounts set under G.S. 120-3, as provided in 1994 by the 1993 General Assembly.

(2) The annual salaries set by G.S. 120-37(c) for the principal clerks in each house shall remain unchanged.

(3) The annual salaries set by G.S. 120-37(b) of the sergeant-at-arms and the reading clerk in each house shall remain unchanged.

(4) The annual salaries of the Legislative Services Officer and of nonelected employees of the General Assembly set under G.S. 120-32 shall remain unchanged.

COMMUNITY COLLEGES PERSONNEL

SECTION 29.6.(a) The annual salaries of all community college nonfaculty and professional staff whose salaries are supported from the State's General Fund shall remain unchanged for the 2011-2013 fiscal biennium.

SECTION 29.6.(b) For the 2011-2013 fiscal biennium, the annual salaries of all community college faculty whose salaries are supported from the State's General Fund shall remain unchanged. The minimum salaries for nine-month, full-time curriculum community college faculty shall also remain unchanged as follows:

Education Level	Minimum Salary
Vocational Diploma/Certificate or Less	$34,314
Associate Degree or Equivalent	$34,819
Bachelor's Degree	$37,009
Master's Degree or Education Specialist	$38,952
Doctoral Degree	$41,753.

No full-time faculty member shall earn less than the minimum salary for his or her education level.

The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members.

UNIVERSITY OF NORTH CAROLINA SYSTEM

SECTION 29.7.(a) The annual salaries of all University of North Carolina EPA faculty, EPA nonfaculty, SPA employees, and teachers employed by the North Carolina School of Science and Math shall remain unchanged for the 2011-2013 fiscal biennium.

SECTION 29.7.(b) The annual salaries of all employees of the University of North Carolina Health Care System and the Medical Faculty Practice Plan at East Carolina University shall remain unchanged for the 2011-2013 fiscal biennium.

SALARY ADJUSTMENTS FOR SPECIAL CIRCUMSTANCES ONLY/NO AUTOMATIC INCREASES

SECTION 29.8.(a) The annual pay of all State employees for the 2011-2013 fiscal biennium shall remain unchanged from that authorized on June 30, 2011, or the last date in pay status during the 2010-2011 fiscal year, if earlier, except that an increase may be allowed under the following special circumstances:

(1) For all State employees regardless of funding source, and for employees of the North Carolina Community College System and local school boards who are paid from State funds, salaries may be increased for reallocations or promotions, in-range adjustments for job change, career progression adjustments for demonstrated competencies, or any other adjustment related to an increase in job duties or responsibilities, none of which are subject to the salary freeze otherwise provided by this Part. All other salary increases are prohibited.

(2) For The University of North Carolina, (i) faculty using funds from the Faculty Recruiting and Retention Fund, the Distinguished Professors Endowment Fund, or the University Cancer Research Fund in the case of faculty involved in cancer research supported by that fund and (ii) faculty, nonfaculty, and other employee adjustments, including retention adjustments, funded from non-State funding sources.

(3) For employees of the judicial branch, for local supplementation as authorized by G.S. 7A-300.1.

The cumulative salary adjustment allowed under this subsection for the 2011-2012 fiscal year may exceed ten percent (10%) of annual salary only if the adjustment is approved in advance by the Office of State Budget and Management, The University of North Carolina Board of Governors, the Board of the North Carolina Community College System, the Legislative Services Commission, the local board of education, or other authorized body as appropriate.

SECTION 29.8.(b) The automatic salary step increases for assistant and deputy clerks of superior court and magistrates are suspended for the 2011-2013 fiscal biennium.

SECTION 29.8.(c) The salary increase provisions of G.S. 20-187.3 are suspended for the 2011-2013 fiscal biennium.

SECTION 29.8.(d) Notwithstanding G.S. 53-96.1, and except as provided by subdivision (1) of subsection (a) of this section, employees of the Office of the Commissioner of Banks shall not be awarded compensation increases or bonuses during the 2011-2013 fiscal biennium.

SECTION 29.8.(e) Employees of the Lottery Commission shall not receive compensation bonuses during the 2011-2013 fiscal biennium.

SECTION 29.8.(f) No employee of any other State agency or constituent institution of The University of North Carolina, excluding employees of the University of North Carolina Health Care System and employees participating in a constituent institution's medical faculty practice plan, shall receive compensation bonuses.

MOST STATE EMPLOYEES

SECTION 29.9.(a) Effective for the 2011-2013 fiscal biennium, the salaries in effect June 30, 2011, of all permanent, full-time State employees whose salaries are set in accordance with the State Personnel Act, shall remain unchanged.

SECTION 29.9.(b) Effective for the 2011-2013 fiscal biennium, the compensation of permanent, full-time State officials and persons in exempt positions shall remain unchanged.

SECTION 29.9.(c) Effective for the 2011-2013 fiscal biennium, the salaries of permanent, part-time State employees shall remain unchanged.

SECTION 29.9.(d) Effective for the 2011-2013 fiscal biennium, the compensation of temporary and permanent hourly State employees shall remain unchanged.

ALL STATE-SUPPORTED PERSONNEL/NO SALARY INCREASES

SECTION 29.10.(a) The salaries provided for in this act are to be effective July 1, 2011, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, or whose last workday is prior to July 1, 2011.

This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

SECTION 29.10.(b) For the 2011-2013 fiscal biennium, the salaries of permanent, full-time employees who work a nine-, ten-, or eleven-month work year schedule shall remain unchanged.

STATE AGENCY TEACHERS' COMPENSATION

SECTION 29.11.(a) The salaries of employees of schools operated by the Department of Health and Human Services, the Department of Correction, or the Department of Juvenile Justice and Delinquency Prevention who are paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule shall remain unchanged for the 2011-2013 fiscal biennium.

SECTION 29.11.(b) Effective January 1, 2012, subsection (a) of this section reads as rewritten:

"**SECTION 29.11.(a)** The salaries of employees of schools operated by the Department of Health and Human ~~Services, the Department of Correction, or the Department of Juvenile Justice and Delinquency Prevention,~~ Services or by the Department of Public Safety who are paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule shall remain unchanged for the 2011-2013 fiscal biennium."

TEACHER SALARY SCHEDULES

SECTION 29.12.(a) The following monthly salary schedules shall apply for the 2011-2012 fiscal year to certified personnel of the public schools who are classified as teachers. The schedules contain 35 steps, with each step corresponding to one year of teaching experience. Public school employees paid according to this salary schedule and receiving NBPTS certification or obtaining a master's degree shall not be prohibited from receiving the appropriate increase in salary. Provided, however, teachers employed during the 2010-2011 school year who did not work the required number of months to acquire an additional year of experience shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2011-2012 Monthly Salary Schedule

Years of Experience	"A" Teachers	NBPTS Certification
0	$3,043	N/A
1	$3,043	N/A
2	$3,043	N/A
3	$3,043	$3,408
4	$3,085	$3,455
5	$3,129	$3,504
6	$3,264	$3,656
7	$3,404	$3,812
8	$3,538	$3,963
9	$3,667	$4,107
10	$3,771	$4,224
11	$3,819	$4,277
12	$3,868	$4,332
13	$3,918	$4,388
14	$3,967	$4,443
15	$4,018	$4,500
16	$4,069	$4,557
17	$4,122	$4,617
18	$4,176	$4,677
19	$4,231	$4,739
20	$4,286	$4,800
21	$4,345	$4,866
22	$4,403	$4,931
23	$4,461	$4,996
24	$4,523	$5,066
25	$4,584	$5,134
26	$4,650	$5,208

27	$4,714	$5,280
28	$4,779	$5,352
29	$4,845	$5,426
30	$4,913	$5,503
31	$4,984	$5,582
32	$5,055	$5,662
33	$5,153	$5,771
34+	$5,255	$5,886

2011-2012 Monthly Salary Schedule
"M" Teachers

Years of Experience	"M" Teachers	NBPTS Certification
0	$3,347	N/A
1	$3,347	N/A
2	$3,347	N/A
3	$3,347	$3,749
4	$3,394	$3,801
5	$3,442	$3,855
6	$3,590	$4,021
7	$3,744	$4,193
8	$3,892	$4,359
9	$4,034	$4,518
10	$4,148	$4,646
11	$4,201	$4,705
12	$4,255	$4,766
13	$4,310	$4,827
14	$4,364	$4,888
15	$4,420	$4,950
16	$4,476	$5,013
17	$4,534	$5,078
18	$4,594	$5,145
19	$4,654	$5,212
20	$4,715	$5,281
21	$4,780	$5,354
22	$4,843	$5,424
23	$4,907	$5,496
24	$4,975	$5,572
25	$5,042	$5,647
26	$5,115	$5,729
27	$5,185	$5,807
28	$5,257	$5,888
29	$5,330	$5,970
30	$5,404	$6,052
31	$5,482	$6,140
32	$5,561	$6,228
33	$5,668	$6,348
34+	$5,781	$6,475

SECTION 29.12.(b) Annual longevity payments for teachers shall be at the rate of one and one-half percent (1.5%) of base salary for 10 to 14 years of State service, two and twenty-five hundredths percent (2.25%) of base salary for 15 to 19 years of State service, three and twenty-five hundredths percent (3.25%) of base salary for 20 to 24 years of State service, and four and one-half percent (4.5%) of base salary for 25 or more years of State service. The longevity payment shall be paid in a lump sum once a year.

SECTION 29.12.(c) Certified public schoolteachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers. Certified public schoolteachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in

addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers.

SECTION 29.12.(d) The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified psychologists.

SECTION 29.12.(e) Speech pathologists who are certified as speech pathologists at the master's degree level and audiologists who are certified as audiologists at the master's degree level and who are employed in the public schools as speech and language specialists and audiologists shall be paid on the school psychologist salary schedule.

Speech pathologists and audiologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for speech pathologists and audiologists. Speech pathologists and audiologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for speech pathologists and audiologists.

SECTION 29.12.(f) Certified school nurses who are employed in the public schools as nurses shall be paid on the "M" salary schedule.

SECTION 29.12.(g) As used in this section, the term "teacher" shall also include instructional support personnel.

SCHOOL-BASED ADMINISTRATOR SALARY SCHEDULE

SECTION 29.13.(a) The following base salary schedule for school-based administrators shall apply only to principals and assistant principals. This base salary schedule shall apply for the 2011-2012 fiscal year, commencing July 1, 2011. Provided, however, school-based administrators (i) employed during the 2010-2011 school year who did not work the required number of months to acquire an additional year of experience and (ii) employed during the 2011-2012 school year in the same classification shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2011-2012 Principal and Assistant Principal Salary Schedules

	Classification				
Years of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-7	$3,781	-	-	-	-
8	$3,931	-	-	-	-
9	$4,074	-	-	-	-
10	$4,189	-	-	-	-
11	$4,243	$4,243	-	-	-
12	$4,298	$4,298	-	-	-
13	$4,353	$4,353	$4,408	-	-
14	$4,408	$4,408	$4,464	-	-
15	$4,464	$4,464	$4,521	$4,579	-
16	$4,521	$4,521	$4,579	$4,640	$4,701
17	$4,579	$4,579	$4,640	$4,701	$4,762
18	$4,640	$4,640	$4,701	$4,762	$4,828
19	$4,701	$4,701	$4,762	$4,828	$4,891
20	$4,762	$4,762	$4,828	$4,891	$4,956
21	$4,828	$4,828	$4,891	$4,956	$5,025
22	$4,891	$4,891	$4,956	$5,025	$5,092

23	$4,956	$4,956	$5,025	$5,092	$5,166
24	$5,025	$5,025	$5,092	$5,166	$5,237
25	$5,092	$5,092	$5,166	$5,237	$5,310
26	$5,166	$5,166	$5,237	$5,310	$5,383
27	$5,237	$5,237	$5,310	$5,383	$5,458
28	$5,310	$5,310	$5,383	$5,458	$5,537
29	$5,383	$5,383	$5,458	$5,537	$5,617
30	$5,458	$5,458	$5,537	$5,617	$5,725
31	$5,537	$5,537	$5,617	$5,725	$5,839
32	$5,617	$5,617	$5,725	$5,839	$5,956
33	$5,725	$5,725	$5,839	$5,956	$6,075
34	$5,839	$5,839	$5,956	$6,075	$6,197
35	-	$5,956	$6,075	$6,197	$6,321
36	-	-	$6,197	$6,321	$6,447
37	-	-	$6,321	$6,447	$6,576
38	-	-	-	$6,576	$6,708
39	-	-	-	$6,708	$6,842
40	-	-	-	-	$6,979

2011-2012 Principal and Assistant Principal Salary Schedules

	Classification			
Years of Exp	Prin V (44-54)	Prin VI (55-65)	Prin VII (66-100)	Prin VIII (101+)
0-17	$4,828	-	-	-
18	$4,891	-	-	-
19	$4,956	$5,025	-	-
20	$5,025	$5,092	$5,237	-
21	$5,092	$5,166	$5,310	$5,383
22	$5,166	$5,237	$5,383	$5,458
23	$5,237	$5,310	$5,458	$5,537
24	$5,310	$5,383	$5,537	$5,617
25	$5,383	$5,458	$5,617	$5,725
26	$5,458	$5,537	$5,725	$5,839
27	$5,537	$5,617	$5,839	$5,956
28	$5,617	$5,725	$5,956	$6,075
29	$5,725	$5,839	$6,075	$6,197
30	$5,839	$5,956	$6,197	$6,321
31	$5,956	$6,075	$6,321	$6,447
32	$6,075	$6,197	$6,447	$6,576
33	$6,197	$6,321	$6,576	$6,708
34	$6,321	$6,447	$6,708	$6,842
35	$6,447	$6,576	$6,842	$6,979
36	$6,576	$6,708	$6,979	$7,119
37	$6,708	$6,842	$7,119	$7,261
38	$6,842	$6,979	$7,261	$7,406
39	$6,979	$7,119	$7,406	$7,554
40	$7,119	$7,261	$7,554	$7,705
41	$7,261	$7,406	$7,705	$7,859
42	-	$7,554	$7,859	$8,016
43	-	$7,705	$8,016	$8,176
44	-	-	$8,176	$8,340

SECTION 29.13.(b) The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools and in cooperative innovative high schools, shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised

Assistant Principal	
Principal I	Fewer than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	66-100 Teachers
Principal VIII	More than 100 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

The beginning classification for principals in alternative schools and in cooperative innovative high school programs shall be the Principal III level. Principals in alternative schools who supervise 33 or more teachers shall be classified according to the number of teachers supervised.

SECTION 29.13.(c) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal. Provided, however, a principal who acquires an additional step for the 2011-2012 or 2012-2013 fiscal years shall not receive a corresponding increase in salary during the 2011-2013 fiscal biennium. A principal or assistant principal shall also continue to receive any additional State-funded percentage increases earned for the 1997-1998, 1998-1999, and 1999-2000 school years for improvement in student performance or maintaining a safe and orderly school.

SECTION 29.13.(d) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars ($126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars ($253.00) per month.

SECTION 29.13.(e) Longevity pay for principals and assistant principals shall be as provided for State employees under the State Personnel Act.

SECTION 29.13.(f) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subsection applies to all transfers on or after the effective date of this section, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subsection for one calendar year following the date of the merger.

SECTION 29.13.(g) Participants in an approved full-time master's in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the master's program. For the 2006-2007 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal plus the cost of tuition, fees, and books and any fellowship funds received by the intern as a full-time student, including awards of the Principal Fellows Program. The Principal Fellows Program or the school of education where the intern participates in a full-time master's in school administration program shall supply the Department of Public Instruction with certification of eligible full-time interns.

SECTION 29.13.(h) During the 2011-2012 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher.

CENTRAL OFFICE SALARIES

SECTION 29.14.(a) The monthly salary ranges that follow apply to assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers and shall remain unchanged for the 2011-2013 fiscal biennium, beginning July 1, 2011.

School Administrator I	$3,309	$6,207
School Administrator II	$3,508	$6,583
School Administrator III	$3,724	$6,984
School Administrator IV	$3,874	$7,262
School Administrator V	$4,030	$7,556
School Administrator VI	$4,275	$8,013
School Administrator VII	$4,447	$8,336

The local board of education shall determine the appropriate category and placement for each assistant superintendent, associate superintendent, director/coordinator, supervisor, or finance officer within the salary ranges and within funds appropriated by the General Assembly for central office administrators and superintendents. The category in which an employee is placed shall be included in the contract of any employee.

SECTION 29.14.(b) The monthly salary ranges that follow apply to public school superintendents and shall remain unchanged for the 2011-2013 fiscal biennium, beginning July 1, 2011.

Superintendent I	$4,720	$8,843
Superintendent II	$5,011	$9,377
Superintendent III	$5,316	$9,948
Superintendent IV	$5,642	$10,552
Superintendent V	$5,988	$11,196

The local board of education shall determine the appropriate category and placement for the superintendent based on the average daily membership of the local school administrative unit and within funds appropriated by the General Assembly for central office administrators and superintendents.

SECTION 29.14.(c) Longevity pay for superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers shall be as provided for State employees under the State Personnel Act.

SECTION 29.14.(d) Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided pursuant to this section. Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for under this section.

SECTION 29.14.(e) The State Board of Education shall not permit local school administrative units to transfer State funds from other funding categories for salaries for public school central office administrators.

SECTION 29.14.(f) The salaries of all permanent full-time personnel paid from the Central Office Allotment shall remain unchanged for the 2011-2013 fiscal biennium.

NONCERTIFIED PERSONNEL SALARIES

SECTION 29.15. The annual salary for permanent, full-time and part-time noncertified public school employees whose salaries are supported from the State's General Fund shall be remain unchanged for the 2011-2013 fiscal biennium.

ALL FURLOUGHS PROHIBITED EXCEPT AS ORDERED TO BALANCE THE BUDGET/BENEFITS PROTECTION FOR FURLOUGHED PERSONNEL

SECTION 29.18.(a) The following definitions apply in this section:

(1) Furlough. – A temporary, involuntary period of leave from employment without pay but shall not include any period of involuntary leave resulting from disciplinary action.

(2) Public agency. – A State agency, department, or institution in the executive branch of State government; The University of North Carolina; the North Carolina Community College System; and a local school administrative unit.

(3) Public employee. – An employee employed by the legislative or judicial branches or by a public agency.

SECTION 29.18.(b) Any furlough of a public employee paid with State funds is prohibited unless the furlough is ordered by the Governor while acting to balance the budget pursuant to Section 5 of Article III of the North Carolina Constitution or by the Chief Justice or the Legislative Services Officer, respectively, to balance the judicial branch or legislative branch budget.

The Board of Governors of The University of North Carolina, the State Board of Community Colleges, and each local public school board of education must petition the Governor to furlough its respective employees in order to balance the respective budgets.

SECTION 29.18.(c) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, the employing public agency, the judicial branch, or the legislative branch, respectively, shall report to the State Treasurer, the Director of the Retirement Systems Division, and the Executive Administrator of the State Health Plan the following:

(1) The specifics of the authorized furlough.

(2) The positions affected, including all full-time, part-time, temporary, and contractual positions, all nonessential personnel, and all nonteaching positions.

(3) The individual employees affected, including the applicable reduction in salary and whether the employee is subject to or exempt from the Fair Labor Standards Act.

SECTION 29.18.(d) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, then a public employee on a furlough who is:

(1) A member of any of the State-supported retirement plans administered by the Retirement Systems Division of the Department of State Treasurer or of an Optional Retirement Program (ORP) administered under G.S. 135-5.1 or G.S. 135-5.4 shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer shall pay both employee and employer contributions to the Retirement Systems Division or ORP on behalf of the furloughed employee as though the employee were in active service.

(2) A member of the State Health Plan for Teachers and State Employees shall be considered eligible for coverage under the Plan on the same basis as on the workday immediately preceding the furlough. The public employer shall pay contributions on behalf of the furloughed public employee as though the employee were in active service.

SECTION 29.18.(e) The benefits protections provided by this section shall also apply to public employees in the judicial and legislative branches.

MONITOR COMPLIANCE WITH FREEZE ON MOST SALARY INCREASES

SECTION 29.19.(a) The Office of State Budget and Management and the Office of State Personnel shall monitor jointly the compliance of the following units of government with the provisions of Section 29.8 of this act and shall submit quarterly reports of their monitoring activities to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division: (i) State agencies, departments, and institutions, including authorities, boards, and commissions; (ii) the judicial branch; and (iii) The University of North Carolina and its constituent institutions.

The quarterly reports required by this section shall include the following information:

(1) For agencies reporting through the BEACON HR/Payroll system, (i) a breakdown by action type (including promotion, reallocation, career progression, salary adjustment, and any similar actions increasing employee

pay) of the number and annual amount of those increases and (ii) a breakdown by action reason (including in-range higher level, acting pay, trainee adjustment, and other similar action reasons) of the number and annual amount of those action types coded as salary adjustment.

(2) For The University of North Carolina and its constituent institutions, a breakdown of the number and annual amount of those increases categorized by the University as promotions, changes in job duties or responsibilities, Distinguished Professorships, retention pay, career progression, and any similar actions increasing employee pay.

(3) A summary of actions taken by the Office of State Budget and Management and the Office of State Personnel with respect to unauthorized salary increases.

SECTION 29.19.(b) The Legislative Services Officer shall report quarterly to the President Pro Tempore of the Senate and the Speaker of the House of Representatives on compliance with this act.

COMPREHENSIVE REVIEW FOR REFORM OF PUBLIC EMPLOYEE COMPENSATION PLANS/RECOMMENDATIONS FOR LEGISLATION BY MAY 1, 2012

SECTION 29.20.(a) It is the intent of the General Assembly to create and implement a modernized, fair, and fully functional performance-based compensation system for employees of State agencies, departments, institutions, The University of North Carolina System, the North Carolina Community College System, and local education agencies. To that end, the Legislative Services Commission, jointly through the Fiscal Research and Program Evaluation Divisions, is directed to commission a review and study of the current compensation plans of State agencies, departments, institutions, The University of North Carolina System, the North Carolina Community College System, and local education agencies (government sectors). The Legislative Services Commission may use a Request for Information process or a Request for Proposals process to contract with a qualified consulting firm to perform this review and study. The study, at minimum, shall include all of the following:

(1) A labor market analysis of pay, fringe benefits, classification, and banding plans of government sector employees to determine whether current employees are compensated appropriately relative to market rates for similar positions as compared to (i) other North Carolina public employees, (ii) similar positions and employees in other states, and (iii) where applicable, employees in private industry.

(2) An analysis of current performance-based compensation plans in use by the North Carolina Banking Commission, the University of North Carolina Health Care System, and the performance-based compensation system proposed by Charlotte/Mecklenburg County Schools. This analysis should include an assessment of the effectiveness of these performance-based plans and should include identification of best practices.

(3) An evaluation of current longevity pay as applicable to most government sector employees and recommendations as to whether longevity pay should be continued for new hires.

(4) An evaluation of current laws and policies related to "career status" for employees subject to the State Personnel Act and tenure for public school teachers and university professors. For public school teachers, the evaluation of tenure shall include its relationship with student performance, if any. This evaluation should also include recommendations as to whether these laws and policies should be continued or modified based upon human resource best practices.

(5) An evaluation of salary supplements for public school employees paid on account of master's degrees, attainment of other advanced degrees, and national board certification, including the relationship to student performance, if any. This evaluation should also include recommendations as to whether these salary supplements should be continued or modified based upon the effect on student performance, if any, and human resource best practices.

(6) An evaluation of the State Personnel Act, including recommendations as to whether these laws and policies should be continued or modified based upon human resource best practices.

(7) An analysis of the effect of in-State regional variables on employee compensation and recommendations as to how those variables should be addressed in the future.

(8) Recommendations of how to evaluate and compare the value of employee fringe benefits.

(9) Recommendations, timetable, and design of a comprehensive performance-based compensation plan across all government sectors for implementation by the General Assembly. Recommendations must include the design of an effective employee performance evaluation system, including the identification of effective employee performance measures and information systems (including estimated costs) to track and monitor employee performance.

(10) Training recommendations for supervisors and managers regarding employee productivity and performance evaluation.

(11) Recommendations to assure equity of compensation among public employees across government sectors.

(12) Feasibility of a consensus forecasting group to make annual recommendations for compensation policy across all government sectors. These recommendations should include how to establish and maintain priorities for General Fund appropriations necessary to fund the performance-based compensation system while remaining affordable for the State and its taxpayers.

SECTION 29.20.(b) In the event that the Legislative Services Commission contracts with a qualified consulting firm to perform the review and study, the consultant shall report its progress to the Fiscal Research and Program Evaluation Divisions every 90 days.

SECTION 29.20.(c) By May 1, 2012, the Fiscal Research and Program Evaluation Divisions, or at their direction by the consultant hired to perform the review and study, shall report all findings and any other final results of the study, including recommendations and legislative proposals, to the 2012 Regular Session of the 2011 General Assembly.

SECTION 29.20.(d) All State agencies, departments, institutions, The University of North Carolina System, the North Carolina Community College System, and local education agencies shall provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them to the Fiscal Research and Program Evaluation Divisions and/or the consultant necessary to complete this review and study.

SECTION 29.20.(e) The State Personnel Director, the State Budget Director, the State Controller, and the State Treasurer shall dedicate and identify staff for technical assistance, as needed, to aid in the reviews required by this section.

ESTABLISH COMPENSATION ADJUSTMENT AND PERFORMANCE PAY RESERVE IN ANTICIPATION OF COMPENSATION RECOMMENDATIONS

SECTION 29.20A.(a) General Fund and Highway Fund reserve budget codes are established in the Office of State Budget and Management for the purpose of correcting labor market and other salary inequities and to provide funding for a performance-based compensation plan to effectuate recommendations made in connection with the comprehensive review and reform of public employee compensation plans under Section 29.20 of this act.

SECTION 29.20A.(b) The Director of the Budget shall allocate funds appropriated to the Compensation Adjustment and Performance Pay Reserve in Sections 2.1 and 3.1 of this act, as directed by the General Assembly, to public agencies to fund labor market and equity salary increases and to provide funding for performance-based pay plans upon review of the Comprehensive Review and Reform of Public Employee Compensation Plans report.

Funds appropriated to the Compensation Adjustment and Performance Pay Reserve may be allocated to public agencies for positions that are funded by the General Fund or Highway Fund. Positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund may be increased with

funding from the Compensation Adjustment and Performance Pay Reserve only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

For the purposes of this subsection, the term "public employee" means an employee of a State agency, department, or institution; The University of North Carolina; the North Carolina Community College System; or a local school administrative unit.

ESTABLISH SEVERANCE EXPENDITURE RESERVE

SECTION 29.21.(a) There are established in the Office of State Budget and Management General Fund and Highway Fund reserve budget codes for the purpose of funding severance-related obligations to State employees subject to the State Personnel Act, and employees exempt from the State Personnel Act, who are separated from service due to a reduction-in-force action. Severance-related expenditures from these reserves shall include obligations to fund:

(1) A State employee's severance salary continuation with an age adjustment factor as authorized by G.S. 126-8.5, including employer-related contributions for social security, and

(2) Noncontributory health premiums for up to 12 months as authorized by G.S. 135-45.2(a)(8) for employees of employing units as defined by G.S. 135-45.1(12).

SECTION 29.21.(b) The Director of the Budget shall allocate funds appropriated in Sections 2.1 and 3.1 of this act to the Severance Expenditure Reserve to public agencies to fund severance-related obligations incurred by the agencies as a result of reduction-in-force actions that cause State-supported public employees to be terminated from public employment. Funds appropriated to the Severance Expenditure Reserve shall be expended in their entirety before funds appropriated to a public agency for State-supported personal services expenditures may be used to fund any severance-related obligations.

Funds appropriated to the Severance Expenditure Reserve may be allocated to public agencies for positions that are funded by the General Fund or Highway Fund. Funds appropriated to the Severance Expenditure Reserve may also be allocated to public agencies for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund but only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

For the purposes of this subsection, the term "public employee" means an employee of a State agency, department, or institution; The University of North Carolina; the North Carolina Community College System; or a local school administrative unit.

REPEAL REDUCTION-IN-FORCE PRIORITY CONSIDERATION UNDER THE STATE PERSONNEL ACT

SECTION 29.21A.(a) G.S. 126-7.1 reads as rewritten:

"**§ 126-7.1. Posting requirement; ~~State employees receive priority consideration; reduction-in-force rights;~~ reduction in force; Work First hiring.**

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted in a place readily accessible to employees that is located within at least the following:

(1) The personnel office of the agency, department, or institution having the vacancy; and

(2) The particular work unit of the agency, department, or institution having the ~~vacancy~~vacancy. ~~in a location readily accessible to employees.~~ If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall be listed with the Office of State Personnel for the purpose of informing current State employees of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Personnel to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such

violation for the work performed during the period of time between his initial employment and separation.

(a1) State employees to be affected by a reduction in force shall be notified of the reduction in force as soon as practicable, and in any event, no less than 30 days prior to the effective date of the reduction in force.

~~(a2) The State Personnel Commission shall adopt rules to provide that priority consideration for State employees separated from State employment as the result of reductions in force is to enable a State employee's return to career service at a salary grade and salary rate equal to that held in the most recent position. The State Personnel Commission shall provide that a State employee who:~~

~~(1) Accepts a position at the same salary grade shall be paid at the same salary rate as the employee's previous position.~~

~~(2) Accepts a position at a lower salary grade than the employee's previous position shall be paid at the same rate as the previous position unless the salary rate exceeds the maximum of the new salary grade. When the salary rate exceeds the maximum of the salary grade, the employee's new salary rate shall be reduced to the maximum of the new salary grade.~~

(b) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(c) If a State employee subject to this section:

(1) Applies for another position of State employment that would constitute a promotion and;

(2) Has substantially equal qualifications as an applicant who is not a State employee then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees.

~~(c1) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force:~~

~~(1) Applies for another position of State employment equal to or lower in salary grade than the position held by the employee at the time of notification or separation; and~~

~~(2) Is determined qualified for that position~~

~~then within all State agencies, the State employee shall receive priority consideration over all other applicants but shall receive equal consideration with other applicants who are current State employees not affected by the reduction in force. This priority shall remain in effect for a period of 12 months from the date the employee receives notification of separation by reduction in force. State employees separated due to reduction in force shall receive higher priority than other applicants with employment or reemployment priorities, except that the reemployment priority created by G.S. 126-5(e)(1) shall be considered as equal. The reduction in force priority created by this subsection shall be administered in accordance with rules promulgated by the State Personnel Commission.~~

~~(c2) If the applicants for reemployment for a position include current State employees, a State employee with more than 10 years of service shall receive priority consideration over a State employee having less than 10 years of service in the same or related position classification. This reemployment priority shall be given by all State departments, agencies, and institutions with regard to positions subject to this Chapter.~~

~~(d) "Qualifications" within the meaning of subsection (c) of this section shall consist of:~~

~~(1) Training or education;~~

~~(2) Years of experience; and~~

~~(3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for.~~

(e) Each State agency, department, and institution is encouraged to hire into State government employment qualified applicants who are current or former Work First Program participants.

(f) Each State agency, department, institution, university, community college, and local education agency shall verify, in accordance with the Basic Pilot Program administered by the United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each

individual's legal status or authorization to work in the United States after hiring the individual as an employee to work in the United States."

SECTION 29.21A.(b) Nothing in this section affects the extended period of priority reconsideration afforded to State employees by Section 26.14D of S.L. 2009-451, as amended by Section 9.3 of S.L. 2009-575.

SECTION 29.21A.(c) This section applies to employees subject to reductions in force on or after July 1, 2011.

STATE PERSONNEL INFORMATION AMENDMENT

SECTION 29.21C. G.S. 120-32.01(b) reads as rewritten:

"(b) Notwithstanding subsection (a) of this section, access to the ~~State Personnel Management Information System~~ BEACON/HR payroll system by the ~~Research, Bill Drafting, and Program Evaluation~~ Research and Bill Drafting Divisions shall only be through the Fiscal Research Division and access to the system by the Program Evaluation Division shall only be through the Division Director and two employees of the Division designated by the Division Director."

SALARY-RELATED CONTRIBUTIONS

SECTION 29.22.(a) Effective for the 2011-2013 fiscal biennium, required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employees' salary. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be paid from the source that supplies the remainder of the employee's salary. The requirements of this section as to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave, workers' compensation, severance pay, separation allowances, and applicable disability income benefits.

Notwithstanding any other provision of law, an employing unit, as defined in G.S. 135-45.1 or in G.S. 135-48.1 as enacted by this act, that hires or has hired as an employee a retiree that is in receipt of monthly retirement benefits from any retirement system supported in whole or in part by contributions of the State shall enroll the retiree in the active group and pay the cost for the hospital-medical benefits if that retiree is employed in a position that would require the employer to pay hospital-medical benefits if the individual had not been retired.

SECTION 29.22.(b) The General Assembly directs the Boards of Trustees of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, and the Firemen's and Rescue Squad Workers' Pension Fund to adopt a 12-year liquidation period for all unfunded accrued liability. The General Assembly further directs the State Treasurer to adopt a 12-year liquidation period for all unfunded accrued liability in the North Carolina National Guard Pension Fund.

SECTION 29.22.(c) Effective July 1, 2011, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2011-2012 fiscal year are: (i) thirteen and twelve hundredths percent (13.12%) – Teachers and State Employees; (ii) eighteen and twelve hundredths percent (18.12%) – State Law Enforcement Officers; (iii) twelve and thirty-six hundredths percent (12.36%) – University Employees' Optional Retirement System; (iv) twelve and thirty-six hundredths percent (12.36%) – Community College Optional Retirement Program; (v) thirty and five hundredths percent (30.05%) – Consolidated Judicial Retirement System; and (vi) five and zero hundredths percent (5.00%) – Legislative Retirement System. Each of the foregoing contribution rates includes five and zero hundredths percent (5.00%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

SECTION 29.22.(d) Effective July 1, 2012, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2012-2013 fiscal year are: (i) fourteen and thirty-one hundredths percent (14.31%) – Teachers and State Employees; (ii) nineteen and thirty-one hundredths percent (19.31%) – State Law Enforcement Officers; (iii) twelve and sixty-six hundredths percent (12.66%) – University Employees' Optional Retirement System; (iv) twelve and sixty-six hundredths percent (12.66%) – Community College Optional Retirement Program; (v) thirty-one and seventy hundredths percent (31.70%) – Consolidated Judicial Retirement System; and (vi) five and thirty hundredths percent (5.30%) – Legislative Retirement System. Each of the foregoing contribution rates includes five and thirty hundredths percent (5.30%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

SECTION 29.22.(e) Effective July 1, 2011, the maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2011-2012 fiscal year to the State Health Plan for Teachers and State Employees are: (i) Medicare-eligible employees and retirees – three thousand right hundred thirty-two dollars ($3,832) and (ii) non-Medicare-eligible employees and retirees – four thousand nine hundred thirty-one dollars ($4,931).

SECTION 29.22.(f) Effective July 1, 2012, the maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2012-2013 fiscal year to the State Health Plan for Teachers and State Employees are: (i) Medicare-eligible employees and retirees – four thousand thirty-five dollars ($4,035) and (ii) non-Medicare-eligible employees and retirees – five thousand one hundred ninety-two dollars ($5,192).

LIMIT STATE ABORTION FUNDING/HEALTH PLAN/INSURANCE

SECTION 29.23.(a) Part 1 of Article 6 of Chapter 143C of the General Statutes is amended by adding a new section to read:

"**§ 143C-6-5.5. Limitation on use of State funds for abortions.**

No State funds may be used for the performance of abortions or to support the administration of any governmental health plan or government-offered insurance policy offering abortion, except that this prohibition shall not apply where (i) the life of the mother would be endangered if the unborn child were carried to term or (ii) the pregnancy is the result of a rape or incest. Nothing in this section shall be construed to limit medical care provided after a spontaneous miscarriage."

SECTION 29.23.(b) Effective until January 1, 2012, the provisions of G.S. 135-45.8(21) and (22) do not apply to complications or related charges from an abortion not covered under G.S. 143C-6-5.5, as enacted by subsection (a) of this section.

SECTION 29.23.(c) Effective January 1, 2012, G.S. 135-48.50(1), as enacted by S.L. 2011-85, reads as rewritten:

"(1) Abortion coverage. – The Plan shall not provide coverage for abortions for which State funds could not be used under G.S. 143C-6-5.5. The Plan shall, however, provide coverage for subsequent complications or related charges arising from an abortion not covered under this subdivision."

PERMANENTLY EXEMPT PARTICIPANTS IN THE UNIVERSITY OF NORTH CAROLINA PHASED RETIREMENT PROGRAM FROM THE RESTRICTIONS ON RETURNING TO WORK

SECTION 29.24.(a) Section 29.28(f) of S.L. 2005-276, as amended by Section 22.21 of S.L. 2006-66 and by Section 26.22 of S.L. 2009-451, reads as rewritten:

"**SECTION 29.28.(f)** Subsections (a) and (b) of this section become effective August 1, 2005. Subsection (e) of this section becomes effective November 1, 2005, but does not apply to participants in The University of North Carolina Phased Retirement ~~Program until the earlier of August 31, 2013, or 12 months after the issuance of final phased retirement regulations by the~~

~~Internal Revenue Service.~~Program. The remainder of this section becomes effective June 30, 2005."

SECTION 29.24.(b) G.S. 135-1(20) reads as rewritten:

"(20) "Retirement" means the termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must render no service, including part-time, temporary, substitute, or contractor service, at any time during the six months immediately following the effective date of retirement. For purposes of this subdivision, service as a member of a school board or as an unpaid bona fide volunteer in a local school administrative unit shall not be considered service. A member who is a full-time faculty member of The University of North Carolina may effect a retirement allowance under this Chapter, notwithstanding the six-month requirement above, provided the member immediately enters the University's Phased Retirement Program for Tenured Faculty as that program existed on May 25, 2011."

PROVIDE FOR VESTING RECIPROCITY BETWEEN THE STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEMS AND THE OPTIONAL RETIREMENT PROGRAM FOR STATE INSTITUTIONS OF HIGHER LEARNING

SECTION 29.26. G.S. 135-5.1(b)(5) reads as rewritten:

"(5) If any participant in the Optional Retirement Program having less than five years ~~coverage under the Optional Retirement Program~~ of total membership service under any combination of the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, or the Optional Retirement Program leaves the employ of The University of North Carolina and either retires or commences employment with an employer not having a retirement program with the same company underwriting the participant's annuity contract, regardless of whether the annuity contract is held by the participant, a trust, or the Retirement System, the participant's interest in the Optional Retirement Program attributable to contributions of The University of North Carolina shall be forfeited and shall either (i) be refunded to The University of North Carolina and forthwith paid by it to the Retirement System and credited to the pension accumulation fund or (ii) be paid directly to the Retirement System and credited to the pension accumulation fund."

ENABLE THE UNC HEALTH CARE SYSTEM TO OFFER THE OPTIONAL RETIREMENT PROGRAM (ORP) AS A RETIREMENT OPTION

SECTION 29.27. G.S. 135-5.1(a) reads as rewritten:

"(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of participants in the Program. Participation in the Optional Retirement Program shall be limited to University personnel who are eligible for membership in the Teachers' and State Employees' Retirement Program and who are:

...

(5) Employees of The University of North Carolina Health Care System, subject to rules for eligibility and participation as may be adopted by the Board of Governors in the Optional Retirement Program plan document."

PART XXX. CAPITAL APPROPRIATIONS

GENERAL FUND CAPITAL APPROPRIATIONS/INTRODUCTION

SECTION 30.1. The appropriations made by the 2011 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and

other capital facilities, for acquiring sites for them where necessary, and for acquiring buildings and land for State government purposes.

CAPITAL APPROPRIATIONS/GENERAL FUND

SECTION 30.2. There is appropriated from the General Fund for the 2011-2012 fiscal year the following amounts for capital improvements:

Capital Improvements – General Fund	**2011-2012**
Department of Environment and Natural Resources	
Water Resources Development Projects	$ 4,535,000
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	**$ 4,535,000**

WATER RESOURCES DEVELOPMENT PROJECTS

SECTION 30.3.(a) The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects in accordance with the schedule that follows. These funds will provide a State match for an estimated twenty-three million four hundred forty-nine thousand dollars ($23,449,000) in federal funds.

	Name of Project	**2011-2012**
(1)	B. Everett Jordan Lake Water Supply Storage	$ 200,000
(2)	Wilmington Harbor Maintenance	–
(3)	Morehead City Harbor Maintenance	50,000
(4)	Water Resources Planning in Support of Session Law 2010-143	–
(5)	John H. Kerr Dam and Reservoir Sec. 216 – (50/50)	50,000
(6)	Planning Assistance to Communities (50/50)	50,000
(7)	Aquatic Plant Control, Statewide and Lake Gaston (50/50)	100,000
(8)	Wilmington Harbor Improvements Feasibility (50/50)	250,000
(9)	Belhaven Harbor – CAP – Sec. 1135 (75/25)	–
(10)	Concord Streams, NC Sec. 206 (65/35)	–
(11)	Manteo Old House Channel – CAP – Sec. 204 (65/35)	1,225,000
(12)	Wilmington Harbor Deepening (75/25)	300,000
(13)	Bogue Banks Coastal Storm Damage Reduction Study – (50/50)	50,000
(14)	West Onslow Beach (Topsail Beach) PED (75/25)	–
(15)	Surf City/NTB Coastal Storm Damage Reduction Study – PED (75/25)	85,000
(16)	Neuse River Basin Restoration Feasibility Study (50/50)	300,000
(17)	Currituck Sound Environmental Restoration Study (50/50)	275,000
(18)	Princeville Flood Damage Reduction (50/50)	100,000
(19)	State-Local Projects	500,000
(20)	Agricultural Water Resources Assistance Program	1,000,000
TOTALS		**$ 4,535,000**

SECTION 30.3.(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 2011-2012 fiscal year, or if the projects funded under subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

(1) U.S. Army Corps of Engineers project feasibility studies.
(2) U.S. Army Corps of Engineers projects whose schedules have advanced and require State-matching funds in fiscal year 2011-2012.
(3) State-local water resources development projects.

Funds subject to this subsection that are not expended or encumbered for the purposes set forth in subdivisions (1) through (3) of this subsection shall revert to the General Fund at the end of the 2012-2013 fiscal year.

SECTION 30.3.(c) The Department shall make semiannual reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

(1) All projects listed in this section.
(2) The estimated cost of each project.
(3) The date that work on each project began or is expected to begin.
(4) The date that work on each project was completed or is expected to be completed.
(5) The actual cost of each project.

The semiannual reports also shall show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

SECTION 30.3.(d) Notwithstanding any provision of law to the contrary, funds appropriated for a water resources development project shall be used to provide no more than fifty percent (50%) of the nonfederal portion of funds for the project. This subsection applies to funds appropriated in this act and to funds appropriated prior to the 2011-2013 fiscal biennium that are unencumbered and proposed for reallocation to provide the nonfederal portion of funds for water resources development projects. The limitation on fund usage contained in this subsection applies only to projects in which a local government or local governments participate.

SECTION 30.3.(e) G.S. 143-215.73A is amended by adding a new subsection to read:

"(c1) The Department shall provide information annually to appropriate county or municipal officials about the availability, requirements, and process to secure federal and State funding under the Water Resource Development Program."

NON-GENERAL FUND CAPITAL IMPROVEMENT AUTHORIZATIONS

SECTION 30.4.(a) The General Assembly authorizes the following capital projects to be funded with receipts or from other non-General Fund sources available to the appropriate department:

Name of Project	**Amount of Non-General Fund Funding Authorized for FY 2011-2012**
Department of Correction	
OSDT and DCC Search Trailer	$ 45,400
Statewide Emergency Fund for Small Storage Buildings	85,000
Statewide Emergency Fund for Visitors Registration	500,000
Department of Crime Control and Public Safety	
High Point Readiness Center – Addition/Alteration	1,551,000
Greensboro Readiness Center – Addition/Alteration	306,000
Murphy Firefighting Team Support Facility	2,946,000
Morrisville Flight Facility Fixed Wing Hangar	8,815,000
Statewide Master Planning Support Services – Ph III	125,000
Statewide Master Planning Support Services – Ph IV	100,000
Statewide Master Planning Support Services – Ph V	100,000
Camp Butner Operations Readiness Training Center – Ph I	1,612,000
Department of Cultural Resources	
USS North Carolina Battleship Major Hull Repairs	1,914,000
Construction of Fort at Fort Dobbs State Historic Site	2,600,000
Department of Environment and Natural Resources	
Zoo – New Restrooms at Elephant/Rhino Exhibit	400,000
Aquarium – Roanoke Island Turtle Rehabilitation Center	500,000
Wildlife Resources Commission	

Agency Land Purchases	7,500,000
Watha Hatchery Replacement of 3 Residences	150,000
Fishing Access Areas – New Construction	240,000
Boating Access Areas – New Construction	800,000
Repairs & Renovations	1,105,000
TOTAL AMOUNT OF NON-GENERAL FUND CAPITAL PROJECTS AUTHORIZED	**$31,294,400**

SECTION 30.4.(b) From funds deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services pursuant to G.S. 146-30, the sum of thirty thousand dollars ($30,000) for the 2011-2012 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be used, notwithstanding G.S. 146-30, by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, and environmental studies, and for the management of the plant conservation program preserves owned by the Department.

REPAIRS AND RENOVATIONS RESERVE ALLOCATION

SECTION 30.5.(a) Of the funds in the Reserve for Repairs and Renovations for the 2011-2012 fiscal year, fifty percent (50%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143C-4-3, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty percent (50%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143C-4-3.

Notwithstanding G.S. 143C-4-3, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

SECTION 30.5.(b) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for the installation of fire sprinklers in university residence halls. This portion shall be in addition to funds otherwise appropriated in this act for the same purpose. Such funds shall be allocated among The University of North Carolina's constituent institutions by the President of The University of North Carolina, who shall consider the following factors when allocating those funds:

(1) The safety and well-being of the residents of campus housing programs.

(2) The current level of housing rents charged to students and how that compares to an institution's public peers and other UNC institutions.

(3) The level of previous authorizations to constituent institutions for the construction or renovation of residence halls funded from the General Fund, or from bonds or certificates of participation supported by the General Fund, since 1996.

(4) The financial status of each constituent institution's housing system, including debt capacity, debt coverage ratios, credit rankings, required reserves, the planned use of cash balances for other housing system improvements, and the constituent institution's ability to pay for the installation of fire sprinklers in all residence halls.

(5) The total cost of each proposed project, including the cost of installing fire sprinklers and the cost of other construction, such as asbestos removal and additional water supply needs.

The Board of Governors shall submit progress reports to the Joint Legislative Commission on Governmental Operations. Reports shall include the status of completed, current, and planned projects. Reports also shall include information on the financial status of

each constituent institution's housing system, the constituent institution's ability to pay for fire protection in residence halls, and the timing of installation of fire sprinklers. Reports shall be submitted on January 1 and July 1 until all residence halls have fire sprinklers.

SECTION 30.5.(c) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for campus public safety improvements allowable under G.S. 143C-4-3(b).

PROCEDURES FOR DISBURSEMENT OF CAPITAL FUNDS

SECTION 30.6. The appropriations made by the 2011 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the State Budget Act, Chapter 143C of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects, including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 2011 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act. Capital improvement projects authorized by the 2011 General Assembly for the design phase only shall be designed within the scope of the project as defined by the approved cost estimate filed with the Director of the Budget, including costs associated with site preparation, demolition, and movable and fixed equipment.

UNC NON-GENERAL FUND CAPITAL PROJECTS

SECTION 30.7.(a) The purpose of this section is (i) to authorize the planning or construction by certain constituent institutions of The University of North Carolina of the capital improvement projects listed in this section for the respective institutions and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, hospital receipts from patient care, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State. These funds are hereby appropriated.

SECTION 30.7.(b) The capital improvement projects, and their respective costs, authorized by this section to be constructed and financed as provided in subsection (a) of this section, including by revenue bonds, by special obligation bonds as authorized in subsection (e) of this section, or by both, are as follows:

Appalachian State University	
Winkler Residence Hall Renovation	$ 11,805,000
East Carolina University	
Athletic Facilities Expansion and Improvement – Phase 4	
Auxiliary Practice Gymnasium	15,000,000
Fayetteville State University	
Rudolph Jones Student Center Expansion and Renovation	23,289,021
North Carolina A&T State University	
New Health Center	10,000,000

North Carolina Central University	
Chidley Residence Hall Expansion and Renovation	41,193,000
North Carolina State University	
Centennial Campus Housing Complex	129,000,000
Lee Residence Hall and Sullivan Residence Hall	6,000,000
The University of North Carolina at Chapel Hill	
Carolina Inn Renovation – Phase 2	9,000,000
Woollen Gymnasium Renovation – Phase 2	2,650,000
The University of North Carolina at Charlotte	
New Residence Hall – Phase X	31,045,802
New Residence Hall – Phase XI	40,837,005
Residence Dining Hall Replacement	29,176,738
Parking Deck J	27,418,000
The University of North Carolina at Greensboro	
Student Recreation Center	91,000,000
Tower Village II Residence Hall Acquisition	34,500,000
Campus Police Building	10,030,000
Village Parking Deck	10,877,000
The University of North Carolina at Pembroke	
Student Health Services Comprehensive Renovation and Addition	3,950,000
Western Carolina University	
Walker Residence Hall Expansion and Renovation	17,289,000

SECTION 30.7.(c) The capital improvement projects, and their respective costs, authorized by this section to be planned and financed as provided in subsection (a) of this section, including by revenue bonds, by special obligation bonds as authorized in subsection (e) of this section, or by both, are as follows:

The University of North Carolina at Chapel Hill	
Mary Ellen Jones Renovation – Phase 1	$ 4,000,000
Research Building at Carolina North	6,000,000
The University of North Carolina at Charlotte	
New Residence Hall – Phase XII	3,840,741
Cedar, Hickory, and Sycamore Residence Halls Renovation	750,000

SECTION 30.7.(d) At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this section. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 30.7.(e) Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by subsections (b) and (c) of this section. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in subsections (b) and (c) of this section plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest, and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to subsection (d) of this section.

SECTION 30.7.(f) This section is effective when it becomes law.

VANCE-GRANVILLE COMMUNITY COLLEGE BOND FUNDS

SECTION 30.9. Section 3(b) of S.L. 2000-3 reads as rewritten:

"**Section 3.(b)** Except as provided in this subsection, a community college may use the bond proceeds allocated in subsection (a) of this section for new construction only in accordance with the capital allocation formula adopted by the State Board of Community Colleges in March 2000. Except as provided in this subsection, a community college may use the bond proceeds allocated in subsection (a) of this section for repair and renovation only in accordance with the repair and renovation formula adopted by the State Board of Community Colleges in May 1998, as supplemented by additional repair and renovation needs determined by the State Board of Community Colleges as of April 2000. The following provisions govern reallocations:

(1) New Construction. – Except as provided in this paragraph, new construction funds allocated in this section to a specific site may not be allocated to another site. If the local board of trustees of a community college determines that new construction funds allocated to a specific site are not needed at that site, the board may request that the State Board of Community Colleges reallocate those funds for new construction at another site of the community college. Except in the case of Mayland Community ~~College,~~College and Vance-Granville Community College, the funds may not be reallocated from a site outside the main campus county to a site within the main campus county. If the State Board of Community Colleges determines that the funds are not needed for new construction at the site for which they were originally allocated, it shall approve the reallocation to the other site and shall substitute the proposed facility at the other site in the Community Colleges System Office's application to the State Treasurer pursuant to G.S. 116D-43.

Each community college shall submit to the State Board of Community Colleges a statement (i) proposing the capital facilities to be financed with the proceeds of community college general obligation bonds allocated to that community college, (ii) certifying that the proposed site is included in the allocations in this section or is a substitute facility at another site because the funds are not needed for new construction at the site for which they are allocated in this section, (iii) certifying that the community college is prepared to proceed with the construction, acquisition, or improvement of the proposed capital facilities, and (iv) demonstrating that the applicable matching requirements have been or will be met.

Upon receipt by the State Board of Community Colleges of the information set forth above, the Board shall add the proposed capital facilities to the next application of the Community Colleges System Office to the State Treasurer to issue bonds pursuant to G.S. 116D-43.

The board of trustees of an individual community college may use funds allocated for new construction either for new construction or for repair and renovations.

...."

ALLOW THE UNIVERSITY OF NORTH CAROLINA BOARD OF GOVERNORS TO APPROVE THE PLANNING, AUTHORIZATION, AND FUNDING OF CAPITAL PROJECTS FROM NON-GENERAL FUND SOURCES

SECTION 30.10.(a) G.S. 143C-8-12 reads as rewritten:

"**§ 143C-8-12. University system capital improvement projects from sources that are not General Fund sources: approval of new project or change in scope of existing project.**

Notwithstanding any other provision of this Chapter, ~~the Director of the Budget may, upon request of~~ the Board of Governors of The University of North Carolina ~~and after consultation with the Joint Legislative Commission on Governmental Operations,~~ may approve: (i) expenditures to plan a capital improvement project of The University of North Carolina the planning for which is to be funded entirely with non-General Fund money, (ii) expenditures for a capital improvement project of The University of North Carolina that is to be funded and operated entirely with non-General Fund money, or (iii) a change in the scope of any previously approved capital improvement project of The University of North Carolina provided

that both the project and change in scope are funded entirely with non-General Fund money. The Board of Governors shall report any expenditure made pursuant to this section to the Office of State Budget and Management and to the Joint Legislative Commission on Governmental Operations."

SECTION 30.10.(b) This section is effective when it becomes law.

AUTHORIZE THE UNIVERSITY OF NORTH CAROLINA BOARD OF GOVERNORS TO ALLOCATE OR REALLOCATE FUNDS TO REPAIRS AND RENOVATIONS PROJECTS

SECTION 30.11.(a) G.S. 143C-4-3 is amended by adding a new subsection to read:

"(d) Board of Governors May Allocate Funds to Particular Projects. – Any funds in the Reserve for Repairs and Renovations that are allocated to the Board of Governors of The University of North Carolina may be allocated or reallocated by the Board for repairs and renovations projects so long as (i) any project that receives an allocation or reallocation satisfies the requirements of subsection (b) of this section unless the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance and (ii) the allocation or reallocation is in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina. The Board of Governors shall report to the Joint Legislative Commission on Governmental Operations on the allocation or reallocation of funds pursuant to this section within 60 days of any allocation or reallocation under this subsection."

SECTION 30.11.(b) This section becomes effective July 1, 2011.

WAIVE THE REQUIREMENT FOR A CAPITAL PROJECT FEASIBILITY DETERMINATION FOR CAPITAL PROJECTS OF THE UNIVERSITY OF NORTH CAROLINA FOR WHICH ADVANCE PLANNING HAS NOT BEEN UNDERTAKEN

SECTION 30.12.(a) G.S. 143C-3-3 reads as rewritten:

"**§ 143C-3-3. Budget requests from State agencies in the executive branch.**

...

(c) Repairs and Renovations Funds Request. – In addition to any other information requested by the Director, any State agency proposing to repair or renovate an existing facility shall accompany that request with all of the following:

(1) A description of current deficiencies and proposed corrections with a review and evaluation of that proposal prepared by the Department of Administration.

(2) An estimate of project costs approved by the Department of Administration.

(3) A certification of project feasibility as described in ~~G.S. 143-341.~~G.S. 143-341, except that in the case of a project of The University of North Carolina for which advance planning has not been completed, the request may be submitted without this certification.

(4) An explanation of the method by which the repair or renovation is to be financed.

(d) Capital Funds Request. – In addition to any other information requested by the Director, any State agency proposing to (i) acquire real property, (ii) construct a new facility, (iii) expand the building area (sq. ft.) of an existing facility, or (iv) rehabilitate an existing facility to accommodate new or expanded uses shall accompany that request with all of the following:

(1) An estimate of its space needs and other physical requirements, together with a review and evaluation of that estimate prepared by the Department of ~~Administration.~~Administration, except that in the case of a project of The University of North Carolina for which advance planning has not been completed, the estimate of space needs may be a preliminary estimate.

(2) An estimate of project costs and cash flow requirements approved by the Department of Administration.

(3) A certification of project feasibility as described in ~~G.S. 143-341.~~G.S. 143-341, except that in the case of a project of The

University of North Carolina for which advance planning has not been completed, the request may be submitted without this certification.

(4) An explanation of the method by which the acquisition, construction, or rehabilitation is to be financed.

(5) An estimate of maintenance and operating costs, including personnel, for the project, covering the first five years of operation.

(6) An estimate of revenues, if any, to be derived from the project, covering the first five years of operation.

This subsection does not apply to requests for State resources for railroad, highway, or bridge construction or renovation.

(e) Information Technology Request. – In addition to any other information requested by the Director, any State agency requesting significant State resources, as defined by the Director, for the purpose of acquiring or maintaining information technology shall accompany that request with all of the following:

(1) A statement of its needs for information technology and related resources, including expected improvements to programmatic or business operations, together with a review and evaluation of that statement prepared by the State Chief Information Officer.

(2) A statement setting forth the requirements for State resources, together with an evaluation of those requirements by the State Chief Information Officer that takes into consideration the State's current technology, the opportunities for technology sharing, the requirements of Article 3D of Chapter 147 of the General Statutes, and any other factors relevant to the analysis.

(3) A statement by the State Chief Information Officer that sets forth viable alternatives, if any, for meeting the agency needs in an economical and efficient manner.

(4) In the case of an acquisition, an explanation of the method by which the acquisition is to be financed.

This subsection shall not apply to requests submitted by the General Assembly, the Administrative Office of the Courts, or The University of North Carolina."

SECTION 30.12.(b) G.S. 143-341(3)b1. reads as rewritten:

"**§ 143-341. Powers and duties of Department.**

The Department of Administration has the following powers and duties:

...

(3) Architecture and Engineering:

...

b1. To certify that a statement of needs pursuant to ~~G.S. 143C-3-3~~ G.S. 143C-3-3, other than for a project of The University of North Carolina for which advance planning has not been completed, is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars ($100,000)."

SECTION 30.12.(c) This section becomes effective July 1, 2011.

JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON CAPITAL IMPROVEMENTS SHALL EXAMINE ADEQUACY OF PLANNING FOR LONG-TERM STATE CAPITAL NEEDS

SECTION 30.13.(a) G.S. 120-259 reads as rewritten:

"**§ 120-259. Purpose and powers of the Committee.**

(a) The Joint Legislative Oversight Committee on Capital Improvements shall examine, on a continuing basis, all of the following: ~~capital improvements approved and undertaken for State facilities and institutions. As used in this section "capital improvements" includes repairs~~

~~and renovations, and "State facilities and institutions" includes facilities and institutions of The University of North Carolina.~~

(1) Capital improvements approved and undertaken for State facilities and institutions.

(2) The adequacy of planning for the State's long-term capital needs. This examination (i) may take into account the priorities embodied in the six-year capital improvements plan developed pursuant to G.S. 143C-8-5 and other planning documents but shall constitute a separate examination that does not rely exclusively on any particular document and (ii) shall look at capital needs throughout the State and not only in Wake County.

(b) The Committee shall have oversight over implementation of the six-year capital improvements plan developed pursuant to G.S. 143C-8-5.

(c) The Committee, while in discharge of official duties, shall have access to any paper or document and may compel the attendance of any State official or employee before the Committee or secure any evidence under ~~G.S. 120.19.~~ G.S. 120-19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly.

(d) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

(e) As used in this section, 'capital improvements' includes repairs and renovations, and 'State facilities and institutions' includes facilities and institutions of The University of North Carolina."

SECTION 30.13.(b) The Joint Legislative Oversight Committee on Capital Improvements shall report to the General Assembly no later than April 1, 2012, on the adequacy of planning for the State's long-term capital needs. This report shall accord with G.S. 120-259(a)(2) and shall also include at least the following:

(1) An analysis of the various mechanisms that currently exist to facilitate the long-term capital planning of State facilities and an assessment of the degree to which those mechanisms serve the needs of the State.

(2) An examination of whether and to what degree the capital project priorities of individual State agencies and departments accord with the long-term capital planning needs of the State as a whole.

(3) An examination of whether the long-term capital planning needs of the State might be better served by changing the way in which capital projects are planned. This analysis shall include an examination of the methods by which other States engage in long-term capital planning.

(4) An analysis of whether, historically, the percentage of funds that have been allocated from the Reserve for Repairs and Renovations to the Board of Governors of The University of North Carolina for university facilities compared to the percentage of funds that have been allocated from that Reserve to the Office of State Budget and Management for other State facilities is an appropriate ratio.

(5) An analysis of whether requiring the Board of Governors of The University of North Carolina to set forth capital project requests that prioritize projects on a systemwide basis would better serve the long-term capital planning needs of the State than the current practice of having each campus prioritize capital projects requests for that particular campus does.

PART XXXI. FEE PROVISIONS

EDUCATION/DRIVER EDUCATION COURSE FEE

SECTION 31.1. G.S. 115C-216 is amended by adding a new subsection to read:

"(g) Fee for Instruction. – The local boards of education may charge each student participating in a driver education course a fee of up to forty-five dollars ($45.00) to offset the costs of providing the training and instruction."

EDUCATION/STATE BOARD AUTHORITY TO ESTABLISH GED TESTING FEES

SECTION 31.2. G.S. 115D-5(s) reads as rewritten:

"(s) The State Board of Community Colleges may establish, retain and budget fees charged to students taking the General Education Development (GED) ~~test.~~ test, including fees for retesting. Fees collected for this purpose shall be used only to (i) offset the costs of the GED test, including the cost of scoring the test, (ii) offset the costs of printing GED certificates, and (iii) meet federal and State reporting requirements related to the test."

NER/COMMERCE/SET REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 31.4.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2011.

SECTION 31.4.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2011-2012 fiscal year is two hundred thousand dollars ($200,000).

SECTION 31.4.(c) This section becomes effective July 1, 2011.

NER/AGRICULTURE/INCREASE FEES FOR PET SHOPS, AUCTIONS, KENNELS, AND DEALERS

SECTION 31.5.(a) G.S. 19A-27 reads as rewritten:

"**§ 19A-27. License required for operation of pet shop.**

No person shall operate a pet shop unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license shall be for the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for each license period or part thereof beginning with the first day of the fiscal year."

SECTION 31.5.(b) G.S. 19A-28 reads as rewritten:

"**§ 19A-28. License required for public auction or boarding kennel.**

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for each license period or part thereof beginning with the first day of the fiscal year."

SECTION 31.5.(c) G.S. 19A-29 reads as rewritten:

"**§ 19A-29. License required for dealer.**

No person shall be a dealer unless a license to deal shall have been granted by the Director to such person. Application for such license shall be in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for each license period or part thereof, beginning with the first day of the fiscal year."

NER/AGRICULTURE/FEES FOR OUT-OF-STATE SOIL TESTS AND EXPEDITED SOIL TESTS

SECTION 31.7. G.S. 106-22 reads as rewritten:

"**§ 106-22. Joint duties of Commissioner and Board.**

The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture shall:

...

(17) Agronomic Testing. – Provide agronomic testing services and charge reasonable fees for plant ~~analysis and~~analysis, nematode ~~testing.~~testing, out-of-state soil testing, and expedited soil testing. The Board shall charge at least four dollars ($4.00) for plant ~~analysis and~~analysis, at least two dollars ($2.00) for nematode ~~testing.~~testing, at least five dollars ($5.00) for out-of-state soil testing, and at least one hundred dollars ($100.00) for expedited soil testing."

NER/AGRICULTURE/TECHNICAL CORRECTIONS REGARDING COMMERCIAL FERTILIZER INSPECTION FEE, PESTICIDE TECHNICIAN IDENTIFICATION CARD RENEWAL FEE, AND PESTICIDE DEALER LICENSE RENEWAL FEE

SECTION 31.8.(a) G.S. 106-671(b) reads as rewritten:

"(b) Reporting System. – Each manufacturer, importer, jobber, firm, corporation or person who distributes commercial fertilizers in this State shall make application to the Commissioner for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina Department of Agriculture and Consumer Services an inspection fee of ~~twenty-five cents (25¢)~~fifty cents (50¢) per ton. The Commissioner is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of commercial fertilizers sold in the State, and as are satisfactory to the Commissioner. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the inspection fees paid. Each registrant shall report monthly the tonnage sold to non-registrants on forms furnished by the Commissioner. Such reports shall be made and inspection fees shall be due and payable monthly on the fifteenth of each month covering the tonnage and kind of commercial fertilizers sold during the past month. If the report is not filed and the inspection fee paid by the last day of the month it is due, the amount due shall bear a penalty of ten percent (10%), which shall be added to the inspection fee due. If the report is not filed and the inspection fee paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit."

SECTION 31.8.(b) G.S. 106-65.31(b1) reads as rewritten:

"(b1) Registration. – Within 75 days after the hiring of an employee who is either an estimator, salesman, serviceman, or solicitor, the licensee shall apply to the Division for the issuance of an identification card for such employee. The application must be accompanied by a fee of forty dollars ($40.00) for each card. The card shall be issued in the name of the employee and shall bear the name of the employing licensee, the employer's license number and phases, the name and address of the employer's business, and such other information as the Committee may specify. The identification card shall be carried by the employee on his person at all times while performing any phase of structural pest control work. The card must be displayed upon demand by the Commissioner, the Committee, the Division, or any representative thereof, or the person for whom any phase of structural pest control work is being performed. A registered technician's identification card must be renewed annually on or before June 30 by payment of a renewal fee of ~~twenty-five dollars ($25.00).~~forty dollars ($40.00). If a card is lost or destroyed the licensee may secure a duplicate for a fee of five dollars ($5.00).The licensee shall notify the Division of the termination or change in status of any registered technician. All identification cards expire when a license expires."

SECTION 31.8.(c) G.S. 143-448(c) reads as rewritten:

"(c) The license for a pesticide dealer may be renewed annually upon application to the Board, accompanied by a fee of ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for each license, on or before the first day of January of the calendar year for which the license is issued."

NER/AGRICULTURE/INCREASE AGRICULTURAL LIMING MATERIALS TONNAGE FEES

SECTION 31.9. G.S. 106-92.8 reads as rewritten:

"**§ 106-92.8. Tonnage fees: reporting system.**

For the purpose of defraying expenses connected with the registration, inspection and analysis of the materials coming under this Article, each manufacturer or registrant shall pay to the Department of Agriculture and Consumer Services tonnage fees in addition to registration fees as follows: for agricultural liming material, ~~ten cents (10¢)~~fifty cents (50¢) per ton; for landplaster, ~~ten cents (10¢)~~fifty cents (50¢) per ton; excepting that these fees shall not apply to materials which are sold to fertilizer manufacturers for the sole purpose for use in the manufacture of fertilizer or to materials when sold in packages of 10 pounds or less.

Any manufacturer, importer, jobber, firm, corporation or person who distributes materials coming under this Article in this State shall make application for a permit to report the materials sold and pay the tonnage fees as set forth in this section.

The Commissioner of Agriculture shall grant such permits on the following conditions: The applicant's agreement that he will keep such records as may be necessary to indicate accurately the tonnage of liming materials, etc., sold in the State and his agreement for the Commissioner or this authorized representative to examine such records to verify the tonnage statement. The registrant shall report quarterly and pay the applicable tonnage fees quarterly, on or before the

tenth day of October, January, April, and July of each year. The report and payment shall cover the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be on forms furnished by the Commissioner. If the report is not filed and the tonnage fees paid by the last day of the month in which it is due, or if the report be false, the amount due shall bear a penalty of ten percent (10%) which shall be added to the tonnage fees due. If the report is not filed and the tonnage fees paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit and cancel the registration."

NER/AGRICULTURE/INCREASE ANTIFREEZE DISTRIBUTION REGISTRATION FEE

SECTION 31.10. G.S. 106-579.4 reads as rewritten:

"**§ 106-579.4. Registrations.**

On or before the first day of July of each year, and before any antifreeze may be distributed for the permit year beginning July 1, the manufacturer, packager, or person whose name appears on the label shall make application to the Commissioner on forms provided by the latter for registration for each brand of antifreeze which he desires to distribute. The application shall be accompanied by specimens or facsimiles of labeling for all container sizes to be distributed, when requested by the Commissioner; a license and inspection fee of ~~two hundred fifty dollars ($250.00)~~five hundred dollars ($500.00) for each brand of antifreeze and a properly labeled sample of the antifreeze shall also be submitted at this time. The Commissioner may inspect, test, or analyze the antifreeze and review the labeling. If the antifreeze is not adulterated or misbranded, if it meets the standards established and promulgated by the Board, and if the said antifreeze is not such a type or kind that is in violation of this Article, the Commissioner shall thereafter issue a written license or permit authorizing the sale of such antifreeze in this State for the fiscal year in which the license or inspection fee is paid. If the antifreeze is adulterated or misbranded, if it fails to meet standards promulgated by the Board, or is in violation of this Article or regulations thereunder, the Commissioner shall refuse to register the antifreeze, and he shall return the application to the applicant, stating how the antifreeze or labeling is not in conformity. If the Commissioner shall, at a later date, find that a properly registered antifreeze product has been materially altered or adulterated, or a change has been made in the name, brand or trademark under which the antifreeze is sold, or that it violates the provisions of this Article, or that it violates regulations, definitions or standards duly promulgated by the Board, he shall notify the applicant that the license authorizing sale of the antifreeze is canceled. No antifreeze license shall be canceled unless the registrant shall have been given an opportunity to be heard before the Commissioner or his duly designated agent and to modify his application in order to comply with the requirements of this Article and regulations, definitions, and standards promulgated by the Board. All fees received by the Commissioner shall be placed in the Department of Agriculture and Consumer Services fund for the purpose of supporting the antifreeze enforcement and testing program."

NER/ENVIRONMENT/REDUCE PORTION OF CERTIFICATE OF TITLE FEES CREDITED TO MERCURY SWITCH REMOVAL ACCOUNT

SECTION 31.11. G.S. 20-85(a1) reads as rewritten:

"(a1) One dollar ($1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of this section shall be credited to the North Carolina Highway Fund. The Division shall use the fees derived from transactions with the Division for technology improvements. The Division shall use the fees derived from transactions with commission contract agents for the payment of compensation to commission contract agents. An additional ~~one dollar ($1.00)~~fifty cents (50¢) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited to the Mercury Switch Removal Account in the Department of Environment and Natural Resources."

LOCALS TO RECEIVE LARGER PORTION OF FOOD AND LODGING FEES

SECTION 31.11A. G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging and Adult Services of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, a fee of seventy-five dollars ($75.00)

for each permit issued. This fee shall be reassessed annually for permits that do not expire. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than ~~thirty-three and one-third percent (33 1/3%)~~ten percent (10%) of the fees collected under this subsection may be used to support State health programs and activities."

NER/ENVIRONMENT/ADDITIONAL USES OF HAZARDOUS WASTE FEES

SECTION 31.15. G.S. 130A-294.1(b) reads as rewritten:

"(b) Funds collected pursuant to this section shall be used for personnel and other resources necessary to:

(1) Provide a high level of technical assistance and waste minimization effort for the hazardous waste management program;
(2) Provide timely review of permit applications;
(3) Insure that permit decisions are made on a sound technical basis and that permit decisions incorporate all conditions necessary to accomplish the purposes of this Part;
(4) Improve monitoring and compliance of the hazardous waste management program;
(5) Increase the frequency of inspections;
(6) Provide chemical, biological, toxicological, and analytical support for the hazardous waste management program; and
(7) Provide resources for emergency response to imminent hazards associated with the hazardous waste management program.
(8) Implement and provide oversight of necessary response activities involving inactive hazardous substance or waste disposal sites.
(9) Provide compliance and prevention activities within the solid waste program to ensure that hazardous waste is not disposed in solid waste management facilities."

NER/NATURAL RESOURCES/NO NEW FEES FOR PARKING IN STATE PARKS

SECTION 31.22. Notwithstanding any provision to the contrary, the funds appropriated to the Department of Environment and Natural Resources for State Parks for the 2011-2012 fiscal year and for the 2012-2013 fiscal year shall not be reduced or replaced with fees for parking at State Parks, unless these fees were charged prior to the 2011-2012 fiscal year. No fees shall be charged and no fees shall be collected for parking in a State Park during the 2011-2012 fiscal year and for the 2012-2013 fiscal year, unless these fees were charged prior to the 2011-2012 fiscal year.

JPS/AOC/INCREASE CERTAIN COURT COSTS

SECTION 31.23.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of one hundred twenty-nine dollars and fifty cents ~~($100.50)~~($129.50) in the district court, including cases before a magistrate, and the sum of one hundred ~~two~~ fifty-four dollars and fifty cents ~~($102.50)~~($154.50) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of ~~two dollars and five cents ($2.05)~~one dollar and fifty cents ($1.50) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to

the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 31.23.(b) G.S. 7A-305 reads as rewritten:

"**§ 7A-305. Costs in civil actions.**

(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

...

(2) For support of the General Court of Justice, the sum of one hundred ~~twenty-five~~eighty dollars ~~($125.00)~~($180.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional one thousand dollars ($1,000) shall be paid upon its assignment, and the sum of ~~eighty-~~one hundred thirty dollars ~~($80.00)~~($130.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~fifty-five~~eighty dollars ~~($55.00).~~($80.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of ~~two dollars and five cents ($2.05)~~one dollar and fifty cents ($1.50) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

...

(a5) In every civil action in the superior or district court wherein a party files a pleading containing one or more counterclaims or cross-claims, except for counterclaim and cross-claim actions brought under Chapter 50B of the General Statutes for which costs are assessed pursuant to subsection (a1) of this section, the following shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the municipality providing the facilities in which the judgment is rendered. If a municipality does not provide the facilities in which the judgment is rendered, the sum is to be remitted to the county in which the judgment is rendered. Funds derived from the facilities' fees shall be used in the same manner, for the same purposes, and subject to the same restrictions as facilities' fees assessed in criminal actions.

(2) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of four dollars ($4.00), to be credited to the Court Information Technology Fund.

(3) For support of the General Court of Justice, the sum of one hundred eighty dollars ($180.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional one thousand dollars ($1,000) shall be paid upon its assignment, and the sum of one hundred thirty dollars ($130.00) in the district court, except that if the case is assigned to a magistrate, the sum shall be eighty dollars ($80.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and fifty cents ($1.50) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

...

(f) For the support of the General Court of Justice, the sum of twenty dollars ($20.00) shall accompany any filing containing one or more motions not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a motion containing as a sole claim for relief the taxing of costs, including attorneys' fees."

SECTION 31.23.(c) G.S. 7A-306 reads as rewritten:

"**§ 7A-306. Costs in special proceedings.**

(a) In every special proceeding in the superior court, the following costs shall be assessed:

...

(2) For support of the General Court of Justice the sum of ~~seventy-five~~one hundred six dollars ~~($75.00).~~($106.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of ~~two dollars and five cents ($2.05)~~one dollar and fifty cents ($1.50) of each ~~seventy five dollar ($75.00)~~one hundred six-dollar ($106.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

...

(g) For the support of the General Court of Justice, the sum of twenty dollars ($20.00) shall accompany any filing containing one or more motions not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a motion containing as a sole claim for relief the taxing of costs, including attorneys' fees."

SECTION 31.23.(d) G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36C-2-203, and in collections of personal property by affidavit, the following costs shall be assessed:

...

(2) For support of the General Court of Justice, the sum of ~~seventy-five~~one hundred six dollars ~~($75.00),~~($106.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars ($6,000). Gross estate shall include the fair market value of all personality when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars ($15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of ~~two dollars and five cents ($2.05)~~one dollar and fifty cents ($1.50) of each ~~seventy five dollar ($75.00)~~one hundred six-dollar ($106.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

...

(4) For the support of the General Court of Justice, the sum of twenty dollars ($20.00) shall accompany any filing containing one or more motions not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a motion containing as a sole claim for relief the taxing of costs, including attorneys' fees."

SECTION 31.23.(e) G.S. 7A-308(a) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

(1) Foreclosure under power of sale in deed of trust or mortgage.....~~$150.00~~$300.00
If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: forty-five cents (.45) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars ($10.00), a minimum ten dollar ($10.00) fee will be collected. If the amount determined by the formula is more than five hundred dollars ($500.00), a maximum five hundred-dollar ($500.00) fee will be collected.

...

(21) In civil matters, all alias and pluries summons issued and all endorsements issued on an original summons ..... $15.00."

SECTION 31.23.(f) G.S. 7A-34.1 is repealed.

JPS/AOC/COMMUNITY MEDIATION CENTERS/WORTHLESS CHECK PROGRAMS

SECTION 31.24.(a) G.S. 14-107.2 is amended by adding a new subsection to read:

"(b1) A community mediation center may establish and charge fees for its services in the collection of worthless checks as part of a program established under this section and may assist the Administrative Office of the Courts and district attorneys in the establishment of worthless check programs in any districts in which worthless check programs have not been established."

SECTION 31.24.(b) G.S. 7A-38.5(a) reads as rewritten:

"(a) The General Assembly finds that it is in the public interest to encourage the establishment of community mediation centers, also known as dispute settlement centers or dispute resolution centers, to support the work of these centers in facilitating communication, understanding, reconciliation, and settlement of conflicts in communities, courts, and schools, and to promote the widest possible use of these centers by the courts and law enforcement officials across the State. A center may establish and charge fees for its services."

SECTION 31.24.(c) G.S. 7A-38.6(a) reads as rewritten:

"(a) All community mediation centers ~~currently receiving State funds~~ shall report annually to the Mediation Network of North Carolina on the program's funding and activities, including:

(1) Types of dispute settlement services provided;
(2) Clients receiving each type of dispute settlement service;
(3) Number and type of referrals received, cases actually mediated (identified by docket number), cases resolved in mediation, and total clients served in the cases mediated;
(4) Total program funding and funding sources;
(5) Itemization of the use of funds, including operating expenses and personnel;
(6) Itemization of the use of State funds appropriated to the center;
(7) Level of volunteer activity; and
(8) Identification of future service demands and budget requirements.

(a1) The Mediation Network of North Carolina shall compile and summarize the information provided pursuant to ~~this subsection~~ subsection (a) of this section and shall provide the information to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by February 1 of each year.

The Mediation Network of North Carolina shall also submit a copy of its report to the Administrative Office of the Courts. The receipt and review of this report by the Administrative Office of the Courts shall satisfy any program monitoring, evaluation, and contracting requirements imposed on the Administrative Office of the Courts by Part 3 of Article 6 of Chapter 143C of the General Statutes and any rules adopted under that Part."

SECTION 31.24.(d) G.S. 7A-38.7 reads as rewritten:

"**§ 7A-38.7. Dispute resolution fee for cases resolved in mediation.**

(a) In each criminal case filed in the General Court of Justice that is resolved through referral to a community mediation center, a dispute resolution fee shall be assessed in the sum of sixty dollars ($60.00) per mediation ~~for the support of the General Court of Justice.~~to support the services provided by the community mediation centers and the Mediation Network

of North Carolina. Fees assessed under this section shall be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the ~~State Treasurer.~~Mediation Network of North Carolina. The Mediation Network may retain up to three dollars ($3.00) of this amount as an allowance for its administrative expenses. The Mediation Network must remit the remainder of this amount to the community mediation center that mediated the case.

(b) Before providing the district attorney with a dismissal form, the community mediation center shall require proof that the defendant has paid the dispute resolution fee as required by subsection (a) of this section and shall attach the receipt to the dismissal form."

JPS/AOC/INCREASE INTERSTATE COMPACT FEE

SECTION 31.25. G.S. 148-65.7(a) reads as rewritten:

"(a) Persons convicted in this State who make a request for transfer to another state pursuant to the compact shall pay a transfer application of ~~one~~ two hundred fifty dollars ~~($150.00)~~($250.00) for each transfer application submitted. The transfer application fee shall be paid to the Compact Commissioner upon submission of the transfer application. The Commissioner or the Commissioner's designee may waive the application fee if either the Commissioner or the Commissioner's designee finds that payment of the fee will constitute an undue economic burden on the offender.

All fees collected pursuant to this section shall be deposited in the Interstate Compact Fund and shall be used only to support administration of the Interstate Compact.

The Interstate Compact Fund is established within the Department of Correction as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert, and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Department of Correction pursuant to this subsection shall be remitted to the State Treasurer to be deposited and held in this Fund. Moneys in the Fund shall be used to supplement funds otherwise available to the Department of Correction for the administration of the Interstate Compact."

JPS/AOC/CONTINGENT COURT COST INCREASES FOR COUNTIES

SECTION 31.26.(a) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148.10. Statewide Misdemeanor Confinement Fund established.**

There is created within the Department of Correction a special, nonreverting fund called the Statewide Misdemeanor Confinement Fund."

SECTION 31.26.(b) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(2b) For the maintenance of misdemeanors in county jails, the sum of eighteen dollars ($18.00) in the district court to be remitted to the Statewide Misdemeanor Confinement Fund in the Department of Correction.

...."

SECTION 31.26.(c) If House Bill 642 or other substantially similar legislation that requires a misdemeanant with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when

section. The renewal shall be effective upon the expiration of the prior notice period.

(5) A notice filed in accordance with this section may be amended after its effective date to increase the securities specified as proposed to be offered. An amendment becomes effective upon receipt by the Administrator. Every person submitting an amended notice filing shall pay a filing fee of fifty dollars ($50.00) with respect to the additional securities proposed to be offered."

SECTION 31.27A.(b) This section becomes effective July 1, 2011, and applies to fees for filings due on or after that date.

RAISE PARKING RATES

SECTION 31.27B.(a) The Department of Administration shall raise visitor parking rates for lots it administers in the State Government Complex by one dollar ($1.00) per hour.

SECTION 31.27B.(b) Funds generated by subsection (a) of this section shall be used to support debt service associated with the Green Square Parking Lot authorized in S.L. 2008-107.

TRANSPORTATION/DIVISION OF MOTOR VEHICLES BULK DATA

SECTION 31.29. G.S. 20-43.1 is amended by adding a new subsection to read:

"**§ 20-43.1. Disclosure of personal information in motor vehicle records.**

(a) The Division shall disclose personal information contained in motor vehicle records in accordance with the federal Driver's Privacy Protection Act of 1994, as amended, 18 U.S.C. §§ 2721, et seq.

(b) As authorized in 18 U.S.C. § 2721, the Division shall not disclose personal information for the purposes specified in 18 U.S.C. § 2721(b)(11).

(c) The Division shall not disclose personal information for the purposes specified in 18 U.S.C. § 2721(b)(12) unless the Division receives prior written permission from the person about whom the information is requested.

(d) As authorized in 18 U.S.C. § 2721, the Division may disclose personal information to federally designated organ procurement organizations and eye banks operating in this State for the purpose of identifying individuals who have indicated an intent to be an organ donor. Personal information authorized under this subsection is limited to the individual's first, middle, and last name, date of birth, address, sex, county of residence, and drivers license number. Employees of the Division who provide access to or disclosure of information in good-faith compliance with this subsection are not liable in damages for access to or disclosure of the information.

(e) As authorized in 18 U.S.C. § 2721, the Division may also provide copies of partial crash report data collected pursuant to G.S. 20-166.1, partial driver license data kept pursuant to G.S. 20-26(a), and partial vehicle registration application data collected pursuant to G.S. 20-52 in bulk form to persons, private companies, or other entities, for uses other than official, upon payment of a fee of three cents (3¢) per individual record. The Division shall not furnish such data except upon execution by the recipient of a written agreement to comply with the Driver's Privacy Protection Act of 1994, as amended, 18 U.S.C. §§ 2721, et seq. The information released to persons, private companies, or other entities, for uses other than official, pursuant to this subsection, shall not be a public record pursuant to Chapter 132 of the General Statutes."

TRANSPORTATION/FERRY DIVISION TOLLING

SECTION 31.30.(a) Effective April 1, 2012, G.S. 136-82 reads as rewritten:

"**§ 136-82. Department of Transportation to establish and maintain ferries.**

The Department of Transportation is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as may, in the discretion of the Department of Transportation, be expedient. The Board of Transportation shall establish tolls for all ferry routes, except for the Ocracoke/Hatteras Ferry and the Knotts Island Ferry.

To accomplish the purpose of this section said Department of Transportation is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or

other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Department of Transportation represent the fair value of the public service rendered.

The Department of Transportation, notwithstanding any other provision of law, may operate, or contract for the operation of, concessions on the ferries and at ferry facilities to provide to passengers on the ferries food, drink, and other refreshments, personal comfort items, and souvenirs publicizing the ferry system."

SECTION 31.30.(b) The Board of Transportation shall toll all ferry routes no later than the effective date of subsection (a) of this section but is encouraged to begin tolling on all routes before that date. In establishing tolls for ferry routes under G.S. 136-82, as amended by this section, the Board of Transportation shall consider the needs of commuters and other frequent passengers.

PART XXXI-A. FINANCE PROVISIONS

USE ADJUSTED GROSS INCOME AS STARTING POINT FOR CALCULATION OF STATE INCOME TAX AND PROVIDE TAX RELIEF FOR SMALL BUSINESSES

SECTION 31A.1.(a) G.S. 105-134.1 reads as rewritten:

"**§ 105-134.1. Definitions.**

The following definitions apply in this Part:

(1) Adjusted gross income. – Defined in section 62 of the Code.

~~(1)~~(1a) Code. – Defined in G.S. 105-228.90.

...

~~(16) Taxable income. – Defined in section 63 of the Code.~~

...

~~(19) This State. – The State of North Carolina.~~"

SECTION 31A.1.(b) G.S. 105-134.5 reads as rewritten:

"**§ 105-134.5. North Carolina taxable income defined.**

(a) Residents. – For ~~residents of this State,~~ an individual who is a resident of this State, the term "North Carolina taxable income" means the taxpayer's ~~taxable income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7.~~adjusted gross income as modified in G.S. 105-134.6.

(b) Nonresidents. – For a nonresident ~~individuals,~~ individual, the term "North Carolina taxable income" means the taxpayer's ~~taxable income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which is the taxpayer's gross income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that gross income, as adjusted,~~ adjusted gross income as modified in G.S. 105-134.6, multiplied by a fraction the denominator of which is the taxpayer's adjusted gross income as modified in G.S. 105-134.6, and the numerator of which is the amount of that adjusted gross income, as modified, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade, profession, or occupation carried on in this State, or is derived from gambling activities in this State.

(c) Part-year Residents. – If an individual was a resident of this State for only part of the taxable year, having moved into or removed from the State during the year, the term "North Carolina taxable income" has the same meaning as in subsection (b) of this section except that the numerator ~~shall include gross income, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7,~~ includes adjusted gross income, as modified under G.S. 105-134.6, derived from all sources during the period the individual was a resident.

(d) S Corporations and Partnerships. – In order to calculate the numerator of the fraction provided in subsection ~~(b),~~(b) of this section, the amount of a shareholder's pro rata share of S Corporation income that is includable in the numerator ~~shall be~~ is the shareholder's pro rata share of the S Corporation's income attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of the fraction provided in subsection (b) of this section for a member of a partnership or other unincorporated business ~~with~~ that has one or more nonresident members ~~that~~ and operates in one or more other states, the amount of the member's distributive share of income of the business that is includable in the numerator

~~shall be~~ is determined by multiplying the total net income of the business by the ratio ascertained under the provisions of G.S. 105-130.4. As used in this subsection, total net income means the entire gross income of the business less all expenses, taxes, interest, and other deductions allowable under the Code ~~which~~ that were incurred in the operation of the business.

(e) Tax Year. – A taxpayer must compute North Carolina taxable income on the basis of the taxable year used in computing the taxpayer's income tax liability under the Code."

SECTION 31A.1.(c) G.S. 105-134.6, as amended by S.L. 2011-5, reads as rewritten:

"**§ 105-134.6. ~~Adjustments to taxable income.~~Modifications to adjusted gross income.**

(a) S Corporations. – Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in this section.

(a1) Personal Exemption. – In calculating North Carolina taxable income, a taxpayer may deduct an exemption amount equal to the amount listed in the table below based on the taxpayer's filing status and adjusted gross income. The taxpayer is allowed the same number of personal exemptions claimed under section 151 of the Code for the taxable year.

Filing Status	Adjusted Gross Income	Personal Exemption
Married, filing jointly	Up to $100,000	$2,500
	Over $100,000	$2,000
Head of Household	Up to $80,000	$2,500
	Over $80,000	$2,000
Single	Up to $60,000	$2,500
	Over $60,000	$2,000
Married, filing separately	Up to $50,000	$2,500
	Over $50,000	$2,000

(a2) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct either the standard deduction amount listed in the table below for that taxpayer's filing status or the itemized deductions amount elected under section 63 of the Code. A taxpayer may not deduct both the standard deduction amount and the itemized deductions amount.

Filing Status	Standard Deduction
Married, filing jointly	$6,000
Head of Household	4,400
Single	3,000
Married, filing separately	3,000.

(b) ~~Deductions.~~ Other Deductions. – ~~The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:~~In calculating North Carolina taxable income, a taxpayer may deduct any of the following items to the extent those items are included in the taxpayer's adjusted gross income.

...

(22) The first fifty thousand dollars ($50,000) of net business income the taxpayer receives during the taxable year. For purposes of this subdivision, the term "business income" does not include income that is considered passive income under the Code.

(c) Additions. – ~~The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:~~In calculating North Carolina taxable income, a taxpayer must add any of the following items to the extent those items are not included in the taxpayer's adjusted gross income. For a taxpayer who deducts the itemized deductions amount under subsection (a2) of this section, the taxpayer must add any of the following items to the extent those items are included in the itemized deductions amount.

...

~~(4) The amount by which the taxpayer's additional standard deduction for aged and blind has been increased for inflation under section 63(c)(4)(A) of the Code plus the amount by which the taxpayer's basic standard deduction, including adjustments for inflation, under the Code exceeds the appropriate amount in the following chart based on the taxpayer's filing status:~~

~~**Filing Status** **Standard Deduction**~~

~~Married filing jointly/Surviving Spouse $6,000~~
~~Head of Household 4,400~~
~~Single 3,000~~
~~Married filing separately 3,000~~

~~(4a) The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the Code. This amount is reduced by five hundred dollars ($500.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:~~

~~Filing Status~~	~~AGI~~
~~Married, filing jointly~~	~~$100,000~~
~~Head of Household~~	~~80,000~~
~~Single~~	~~60,000~~
~~Married, filing separately~~	~~50,000.~~

~~For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.~~

...

~~(11) The amount of the taxpayer's real property tax deduction under section 63(c)(1)(C) of the Code.~~

(12) The amount of the taxpayer's deduction for motor vehicle sales taxes under ~~section 164(a)(6) or section 63(c)(1)(E) of the Code.~~section 164(a)(6) of the Code.

...

(d) Other Adjustments. – ~~The following adjustments to taxable income shall be made in calculating North Carolina taxable income:~~In calculating North Carolina taxable income, a taxpayer must make the following adjustments to adjusted gross income.

...."

SECTION 31A.1.(d) G.S. 105-134.4 is repealed.

SECTION 31A.1.(e) G.S. 105-151.26 reads as rewritten:

"§ 105-151.26. Credit for charitable contributions by nonitemizers.

A taxpayer who elects the standard deduction under ~~section 63 of the Code for federal tax purposes~~ G.S. 105-134.6(a2) is allowed as a credit against the tax imposed by this Part an amount equal to seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross ~~income as calculated under the Code.~~income.

No credit shall be allowed under this section ~~for amounts deducted from gross income in calculating taxable income under the Code or~~ for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SECTION 31A.1.(f). This section becomes effective for taxable years beginning on or after January 1, 2012.

FRANCHISE TAX BASE MODIFICATION

SECTION 31A.2.(a) G.S. 105-122(b)(2) reads as rewritten:

"(2) Taxes accrued, dividends declared, and reserves for depreciation of tangible assets and for amortization of intangible assets as permitted for income tax purposes."

SECTION 31A.2.(b) This section is effective for taxable years beginning on or after January 1, 2007.

PART XXXII. MISCELLANEOUS PROVISIONS

STATE BUDGET ACT APPLIES

SECTION 32.1. The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

MOST TEXT APPLIES ONLY TO THE 2011-2013 FISCAL BIENNIUM

SECTION 32.2. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2011-2013 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2011-2013 fiscal biennium.

EFFECT OF HEADINGS

SECTION 32.3. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a part.

COMMITTEE REPORT

SECTION 32.4.(a) The Senate Appropriations Committee Report on the Continuation, Expansion, and Capital Budgets dated May 31, 2011, which was distributed in the Senate and the House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in the State Budget Act, Chapter 143C of the General Statutes, and for these purposes shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

SECTION 32.4.(b) The budget enacted by the General Assembly is for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2011-2013 biennial budget as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget submitted a recommended continuation budget to the General Assembly on February 15, 2011, in the document "The State of North Carolina Governor's Recommended Budget, 2011-2013" and in the Budget Support Document for the various departments, institutions, and other spending agencies of the State. The adjustments to these documents made by the General Assembly are set out in the Committee Report.

SECTION 32.4.(c) The budget enacted by the General Assembly shall also be interpreted in accordance with G.S. 143C-5-5, the special provisions in this act, and other appropriate legislation.

In the event that there is a conflict between the line-item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

SEVERABILITY CLAUSE

SECTION 32.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 32.6. Except as otherwise provided, this act becomes effective July 1, 2011.

HOUSE BILL 200:
Appropriations Act of 2011

2011-2012 General Assembly

Committee:	Senate Re-ref to Appropriations/Base Budget. If fav, re-ref to Finance	**Date:**	May 31, 2011
Introduced by:	Rep. Brubaker	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	H200-CSLEf-17, as adopted by Senate Appropriations		

SUMMARY: ***The Senate Committee Substitute for House Bill 200, as given a favorable report by the Senate Appropriations Committee on May 31, 2011, contains a finance package that allows a $50,000 tax deduction for net business income received by individual taxpayers and modifies the franchise tax base.***

The bill reduces budget availability by $131.6 million in FY2011-12 and by $335.6 million in FY2012-13 for a total finance package of $467.2 million for the biennium. The bill approved by the Finance Committee last week contained a finance package of $671.7 million for the biennium. This tax relief is in addition to the $1.3 billion in expiring tax revenue.[1]

BACKGROUND: The ***fee provisions*** in this version of the bill differ from the ones considered by the Finance Committee last week as follows:

- The House version of the budget authorized local boards of education to charge up to $75 for driver's education course participants; the Senate budget did not. The bill before the Committee today includes an authorization to charge up to $45 per participant.
- The House and Senate versions of the budget both included a provision requiring the tolling of all ferry routes. As raised in Senate Finance last week, two of the routes have no free alternative routes available to them: Ocracoke/Hatteras and Knot's Island/Currituck. The bill before the Committee today specifically exempts those two routes from the toll requirement.
- The Senate version of the budget considered last week included a fee for putting brochures in Welcome Centers of $100 to $200 based on the size of the brochure; the House budget did not. The bill before the Committee today does not include this fee.
- The House version of the budget reduced the per court cost allocation to the NC State Bar for the legal services program from $2.05 to $1.00; the Senate budget did not reduce this allocation. The bill before the Committee today reduces the allocation from $2.05 to $1.50.
- The House and Senate versions of the budget diverted money from various special funds to the General Fund for FY2011-12. The Senate diverted less money from each of these funds than the House. The bill before the Committee today diverts the same amount of money as the House budget; the original Senate position is noted parenthetically:
    - Parks and Recreation Trust Fund: $8,435,000 ($4,217,500)
    - Natural Heritage Trust Fund: $8,000,000 ($4,500,000)
    - Scrap Tire Disposal Account: $2,268,989 ($1,134,495)

[1] The 1% State sales tax rate expires July 1, 2011; the corporate and individual income surtaxes expire for taxable years beginning on or after January 1, 2011.

- White Goods Management Disposal Account: $1,951,465 ($1,131,342)

- The House and Senate versions of the budget both eliminated the sales tax revenue diversion to the Wildlife Resource Commission and replaced it with an appropriation. The House appropriated $18.5 million; the Senate appropriated $16 million. The bill before the Committee today appropriates $18 million.

The ***finance provisions*** in this version of the bill differ from the ones considered by the Finance Committee last week as follows:

- It does not reduce individual income tax rates by ¼%.
- It does not limit the $50,000 tax deduction to net business income received from a small business. A small business was defined as one whose cumulative gross receipts did not exceed $825,000.
- It does not eliminate the four tax expenditures: the income tax deduction for severance wages, the tax credit for oyster shell recycling, the sales tax exemption for nutritional supplements sold by chiropractors, and the Energy Star sales tax holiday.

CURRENT LAW: North Carolina begins its calculation of personal income tax with federal taxable income. Of the 35 states that begin their calculation of state taxable income with federal law, 29 use federal adjusted gross income while only 6 use federal taxable income. Federal taxable income is income after all federally allowed deductions; it includes the deductions from gross income to determine adjusted gross income and the deductions from adjusted gross income to determine taxable income. The primary differences between federal taxable income and adjusted gross income are the personal and dependency exemptions and the subtraction of either the standard deduction amount or the itemized deductions amount.

North Carolina began using federal taxable income as the starting point for this calculation in 1989. At the time, this change significantly simplified North Carolina's individual income tax; it eliminated 30 individual income tax exclusions and reduced 47 deductions and exemptions to seven[2]. Since that time, however, the number of adjustments a taxpayer must make to federal taxable income to determine North Carolina taxable income has increased from 11 to more than 40. North Carolina's current system of additions and subtractions is confusing to taxpayers and complex to administer. For example, under current law, a taxpayer must adjust the standard deduction amount and the personal and dependency exemption amounts because North Carolina does not index those amounts like the federal law does.

North Carolina's personal income tax accounts for 52% to 55% of all General Fund revenues.[3] The non-withholding portion of this tax[4] may fluctuate as much as 35% from year to year, which has contributed to the State's volatile revenue structure. Much of this volatility has occurred since the 1990s as more and more business entities have organized as limited liability entities whose income flows through the personal income tax rather than the corporate income tax.

BILL ANALYSIS: Section 31A.1 would do the following two things, effective for taxable years beginning on or after January 1, 2012:

- Allow a personal income tax deduction of up to $50,000 of net business income a taxpayer receives during a taxable year.

---

[2] Chapter 728 of the 1989 Session Laws.
[3] In 1970, the PIT accounted for 32.7% of General Fund revenues.
[4] The non-withholding portion of the tax consists of business income, capital gains, rental income, interest and dividends, pension income, etc.

- Change the starting point for calculating North Carolina taxable income from federal taxable income to federal adjusted gross income.

$50,000 net business income deduction:

This change in the law would affect at least 450,000 businesses. The term 'business income' would not include income that is considered passive income under the Code. Section 469 of the Code, as well as various IRC tax regulations, define passive income. Form 1040, Schedule E, requires reporting of passive and non-passive income. Form 1040, Schedule C, requires the reporting of profit and loss from sole proprietorships. Form 1040, Schedule F, requires the reporting of farm income and loss.

Begin calculation of State taxable income with AGI[5]:

This change in the law would not expand the tax base because it retains all of the current deductions and credits. Although it does not eliminate many of the 40 adjustments, it does eliminate the need for two of the most confusing and complex ones: the calculation of North Carolina's standard deduction amount and personal and dependency exemption amounts. Under current law, a taxpayer begins the calculation of State taxable income with the federal standard deduction and personal exemption amounts. These amounts are indexed for federal tax purposes. North Carolina does not index its standard deduction and dependent exemption amounts; this difference means every taxpayer must adjust the personal and dependency exemption amounts and at least 70% of the individual taxpayers, representing more than two million returns, must adjust their standard deduction amount.

The federal and State standard deduction amount varies based upon the filing status of the taxpayer. The federal tax law provides an additional amount for a taxpayer who is blind or a senior citizen. The additional amount is $1,150 for married filing jointly and $1,450 for singles.

Filing Status	State Standard Deduction	Federal Standard Deduction
Married, filing jointly	$6,000	$11,600
Head of household	4,400	8,500
Single	3,000	5,800
Married, filing separately	3,000	5,800

The federal personal and dependency exemption amount for 2011 is $3,700. North Carolina's personal and dependency exemption amount varies depending upon the taxpayer's filing status and adjusted gross income:

Filing Status	AGI	Personal Exemption
Married, filing jointly	Up to $100,000	$2,500
	Over $100,000	2,000
Head of household	Up to $80,000	$2,500
	Over $80,000	2,000
Single	Up to $60,000	$2,500
	Over $60,000	2,000
Married, filing separately	Up to $50,000	$2,500
	Over $50,000	2,000

[5] This part of the bill is substantially the same as the provision considered last week by the Finance Committee. It reads differently than the provision discussed last week because it does not modernize the language or remove obsolete provisions form the statutes. The current version of the bill simply adds and removes the necessary provisions from existing law to move the calculation of taxable income from federal taxable income to AGI without rewriting the statutes.

Section 31A.2 would exempt reserves for amortization of intangible assets from surplus and undivided profits, thus excluding them from the franchise tax capital base. Examples of intangible assets include goodwill, patents, copyrights, franchises, trademarks and trade names, as well as going concern value. This change would become effective retroactively for taxable years beginning on or after January 1, 2007.

The State imposes a franchise tax on C-corporations and S-corporations. The tax rate is $1.50 per $1,000[6] and is applied to a company's capital stock, surplus, and undivided profits.[7] The term "surplus" for franchise tax purposes has a broader and more inclusive meaning than the generally accepted accounting definition. G.S. 105-122(b) provides that surplus and undivided profits includes all liabilities, reserves, and deferred credits unless those items are specifically exempt. One of the exemptions from surplus and undivided profits is "reserves for depreciation of tangible assets." Historically, the Department of Revenue allowed a deduction for reserves for amortization of intangible assets as well. However, the audit policy has changed in recent years.

The Attorney General's Office issued an advisory memorandum in July 2009 that the law, as written, applied only to reserves for depreciation of tangible assets. The memorandum noted that amortization, depletion, and depreciation are accounting methods that allow a taxpayer to deduct the acquisition costs of assets over a period of time. The current law allows an exemption for depreciation of tangible assets; it does not specifically address amortization of intangible assets or depletions of natural deposits.

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[6] The minimum tax is $35.

[7] A corporation's capital base may not be less than 55% of the appraised value of tangible property in NC, nor less than its actual investment in tangible property in the State.

SENATE APPROPRIATIONS COMMITTEE

REPORT
ON THE
CONTINUATION, EXPANSION
AND
CAPITAL BUDGETS

Proposed Senate Committee Substitute for the
Sixth Edition, House Bill 200

May 31st, 2011

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General Fund Availability Statement

		FY 2011-12	FY 2012-13
1	Unappropriated Balance Remaining		13,980,015
2	Ending Unreserved Fund Balance for FY 2009-10	236,902,394	0
3	Anticipated Reversions for FY 2010-11 - Session Law 2011-15 (S.B. 109)	537,740,799	0
4	Anticipated Overcollections from FY 2010-11	180,800,000	0
5	Repayment of Medicaid Receipts in FY 2010-11	(125,000,000)	0
6	**Statutory Earmarks:**		
7	Savings Reserve Account	(185,000,000)	0
8	Repairs and Renovations Reserve Account	(125,000,000)	0
9	**Beginning Unreserved Fund Balance**	**520,443,193**	**13,980,015**
10	**Revenues Based on Existing Tax Structure**	**18,129,800,000**	**19,181,900,000**
11	**Non-tax Revenues**		
12	Investment Income	59,400,000	76,700,000
13	Judicial Fees	217,800,000	217,800,000
14	Disproportionate Share	100,000,000	100,000,000
15	Insurance	71,400,000	73,500,000
16	Other Non-Tax Revenues	182,500,000	182,500,000
17	Highway Trust Fund/Use Tax Reimbursement Transfer	41,500,000	27,600,000
18	Highway Fund Transfer	20,230,000	24,080,000
19	**Subtotal Non-tax Revenues**	**692,830,000**	**702,180,000**
20	**Total General Fund Availability**	**19,343,073,193**	**19,898,060,015**
21	**Adjustments to Availability: 2011 Session**		
22	Loss of Estate Tax	(57,100,000)	(72,200,000)
23	Small Business Tax Relief Package	(131,600,000)	(335,600,000)
24	Repeal Wildlife Resources Commission Sales Tax Earmark	22,970,000	23,920,000
25	Suspend Corporate Income Tax Earmark (Public School Construction)	72,110,000	74,750,000
26	Increase in Judicial Fees	61,765,715	61,765,715
27	Increase Investment Company Notice Filing Fee	1,600,000	1,600,000
28	Increase Parking Fees for Visitors	550,000	550,000
29	Loss of Revenue from the Town of Butner	(1,213,235)	(1,213,235)
30	Transfer from E-Commerce Reserve Fund	4,483,526	0
31	Divert Funds from Parks & Recreation Trust Fund	8,435,000	0
32	Divert Funds from Recreational/ Natural Heritage Trust Fund	8,000,000	0
33	Transfer from Highway Fund for State Highway Patrol	196,849,542	188,209,049
34	Transfer Additional Funds from Highway Trust Fund	35,223,642	0
35	Transfer from Mercury Prevention Pollution Fund	250,000	0
36	Transfer from Commerce - Enterprise Fund	500,000	
37	Divert Funds from Scrap Tire Disposal Account	2,268,989	0
38	Divert Funds from White Goods Management Account	1,951,465	0
39	Diversion of Golden LEAF Funds	17,563,760	17,563,760
40	Master Settlement Agreement Funds	24,668,720	25,580,772
41	Transfer Health and Wellness Trust Funds to Public Health	32,904,411	0
42	Department of Revenue - Accounts Receivable Program	25,000,000	25,000,000
43	Medicaid Disproportionate Share Receipts	15,000,000	15,000,000
44	Adjust Transfer from Insurance Regulatory Fund	(742,348)	(742,348)
45	Adjust Transfer from Treasurer's Office	(3,881,172)	(3,916,453)
46	Transfer from NC Flex FICA Funds	1,000,000	0
47	Proceeds from the Sale of State Assets	15,000,000	25,000,000
48	**Subtotal Adjustments to Availability: 2011 Session**	**353,558,015**	**45,267,260**
49	**Revised General Fund Availability**	**19,696,631,208**	**19,943,327,275**
50	Less General Fund Appropriations	(19,682,651,193)	(19,943,327,275)
51	**Unappropriated Balance Remaining**	**13,980,015**	**0**

SUMMARY:

GENERAL FUND APPROPRIATIONS

SUMMARY OF GENERAL FUND APPROPRIATIONS						
2011 Legislative Session: Fiscal Year 2011-12						
		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2011-12
Education						
Community Colleges	1,102,475,214	(109,875,214)	(7,600,000)	(117,475,214)	(25.00)	985,000,000
Public Education	7,923,543,951	(341,814,675)	(117,237,219)	(459,051,894)	(99.50)	7,464,492,057
University System	2,887,492,464	(332,663,591)	(14,453,741)	(347,117,332)	309.80	2,540,375,132
Total Education	**11,913,511,629**	**(784,353,480)**	**(139,290,960)**	**(923,644,440)**	**185.30**	**10,989,867,189**
Health and Human Services						
Central Management and Support	70,229,335	(25,651,348)	5,599,390	(20,051,958)	(288.00)	50,177,377
Aging and Adult Services	37,419,667	(400,000)	0	(400,000)	0.00	37,019,667
Blind and Deaf / Hard of Hearing Services	8,389,110	0	0	0	0.00	8,389,110
Child Development	261,759,600	10,695,977	(6,352,644)	4,343,333	0.00	266,102,933
Health Service Regulation	17,925,590	0	(1,792,559)	(1,792,559)	0.00	16,133,031
Medical Assistance	3,314,539,538	(340,004,970)	(16,146,384)	(356,151,354)	(30.00)	2,958,388,184
Mental Health, Dev. Disabilities and Sub. Abuse	723,675,112	(12,962,880)	(45,000,000)	(57,962,880)	(7.00)	665,712,232
NC Health Choice	88,373,806	(8,921,489)	0	(8,921,489)	0.00	79,452,317
Public Health	161,930,589	(4,391,755)	32,904,411	28,512,656	(25.00)	190,443,245
Social Services	202,245,063	(16,061,995)	0	(16,061,995)	(2.00)	186,183,068
Vocational Rehabilitation	41,252,238	(2,058,522)	(2,067,928)	(4,126,450)	(5.00)	37,125,788
Total Health and Human Services	**4,927,739,648**	**(399,756,982)**	**(32,855,714)**	**(432,612,696)**	**(357.00)**	**4,495,126,952**
Justice and Public Safety						
Correction	1,421,644,768	(71,332,902)	(12,495,520)	(83,828,422)	(499.00)	1,337,816,346
Crime Control & Public Safety	34,175,427	191,083,368	0	191,083,368	2,310.20	225,258,795
Judicial Department	477,189,575	(39,454,220)	1,184,693	(38,269,527)	(302.50)	438,920,048
Judicial - Indigent Defense	122,770,246	(10,021,513)	(2,657,207)	(12,678,720)	(11.40)	110,091,526
Justice	89,670,944	(8,806,806)	(160,125)	(8,966,931)	(105.31)	80,704,013
Juvenile Justice & Delinquency Prevention	151,295,187	(19,563,395)	3,861,900	(15,701,495)	(278.60)	135,593,692
Total Justice and Public Safety	**2,296,746,147**	**41,904,532**	**(10,266,259)**	**31,638,273**	**1,113.39**	**2,328,384,420**

SUMMARY OF GENERAL FUND APPROPRIATIONS 2011 Legislative Session: Fiscal Year 2011-12						
		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2011-12
Natural and Economic Resources						
Agriculture and Consumer Services	61,754,014	(1,555,380)	5,262,230	3,706,850	(8.00)	65,460,864
Commerce	38,907,381	(5,920,640)	17,865,599	11,944,959	(20.00)	50,852,340
Commerce - State Aid	31,169,289	(2,190,286)	3,872,022	1,681,736	0.00	32,851,025
Environment and Natural Resources	188,972,401	(36,366,265)	13,178,751	(23,187,514)	(160.51)	165,784,887
Clean Water Mgmt. Trust Fund	100,000,000	(88,750,000)	0	(88,750,000)	0.00	11,250,000
Labor	16,842,679	(1,005,792)	0	(1,005,792)	(9.00)	15,836,887
NC Biotechnology Center	19,501,900	(1,950,190)	0	(1,950,190)	0.00	17,551,710
Rural Economic Development Center	22,640,814	(2,264,085)	5,000,000	2,735,915	0.00	25,376,729
Wildlife Resources Commission	0	17,221,179	778,821	18,000,000	0.00	18,000,000
Total Natural & Economic Resources	**479,788,478**	**(122,781,459)**	**45,957,423**	**(76,824,036)**	**(197.51)**	**402,964,442**
General Government						
Administration	69,700,026	(6,092,696)	0	(6,092,696)	(94.52)	63,607,330
Auditor	13,063,656	(1,206,082)	0	(1,206,082)	(13.00)	11,857,574
Cultural Resources	72,664,633	(9,139,776)	0	(9,139,776)	(94.01)	63,524,857
Cultural Resources - Roanoke Island Comm.	2,406,982	(601,746)	0	(601,746)	0.00	1,805,236
General Assembly	54,593,047	(8,906,058)	7,572,506	(1,333,552)	(9.00)	53,259,495
Governor	6,189,478	(1,448,321)	0	(1,448,321)	(18.00)	4,741,157
Housing Finance Agency	13,877,996	(4,204,945)	0	(4,204,945)	0.00	9,673,051
Insurance	33,458,756	2,935,165	0	2,935,165	(3.00)	36,393,921
Insurance - Worker's Compensation Fund	4,500,000	(706,000)	(1,500,000)	(2,206,000)	0.00	2,294,000
Lieutenant Governor	954,868	(259,544)	0	(259,544)	(1.00)	695,324
Office of Administrative Hearings	4,328,822	655,049	0	655,049	8.68	4,983,871
Revenue	88,370,399	(10,170,861)	0	(10,170,861)	(106.00)	78,199,538
Secretary of State	11,076,972	(422,409)	0	(422,409)	(4.00)	10,654,563
State Board of Elections	6,189,011	(1,002,408)	0	(1,002,408)	(14.00)	5,186,603
State Budget and Management (OSBM)	6,963,796	(1,115,133)	0	(1,115,133)	(6.00)	5,848,663
OSBM - Special Appropriations	5,934,311	(5,493,699)	1,500,000	(3,993,699)	(13.00)	1,940,612
State Controller	32,517,077	(3,539,584)	(608,536)	(4,148,120)	(18.50)	28,368,957
Treasurer - Operations	10,538,203	(3,881,172)	0	(3,881,172)	(36.00)	6,657,031
Treasurer - Fire/Rescue Retirement	17,812,114	0	0	0	0.00	17,812,114
Total General Government	**455,140,147**	**(54,600,220)**	**6,963,970**	**(47,636,250)**	**(419.35)**	**407,503,897**

SUMMARY OF GENERAL FUND APPROPRIATIONS 2011 Legislative Session: Fiscal Year 2011-12						
		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2011-12
Debt Service and Statewide Reserves						
Debt Service						
Interest / Redemption	705,905,183	(16,947,995)	0	(16,947,995)	0.00	688,957,188
Federal Reimbursement	1,616,380	0	0	0	0.00	1,616,380
Subtotal Debt Service	**707,521,563**	**(16,947,995)**	**0**	**(16,947,995)**	**0.00**	**690,573,568**
Statewide Reserves						
Contingency and Emergency Fund	5,000,000	0	0	0		5,000,000
State Retirement System Contributions	0	248,100,000		248,100,000		248,100,000
Judicial Retirement System Contribution	0	6,800,000	0	6,800,000		6,800,000
Firemen & Rescue Squad Workers Pension Fund		4,318,042	0	4,318,042		4,318,042
National Guard Pension Fund		0	0	0		0
State Health Plan	0	7,119,541		7,119,541		7,119,541
Information Technology Fund	7,840,000	(1,537,574)	(1,844,284)	(3,381,858)	(3.00)	4,458,142
Job Development Investment Grants (JDIG)	27,400,000	0	(12,000,000)	(12,000,000)		15,400,000
Continuation Review Reserve						
Review of Compensation Plans			2,000,000	2,000,000		2,000,000
Automated Fraud Detection Development			1,000,000	1,000,000		1,000,000
Controller- Fraud Detection Development			500,000	500,000		500,000
Severance Expenditure Reserve			69,000,000	69,000,000		69,000,000
Subtotal Statewide Reserves	**40,240,000**	**264,800,009**	**58,655,716**	**323,455,725**	**(3.00)**	**363,695,725**
Total Reserves and Debt Service	**747,761,563**	**247,852,014**	**58,655,716**	**306,507,730**	**(3.00)**	**1,054,269,293**
Total General Fund for Operations	**20,820,687,612**	**(1,071,735,595)**	**(70,835,824)**	**(1,142,571,419)**	**321.83**	**19,678,116,193**
Capital Improvements						
Water Resources Development Projects	0	0	4,535,000	4,535,000	0.00	4,535,000
Total Capital Improvements	**0**	**0**	**4,535,000**	**4,535,000**	**0.00**	**4,535,000**
Total General Fund Budget	**20,820,687,612**	**(1,071,735,595)**	**(66,300,824)**	**(1,138,036,419)**	**321.83**	**19,682,651,193**

SUMMARY OF GENERAL FUND APPROPRIATIONS 2011 Legislative Session: Fiscal Year 2012-13						
		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2012-13
Education						
Community Colleges	1,102,475,214	(117,475,214)	0	(117,475,214)	(25.00)	985,000,000
Public Education	7,923,543,951	(338,626,804)	(134,917,147)	(473,543,951)	(99.50)	7,450,000,000
University System	2,886,730,386	(310,045,806)	(25,011,882)	(335,057,688)	205.80	2,551,672,698
Total Education	**11,912,749,551**	**(766,147,824)**	**(159,929,029)**	**(926,076,853)**	**81.30**	**10,986,672,698**
Health and Human Services						
Central Management and Support	70,229,335	(25,651,348)	0	(25,651,348)	(288.00)	44,577,987
Aging and Adult Services	37,419,667	(400,000)	0	(400,000)	0.00	37,019,667
Blind and Deaf / Hard of Hearing Services	8,372,886	0	0	0	0.00	8,372,886
Child Development	261,759,600	10,695,977	(6,352,644)	4,343,333	0.00	266,102,933
Health Service Regulation	17,925,590	0	(1,792,559)	(1,792,559)	0.00	16,133,031
Medical Assistance	3,314,539,538	(382,523,695)	(24,739,541)	(407,263,236)	(40.00)	2,907,276,302
Mental Health, Dev. Disabilities and Sub. Abuse	723,675,112	(12,962,880)	0	(12,962,880)	(7.00)	710,712,232
NC Health Choice	88,373,806	(4,655,941)	0	(4,655,941)	0.00	83,717,865
Public Health	161,930,589	(4,391,755)	0	(4,391,755)	(25.00)	157,538,834
Social Services	202,245,063	(16,061,995)	0	(16,061,995)	(2.00)	186,183,068
Vocational Rehabilitation	41,654,578	(2,058,522)	(2,067,928)	(4,126,450)	(5.00)	37,528,128
Total Health and Human Services	**4,928,125,764**	**(438,010,159)**	**(34,952,672)**	**(472,962,831)**	**(367.00)**	**4,455,162,933**
Justice and Public Safety						
Correction	1,418,867,332	(59,302,927)	(11,153,612)	(70,456,539)	(439.00)	1,348,410,793
Crime Control & Public Safety	34,175,427	180,989,091	0	180,989,091	2,310.50	215,164,518
Judicial Department	477,189,575	(40,367,468)	(1,681,000)	(42,048,468)	(388.50)	435,141,107
Judicial - Indigent Defense	122,770,246	(10,021,513)	0	(10,021,513)	(11.40)	112,748,733
Justice	89,670,944	(8,806,806)	0	(8,806,806)	(105.31)	80,864,138
Juvenile Justice & Delinquency Prevention	151,295,187	(20,154,622)	0	(20,154,622)	(278.60)	131,140,565
Total Justice and Public Safety	**2,293,968,711**	**42,335,755**	**(12,834,612)**	**29,501,143**	**1,087.69**	**2,323,469,854**

SUMMARY OF GENERAL FUND APPROPRIATIONS
2011 Legislative Session: Fiscal Year 2012-13

		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2012-13
Natural and Economic Resources						
Agriculture and Consumer Services	61,754,014	(1,555,380)	2,000,000	444,620	(14.00)	62,198,634
Commerce	38,907,381	(5,656,918)	0	(5,656,918)	(22.00)	33,250,463
Commerce - State Aid	31,169,289	(1,717,305)	700,000	(1,017,305)	0.00	30,151,984
Environment and Natural Resources	188,972,401	(34,824,296)	(6,000,000)	(40,824,296)	(161.51)	148,148,105
Clean Water Mgmt. Trust Fund	100,000,000	(88,750,000)	0	(88,750,000)	0.00	11,250,000
Labor	16,842,679	(1,005,792)	0	(1,005,792)	(9.00)	15,836,887
NC Biotechnology Center	19,501,900	(1,950,190)	0	(1,950,190)	0.00	17,551,710
Rural Economic Development Center	22,640,814	(2,264,085)	5,000,000	2,735,915	0.00	25,376,729
Wildlife Resources Commission	0	17,221,179	0	17,221,179	0.00	17,221,179
Total Natural and Economic Resources	**479,788,478**	**(120,502,787)**	**1,700,000**	**(118,802,787)**	**(206.51)**	**360,985,691**
General Government						
Administration	69,700,026	(4,188,566)	0	(4,188,566)	(94.52)	65,511,460
Auditor	13,063,656	(2,387,621)	0	(2,387,621)	(26.00)	10,676,035
Cultural Resources	72,664,633	(10,967,632)	0	(10,967,632)	(106.51)	61,697,001
Cultural Resources - Roanoke Island Comm.	2,406,982	(1,203,491)	0	(1,203,491)	0.00	1,203,491
General Assembly	54,593,047	(7,488,839)	3,000,000	(4,488,839)	(47.75)	50,104,208
Governor	6,189,478	(1,448,321)	0	(1,448,321)	(18.00)	4,741,157
Housing Finance Agency	13,877,996	(4,204,945)	0	(4,204,945)	0.00	9,673,051
Insurance	33,458,756	2,935,165	0	2,935,165	(3.00)	36,393,921
Insurance - Worker's Compensation Fund	4,500,000	(1,876,346)	0	(1,876,346)	0.00	2,623,654
Lieutenant Governor	954,868	(259,544)	0	(259,544)	(1.00)	695,324
Office of Administrative Hearings	4,328,822	655,049	0	655,049	8.68	4,983,871
Revenue	88,370,399	(10,170,861)	0	(10,170,861)	(106.00)	78,199,538
Secretary of State	11,076,972	(422,409)	0	(422,409)	(4.00)	10,654,563
State Board of Elections	6,189,011	(1,062,408)	0	(1,062,408)	(14.00)	5,126,603
State Budget and Management (OSBM)	6,963,796	(1,115,133)	0	(1,115,133)	(6.00)	5,848,663
OSBM - Special Appropriations	5,934,311	(5,493,699)	0	(5,493,699)	(13.00)	440,612
State Controller	32,517,077	(3,539,584)	(608,536)	(4,148,120)	(18.50)	28,368,957
Treasurer - Operations	10,538,203	(3,916,453)	0	(3,916,453)	(36.00)	6,621,750
Treasurer - Fire/Rescue Retirement	17,812,114	0	0	0	0.00	17,812,114
Total General Government	**455,140,147**	**(56,155,638)**	**2,391,464**	**(53,764,174)**	**(485.60)**	**401,375,973**

SUMMARY OF GENERAL FUND APPROPRIATIONS						
2011 Legislative Session: Fiscal Year 2012-13						
		Legislative Adjustments				Revised
	Continuation Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2012-13
Debt Service and Statewide Reserves						
Debt Service:						
Interest / Redemption	705,905,183	54,079,791	0	54,079,791		759,984,974
Federal Reimbursement	1,616,380	0	0	0		1,616,380
Subtotal Debt Service	**707,521,563**	**54,079,791**	**0**	**54,079,791**	**0.00**	**761,601,354**
Statewide Reserves:						
Contingency and Emergency Fund	5,000,000	0	0	0		5,000,000
State Retirement System Contributions	0	336,000,000	0	336,000,000		336,000,000
Judicial Retirement System Contribution	0	7,800,000	0	7,800,000		7,800,000
Firemen & Rescue Squad Workers Pension Fund		5,366,928	0	5,366,928		5,366,928
National Guard Pension Fund		0	0	0		0
State Health Plan	0	102,151,104	0	102,151,104		102,151,104
Information Technology Fund	7,840,000	162,426	(1,844,284)	(1,681,858)	(3.00)	6,158,142
Job Development Investment Grants (JDIG)	27,400,000	0	0	0		27,400,000
Continuation Review Reserve			35,576,758	35,576,758		35,576,758
Compensation Adjustment, Performance Pay Reserve	0	121,105,840		121,105,840		121,105,840
Automated Fraud Detection Development			7,000,000	7,000,000		7,000,000
Controller- Fraud Detection Development			500,000	500,000		500,000
Subtotal Statewide Reserves	**40,240,000**	**572,586,298**	**41,232,474**	**613,818,772**	**(3.00)**	**654,058,772**
Total Reserves and Debt Service	**747,761,563**	**626,666,089**	**41,232,474**	**667,898,563**	**(3.00)**	**1,415,660,126**
Total General Fund for Operations	**20,817,534,214**	**(711,814,564)**	**(162,392,375)**	**(874,206,939)**	**106.88**	**19,943,327,275**
Capital Improvements						
Water Resources Development Projects	0	0	0	0	0.00	0
Total Capital Improvements	**0**	**0**	**0**	**0**	**0.00**	**0**
Total General Fund Budget	**20,817,534,214**	**(711,814,564)**	**(162,392,375)**	**(874,206,939)**	**109.88**	**19,943,327,275**

EDUCATION
Section F

Public Education

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$7,923,543,951**		**$7,923,543,951**	
Legislative Changes				
A. Technical Adjustments				
1 ADM Adjustment Fully funds both years of average daily membership (ADM) growth for public schools, providing $55.8 million in FY 2011-12 and $143.1 million in FY 2012-13. This adjustment, which accounts for changes in multiple allotments, has traditionally been included in the continuation budget.	$55,882,651	R	$143,087,414	R
2 Average Salary Adjustment Adjusts several budget lines to account for the decrease in average salaries between FY 2009-10 and FY 2010-11. This adjustment has traditionally been included in the continuation budget.	($21,838,817)	R	($22,040,287)	R
B. Other Public School Funding Adjustments				
3 LEA Adjustment Increases the LEA Adjustment reduction. The State Board of Education will distribute this reduction to all LEAs and charter schools on the basis of ADM. LEAs and charters will then be responsible for identifying budget reductions in order to meet their share of the LEA Adjustment. LEAs are expected to utilize federal EduJobs availability to minimize reducing position allotments.	($124,217,542)	R	($198,293,574)	R
4 Class Size Reduction in Grades 1-3 Adds funding for 1,124 additional teaching positions in FY 2011-12 and 1,144 additional teaching positions in FY 2012-13 to reduce the classroom teacher allotment ratios for grades 1-3 from 1 teacher per 18 students to 1 teacher per 17 students in both years of the biennium. A related provision, Section 7.1B, expresses the intent of the General Assembly to add additional teachers as funds become available with a goal of reducing the teacher allotment ratio in grades 1-3 to 1 teacher for every 15 students.	$61,697,942	R	$62,767,803	R
5 Education Reform Studies Provides nonrecurring funding for studies of third grade literacy programs and ways to reduce the need for remedial or developmental education in the State's higher education institutions. Funding will be available to hire an outside consultant to examine these topics.	$200,000	NR		

	FY 11-12		FY 12-13	
6 Testing Eliminates funding for four End of Course tests eliminated by S.L. 2011-8 and not required by federal law. Those tests are United States History, Civics and Economics, Algebra II, and Physical Science. The remaining testing funds are then reduced a further 10%, leaving $8.8 million available for testing in each year of the biennium.	($2,725,029)	R	($2,729,677)	R
7 Dropout Prevention Grants Eliminates funding for the Dropout Prevention Grant program.	($13,290,683)	R	($13,290,683)	R
8 Student Diagnostics Eliminates funding for the Student Diagnostics pilot program.	($10,000,000)	R	($10,000,000)	R
9 Learn & Earn Online Eliminates funding for Learn & Earn Online courses provided through the UNC system.	($4,875,000)	R	($4,875,000)	R
10 Noninstructional Support Personnel Reduces this allotment, which supports clerical, janitorial, substitute teachers, and other personnel, by 15% in both years of the biennium. $337.1 million will remain in this allotment in FY 2011-12 and $340.3 million will remain in FY 2012-13.	($59,497,471)	R	($60,054,792)	R
11 Textbooks Reduces funding for textbooks. $23.4 million will remain in this allotment in FY 2011-12 and $27.2 million will remain available in FY 2012-13.	($13,000,000) ($79,166,861)	R NR	($13,000,000) ($76,500,000)	-- NR
12 Instructional Supplies Reduces funding for this allotment by approximately 46%. $49.3 million will remain in this allotment in FY 2011-12 and $50.2 million will remain available in FY 2012-13.	($3,450,000) ($38,520,358)	R NR	($3,450,000) ($38,417,147)	R NR
13 Central Office Administration Reduces the allotment to LEAs for the salaries and benefits of central office staff by 16%. This staff includes, but is not limited to, superintendents, associate and assistant superintendents, finance officers, athletic trainers, and transportation directors. $90.4 million will remain to support these local staff in FY 2011-12 and $90.5 million will remain available in FY 2012-13.	($17,211,294)	R	($17,254,494)	R
14 School Building Administration Reduces the funding for assistant principal months of employment by approximately 18.8%. This reduction does not reduce any guaranteed principal positions. $304.4 million will remain in this allotment in FY 2011-12 and $306.6 million will remain available in FY 2012-13.	($22,193,080)	R	($22,403,290)	R

	FY 11-12		FY 12-13	
15 School Building Administration Position Conversion Reduces funding for this allotment based on a modification of the allowable conversion of assistant principal and principal months of employment. Currently, LEAs are allowed to "cash-out" their allotted SBA months of employment at the State-average salary and benefits, and then use the money for other purposes. This section would continue to allow conversions, but only at the equivalent amount for a beginning Principal III for converted principal positions, and the equivalent amount for a beginning assistant principal for cashed-out assistant principal positions.	($7,700,000)	R	($7,700,000)	R
16 Instructional Support Reduces this allotment, which supports guidance counselors, social workers, media specialists, and other miscellaneous personnel, by 5%. $435.8 million will remain in this allotment in FY 2011-12 and $439.9 million will remain available in FY 2012-13.	($22,934,278)	R	($23,149,479)	R
17 Transportation Reduces funding for the allotment, which supports the salaries of transportation personnel as well as the maintenance of yellow buses by 2.5%. $403.3 million will remain in this allotment in FY 2011-12 and $407.2 million will remain available in FY 2012-13.	($10,340,115)	R	($10,442,266)	R
18 School Bus Replacement Provides full funding for school bus replacement in FY 2011-12, and reduces the funding on a nonrecurring basis in FY 2012-13. The Department of Public Instruction shall utilize these funds only to support financing payments on previously purchased buses or for finance payments for new replacement buses purchased over the biennium.			($20,000,000)	NR
19 Mentoring Eliminates funding for this allotment. School districts may use State and other funding sources to provide mentoring services for beginning teachers.	($9,214,190)	R	($9,214,190)	R
20 School Technology Fund Eliminates General Fund support for this purpose. An additional $18.0 million for the Fund will remain available from the proceeds of the Civil Penalty and Forfeiture Fund.	($10,000,000)	R	($10,000,000)	R
21 Staff Development Eliminates funding for this allotment. School districts may use State and other funding sources to support professional development.	($12,565,063)	R	($12,626,995)	R
22 Uniform Education Reporting System (UERS) Reduces funding for the Uniform Education Reporting System (UERS) and the related NC WISE system as it moves into an operations and maintenance phase. This adjustment will leave $10.3 million in annual appropriations available for UERS operations.	($2,101,213)	R	($2,101,213)	R

	FY 11-12		FY 12-13	
23 More at Four Funding Reduction Reduces More at Four General Fund support by $16 million, or approximately 20%.	($16,000,000)	R	($16,000,000)	R
24 More at Four Transfer Transfers the remaining $65 million in General Fund appropriations to the Department of Health and Human Service's Division of Child Development (DCD) to provide a dedicated high-quality pre-K program within its Child Care Subsidy program. In addition, Section 5.4 of the budget bill redirects $63 million in Lottery funding for the program to DCD. A related provision in Section 10.7 of the bill details the particulars of the transfer.	($65,011,651)	R	($65,011,651)	R
25 Liability Insurance for Public School Personnel Establishes a single State-funded liability insurance policy for all North Carolina public schools employees. The State Board of Education shall use funding provided to establish this policy with the North Carolina Department of Public Instruction serving as the master policy holder.	$3,700,000	R	$3,700,000	R
26 JOBS Commission Schools Eliminates planning funding for these two schools which will open in the 2011-12 school year.	($200,000)	R	($200,000)	R
27 Learn and Earn Early College High Schools Transfers planning funding for the two schools recommended by the JOBS Commission. These schools shall be eligible for Learn and Earn Early College allotment funding.	$200,000	R	$200,000	
C. Pass-through Funds				
28 Teacher Cadet Eliminates State support for this program.	($340,000)	R	($340,000)	R
29 Science Olympiad Eliminates State support for this program.	($127,500)	R	($127,500)	R
30 Kids Voting Eliminates State support for this program.	($50,000)	R	($50,000)	R
31 NC Science, Math and Technical Education Center Eliminates State support for this program.	($100,000)	R	($100,000)	R
32 Tarheel ChalleNGe Academy Provides funds for the phase one construction of the National Guard Tarheel ChalleNGe Academy site in Badin, NC.	$250,000	NR		

	FY 11-12		FY 12-13	
33 Teaching Fellows Fund Reduces the General Fund appropriation for the Teaching Fellows Fund. This reduction reflects a decrease in funds available for administrative costs associated with the Teaching Fellows Program in FY 2011-12 and FY 2012-13. Additionally, funds are reduced in FY 2012-13 to phase out support for this program. It is the intent of the General Assembly to support its obligations to the 2011-12 class of Teaching Fellows and prior classes until the State's scholarship commitment is completed.	($210,000)	R	($3,475,000)	R
D. Department of Public Instruction				
34 DPI Curriculum Division Eliminates 5.5 State-funded positions working on curriculum issues. Of these, 3.5 State-funded positions are eliminated from the Curriculum, Instruction & Technology section, and 2.0 State-funded positions are eliminated from the Career and Technology Education (CTE) section.	($457,690) -5.50	R	($457,690) -5.50	R
35 DPI Technology Services Eliminates 30.0 State-funded positions from DPI's Technology Services section. 102.85 positions (70.72 State-funded) will remain in this section.	($2,712,988) -30.00	R	($2,712,988) -30.00	R
36 DPI Communications Eliminates 4.0 State-funded positions in the Communications section. 15.0 positions (10.8 State-funded) will remain in this section.	($246,586) -4.00	R	($246,586) -4.00	R
37 Learn and Earn Administration Eliminates the State-funded position at DPI supporting Learn & Earn Online.	($139,050) -1.00	R	($139,050) -1.00	R
38 Governor's Education Cabinet Eliminates funding for the 2.0 positions that DPI provides to support the NC Education Cabinet housed in the Office of the Governor.	($206,063) -2.00	R	($206,063) -2.00	R
39 NC Professional Teaching Standards Commission Eliminates the State funding and positions supporting the NC Professional Teaching Standards Commission.	($235,646) -2.00	R	($235,646) -2.00	R
40 Teacher Academy Eliminates State funding for the Teacher Academy, a provider of professional development services for teachers.	($4,762,874) -14.00	R	($4,762,874) -14.00	R
41 North Carolina Center for the Advancement of Teaching (NCCAT) Reduces State support for the operations of this teacher professional development provider.	($3,000,000) -40.00	R	($3,000,000) -40.00	R

	FY 11-12		FY 12-13	
42 Connectivity Eliminates the $350,000 annual transfer from Connectivity to support the e-Learning Portal. Also eliminates the $300,000 annual transfer from Connectivity to support the evaluation of the Connectivity initiative.	($650,000)	R	($650,000)	R
43 Governor's Schools Eliminates State funding for the Governor's Schools. A related provision in Section 7.9 provides the State Board with the discretion to make the program receipt-supported beginning with the summer 2012 program. Funding remains available to provide the program in summer 2011.			($849,588)	R
44 Residential Schools for the Deaf and Blind Eliminates State funding for the superintendent of residential schools position within DPI and reduces the operating budget for Residential Schools for the Deaf and Blind by approximately 5%. For FY 2012-13, DPI must close one of the three residential schools. A related provision, Section 7.25, directs DPI to report to the Joint Education Oversight Committee of the General Assembly the school slated for closure and the Department's plan for consolidating the programs with those at the two remaining schools.	($1,691,445) -1.00	R	($7,191,445) -1.00	R
Total Legislative Changes	**($341,814,675)** **($117,237,219)**	**R** **NR**	**($338,626,804)** **($134,917,147)**	
Total Position Changes	-99.50		-99.50	
Revised Budget	**$7,464,492,057**		**$7,450,000,000**	

Community Colleges

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$1,102,475,214**		**$1,102,475,214**	

Legislative Changes

A. Technical Adjustments

45 Enrollment Growth — $34,140,158 R — $47,699,747 R

Provides funds to fully fund enrollment growth, including enrollment growth for equipment funding, in both years of the biennium.

According to the FY 2010-11 spring enrollment census, enrollment has increased by 3.3% (8,081 full-time-equivalent students or FTE) above the FY 2010-11 budgeted enrollment of 243,854. Curriculum enrollment has increased by 6,928 FTE (3.6%), continuing education enrollment has increased by 1,396 FTE (4.9%), and basic skills enrollment has decreased by 243 FTE (-1.1%). Total equipment funding for FY 2011-12 is $5,643,030, which maintains the amount per equipment FTE at the FY 2009-10 level. Total requirements for the enrollment growth increase are $45,058,958, of which $10,918,800 is funded from receipts.

Estimated enrollment growth during the FY 2011-12 year is also fully funded with an additional appropriation of $13,559,589, $584,775 of which is for equipment. This adjustment is based on estimated enrollment growth of 1.5% (3,672 FTE). Total requirements for the enrollment growth are $18,478,365, of which $4,918,776 is funded from receipts.

46 Hickory Metro Higher Education Center — ($264,833) R — ($264,833) R

Transfers categorical funding for the Hickory Metro Higher Education Center at Catawba Valley Community College to the UNC System budget.

B. State Aid Adjustments

47 Management Flexibility Reduction — ($50,777,984) R — ($58,544,165) R

Reduces funds in the State Aid budget. The State Board of Community Colleges shall distribute the flexibility reduction, accounting for the unique needs of each college. Each college reduced shall have the flexibility to adjust its budget to implement this reduction, but shall not impact those activities directly involved in retraining displaced workers.

	FY 11-12		FY 12-13	
48 Curriculum Tuition Increases curriculum tuition by $10 per credit hour in FY 2011-12 and an additional $2.50 per credit hour in FY 2012-13, and makes a corresponding General Fund reduction in anticipation of increased tuition receipts. For FY 2011-12, resident tuition will increase from $56.50 to $66.50 for residents and from $248.50 to $258.50 for nonresidents. Tuition for full-time resident students will increase by a maximum of $320 per year, from $1,808 to $2,128. For FY 2012-13, resident tuition will increase from $66.50 to $69 for residents and from $258.50 to $261 for nonresidents. Tuition for full-time resident students will increase by a maximum of an additional $80 per year, from $2,128 to $2,208.	($47,664,650)	R	($60,393,549)	R
49 Continuing Education Fee Increases continuing education fees by $5 per course, beginning in FY 2012-13, and takes a corresponding General Fund reduction in anticipation of increased tuition receipts. The new fees will be as follows: Classes 1-24 hours - $70, Classes 25-50 hours - $125, Classes 51+ hours - $180.			($664,509)	R
50 Funding Formula Eliminates categorical funding for Health Sciences ($16,842,300), Technical Education ($5,500,000), and Special High Cost Programs allotment for Heavy Equipment ($328,336), and restructures the curriculum and continuing education funding formulas to provide weighted funding based on the type of instruction, as directed in Section 8.3. Curriculum courses in high-cost areas such as healthcare, technical education, and lab-based science courses shall be weighted more heavily than other curriculum courses. Continuing education courses that lead to a third-party credential or certification and courses providing an industry-designed curriculum shall be weighted more heavily than other continuing education courses.	($22,670,636)	R	($22,670,636)	R
51 Basic Skills Reduces funding for basic skills education by 12.4%. Total funding remaining for the program will be $86,246,787, with $70,483,463 in State funding and $15,763,628 in federal funding.	($10,000,000)	R	($10,000,000)	R
52 Institutional and Academic Support Eliminates funding for one of the 5.5 general institutional positions in the institutional and academic support enrollment allotment funding formula for community colleges. Total funding remaining in this allotment will be $452.5 million.	($8,548,090)	R	($8,548,090)	R

	FY 11-12		FY 12-13	
53 Customized Training Reduces the Customized Training budget on a one-time basis. Total recurring funding for the program is $12,457,121; however, per G.S. 115D-5.1(f2), unexpended funds for the program do not revert and are instead carried forward to the next year. After this reduction, the total amount available for expenditure in the biennium is expected to be $31,710,340, or $15,855,170 per year. Of these funds, up to $75,000 may be used to support curriculum development, materials, and training for Small Business Centers.	($7,600,000)	NR		
54 BioNetwork Reduces funds for BioNetwork grants and centers by 6.6%. $205,582 will be reduced from BioNetwork centers (5% reduction) and $84,646 from grants to colleges (30% reduction). Total funding remaining for the program will be $4,106,056.	($290,228)	R	($290,228)	R
55 Minority Male Mentoring Reduces funding for the Minority Male Mentoring program by 10%. Total funding remaining for the program will be $810,000.	($90,000)	R	($90,000)	R
56 NC Military Business Center Reduces the categorical allotment to the NC Military Business Center at Fayetteville Technical Community College by 10%. Total funding remaining for the program will be $1,125,000.	($125,000)	R	($125,000)	R
57 Textile Technology Center Reduces the categorical allotment to the Textile Technology Center at Gaston College by 10%. Total funding remaining for this program will be $821,258.	($91,251)	R	($91,251)	R
58 Manufacturing Solutions Center Reduces the categorical allotment for the Manufacturing Solutions Center at Catawba Valley Community College by 10%. Total funding remaining for this program will be $514,904.	($57,212)	R	($57,212)	R
59 Haywood Regional High Technology Center Eliminates the categorical allotment for the Regional High Technology Center at Haywood Community College. The college will continue to receive regular FTE formula funding for the enrollment at the Center.	($582,383)	R	($582,383)	R
60 NC REAL Eliminates pass-through funding for NC Rural Entrepreneurship through Action Learning (NC REAL).	($250,000)	R	($250,000)	R

	FY 11-12		FY 12-13	
C. Student Aid Adjustments				
61 NC Community College Grant Program Reverts the existing fund balance of $5.7 million to the Escheats Fund and increases annual appropriations by $2.5 million for a total budget of $16.5 million per year. The funds for this item are shown in the Community College System - Trust - General Fund (Budget Code: 66801) section of this report.				
62 Tuition Waivers Eliminates tuition waivers for community college faculty and staff, NC Civil Air Patrol, and individuals engaged in civil preparedness activities. Colleges are permitted to use State and local funds to pay for tuition and registration fees for one course per semester for full-time faculty and staff.	($444,000)	R	($444,000)	R
D. Community Colleges System Office Adjustments				
63 System Office Positions Eliminates 19 positions in the Community Colleges System Office, including 9 vacant, 2 expected-to-be-vacant, and 8 filled positions. The positions are as follows: Executive Division - 3 vacant and 2 filled positions; IT & Workforce Development Division - 3 vacant, 2 expected-to-be-vacant, and 4 filled positions; Business and Finance Division - 1 vacant and 1 filled position; and Academic and Student Services Division - 2 vacant and 1 filled positions.	($1,265,975) -19.00	R	($1,265,975) -19.00	R
64 System Office Operating Funds Reduces operating funds for travel, training, information technology, and other expenses.	($265,417)	R	($265,417)	R
65 2+2 E-learning Initiative Reduces the budget of the 2+2 E-learning initiative by 13%. Total funding remaining for the program will be $653,000.	($97,000)	R	($97,000)	R
66 Receipt-supported Positions Shifts 3.5 positions from General Fund appropriations to receipts. Positions and receipt source are as follows: Accountant (2 positions) - indirect cost receipts; Education Program Director (1 position) - Proprietary School receipts; Education Consultant II (.25 position) and Education Program Director II (.25 position) - federal receipts.	($322,180) -3.50	R	($322,180) -3.50	R

	FY 11-12		FY 12-13	
67 GED Program Shifts the General Education Development (GED) program entirely to receipt support. Section 31.2 permits the State Board of Community Colleges to increase the fee assessed to individuals taking the GED exam. The current fee is $7.50. The fees will be used to support the costs of administering the tests, including scoring the tests and printing the GED certificates. A total of 2.5 positions will be shifted from appropriation to receipt support, including 2 GED & Adult High School Tech positions, and one-half of the Education Program Director position.	($208,533) -2.50	R	($208,533) -2.50	R
Total Legislative Changes	**($109,875,214)** **($7,600,000)**	**R** **NR**	**($117,475,214)**	**R**
Total Position Changes	-25.00		-25.00	
Revised Budget	**$985,000,000**		**$985,000,000**	

UNC System

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$2,887,492,464**		**$2,886,730,386**	
Legislative Changes				
A. Technical Adjustments				
68 Enrollment Growth Fully funds projected enrollment growth for FY 2011-12 at the University of North Carolina. The projected enrollment increase of 1.2% equates to an additional 2,337 full-time-equivalent (FTE) students. Total requirements will increase by $56,474,924, of which $10,656,801 will be funded by increased tuition receipts, for a net State appropriation of $46,818,123.	$46,818,123	R	$46,818,123	R
69 Hickory Metro Higher Education Center Transfers funds for the Hickory Metro Higher Education Center from the North Carolina Community College System budget to the budget for Appalachian State University.	$264,833	R	$264,833	R
B. Base Budget Adjustments				
70 Management Flexibility Reduction Mandates a management flexibility reduction for the UNC operating budget. As directed in Section 9.6, the UNC Board of Governors shall not allocate this reduction on an across-the-board basis to constituent institutions.	($413,987,494)	R	($423,172,261)	R
71 UNC Hospitals Subsidy Reduces the State subsidy to UNC Hospitals by 59% for two years. $18 million will remain available to UNC Hospitals after this reduction.	($26,011,882)	NR	($26,011,882)	NR
72 Center for Public Television Continuation Review Eliminates recurring funding for the Center for Public Television and provides nonrecurring funds with a twelve percent reduction for FY 2011-12. Restoration of recurring funding is subject to the findings of a legislative continuation review.	($11,997,888) $10,558,141	R NR	($11,997,888) -116.00	R

	FY 11-12		FY 12-13	
73 East Carolina School of Dentistry Operations Provides funds to the East Carolina School of Dentistry for new faculty and staff and operating costs to prepare for its first class of students, which will enroll in fall 2011, and to establish dental service learning centers throughout the State where faculty and students will serve patients. Of the new funds appropriated, approximately $3.4 million in FY 2011-12 and approximately $4.5 million in FY 2012-13 will be used for salaries, wages, and benefits. Total State appropriations will be $15 million in FY 2011-12 and $16.5 million in FY 2012-13.	$3,500,000 27.00	R	$5,000,000 39.00	R
74 Building Reserves Provides funds to operate new or renovated UNC buildings completed in FY 2011-12. Specifically, funds are for the housekeeping, maintenance, and security requirements for the added building square footage. The FY 2011-12 amount provides funding for a partial year; the FY 2012-13 appropriation represents the full-year cost.	$18,531,614 282.80	R	$29,233,551 282.80	R
75 NC A&T/UNC-G Joint School of Nanoscience and Nanoengineering Provides nonrecurring funds for the NC A&T/UNC-G Joint School of Nanoscience and Nanotechnology located the Gateway University Research Park in Greensboro. The program is designed to conduct research in areas such as drug design and delivery, nanobioengineering, and genetic screening.	$1,000,000	NR	$1,000,000	NR

	FY 11-12		FY 12-13	
C. Student Aid Adjustments				
76 UNC Need-based Financial Aid Program Shifts program funding to a higher proportion from the General Fund, due to diminishing Escheat Fund principal. In FY 2011-12, total funds available for the UNC Need-based Financial Aid program from all sources will be $301,446 lower than the FY 2011-12 base budget. In FY 2012-13, total funds available will be $4,956,358 lower, and students will be limited in the length of time they can receive the grant (Section 9.11). An additional $59.9 million in forward-funding is provided in FY 2011-12, to increase program stability (Section 9.9). Total funding includes: FY 2011-12 General Fund - $48,891,429 Escheat Fund - $127,354,154 Lottery Fund - $10,744,733 FY 2012-13 General Fund - $79,608,867 Escheat Fund - $32,122,242 Lottery Fund - $10,744,733 Note: Sections 5.4 and 9.8 appropriate funds from the Lottery Fund and Escheat Fund, respectively.	$37,891,429	R	$68,608,867	R
77 Student Incentive Grant Eliminates funding for the Student Incentive Grant, as federal matching funds have been eliminated. In addition to the funds shown here, $3,613,601 in Escheat Fund program funding is also reduced, for a total reduction of $4,414,428.	($800,827)	R	($800,827)	R
78 Nonresident Tuition Waivers Eliminates certain tuition waivers for nonresident students. These waivers include: - Special Talent undergraduate tuition waivers ($529,967); - Nonresident teachers ($984,443); and - Nonresident Prospective Teacher Scholars program ($378,230).	($1,892,640)	R	($1,892,640)	R
79 Academic Common Market Phases out funding for the Academic Common Market program, beginning in FY 2012-13. Based on tuition waived in FY 2009-10, it is estimated that $970,747 will remain in program funding in FY 2012-13.			($970,747)	R
80 Legislative Tuition Grant Reduces funds for the Legislative Tuition Grant (LTG) by 12.3% in FY 2011-12 and eliminates funding in FY 2012-13. This program will be replaced by the Need-based Scholarships for Students Attending Private Institutions of Higher Education, described below.	($7,167,171)	R	($58,269,681)	R

	FY 11-12		FY 12-13	
81 State Contractual Scholarship Fund Reduces funds for the State Contractual Scholarship Fund by 12.3% in FY 2011-12 and eliminates funding in FY 2012-13. This program will be replaced by the Need-based Scholarships for Students Attending Private Institutions of Higher Education, described below.	($5,645,326)	R	($45,896,963)	R
82 Other Private School Aid Reduces funds for Other Private School Aid by 12.3% in FY 2011-12 and eliminates funding in FY 2012-13. This program will be replaced by the Need-based Scholarships for Students Attending Private Institutions of Higher Education, described below.	($39,483)	R	($321,000)	R
83 Need-based Scholarships for Private College Students Provides funds for the newly established Need-based Scholarships for Students Attending Private Institutions of Higher Education, beginning in FY 2012-13. This program is described in Section 9.18.			$81,851,588	R
84 Private Medical School Aid Eliminates funding for the Private Medical School aid program. Students funded under this program are eligible to apply for the Board of Governors Medical School Loan program.	($1,279,000)	R	($1,279,000)	R
85 Principal Fellows Reduces program slots by 10% beginning in FY 2012-13. Total funding remaining for the program in FY 2012-13 will be $3,258,000.			($362,000)	R
86 Future Teachers Scholarship-loan Eliminates the remaining budget of the Future Teachers Scholarship-loan, which was abolished in 2009.	($455,000)	R	($455,000)	R
87 Health, Science, and Mathematics Scholarship-loan Shifts the portion of program funding previously provided from the Escheat Fund to General Fund support. Total program funding will remain at $1,922,779.	$1,100,000	R	$1,100,000	R
88 Board of Governors Medical Scholarship-loan Shifts the portion of program funding previously provided from the Escheat Fund to General Fund support. Total program funding will remain at $1,869,180.	$645,000	R	$645,000	R
89 Board of Governors Dental Scholarship-loan Shifts the portion of program funding previously provided from the Escheat Fund to General Fund support. Total program funding will remain at $939,160.	$450,239	R	$450,239	R
90 Nurse Education Scholarship-loan Shifts the portion of program funding previously provided from the Escheat Fund to General Fund support. Total program funding will remain at $867,756.	$800,000	R	$800,000	R

Senate Subcommittee on Education	FY 11-12		FY 12-13	
91 Teacher Assistant Scholarship Fund Shifts the portion of program funding previously provided from the Escheat Fund to General Fund support. Total program funding will remain at $814,714.	$600,000	R	$600,000	R
Total Legislative Changes	**($332,663,591)**	**R**	**($310,045,806)**	**R**
	($14,453,741)	**NR**	**($25,011,882)**	**NR**
Total Position Changes	309.80		205.80	
Revised Budget	**$2,540,375,132**		**$2,551,672,698**	

NC Community College System – Trust – General

Budget Code: 66801

	FY 2011-12		FY 2012-13	
Beginning Unreserved Fund Balance	**$5,919,657**		**$187,745**	
Recommended Budget				
Requirements	**$26,282,132**		**$26,282,132**	
Receipts	**$26,282,132**		**$26,282,132**	
Positions	**0.00**		**0.00**	
Legislative Changes				
Requirements:				
NC Community College Grant Program	$2,518,798	R	$2,518,798	R
Increases the annual appropriation from the Escheats Fund by $2.5 million, for a total program budget of $16.5 million per year.	$0	NR	$0	NR
	0.00		0.00	
Community College Grant Program Fund Balance	$0	R	$0	R
Appropriates the program's fund balance, which will be transferred to the Escheats Fund.	$5,731,912	NR	$0	NR
	0.00		0.00	
Correction to Base Budget	($11,648,356)	R	($11,648,356)	R
Corrects an error in the Governor's recommended budget for the total requirements in Budget Code 66801, Fund 6102.	$0	NR	$0	NR
	0.00		0.00	
Subtotal Legislative Changes	**($9,129,558)**	R	**($9,129,558)**	R
	$5,731,912	NR	**$0**	NR
	0.00		0.00	
Receipts:				
NC Community College Grant Program	$2,518,798	R	$2,518,798	R
Increases receipts from the Escheats Fund by $2.5 million. Total program receipts will be $16.5 million per year.	$0	NR	$0	NR

	FY 2011-12		FY 2012-13	
Correction to Base Budget	($11,648,356)	R	($11,648,356)	R
Corrects an error in the Governor's recommended budget for the fund balance receipts in Budget Code 66801, Fund 6102.	$0	NR	$0	NR
Subtotal Legislative Changes	**($9,129,558)**	R	**($9,129,558)**	R
	$0	NR	**$0**	NR
Revised Total Requirements	**$22,884,486**		**$17,152,574**	
Revised Total Receipts	**$17,152,574**		**$17,152,574**	
Change in Fund Balance	**($5,731,912)**		**$0**	
Total Positions	**0.00**		**0.00**	
Unappropriated Balance Remaining	**$187,745**		**$187,745**	

HEALTH
&
HUMAN SERVICES
Section G

Health and Human Services

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	$4,927,739,648		$4,928,125,764	
Legislative Changes				
(1.0) Division of Child Development				
1 **Pre-kindergarten Funds Transfer** Transfers $65,011,651 from the Department of Public Instruction to Department of Health and Human Services to operate a pre-kindergarten program within the Division of Child Development. Additionally, lottery funds will be allocated in the amount of $63,135,709 for the continued payment of a high quality pre-kindergarten program. Sec. 10.7	$65,011,651	R	$65,011,651	R
2 **TANF Funding** Replaces State funds for child care subsidy with one time TANF funds. This reduction does not result in loss of services. Sec. 10.60	($6,352,644)	NR	($6,352,644)	NR
3 **Smart Start** Reduces the Smart Start budget by 20%, leaving $150M available to support activities. Sec. 10.5	($37,600,000)	R	($37,600,000)	R
4 **TEACH Program** Swaps federal Child Care Development Fund Block Grant with state funds for the program. Sec. 10.60	($3,800,000)	R	($3,800,000)	R
5 **Social Services Administrative Support** Reduces the allowance for County Departments of Social Services administrative allowance from 5% to 4%. This leaves $16.4M County Departments of Social Services may use to support administrative costs. Sec. 10.60	($3,195,581)	R	($3,195,581)	R
6 **Post-Secondary Education** Reduces child care subsidy funding available for post-secondary education. This reduction will change the existing policy from allowing individuals to receive subsidy for 24 months to 20 months. The combination of changing various policies (items 6-9) will result in a net reduction of $9.7M, leaving approximately $54M. Sec. 10.1 (c)(5)	($7,052,797)	R	($7,052,797)	R

	FY 11-12		FY 12-13	
7 More At Four Match Discontinues payment for the instructional day of More At Four students by child care subsidy funds. The combination of changing various policies (items 6-9) will result in a net reduction of $9.7M, leaving approximately $54M.	($1,305,008)	R	($1,305,008)	R
8 Facility Registration Fees Discontinues payment for child care centers' registration fees by child care subsidy funds. The combination of changing various policies (items 6-9) will result in a net reduction of $9.7M, leaving approximately $54M. Sec. 10.1 (c)(4)	($360,570)	R	($360,570)	R
9 Transportation Services Discontinues payment for transportation services with subsidy funds. The combination of changing various policies (items 6-9) will result in a net reduction of $9.7M, leaving approximately $54M. Sec. 10.1 (c)(4)	($1,001,718)	R	($1,001,718)	R
(2.0) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services				
10 Management Funding Reduction Reduces community service funds by 2%; this reduction continues a non-recurring reduction made in FY2010-11. These funds have not been used to pay for services. There is currently $350M in state funding to pay for services managed through Local Management Entities.	($7,180,807)	R	($7,180,807)	R
11 Advocacy Positions Eliminates seven vacant advocacy positions located throughout facilities and/or community settings. There are 56 positions remaining after this reduction; this is an 11% reduction in number of positions for advocacy.	($158,045) -7.00	R	($158,045) -7.00	R
12 Community Services Funds Reduces Community Services funds by $20M for FY2011-12. This reduction combined with the Management Funding Reduction leaves $323M of state funds available for purchase of services through Local Management Entities. This reduction is an 8% reduction in this budget. Sec. 10.11(a)	($20,000,000)	NR		
13 Child and Family Support Teams Eliminates funding for coordinator positions located in 15 Local Management Entities. These positions have supported the Child and Family Team Pilot Program. Funds within Division of Social Services for this pilot is also being eliminated within this budget.	($523,638)	R	($523,638)	R

	FY 11-12		FY 12-13	
14 Community Services Funds - Swap Replaces Community Services Funds with Local Management Entities' Fund Balance available for FY2011-12. This reduction/swap is to come from the undesignated/unreserved fund balances and not further reduce community services. Sec. 10.11 (d)	($25,000,000)	NR		
15 Information Technology Reserve Eliminates the funding for the information technology account that is used to fund the facilities' information technology systems upgrade.	($5,100,390)	R	($5,100,390)	R
(3.0) Division of Central Management and Support				
16 Division of Information Resource Management - Contracts Eliminates recurring funding for the DIRM Contracts. Funding for FY2012-13 is pending the findings and recommendations of a Continuation Review.	($5,599,390) $5,599,390	R NR	($5,599,390)	R
17 Community Health Centers Reduces funding available for grants to community health centers. Grants are awarded on a multi-year basis; this reduction represents the new grants to be awarded in FY2011-12. There will be $5M remaining for grants.	($1,452,527)	R	($1,452,527)	R
18 Loan Repayment Program - Federal Receipts Replaces state funds with increased federal funds available for the loan repayment program. The total program has approximately $1.4M in funds.	($458,395)	R	($458,395)	R
19 Information Resource Management - Operating Budget Reduces excess operating funds within the Division of Resource Management.	($550,556)	R	($550,556)	R
20 Position Eliminations - Office of the Controller Eliminates two positions, one due to transfer of the Residential Schools to Department of Public Instruction and one within Purchase of Medical Care Section.	($76,215) -2.00	R	($76,215) -2.00	R
21 Department Wide Administrative Efficiencies Reduces administrative funds and positions available within the Department of Health and Human Services. Administrative cost savings should include the co-location of various regional and field offices to achieve savings in leased space costs.	($1,869,435) -25.00	R	($1,869,435) -25.00	R
22 Non-profit Reductions Reduces grants-in-aid and contract funding for non-profits by $5M. There is currently $75M in state funds for non-profits and this reduction represents 6.6% of total state funding.	($5,000,000)	R	($5,000,000)	R

Senate Subcommittee on Health and Human Services	FY 11-12		FY 12-13	
23 Migrant Fee for Service Program Reduces the program funds for the Migrant Purchase of Medical Care Program; the federal funds will continue. There remains approximately $2.8M in this program.	($736,145)	R	($736,145)	R
24 NC Care Line Eliminates funding and positions for the NC Care Line.	($380,478) -11.00	R	($380,478) -11.00	R
25 Information Resource Management - Conversion of Contracts to Employees Reduces the contractual services line item within The Division of Resource Management. This reduction represents cost-savings realized from converting 78 Information Technology Contractors to state employees.	($1,360,982)	R	($1,360,982)	R
26 Position Eliminations Eliminates vacant positions. There are over 1,600 positions vacant.	($7,606,000) -250.00	R	($7,606,000) -250.00	R
27 Budgeting Receipts - Information Resource Management Replaces state appropriations within The Division of Resource Management ($410,225) and throughout Central Management and Support ($151,000) with over-realized receipts.	($561,225)	R	($561,225)	R
(4.0) Division of Public Health				
28 Division of Environmental Health Transfer Transfers $14,296,540 from the Department of Environment and Natural Resources to the Department of Health and Human Services to operate various programs and activities that comprised the Division of Environmental Health. In effecting this transfer, the following activities are being eliminated: 1) Public Health Pest Management Section, and 2) the Private Well Program, WaDE Program, and Quality Assurance of the On-Site Water Protection Section.				
29 Early Intervention Requires the Division of Public Health to implement several administrative efficiencies, including: 1) elimination of 11 vacant positions; 2) reducing the contract to the Charlotte-Child Development Service Agency (a reduction that can be made up by its implementing Medicaid cost-settlement); and 3) other administrative efficiencies. The program will continue to be funded at nearly $80 million annually, with a combination of federal and state funds.	($3,118,046) -11.00	R	($3,118,046) -11.00	R
30 Department of Health and Human Services - Chemical Testing Unit Shifts a portion of funds for position number 60039654 from Highway Fund receipts to other receipts within the Department of Health and Human Services budget, and reduces funding for purchased services by $6,280.				

	FY 11-12		FY 12-13	
31 Office of Minority Health Reduces the administrative staff within the Office of Minority Health with little or no impact on the Division's ability to direct this program or provide technical assistance to Local Health Departments in striving to eliminate health disparities.	($302,262) -4.00	R	($302,262) -4.00	R
32 Consolidate Healthy Carolinians and Health Education Integrates the activities of the Office of Healthy Carolinians and Health Education into the duties of other personnel in the Division of Public Health. The Division will continue to provide technical assistance to local communities in support of the Governor's Task Force on Healthy Carolinians.	($571,447) -10.00	R	($571,447) -10.00	R
33 Local Health Department Accreditation Continues funding for the Accreditation program at a level comparable to FY 2010-11 ($375,000). This allows the program to be funded at a maintenance level.	($400,000)	R	($400,000)	R
34 Health & Wellness Trust Fund Transfer to DHHS Transfers $32,904,411 from funds available to the Health & Wellness Trust Fund to the Department of Health and Human Services as follows: -- $22,000,000 shall be used to administer the grants associated with the following programs and initiatives; Teen Tobacco Prevention, CheckMeds, Medication Assistance Program, and Obesity Prevention. -- $10,000,000 shall be used to reduce the total savings required to be achieved for the Medicaid program by Community Care of North Carolina -- The remainder shall be used to reduce the Medicaid Provider Rate cut.	$32,904,411	NR		
(5.0) NC Health Choice				
35 Modify Health Choice Services Modifies and ensures the clinical appropriateness of several Health Choice Services, including: 1) Elimination of long-term care, hearing services, and non-emergency transportation; 2) Reduction of dental benefits; and 3) Assurance of evidence-based treatment.	($650,000)	R	($900,000)	R
36 Benchmark Health Choice to Medicaid Benchmarks Health Choice services to Medicaid including the amounts, types, and reimbursement rates. The exception is that Health Choice will not be benchmarked to Medicaid's Early Periodic Screening, Diagnosis, and Treatment Program.	($125,000)	R	($350,000)	R
37 Targeted Rate Adjustments Adjusts Medicaid provider reimbursement rates. The Division of Medical Assistance will adjust provider reimbursement rates that are above regional rates, or where analysis indicates an adjustment is warranted and appropriate.	($225,000)	R	($250,000)	R

	FY 11-12		FY 12-13	
38 Strengthen and Restructure Program Integrity Budgets savings to be realized by the Division of Medical Assistance as a result of restructuring and modernizing its program integrity and fraud and abuse operations to enhance recoveries and avoid overpayments. Complementary savings are expected in the Health Choice program.	($500,000)	R	($666,667)	R
39 Care Coordination through CCNC Reduces State costs in the Division of Medical Assistance by re-establishing the care and utilization management services of the Community Care of North Carolina program-both Networks and Physician of Health Choice recipients. A per member per month payment will be made to physicians and networks. The cost will be offset by better management of services and improved clinical outcomes which lead to reduced state costs.	($4,255,235)	R	($4,489,274)	R
40 Health Choice Adjustment Adjusts funding for Health Choice to reflect the changes in the consumption and mix of services, and payment to cost-settled health care providers. The policy of open enrollment will continue in FY 2011-12 and is projected to increase enrollment to approximately 148,203 children. Open enrollment will continue in FY 2012-13, but at a moderated rate.	($3,166,254)	R	$2,000,000	R
(6.0) Division of Medical Assistance				
41 Medicaid Provider Assessments Levies an assessment of up to 5.5%, consistent with Federal Regulations, on willing Medicaid healthcare providers. Currently, the list of providers includes: Hospitals, Critical Access Behavioral Health Agencies (CABHA), and Community Alternative Programs for Mentally Retarded (CAP/MR). A portion of the assessment will be retained by the State. The current 5.5% assessment on Nursing Homes is not affected.	($60,183,120)	R	($62,798,614)	R
42 Adjust Assessment on Nursing Facilities to 6% Adjusts the assessment rate on Nursing Facilities upward to 6.0%, as allowed by Federal regulations, effective October 1, 2011, by adjusting the appropriate totals accordingly.	($7,926,122)	R	($10,568,163)	R
43 Implement Pregnancy Home Model Budgets savings to be achieved from the March 2011 implementation of a collaborative effort between Community Care of North Carolina Networks and Local Health Departments to improve the quality of perinatal care and ensure that high-risk pregnant women receive the care and case management required. The improved birth outcomes, especially preventing premature births, will reduce state expenditures incurred by the Division of Medical Assistance.	($528,960)	R	($3,457,596)	R

	FY 11-12		FY 12-13	
44 Health Homes for Chronically Ill Budgets revenue from the increased federal matching rate for the Health Homes for Chronically III Program. The Division of Medical Assistance is taking advantage of the two-year Federal program to enhance comprehensive care management for Medicaid recipients with co-occurring illnesses, including a chronic health condition and severe and persistent mental health condition. The Federal matching rate for this program, during the two-years, is 90%, versus the current rate of approximately 65%.	($16,146,384)	NR	($24,739,541)	NR
45 Strengthen and Restructure Program Integrity Budgets the anticipated savings from the Division of Medical Assistance efforts to reduce, if not eliminate, fraud and abuse in the Medicaid program by restructuring and modernizing current policies and efforts. Through policy and staffing changes and technology improvements, state administrative costs will be reduced, over payments avoided and recovery-of-funds improved.	($19,200,000) -30.00	R	($28,000,000) -40.00	R
46 Generic Substitution for Off-Patent Drugs Budgets anticipated savings in FY 2012-13. In the next 12 months several brand-name drugs are scheduled to go off patent, leading to generic drug substitution savings in FY 2012-13.			($7,000,000)	R
47 Modify Pharmacy Services Budgets savings to be realized by the Division of Medical Assistance through several actions, including: 1) Better management of drug rebates, 2) Ensuring Medicare Part D correctly reimburses Medicaid, 3) Elimination of automatic refills, and 4) For flexibility to modify dispensing fees.	($10,845,441)	R	($14,436,600)	R
48 Modify Generic Prescription Dispensing Rates Revises generic drug dispensing rates to increase the rate of generic drugs within the Medicaid Program.	($15,000,000)	R	($24,000,000)	R
49 Behavioral Health Medicaid 1915 b/c Waiver Expands the capitated behavioral health program to additional Local Management Entities (LMEs).	($10,537,931)	R	($52,551,082)	R
50 DHHS Savings Through Community Care of North Carolina (CCNC) Budgets savings to be achieved by DHHS, in conjunction with CCNC Networks and North Carolina Community Care, Inc., through the cooperation of Medicaid health care providers. To the extent these savings are not achieved, DHHS is to undertake whatever actions necessary to affect the savings, including: 1) Reducing provider rates, and 2) Eliminating or reducing the level or duration of optional Medicaid services.	($90,000,000)	R	($90,000,000)	R

Senate Subcommittee on Health and Human Services	FY 11-12		FY 12-13	
51 Modify Optional and Mandatory Services Budgets savings to be achieved by the Division of Medical Assistance through adjustments to mandatory and optional Medicaid services. These changes include the following services: Optical, Durable Medical Equipment, Specialized Therapies, Home Health, Dental, and a variety of other services. In the event, these savings are not fully achieved, the elimination of optional service requirements may be required.	($16,508,903)	R	($22,072,343)	R
52 Eliminate Inflationary Increases Eliminates automatic inflation increases for Medicaid providers. The Division of Medical Assistance is not to authorize any inflationary increases to Medicaid provider rates during the 2011-13 biennium, except as provided for in Section 10.43.	($62,853,775)	R	($130,874,505)	R
53 Adjust Provider Rates Reduces Medicaid provider reimbursement rates. The Division of Medical Assistance is to reduce Medicaid provider rates by 2%, except as provided for in Section 10.37.	($46,420,718)	R	($46,458,260)	R
54 Medicaid Rebase Rebases the Medicaid budget to adjust for changes in the number of Medicaid recipients, utilization or consumption of services, mix of services being consumed, inflation for cost-settled providers, and changes to the Federal Medical Assistance Percentage (FMAP).			$109,693,468	R
(7.0) Division of Health Service Regulation				
55 Nursing Home Licensure and Certification Funds Replaces State funds with federal receipts in the Nursing Home Licensure and Certification Section on a non-recurring basis. The receipts come from civil monetary penalties assessed against nursing homes.	($1,792,559)	NR	($1,792,559)	NR
(8.0) Division of Social Services				
56 Child and Family Team Pilot Elimination Eliminates pilot funding for local departments of social services that partially supports Child and Family Team positions. Child and Family Teams will continue to work in schools and DSS will continue to provide training and technical assistance to local departments of social services in order for the initiative to continue.	($420,804)	R	($420,804)	R
57 Replace State Funding for Child Protective Services Replaces state funds with federal block grant funds to support Child Protective Services. County departments of social services will receive Social Services Block Grant (SSBG) funds in lieu of state general funds. Sec. 10.60 (a)	($5,040,000)	R	($5,040,000)	R

	FY 11-12		FY 12-13	
58 Eliminate Special Assistance Intervention Team Eliminates the Special Assistance Intervention team, whose purpose was to provide special assistance and intervention services for low performing counties around child welfare services. The model has not been effective and positions are vacant.	($103,997) -2.00	R	($103,997) -2.00	R
59 Eliminate State General Funds to Local Departments of Social Services Continues the reduction in general funds to county departments of social services from the previous biennium. This action eliminates the State general fund contribution to county social services departments to offset the cost of administering public assistance programs. The administrative cost of these programs is shared evenly by the federal and county governments.	($5,473,985)	R	($5,473,985)	R
60 Use Social Services Block Grant (SSBG) to Support Adult Protective Services Replaces State funds with federal funds by requiring all counties to use federal SSBG funds to provide adult protective services. This will require 52 counties to begin using their SSBG allocations to provide this mandated service. Sec. 10.60 (a)	($2,000,000)	R	($2,000,000)	R
61 Eliminate State Abortion Fund Eliminates funding for the State Abortion Fund. Sec. 10.53	($50,000)	R	($50,000)	R
62 Reduce NC Reach Scholarship Funds Reduces the budget for the NC Reach post-secondary education program by 50%, $1,584,125, maintaining the program at the FY 2010-11 funding level. Sec. 10.54 (a)	($1,584,125)	R	($1,584,125)	R
63 Replace Division Admin Funds with Federal Block Grant Replaces State funding for the Division of Social Services administrative costs with federal TANF Block Grant funds. Sec. 10.60 (a)	($1,389,084)	R	($1,389,084)	R
(9.0) Division of Aging and Adult Services				
64 Replace Funding for Long-Term Care Constituent Advocate Program Replaces State funds with federal Civil Monetary Penalty proceeds to support the Long-Term Care Ombudsman Program, which advocates for the elderly.	($200,000)	R	($200,000)	R

Senate Subcommittee on Health and Human Services	FY 11-12		FY 12-13	
65 **Eliminate Volunteer Program Development** Eliminates funds for the Volunteer Development Program, one of 18 services funded through the Home and Community Care Block Grant. Currently, only 11 counties elect to provide this service.	($200,000)	R	($200,000)	R
(11.0) Division of Vocational Rehabilitation				
66 **Eliminate Recreational Therapists Services** Eliminates recreational therapist services available in only five cities across the state. Four of the five positions to be eliminated are vacant.	($284,501) -5.00	R	($284,501) -5.00	R
67 **Reduce Independent Living Program** Reduces State funding for independent living services by 9%. Services will continue to be prioritized so as to avoid institutional care.	($1,774,021)	R	($1,774,021)	R
68 **Reduce Basic Support Program** Replaces a portion of the State funds for the Basic Support Program with unspent federal funds.	($2,067,928)	NR	($2,067,928)	NR
Total Legislative Changes	**($399,756,982)** **($32,855,714)**	R NR	**($438,010,159)** **($34,952,672)**	R
Total Position Changes	-357.00		-367.00	
Revised Budget	**$4,495,126,952**		**$4,455,162,933**	

Health & Wellness Trust Fund

Budget Code: 23460

	FY 2011-12		FY 2012-13	
Beginning Unreserved Fund Balance	**$32,904,411**		**$0**	
Recommended Budget				
Requirements	**$0**		**$0**	
Receipts	**$0**		**$0**	
Positions	**0.00**		**0.00**	
Legislative Changes				
Requirements:				
Health & Wellness Trust Fund to General Fund	$0	R	$0	R
Transfers the $32,904,411 in Health and Wellness Trust Fund to the General Fund for use by the Department of Health and Human Services.	$32,904,411	NR	$0	NR
	0.00		0.00	
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$32,904,411	NR	**$0**	NR
	0.00		0.00	
Receipts:				
Health & Wellness Trust Fund to General Fund	$0	R	$0	R
Transfers the $32,904,411 in Health and Wellness Trust Fund to the General Fund for use by the Department of Health and Human Services.	$0	NR	$0	NR
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$0	NR	**$0**	NR

	FY 2011-12	FY 2012-13
Revised Total Requirements	$32,904,411	$0
Revised Total Receipts	$0	$0
Change in Fund Balance	($32,904,411)	$0
Total Positions	0.00	0.00
Unappropriated Balance Remaining	$0	$0

NATURAL & ECONOMIC RESOURCES
Section H

Agriculture and Consumer Services

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	$61,754,014		$61,754,014	
Legislative Changes				
Department-wide				
1 **Cell Phones**	($41,805)	R	($41,805)	R
Reduces General Fund appropriation for cell phones across the Department by 25%. The Department is to reduce the actual number of phones by this percentage as well.				
2 **Longevity**	($25,000)	R	($25,000)	R
Reduces General Fund appropriation for longevity across the Department to reflect expected longevity needs.				
3 **Motor Fleet Management**	($127,726)	R	($127,726)	R
Reduces General Fund appropriation for Motor Fleet Management expenditures across the Department by 10%. The Department is to reduce the actual number of Motor Fleet Management vehicles by 10% as well.				
4 **Vacant Positions and Salary Reserve**	($824,249)	R	($824,249)	R
Eliminates 12 vacant positions and fund shifts one position. Of the eliminated positions, 11 were proposed by the Department and one had been vacant for more than one year as of March 2011. The reduction includes salaries and benefits for these positions and salary reserve. Positions eliminated include:	-13.00		-13.00	

60011803 Research Tech	$34,923
60011834 Technology Support Analyst	$77,114
60011858 Lithographic Press Operator III	$58,413
60011880 Food Compliance Officer I	$50,736
60011976 Food Inspector	$47,631
60012083 Veterinarian	$126,818
60012226 Veterinary Laboratory Asst I	$32,834
60012592 Research Spec	$49,593
60012527 Processing Assistant IV	$40,649
60012095 Veterinarian	$106,463
60012094 Livestock Compliance Officer	$67,706
60011911 Chemist	$42,294
Salary Reserve	$12,111

Fund shifts one position to the Pesticide Environmental Trust Fund:

60012056 Environmental Toxicologist	$76,964

5 Forest Resources Transfers the Division of Forest Resources from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.				
6 Soil & Water Conservation Transfers the Division of Soil and Water Conservation from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.				
7 Sleep Products Section Transfers the Sleep Products Section of the Division of Environmental Health within the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services. The Sleep Products Section has eight FTE; the $630,337 budget is entirely supported by receipts.				
Reserves & Transfers				
8 S.B. 109 Funds Provides $2.4 million to the Department to restore funds taken to meet the requirements of S.L. 2011-15 (S.B. 109).	$2,400,000	NR		
9 Tobacco Trust Fund Provides General Fund appropriation for the operation of the Tobacco Trust Fund (TTF). Beginning in FY 2011-12, MSA funds are transferred to the General Fund, not directly to TTF. These funds shall be used for administration, grants, and all costs associated with the enforcement of the MSA formerly covered by payments from both TTF and the Health & Wellness Trust Fund.	$2,000,000	NR	$2,000,000	NR
Administration				
10 Ag. Development and Farmland Preservation Trust Fund Reduces funding for the Agricultural Development and Farmland Preservation Trust Fund by 15%. This leaves $1.7 million to be appropriated to the Trust Fund.	($300,000)	R	($300,000)	R
11 Cooperative Grading Service Charge Reduces General Fund support for the General Administration Division, replacing these funds with $20,000 paid by the Cooperative Grading Program for budgeting, accounting, and HR services provided by the Division.	($20,000)	R	($20,000)	R
12 Ag in the Classroom Transfers the appropriation for Ag in the Classroom to Commerce State-Aid. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	($22,077)	R	($22,077)	R

	FY 11-12		FY 12-13	
13 FFA Foundation Transfers the appropriation for the FFA Foundation to Commerce State-Aid. A 15% reduction will be taken when the funds are added into the Commerce State-Aid section, leaving $37,531. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	($44,154)	R	($44,154)	R
Agronomics				
14 Soil Testing Fees Implements two fees related to soil testing: (1) A fee for soil tests on samples sent to the Department from outside of North Carolina and (2) a fee for expedited soil testing. The fee for out-of-state soil tests shall not be less than $5. The expedited service will be for bulk samples and the fee shall not be less than $100.	($50,000)	R	($50,000)	R
15 Lime Tonnage Fee Replaces General Fund appropriation with an increase in the lime tonnage fee. The fee will be increased from $0.10 per ton to $0.50 per ton. All receipts from this increase will be used to support the soil testing program in the Agronomic Services Division. This fee has not been increased since 1979.	($250,000)	R	($250,000)	R
Food & Drug				
16 Antifreeze Registration Increases the fee for antifreeze registration from $250 to $500 for each brand of antifreeze. This fee has not been increased since 1979.	($75,000)	R	($75,000)	R
17 Grade "A" Milk Transfers the Grade "A" Milk program from the Division of Environmental Health within the Department of Environment and Natural Resources to the Division of Food & Drug Protection within the Department of Agriculture and Consumer Services.	$811,175 7.00	R	$811,175 7.00	R
Food Distribution				
18 Administrative Position Eliminates one administrative position within the Food Distribution Division. The reduction includes salaries and benefits for this position. 60012718 Office Assistant III $43,235	($43,235) -1.00	R	($43,235) -1.00	R
19 Position to Federal Receipts Transfers funding for one Storeroom Manager from General Fund support to federal receipts. The reduction includes salaries and benefits for this position. 60012736 Storeroom Manager $48,608	($48,608) -1.00	R	($48,608) -1.00	R

	FY 11-12		FY 12-13	
Markets				
20 **Piedmont Farmers Market** Eliminates General Fund support for the Piedmont Farmers Market. This market will now operate as a self-supporting enterprise budgeted in an Enterprise Fund like the Raleigh Farmers Market.	($22,000)	R	($22,000)	R
21 **Lumberton Ag Center and Farmers Market** Eliminates recurring funding for the Lumberton Agricultural Center and Farmers Market and makes the funding nonrecurring for FY 2011-12. The Fiscal Research Division will perform a Justification Review of this program.	($362,230) $362,230 	R NR 	($362,230) -6.00	R
22 **International Marketing** Provides $500,000 NR for international marketing of North Carolina agricultural products.	$500,000	NR		
Plant Industry				
23 **Over-realized License Revenue** Directs the Plant Industry Division to budget over-realized receipts from business licenses in the Seed and Fertilizer Section.	($50,000)	R	($50,000)	R
24 **Plant Conservation** Eliminates General Fund support for the Plant Conservation program and transfers the program to receipts provided by the Natural Heritage Trust Fund. This transfer fund shifts the salary and benefits of one position: 60012489 Plant Ecologist $68,481	($68,481) -1.00	R	($68,481) -1.00	
Research Stations				
25 **Research Grant Funds** Reduces General Fund support for the research stations by $50,000 and directs the Division to increase receipts from University research grants accordingly. Currently few researchers provide funding to the research stations for the services they provide. Researchers are encouraged to include operating support for the research stations in grant proposals and to compensate the research stations for the services they provide.	($50,000)	R	($50,000)	R
Vet Services				
26 **Administrative Position** Eliminates one administrative position from the Division of Veterinary Services. The Division is to determine which position to eliminate. The reduction reflects the average salary and benefits of an administrative position within the Division.	($51,990) -1.00	R	($51,990) -1.00	R

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
27 **License Fees** Increases the license fee for pet shops, public auctions, boarding kennels, and dealers as defined in G.S. 19A-23 from $50 to $75. This fee was last increased in 1989.	($10,000)	R	($10,000)	R
28 **Animal Welfare Services** Provides two positions and funds for the Animal Welfare Services program to support operations.	$120,000 2.00	R	$120,000 2.00	R
Total Legislative Changes	**($1,555,380)**	**R**	**($1,555,380)**	**R**
	$5,262,230	**NR**	**$2,000,000**	**NR**
Total Position Changes	-8.00		-14.00	
Revised Budget	**$65,460,864**		**$62,198,634**	

Labor

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	$16,842,679		$16,842,679	
Legislative Changes				
Department-Wide				
29 **Cell Phones** Reduces General Fund appropriation for cell phones across the Department by 25%. The Department is to reduce the actual number of phones by this percentage as well.	($10,074)	R	($10,074)	R
30 **Motor Fleet Management** Reduces General Fund appropriation for Motor Fleet Management expenditures across the Department by 10%. The Department is to reduce the actual number of Motor Fleet Management vehicles by this percentage as well.	($22,635)	R	($22,635)	R
Administration				
31 **Operating Budget** Reduces the operating budget for the Administration Division.	($81,241)	R	($81,241)	
32 **IT Operating Budget** Reduces the IT operating budget for the Administration Division.	($255,000)	R	($255,000)	R
33 **Vacant Position** Eliminates the salary and benefits of 1.0 vacant position: 60012904 Labor Library Assistant $48,414	($48,414) -1.00	R	($48,414) -1.00	R
Occupational Safety and Health				
34 **Agricultural Safety & Health Vacant Position and Salary Reserve** Eliminates the salary and benefits of 1.0 vacant Agricultural Safety & Health position and department-wide salary reserve: 60013261 Agricultural Safety & Health Officer $53,579 Department-wide salary reserve $25,760	($79,339) -1.00	R	($79,339) -1.00	R
Standards and Inspections				
35 **Apprenticeship Bureau** Transfers $350,000 in Workforce Investment Act funds from the Department of Commerce to the Department of Labor to be used for the recurring operating costs of the Apprenticeship Program.				

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
36 Mine & Quarry Vacant Position and Salary Reserve	($81,560)	R	($81,560)	R
Eliminates salary and benefits of 1.0 vacant position in the Mine & Quarry Bureau and department-wide salary reserve:	-1.00		-1.00	
60012967 Mine Safety & Health Representative $69,900				
Department-wide salary reserve $11,660				
37 Employment Discrimination Bureau Vacant Position	($83,622)	R	($83,622)	R
Eliminates the salary, benefits, salary reserve, and operating costs associated with 1.0 vacant position:	-1.00		-1.00	
60013056 Employment Discrimination Investigator $70,116				
Salary reserve $7,981				
Operating costs $5,525				
38 Positions to Receipts and Reduction to Department-wide Salary Reserve	($343,907)	R	($343,907)	R
Shifts the salary and benefits of 5.0 positions to receipt support:	-5.00		-5.00	
60013001 Executive Assistant I $56,190				
60012894 Accounting Technician $45,991				
60012897 Administrative Assistant I $53,488				
60012899 Accounting Technician $52,688				
60012982 Deputy Commissioner Standards & Insp. $114,402				
Department-wide Salary Reserve $21,148				
Total Legislative Changes	**($1,005,792)**	R	**($1,005,792)**	R
Total Position Changes	-9.00		-9.00	
Revised Budget	**$15,836,887**		**$15,836,887**	

Environment & Natural Resources

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	$188,972,401		$188,972,401	

Legislative Changes

(1.0) Department-wide

39 Cell Phones ($112,250) R ($112,250) R

Reduces General Fund appropriation for cell phones across the Department by 25%. The Department is to reduce the actual number of phones by this percentage as well.

40 Longevity ($100,000) R ($100,000) R

Reduces General Fund appropriation for longevity across the Department to reflect expected longevity needs.

41 Filled and Vacant Positions ($1,099,424) R ($1,099,424) R

Eliminates funding for the salaries and benefits of 11.22 positions and associated operating costs across the Department of Environment and Natural Resources: -11.22 -11.22

60035980	Artist Illustrator II	(1.00)	$53,067
60035995	Personnel Analyst I	(1.00)	$50,036
60035987	Workers' Comp Program Manager	(1.00)	$69,074
60035072	Environmental Program Supv II	(0.22)	$20,436
60035963	Environmental Specialist	(1.00)	$57,919
60035956	Environmental Specialist	(1.00)	$71,954
60036076	GIS Specialist	(1.00)	$89,804
60035006	Nat. Science Curator I	(1.00)	$42,294
60033392	Design Tech.	(1.00)	$42,498
60036022	Business Officer	(1.00)	$59,883
60032483	Engineer	(1.00)	$61,444
69932572	Deputy CIO	(1.00)	$116,417
	Operating Costs		$364,598

42 Motor Fleet Management ($265,029) R ($265,029) R

Reduces General Fund appropriation for Motor Fleet Management expenditures across the Department by 15%. The Department is to reduce the actual number of Motor Fleet Management vehicles by 15% as well.

43 Funds for S.B. 709

Provides $100,000 NR for FY 2011-12 to the Department, contingent upon the adoption of S.B. 709, "Energy Jobs Act," in order to fulfill the requirements of the bill. These funds shall come from the Mercury Pollution Prevention Fund in the Department of Environment and Natural Resources.

	FY 11-12		FY 12-13	
44 Funds for H.B. 242 Provides $100,000 NR for FY 2011-12 to the Department, contingent upon the adoption of H.B. 242, "Nat'l Gas/ Bonds/ Fees/ Studies," in order to fulfill the requirements of the bill. These funds shall come from the Mercury Pollution Prevention Fund in the Department of Environment and Natural Resources.				
(1.0) Reserves & Transfers				
45 Clean Water State Revolving Fund Directs the Department to use $5,567,165 of its loan origination fee fund to provide the 20% State match needed to draw down the maximum available federal funds for the Clean Water State Revolving Fund for FY 2011-12. The US EPA has given the Department permission to use these funds for FY 2011-12 only.				
46 Drinking Water State Revolving Fund Provides funding to meet the 20% State match requirement for drawing down the maximum available federal funds for the Drinking Water State Revolving Fund for FY 2011-12.	$7,118,600	NR		
47 Nature Research Center Operating Reserve Provides funds for the operations of the Nature Research Center building. The Center is scheduled to open in the spring of 2012. These funds are to be transferred to the Department of Administration for utilities, custodial services, maintenance, pest control, etc.	$417,498	R	$1,253,590	R
48 Nature Research Center Program Operating Reserve Provides the operating funds and staff required to open the Nature Research Center in the spring of 2012.	$1,465,460 22.00	R	$2,269,798 22.00	R
49 Green Square Office Building Operating Reserve Provides funds for the operations of the Green Square office building, which DENR plans to move into during the summer of 2011. These funds are to be transferred to the Department of Administration for utilities, custodial services, maintenance, pest control, etc.	$956,408	R	$1,056,408	R
50 Plains Barn Operating Reserve Provides the operating funds and staff needed to operate the plains barn and paddock at the North Carolina Zoo.	$128,409 1.50	R	$128,409 1.50	R
51 State Park System Operating Reserve Provides the operating funds and staff for a new boat ramp at Kerr Lake State Recreation Area and new facilities and trails at Grandfather Mountain, Gorges, and Deep River State Parks. Since the projects for Kerr Lake State Recreation Area and Gorges State Park will not be complete until later in 2011, positions included for these locations shall have an effective date of April 1, 2012.	$143,030 5.00	R	$364,812 5.00	R

	FY 11-12		FY 12-13	
52 Grassroots Science Museums Collaborative Transfers the appropriation for the Grassroots Science Museums Collaborative to Commerce State-Aid. A 15% reduction will be taken when the funds are added into the Commerce State-Aid section, leaving $2,899,885. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	($3,411,713)	R	($3,411,713)	R
53 Partnership for the Sounds Transfers the appropriation for the Partnership for the Sounds to Commerce State-Aid. A 15% reduction will be taken when the funds are added into the Commerce State-Aid section, leaving $409,326 recurring. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	($481,560)	R	($481,560)	R
(1.0) Administration				
54 Vacant Positions Eliminates two positions within the administrative area of the Department. These two positions had been vacant for more than a year as of March 2011. The reduction includes salaries and benefits for these positions. 60036049 Departmental Purchasing Agent II $63,832 60036070 Networking Specialist $95,219	($159,051) -2.00	R	($159,051) -2.00	R
55 Office of Environmental Education and Public Affairs Reduces the environmental education responsibilities of the Office of Environmental Education and Public Affairs, with two positions to remain to administer the environmental teacher certification program and serve as a liaison with the Department of Public Instruction. 60036088 Edu. Dev. Consultant $65,772 60036090 Edu. Dev. Consultant $75,019 60036091 Edu. Dev. Consultant $63,925	($246,134) -3.00	R	($246,134) -3.00	R
(1.0) Aquariums				
56 Gate Admissions Reduces General Fund support for the aquariums and budgets $2 million in gate admissions collected by the three aquariums. Currently, all gate admissions are budgeted in a special fund and are used for capital projects, repairs, maintenance, exhibits, etc. Over $7.5 million from the General Fund will continue to be used to support the aquariums.	($2,000,000)	R	($2,250,000)	R
(1.0) Conservation Planning & Comm. Affairs				
57 Working Lands Program Eliminates the Working Lands Program and the position associated with this program. 60036193 Program Development Coordinator $78,195	($78,195) -1.00	R	($78,195) -1.00	R

	FY 11-12		FY 12-13	
58 Program Staff Eliminates all remaining General Fund support for the Office of Conservation Planning & Community Affairs and replaces these funds with receipts from the Natural Heritage Trust Fund. All operating expenses and the salaries and benefits associated with three positions are transferred to receipts. 60036191 Program Dev Coordinator $80,859 60036192 Program Dev Coordinator $84,110 60036213 Edu. Dev. Consultant $79,213	($279,271) -3.00	R	($279,271) -3.00	R

(1.0) Forest Resources

59 Positions to Receipt Support Reduces General Fund support for 13 positions, replacing these funds with receipts. Several of the positions shifted are partial positions; in total, 8.8 FTE are transferred to receipts. Positions and the amount shifted to receipts are listed below: 60031721 Office Assistant III $16,635 (0.4 FTE) 60031762 Office Assistant III $14,260 (0.4 FTE) 60031781 Office Assistant III $16,918 (0.4 FTE) 60031786 Office Assistant III $16,584 (0.4 FTE) 60031808 Office Assistant III $16,182 (0.4 FTE) 60031919 Office Assistant III $14,273 (0.4 FTE) 60031944 Office Assistant III $15,085 (0.4 FTE) 60031995 Forester III $80,712 (1.0 FTE) 60032202 Extension Educ & Training Spec. $64,914 (1.0 FTE) 60032214 Forester III $73,953 (1.0 FTE) 60032220 Forestry Technician $55,449 (1.0 FTE) 60032221 Forestry Technician $50,847 (1.0 FTE) 60032224 Accounting Clerk V $49,336 (1.0 FTE)	($485,148) -8.80	R	($485,148) -8.80	R
60 Operating Reduction Reduces operating expenses of the Division.	($2,448,094)	R	($2,548,094)	R
61 Vacant Position Eliminates one vacant position in the Division that had been vacant for more than one year as of March 2011. 60031683 Cook $31,504	($31,504) -1.00	R	($31,504) -1.00	R
62 Turnbull Educational State Forest Replaces General Fund appropriation for the Turnbull Educational State Forest with receipts generated by the Turnbull forest.	($87,317) -1.00	R	($87,317) -1.00	R
63 Aviation Base System Directs the Division to transition to a three base system for aircraft. Currently the Division operates nine bases across the State. The Conklin & de Decker report issued in late 2010 recommended the three base system.	($40,000)	R	($40,000)	R

	FY 11-12		FY 12-13	
64 Forest Resources Transfers the Division of Forest Resources from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.				
(1.0) Marine Fisheries				
65 Operating Expenses Reduces operating expenses across the Division.	($168,910)	R	($168,910)	R
66 Operating Expenses to Receipt Support Transfers operating expenses within the Division to commercial fishing receipts.	($200,000)	R	($200,000)	R
67 Position Changes Eliminates three permanent positions within the Division: one vacant, two filled, and one temporary position.	($202,937) -3.00	R	($202,937) -3.00	R
Filled 60032651 M.F. Biologist II $67,900 60032556 M.F. Biologist II $56,225 Vacant 60032552 Processing Asst IV $38,761 Temporary Position $40,051				
68 Positions to Receipt Support Transfers the salaries and benefits of six positions to federal grant funds.	($297,116) -6.00	R	($297,116) -6.00	R
60032644 Marine Fisheries Biologist II $52,330 60032649 Marine Fisheries Technician II $38,586 60032560 Marine Fisheries Biologist II $62,495 60032650 Marine Fisheries Technician III $52,789 60032645 Marine Fisheries Technician II $38,586 60032642 Marine Fisheries Biologist II $52,330				
69 Columbia Office Closes the Columbia Office of the Division of Marine Fisheries. This reduction includes rent and operating expenses associated with the office.	($55,902)	R	($55,902)	R
70 River Herring Program Reduces funding for river herring research. This reduction leaves approximately $65,000 and one position to continue to monitor river herring.	($85,000)	R	($85,000)	R
71 Oyster Sanctuary Program Eliminates funding for the Oyster Sanctuary Program.	($1,451,778)	R	($1,451,778)	R

	FY 11-12		FY 12-13	
72 Shellfish Rehabilitation Program Reduces funding for the Shellfish Rehabilitation program, leaving $315,000 to support the Oyster Shell Recycling program and oyster sanctuary construction projects. This reduction reduces operating funds.	($260,000)	R	($260,000)	R
73 Fishery Resource Grant Program Reduces the Fishery Resource Grant Program. This program is funded by the Division of Marine Fisheries but is operated by the SeaGrant program at North Carolina State University.	($200,000)	R	($200,000)	R
74 Shellfish Mapping Program Reduces operating funds as well as the salaries and benefits for five positions associated with the Shellfish Mapping Program. Four of these positions are filled and one is vacant.	($281,168) -5.00	R	($281,168) -5.00	R
Filled 60032712 M.F. Technician II $ 40,200 60032771 M.F. Technician II $ 40,200 60032713 M.F. Technician II $ 39,328 60032774 M.F. Technician II $ 38,586 Vacant 60032773 M.F. Technician II $ 38,896				
75 Shellfish Sanitation and Recreational Water Quality Moves the Shellfish Sanitation and Recreational Water Quality program from the Division of Environmental Health to the Division of Marine Fisheries.	$1,772,789 24.75	R	$1,772,789 24.75	R
(1.0) Museum of Natural Sciences				
76 Position Changes Eliminates five filled positions within the Division. This reduction includes the salaries and benefits of these positions.	($245,180) -5.00	R	($245,180) -5.00	R
60035038 Natural Science Curator I $47,502 60035013 Art Exhibit Design Technician $48,617 60034968 Art Exhibit Design Technician $46,310 60034980 Natural Science Research Curator II $62,733 60034966 Maintenance Mechanic II $40,018				
77 Temporary Wages Reduces temporary wages in the Division.	($189,732)	R	($189,732)	R
(1.0) North Carolina Zoo				
78 Operating Expenses Reduces General Fund operating expenses at the NC Zoo by approximately 6.5%. The NC Zoo may offset this reduction by increasing fees for gate admissions by $2.	($806,396)	R	($806,396)	R

	FY 11-12		FY 12-13	
79 Operations to Receipt Support Budgets $493,604 in receipts generated by the NC Zoo from revenue sources such as gate admissions, carousel rides, and stroller rentals. These receipts are over-realized and are currently deposited into the Special Zoo Fund.	($493,604)	R	($493,604)	R
80 Gift Shops Outsources at least three gift shops operated by the North Carolina Zoo. Outsourcing the NC Zoo's gift shops will eliminate six filled positions and one vacant position.	($603,198) -7.00	R	($603,198) -7.00	R
60033433 Sales Manager I $33,260 60033304 Sales Manager I $32,505 60033404 Sales Manager I $34,235 60033403 Sales Manager II $35,133 60033402 Sales Manager II $36,506 60033459 Stock Clerk I $34,203 60033405 Sales Manager I $32,505				
81 Vacant Positions Eliminates two positions in the Division that had been vacant for more than one year as of March 2011. This reduction includes the salaries and benefits for these positions.	($68,846) -2.00	R	($68,846) -2.00	R
60033308 Grounds Worker $32,505 60033295 Vehicle Operator II $36,341				
(1.0) Parks & Recreation				
82 Operating Expenses Transfers $6 million in Parks and Recreation Trust Fund receipts to the Division of Parks and Recreation to support park operations for the biennium.	($6,000,000)	NR	($6,000,000)	NR
83 Operation Reduction Reduces operating expenses for the Division of Parks and Recreation.	($1,012,500)	R	($1,012,500)	R

	FY 11-12		FY 12-13	
84 Vacant Positions	($856,447)	R	($856,447)	R
Eliminates 18 vacant positions in the Division. This reduction includes the salaries and benefits for these positions.	-18.00		-18.00	

65007762	Maintenance Mechanic IV	$ 43,651
65007760	Maintenance Mechanic III	$ 39,789
60032890	Park Ranger	$ 45,510
60032962	Maintenance Mechanic IV	$ 42,294
65010034	Maintenance Mechanic IV	$ 46,323
65010033	Natural Science Curator II	$ 58,201
65009861	Office Assistant IV	$ 42,740
65009844	Park Ranger	$ 58,322
65009846	Park Ranger	$ 56,460
60033075	Park Ranger	$ 42,809
60033072	Park Ranger	$ 47,721
60033208	Park Ranger	$ 43,392
60032923	Park Ranger	$ 45,438
60032970	Maintenance Mechanic III	$ 39,789
60033159	Parks Designer II	$ 72,069
60032974	Maintenance Mechanic III	$ 44,165
60033046	Park Ranger	$ 44,806
60033057	Park Ranger	$ 42,968

(1.0) Soil & Water Conservation

85 Operating Reduction	($28,719)	R	($28,719)	R
Reduces operating expenses in the Division.				
86 Filled Positions	($105,990)	R	($105,990)	R
Eliminates the salary and benefits of two filled positions in the Division.	-2.00		-2.00	

60032335	Environmental Specialist	$53,355
60032377	Info & Communication Spec. I	$52,635

87 Soil & Water Conservation Districts	($68,000)	R	($68,000)	R
Reduces funding for soil and water conservation districts by $708 per district. This reduction cuts local matching funds by 10%, or $400 per district. The remainder of the reduction is from funds provided for subsistence expenses for local Supervisors. This reduction means that lunch will no longer be reimbursed on days when the local district boards meet.				

	FY 11-12		FY 12-13	
88 Routine Animal Operating Inspections Ends the routine operating inspections of animal operations performed by the Division. Both the Division of Soil & Water Conservation and the Division of Water Quality inspect these operations. This reduction eliminates seven positions, their salaries and benefits, and associated operating costs. Two positions remain to provide technical assistance, conduct voluntary inspections, and respond to critical emergencies.	($472,725) -7.00	R	($472,725) -7.00	R

60032353	Env. Specialist	$60,358
60032354	Env. Specialist	$51,649
60032355	Env. Program Supervisor II	$83,575
60032358	Engineer	$61,444
60032341	Soil Scientist	$51,649
60032366	Env. Specialist	$53,698
60032356	Env. Specialist	$56,222

89 Cooperative Soil Survey Program Reduces operating funds and positions that support the Cooperative Soil Survey Program. This program conducts soil surveys that show the nature and distribution of various kinds of soil within a county and are used on a technical basis for land use decisions. This activity will now be carried out by local governments and the USDA Natural Resource Conservation Service. One position remains to provide technical assistance to local governments.	($105,352) -2.00	R	($105,352) -2.00	R

60032322	Soil Specialist	$52,676
60032324	Soil Specialist	$52,676

90 Animal Waste Pilot Program Ends the Animal Waste Pilot Program extended in S.L.2009-84. The pilot program currently operates in four counties (Pender, Jones, Columbus, and Brunswick) and is scheduled to sunset in September of 2011. There is one position associated with this program. This reduction includes salary and benefits for this position.	($51,880) -1.00	R	($51,880) -1.00	R

60032357	Environmental Specialist	$51,880

91 Soil & Water Conservation

Transfers the Division of Soil and Water Conservation from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.

(2.0) Coastal Management

92 Positions to Receipt Support Shifts the salary and benefits of 5.0 positions to receipt support:	($314,075) -5.00	R	($314,075) -5.00	R

60031539	Office Assistant IV	$47,372
60031553	District Planner	$61,397
60031533	Asst Major Permit Coordinator	$63,651
60031546	Rule Making & Policy Analyst	$68,840
60031601	Compliance & Enforcement Field Rep.	$72,815

	FY 11-12		FY 12-13	
93 Raleigh Office Closes the Raleigh Office of the Division of Coastal Management and eliminates 1.0 filled receipt-supported position. The Department shall fund shift other positions and operating costs within the Division to be supported by these federal receipts. 60031545 Asst Dir For Policy & Planning $109,523	($109,523) -1.00	R	($109,523) -1.00	R
(2.0) Environmental Assistance and Outreach				
94 Filled Position Eliminates the salary and benefits of 1.0 filled position: 60035066 Environmental Program Manager $113,994	($113,994) -1.00	R	($113,994) -1.00	R
95 Customer Service Liaisons Directs the Division of Environmental Assistance and Outreach to provide a minimum of one Customer Service Liaison for each of the Department's Regional Offices in order to address customer services issues, complaints, information requests, and the like.				
(2.0) Environmental Health				
96 Private Well Program Eliminates operating funding for the Private Well Program and 4.0 filled positions in FY 2011-12: 60034257 Environmental Program Supervisor II $73,531 60034539 Environmental Health Regional Specialist $63,332 60034541 Environmental Health Regional Specialist $58,246 60034305 Processing Assistant IV $38,180 and eliminates the program's remaining position in FY 2012-13: 60034542 Environmental Health Regional Specialist $55,275	($278,129) -4.00	R	($348,372) -5.00	R
97 Vector Control Program Eliminates operating funding for the Vector Control Program and its 4.50 filled positions: 60034360 Enviro. Senior Specialist (1.0 FTE) $72,644 60034361 Enviro. Senior Specialist (1.0 FTE) $59,798 60034359 Enviro. Program Consultant (1.0 FTE) $84,637 60034363 Enviro. Program Consultant (1.0 FTE) $88,214 60034358 Pub. Health Pest Mgmt Sec. Chief (0.5 FTE) $23,949 Mosquito control grant funds will be administered by existing staff within the Division of Public Health.	($391,311) -4.50	R	($391,311) -4.50	R

	FY 11-12		FY 12-13	
98 Positions Eliminated and Shifted to Receipt Support	($389,938)	R	($389,938)	R
Eliminates the salary and benefits of 3.0 positions:	-6.50		-6.50	

Filled:

60034261	Administrative Assistant I	$49,013
60034543	Administrative Assistant I	$41,867

Vacant:

60034466	Extension Educ & Training Spec III	$56,780

and fund shifts 3.50 positions to receipt support:

60034300	Nurse Consultant	(1.0 FTE)	$74,315
60034293	Enviro. Health Regional Spec.	(1.0 FTE)	$65,844
60034495	Enviro. Program Supervisor	(0.25 FTE)	$19,821
60034298	Technology Support Analyst	(1.0 FTE)	$61,118
60034255	Environmental Program Supv I	(0.25 FTE)	$21,180

99 Public Water Supply Positions	($202,628)	R	($202,628)	R
Eliminates the salary and benefits of 2.0 vacant positions in the Public Water Supply Section:	-3.00		-3.00	

60034405	Environmental Senior Specialist	$59,750
60034392	Engineer	$98,022

and 1.0 filled position in the Division Finance Office:

60034413	Accounting Technician	$44,856

100 Public Water Supply Program	($759,217)	R	($759,217)	R
Transfers the Public Water Supply Program to the Division of Water Resources.	-8.80		-8.80	

101 Food and Lodging Program

Directs the Division to change the use of the $400,000 appropriation originally intended for aid to counties for local food and lodging programs. The Division is to use those funds to pay for the costs to operate the State elements of the program. Counties will receive a higher percentage of the food and lodging fee that will more than offset not receiving these grant funds.

102 On-Site Quality Assurance Program	($69,792)	R	($69,792)	R
Eliminates funding for the On-Site Quality Assurance Program and its 1.0 position:	-1.00		-1.00	

60034368	Environmental Health Regional Specialist	$69,792

103 Wastewater Discharge Elimination Program	($160,594)	R	($160,594)	R
Eliminates operating funding for the Wastewater Discharge Elimination Program and its 2.0 filled positions:	-2.00		-2.00	

60034370	Environmental Senior Specialist	$55,541
60034306	Environmental Program Supervisor I	$75,547

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
104 Tick Control Program Eliminates operating funding for the Tick Control Program and its 1.0 filled position: 65001605 Environmental Senior Specialist $58,072	($139,499) -1.00	R	($139,499) -1.00	R
105 Sleep Products Program Transfers the Sleep Products Program to the Department of Agriculture and Consumer Services. This program's expenditures of $630,337 and 8.0 positions are fully supported by receipts.				
106 Shellfish Sanitation and Recreational Water Quality Transfers the Shellfish Sanitation and Recreational Water Quality Program to the Division of Marine Fisheries.	($1,772,789) -24.75	R	($1,772,789) -24.75	R
107 Grade "A" Milk Sanitation Branch Transfers the Grade "A" Milk Sanitation Branch to the Department of Agriculture and Consumer Services. The Department shall transfer the full General Fund amount shown and fund shift other divisional expenses to receipts as necessary.	($811,175) -7.00	R	($811,175) -7.00	R
108 Transfer to DHHS - Division of Public Health Eliminates salary and benefits of 2.0 filled positions that will be eliminated as part of the transfer of the Division of Environmental Health to the Division of Public Health in the Department of Health and Human Services: 60034382 Division Deputy Director $116,617 60034417 Information & Communications Spec. I $56,780	($173,397) -2.00	R	($173,397) -2.00	R
(2.0) Regional Offices				
109 Filled Positions Eliminates the salary and benefits of 3.0 filled positions: 60036122 Office Assistant $37,614 60036157 Office Assistant $37,455 60036154 Office Assistant $36,355	($111,424) -3.00	R	($111,424) -3.00	R
110 Regional Offices Eliminates three positions at each of DENR's seven Regional Offices for a total reduction of 21.0 positions.	($1,238,874) -21.00	R	($1,238,874) -21.00	R

	FY 11-12		FY 12-13	
111 Asheville Regional Office	($479,674)	R	($479,674)	R
Eliminates the salaries and benefits of 6.0 positions and operating costs in the Asheville Regional Office:	-6.00		-6.00	
60032508 Tech Support Analyst $68,894 60032509 Hydrogeologist $60,272 60032510 Hydrogeologist $54,115 60032511 Hydrogeologist $54,115 60032512 Hydrogeologist $76,301 60032513 Hydrogeologist $84,265 Operating Costs $81,712				
112 Regional Offices Justification Review	($12,624,378)	R	($12,624,378)	R
Eliminates recurring funding for the Regional Offices and makes the funding nonrecurring for FY 2011-12. The Fiscal Research Division will perform a Justification Review of this program.	$12,624,378	NR		
(2.0) Waste Management				
113 Operating Budget	($23,819)	R	($23,819)	R
Reduces the operating budget of the Division of Waste Management.				
114 Positions Eliminated and Shifted to Receipt Support	($482,878)	R	($482,878)	
Eliminate the salary and benefits of 3.0 vacant and 1.0 filled positions:	-6.90		-6.90	
Vacant 60034588 Hydrogeologist (1.0 FTE) $72,226 60095583 Engineer (1.0 FTE) $83,171 60034613 Environmental Sr Specialist (1.0 FTE) $59,273 Filled 60034616 Hydrogeologist (1.0 FTE) $65,806				
and fund shifts 2.9 positions to receipt support: 60034617 Engineer (0.5 FTE) $43,137 60034596 Environmental Sr Specialist (0.2 FTE) $13,644 60034589 Environmental Sr Specialist (0.2 FTE) $14,245 60034607 Environmental Sr Specialist (1.0 FTE) $65,101 60034595 Environmental Sr Specialist (0.25 FTE) $15,438 60034602 Environmental Supervisor III (0.25 FTE) $21,475 60034608 Environmental Sr Specialist (0.25 FTE) $14,681 60034594 Environmental Sr Specialist (0.25 FTE) $14,681				
115 Vacant Position	($63,764)	R	($63,764)	R
Eliminates the salary and benefits of 1.0 position that has been vacant for over a year as of March 2011:	-1.00		-1.00	
60034774 Hydrogeologist $63,764				

(2.0) Water Quality

116	**Vacant Positions** Eliminates the salary and benefits of 1.59 positions vacant for over one year: 60035518 Environmental Senior Specialist (0.59 FTE) $39,110 60035240 Environmental Senior Technician (1.0 FTE) $45,223	($84,333) -1.59	R	($84,333) -1.59	R
117	**Operating Budget** Reduces General Fund support of the operating budget of the Division of Water Quality by 15%.	($442,880)	R	($442,880)	R
118	**Positions Eliminated and Shifted to Receipt Support** Eliminates the salary and benefits of 6.0 vacant and 2.0 filled positions: -22.50	($1,217,921) -22.50	R	($1,217,921) -22.50	R

60035140 Processing Assistant IV (1.0 FTE) $40,481
60035166 Chemist III (1.0 FTE) $74,824
60035160 Chemistry Technician III (1.0 FTE) $47,705
60035141 Chemistry Technician I (1.0 FTE) $46,684
60035489 Environmental Senior Tech. (1.0 FTE) $48,425
60035466 Environmental Specialist (1.0 FTE) $58,201
60035229 Environmental Technician (1.0 FTE) $45,887
60035347 Environmental Senior Tech. (1.0 FTE) $48,594

and shifts 14.5 positions to receipt support:

60035164 Chemistry Technician III (1.0 FTE) $46,684
60035161 Chemistry Technician III (0.5 FTE) $24,752
60035186 Processing Assistant IV (1.0 FTE) $40,400
60035139 Enviro. Prog. Supv. IV (0.5 FTE) $50,193
60035424 Environmental Engineer (1.0 FTE) $70,530
60035104 Accounting Clerk IV (1.0 FTE) $38,672
60035398 Environmental Specialist (1.0 FTE) $66,022
60035170 Chemistry Technician III (1.0 FTE) $50,432
60035099 Processing Assistant IV (1.0 FTE) $38,043
60035414 Environmental Engineer (1.0 FTE) $66,250
60035381 Environmental Senior Tech. (1.0 FTE) $45,181
60035270 Enviro. Prog. Supv. III (0.5 FTE) $42,999
60035490 Environmental Specialist (1.0 FTE) $58,350
60035231 Environmental Specialist (1.0 FTE) $55,793
60035467 Environmental Senior Tech. (1.0 FTE) $49,798
60035472 Environmental Engineer (1.0 FTE) $63,021

(2.0) Water Resources

119	**Funds for H.B. 609 "Promote Water Supply Development"** Provides $83,000 in recurring funding to the Department in order to fulfill the requirements of H.B. 609, contingent upon the passage of H.B. 609. If the bill is not enacted, then these funds shall revert to the General Fund.	$83,000	R	$83,000	R
120	**Public Water Supply Section from Environmental Health** Transfers the Public Water Supply Section from the Division of Environmental Health to the Division of Water Resources. 8.80	$759,217	R	$759,217 8.80	R

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
121 **Transfer from Capital Improvement Funds** Transfers $564,227 from Division of Water Resources Capital Improvement funds to Division of Water Resources on a nonrecurring basis for FY 2011-12 and reduces the General Fund operating budget in a like amount.	($564,227)	NR		
Total Legislative Changes	**($36,366,265)**	**R**	**($34,824,296)**	**R**
	$13,178,751	**NR**	**($6,000,000)**	**NR**
Total Position Changes	-160.51		-161.51	
Revised Budget	**$165,784,887**		**$148,148,105**	

DENR-Clean Water Management Trust Fund

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	$100,000,000		$100,000,000	
Legislative Changes				
Department-wide				
122 **Operating Reduction** Provides $11.25 million to the Clean Water Management Trust Fund. In addition, the bill repeals G.S. 113A-253.1, which set the Trust Fund's annual appropriation at $100 million.	($88,750,000)	R	($88,750,000)	R
Total Legislative Changes	**($88,750,000)**	**R**	**($88,750,000)**	**R**
Total Position Changes				
Revised Budget	**$11,250,000**		**$11,250,000**	

Commerce

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	$38,907,381		$38,907,381	
Legislative Changes				
Department-wide				
123 **Employment Security Commission Merger** Reduces expenditures due to the merger of the Employment Security Commission with the Department of Commerce. This reduction is based on an effective date of November 1, 2011 for the transfer. This transfer shall be done in accordance with S.B. 532.	($251,376)	R	($377,064)	R
124 **Governor's Office Transfer** Eliminates funding from various account codes (1x-5x) across the Department which have been used to transfer funds to the Governor's Office to pay for salary and benefits for one position. The Department shall not transfer funds to the Governor's Office for this purpose.	($192,354)	R	($192,354)	R
125 **Salary and Operating Reductions to Align Budget** Reduces various accounts (1x-5x) across the Department such that the Department may properly budget contracts with the Attorney General's Office, rather than using lapsed salary and operating line items for this purpose.	($235,558)	R	($235,558)	
126 **Cell Phones** Reduces cell phones expenditures across the Department by 30%. The Department is to reduce the actual number of cell phones by this percentage as well.	($7,000)	R	($7,000)	R
127 **Motor Fleet Management** Reduces Motor Fleet Management expenses by 10%. The Department is to reduce the actual number of Motor Fleet Management vehicles by 10% as well.	($27,647)	R	($27,647)	R
Department-wide Reserves and Transfers				
128 **Rural Electrification Authority** Appropriates $150,000 to be transferred to the Rural Electrification Authority (budget code 54600 5241). In section 2.2(g) of S.L. 2009-451, $210,240 was transferred from this fund to General Fund availability.	$150,000	NR		
Administration				
129 **Administrative Assistant** Eliminates the salary and benefits for one filled administrative assistant position (60077162).	($54,640) -1.00	R	($54,640) -1.00	R

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
130 **Attorney General Contracts** Directs the Department to properly budget its Attorney General contracts as a separate 2x account line.	$235,558	R	$235,558	R
131 **Assistant Secretary for Community Development** Transfers the salary and benefits for the Assistant Secretary for Community Development position (60077156) from the Administration fund code (1111) to the Division of Community Assistance fund code (1620) so that the funding can be properly aligned in the correct division. The Department shall physically locate the Assistant Secretary in the same building as the majority of the division's employees.	($125,101) -1.00	R	($125,101) -1.00	R
132 **Assistant Secretary for Policy, Research, and Strategic Planning (PRSP)** Transfers the Assistant Secretary position (60077183) from the Administration fund code (1111) to the PRSP fund code (1130) so that the funding can be properly aligned in the correct division.	($125,720) -1.00	R	($125,720) -1.00	R
133 **Director of Rural Development Programs** Eliminates the salary and benefits for the position of Director of Rural Development Programs (60077188). This position oversees the 21st Centuries Communities Program, which is eliminated, and administers Community Development Block Grant (CDBG) programs which can be handled by existing CDBG staff. The Certified Retirement Communities Program shall be transferred to the Division of Tourism, Film, and Sports Development and administered by existing staff.	($99,308) -1.00	R	($99,308) -1.00	R
134 **Public Affairs Staff Reduction** Eliminates the salary and benefits for one filled position (60077186) in the Secretary's Office, Public Affairs section.	($42,289) -1.00	R	($42,289) -1.00	R
BLNC - Business Link North Carolina				
135 **Director Position** Eliminates the salary and benefits for the director position (60080987) for BLNC. Employees in this division will report to the Director of Business and Industry.	($131,110) -1.00	R	($131,110) -1.00	R
Business and Industry				
136 **Transfer to Biotechnology Center** Eliminates the transfer to the Biotechnology Center. The Department and the Biotechnology Center are encouraged to continue the Memorandum of Understanding but without the use of Commerce funds to pay for Biotechnology Center expenses.	($64,125)	R	($64,125)	R
137 **Trade Shows** Reduces funding for trade shows.	($50,000)	R	($50,000)	R

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
138 Vacant Positions Eliminates the salaries and benefits for two positions which have been vacant for more than one year as of March 2011: 60080967 Econ Development Rep $58,413 60080979 Client Development Manager $83,314	($141,727) -2.00	R	($141,727) -2.00	R
Commerce Finance Center				
139 Industrial Development Fund Eliminates the General Fund appropriation for the Industrial Development Fund. Funding will remain available from loan repayments and in the fund balance to fulfill existing obligations.	($320,107)	R	($320,107)	R
140 Jobs Maintenance and Capital Development Fund (JMAC) Appropriates $6,000,000 for Bridgestone/Firestone and Goodyear agreements for the 2010 grant year.	$6,000,000	NR		
141 One North Carolina Fund Provides additional funding for the One North Carolina Fund.	$10,000,000	NR		
142 Broadband Mapping Provides funding for the CDBG Economic Development section to contract out for the North Carolina mapping and planning project currently titled NC BRIM, Broadband-Rigor in Mapping.	$375,730	R	$375,730	R
143 Broadband Connectivity Provides $1 million non-recurring for the CDBG-Economic Development section to incent private businesses to provide broadband connectivity. Priority shall be given to unserved areas in mixed urban-rural counties and then to unserved areas in mainly rural counties. The Department shall work with the Rural Economic Development Center in developing and implementing this grant program.	$1,000,000	NR		
Community Assistance				
144 Assistant Secretary Position Transfers the salary and benefits for the Assistant Secretary for Community Development position (60077156) from the Administration fund code (1111) into the Division of Community Assistance fund code (1620) so that the funding can be properly aligned in the correct division. The Department shall physically locate the Assistant Secretary in the same building as the majority of the division's employees.	$125,101 1.00	R	$125,101 1.00	R
145 Senior Advisor/Director Position Eliminates the salary and benefits for the position of director (60081167). This division also has an Assistant Secretary, and thus the director position is eliminated to more properly align span of control.	($117,624) -1.00	R	($117,624) -1.00	R

	FY 11-12		FY 12-13	
146 Vacant Position Eliminates the salary and benefits for one Planner position (60081202) vacant for more than one year as of March 2011.	($71,536) -1.00	R	($71,536) -1.00	R
147 21st Century Communities Eliminates operating funding for the 21st Century Communities program and the salaries and benefits for three filled positions. This program was designed to certify counties to be ready for the 21st Century and is no longer needed. 60081236 Planner $58,074 60081237 Planner $55,541 60081238 Planner $63,013	($244,699) -3.00	R	($244,699) -3.00	R
148 Filled Positions Eliminates the salaries and benefits for five filled positions and associated operating costs within the Division. Funding will still be sufficient to meet Community Development Block Grant (CDBG) match requirements. 60081178 Office Assistant IV $31,634 60081182 Comm Dev Planner I $57,511 60081198 Comm Dev Planner II $62,238 60081205 Office Assistant IV $34,305 60089504 Comm Dev Planner I $74,135 Operating Expenses $36,354	($296,177) -5.00	R	($296,177) -5.00	R

Energy

149 Pass-through Funding to Universities Reduces pass-through funding to the Energy Centers at North Carolina A&T State University, North Carolina State University, and Appalachian State University. Provides $500,000 in FY 2011-12 and $617,603 in FY 2012-13 for the Solar Center at North Carolina State University to continue energy efficiency programs. $200,000 of this funding shall be used for the Energy Management Program within the Energy Efficiency and Environmental Research Program in the Department of Mechanical & Aerospace Engineering. No funds shall be used for advertising or promotion of the Solar Center. Provides $100,000 in FY 2011-12 and $261,215 in FY 2012-13 to the Appalachian Energy Center at Appalachian State University. Provides $100,000 in FY 2011-12 and $210,592 in FY 2012-13 to the Center for Energy Research and Technology at North Carolina A&T State University.	($1,855,500)	R	($1,466,090)	R
150 Operating Reduction Reduces operating expenses (2x-5x) in the division by $21,120, leaving $154,716 for these purposes.	($21,120)	R	($21,120)	R

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
151 **Filled Position** Eliminates the salary and benefits for one filled Engineer position (60014891) who currently is assigned to the Utility Savings Initiative program.	($78,880) -1.00	R	($78,880) -1.00	R
Industrial Commission				
152 **Over-realized Receipts** Directs the Industrial Commission to budget over-realized receipts.	($736,861)	R	($736,861)	R
International Trade				
153 **Trade Shows** Reduces funding for trade shows.	($50,000)	R	($50,000)	R
Management Information Systems				
154 **Division Director** Eliminates the salary and benefits for the director position (60080825) for the Management Information Systems division.	($153,218) -1.00	R	($153,218) -1.00	R
155 **Operating Funds** Reduces operating expenses (2x-5x) in the division by $18,552, leaving $163,790 for these purposes.	($18,552)	R	($18,552)	R
Office of Science and Technology				
156 **Continuation Review** Eliminates recurring funding for the Office of Science and Technology and makes the funding nonrecurring for FY 2011-12. This program is subject to continuation review.	($215,599) $215,599	R NR	($215,599) -2.00	R
Policy, Research, and Strategic Planning				
157 **Assistant Secretary Position** Transfers the Assistant Secretary position (60077183) from the Administration fund code (1111) into the Policy, Research, and Strategic Planning fund code (1130) so that the funding can be properly aligned in the correct division.	$125,720 1.00	R	$125,720 1.00	R
158 **Operating Expenses** Reduces operating expenses (2x-5x) in the division by $10,000, leaving $200,753 for these purposes.	($10,000)	R	($10,000)	R
Tourism, Film, and Sports Development				
159 **Welcome Centers Position** Eliminates the salary and benefits for an Office Assistant IV position (60080870) which has been vacant for more than a year as of March 2011.	($39,102) -1.00	R	($39,102) -1.00	R

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
160 **Wine and Grape Grower's Council** Eliminates funding for the Wine and Grape Grower's Council, including the salary and benefits for one filled position (60080945).	($732,380) -1.00	R	($732,380) -1.00	R
161 **NC Wineries & Tourism** Provides $500,000 NR for North Carolina wineries and tourism. $250,000 shall be allocated to the Vinifera Group and $250,000 to the Muscadines Group for the purpose of promoting North Carolina wineries and tourism related to the wineries. The funds shall be used for advertising and State winery maps.	$500,000	NR		
Wanchese Seafood Industrial Park				
162 **Capital and Operating Funds** Eliminates funding most recently used for capital projects and operating expenses.	($248,327)	R	($248,327)	R
163 **Operating Reduction** Reduces the budget for Wanchese by 15%.	($25,112)	R	($25,112)	R
Workforce Development				
164 **Workforce Investment Act Funds** Transfers $350,000 in Workforce Investment Act funds from the Department of Commerce to the Department of Labor to be used for the recurring operating costs of the Apprenticeship Program.				
Total Legislative Changes	**($5,920,640)** **$17,865,599**	R NR	**($5,656,918)**	R
Total Position Changes	-20.00		-22.00	
Revised Budget	**$50,852,340**		**$33,250,463**	

Commerce - State Aid

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	$31,169,289		$31,169,289	
Legislative Changes				
165 **Ag in the Classroom** Transfers the appropriation for Ag in the Classroom from Agriculture to Commerce State-Aid. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	$22,077	R	$22,077	R
166 **Association of Community Development Corporations (CDCs)** Reduces the recurring pass-through appropriation for the Association of CDCs by 20% for FY 2011-12 and by 15% in FY 2012-13.	($196,137)	R	($147,103)	R
167 **Biofuels Center** Reduces the recurring pass-through appropriation for the Biofuels Center by 10%, leaving $4,500,000 recurring.	($500,000)	R	($500,000)	R
168 **Community Development Initiative** Reduces the recurring pass-through appropriation for the Community Development Initiative by 20% for FY 2011-12 and by 15% for FY 2012-13.	($936,548)	R	($702,411)	R
169 **Councils of Government (COGs)** Reduces the recurring pass-through appropriation for the COGs.	($60,563)	R	($60,563)	R
170 **Defense & Security Technology Accelerator** Provides funding to the Defense & Security Technology Accelerator for FY 2011-12 and FY 2012-13.	$700,000	NR	$700,000	NR
171 **e-NC Authority** Eliminates all funding to the e-NC Authority.	($442,035)	R	($442,035)	R
172 **FFA Foundation** Transfers the appropriation for the FFA Foundation from Agriculture to Commerce State-Aid. A 15% reduction is taken, leaving $37,531 recurring. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	$37,531	R	$37,531	R

	FY 11-12		FY 12-13	
173 **Grassroots Science Museums** Transfers the appropriation for the Grassroots Science Museums Collaborative from DENR to Commerce State-Aid. A 15% reduction is taken, leaving $2,899,885 recurring. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	$2,899,885	R	$2,899,885	R
174 **High Point Furniture Market** Reduces the recurring pass-through appropriation for the High Point Furniture Market by 15%, leaving $685,507 recurring.	($120,972)	R	($120,972)	R
175 **Indian Economic Development Initiative** Provides recurring funding to the Indian Economic Development Initiative.	$90,000	R	$90,000	R
176 **Institute for Regenerative Medicine** Reduces the recurring pass-through appropriation for the Institute for Regenerative Medicine.	($2,000,000)	R	($2,000,000)	R
177 **Institute of Minority Economic Development** Reduces the recurring pass-through appropriation for the Institute of Minority Economic Development by 15%, leaving $2,139,793 recurring.	($377,612)	R	($377,612)	R
178 **Johnson & Wales** Appropriates $500,000 to Johnson & Wales University for FY 2011-12.	$500,000	NR		
179 **Land Loss Prevention Project** Reduces the recurring pass-through appropriation for the Land Loss Prevention Project by 20% for FY 2011-12 and by 15% for FY 2012-13.	($139,492)	R	($106,119)	R
180 **Minority Support Center** Reduces the recurring pass-through appropriation for the Minority Support Center by 20% for FY 2011-12 and by 15% for FY 2012-13.	($625,746)	R	($469,309)	R
181 **Partnership for the Sounds** Transfers the appropriation for the Partnership for the Sounds from DENR to Commerce State-Aid. A 15% reduction is taken, leaving $409,326 recurring. All nonprofits funded by the Natural and Economic Resources Subcommittee will now be funded out of Commerce State-Aid.	$409,326	R	$409,326	R
182 **Regional Economic Development Commissions** Reduces the recurring pass-through appropriation for the Regional Economic Development Commissions by 10%, leaving $2,250,000 recurring and provides $2,172,022 in non-recurring funds for FY 2011-12.	($250,000) $2,172,022	R NR	($250,000)	R
183 **RTI International** Provides $500,000 NR for RTI to match US Department of Energy grant funds.	$500,000	NR		

Senate Subcommittee on Natural and Economic Resources	FY 11-12		FY 12-13	
Total Legislative Changes	($2,190,286)	R	($1,717,305)	R
	$3,872,022	NR	$700,000	NR
Total Position Changes				
Revised Budget	$32,851,025		$30,151,984	

N.C. Biotechnology Center

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	$19,501,900		$19,501,900	
Legislative Changes				
184 **Operating Funds** Reduces the recurring pass-through appropriation for the Biotechnology Center by 10%, leaving $17,551,710 recurring.	($1,950,190)	R	($1,950,190)	R
Total Legislative Changes	**($1,950,190)**	**R**	**($1,950,190)**	**R**
Total Position Changes				
Revised Budget	**$17,551,710**		**$17,551,710**	

Rural Economic Development Center

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	$22,640,814		$22,640,814	
Legislative Changes				
185 **Operating Reductions** Reduces the recurring pass-through appropriation for the Rural Center by 10%, leaving $20,376,729 in recurring funding.	($2,264,085)	R	($2,264,085)	R
186 **Emergency Rural Jobs Infrastructure Fund** Provides nonrecurring funding for FY 2011-12 and FY 2012-13 to establish the Emergency Rural Jobs Infrastructure Fund.	$5,000,000	NR	$5,000,000	NR
Total Legislative Changes	**($2,264,085)**	**R**	**($2,264,085)**	**R**
	$5,000,000	**NR**	**$5,000,000**	**NR**
Total Position Changes				
Revised Budget	**$25,376,729**		**$25,376,729**	

Wildlife Resources Commission

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	$0		$0	
Legislative Changes				
187 **Operating Funds** Transfers the Wildlife Resource Commission to General Fund support. The expected sales tax transfer of $22.97 million is changed to a $18 million General Fund appropriation. Of the $18 million appropriated to the Commission, $250,000 shall be used to supplement the Beaver Management Assistance Program. These funds shall be in addition to the $349,000 of Commission funds currently obligated for the program.	$18,000,000	R	$18,000,000	R
Conservation Education				
188 **Conservation Education** Eliminates recurring funding for the Conservation Education Division and makes the funding nonrecurring for FY 2011-12. This program is subject to Continuation Review.	($778,821) $778,821	R NR	($778,821)	R
Total Legislative Changes	**$17,221,179** **$778,821**	R NR	**$17,221,179**	R
Total Position Changes				
Revised Budget	**$18,000,000**		**$17,221,179**	

Commerce – Enterprise

Budget Code: 54600

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	**$9,069,749**	**$8,190,899**
Recommended Budget		
Requirements	**$4,479,458**	**$4,479,458**
Receipts	**$4,100,608**	**$4,100,608**
Positions	**46.00**	**46.00**

Legislative Changes

Requirements:

Transfer to General Fund	$0 R	$0 R
Directs the ABC Commission to transfer $500,000 in cash balance to the General Fund for general availability.	$500,000 NR	$0 NR
	0.00	0.00
Subtotal Legislative Changes	**$0** R	**$0** R
	$500,000 NR	**$0** NR
	0.00	0.00

Receipts:

ABC Commission	$0 R	$0 R
	$0 NR	$0 NR
Subtotal Legislative Changes	**$0** R	**$0** R
	$0 NR	**$0** NR

Subcommittee on Natural and Economic Resources

	FY 2011-12	FY 2012-13
Revised Total Requirements	$4,979,458	$4,479,458
Revised Total Receipts	$4,100,608	$4,100,608
Change in Fund Balance	($878,850)	($378,850)
Total Positions	46.00	46.00
Unappropriated Balance Remaining	$8,190,899	$7,812,049

DENR - Special

Budget Code: 24300

	FY 2011-12		FY 2012-13	
Beginning Unreserved Fund Balance	**$2,291,385**		**$1,841,385**	
Recommended Budget				
Requirements	**$1,029,288**		**$1,029,288**	
Receipts	**$1,029,288**		**$1,029,288**	
Positions	**0.00**		**0.00**	
Legislative Changes				
Requirements:				
Mercury Pollution Prevention Funds for H.B. 242 Provides $100,000 to the Department of Environment and Natural Resources, contingent upon the adoption of H.B. 242, "Nat'l Gas/ Bonds/ Fees/ Studies," in order to fulfill the requirements of the bill. These funds shall come from the Mercury Pollution Prevention Fund in the Department of Environment and Natural Resources.	$0 $100,000 0.00	R NR	$0 $0 0.00	R NR
Mercury Pollution Prevention Funds for S.B. 709 Provides $100,000 to the Department of Environment and Natural Resources, contingent upon the adoption of S.B. 709, "Energy Jobs Act," in order to fulfill the requirements of the bill. These funds shall come from the Mercury Pollution Prevention Fund in the Department of Environment and Natural Resources.	$0 $100,000 0.00	R NR	$0 $0 0.00	R NR
Mercury Pollution Prevention Fund Transfers $250,000 from the cash balance of the Mercury Pollution Prevention Fund to the General Fund for general availability.	$0 $250,000 0.00	R NR	$0 $0 0.00	R NR
Subtotal Legislative Changes	**$0** **$450,000** 0.00	R NR	**$0** **$0** 0.00	R NR

Subcommittee on Natural and Economic Resources

	FY 2011-12		FY 2012-13	
Receipts:				
Mercury Prevention Transfer to General Fund	$0	R	$0	R
	$0	NR	$0	NR
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$0	NR	**$0**	NR
Revised Total Requirements	**$1,479,288**		**$1,029,288**	
Revised Total Receipts	**$1,029,288**		**$1,029,288**	
Change in Fund Balance	**($450,000)**		**$0**	
Total Positions	**0.00**		**0.00**	
Unappropriated Balance Remaining	**$1,841,385**		**$1,841,385**	

DENR - PART F

Budget Code: 24309

	FY 2011-12		FY 2012-13	
Beginning Unreserved Fund Balance	**$13,599,484**		**$4,419,353**	
Recommended Budget				
Requirements	**$45,793,981**		**$45,793,981**	
Receipts	**$36,613,850**		**$36,613,850**	
Positions	**0.00**		**0.00**	
Legislative Changes				
Requirements:				
Transfer to General Fund	$0	R	$0	R
Diverts $8.435 million in Deed Stamp tax revenue to the General Fund for general availability.	$8,435,000	NR	$0	NR
	0.00		0.00	
Parks and Recreation Trust Fund Expenditures	$0	R	$0	R
Reduces expenditures by the Parks and Recreation Trust Fund due to the diversion of tax revenue to the General Fund.	($8,435,000)	NR	$0	NR
	0.00		0.00	
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$0	NR	**$0**	NR
	0.00		0.00	
Receipts:				
Transfer to General Fund	$0	R	$0	R
	$0	NR	$0	NR
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$0	NR	**$0**	NR

Subcommittee on Natural and Economic Resources

	FY 2011-12	FY 2012-13
Revised Total Requirements	$45,793,981	$45,793,981
Revised Total Receipts	$36,613,850	$36,613,850
Change in Fund Balance	($9,180,131)	($9,180,131)
Total Positions	0.00	0.00
Unappropriated Balance Remaining	$4,419,353	($4,760,778)

DENR - Recreational/ Natural Heritage Trust Fund

Budget Code: 64302

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	**($4,355,915)**	**($15,956,577)**
Recommended Budget		
Requirements	**$31,750,487**	**$31,750,487**
Receipts	**$20,149,825**	**$20,149,825**
Positions	**0.00**	**0.00**

Legislative Changes

Requirements:

Transfer to General Fund	$0 R	$0 R
Diverts $8 million in Deed Stamp tax revenue to the General Fund for general availability.	$8,000,000 NR	$0 NR
	0.00	0.00
Natural Heritage Trust Fund Expenditures	$0 R	$0 R
Reduces expenditures by the Natural Heritage Trust Fund due to the diversion of tax revenue to the General Fund.	($8,000,000) NR	$0 NR
	0.00	0.00
Subtotal Legislative Changes	**$0** R	**$0** R
	$0 NR	**$0** NR
	0.00	0.00

Receipts:

Transfer to General Fund	$0 R	$0 R
	$0 NR	$0 NR
Subtotal Legislative Changes	**$0** R	**$0** R
	$0 NR	**$0** NR

	FY 2011-12	FY 2012-13
Revised Total Requirements	$31,750,487	$31,750,487
Revised Total Receipts	$20,149,825	$20,149,825
Change in Fund Balance	($11,600,662)	($11,600,662)
Total Positions	0.00	0.00
Unappropriated Balance Remaining	($15,956,577)	($27,557,239)

Solid Waste Management Trust Fund

Budget Code: 64303

	FY 2011-12		FY 2012-13	
Beginning Unreserved Fund Balance	**$6,399,207**		**$6,377,207**	
Recommended Budget				
Requirements	**$3,836,277**		**$3,836,277**	
Receipts	**$3,814,277**		**$3,814,277**	
Positions	**1.00**		**1.00**	
Legislative Changes				
Requirements:				
Scrap Tire Expenditures	$0	R	$0	R
Reduces expenditures in the Scrap Tire fund to reflect the diversion of tax revenue to the the General Fund.	($2,268,989)	NR	$0	NR
	0.00		0.00	
Scrap Tire Transfer to General Fund	$0	R	$0	R
Diverts Scrap Tire tax revenue to the General Fund for general availability.	$2,268,989	NR	$0	NR
	0.00		0.00	
White Goods Expenditures	$0	R	$0	R
Reduces expenditures in the White Goods fund to reflect the diversion of tax revenue to the General Fund.	($1,951,465)	NR	$0	NR
	0.00		0.00	
White Goods Transfer to General Fund	$0	R	$0	R
Diverts White Goods tax revenue to the General Fund for general availability.	$1,951,465	NR	$0	NR
	0.00		0.00	
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$0	NR	**$0**	NR
	0.00		0.00	
Receipts:				

	FY 2011-12		FY 2012-13	
White Goods Transfer to General Fund	$0	R	$0	R
	$0	NR	$0	NR
Scrap Tire Transfer to General Fund	$0	R	$0	R
	$0	NR	$0	NR
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$0	NR	**$0**	NR
Revised Total Requirements	**$3,836,277**		**$3,836,277**	
Revised Total Receipts	**$3,814,277**		**$3,814,277**	
Change in Fund Balance	**($22,000)**		**($22,000)**	
Total Positions	**1.00**		**1.00**	
Unappropriated Balance Remaining	**$6,377,207**		**$6,355,207**	

Wildlife Receipts - Non-Interest Earning

Budget Code: 24353

	FY 2011-12		FY 2012-13	
Beginning Unreserved Fund Balance	**$5,375,000**		**$26,875,000**	
Recommended Budget				
Requirements	**$21,500,000**		**$21,500,000**	
Receipts	**$21,500,000**		**$21,500,000**	
Positions	**0.00**		**0.00**	
Legislative Changes				
Requirements:				
Sales Tax Transfer	($21,500,000)	R	($21,500,000)	R
Eliminates the sales tax transfer to the Wildlife Resources Commission. The Commission will now be funded through the General Fund.	$0	NR	$0	NR
	0.00		0.00	
Subtotal Legislative Changes	**($21,500,000)**	R	**($21,500,000)**	R
	$0	NR	**$0**	NR
	0.00		0.00	
Receipts:				
Sales Tax Transfer	$0	R	$0	R
Eliminates the sales tax transfer to the Wildlife Resources Commission. The Commission will now be funded through the General Fund.	$0	NR	$0	NR
Subtotal Legislative Changes	**$0**	R	**$0**	R
	$0	NR	**$0**	NR

	FY 2011-12	FY 2012-13
Revised Total Requirements	**$0**	**$0**
Revised Total Receipts	**$21,500,000**	**$21,500,000**
Change in Fund Balance	**$21,500,000**	**$21,500,000**
Total Positions	**0.00**	**0.00**
Unappropriated Balance Remaining	**$26,875,000**	**$48,375,000**

JUSTICE
&
PUBLIC SAFETY
Section I

Senate Subcommittee on Justice and Public Safety

Judicial

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$477,189,575**		**$477,189,575**	
Legislative Changes				
1 Eliminate VRIF Positions Eliminates 194.5 full-time equivalent positions within the Judicial Branch. These positions became vacant effective March 1, 2011, through a voluntary reduction in force implemented by the Administrative Office of the Courts.	($12,935,761) -194.50	R	($12,935,761) -194.50	R
2 Freeze Statutory Pay Plans Eliminates a recurring reserve in the continuation budget for statutory pay plans for Deputy Clerks and Magistrates. These pay increases will be frozen for the 2011-13 fiscal biennium.	($6,390,013)	R	($6,390,013)	R
3 Reduce Continuation Budget Increases Reduces restored funds in the Administrative Office of the Courts' continuation budget. The AOC budget included a non-recurring reduction in FY 2010-11; the AOC eliminated positions to comply with this reduction, so the restorations to Personal Services line items can be eliminated as the positions they were associated with no longer exist.	($5,282,000)	R	($5,282,000)	R
4 Freeze Field Vacancies for Two Years Implements a hiring freeze on 35 vacant positions for the 2011-13 fiscal biennium. The freeze includes the following positions: 18 Deputy Clerks 3 Assistant District Attorneys 7 Superior Court Judicial Assistants 4 District Court Judicial Assistants 3 Court Reporters	($1,681,000)	NR	($1,681,000)	NR
5 Discretionary Position Reduction Allows the Administrative Office of the Courts to identify positions, either vacant or filled, to eliminate to achieve required savings level of $256,122. The agency will report on the positions eliminated to the Chairs of the Justice and Public Safety Appropriations Subcommittee.	($256,122)	R	($256,122)	R

Senate Subcommittee on Justice and Public Safety	FY 11-12		FY 12-13	
6 Eliminate Dispute Resolution Eliminates all State funding for the non-profit mediation centers. The State appropriation accounts for 19% of the combined budgets for mediation centers on average. Because these centers are not-for-profit, non-State entities, they are able to charge a fee for any service provided to cover their costs.	($1,139,513)	R	($1,139,513)	R
7 Eliminate Juvenile Court Coordinator Pilot Program Eliminates two Juvenile Court Coordinator positions associated with a court improvement pilot initiative that is ending.	($108,678) -2.00	R	($108,678) -2.00	R
8 Reduce Access to Civil Justice Pass-Through Reduces the direct appropriation to the State Bar for Access to Civil Justice by $112,500, leaving $600,000 in the pass-through.	($112,500)	R	($112,500)	R
Office-District Attorney				
9 Reduce District Attorney Support Staff Reduces the number of support staff in District Attorneys' offices. There are currently 599 Assistant District Attorney positions and 550 support staff positions - a ratio of 1:1.08. The Administrative Office of the Courts is directed to take reductions based on a blended ratio/workload approach, but in no case would any prosecutorial office have fewer than three legal assistants, nor would any office gain more support positions.	($2,576,145) -55.00	R	($2,576,145) -55.00	R
Technology Services				
10 Reduce AOC Technology Services Reduces the budget for technology within the Judicial Branch. It is the intent of the General Assembly that new application development projects should be funded on a case-by-case basis by the legislature with clear timetables and budget projections.	($4,918,000)	R	($4,918,000)	R
Trial Courts				
11 Eliminate Vacant Magistrate Positions Eliminates vacant magistrate positions based on workload. The Administrative Office of the Courts' workload formula for magistrates indicates that there are over 60 more magistrates than necessary for the workload. Eliminates 19 positions currently vacant and an additional 42 vacancies occurring on January 1, 2013.	($826,272) -19.00	R	($1,739,520) -61.00	R
12 Eliminate Drug Treatment Court Eliminates all State funding for the Drug Treatment Court program.	($2,043,523) -32.00	R	($2,043,523) -32.00	R
13 Continuation Review of Family Court Eliminates recurring funding for the Family Court Program pending the outcome of a Continuation Review.	($2,865,693) $2,865,693	R NR	($2,865,693) -44.00	R

Senate Subcommittee on Justice and Public Safety	FY 11-12		FY 12-13	
Total Legislative Changes	**($39,454,220)**	**R**	**($40,367,468)**	**R**
	$1,184,693	**NR**	**($1,681,000)**	**NR**
Total Position Changes	-302.50		-388.50	
Revised Budget	**$438,920,048**		**$435,141,107**	

Judicial - Indigent Defense

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$122,770,246**		**$122,770,246**	
Legislative Changes				
14 Reduce Private Assigned Counsel Funds Reduces funding to the Private Assigned Counsel fund. The Office of Indigent Defense Services is directed to use its statutory authorization to set reimbursement rates based on projected utilization to minimize potential shortfalls in the fund, including setting differential rates for District and Superior Court work and setting fixed costs for high-volume, standard case types. The Office is also authorized to create regional public defender offices, which is expected to contain costs further.	($7,897,882) ($2,657,207)	R NR	($7,897,882)	R
15 Eliminate Sentencing Services Eliminates all State funding for the Sentencing Services Program. Pre-sentencing assessment and referral services may be provided by probation officers and by the Treatment Accountability for Safer Communities (TASC) program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services at the request of the court.	($2,123,631) -11.40	R	($2,123,631) -11.40	R
Total Legislative Changes	**($10,021,513)** **($2,657,207)**	R NR	**($10,021,513)**	R
Total Position Changes	-11.40		-11.40	
Revised Budget	**$110,091,526**		**$112,748,733**	

Justice

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$89,670,944**		**$89,670,944**	
Legislative Changes				
A. Department-wide				
16 Vacant Position Reduction	($2,527,438)	R	($2,527,438)	R
Eliminates vacant positions throughout the Department.	-40.31		-40.31	
17 Miscellaneous Operating Reductions	($1,325,000)	R	($1,325,000)	R
Makes recurring operating reductions that were taken on a non-recurring basis in FY 2010-11.				
B. Administration				
18 Executive Staff	($551,993)	R	($551,993)	R
Eliminates the following executive staff positions:	-5.00		-5.00	

Position Number	Title	Total Position Cost
60010114	Chief Deputy II	$136,803
60010136	Chief Deputy II	$138,294
60010135	Administrative Secretary	$ 55,436
60010111	Special Cnsl for Dev.	$117,057
60010141	Special Counsel	$104,403

19 Information Technology Administration	($250,347)	R	($250,347)	R
Reorganizes the information technology section administration by eliminating two IT director positions (60011101 and 60011154).	-2.00		-2.00	
20 Administrative Efficiencies	($654,404)	R	($654,404)	R
Reduces administrative positions based on the following ratios:	-10.00		-10.00	

Human Resources:	1 position for every 150 full-time equivalent (FTE) employees.
Fiscal/Budgeting:	1 position for every $8 million of total budget requirements.
Purchasing:	1 position for every $11 million of goods or services purchased.

21 Finance Staff Receipts	($100,681)	R	($100,681)	R
Shifts two finance staff positions to receipt support.	-2.00		-2.00	

	FY 11-12		FY 12-13	
22 Postage Budget Reduces the postage budget for the Department.	($93,000)	R	($93,000)	R
C. Legal Services				
23 Consumer Protection Receipts Shifts nine consumer protection staff to receipt support.	($482,105) -9.00	R	($482,105) -9.00	R
24 NC LEAF Eliminates the pass-through appropriation for the NC Legal Education Assistance Foundation.	($356,250)	R	($356,250)	R
25 Legal Services Division Transfers the following positions to the General Assembly:	($259,019) -3.00	R	($259,019) -3.00	R

Position Number	Title	Total Position Cost
60010185	Asst. Attorney General	$115,875
60010191	Asst. Attorney General	$ 94,904
60010189	Administrative Assistant	$ 48,240

D. State Bureau of Investigation				
26 Criminal Background Check Receipts Shifts eight Criminal Background staff to receipt support.	($396,189) -8.00	R	($396,189) -8.00	R
27 SBI Personal Services Reduces the personal services line in the SBI budget to more accurately reflect actual expenditures.	($141,797) ($160,125)	R NR	($141,797)	R
28 SBI Workload Reduction Reduces State Bureau of Investigation staff based on actual workloads.	($1,123,812) -18.00	R	($1,123,812) -18.00	R
29 Sale of Aircraft Requires the SBI to sell one of its three aircraft in accordance with the Program Evaluation Division's recommendation in Report #2010-04, and reduces the SBI's operating budget to eliminate funding for insurance and maintenance costs for that aircraft.	($16,835)	R	($16,835)	R
E. Training and Standards				
30 Academy Bookstore Receipts Shifts three bookstore staff positions to receipt support.	($137,487) -3.00	R	($137,487) -3.00	R

	FY 11-12		FY 12-13	
31 Academy Staff Efficiencies	($390,449)	R	($390,449)	R
Consolidates administration of the two training academies and increases receipts for the use of facilities by non-law enforcement agencies. The following positions are eliminated:	-5.00		-5.00	

Position Number	Title	FTE	Total Position Cost
60011295	CJ Training Coord I	1.0	$62,010
60011353	CJ Training Coord I	0.5	$46,471
60011397	CJ Training Coord I	1.0	$71,173
60011369	Housekeeping Team Ldr	1.0	$37,204

The following positions are shifted to receipt support:

Position Number	Title	FTE	Total Position Cost
60011372	Housekeeper	0.5	$35,459
60011377	Security Guard	1.0	$38,132

Total Legislative Changes	**($8,806,806)**	R	**($8,806,806)**	R
	($160,125)	NR		
Total Position Changes	-105.31		-105.31	
Revised Budget	**$80,704,013**		**$80,864,138**	

Juvenile Justice & Delinquency Prevention

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$151,295,187**		**$151,295,187**	

Legislative Changes

A. Department-wide

32 Longevity ($138,777) R ($138,777) R

Makes a reduction to the budgeted amount for longevity to more accurately reflect actual expenditures.

33 Equipment ($197,563) R ($197,563) R

Makes a reduction to the budgeted amount for equipment to more accurately reflect actual expenditures.

34 Computer Services ($472,649) R ($472,649) R

Reduces the budget for computer services throughout the Department.

35 Art, Artifacts, and Literature ($100,000) R ($100,000) R

Reduces the budget for art, artifacts, and literature to more accurately reflect actual expenditures.

36 Utilities ($114,701) R ($114,701) R

Reduces the budget for utilities to more accurately reflect actual expenditures.

37 Repair Services ($154,671) R ($154,671) R

Reduces the budget for repair services to more accurately reflect actual expenditures.

38 Facility and Hardware Supplies ($25,367) R ($25,367) R

Reduces the budget for facility and hardware supplies.

39 Vacant Positions ($222,448) R ($222,448) R

Eliminates the following vacant positions:

-3.00 -3.00

Position Number	Title	Total Position Cost
60001018	Business Services Coord.	$ 52,194
60089025	Administrative Officer I	$ 65,489
60000894	Quality Assurance Specialist	$104,765

	FY 11-12		FY 12-13	
B. Administration				
40 Administrative Efficiencies	($1,281,235)	R	($1,281,235)	R
Reduces administrative positions based on the following ratios:	-20.00		-20.00	

Human Resources:	1 position for every 150 full-time equivalent (FTE) employees.
Fiscal/Budgeting:	1 position for every $8 million of total budget requirements.
Purchasing:	1 position for every $11 million of goods or services purchased.

41 Consolidation Reduction	($591,228)	R	($1,182,455)	R
Eliminates executive level positions as a result of consolidation of the Departments of Juvenile Justice and Delinquency Prevention, Crime Control and Public Safety, and Correction. Position eliminations are effective December 31, 2011. The following positions are eliminated in DJJDP:	-11.00		-11.00	

Position Number	Title	Total Position Cost
60000889	Secretary	$146,310
60000900	Chief Operating Officer	$141,425
60000890	Deputy Secretary	$131,110
60000968	Controller	$117,886
60000964	Dir. of Budget Operations	$ 96,241
60000893	Communications Director	$ 79,945
60000896	Human Resources Director	$125,296
60000916	Technical Services Manager	$125,651
60001485	Legislative Liaison	$ 97,686
60001049	Asst. to Human Resources Dir.	$ 50,325
60000892	Executive Assistant	$ 70,582

42 Staff Development	($300,338)	R	($300,338)	R
Eliminates five staff development positions. The Department can work with the Training Academies in the Department of Justice or the NC Community College System to provide this service.	-5.00		-5.00	
43 IT Help Desk	($172,390)	R	($172,390)	R
Eliminates two IT help desk positions. These positions are a duplication of services provided through the State's Office of Information Technology Services.	-1.60		-1.60	
C. Detention Center Services				
44 Detention Centers	($1,143,137)	R	($1,143,137)	R
Eliminates four Staff Psychologists at Wake, Richmond, New Hanover, and Cumberland Detention Centers. Eliminates 14 Youth Counselor Technicians from Perquimans, Pitt, Alexander, Cumberland, Richmond, Gaston, and Wake Detention Centers. Eliminates three Housing Unit Supervisors from Pitt, Alexander, and Cumberland.	-21.00		-21.00	

	FY 11-12		FY 12-13	
45 Detention Center Receipts Eliminates the continuation budget increase for Detention Center receipts. G.S. 143B-530 requires that any county placing a juvenile in a detention facility in another county shall pay fifty percent of the total cost of caring for the juvenile to the Department.	($2,000,000)	R	($2,000,000)	R
D. Youth Development Centers				
46 Swannanoa Youth Development Center Eliminates funding and positions at Swannanoa Youth Development Center. The Department closed Swannanoa effective March 1, 2011.	($5,000,703) -87.00	R	($5,000,703) -87.00	R
47 DHHS Security Contract Eliminates funding for a contract with the Department of Health and Human Services (DHHS) for security services at Swannanoa Youth Development Center.	($137,989)	R	($137,989)	R
48 Samarkand Youth Development Center Eliminates funding and positions at the Samarkand Youth Development Center (YDC). Bed capacity at the remaining seven YDCs is sufficient to house the juveniles currently committed to Samarkand. The Department is encouraged to increase the use of community-based alternatives to commitment to continue to reduce the need for YDCs across the State.	($3,164,764) -57.00	R	($3,164,764) -57.00	R
49 Repair and Renovation Funds Provides repair and renovation funds for Stonewall Jackson Youth Development Center ($2,330,900) and C.A. Dillon Youth Development Center ($1,531,000). Funds are to be used on repairs or renovations that increase the operational capacity of these youth development centers in order to provide more bed space at a lower cost.	$3,861,900	NR		
E. Education and Treatment Services				
50 School Superintendent Eliminates the Superintendent position in DJJDP (position number 60000978). Superintendent responsibilities can be handled by the Chief Deputy Secretary for Juvenile Justice or the head of Education and Treatment Services.	($113,637) -1.00	R	($113,637) -1.00	R
51 Education Directors Eliminates two education directors (position numbers 60001052, 60001058). The Director for Exceptional Children remains, along with one education director that is 50% receipt supported and one education director that is 100% receipt supported. In addition, the Department of Public Instruction is available to provide consultation and assistance to all public education entities in the State.	($155,550) -2.00	R	($155,550) -2.00	R

	FY 11-12		FY 12-13	
52 Youth Development Center Principals Reduces the number of youth development center principals and assistant principals by four. Two vacant principal positions are eliminated (position numbers 60001614 and 60001205). The Department has discretion to determine which two remaining principal positions to eliminate.	($336,275) -4.00	R	($336,275) -4.00	R
53 Camp Woodson Eliminates funding for Camp Woodson. This therapeutic wilderness program was closed by the Department on March 1, 2011.	($973,570) -19.00	R	($973,570) -19.00	R
F. Community Programs				
54 Juvenile Assessment Center Eliminates the pass-through appropriation to the Juvenile Assessment Center in Cumberland County. This program may continue to receive funding through Juvenile Crime Prevention Council (JCPC) grants.	($124,075)	R	($124,075)	R
55 Project Challenge Eliminates the direct pass-through appropriation for Project Challenge. Project Challenge receives funding through the Juvenile Crime Prevention Council (JCPC) allotment.	($121,600)	R	($121,600)	R
G. Court Services				
56 District Consolidation Reduces the number of districts for the Department from 39 to 30. Eliminates funding for eight chief court counselors (two districts currently share a chief), leaving one chief court counselor for each district.	($563,240) -8.00	R	($563,240) -8.00	R
57 Court Counselor Allotment Reduces the Court Counselor workload to one court counselor for every 32 complaints. This reduction is based on 2005 workload data. The Department is developing a new allotment formula that takes into account workloads and travel requirements. This new formula will be used to distribute court counselors among the 30 districts.	($1,957,488) -39.00	R	($1,957,488) -39.00	R
Total Legislative Changes	**($19,563,395)** **$3,861,900**	R NR	**($20,154,622)**	R
Total Position Changes	-278.60		-278.60	
Revised Budget	**$135,593,692**		**$131,140,565**	

Correction

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$1,421,644,768**		**$1,418,867,332**	

Legislative Changes

A. Department-wide

58 Administrative Efficiencies ($2,983,860) R ($2,983,860) R

Reduces administrative positions based on the following ratios: -60.00 -60.00

Human Resources:	1 position for every 150 full-time equivalent (FTE) employees.
Fiscal/Budgeting:	1 position for every $8 million of total budget requirements.
Purchasing:	1 position for every $11 million of goods or services purchased.

59 Consolidation Reduction ($707,238) R ($1,414,476) R

Eliminates executive level positions as a result of consolidation of the Departments of Juvenile Justice and Delinquency Prevention, Crime Control and Public Safety, and Correction. Position eliminations are effective December 31, 2011. The following positions are eliminated in DOC: -12.00 -12.00

Position Number	Title	Total Position Cost
60056032	Secretary	$146,309
60056034	Administrative Assistant III	$ 68,516
60058360	Deputy Secretary/Commissioner IV	$141,424
60056033	Chief Operating Officer	$151,109
60056056	Administrative Secretary III	$ 51,797
60056384	Accounting Director	$136,885
60056393	Accounting Manager	$117,836
60056146	Information Technology Executive	$156,996
60056264	Agency/University HR Director III	$136,464
60056255	DOC Special Assistant	$ 91,556
60056040	Director of Public Affairs	$ 87,770
60056051	Deputy Secretary/Commissioner II	$127,815

60 Reduce Temporary and Contractual Positions ($1,650,000) R ($1,650,000) R

Reduces the use of temporary and contractual staff department wide.

61 Reduce Longevity Pay ($2,009,625) R ($2,009,625) R

Reduces the longevity pay line item to more accurately reflect actual expenditures.

	FY 11-12		FY 12-13	
62 Reduce the Motor Vehicle Continuation Budget Reduces the Motor Vehicle Continuation Budget.	($950,000) ($1,500,000)	R NR	($950,000)	R
63 Reduce Clothing Budget Reduces the clothing budget for inmate clothing and officer uniforms.	($1,000,000)	R	($1,000,000)	R
64 Reduce PC Equipment Reduces the budget for personal computers replacement schedule.	($300,000)	R	($300,000)	R
65 Reduce Equipment Budget Reduces the equipment budget.	($1,600,000)	R	($1,600,000)	R
66 Reduce Data Processing Equipment Reduces the funding for data processing equipment.	($300,000)	R	($300,000)	R
67 Reduce Supplies Continuation Budget Reduces the Supplies Continuation Budget.	($1,422,052)	R	($1,422,052)	R
68 Reduce Salary Reserve Reduces funds budgeted for salaries in excess of actual salaries of employees.	($1,000,000)	R	($1,000,000)	R
69 Miscellaneous Contractual Services Reduces the Miscellaneous Contractual Services Continuation Budget.	($750,000)	R	($750,000)	R
70 Reduce Travel Budget Reduces the Department's travel budget.	($500,000)	R	($500,000)	R
71 Reduce Utility Budget Reduces the Department's utility budget.	($2,000,000)	R	($2,000,000)	R
72 Reduce the Fringe Benefit Continuation Budget Reduces the continuation budget increases for various fringe benefits accounts across the Department.	($5,429,410)	R	($5,429,410)	R
73 Eliminate Domestic Violence Rehabilitation Reserve Eliminates the Domestic Violence Rehabilitation Reserve, which was funded in 2008. The Department was able to establish the domestic violence programs without ever making use of the appropriation. The domestic violence programs will continue to serve inmates at the same level.	($100,000)	R	($100,000)	R
74 Eliminate Parole Commission Support Position Eliminates a Parole Commission administrative support position (position number 60076645). This reduction will have minimal impact on the Commission.	($87,369) -1.00	R	($87,369) -1.00	R

	FY 11-12		FY 12-13	
75 Eliminates Vacant Positions Eliminates vacant positions throughout the Department.	($14,132,696) -255.00	R	($14,132,696) -255.00	R
76 Eliminate Restoration Budget Reserve Eliminates a continuation budget increase that restores a non-recurring reduction to the Department's budget for a lower than expected inmate population.	($10,042,999) ($11,957,001)	R NR	($10,042,999) ($11,957,001)	R NR
B. Department Management				
77 Legal, License, and Permit Reduces the Legal, License, and Permit Continuation Budget.	($30,000)	R	($30,000)	R
78 Shift Accountants to Receipts Funds accounting positions that support Correction Enterprise with receipts, eliminates the reimbursement from Correction Enterprise, and transfers the positions to the Correction Enterprise fund.	($110,829) -8.00	R	($110,829) -8.00	R
C. Prisons				
79 Eliminate Maintenance Positions at Central Prison Eliminates five maintenance positions that manage the boiler operation at Central Prison. This reduction is possible due to facility improvements related to the Central Prison Hospital addition.	($221,696) -5.00	R	($221,696) -5.00	R
80 Reduce Inmate Costs Reduces inmate costs by enabling inmates with shorter sentences to be rewarded for positive conduct and good behavior. These inmates would otherwise not be able to benefit from sentence reduction credits for program completion. No inmate would serve less than their minimum sentence.	($2,500,000)	R	($2,500,000)	R
81 Establish Two Release Dates Per Month Establishes two release dates per month for inmates leaving prison. Inmates would still be required to serve their mandatory sentence, but would enable the Department of Correction to reduce the costs associated with transportation and processing inmates by improved coordination.	($571,000)	R	($571,000)	R
82 Shift Inmate Medical Costs to Medicaid Shifts medical costs for Medicaid eligible inmates. The Department of Correction and the Department of Health and Human Services have developed a Memorandum of Understanding related to establishing the Medicaid eligibility of qualified inmates who receive inpatient services at a hospital and are away from the prison housing unit for 24 hours or longer. The Department of Correction will pay the State share of Medicaid.	($3,000,000)	R	($3,000,000)	R

	FY 11-12		FY 12-13	
83 Transfer Inmate Welfare Funds Transfers a one-time payment of $1 million from the Inmate Welfare Fund to the General Fund.	($1,000,000)	NR		
84 Transfer Correction Enterprise Funds Transfers a one-time payment of $1 million from the Correction Enterprise Fund to the General Fund.	($1,000,000)	NR		
85 Correction Enterprise Buy Back Directs Correction Enterprise to buy back items currently held in the Department's Central Supply Warehouse. This reduction would shift the responsibility for storing excess supplies from the Department to the receipt-supported Correction Enterprise Fund.	($1,300,000)	R	($1,300,000)	R
86 Eliminate Community Work Crews Eliminates Community Work Crews, which were partially restored in 2010 after a complete elimination in 2009. The Department was authorized to charge local government entities a $150 per day fee to offset part of the cost of the eight-person crew plus one Correctional Officer. No local entity has ever paid the Work Crew fee.	($1,602,094) -39.00	R	($1,602,094) -39.00	R
87 Reduces Chaplains Reduces Chaplain positions at minimum and medium custody prisons, and maintains at least one Chaplain position at each of the 14 close custody prisons. Each prison facility has a designated staff member responsible for coordinating the involvement and supervision of the Community Volunteer Program. This designee will coordinate the community volunteers, including the religious volunteers, at the minimum and medium custody prisons.	($1,386,653) -25.00	R	($1,386,653) -25.00	R
88 Eliminate Double Celling at Pamlico CI Eliminates funding for double celling of inmates at Pamlico Correctional Institution. Implementation of double celling has been cancelled due to county waste water treatment capacity issues.	($2,395,452) -57.00	R	($2,395,452) -57.00	R
89 Eliminate Correctional Officer Positions Eliminates 39 Correctional Officer positions associated with the Inmate Litter Crews. This reduction will eliminate positions that are not supported by receipts received from the Department of Transportation.	($1,560,000) -39.00	R	($1,560,000) -39.00	R
90 Eliminate Funding For Our Children's Place Eliminates the pass-through appropriation for Our Children's Place, which has yet to become operational.	($104,025)	R	($104,025)	R
91 Justice Reinvestment Act: Prison Closures Closes four minimum custody prisons, effective January 1, 2012. These prisons are closing as part of the Justice Reinvestment Act reforms.	($5,379,669) -203.00	R	($10,759,336) -203.00	R

	FY 11-12		FY 12-13	
92 Justice Reinvestment Act: Diagnostic Center	($616,884)	R	($822,513)	R
Eliminates 18 diagnostic center positions at Neuse Correctional Institution and Fountain Correctional Center for Women. These positions are being eliminated as part of the Justice Reinvestment Act reforms.	-18.00		-18.00	
93 Justice Reinvestment Act: Remove Misdemeanants	($3,980,368)	R	($3,980,368)	R
Removes misdemeanants with sentences of six months or less from State prisons and houses them in county facilities. Structured Sentencing misdemeanants with sentences longer than six months and Driving While Impaired misdemeanants will remain in the custody of the State. This change is part of the Justice Reinvestment Act reforms. The fee section of the budget proposes increasing the following court costs to offset the costs of housing misdemeanants: the District Criminal Court Facility court cost, which will generate an estimated $19 million; and the Service of Civil Process court cost, which will generate an estimated $3.3 million. In addition, the fee section establishes a new court cost for Improper Equipment dispositions, which will generate an estimated $12 million, and increases the daily jail fee and jail inmate medical co-pay. It is unknown how much the daily jail fee and co-pay increase will generate. These court cost increases are contingent upon passage of legislation increasing the number of days misdemeanants are housed in county jails.				
94 Operating Reserves For New Hospital Facilities	($299,859)	R	($299,859)	
Reduces the operating reserves for the new hospitals at Central Prison and NC Correctional Institution for Women Mental Health Facility.	($1,164,417) -3.00	NR	 -3.00	
95 Operating Reserves For New Facilities	$5,874,102	R	$24,196,611	R
Provides funding to operate and staff new add-on facilities at Swannanoa Correctional Center for Women, Lanesboro Correctional Institution, Maury Correctional Institution, and Tabor Correctional Institution. These facilities will become operational in 2011 and 2012.	$4,125,898 280.00	NR	$803,389 340.00	NR

	FY 11-12		FY 12-13	
D. DACDP				
96 Reduce DACDP Administration	($405,875)	R	($405,875)	R
Reduces the Division of Alcoholism and Chemical Dependency Programs (DACDP) administration and eliminates six positions.	-6.00		-6.00	

Position Number	Title	Total Position Cost
60056812	Dep. Dir. Substance Abuse Serv.	$127,095
60056814	Personnel Technician	$ 62,921
60056770	SA Counselor Clinician	$ 53,124
60056816	Administrative Secretary III	$ 46,780
60056769	Accounting Technician	$ 46,736
60056771	Processing Assistant	$ 36,594
	Reduces Lease Savings Projection	$26,355
	Reduces Rent/Lease Motor Vehicles	$6,270

97 Eliminate DACDP Private Treatment Beds	($5,233,354)	R	($5,233,354)	R
Eliminates funding for two private contractual providers of minimum custody level treatment beds.				
E. Community Corrections				
98 Eliminate Women at Risk	($249,375)	R	($249,375)	R
Eliminates all State funding for the Women at Risk program, a substance abuse treatment program for female probationers mainly serving Buncombe and Henderson counties.				
99 Eliminate Summit House	($1,052,756)	R	($1,052,756)	R
Eliminates all State funding for Summit House, a residential facility for female probationers at risk of revocation and their children. The program accepts women from any part of the State, but operates in Guilford and Mecklenburg counties.				
100 Eliminate Harriet's House	($195,937)	R	($195,937)	R
Eliminates all State funding for Harriet's House, a residential facility serving women upon release from prison and their children.				

	FY 11-12		FY 12-13	
101 Broaden Access to Community Treatment Captures funds currently directed through non-profit pass-throughs and contracts into a fund within the Division of Community Corrections to provide community treatment services through fee-for-service contracts with local providers. The Department shall use money from this fund to continue existing contracts with Mary Frances and Evergreen for one additional month to insure orderly transition of inmates back into the prison system. The Department shall further use money from this fund to continue pass-through funding for Harriet's House, Summit House, and Women at Risk for three additional months to complete services for existing populations and to shut down operations. The Department shall also use up to $300,000 of this fund to pay the NC Sheriff's Association, Inc. to manage the assignment of misdemeanants held in county jails.	$4,138,260	R	$4,138,260	R
102 Interstate Compact Receipts Funds the non-personnel operating costs of the Interstate Compact with receipts so the Division of Community Corrections can reduce the appropriations used to fund the Compact. This will have no impact on services. The fee is increasing from $150 to $250.	($125,000)	R	($125,000)	R
103 Reorganization of Victim Services Eliminates four victim service positions in the Community Corrections regional offices. The services provided by these positions can be managed within existing resources at the DOC Office of Victim Services.	($201,873) -4.00	R	($201,873) -4.00	R
104 DCC Reduction in Support Positions Eliminates 21 positions associated with middle management at the Division of Community Corrections that have become redundant due to district reorganization.	($880,727) -21.00	R	($880,727) -21.00	R
105 Eliminate DCC Personnel Tech Positions Eliminates the Personnel Technician position at each of the four Community Corrections division offices.	($156,215) -4.00	R	($156,215) -4.00	R
106 Outsource Electronic Monitoring Eliminates positions in the Community Corrections Technology Center overseeing offenders on house arrest with electronic monitoring. The service will be provided through a lower-cost contract with the provider of the monitoring equipment. The contract shall including monitoring services for the Department of Juvenile Justice and Delinquency Prevention to maximize cost savings.	($475,331) -11.00	R	($475,331) -11.00	R
107 Consolidate DCC Drug Lab Functions Closes three Community Corrections drug labs, leaving two open. Developments in the products for drug testing have reduced the need for labs.	($345,043) -8.00	R	($345,043) -8.00	R

Senate Subcommittee on Justice and Public Safety	FY 11-12		FY 12-13	
Total Legislative Changes	**($71,332,902)**	**R**	**($59,302,927)**	**R**
	($12,495,520)	**NR**	**($11,153,612)**	**NR**
Total Position Changes	-499.00		-439.00	
Revised Budget	**$1,337,816,346**		**$1,348,410,793**	

Crime Control and Public Safety

GENERAL FUND

	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$34,175,427**		**$34,175,427**	

Legislative Changes

A. Department-wide

108 Janitorial Services ($47,794) R ($47,794) R

Reduces the line item for janitorial services throughout the Department to more accurately reflect actual expenditures.

109 Waste Removal Services ($64,411) R ($64,411) R

Reduces the line item for waste removal services throughout the Department to more accurately reflect actual expenditures.

110 Utilities ($56,103) R

Reduces the line item for utilities throughout the Department in the second year of the biennium.

B. Administration

111 Criminal Justice Information Network (CJIN) ($154,423) R ($154,423)

Eliminates two positions assigned to provide support for CJIN. The following positions are eliminated: -2.00 -2.00

Position Number	Title	Total Position Cost
60084100	Admin. Assistant II	$ 50,559
60084125	CJIN Director	$103,864

112 Consolidation Reduction ($620,241) R ($1,240,482) R

Eliminates executive level positions as a result of consolidation of the Departments of Juvenile Justice and Delinquency Prevention, Crime Control and Public Safety, and Correction. Position eliminations are effective December 31, 2011. The following positions are eliminated in CCPS: -11.00 -11.00

Position Number	Title	Total Position Cost
60084098	Secretary	$146,310
60084129	Chief Operating Officer	$136,740
60084134	Assistant Secretary	$131,349
60084686	Deputy Secretary	$133,225
60084138	Controller	$122,290
60084158	Dir. of Human Resources	$119,565
60084127	Director of IT	$131,028
60084159	Leg. Affairs Program Mgr.	$ 87,747
60084130	Special Assistant to the Sec.	$103,608
60084132	Administrative Assistant	$ 68,473
60084133	Administrative Assistant	$ 60,147

	FY 11-12		FY 12-13	
C. National Guard				
113 Reorganization of National Guard Support Reduces staffing costs in the Adjutant General's Office.	($200,000)	R	($200,000)	R
D. Butner Public Safety				
114 Butner Public Safety (BPS) Increases the receipts for Butner Public Safety. The Department will contract with the Town of Butner to provide fire and police service to the Town and to the Butner Fire and Police District. Receipts that were previously directed through the General Fund will now go directly to the Department for the support of BPS. The appropriation for BPS is also reduced by 10% in the first year and 15% in the second year.	($1,422,700)	R	($1,527,432)	R
F. State Capitol Police				
115 Reorganize State Capitol Police Reorganizes State Capitol Police to focus on security in and around State-owned buildings in Wake County.	($2,267,303) -40.00	R	($2,267,303) -40.00	R
G. Alcohol Law Enforcement				
116 ALE Administration Eliminates five positions in Alcohol Law Enforcement administration. Increases Lottery receipts by $200,000 and makes other reductions to operating costs.	($1,064,210) -5.00	R	($1,064,210) -5.00	R
H. Division of Emergency Management				
117 Shift Positions to Receipt Support Makes 16 positions in the Division of Emergency Management 50% receipt supported.	($539,974) -8.00	R	($539,974) -8.00	R
J. Law Enforcement Support Services				
118 General Fund Appropriation for LESS Eliminates the General Fund appropriation for LESS and transfers the evidence and DNA storage warehouse to the NC Crime Lab. The Secretary of the Department shall appoint a designee to coordinate the surplus federal property and first-responder purchasing programs for local law enforcement agencies. The following positions are eliminated:	($203,257) -5.00	R	($203,257) -5.00	R

Position Number	Title	Total Position Cost
60084103	Director LESS	$95,410
65011786	Processing Assistant V	$37,553
65011787	Processing Assistant V	$37,553
65011788	Processing Assistant V	$37,553
65011789	Processing Assistant V	$37,553

	FY 11-12		FY 12-13	
K. Highway Patrol				
119 Highway Patrol	$196,849,542	R	$188,209,049	R
Appropriates funds for the Highway Patrol in a new fund code in Budget Code 14900. In previous years, the budget for the Highway Patrol has been budgeted directly from the Highway Fund. Beginning in FY 2011-12, funds will be transferred from the Highway Fund to the General Fund for the support of the Highway Patrol. Reductions to the Highway Patrol's budget for FY 2011-13 have been itemized in the Transportation section of the Committee Report. Non-Highway Fund receipts collected by the Highway Patrol will also be budgeted in the new fund code.	2,368.50		2,368.50	
L. Department of Public Safety				
120 Consolidation Reserve	$818,139	R	$1,563,124	R
Creates 13 new positions for the new Department of Public Safety. These positions are effective January 1, 2012, except for the secretary position, which is effective October 1, 2011. The following positions are created:	13.00		13.00	

Title	FTE	Total Position Cost
Secretary	1.0	$146,310
Administrative Assistant	2.0	$130,620
Controller	1.0	$136,947
Chief Financial Officer	1.0	$118,364
Dir. of Human Resources	1.0	$136,387
Director of IT	1.0	$157,100
Public Information Officer	1.0	$ 87,771
Legislative Liaison	1.0	$ 97,686
Chief Deputy Secretary	3.0	$416,071
Deputy Secretary	1.0	$135,870

121 Anticipated Consolidation Savings			($1,417,693)	R
Creates a reserve for savings that will be realized as a result of consolidation of the Departments of Juvenile Justice and Delinquency Prevention, Crime Control and Public Safety, and Correction. Savings are anticipated from bulk purchasing, the merger of regional offices in the Law Enforcement Division, and the elimination of duplicative administrative positions identified by the new Department. These savings will be taken from the consolidated budget for the Department of Public Safety, and are not limited to funds currently appropriated to the Department of Crime Control and Public Safety.				

Senate Subcommittee on Justice and Public Safety	FY 11-12		FY 12-13	
Total Legislative Changes	**$191,083,368**	**R**	**$180,989,091**	**R**
Total Position Changes	2,310.50		2,310.50	
Revised Budget	**$225,258,795**		**$215,164,518**	

Highway Patrol

Budget Code: 24960

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	**$0**	**$0**
Recommended Budget		
Requirements	**$221,219,607**	**$221,219,607**
Receipts	**$221,190,127**	**$221,190,127**
Positions	**2,384.50**	**2,384.50**

Legislative Changes

Requirements:

Transfer SHP Funds to General Fund Support Transfers the budget for the Highway Patrol from Budget Code 24960 to a new fund code in Budget Code 14900 - Crime Control and Public Safety. A corresponding item in the Justice and Public Safety section of the Committee report appropriates funds from the General Fund to the Highway Patrol.	($221,219,607)	R	($221,219,607)	R
	$0	NR	$0	NR
	-2,384.50		-2,384.50	
Subtotal Legislative Changes	**($221,219,607)**	R	**($221,219,607)**	R
	$0	NR	**$0**	NR
	-2,384.50		-2,384.50	

Receipts:

Transfer Highway Fund Receipts Transfers Highway Fund receipts for the Highway Patrol to General Fund availability. The Transportation section of the Committee Report reduces the transfer for the Highway Patrol by $21 million. The total amount transferred to General Fund availability will be $196,849,542 in FY 2011-12 and $188,209,049 in FY 2012-13.	($217,567,328)	R	($217,567,328)	R
	$0	NR	$0	NR
Transfer Highway Patrol Receipts Transfers non-Highway Fund Highway Patrol receipts to a new fund code in Budget Code 14900 - Crime Control and Public Safety.	($3,622,799)	R	($3,622,799)	R
	$0	NR	$0	NR

	FY 2011-12		FY 2012-13	
Subtotal Legislative Changes	($221,190,127)	R	($221,190,127)	R
	$0	NR	$0	NR
Revised Total Requirements	$0		$0	
Revised Total Receipts	$0		$0	
Change in Fund Balance	$0		$0	
Total Positions	0.00		0.00	
Unappropriated Balance Remaining	$0		$0	

GENERAL GOVERNMENT
Section J

Administration

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$69,700,026**		**$69,700,026**	
Legislative Changes				
1111 Office of the Secretary				
1 Consolidate Environmental Clearing House Function	($74,144)	R	($74,144)	R
Eliminates Environmental Clearing House Function and position (Community Development Specialist 660013846) and benefits.	-1.00		-1.00	
1121 Fiscal Management				
2 Increase Receipt Support for Positions	($188,907)	R	($188,907)	R
Increases receipt support for the following positions within Fiscal Management (60014119, 60014102, 60014118, 60014100, 60014112, 60014114, 60014107).	-2.44		-2.44	
1122 Human Resources				
3 Reduce Operating Costs	($116,612)	R	($116,612)	R
Reduces operating accounts within the Human Resources Office.				
1123 Historically Underutilized Businesses				
4 Program Reduction	($81,820)	R	($81,820)	R
Eliminates salary ($65,074) and benefits of one filled position: 60014897.	-1.00		-1.00	
1241 Management Information Systems				
5 Move Position to Receipts Support	($83,455)	R	($83,455)	R
Moves a State Construction Office related position (Business and Technology Applications Analyst 60014137) to receipts support.	-0.85		-0.85	

	FY 11-12		FY 12-13	
1264 Agency for Public Telecommunications				
6 Transfer Agency for Public Telecommunications to Receipt Support	($617,497)	R	($617,497)	R
Requires the APT division to become fully receipt supported. In addition to operating costs, the following positions will be receipt supported:	-7.71		-7.71	

Executive Director (60014546)
Administrative Assistant II (60014548)
Television Engineer III (60014554)
Television Producer/Director III (60014564)
Television Producer Director II (60014556)
Television Producer Director III (60014555)
Administrative Officer III (60014547)

1311 Office of State Personnel

	FY 11-12		FY 12-13	
7 Eliminate Positions and Reduce Operating Expenses	($1,159,596)	R	($1,159,596)	R
Eliminates salaries and benefits of 8.25 vacant and 6 filled positions, and transfers .27 position to receipts; and reduces operating expenses.	-14.52		-14.52	

Vacant Positions

60013785	HR Consultant	($65,000)
60013823	HR Consultant	($65,000)
60013793	HR Consultant	($65,124)
60013838	HR Associate	($46,335)
60013764	Adm. Support	($31,889)
60013777	Division Director	($91,500)
60013742	Division Director	($57,010) - .50 FTE
65012021	HR Partner	($40,250) - .75 FTE
60013784	HR Consultant	($50,932)

531211 SPA Reg Salary ($513,040)
531511 Soc Sec ($39,248)
531521 Retirement ($47,910)
531561 Medical ($39,440)
SUBTOTAL Vacant Positions ($639,638)

Filled Positions
60013804 HR Partner Per. Officer ($68,303)
60013744 HR Associate ($47,432)
60013790 HR Manager ($97,353)
60013782 Associate Position ($38,851)
60013798 Partner Position ($70,046)
60013836 Adm. Support Assoc ($26,208)
60013818 HR Manager ($28,300) - .27 FTE

531211 SPA Reg Salary ($376,493)
531511 Soc Sec ($ 28,802)
531521 Retirement ($ 36,780)
531561 Medical ($ 27,100)
SUBTOTAL Filled/Receipted Pos ($469,175)

Operating Expenses
532140 Data Processing ($3,404)
532150 Academic Services ($1,500)
532700 Travel($1,500)
532930 Registration Fees ($5,000)
535830 Member Dues&Subs ($5,000)
536905 OJT Incentive Program ($10,000)
5328XX IT Costs ($24,379)
SUBTOTAL Operating Expenses ($50,783)

8 Human Resources Development

Provides $1.5 million to support the Learning Management System, which is a component of a comprehensive Human Capital Management (HCM) System. Funds from the NCFlex FICA Fund will be used to support the program components. The Office of State Controller will transfer funds from the NCFlex FICA Fund to the Office of State Personnel.

	FY 11-12		FY 12-13	
1411 State Construction				
9 Move Positions to Receipt Support	($750,012)	R	($750,012)	R
Uses a portion of the 5% Contingency Reserve for all capital projects under the State Construction Office's control to fund nine positions. The positions are as follows: 60014589 Mechanical Engineer 60014582 Engineer 60014588 Engineer 60014614 Engineer 60014580 Engineer 60014608 Construction Contracts Administrator 60014700 Control System Technician 60014590 Engineer 60089475 Engineer	-9.00		-9.00	
1412 State Property				
10 Consolidate Position	($89,028)	R	($89,028)	R
Consolidates Plan Review position with Code Review. One Management Engineer III position (60014636) and benefits will be eliminated.	-1.00		-1.00	
11 Move Positions to Receipt Support	($66,047)	R	($66,047)	R
Increases support from the Land Fund for a portion of four positions: 60014639 Real Property Agent II 60014635 Real Property Manager 60014637 Real Property Agent III 60014640 Real Property Agent III	-1.07		-1.07	
1421 Building Reserves				
12 Fund Building Reserve for the Department of Health and Human Services	$1,473,580	R	$3,377,710	R
Funds the Public Health Lab and Office of the Medical Examiner Building that will come online during FY 2011-12.				

	FY 11-12		FY 12-13	
1421 Facilities Management				
13 Eliminate Positions in Facility Management	($544,533)	R	($544,533)	R
Eliminates the following positions in the Facilities Management division. The positions are as follows:	-10.75		-10.75	
60014761 Facilities Maintenance Tech. 60014822 Building and Environmental Tech. 60014824 Building and Environmental Tech. 60014737 Plasterer 65011759 Facilities Maintenance Tech. 65011754 Building and Environmental Tech. 65011755 Building and Environmental Supervisor 60014721 Housekeeping Contract Admin. 60014784 Housekeeping Procurement Asst. 60014708 Painter 60014781 Housekeeping Supervisor				
1421 Facility Management				
14 Consolidate Position	($41,232)	R	($41,232)	R
Consolidates a position within Pest Control and Greenhouse Management. One position (Facilities Maintenance Tech 60014763) and benefits will be eliminated.	-1.00		-1.00	
15 Move Position to Receipts	($51,644)	R	($51,644)	R
Moves a carpenter position (60014730) to receipts support.	-1.00		-1.00	
1511 Purchase and Contract				
16 Eliminate Purchase and Contract Positions	($480,268)	R	($480,268)	R
Eliminates seven vacant purchase and contract positions. Positions affected are as follows:	-7.00		-7.00	
State Procurement Specialist III 60013871 Administrative Assistant III 60013904 Engineer 60013872 Auditor 65011990 State Procurement Specialist 65011994 Auditor 65011991 State Procurement Specialist III 65011993				
1731 NC Council for Women				
17 Program Reduction	($101,839)	R	($101,839)	R
Eliminates regional office and redistributes oversight responsibilities for local grantees.	-2.00		-2.00	
1732 Displaced Homemakers Program				
18 Program Reduction	($15,247)	R	($15,247)	R
Reduces appropriation for Displaced Homemakers grant funding and administrative costs by 5%. The remaining appropriation for Displaced Homemakers is $289,700 each year.				

1734 Rape Crisis Program

19 Program Reduction ($151,120) R ($151,120) R

Reduces appropriation for Sexual Assault grant funding and administrative costs by 5%, which provides an appropriation of $2,871,270 each year.

1741 Human Relations Commission

20 Human Relations Commission Transfer ($841,613) R ($841,613) R

Authorizes a Type I transfer of the Human Relations Commission from the Department of Administration to the Office of Administrative Hearings. The Commission's Fair Housing responsibilities will continue in the Office of Administrative Hearings. -10.68 -10.68

1742 Martin Luther King Commission

21 Eliminate Grant Funding ($42,465) R ($42,465) R

Eliminates funding for the grants managed by the Commission.

1761 Youth Advocacy & Involvement Office

22 Personnel Adjustment and Operations Reduction ($322,702) R ($322,702) R

Reduces the program with the elimination of salaries and benefits of three vacant and two filled positions ($277,750) and reduces funds for operations ($44,952). -5.00 -5.00

Vacant Positions:
60014505 Advocacy Specialist II/Assistant Director ($53,879)
60014504 Advocacy Specialist ($40,624)
60014063 Administrative Officer II ($39,078)

Filled Positions
60014503 Advocacy Specialist ($39,190)
60014507 Advocacy Specialist ($41,429)

1771 Veterans Affairs - Administration

23 Program Reduction ($562,135) R ($562,135) R

Reduces the appropriation by realigning the budget to more closely reflect actual expenditures, and leaves $73,545 in the account. Eliminates salary and benefits of one filled position: -1.00 -1.00

#60014249

531211 SPA Reg Salary	($48,415)
531511 Soc Sec	($ 3,704)
531521 Retirement	($ 5,088)
531561 Medical	($ 4,930)

24 Reduces Program Funding ($50,000) R ($50,000) R

Reduces funding for the Aid to Counties Program.

	FY 11-12		FY 12-13	
1810 State Ethics Commission				
25 Adjust Personnel and Reduce Operating Budget	($219,519)	R	($219,519)	R
Eliminates salaries and benefits of a vacant Program Assistant V position at $33,582, and an Attorney II position at $85,241 that is filled. Additionally reduces IT Services.	-2.00		-2.00	
Vacant Position 60088569 Program Assistant V ($33,582) 531211 SPA Reg Salary ($33,582) 531511 Soc Sec ($2,569) 531521 Retirement ($3,529) 531561 Medical ($4,930) Subtotal Vacant Position ($44,610)				
Filled Position 65012031 Attorney II ($85,241) 531211 SPA Reg Salary ($ 85,241) 531511 Soc Sec ($ 6,521) 531521 Retirement ($ 8,959) 531561 Medical ($ 4,930) Subtotal Vacant Position ($105,651)				
Operating Budget Reductions 532140 IT Services ($64,408) IT 5% Reduction ($ 4,850) Subtotal Operating Budget ($72,479)				
2401 E-Commerce Reserve				
26 Reduce E-Commerce Reserve				
Reduces the E-Commerce Reserve by eliminating SL. 2010-31, Sec. 6.19 for the purchase of $1,000,0000 in Smart Cards and $3,483,526 in funds to be used in FY 2012 for E-Procurement system upgrades for a total reduction of $4,483,526. Funds in the Reserve may be used for E-Procurement Contracts in effect on May 1, 2011. Funds are being transferred to General Fund availability.				
Department-wide				
27 Eliminate Vacant Positions	($793,948)	R	($793,948)	R
Eliminates up to 15.50 vacant positions and associated benefits at the Department of Administration that have been vacant for more than 100 days.	-15.50		-15.50	
28 Reduce Payments to ITS	($58,871)	R	($58,871)	R
Reduce payments to ITS by 5% (532800).				

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Department-wide				
29 Reduce Longevity and Fringe Benefits to Actual Reduces Longevity and Fringe Benefits to actual.	($62,022)	R	($62,022)	R
Total Legislative Changes	**($6,092,696)**	R	**($4,188,566)**	R
Total Position Changes	-94.52		-94.52	
Revised Budget	**$63,607,330**		**$65,511,460**	

Auditor

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$13,063,656**		**$13,063,656**	
Legislative Changes				
1110 - Administration				
30 Reduce Payments to ITS Reduces IT payments to reflect a reduction in Community College and UNC Audits (532800).	($41,992)	R	($41,992)	R
1210 Field Audit Division				
31 Reduce Audits at Community Colleges and University of North Carolina Reduces the number of audits at the North Carolina Community College System (NCCCS) campuses to the statutory minimum of once every five years. The University of North Carolina (UNC) will receive a fiscal control audit every three years. Both UNC and NCCCS campuses will be allowed to use State appropriated funds for private audits as necessary and may contract with the Office of State Auditor for such services. In FY 2011-12, four positions will be eliminated. In FY 2012-13, it is the intention for positions related to UNC and NCCCS audits to become receipt supported. The four positions with associated benefits for elimination are as follows: 60008883 Adm. Support Spec. ($58,496) 60008950 Assistant State Auditor ($96,274) 60008961 Assistant State Auditor ($84,096) 60008811 Assistant State Auditor ($90,595)	($329,461) -4.00	R	($1,511,000) -17.00	R
1210 Field Audit Division				
32 Reduce Performance Audit Division Reduces half of the Performance Audit Division and transfers funding for up to 5 positions to the Program Evaluation Division at the North Carolina General Assembly.	($771,994) -9.00	R	($771,994) -9.00	R
1210 Field Office Division				
33 Lease Reduction Eliminates leases in Asheville, Charlotte, Fayetteville, Edenton, and Greensboro.	($62,635)	R	($62,635)	R

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Total Legislative Changes	($1,206,082)	R	($2,387,621)	R
Total Position Changes	-13.00		-26.00	
Revised Budget	**$11,857,574**		**$10,676,035**	

Cultural Resources

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$72,664,633**		**$72,664,633**	
Legislative Changes				
1110 Office of the Secretary				
34 Personnel Adjustment Eliminates salaries and benefits of three vacant positions - 2 in the Cultural Heritage Tourism Program and a Personnel Analyst III. Vacant Positions 60083263 Deputy HR Director ($65,451) 65011686 Multi-Cultural and Development Officer ($38,174) 65011687 Community Development Director ($48,654) 531211 SPA Reg Salary ($152,279) 531511 Soc Sec ($ 11,650) 531521 Retirement ($ 16,005) 531561 Medical ($ 14,787)	($194,721) -3.00	R	($194,721) -3.00	R
1230 Archives & Records				
35 Personnel Adjustment Eliminates salary and benefits of a vacant position: 60083352 (Local Records Supervisor). 531211 SPA Reg Salary ($46,219) 531511 Soc Sec ($3,535) 531521 Retirement ($4,858) 531561 Medical ($4,929)	($59,541) -1.00	R	($59,541) -1.00	R
36 Personnel Adjustment Transfers four positions to Archives and Records Management (ARM) receipts. #60083376 - Processing Assistant IV #60083348 - Accounting Technician #60083346 - Archives and Records Professional #60083353 - Archives and Records Professional 531211 SPA Reg Salary ($145,271) 531511 Soc Sec ($11,113) 531521 Retirement ($15,268) 531561 Medical ($19,716)	($191,368) -4.00	R	($191,368) -4.00	R

	FY 11-12		FY 12-13	
1241 State Historic Sites				
37 Transfer Functions and Positions to Receipts	($576,258)	R	($1,152,515)	R
Transfers the Transportation Museum to 50% receipts-support in FY 2011-12 and total receipts-support in FY 2012-13.	-8.00		-20.50	

FY 2011-12
#60083524 Electrician II
#60083520 Museum Specialist
#60083528 Carpenter II
#60083521 Historic interpreter II
#60083530 Historic interpreter II
#60083533 Security Guard
#60083529 & #60083536 Building Environmental Technician

531211 SPA Reg Salary ($228,999)
531511 Soc Sec ($ 17,518)
531521 Retirement ($ 24,068)
531561 Medical ($ 39,432)
532188 Lawn & Garden Service Agreement ($40,262)
532199 Misc Contractual Service ($43,642)
532210 Enrg Ser - Electrical ($62,338)
532220 Enrg Ser - Nat Gas/ Propane ($26,742)
532230 Enrg Ser - Water & Sewer ($8,123)
532331 Repairs - Motor Vehicles($195)
532333 Repairs - Other Equip ($ 8,460)
532390 Repairs- Other ($40,262)
532430 Maint - Equip ($3,292)
532490 Maint Agreement - Other ($385)
532714 Transp - Grnd -In state ($6,825)
532811 Telephone Service ($5,708)
532840 Postage, Freight, Delivery ($3,241)
532911 Property - Insurance ($3,335)
532919 Other Insurance ($235)
532942 Other Emp Educ Expense ($40)
533320 Diesel Fuel ($860)
533900 Other Materials & Supplies ($2,060)
535830 Membership, Dues, & Subscrip ($236)
TOTAL FY 2011-12 ($576,258)

FY 2012-13
#60083531 NC Transportation History Museum Director
#60083522 Facility Maintenance Supervisor III
#60083527 Maintenance Mechanic V
#60083524 Electrician II
#60083523 and #60083525 Historic Sites Manager II
#60083520 Museum Specialist
#60083519 Information & Communication Specialist I
#60083528 Carpenter II
#60083535 Office Assistant IV
#60083526 and #60083534 Historic Interpreter III
#60083521 and #60083530 Historic interpreter II
#60083529 and #60083536 Building Environmental Technician
#60083532 and #60083533 Security Guard

1241 State Historic Sites

#60083404 Historic Sites Specialist I

531211 SPA Reg Salary ($662,320)
531511 Soc Sec ($50,667)
531521 Retirement ($69,610)
531561 Medical ($101,045)
532188 Lawn & Garden Service Agreement ($40,262)
532199 Misc Contractual Service ($43,642)
532210 Enrg Ser - Electrical ($62,338)
532220 Enrg Ser - Nat Gas/ Propane ($26,742)
532230 Enrg Ser - Water & Sewer ($8,123)
532331 Repairs - Motor Vehicles ($195)
532333 Repairs - Other Equip ($18,460)
532390 Repairs- Other ($40,262)
532430 Maint - Equip ($3,292)
532490 Maint Agreement - Other ($385)
532714 Transp - Grnd -In state ($6,825)
532811 Telephone Serv ($5,708)
532840 Postage, Freight, Delivery ($3,241)
532911 Property - Insurance ($3,335)
532919 Other Insurance ($235)
532942 Other Emp Educ Expense ($40)
533320 Diesel Fuel ($860)
533900 Other Materials & Supplies ($4,692)
535830 Membership, Dues, & Subscrip ($236)
Total FY 2012-13 ($1,152,515)

1242 Tryon Palace

38 Transfers Positions to Receipts-support	($375,075)	R	($375,075)	R
Transfers the historic site's maintenance program to receipts-support.	-10.00		-10.00	

#60083572 Painter
#60083563 Carpenter II
#65011462 and 60083559 Maintenance Mechanic IV
#60083568, 60083571, 65011458, 65011459, and 60083567 Building Environmental Technicians
#65011430 Assistant Special Events Coordinator

531211 SPA Reg Salary ($275,715)
531511 Soc Sec ($21,092)
531521 Retirement ($28,978)
531561 Medical ($49,290)

39 Changes to Historic Site's Funding	($846,951)	R	($1,693,902)	R
Reduces remaining operating budget each year.				

	FY 11-12		FY 12-13	
1245 NC Maritime Museum				
40 Transfer to Receipts-support	($59,265)	R	($59,265)	R
Transfers support for the Cape Lookout Studies Program and .75 FTE of position to receipts available from private partnership funds.	-0.75		-0.75	
#60083652 Natural Science Curator				
531211 SPA Reg Salary ($31,834)				
531511 Soc Sec ($2,435)				
531521 Retirement ($3,346)				
531561 Medical ($3,697)				
532199 Misc Contractual Serv ($7,500)				
532333 Repairs- Other Equip ($863)				
532714 Transp - Grnd, In State ($1,500)				
532715 Transp - Grnd, Out State, In U.S. ($225)				
532721 Lodging - In State ($1,275)				
532724 Meals- In State ($1,013)				
532930 Registration Fees ($750)				
533110 General Office Supplies ($375)				
533720 Educ Supplies ($137)				
534539 Other Equip ($4,315)				
1247 Office of State Archaeology				
41 Program Reductions	($171,242)	R	($171,242)	
Suspends the operations of the Archaeology Laboratory and Curation Facility and eliminates salaries and benefits of three filled positions:	-3.00		-3.00	
#60083679 Archaeological Technician ($27,544)				
#60090495 Archaeologist I ($41,100)				
#60083676 Archaeologist II ($54,341)				
531211 SPA Reg Salary ($122,985)				
531461 Longevity ($2,446)				
531511 Soc Sec ($9,595)				
531521 Retirement ($13,182)				
531561 Medical ($14,790)				
Operating Budget Reductions				
53XXXX ($8,243)				

	FY 11-12		FY 12-13	
1250 Historic Preservation Office				
42 Transfer to Receipts-support	($71,106)	R	($71,106)	R
Transfers 1.5 positions to federal grant receipts.				
	-1.50		-1.50	
#60083622 Office Assistant III				
#60083629 Historic Preservation/Restoration Specialist I (.5FTE)				
531211 SPA Reg Salary ($53,921)				
531511 Soc Sec ($ 4,124)				
531521 Retirement ($ 5,667)				
531561 Medical ($ 7,394)				

	FY 11-12		FY 12-13	
1320 Museum of Art				
43 Operating Reductions	($471,601)	R	($673,925)	R
Reorganizes and consolidates Museum of Art operations by eliminating salaries and benefits of three vacant positions and 7.25 filled positions; and transfers .25 position to receipts-support.	-10.50		-10.50	

Vacant Positions
SPA
#65011450 Maintenance Mechanic II ($27,544)
#60083791 Office Assistant III ($34,319)

EPA
#6501.1451 Art Museum Curator ($50,400)
SUBTOTAL Vacant Positions ($112,263)

Filled Positions
#60083795 Security Guard ($24,861)
#65005187 Security Guard ($24,861)
#60083773 Processing Assistant III ($8,119) - (.25 FTE)
#60083774 Processing Assistant III ($34,319)
#60083772 Program Assistant IV ($29,783)
#60083754 Processing Assistant IV ($31,389)
#65005027 Art Handler ($32,411)
#60083769 Library Technician ($36,378)
SUBTOTAL Filled Positions ($222,121)

Receipts-support Position
#60090505 Associate Director ($15,412) - (.25 FTE)

531111 EPA- Reg Salaries- Approp ($ 50,400)
531211 SPA- Reg Salaries- Appropr ($299,396)
531511 Soc Sec ($26,759)
535121 Retirement ($36,764)
531561 Medical ($49,300)

Operating Budget Reduction
FY 11-12
53XXXX ($8,982)

FY 12-13
53XXXX ($211,306)

1330 NC Arts Council

44 Grant Program Reduction	($581,000)	R	($581,000)	R
Reduces funding for the Basic Grants Program, which provides $3,292,320 for each year of the 2011-2013 Biennium.				

	FY 11-12		FY 12-13	
1330 NC Arts Council				
45 Operating Reductions Eliminates 1.75 vacant positions and 1 filled position by reassigning duties and consolidating grant categories. Vacant Positions #60083908 Arts Development Consultant ($40,856) #60083931 Information & Communication Specialist I (.75 FTE) ($27,734) Filled Position #60083927 Information & Communication Specialist II ($38,767) 531211 SPA- Reg Salaries- Appropr ($107,357) 531511 Soc Sec ($8,213) 535121 Retirement ($11,283) 531561 Medical ($13,555)	($140,408) -2.75	R	($140,408) -2.75	R
46 Grant Program Reduction Reduces funding for Grassroots Arts Program which provides $2,303,708 for each year of the 2011-2013 Biennium.	($406,537)	R	($406,537)	R
47 Eliminate Non-Competitive Funding Eliminates funding for the Vagabond School of Drama.	($40,957)	R	($40,957)	R
48 Reduce Non-Competitive Funding Reduces funding for the Lost Colony.	($50,000)	R	($50,000)	R
49 Eliminate Non-Competitive Funding Eliminates funding for the Shakespeare Festival.	($218,957)	R	($218,957)	R
1340 NC Symphony				
50 Reduce Grant Funding Reduces grant funding for statewide concerts by 10%.	($217,310)	R	($217,310)	R

	FY 11-12		FY 12-13	
1410 State Library Services				
51 Personnel Adjustment	($499,423)	R	($499,423)	R
Consolidates and eliminates two layers of management in the State Library of NC. Transfers a position to federal receipts.	-9.00		-9.00	
Filled Positions #60083815 Office Assistant V ($36,434) #60083867 Library Technician ($32,029) #60083850 Library Technician ($32,758) #60083853 Library Technician ($28,327) #60083861 Processing Assistant IV ($35,575)				
Vacant Positions 60083822 Assistant State Librarian ($58,701) #60083844 Library Supervisor ($54,692) #60083904 Office Assistant III ($26,646)				
Transferred to Federal Receipts Position #60083901 Library Professional ($79,963)				
531211 SPA Reg Salary ($385,125) 531511 Soc Sec ($ 29,460) 531521 Retirement ($ 40,477) 531561 Medical ($ 44,361)				
1480 Statewide Programs & Grants				
52 Program Reduction	($1,980,543)	R	($1,980,543)	R
Reduces State-Aid to local libraries by 13%.				

	FY 11-12		FY 12-13	
1500 Museum of History				
53 Program Reductions	($383,505)	R	($585,829)	R
Reorganizes and consolidates the museum and its regional branches in the areas of administration, program, and operating functions. Eliminates salaries and benefits of 5 vacant positions and 4 filled positions and reduces operating budget.	-9.00		-9.00	
Vacant Positions #60083949 Art Handler ($25,705) #60083990 Curator of Furnishings & Decorative Arts ($42,860) #60083981 Library Professional ($40,000) #60084030 Museum Specialist ($33,229) #60084043 Security Guard ($24,861)				
Filled Positions #60083942 Public Information Assistant IV ($27,615) #60083957 Public Information Assistant III ($32,258) #60084027 Museum Specialist ($32,796) #60084035 Process Assistant IV ($27,615)				
531211 SPA Reg Salary ($287,039) 531511 Soc Sec ($21,934) 531521 Retirement ($30,168) 531561 Medical ($44,361)				
Operating Budget Reduction FY 12-13 53XXXX (202,324)				
54 Reduce Operating Budget	($335,997)	R	($335,997)	R
Eliminates salaries and benefits of 1 vacant and 4 filled positions and reduces operating expenses of the Museum of the Cape Fear.	-5.00		-5.00	
Vacant Position #60084056 Security Guard ($26,220)				
Filled Positions #60084055 Museum Specialist ($32,796) #60084057 Historical Interpreter I ($24,861) #60084051 Assoc. Museum Curator ($40,105) #60084053 Bldg. Envir Tech. ($25,718)				
531211 SPA Reg Salary ($149,700) 531511 Soc Sec ($ 11,452) 531521 Retirement ($ 15,733) 531561 Medical ($ 24,650)				
Operating Expense Reduction 53XXXX ($134,461)				

	FY 11-12		FY 12-13	
Department-wide				
55 Personnel Reductions	($1,212,827)	R	($1,212,827)	R
Eliminates salaries and benefits of 8.51 additional positions vacant 6 months or more since January 1, 2011; and 18 positions vacant 100 or more days since March 31, 2011.	-26.51		-26.51	
Positions vacant for 6 months or more				
#60083367 Archives & Records Professional ($1)				
#60083486 Office Assistant IV ($30,417)				
#65010790 Transportation Coordinator ($29,502)				
#60083569 Horticulture/grounds Technician (.38 FTE) ($1,329)				
#65010906 Administrative Officer III ($41,173)				
#65010907 Media Technician I ($25,705)				
#60083505 Historic Interpreter I ($24,861)				
#60090511 Museum Curator ($38,174)				
#60090513 Museum Specialist ($32,796)				
#60090514 Museum Exhibit Designer (.13 FTE) ($6,626)				
531211 SPA Reg Salary ($230,584)				
531511 Soc Sec ($17,640)				
531521 Retirement ($24,234)				
531561 Medical ($41,954)				
Positions vacant for 100 or more days				
#60080925 Heritage Tourism Officer ($38,543)				
#65011681 Maritime Heritage Tourism Officer ($35,337)				
#65011682 Heritage Tourism Officer ($35,337)				
#65011683 Heritage Tourism Officer ($35,337)				
#65011684 Heritage Tourism Officer ($35,337)				
#65011685 Regional Development Officer ($38,174)				
#60083349 Office Assistant IV ($29,656)				
#60090501 Records Management Analyst ($37,000)				
#60083465 Historic Sites Specialist II ($50,000)				
#60083470 Historic Site Assistant ($25,355)				
#60083585 Museum Specialist ($39,162)				
#65011433 Assistant Conservator ($27,942)				
#60083562 Exhibit Designer ($35,498)				
#65010801 Utility Worker Supervisor ($27,380)				
#65011464 Section Gardener ($26,584)				
#65011455 Museum Exhibits Assistant ($29,502)				
#65011424 Processing Assistant III ($24,092)				
#60083256 Deputy Secretary ($115,000)				
531211 SPA Reg Salary ($685,236)				
531511 Soc Sec ($52,421)				
531521 Retirement ($72,018)				
531561 Medical ($88,740)				
56 IT Reduction	($55,184)	R	($55,184)	R
Reduces IT by 5%.				

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Total Legislative Changes	($9,139,776)	R	($10,967,632)	R
Total Position Changes	-94.01		-106.51	
Revised Budget	**$63,524,857**		**$61,697,001**	

Cultural Resources - Roanoke Island Commission

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$2,406,982**		**$2,406,982**	
Legislative Changes				
1584 Roanoke Island Commission				
57 Changes to Commission Funding Reduces General Fund appropriation by 25% in FY 2011-12 and 50% in FY 2012-13 with an additional 25% reduction to the appropriation through FY 2014-15 and the Commission becoming self-supporting by FY 2015-16.	($601,746)	R	($1,203,491)	R
Total Legislative Changes	**($601,746)**	**R**	**($1,203,491)**	**R**
Total Position Changes				
Revised Budget	**$1,805,236**		**$1,203,491**	

General Assembly

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$54,593,047**		**$54,593,047**	
Legislative Changes				
1213 Research Division				
58 Transfer of General Statutes Commission Provides funding for positions and operations of the General statutes Commission that is transferred from the Department of Justice.	$270,341 3.00	R	$270,341 3.00	R
1215 Building & maintenance				
59 Reduce Division Budget and Personnel Reduces appropriations by funding Building & Maintenance Repairs from Carryforward Reserve each year. Additionally, eliminates salaries and benefits of 3.4 positions in FY 2012-13.	($292,980)	R	($212,565) -3.40	R
60 Continuation Review of Building & Maintenance Division Conducts a Continuation Review of facility services in the General Assembly during the 2011-12 Interim. The budget for the division, minus reductions authorized for FY 2012-13, is included as non-recurring, pending the findings and recommendations that will be reported to the 2012 Session.	($2,572,506) $2,572,506	R NR	($2,572,506) -31.60	R
1216 Food Service				
61 Reduce Operating Budget Increases prices in the cafeteria and snack bars by 10%. Additionally, eliminates salaries and benefits of 3.75 positions in FY 2012-13.	($103,648)	R	($210,348) -3.75	R
1217 Information Systems Division				
62 Various Reductions to Operations Reduces the operating accounts in ISD and uses Carryforward Reserve to support non-personnel costs and 2 Temporary Time-Limited positions to work with Redistricting.	($2,653,145)	R	($2,114,555)	R
1219 Program Evaluation Division				
63 Expand Division Staff Expands staff in the Program Evaluation Division with the transfer of funding from the Performance Audit Division in the State Auditor's Office to support up to 5 positions.	$345,000 5.00	R	$345,000 5.00	R

	FY 11-12		FY 12-13	
1900 Committees & Other Reserves				
64 Reduction to Reserves Reduces funding in the Reserves of Committees, Studies, and Contingencies (537195).	($888,527)	R	($636,435)	R
Department-wide				
65 Various Reductions to Operating Budget Reduces the budget each year in the following areas: Reduces the number of interim days budgeted for Legislative Assistants from 3.5 days to 3 days during the first year of the biennium. Both years will be budgeted at 3.0 days during the interim with a reduction of $691,223. Eliminates funding budgeted for the purchase of furniture (desk, chairs, tables & bookshelves)with a reduction of $55,000 in FY 2011-12 and $40,000 in FY 2012-13. Reduces funding for staff travel which includes travel reimbursements, registration fees and education reimbursement. However, funding is maintained for staff in the Program Evaluation Division and Fiscal Research Division to pursue studies and conduct routine visits to state agencies and facilities. The budget is reduced $84,250 in FY 2011-12 and $94,250 in FY 2012-13. Reduces some discretionary contracts and budgeted supplies within the Building & Maintenance and Food Services Sections with a reduction of $57,773 in FY 2011-12 and $81,810 in FY 2012-13. Reduces NCSL annual dues by 20% with a reduction of $51,097 each year. Reduces appropriations by funding the Legislative Library Learning Resources and subscriptions from Carryforward Reserve with a reduction of $188,000 in FY 2011-12 and $175,800 in FY 2012-13.	($1,127,343)	R	($442,957)	R
66 Personnel Adjustments Eliminates salaries and benefits of 17 vacant permanent positions of which 2 are frozen from FY 2010-11 with a reduction of $1,033,504 each year. Also, eliminates salaries and benefits for 47 temporary positions of which 27 are frozen from FY 2010-11 at a reduction of $849,746 in FY 2011-12 and $881,310 in FY 2012-13.	($1,883,250) -17.00	R	($1,914,814) -17.00	R
67 Reserve Funds Appropriates funds for reserve to support security upgrades.	$3,000,000	NR		

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Department-wide				
68 Reserve for Information Technology Study				
Provides funding for the General Assembly to conduct a comprehensive, two-year evaluation of information technology operations throughout State government.	$2,000,000	NR	$3,000,000	NR
Total Legislative Changes	**($8,906,058)**	R	**($7,488,839)**	R
	$7,572,506	NR	**$3,000,000**	NR
Total Position Changes	-9.00		-47.75	
Revised Budget	**$53,259,495**		**$50,104,208**	

Governor

	GENERAL FUND		
	FY 11-12		FY 12-13
Recommended Continuation Budget	**$6,189,478**		**$6,189,478**
Legislative Changes			
1420 Center for 21st Century Skills			
69 Eliminates Program and Personnel Adjustment	($91,738)	R	($91,738) R
Eliminates the remainder of budget for the Center for 21st Century Skills, including a vacant position 60008514 (Director of 21st Century Skills Center).	-1.00		-1.00
531111 Reg Salary ($35,000) 531511 Social Security ($2,678) 531521 Retirement ($3,679) 531561 Medical Insurance ($4,930) 532199 Misc Contractual Svcs ($45,451)			
Department-wide			
70 Reduces Personnel	($318,825)	R	($318,825)
Eliminates salaries and benefits of the Deputy Legal Counsel (#60008505) and Policy Analyst (#60071726) positions that are filled, and the Special Assistant to the Governor position (#60008479) that is vacant.	-3.00		-3.00
531111 Reg Salaries ($258,000) 531511 Social Security ($ 18,919) 531521 Retirement ($ 27,116) 531561 Medical Insurance ($ 14,790)			

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Department-wide				
71 Personnel and IT Reductions	($1,037,758)	R	($1,037,758)	R
Eliminates the salaries and benefits of 6 vacant positions:	-14.00		-14.00	
#60000881 Policy Analyst ($16,000)				
#60008496 Policy Analyst ($53,000)				
#60008480 W/A Administrative Assistant I ($39,000)				
#60008482 Operations Director ($82,200)				
#60008494 Deputy Director of Hispanic Affairs ($32,000)				
#60038174 Policy Analyst ($66,000)				
531111 Reg Salaries ($288,200)				
531511 Social Security ($ 22,047)				
531521 Retirement ($ 30,290)				
531561 Medical Insurance ($ 29,580)				
SUBTOTAL Vacant Positions ($370,117)				
Eliminates the salaries and benefits of 8 filled positions:				
#65007128 Special Advisor - Education & Innovation ($109,509)				
#60008516 Deputy Communications Director ($81,000)				
#60008485 Teacher Advisor ($65,000)				
#60031506 Policy Analyst ($45,000)				
#60083951 Regional Director ($50,000)				
#60008474 Faith Outreach Coordinator ($20,000)				
#60008507 Governor's Communications Director ($115,200)				
#60008501 Asst. External Scheduler ($38,780)				
531111 Reg Salaries ($524,489)				
531511 Social Security ($ 40,123)				
531521 Retirement ($ 55,124)				
531561 Medical Insurance ($ 39,440)				
SUBTOTAL Filled Positions ($660,176)				
Reduces IT each year by 5% ($7,465).				
Total Legislative Changes	**($1,448,321)**	R	**($1,448,321)**	R
Total Position Changes	-18.00		-18.00	
Revised Budget	**$4,741,157**		**$4,741,157**	

Housing Finance Agency

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$13,877,996**		**$13,877,996**	
Legislative Changes				
8102 Housing Finance Agency				
72 Program Reduction Reduces funding for the Housing Trust Fund.	($2,123,245)	R	($2,123,245)	R
8104 Home Protection Program				
73 Program Reduction Reduces funding for the Home Protection Program.	($2,081,700)	R	($2,081,700)	R
Total Legislative Changes	**($4,204,945)**	R	**($4,204,945)**	R
Total Position Changes				
Revised Budget	**$9,673,051**		**$9,673,051**	

Insurance

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	$33,458,756		$33,458,756	
Legislative Changes				
1110 Administration				
74 Reduce Expenditures Reduces various expenditure accounts in the division to more closely match actual costs. 532199 Misc Contractual Svs ($15,957) 532814 Cellular Phone Svs ($ 4,346) 532942 Other Employees Ed Expense ($ 4,918)	($25,221)	R	($25,221)	R
1200 Company Services Group				
75 Reduce Expenditures Reduces various expenditure accounts in the division to more closely match actual costs. 532814 Cellular Phone Svs ($ 119) 532942 Other Employees Ed Expense ($50,569)	($50,688)	R	($50,688)	R
1300 Technical Services Group				
76 Reduce Employee Education Expense Reduces expenditures each fiscal year in 532942 - Employee Education Expense.	($11,589)	R	($11,589)	R
1400 Public Services				
77 Reduce Cellular Phone Service Reduces expenditures each fiscal year in 532814 - Cellular Phone Service.	($2,200)	R	($2,200)	R
1500 Office of State Fire Marshal				
78 Adjust Expenditures Reduces expenditures for cellular phone service and eliminates funding for the sale of Code Books as the sale of Code Books is transferred to the publisher. 532814 Cellular Phone Svs ($ 23,315) 532850 Print, Bind, & Duplication ($330,000) 532942 Other Employees Ed Expense ($ 2,950)	($356,265)	R	($356,265)	R

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
1500 Office State Fire Marshal				
79 Transfer of Fire Protection Grant Fund Transfers the Fire Protection Grant Fund from the Office of State Budget and Management to the Department of Insurance.	$3,677,513	R	$3,677,513	R
Department-wide				
80 Eliminate Vacant Positions and Reduce Expenditure Accounts Eliminates salaries and benefits of 3 vacant positions.	($139,612)	R	($139,612)	R
	-3.00		-3.00	
Vacant Positions 60013339 Processing Assistant III ($28,490) 60013607 Office Assistant IV ($25,705) 65004532 Insurance Company Examiner ($51,443) 531211 SPA Reg Salary ($105,638) 531511 Soc Sec ($8,081) 531521 Retirement ($11,103) 531561 Medical ($14,790)				
81 Reduction to Consumer Protection Services Fund Reduces transfer to Consumer Protection Services Fund to more closely match actual expenditures.	($156,773)	R	($156,773)	R
531111 Salaries ($38,473) 531511 Social Security ($2,943) 531521 Retirement ($4,044) 532110 Legal Services ($111,313)				
Total Legislative Changes	**$2,935,165**	R	**$2,935,165**	R
Total Position Changes	-3.00		-3.00	
Revised Budget	**$36,393,921**		**$36,393,921**	

Insurance - Volunteer Safety Workers' Compensation Fund

	GENERAL FUND			
	FY_11-12		FY_12-13	
Recommended Continuation Budget	**$4,500,000**		**$4,500,000**	
Legislative Changes				
1900 Reserves & transfers				
82 Reduce Volunteer Safety Workers' Compensation Fund Reduces funding for the Volunteer Safety Workers' Compensation Fund.	($706,000) ($1,500,000)	R NR	($1,876,346)	R
Total Legislative Changes	**($706,000)** **($1,500,000)**	**R** **NR**	**($1,876,346)**	**R**
Total Position Changes				
Revised Budget	**$2,294,000**		**$2,623,654**	

Lieutenant Governor

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$954,868**		**$954,868**	
Legislative Changes				
1110 Administration				
83 Management Flexibility Reduction Requires the Lt. Governor's Office to reduce the operating budget of the office by $191,398 recurring.	($191,398)	R	($191,398)	R
84 Eliminate Vacant Position and Benefits Eliminates Assistant Policy Director Position and benefits (60008622).	($45,695) -1.00	R	($45,695) -1.00	R
85 Reduce Salary, Benefits, and Longevity to Actual Reduces the following accounts to actual: 531111 Salaries ($8,327) 531511 Social Security ($67) 531521 Retirement ($875) 531521 Longevity ($5,168)	($14,437)	R	($14,437)	R
86 Reduce Operating Expenses Reduces the following operating expense accounts: 532814 Cellular Phones ($6,750) 532870 Cable TV ($689) 532840 Postage ($575)	($8,014)	R	($8,014)	R
Total Legislative Changes	**($259,544)**	R	**($259,544)**	R
Total Position Changes	-1.00		-1.00	
Revised Budget	**$695,324**		**$695,324**	

Office of Administrative Hearings

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$4,328,822**		**$4,328,822**	
Legislative Changes				
1100 Administration and Operations				
87 Reduce Payments to ITS Reduces data and communications (532800) by 5%.	($7,612)	R	($7,612)	R
88 Type I Transfer of Human Relations Commission to OAH Transfers the Human Relations Commission to the Civil Rights Division at OAH. The transfer detail is in the Department of Administration's section of the report.	$841,613 10.68	R	$841,613 10.68	R
1100 Civil Rights Division				
89 Eliminate Vacant Position Eliminates vacant Civil Rights Investigator Position (60088595) and benefits.	($57,710) -1.00	R	($57,710) -1.00	R
1100 Hearings Division				
90 Eliminate Administrative Law Judge Position Eliminates one Administrative Law Judge position and benefits.	($121,242) -1.00	R	($121,242) -1.00	R
Administrative Hearings				
91 Funding from DHHS for Medicaid Mediation Transfers $1 million in General Funds for each year of the biennium from the Department of Health and Human Services (DHHS) to the Office of Administrative Hearings (OAH) for the purpose of providing Medicaid mediation services. OAH shall continue the Memorandum of Agreement with DHHS and provide invoices to DHHS for covered services in order for DHHS to transfer the federal share of funds drawn down for this purpose.				
Total Legislative Changes	**$655,049**	R	**$655,049**	R
Total Position Changes	8.68		8.68	
Revised Budget	**$4,983,871**		**$4,983,871**	

Revenue

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$88,370,399**		**$88,370,399**	
Legislative Changes				
1681 Administrative Services				
92 Close Three Offices	($124,054)	R	($124,054)	R
Closes Offices in Nags Head, Rocky Mount, and Winston-Salem				
1700 Motor Fuels Division				
93 Eliminate Vacant Positions				
Eliminates 15 vacant positions in the Motor Fuels Division funded by the Highway Fund.				
1900 Reserves and Transfers				
94 Remaining Resolution Initiative Funding	($760,075)	R	($760,075)	R
Reduces the remaining funds appropriated for the Resolution Initiative. The funds were originally appropriated in FY 2010-11.				
Department-wide				
95 Reduce General Fund Supported Operating Expenditures	($371,495)	R	($371,495)	R
Reduces additional eight positions and associated benefits that are vacant at the Department	-8.00		-8.00	
60082603 Processing Assistant IV ($37,560)				
60081507 Revenue Tax Technician ($55,395)				
60081800 Processing Assistant III ($34,306)				
60081505 Information Processing Technician ($54,583)				
60093429 Processing Assistant IV ($41,527)				
60082584 Processing Assistant V ($39,907)				
60081612 Revenue Tax Technician ($52,675)				
60082692 Information Processing Technician ($50,861)				

	FY 11-12		FY 12-13	
Department-wide				
96 Eliminate Vacant Positions	($3,498,026)	R	($3,498,026)	R
Eliminates 61 vacant positions throughout the Department and related benefits. Positions are as follows:	-61.00		-61.00	

60081469 Program Assistant V
60081535 Information Processing Technician
60081540 Team Leader
60082951 Processing Assistant V
60082846 Administrative Officer II
60082953 Processing Assistant IV
60082759 Processing Assistant III
60081588 Processing Assistant III
60082668 Data Entry Specialist
60082564 Information Processing Technician
60081675 Information Processing Technician
60081494 Information Processing Technician
60081482 Information Processing Technician
60082949 Processing Assistant IV
60081660 Revenue Officer I
60081781 Law Enforcement Agent
60082835 Processing Assistant IV
60082685 Revenue Officer II
60081633 Processing Assistant IV
60081597 Processing Assistant III
60081637 Information Processing Technician
60082570 Processing Assistant III
60082756 Processing Assistant III
60081566 Auditor
60082502 Processing Assistant III
60082553 Processing Assistant IV
60082661 Data Entry Specialist
60082599 Administrative Officer II
60082966 Administrative Assistant III
60081512 Processing Assistant V
60082682 Data Entry Specialist
60082569 Processing Assistant IV
60082758 Processing Assistant IV
60081520 Processing Assistant III
60082537 Accounting Manager
60081779 Law Enforcement Agent
60081657 Manager
60081434 Audit Director
60081748 Revenue Officer I
60082594 Processing Assistant V
60083099 Office Assistant V
60081531 Revenue Officer I
60081635 Administrative Assistant II
60081548 Administrative Assistant III
60081579 Administrative Assistant II
60081311 ETM Administrator
60082396 Revenue Administrative Officer
60082169 Field Auditor SCCI
60083224 Special Agent
60082057 Revenue Officer I

Department-wide

60081837 Interstate Field Officer
60081337 DTAX/Audit Workbench/Taxmaster Admin
60081405 ETM Developer
60081803 Interstate Field Auditor
60083098 Audit Manager
60082033 Field Auditor
60081817 Interstate Field Auditor
60081399 ETAX/Audit Workbench/Taxmaster Developer
60082444 Revenue Officer Trainee
60082440 Revenue Officer
60082059 Revenue Officer Trainee

97 Convert Collections Positions to Receipt Supported Converts 30 collections positions to receipt support. The source of the receipt is the Collection Assistance Fee. Positions numbers are as follows: 60082149, 60082449, 60082041, 60082129, 60082154, 60082165, 60082243, 60082244, 60081863, 60081493, 60081550, 60081747, 60082435, 60082132, 60082136, 60082137, 60082451, 60082445, 60082455, 60082047, 60082053, 60082452, 60082148, 60082162, 60082163, 60082152, 60082176, 60082454, 60082077, 60082081.	($1,896,157) -30.00	R	($1,896,157) -30.00	R
98 Reduce Supplemental Wages to FY 2010 Actual Reduces supplemental wages to FY 2009-10 actual. 531411 - OT Pay ($39,766) 531421 - Holiday Perm Pay - ($2,121)	($41,887)	R	($41,887)	R
99 Reduce Temporary Wages Reduce Temporary Wages and benefits in the following areas: 1600 - Administration ($5,018) 1603 - Human Resources ($33,784) 1605 - IT ($39,922) 1621 - Corporate ($18,488) 1643 - TPA (316,547) 1660 - Collections ($286,799) 1670 - USUB ($14,328) 1681 - Administrative Services ($97,025) 1685 - DPPD ($966,912)	($1,778,823)	R	($1,778,823)	R
100 Reduce Budgeted Longevity Reduces budgeted longevity (521461).	($32,459)	R	($32,459)	R
101 Reduce Payments to ITS Reduces payments to Information Technology Services by 5% (532800).	($602,867)	R	($602,867)	R

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Information Technology				
102 Imaging System License Corrects error, a non-recurring expenditure for an imaging system license was mistakenly coded as recurring in FY 2010-11. This reduction corrects the error.	($613,440)	R	($613,440)	R
Local Government Unit				
103 Local Government Unit to Receipts Moves positions to the Local Government Unit within the Department to receipt support to create a point of contact regarding tax distributions. Over $200 million per year is distributed to local governments each year.	($451,578) -7.00	R	($451,578) -7.00	R
Total Legislative Changes	**($10,170,861)**	R	**($10,170,861)**	R
Total Position Changes	-106.00		-106.00	
Revised Budget	**$78,199,538**		**$78,199,538**	

Secretary of State

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$11,076,972**		**$11,076,972**	
Legislative Changes				
1120 Publications				
104 Reduce Printing Budget	($77,268)	R	($77,268)	R
Eliminates the printing of the NC Directory of County and State Officials, which is available electronically, and the free distribution of the NC Manual. Budget code affected is 532850.				
1150 Lobbyist Registration				
105 Eliminate Four Positions in Lobbyist Registration	($200,791)	R	($200,791)	R
Eliminates four positions and benefits in Lobbyist Registration Division.	-4.00		-4.00	
60008804 Registrar/Examiner ($42,295) 60008805 Registrar/Examiner ($50,469) 65004907 Office Assistant ($36,176) 60008807 Attorney I ($71,851)				
Department-wide				
106 Reduce Operating Expenditures and Eliminate Cell Phones	($136,290)	R	($136,290)	R
Reduces operating expenditures in a variety of accounts and eliminates budget for cellular phones.				
532700 Travel and Other Employee Expense ($25,423) 532814 Cellular Phone Service ($9,809) 532900 Other Services ($7,342) 533100 General And Administrative Supplies ($26,100 533900 Other Materials and Supplies 534500 Equipment ($42,966) 534700 Intangible Assets ($17,000)				
107 Reduce Payments to ITS	($8,060)	R	($8,060)	R
Reduces payments to ITS (532800) by 5%.				
Total Legislative Changes	**($422,409)**	R	**($422,409)**	R
Total Position Changes	-4.00		-4.00	
Revised Budget	**$10,654,563**		**$10,654,563**	

State Board of Elections

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$6,189,011**		**$6,189,011**	
Legislative Changes				
1100 Administration				
108 Correct Error in Base Budget Corrects error, a non-recurring expenditure was miscoded as recurring (532700) related to a move into office space.			($60,000)	R
109 Administrative Services Reduces expenditures for workshops and conferences (532181) and administrative services (532170).	($23,000)	R	($23,000)	R
1200 Campaign Reporting				
110 Reduce Administrative Services Reduces Administrative Services (532170).	($45,110)	R	($45,110)	R
1300 Voter Registration and Systems				
111 Eliminate Positions in Voter Registration and Systems Eliminates all 8 District Elections Technicians ($510,610), Voting Systems Project Manager (60088251 - $65,191), Technology Support Analyst (65006606 - $64,010), and associated benefits.	($637,706) -10.00	R	($637,706) -10.00	R
112 Reduce Assigned Vehicles Reduces payments to Motor Fleet Management for vehicles from 8 District Elections Technicians (532700).	($32,634)	R	($32,634)	R
Department-wide				
113 ITS Reduction Reduces data and procurement purchases by 5% (532800).	($28,787)	R	($28,787)	R
114 Eliminate Vacant Positions Eliminates four vacant positions and benefits in the State Board of Elections 65012228 - Elections Investigator 65005662 - Business Officer 60088258 - Compliance Specialist 65012227 - Attorney II	($235,171) -4.00	R	($235,171) -4.00	R

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Total Legislative Changes	($1,002,408)	R	($1,062,408)	R
Total Position Changes	-14.00		-14.00	
Revised Budget	**$5,186,603**		**$5,126,603**	

State Budget & Management

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$6,963,796**		**$6,963,796**	

Legislative Changes

1310 Office of State Budget & Management

115 Personnel Adjustment and IT Reduction ($546,454) R ($546,454) R

Eliminates 6 vacant positions and reduces salary reserves.

-6.00 -6.00

#60008592 State Budget Management Analyst ($62,463)
#60008553 State Budget Management Analyst ($64,383)
#60008582 State Budget Management Analyst ($102,163)
#60008577 Human Resources Director ($62,429)
#60008585 State Budget Management Analyst ($57,000)
#60008609 State Budget Management Analyst ($71,925)

531211 Salaries	($420,363)
531511 Social Security	($32,158)
531521 Retirement	($44,180)
531561 Medical Insurance	($29,580)
531211 Salary Reserves	($ 6,774)

Reduces funding for the Information Technology Services by 5% ($13,399).

116 Operating Reductions ($34,900) R ($34,900) R

Reduces operating expenses.

532145 Server Support Services	($29,100)
532840 Postage, Freight & Delivery	($ 3,800)
534530 Other DP Equipment	($ 1,500)
534534 PC/Printer Equipment	($ 500)

117 Longevity Reduction ($21,867) R ($21,867) R

Reduces longevity to actual.

118 Integrated Budget Information System (IBIS) Funding ($511,912) R ($511,912) R

Eliminates funding for the Integrated Budget Information System (IBIS) continuation request for software support, hardware, and databases.

532199 Miscellaneous Contractual Services	($250,000)
532800 Communication & Data Processing	($261,912)

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
Total Legislative Changes	($1,115,133)	R	($1,115,133)	R
Total Position Changes	-6.00		-6.00	
Revised Budget	**$5,848,663**		**$5,848,663**	

State Budget and Management - Special

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$5,934,311**		**$5,934,311**	
Legislative Changes				
1022 Special Appropriations				
119 Humanities Council Grant Reduces funding for NC Humanities Council(536G02).	($43,000)	R	($43,000)	R
1023 Fire Protection Grant Fund				
120 Transfer of Fire Protection Grant Fund Transfers management of the State Fire Protection Grant Fund to the Department of Insurance from the Office of State Budget and Management. The General Fund appropriation is reduced 10%.	($3,677,513)	R	($3,677,513)	R
1900 Reserves & Transfers				
121 NC Symphony Provides funding for the NC Symphony to leverage match to support the operation.	$1,500,000	NR		
122 Adjust Funds for Health Care Reform and Board of Elections Software Eliminates funding ($1,101,293) and positions each year for DOI Healthcare Reform Reserve (537122). Additionally, reduces budget for non-recurring ($671,893) expense that was classified as recurring in the 2010 Session for the State Board of Elections Software Purchase (to comply with HB 961).	($1,773,186) -13.00	R	($1,773,186) -13.00	R
Total Legislative Changes	**($5,493,699)** **$1,500,000**	R NR	**($5,493,699)**	R
Total Position Changes	-13.00		-13.00	
Revised Budget	**$1,940,612**		**$440,612**	

State Controller

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$32,517,077**		**$32,517,077**	

Legislative Changes

1000 Department-wide

123 Eliminate Vacant Positions ($1,172,321) R ($1,172,321) R

Eliminates salaries and benefits of 14 vacant positions and reduces IT costs by 5% or $197,689 each year in expenditure accounts 532800 - Communications/Data Processing. -14.00 -14.00

Vacant Positions	
60015308 Information Processing Technician	($35,697)
60087149 State Controller Financial Specialist	($51,375)
60087175 Administrative Support Associate	($50,831)
60087196 Bus & Tech Applications Analyst	($80,145)
60090520 State Controller Risk Mitigation Spec	($61,274)
60091131 Information Processing Technician	($39,954)
60091133 Information Processing Technician	($29,502)
60091720 Information Processing Technician	($38,792)
60092194 Administrative Support Specialist	($39,400)
65009029 Business Systems Analyst III	($75,000)
65008979 Staff Development Specialist II	($47,791)
65008981 Staff Development Specialist II	($56,667)
65008996 Business & Technology Applications Spec.	($80,000)
65009030 Bus. Systems Analyst II	($80,000)

531211 SPA Reg Salary	($766,428)
531511 Soc Sec	($ 58,632)
531521 Retirement	($ 80,552)
531561 Medical	($ 69,020)
Subtotal Positions	($974,632)

124 Reduce BEACON Reserve

Reduces funding in BEACON Reserve that leaves a balance of $2,427,928 that will support operations in Reporting Support, Production Support, Security, and BASIS support for the biennium. ($536,036) NR ($536,036) NR

125 Reduce Account Balance

Reduces General Fund by transferring funding from the unclaimed property account. ($72,500) NR ($72,500) NR

Senate Subcommittee on General Government	FY 11-12		FY 12-13	
1000 Department-wide				
126 Personnel And Operating Budget Reductions to CJLEADS Eliminates salaries and benefits of 4.50 vacant positions and reduces operating budget. Vacant Positions 65011662 Business Systems Analyst III ($75,000) 65011663 Staff Development Specialist II ($47,791) 65011667 Staff Development Specialist II ($56,667) 65011705 Business & Technology Applications Spec. ($80,000) 65011706 Bus. Systems Analyst II ($80,000) 531211 SPA Reg Salary ($275,000) 531511 Soc Sec ($21,038) 531521 Retirement ($28,903) 531561 Medical ($22,185) SUBTOTAL Positions ($347,126) Operating Budget Reductions Reduces SAS Customized Services ($625,000) Reduces State Agency Development ($1,200,000) Reduces Other Technology Services ($192,879) Reduces IT by 5% ($2,262) SUBTOTAL Operating Budget Reductions ($2,620,141)	($2,367,263) -4.50	R	($2,367,263) -4.50	R
Total Legislative Changes	**($3,539,584)** **($608,536)**	R NR	**($3,539,584)** **($608,536)**	R NR
Total Position Changes	-18.50		-18.50	
Revised Budget	**$28,368,957**		**$28,368,957**	

Treasurer

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$10,538,203**		**$10,538,203**	
Legislative Changes				
1300 Local Government Operations				
127 Integrated Document Management System Provides funding for the Integrated Document Management System, which is receipt supported. Requirements total $160,000 in FY 2011-12 of which $15,000 is recurring and $145,000 is non-recurring. The $15,000 is continued in FY 2012-13.				
1310 Local Government Operations				
128 Convert Division to Receipt Support Converts the State and Local Government Finance Division to receipt-support.	($3,324,834) -36.00	R	($3,324,834) -36.00	R
Department-wide				
129 Reduced Funding for Personnel and Operations Reduces funding for five positions that were converted to receipt support with a reduction each year of $526,910. Additionally, reduces Travel & Other Employee Expenses in FY 2011-12 ($23,624), Financial/Audit Services in FY 2012-13 ($58,905), and IT by 5% each year ($5,804).	($556,338)	R	($591,619)	R
Total Legislative Changes	**($3,881,172)**	R	**($3,916,453)**	R
Total Position Changes	-36.00		-36.00	
Revised Budget	**$6,657,031**		**$6,621,750**	

Treasurer - Retirement for Fire and Rescue

	GENERAL FUND	
	FY 11-12	FY 12-13
Recommended Continuation Budget	**$17,812,114**	**$17,812,114**
Legislative Changes		
130 NO LEGISLATIVE ACTION REPORTED		
Total Legislative Changes		
Total Position Changes		
Revised Budget	**$17,812,114**	**$17,812,114**

TRANSPORTATION
Section K

Highway Fund

	HIGHWAY FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$1,806,351,974**		**$1,812,408,831**	
Legislative Changes				
Administration				
1 General Administration - Cuts Decreases funds to the General Administration budget. This includes the elimination of seven (7) vacant positions funded through General Administration funds.	($4,507,486) -7.00	R	($4,507,486) -7.00	R
2 General Administration - Internal Consolidations Reduces budget through internal consolidations and eliminations to the General Administration budget.	($1,071,606) -41.00	R	($1,071,606) -41.00	R
3 Eliminate Aeronautics Council and Funding Eliminates funding for the Aeronautics Council. The Council is funded through General Administration fund code 84210-0041.	($14,435)	R	($14,435)	R
4 Eliminate Bicycle Committee and Funding Eliminates funding for the North Carolina Bicycle Committee. The Committee is funded through General Administration fund code 84210-0035.	($2,070)	R	($2,070)	R
5 Eliminate Vacant Ferry Division Position Eliminates funding for one vacant Administrative Secretary II position in the Ferry Division's Morehead City office. This position is funded through General Administration fund code 84210-7040.	($39,327) -1.00	R	($39,327) -1.00	R
6 Transfer One Public Transportation Employee to Receipt Support Transfers funding for one position (position number 60029757) in the Public Transportation Division to receipt support. This position is funded through General Administration fund code 84210-0036.	($63,528) -1.00	R	($63,528) -1.00	R
7 Highway Administration - Eliminate Keep America Beautiful Transfer Eliminates funding for the Keep America Beautiful grant (non-profit operating grant) in the Highway Administration budget.	($40,000)	R	($40,000)	R
Construction				
8 Access and Public Service Roads Reduces funding to the Access and Public Service Roads. The total budget is $1,758,885 in both years of the biennium.	($101,115)	R	($101,115)	R

	FY 11-12		FY 12-13	
9 Secondary Roads				
Reduces funding for secondary road construction in order to have greater flexibility to use funds across the State-maintained road network by shifting funds to the maintenance categories of contract resurfacing, system preservation, and to the general maintenance reserve. The total budget is $54,373,921 in FY 2011-12 and $53,480,182 in FY 2012-13.	($35,000,000)	NR	($35,000,000)	NR
10 Spot Safety Program	$3,000,000	R	$3,000,000	R
Increases funding to the Spot Safety program to improve safety on State maintained roads. The total budget is $12,100,000 in both years of the biennium.				
Department-wide				
11 Consolidate Call Center Functions			$556,074	R
Transfers funds to the new consolidated call center in FY 2012-13 to support the cost of the ferry reservations line. It is anticipated that the call center will be staffed by contracted employees, not State employees.				
Division of Motor Vehicles				
12 Driver License Continuation Review	($47,065,069)	R	($47,713,947)	R
Eliminates recurring funds for the Driver License program within the Division of Motor Vehicles and supplants with non-recurring funds for FY 2011-12. Program funding will be re-examined for FY 2012-13, per a Continuation Review.	$47,065,069	NR		
13 Reduce Driver & Vehicle Services Operating Funds	($4,224,000)	R	($4,224,000)	R
Reduces operating funds per projected driver (license issuance) and vehicle services (contractor commission) transactions. Reductions are net of the expected increase in license production costs upon implementation of the New Generation Driver License System in FY 2011-12.				
14 Shift Positions to Receipt-Support	($800,319)	R	($800,319)	R
Increases budgeted emission inspection (electronic authorization) receipts to support half of the personnel costs for License & Theft Bureau law enforcement positions.				
15 Consolidate Inspection Audits	($2,188,668)	R	($2,188,668)	R
Eliminates 39 non-sworn, Emission Specialist positions per a restructuring of the Division of Motor Vehicles Inspection Program. Presently, when an Emission Specialist audits an inspection station and detects a violation, a sworn law enforcement agent is notified for enforcement. Adjustments to Inspector's duties and technological upgrades permit this workflow to be streamlined.	-39.00		-39.00	
Receipts budgeted for these positions are reallocated to offset License & Theft Bureau personnel and operating expenses.				

	FY 11-12		FY 12-13	
16 Establish Per Record Fee for Bulk Data Establishes a fee of three cents ($.03) per partial license, registration, and accident report data record downloaded by third parties, principally for resale. Revenues are projected to increase by $5,049,796 recurring. Highway Fund appropriations are reduced per projected revenues.	($5,049,796)	R	($5,049,796)	R
17 Eliminate Vacant Positions Eliminates vacant positions within the Division of Motor Vehicles.	($343,990) -5.00	R	($417,117) -7.00	R
18 Implement Credit/Debit Payments at Driver License Offices Provides funds to offset transactional costs upon implementation of merchant card (credit/debit) point-of-sale processing at driver license offices. Pilot implementation is proposed for January 2012. Second year transactional costs are annualized. Point-of-sale terminal and other installation costs will be supported with existing funds.	$648,879	R	$1,297,757	R
Governor's Highway Safety Program				
19 GHSP - Cuts Eliminates a Public Relations Officer position supported by 50 percent highway funds and 50 percent federal funds, and shifts the employee into a vacant position fully supported by federal funds.	($28,233) -0.50	R	($28,233) -0.50	R
20 GHSP - Cuts Eliminates costs to Board in fund code 84210-0042.	($3,700)	R	($3,700)	R
Intermodal Divisions				
21 Division-wide Appropriates $24,000,000 of accumulated unencumbered fund balance from the five intermodal divisions. This balance resulted primarily from funds encumbered as the state matching component for grant applications for federal funds that were not awarded.				
22 Aviation Division - Cuts Reduces grant funds for commercial air carrier airports by $1,200,000, miscellaneous aviation programs by $1,100,000, and general aviation airports by $750,000.	($3,050,000)	R	($3,050,000)	R
23 Ferry Division - Cuts Reduces non-essential seasonal temporary employees; reduces fuel costs through engine RPM adjustments and from increasing hull cleanings from every two years to annually; eliminates non-essential overtime; and, reduces consumables used by operations and vessels.	($2,097,950)	R	($2,097,950)	R
24 Ferry Division - Tolling Raises tolling on existing routes and adds tolls to two untolled routes. Revenues will increase by $2,000,000 in FY 2011-12 and by $2,500,000 recurring in FY 2012-13.	($2,000,000)	R	($2,500,000)	R

	FY 11-12		FY 12-13	
25 Ferry Division - Efficiencies Reduces funds through division-wide efficiencies. In order to meet the reduction, the Department is authorized to reduce ferry schedules if reductions cannot be met through efficiencies.	($2,000,000)	R	($2,000,000)	R
26 Ferry Division - Eliminate Vacant Positions Eliminates 23 vacant positions that are determined to be non-critical positions. This includes one position associated with the closure of the Morehead City Office.	($1,115,490) -23.00	R	($1,115,490) -23.00	R
27 Ferry Division - Close Morehead City Field Office Closes the Morehead City Office on Feb. 1, 2012, eliminating four (4) permanent employees and six (6) temporary employees that are responsible for the ferry reservations line. The recurring reduction includes rent for the office. The ferry reservation line will be transferred outside of the Ferry Division so that call center functions may be merged across the Department in a manner selected by the Department to better coordinate communications. Funds transferred to the new call center to support ferry operations will come from existing funds within the ferry system budget for FY 2011-12.	($186,189) -4.00	R	($446,855) -4.00	R
28 Ferry Division - Call Center Transfers funds to the new consolidated call center in FY 2012-13 to support the cost of the ferry reservations line. It is anticipated the call center will be staffed by contracted employees, not State employees. Reservation line costs are anticipated to grow once the additional ferry routes become tolled.			$109,209	R
29 Ferry Division - Replace Dredge Carolina Replaces Dredge Carolina. The current dredge is over 40 years old and in need of replacement. The dredge is used to maintain channels and basins in order for the ferries to operate and keep navigable channels operational.			$10,000,000	NR
30 Public Transportation Division - Cuts Reduces all public transportation grant programs by six (6) percent.	($5,792,654)	R	($5,792,654)	R
31 Public Transportation Division - Cuts Reduces the Highpoint Furniture Market grants from $1,200,000 to $1,000,000.	($200,000)	R	($200,000)	R
32 Rail Division - Transparency Repeals G.S. 136-44.20(d) in order to bring transparency to the Rail Division budget. The funds associated are transferred from the Highway Trust Fund to the Highway Fund fund code 84210-7829 to pay for the Piedmont and Carolinian passenger rail operations. These funds are used to pay Amtrak for the cost to fully operate these trains, less fare receipts.	$5,000,000	R	$5,000,000	R

	FY 11-12		FY 12-13	
33 Rail Division - Cuts Reduces funds to the Rail Division's operating budget.	($800,000)	R	($800,000)	R
34 Rail Division - Grants to Short-Line Railroads Provides recurring funds to short-line railroads to fund rehabilitation projects that strengthen North Carolina's short-line infrastructure.	$400,000	R	$400,000	R
Maintenance				
35 Internal Consolidations Decreases funds to Maintenance through internal consolidations and eliminations in the pre-construction and administrative areas, and through the elimination of management layers. Within the Highway Fund, of the 75 positions identified for elimination, 29 positions are vacant and can be eliminated on July 1, 2011. Of the 46 filled positions, 24 positions will be eliminated December 31, 2011. The remaining 22 positions will be eliminated July 1, 2012. Within the Highway Trust Fund, of the 15 positions identified for elimination, nine (9) positions are eliminated immediately, and the remaining six (6) filled positions are eliminated December 31, 2011. Receipts for the Trust Fund positions are reduced $1,339,149 in FY 2011-12 and $1,394,531 in FY 2012-13.	($4,127,167) -53.00	R	($5,913,401) -75.00	R
36 Privatize and Outsource Functions Transfers funds within the Maintenance budget to outsource and further privatize existing functions. These functions include the pre-construction work to increase the amount of work privatized in preliminary engineering and project designs. Some general services functions, such as janitorial work, will be outsourced. Within the Highway Fund, of the positions to be eliminated, 57 positions are vacant and will be eliminated on July 1, 2011. Of the remaining 137 filled positions, 110 will be eliminated on December 31, 2011 and the remaining 27 positions will be eliminated on July 1, 2012. No funds are associated with these position reductions because the funds will be shifted to the costs of outsourcing and privatizing these functions. Within the Highway Trust Fund, of the 16 positions to be eliminated, three (3) positions are vacant and will be eliminated on July 1, 2011. The remaining 13 filled positions will be eliminated on July 1, 2012. No funds are associated with these position reductions because the funds will be shifted to the costs of outsourcing and privatizing these functions.	-167.00		-194.00	
37 Primary System Reduces funding to the primary system in order to have greater flexibility to use funds across the State-maintained road network by shifting funds to contract resurfacing, system preservation, and to the general maintenance reserve. The total budget is $184,459,157 in both years of the biennium.	($20,000,000)	NR	($20,000,000)	NR

	FY 11-12		FY 12-13	
38 Secondary System Reduces funding to the secondary system in order to have greater flexibility to use funds across the State-maintained road network by shifting funds to contract resurfacing, system preservation, and to the general maintenance reserve. The total budget is $267,356,761 in both years of the biennium.	($30,000,000)	NR	($30,000,000)	NR
39 Contract Resurfacing Increases funds for Contract Resurfacing. The contract resurfacing program provides funding for resurfacing the paved road system to improve ride quality. Contract resurfacing avoids costly patching and frequent maintenance. The total budget is $406,919,741 in FY 2011-12 and $427,682,126 in FY 2012-13.	$132,394,078	NR	$153,156,463	NR
40 System Preservation Increases funds for System Preservation in order to make improvements on structurally deficient bridges. 81.1 percent of structurally deficient bridges are located on the secondary road system. The total budget is $214,441,480 in FY 2011-12 and $235,293,865 in FY 2012-13.	$135,852,409	NR	$156,704,794	NR
41 General Maintenance Reserve Increases funds for the General Maintenance Reserve in order for the Department to have greater flexibility in programming funds to target the most critical maintenance needs. The total budget is $116,030,243 in FY 2011-12 and $140,636,243 in FY 2012-13.	$78,229,931	NR	$102,835,931	NR
Repairs and Renovations				
42 Funds for Facility Improvements and Repairs Provides funds for the Department to address critical life safety repairs, renovations, and replacement of its field facilities. Projects to be funded are critical to the success of the Department to effectively deliver its statutorily mandated programs and services. $250,000 non-recurring in receipts are used in FY 2011-12.	$15,250,000	NR	$15,000,000	NR
Reserves				
43 Reserve for Continuation Review Establishes a reserve for Highway Fund support of the Driver License Program within the Division of Motor Vehicles.			$47,713,947	R
44 Reserve for Global TransPark Authority Reduces funding for the Global TransPark Authority (fund code 84210-0869) by ten (10) percent. Highway Fund appropriations for the Authority total $1,152,000 recurring.	($128,000)	R	($128,000)	R
45 State Retirement System Contributions Increases the State's contribution to the Teachers' and State Employees' Retirement System for the 2011-2013 biennium to fund the Annual Required Contribution.	$11,200,000	R	$15,100,000	R

	FY 11-12		FY 12-13	
46 Compensation Adjustment and Performance Pay Reserve Provides funding for labor market and equity salary increases and funding for performance based pay plans to effectuate recommendations made in connection with the comprehensive review and reform of public employee compensation plans.			$4,906,715	R
47 State Health Plan Provides additional funding to continue health benefit coverage for enrolled active and retired employees supported by the Highway Fund for the 2011-2013 biennium.	$332,245	R	$4,767,052	R
48 Severance Expenditure Reserve Provides funding for severance salary continuation payments and health benefit coverage under the State Health Plan for employees reduced-in-force. Additional receipts for positions funded from the Highway Trust Fund total $149,083 in FY 2011-12 and $323,012 in FY 2012-13.	$2,552,553	NR	$626,316	NR
49 Reserve for Visitor Centers Eliminates Highway Fund appropriations to the Reserve for Visitor Centers (fund code 84210-0882). Budgets $400,000 of additional title fee receipts, per transfer from the Highway Trust Fund, to offset reductions for visitor center operating grants. Total grant funding remains $400,000 for the 2011-2013 biennium.	($400,000)	R	($400,000)	R
Statutory Adjustments				
50 Aid to Municipalities Adjusts funding for Aid to Municipalities based on revised projections for motor fuels tax consumption in accordance with G.S. 136-41.1. The total budget is $89,373,921 in FY 2011-12 and $90,187,224 in FY 2012-13.			$1,707,042	NR
Transfers				
51 Department of Agriculture - Standards Division Eliminates funds for three (3) vacant positions for a total position cost of $146,561, one (1) filled position (Chemical Tech II) for a total position cost of $58,101, and shifts funds for another position from Highway Fund receipts to other receipts within the Department of Agriculture budget (total $57,039). Reduces operating budget for equipment and supplies by $187.	($261,888)	R	($261,888)	R
52 Department of Revenue - Motor Fuels Division Eliminates funds for 15 vacant positions for a total personnel cost savings of $785,704, reduces the "other information technology services" budget by $207,346, and reduces the travel budget by $31,494.	($1,024,544)	R	($1,024,544)	R
53 DENR Lust Trust Fund Eliminates funding for the Leaking Underground Storage Tank (LUST) program through G.S. 119-18(b). The larger transfer to LUST from motor fuels taxes through G.S. 105-449.125, which totaled $17.7 million in FY 2009-10, is not impacted.	($2,171,898)	R	($2,261,898)	R

	FY 11-12		FY 12-13	
54 Department of Health and Human Services - Chemical Testing Unit Shifts a portion of funds for position number 60039654 from Highway Fund receipts to other receipts within the Department of Health and Human Services budget, and reduces funding for purchased services by $6,280.	($28,867)	R	($28,867)	R
55 Department of Public Instruction - Driver Education Program Authorizes local education agencies (LEAs) to assess fees of up to forty-five dollars ($45.00) to program participants. Highway Fund appropriations are reduced per projected revenues of $5,211,990 in FY 2011-12 and $5,265,585 in FY 2012-13. Estimates are based on projected ninth-grade average daily membership and reported enrollment from fiscal years 2007-08 through 2009-10. Highway Fund appropriations total $26,809,974 for FY 2011-12 and $26,756,379 for FY 2012-13.	($5,211,990)	R	($5,265,585)	R
56 State Highway Patrol - Freeze Step Increases Continues the freeze on salary step increases (five percent) for sworn members of the State Highway Patrol for the 2011-2013 biennium.	($3,373,932)	NR	($3,373,932)	NR
57 State Highway Patrol - Management Flexibility Reserve Establishes a management flexibility reserve for the State Highway Patrol.	($2,325,484)	R	($10,373,350)	R
58 State Highway Patrol - Administrative Consolidations Eliminates the Administrative Services Section and other administrative units within the State Highway Patrol, and reduces human resources staffing as follows: - Crime Control & Public Safety Deputy Director: $108,676 (1 FTE) - General Counsel Office: $176,752 (2 FTE) - Public Information/Recruiting: $267,796 (3 FTE) - Administrative Services Section Management: $119,372 (1 FTE) - Assessment Office: $205,123 (3 FTE) - Benefits/Personnel and Performance/Promotion: $502,651 (6 FTE) $592,627 is budgeted on a non-recurring basis in FY 2011-12 for projected severance payments.	($1,380,370) $592,627	R NR	($1,380,370)	
59 State Highway Patrol - Reduce Operating Funds Reduces funding for purchased services, equipment, and supplies.	($1,450,000)	R	($1,450,000)	R
60 State Highway Patrol - Eliminate Highway Fund Transfer Eliminates Highway Fund appropriations (fund codes 84210-0866 and 84210-1010) for transfer to the Department of Crime Control and Public Safety (budget code 24960) for State Highway Patrol operations. Equivalent transfers to the General Fund offset this reduction. The Department of Transportation shall continue to administer and transfer matching funds for Motor Carrier Safety Assistance Program grants budgeted within fund code 84210-7834 for the State Highway Patrol.	($196,849,542)	R	($188,209,049)	R

Senate Subcommittee on Transportation	FY 11-12		FY 12-13	
61 Transfer to General Fund Transfers funds to the General Fund per the directed certification of the State Highway Patrol budget under a Department of Crime Control and Public Safety fund code within the General Fund. Including matching funds for Motor Carrier Safety Assistance Program grants budgeted within fund code 84210-7834, total budgeted transfers for the State Highway Patrol are $198,500,000 in FY 2011-12 and $189,859,507 in FY 2012-13.	$196,849,542	R	$188,209,049	R
Total Legislative Changes	**($80,714,709)**	R	**($29,905,445)**	R
	$323,562,735	NR	**$351,656,614**	NR
Total Position Changes	-341.50		-392.50	
Revised Budget	**$2,049,200,000**		**$2,134,160,000**	

Highway Trust Fund

	HIGHWAY TRUST FUND	
	FY 11-12	FY 12-13
Recommended Continuation Budget	**$933,800,000**	**$982,400,000**

Legislative Changes

Administration

62 Administration

Appropriates $25,000,000 of the accumulated unencumbered fund balance within the Highway Trust Fund Administration budget to Urban Loops.

Aid to Municipalities

63 Statutory Adjustment to Aid to Municipalities Allocation

Increases funds for State Aid to Municipalities for FY 2011-12 and FY 2012-13, consistent with new revenue estimates and G.S. 136-176(b)(3). The total budget is $51,216,036 in FY 2011-12 and $54,043,432 in FY 2012-13.

$6,365,050	NR	$6,371,287	NR

Construction

64 Intrastate System

Increases funds for the Intrastate System for FY 2011-12 and FY 2012-13, consistent with new revenue estimates and G.S. 136-176(b)(1). The total budget is $460,823,529 in FY 2011-12 and $487,503,034 in FY 2012-13.

$60,663,823	NR	$60,723,266	NR

65 Secondary Roads

Notwithstands G.S. 136-176(b)(4) and reduces funding to Secondary Roads. The total budget is $43,655,667 in FY 2011-12 and $49,320,944 in FY 2012-13.

($17,500,000)	NR	($17,500,000)	NR

	FY 11-12		FY 12-13	
66 Urban Loops	$550,000	R	$550,000	R
Increases funds for Urban Loops for FY 2011-12 and FY 2012-13, consistent with new revenue estimates and G.S. 136-176(b)(2). Also budgets $72,500,000 of non-recurring funds that are reallocated from the Garden Parkway project. Non-recurring increases in FY 2011-12 also include $25,000,000 of unencumbered administrative funds from prior years and $17,500,000 in funds reallocated from secondary road construction.	$130,907,485	NR	$71,350,039	NR
Budgets title fee revenues per a reduction in the amount statutorily transferred to the Mercury Switch Removal Account (budget code 24300-2119) in the Department of Environment and Natural Resources, per G.S. 20-85(a1). $550,000 of projected title fee revenues are budgeted for both years of the biennium.				
Transfers $5,223,642 in non-recurring funds to the General Fund to purchase replacement school buses for local school systems.				
The total Urban Loops budget is $263,587,722 in FY 2011-12 and $212,957,986 in FY 2012-13.				
67 Mobility Fund			($45,000,000)	R
Eliminates the transfer to the Mobility Fund beginning in FY 2012-13 and transfers the funds to a reserve.				
The total Mobility Fund budget is $31,000,000 in FY 2011-12.				
Reserves				
68 DOT Prioritization Reserve			$45,000,000	R
Pending finalization of the Mobility Fund project selection criteria and review of final outcomes, recurring funds to the Mobility Fund beginning in FY 2012-13 are placed in this reserve account.				
Transfers				
69 Transfer to General Fund			$115,408	R
Increases transfer to the General Fund by $35,223,642 in FY 2011-12 to purchase replacement school buses for local school systems, and by $115,408 in FY 2012-13 in accordance with G.S. 105-187.9(b)2. The total transfer is $76,720,918 in FY 2011-12 and $27,595,861 in FY 2012-13.	$35,223,642	NR		

Senate Subcommittee on Transportation	FY 11-12		FY 12-13	
70 Transfer to Highway Fund - Reserve for Visitor Centers Appropriates $400,000 for transfer to the Highway Fund Reserve for Visitor Centers for operating grants to nine visitor centers. Highway Trust Fund revenues are projected to increase by $950,000 recurring per a reduction in the amount of title fee receipts transferred to the Mercury Switch Removal Account (budget code 24300-2119) in the Department of Environment and Natural Resources. Of these revenues, $400,000 is appropriated to the Highway Fund Reserve for Visitor Centers and the remaining balance is appropriated to Urban Loops.	$400,000	R	$400,000	R
Turnpike Authority				
71 Mid-Currituck Bridge Project Reallocates $30,000,000 of unencumbered gap funds appropriated in FY 2009-10 and FY 2010-11 to the Mid-Currituck Bridge project for transfer to the General Fund to purchase replacement school buses for local school systems.				
72 Garden Parkway Project Reduces gap funding for debt service and related financing costs for the Garden Parkway project on a non-recurring basis and reallocates $20,000,000 of unencumbered gap funds appropriated in FY 2010-11 to Urban Loops.	($35,000,000)	NR	($17,500,000)	NR
Total Legislative Changes	**$950,000**	**R**	**$1,065,408**	**R**
	$180,660,000	**NR**	**$103,444,592**	**NR**
Total Position Changes				
Revised Budget	**$1,115,410,000**		**$1,086,910,000**	

Turnpike Authority

	TURNPIKE AUTHORITY			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$4,442,571**		**$4,442,571**	
Legislative Changes				
North Carolina Turnpike Authority Administration				
73 Reduce Operating Funds Reduces operating funds for administration of the North Carolina Turnpike Authority by 18 percent. The total budget for Turnpike Authority administration is $3,642,571 for the 2011-2013 biennium.	($800,000)	R	($800,000)	R
Total Legislative Changes	**($800,000)**	**R**	**($800,000)**	**R**
Total Position Changes				
Revised Budget	**$3,642,571**		**$3,642,571**	

RESERVES/ DEBT SERVICE/ ADJUSTMENTS
Section L

Statewide Reserves

	GENERAL FUND			
	FY 11-12		FY 12-13	
Recommended Continuation Budget	**$747,761,563**		**$747,761,563**	
Legislative Changes				
A. Employee Benefits				
1 Severance Expenditure Reserve Provides funding for severance salary continuation payments and health benefit coverage under the State Health Plan for employees reduced-in-force.	$69,000,000	NR		
2 Comprehensive Review of Public Employee Compensation Plans Provides funding for a comprehensive review of public employee compensation plans as directed by this Act.	$2,000,000	NR		
3 Compensation Adjustment and Performance Pay Reserve Provides funding for labor market and equity salary increases and funding for performance based pay plans to effectuate recommendations made in connection with the comprehensive review and reform of public employee compensation plans.			$121,105,840	R
4 State Retirement System Contributions Increases the State's contribution to the Teachers' and State Employees' Retirement System for the 2011-2013 biennium to fund the Annual Required Contribution.	$248,100,000	R	$336,000,000	R
5 Judicial Retirement System Contributions Increases the State's contribution to the Consolidated Judicial Retirement System for the 2011-2013 biennium to fund the Annual Required Contribution.	$6,800,000	R	$7,800,000	R
6 Firemen's and Rescue Squad Workers' Pension Fund Contributions Increases contributions to the Firemen's and Rescue Squad Workers' Pension Fund for the 2011-2013 biennium to fund the Annual Required Contribution.	$4,318,042	R	$5,366,928	R
7 State Health Plan Provides additional funding to continue health benefit coverage for enrolled active and retired employees supported by the General Fund for the FY 2011-13 biennium.	$7,119,541	R	$102,151,104	R
B. Other Reserves				
8 Job Development Incentive Grants Reserve Reduces the funding for Job Development Investment Grants to amount needed to meet projected needs for FY 2011-12 grant payments.	($12,000,000)	NR		

	FY 11-12		FY 12-13	
9 Reserve for Controller Support for Automated Fraud Detection Provides funding to support the planning, development, and implementation of an automated fraud detection system by the Office of the State Controller.	$500,000	NR	$500,000	NR
10 Reserve for Automated Fraud Detection Development Provides funding to the Office of the State Controller to engage the services of a qualified vendor to plan, develop, and implement an enterprise-level, automated fraud detection system.	$1,000,000	NR	$7,000,000	NR
11 Information Technology Fund	($1,537,574)	R	$162,426	R
Eliminates funds for five positions from the IT Fund and adds two positions for the Criminal Justice Information Network. Provides funding for enterprise-level information technology operation and projects. Shifts enterprise identity management, plus email consolidation, information technology procurement, and archiving to agency fees. Begins process of shifting responsibility for enterprise agreements to participating agencies.	($1,844,284) -3.00	NR	($1,844,284) -3.00	NR
12 Continuation/Justification Review Reserve Creates a reserve to reinstate budgets of programs being reviewed by the General Assembly's Fiscal Research Division (Justification Reviews) or state agencies (Continuation Reviews). The FY 2012-13 budgets for programs under review have been eliminated. The General Assembly in the 2012 Session will determine whether to restore funding based on the results of these reviews.			$35,576,758	NR
C. Debt Service				
13 Adjust Debt Service Payments Adjusts debt service appropriations based on updated cash flow requirements.	($9,567,995)	R	$76,853,698	R
14 Adjust Debt Service - Canceled Projects Adjusts debt service appropriations due to the cancellation of projects in SB 464 (Debt Reduction Act of 2011).	($7,380,000)	R	($22,773,907)	R
Total Legislative Changes	**$247,852,014**	R	**$626,666,089**	R
	$58,655,716	NR	**$41,232,474**	NR
Total Position Changes	-3.00		-3.00	
Revised Budget	**$1,054,269,293**		**$1,415,660,126**	

State Health Plan (Administration)

Budget Code: 28410

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	$0	$0
Recommended Budget		
Requirements	$191,734,088	$191,734,088
Receipts	$191,734,088	$191,734,088
Positions	42.00	42.00

Legislative Changes

Requirements:

Medical Benefits/Claims Processing Contract Adjust budgeted amounts for the PPO Administrative Services Agreement based on anticipated contractual costs, changes in plan membership and on-going administrative services.	($1,311,263)	R	$3,622,105	R
	$0	NR	$0	NR
	0.00		0.00	
Pharmacy Benefits Management Contract Reduce budgeted amount for PPO PBM Contract based on anticipated contractual costs, changes in plan membership and on-going pharmacy benefit and utilization management programs.	($146,568)	R	($3,335,958)	R
	$0	NR	$0	NR
	0.00		0.00	
Disease & Case Management Contracts Reduce budgeted amount for Population Health Management Services contracts based on anticipated contractual costs, changes in plan membership and on-going disease and case management services.	($6,037,580)	R	($5,284,198)	R
	$0	NR	$0	NR
	0.00		0.00	
Wellness Initiatives and Programs Reduce budgeted amount for Wellness Initiatives contracts based on anticipated contractual costs, changes in plan membership and on-going wellness programs.	($3,130,234)	R	($3,119,350)	R
	$0	NR	$0	NR
	0.00		0.00	
Other Administrative Cost Reduce budgeted amounts for the Plan's other administrative costs to more accurately reflect anticipated expenditures.	($644,294)	R	($12,544)	R
	$0	NR	$0	NR
	0.00		0.00	

	FY 2011-12		FY 2012-13	
Subtotal Legislative Changes	**($11,269,939)**	R	**($8,129,945)**	R
	$0	NR	**$0**	NR
	0.00		0.00	
Receipts:				
Reduce Transfers from Trust Funds	($11,269,939)	R	($8,129,945)	R
Reduces the amount of transfer from the Plan's health benefit trust fund budget codes to support administrative costs authorized for the FY 2011-13 biennium.	$0	NR	$0	NR
Subtotal Legislative Changes	**($11,269,939)**	R	**($8,129,945)**	R
	$0	NR	**$0**	NR
Revised Total Requirements	**$180,464,149**		**$183,604,143**	
Revised Total Receipts	**$180,464,149**		**$183,604,143**	
Change in Fund Balance	**$0**		**$0**	
Total Positions	**42.00**		**42.00**	
Unappropriated Balance Remaining	**$0**		**$0**	

CAPITAL
Section M

Capital

	GENERAL FUND	
	FY 11-12	FY 12-13
Department of Environment and Natural Resources		
1 Water Resources Development Projects		
Provides funds for the State's share of Water Resources Development Projects. Funds will provide a State match for $23,449,000 in federal funds. Projects are specified in a special provision.	$4,535,000 NR	
Total Appropriation to Capital		
	$4,535,000 NR	

INFORMATION TECHNOLOGY SERVICES
Section N

Information Technology Fund

Budget Code: 24467

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	**$792,000**	**$0**
Recommended Budget		
Requirements	**$5,685,609**	**$7,485,609**
Receipts	**$4,458,142**	**$6,158,142**
Positions	**35.00**	**35.00**

Legislative Changes

Requirements:

Center for Geographic Information and Analysis Provides funding to support the operations of the Center for Geographic Information and Analysis (CGIA), located in the Office of the State Chief Information Officer. The CGIA is the lead agency for geographic information systems (GIS) services and GIS coordination for the State of North Carolina. CGIA provides GIS services to state and local governments as well as the private sector. Two positions are eliminated, 60036161 and 60036176, for a total savings of $140,653.	$599,347	R	$599,347	R
	$0	NR	$0	NR
	-2.00		-2.00	
Enterprise Security and Risk Management Office Provides funding to support the operation of the Enterprise Security and Risk Management Office (ESRMO) in the Office of the State Chief Information Officer. The ESRMO supports the development, delivery, and maintenance of an information security and risk management program that safeguards the state's information assets and the supporting infrastructure against unauthorized use, disclosure, modification, damage or loss. Reduces position cost with retirement and replacement, resulting in savings of $37,148.	$864,148	R	$864,148	R
	$0	NR	$0	NR
	0.00		0.00	

	FY 2011-12		FY 2012-13	
Enterprise Project Management Office Provides funding to support the operation of the Enterprise Project Management Office (EPMO). The EPMO is responsible for coordinating and standardizing the management of IT projects over their life cycle, to include providing oversight during the design, development, and implementation process. Eliminates one position, 60087262, for a reduction of $121,715.	$1,473,285	R	$1,473,285	R
	$0	NR	$0	NR
	-1.00		-1.00	
Architecture and Engineering Provides funding to support the State Chief Information Officer's efforts to establish and maintain statewide information technology standards, and to design technical solutions for executive branch agencies, as well as local governments, public libraries, and K-20 organizations.	$581,986	R	$581,986	R
	$0	NR	$0	NR
	0.00		0.00	
Statewide Information Technology Procurement Allows the Statewide Information Technology Procurement Office to charge a fee to make up a $550,000 shortfall resulting from a reduction in supplemental staffing contracts. In the past, a 4.5% fee on information technology contracts has funded the Office. Reductions in supplemental staffing contracts have reduced the amount received from this fee.	($550,000)	R	($550,000)	R
	$0	NR	$0	NR
	0.00		0.00	
State Portal Eliminates appropriation for the State Portal. The State Portal was funded at $500,000 last year, but the Department of Administration is converting it to a fee-supported function.	($500,000)	R	($500,000)	R
	$0	NR	$0	NR
	0.00		0.00	
State Web Site Provides funding support to be used only for the State's current nc.gov website.	$0	R	$0	R
	$100,000	NR	$0	NR
	0.00		0.00	

	FY 2011-12		FY 2012-13	
Information Technology Consolidation Provides funding for IT Consolidation to continue the State's efforts to consolidate information technology infrastructure within State agencies, coordinating the use of information technology infrastructure by focusing on the consolidation of local area network, voice, data center (servers), security, desktop, and service desk operations and services. Also begins the process of consolidating applications within the State. Eliminates two positions, 60087232 and 65000717, for a total savings of $218,201.	$776,440	R	$784,440	R
	$0	NR	$0	NR
	-2.00		-2.00	
Data Integration License Transfer to Agencies Transfers, as required by S.L. 2010-31, funding for data integration licenses from the Office of the State Chief Information Officer to State agencies using the licenses. The State Chief Information Officer is required to complete this transfer by September 1 of each State fiscal year and to report to the General Assembly upon completion of the transfer.	$0	R	$0	R
	$200,000	NR	$1,200,000	NR
	0.00		0.00	
Criminal Justice Information Network Provides funding to move two positions, 60084125 and 60084100, to the Office of the State Chief Information Officer from the Department of Crime Control and Public Safety. The Criminal Justice Information Network is responsible for providing the governmental and technical information systems necessary for accomplishing State and local governmental public safety and justice functions in the most efficient manner by appropriately and efficiently sharing criminal justice and juvenile justice information among law enforcement, judicial, and corrections agencies.	$166,422	R	$166,422	R
	$0	NR	$0	NR
	2.00		2.00	
Transfer to OSC for E Forms Initiative Transfers $500,000 from the Office of the State Chief Information Officer to the Office of the State Controller to support the planning and development of an enterprise e forms and digital signatures initiative.	$500,000	R	$500,000	R
	$0	NR	$0	NR
	0.00		0.00	

	FY 2011-12		FY 2012-13	
Transfer IT Analyst Funding to OSBM	$105,000	R	$105,000	R
Transfers funding from the Office of the State Chief Information Officer to the Office of State Budget and Management to be used only for the salary and benefits of an Information Technology Analyst for the Office of State Budget and Management.	$0	NR	$0	NR
	0.00		0.00	
Information Technology Fund Adjustment	$0	R	$0	R
Reduces appropriations to reflect adjustments in General Fund expenditures and receipts, and the use of the Unreserved Fund Balance.	($4,635,609)	NR	($6,435,609)	NR
	0.00		0.00	
Subtotal Legislative Changes	**$4,016,628**	R	**$4,024,628**	R
	($4,335,609)	NR	**($5,235,609)**	NR
	-3.00		-3.00	
Receipts:				
Information Technology Fund Interest	$25,000	R	$25,000	R
Accounts for the interest generated by the balance in the Information Technology Fund.	$0	NR	$0	NR
ITS Overhead	$91,486	R	$91,486	R
Reduces overhead billed to support the Office of Information Technology Services, based on rate reductions projected for the next State fiscal year.	$0	NR	$0	NR
Subtotal Legislative Changes	**$116,486**	R	**$116,486**	R
	$0	NR	**$0**	NR
Revised Total Requirements	**$5,366,628**		**$6,274,628**	
Revised Total Receipts	**$4,574,628**		**$6,274,628**	
Change in Fund Balance	**($792,000)**		**$0**	
Total Positions	**32.00**		**32.00**	
Ending Unreserved Fund Balance	**$0**		**$0**	

Information Technology Internal Service Fund

Budget Code: 74660

	FY 2011-12	FY 2012-13
Beginning Unreserved Fund Balance	**$32,445,864**	**$32,445,864**
Recommended Budget		
Requirements	**$196,263,192**	**$196,263,192**
Receipts	**$196,263,192**	**$196,263,192**
Positions	**592.00**	**592.00**

Legislative Changes

Requirements:

Reduction to IT Internal Service Fund	$0 R	$0 R
Requires the Office of the State Chief Information Officer and the Office of Information Technology Services to limit requirements for the Information Technology Internal Service Fund to $190,000,000 each State fiscal year, and eliminates 61 positions, to include position numbers 60087678, 60087377, 60087386, 60087436, 60089620, 60090531, 60087478, 60093461, 60087389, 60087453, 65010101, 60087464, 60087472, 60087488, 60087490, 60090526, 60087530, 60087624, 60087512, 60087606, 60087532, 60093453, 65000536, 60087605, 60089810, 60087652, 60087648, 60087520, 60087674, 65010102, 60087727, 60087553, 65005226, 65000702, 65010802, 65010803, 60089805, 60087580, 60087726, 60089804, 60087413, 60087440, 60087414, 60087322, 60093458, 60087227, 60087230, 60087234, 60087246, 60087314, 60087299, 60087286, 60087239, 60087710, 60089801, 60087445, 60089785, 65000706, 60087586, 60087533, 60087544.	($6,263,192) NR -61.00	($6,263,192) NR -61.00
Subtotal Legislative Changes	**$0** R	**$0** R
	($6,263,192) NR -61.00	**($6,263,192)** NR -61.00

Receipts:

Senate Report on Information Technology

	FY 2011-12		FY 2012-13	
Receipts for Internal Service Fund	$0	R	$0	R
Reduces receipts to Information Technology Internal Service Fund to reflect requirements.	($6,263,192)	NR	($6,263,192)	NR
Subtotal Legislative Changes	**$0**	R	**$0**	R
	($6,263,192)	NR	**($6,263,192)**	NR
Revised Total Requirements	**$190,000,000**		**$190,000,000**	
Revised Total Receipts	**$190,000,000**		**$190,000,000**	
Change in Fund Balance	**$0**		**$0**	
Total Positions	**531.00**		**531.00**	
Ending Unreserved Fund Balance	**$32,445,864**		**$32,445,864**	

PAGES ATTENDING

COMMITTEE: Finance ROOM 544

DATE: 5-31 TIME: 3:15

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Jonathan Glover	Bailey	E.S. Newton
2 Thomas Jarrell	High Point	Vaughan
3 Jeremy Glover	Bailey	Newton
4 Manraj Singh	Wilson	Newton
5 Eleanor Yarboro	Goldsboro	Rouzer
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 31, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dana Fenton	City of Charlotte

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 31, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Hatalyn Robinson	NCRMA
Heather Barnett	Williams Mullen
Thomas Weeks	Fidelity
BRUCE THOMPSON	PARKER POE
Jon Ellis	BEGINNINGS
John Bowdish	Astra Zeneca
Barbara Conder	BB&T
Doug Lassiter	NCSTA
Mary Hall	Smith Anderson
Annette Newkirk	NCCCC
Matt Gross	NCPC

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 31, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
H. Isaico	NCDOT
Jimmy Broughton	Womble Carlyle
Daniel Rabon	DENR
Alan Briggs	NC Food Banks
Chris Kelly	Nelson Mullins
Ed Turlington	Brooks Pierce
Elizabeth Kaiser	" "
Steve Sawicer	AFC Grassroots
Lauren Phillips	Wakemed
Paula Stoppe	Childress Klein

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 31, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Matt Farrell	NCSBA
Emily Boyce	NCPAPA
Katherine Joyce	NCAOA
Chris Dillon	NCWRC
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Catherine Fleming	Cardinal Healthcare System
BJ Miller	Cone Health
Will Culpepper	NVDA
Mitch Leonard	SEANC
Chuck Stone	SEANC
Emily Grimm	NCWC

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 31, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dirse King	NCEL
Amy Whited	NCMS
Becky Curtis	RAFI
Joyce Peterson	IPASSC
Whitney C. Christensen	Jordan Price
Renee Coward	
Matthew McConnell	Carolinas HealthCare Sys.
Jon Carr	Jordan Price Law Firm
Fred Baggett	Smith Moore L.
BSP	NCFB
Susan Valaun	NCA

SENATE FINANCE COMMITTEE
Wednesday, June 1, 2011 at 3:15 PM
Room 545, Legislative Office Building

MINUTES

The Senate Finance Committee met at 3:15 PM on June 1, 2011 in room 544 of the Legislative Office Building. Twenty members of the committee were present. Leah Cashwell of Garland, Ross Byrd of Williamston, David Scoggins of Denver, Noah Parrish of Greensboro, Joseph Curry of Angier, and Abby Newsom of Raleigh served as pages. Senator Rucho presided as chair.

S.B. 237 – Incorporate Castle Hayne

Senator Goolsby was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The bill incorporates the Town of Castle Hayne, subject to a referendum on November 8, 2011. In its report to the General Assembly dated May 23, 2011, the Joint Legislative Commission on Municipal Corporations found that the proposed Town of Castle Hayne meets the standards required by Article 20 of Chapter 120 of the General Statutes and recommended the incorporation of the area as the Town of Castle Hayne. The PCS reduces the size of the town council from six to four, changes the form of government from council-manager to mayor-council, and restricts the council's ability to make zoning changes for the first five years. Cindy Avrette, an attorney with the Research Division, was recognized to answer questions. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 743 – Encourage Volunteer Health Care Providers

Senator Goolsby explained the bill which modifies the requirements and fee provisions for a limited volunteer license to practice surgery or medicine at clinics that specialize in the treatment of indigent patients. Cindy Avrette was recognized to answer questions. Senator Clary moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

S.B. 446 – Community College Tuition for Members of the Military

Senator Meredith was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS includes the costs of textbooks in the tuition at community colleges for active duty service members, so that these costs would be included as "tuition" for the purposes of payment by the armed forces. Senator Rabon moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 532 – ESC/Jobs Reform

Senator Clary was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The bill transfers all of the statutory powers, duties, and functions of the Employment Security Commission to the Department of

Commerce. It establishes a Division of Employment Security within the Department of Commerce and subjects that Division to the rule-making requirements under the Administrative Procedure Act. The bill also makes other modifications and conforming changes to align the employment security functions under the Secretary of Commerce. Heather Fennell, an attorney with the Research Division, was recognized to answer questions. Senator Stevens moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 3:40 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Thursday, June 02, 2011

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

FAVORABLE

S.B.(CS #1) **743** Encourage Volunteer Health Care Providers.
Sequential Referral: None
Recommended Referral: None

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

S.B. **237** Incorporate Castle Hayne.
Draft Number: 15166
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **446** Comm. Coll. Tuition for Members of Military.
Draft Number: 55307
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **532** ESC/Jobs Reform.
Draft Number: 15167
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comments:
S743 – Sen. Goolsby
S237 – Sen. Goolsby
S446 – Sen. Meredith
S532 – Sen. Clary

Senate Finance Committee
Wednesday, June 1, 2011
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 237	Incorporate Castle Hayne.	Sen. Goolsby
SB 446	Comm. Coll. Tuition for Members of Military.	Sen. Brown Sen. Preston Sen. Meredith
SB 532	ESC/Jobs Reform.	Sen. Clary Sen. Rucho
SB 743	Encourage Volunteer Health Care Providers.	Sen. Goolsby

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 237*
PROPOSED COMMITTEE SUBSTITUTE S237-CSRBx-45 [v.2]

6/1/2011 1:01:14 PM

Short Title: Incorporate Castle Hayne. (Local)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF CASTLE HAYNE, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Castle Hayne is enacted to read:

"CHARTER OF THE TOWN OF CASTLE HAYNE.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Castle Hayne are a body corporate and politic under the name "Town of Castle Hayne." The Town shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Castle Hayne are as follows:

BEGINNING at a point in the centerline of N.C. Highway No. 133 at the Northern New Hanover County boundary line; thence in a westerly direction; thence northerly, along the New Hanover County boundary line to a point intersecting the southern boundary line of PIN #3232-19-5017.000; thence westward of said parcel along the southern boundary to PIN #3212-83-7918.000; thence west along the southern boundary line; thence south along the eastern boundary line; thence east to intersect Prince George Creek; thence joining the southern bank of Prince George Creek; thence west along the southern bank to intersect with the eastern boundary lines of PIN #3221-28-5577.000; thence south along the eastern side to PIN #3221-36-7616.000 northern tip; thence north along the western side; thence east of said parcel along the northern boundary line; thence south of said parcel along the eastern boundary line to the centerline point of Sondey Rd; thence east along the centerline of said road to the intersection of the centerline of N.C. Highway No. 133; thence north on centerline of said road to the intersection of the centerline of Parmele Rd; thence east on the centerline line of said road to the centerline of N.C. Highway No. 132; thence south on the centerline to southern tip of PIN #3231-63-0919.000; thence east along the southern boundary line to PIN #3231-63-2909.000; thence south along the western boundary line to PIN #3231-63-2886.000; thence south along the western boundary line to the eastern boundary line of PIN #3231-64-6255.000; thence north along the western boundary line; thence east along the northern boundary line to PIN #3231-74-0048.000; thence east along the northern boundary line to PIN #3231-83-1775.000; thence north along the eastern boundary line to PIN

#3231-84-5481; thence east along the southern boundary line to the centerline point of Blue Clay Rd; thence north of said road to the point of intersection at the right-of-way of Interstate 40; thence crossing said interstate in a line connecting to the continuation of the centerline of Blue Clay Rd on the northern boundary of the interstate right-of-way at the centerline of Blue Clay Rd; thence north on said road to PIN #3241-06-4363.000; thence east along said parcel along the southern boundary line to PIN #3241-06-6234.000; thence east along the southern boundary line to PIN #3241-05-7293.000; thence east along the northern boundary line to PIN #3241-15-4490.000; thence east along the northern boundary line to PIN #3241-26-3164.000; thence east along the western boundary line north to PIN #3241-26-4528.000; thence east along the southern boundary line; thence north along the eastern boundary line to PIN #3241-26-9929; thence east of said parcel along the southern boundary line to PIN #3241-88-1225.000; thence north of said parcel along the western boundary line; thence west; thence north along the centerline at Blue Clay Rd; thence east along the northern boundary line to PIN #3251-63-1678.000; thence north of said parcel along the western boundary line to the centerline point at Holly Shelter Rd; thence east along of said road centerline to New Hanover County boundary line; thence north along the county line to the New Hanover County boundary line at the North East Cape Fear River; thence west along the northern boundary of the New Hanover County line to the starting point at centerline of N.C. Highway No. 133 at the Northern New Hanover County boundary line.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Castle Hayne is the Mayor and the Town Council, which shall have four members.

"Section 3.2. **Manner of Electing Town Council; Terms; Vacancies.** The qualified voters of the entire Town shall elect the members of the Town Council and, except as provided in this section, they shall serve four-year terms. In 2011, the two candidates receiving the highest numbers of votes shall be elected to four-year terms, and the two candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2013, and quadrennially thereafter, two members shall be elected to four-year terms. In 2015, and quadrennially thereafter, two members shall be elected to four-year terms. Vacancies on the Town Council shall be filled as provided in G.S. 160A-63.

"Section 3.3. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Town shall elect the Mayor. In 2011, and biennially thereafter, the Mayor shall be elected for a term of two years. The Mayor shall attend and preside over meetings of the Town Council, shall advise the Town Council from time to time as to matters involving the Town of Castle Hayne, and shall have the right to vote as a member of the Town Council on all matters before the Town Council, but shall have no right to break a tie vote in which the Mayor has participated. Vacancies in the office of Mayor shall be filled as provided in G.S. 160A-63.

"Section 3.4. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The Mayor Pro Tempore shall be elected from among the members of the Town Council at the organizational meeting after the initial election in November 2011 and shall serve for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of the Town Council present may elect a temporary chair to preside in the absence from amongst the members of the Council. The Mayor Pro Tempore shall have the right to vote on all matters before the Town Council and shall be considered a member of the Town Council for all purposes.

"Section 3.5. **Residency Requirement.** Members of the governing body of the Town of Castle Hayne, whether elected or appointed, must be qualified voters who reside within the corporate limits of the Town in order to qualify to take, hold, and continue in office.

"Section 3.6. **Compensation of Mayor and Town Council.** The Mayor of the Town of Castle Hayne shall be paid an annual sum of one thousand five hundred dollars ($1,500) as compensation for his or her services, and each member of the Town Council shall be paid an annual sum of one thousand dollars ($1,000) as compensation for his or her services. In addition, the Mayor and the members of the Town Council shall be entitled to reimbursement for ordinary and necessary travel, training, or other expenses incurred in the course of performing their official duties, subject to adopted Town Council policies. The Town Council may, from time to time, establish rates and amounts of reimbursement which shall not be exceeded without prior approval of the Town Council.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and the results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, with the first regular municipal election to be held on November 8, 2011.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by the general law of North Carolina, local acts of the General Assembly, or as provided for in this Charter.

"ARTICLE V. ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town shall operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Town Council may direct.

"Section 5.3. **Town Clerk.** The Town Council shall appoint a Town Clerk to keep a journal of the proceedings of the Town Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Town Council may direct.

"Section 5.4. **Other Administrative Officers and Employees.** The Town Council may authorize other offices and positions and appoint persons to fill the offices and positions. The Town Council may organize the Town government as deemed appropriate, subject to the requirements of general law.

"Section 5.5. **Advisory Groups and Boards.** The Town Council may create one or more advisory groups or boards to assist or advise the Town Council on matters related to the Town, unless otherwise prohibited by general law. The Town Council may appoint members to serve on an advisory group or board authorized by this section, subject to the requirements of general law.

"Section 5.6. **Consolidation of Functions.** Where positions are not incompatible, the Town Council may combine in one person the powers and duties of two or more officers created or authorized by this Charter.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Powers of the Village Council.** The Town Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Town Council shall be required to change the ad valorem tax rate from the rate established during the prior fiscal year.

"Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2011, the citizens and property in the Town of Castle Hayne shall be subject to municipal taxes levied for the year beginning July 1, 2011, and for that purpose, the Town shall obtain from New Hanover

County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2011.

"Section 6.3. **Budget.** The Town may adopt a budget ordinance for fiscal year 2011-2012 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2011-2012, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2011.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Castle Hayne is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town.

"Section 7.2. **Zoning Restriction.** Notwithstanding any other provisions of this Charter or the provisions of general law, including the provisions of Article 19 of Chapter 160A of the General Statutes, the Town shall not, prior to December 31, 2016, adopt an ordinance regulating or restricting the subdivision, zoning, or use of land within the corporate limits of the Town or within the Town's extraterritorial jurisdiction.

"ARTICLE VIII. MISCELLANEOUS.

"Section 8.1. **Conflicts of Interest.** No person, or a member of the person's immediate family, who is employed by or is an official of the Town of Castle Hayne, shall do business with the Town unless the activity is approved by the Town Council. All appointed officials of the Town shall inform the Town Council of any conflicts of interest, and the failure to so inform shall constitute grounds for immediate dismissal for cause. No official of the Town may accept any gratuity from any business, person, or other official if the gratuity is related to his or her official duties.

"Section 8.2. **Enlargement or Reduction of Town Council.** (a) The Town Council may enlarge or reduce the size of the Town Council by two offices upon an affirmative vote of three-fourths of the members of the Town Council. A vote to enlarge or reduce the size of the Town Council may be had at any time, but shall not occur more often than every two years. The Town Charter shall be amended to reflect an affirmative vote to enlarge or reduce the size of the Town Council as provided in G.S. 160A-102.

(b) The qualified voters of the Town of Castle Hayne may seek to enlarge or reduce the number of members of the Town Council by submitting a petition to that effect signed by twenty percent (20%) of the qualified voters. Upon passage of a resolution as provided in G.S. 160A-102 or upon receipt of a valid petition, the Town Council shall immediately take steps as provided in Part 4 of Article 5 of Chapter 160A of the General Statutes to determine by referendum whether the number of members of the Town Council should be increased or reduced. If a majority of the votes cast in the referendum are in the affirmative to enlarge the number of members of the Town Council, a special election shall be held at the earliest possible date to elect the additional members required to enlarge the Town Council to the number set forth in the referendum.

"Section 8.3. **Amendments to Charter.** The Town Council may propose and enact amendments to this Charter in accordance with Part 4 of Article 5 of Chapter 160A of the General Statutes. No amendment to this Charter shall become effective until public notice is given and a public hearing is held to receive comments on the proposed Charter amendment. Notwithstanding G.S. 160A-103, upon receipt of a referendum petition bearing the signatures and residence addresses of twenty percent (20%) of the qualified voters of the Town, the Town Council shall submit ordinances adopted under G.S. 160A-102 to a vote of the people.

"Section 8.4. **Provision of Services and Administration of Functions.** The Town Council may enter into agreements with other governmental bodies and private enterprises for the

provision of services and the administration of corporate functions in order to provide the services and administer the functions in the most efficient and cost-effective manner.

"ARTICLE IX. SPECIAL PROVISIONS.

"Section 9.1. **Fire Protection.** The Town of Castle Hayne may contract with either or both the New Hanover County Fire Services or the Castle Hayne Volunteer Fire Department, or any other capable fire services provider, to provide fire protection for the Town. The contract terms and the amount paid by the Town of Castle Hayne to any fire services provider shall be mutually agreed upon and annually renewed by the Town Council and the fire services provider.

"Section 9.2. **Law Enforcement.** The Town of Castle Hayne may contract with the New Hanover County Sheriff's Department, or any other capable law enforcement services provider, to provide law enforcement services for the Town. The contract terms and amount paid by the Town of Castle Hayne to the New Hanover County Sheriff's Department or any other capable law enforcement services provider shall be mutually agreed upon and annually renewed by the Town Council and the New Hanover County Board of Commissioners, or other capable law enforcement services provider.

"Section 9.3. **Zoning, Planning, and Inspections.** The Town of Castle Hayne may contract with the New Hanover County Planning, Zoning, and Inspections Department, or any other capable planning, zoning, and inspections service provider, to provide planning, zoning, and inspections services for the Town. The contract terms and amount paid by the Town of Castle Hayne to the New Hanover County Planning, Zoning, and Inspections Department, or any other capable planning, zoning, and inspections service provider, shall be mutually agreed upon and annually renewed by the Town Council and the New Hanover County Board of Commissioners, or other capable planning, zoning, and inspections service provider."

SECTION 2. The New Hanover County Board of Elections shall conduct an election on November 8, 2011, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Town of Castle Hayne the question of whether or not the area shall be incorporated as the Town of Castle Hayne. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

SECTION 3. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST
Incorporation of the Town of Castle Hayne."

SECTION 4. In the election, if a majority of the votes are cast "FOR Incorporation of the Town of Castle Hayne," Section 1 of this act shall become effective on the date that the New Hanover County Board of Elections certifies the results of the election. Otherwise, Section 1 of this act shall have no force and effect.

SECTION 5. At the same time as the election held under Section 2 of this act, the New Hanover County Board of Elections shall hold an election for the initial Town Council as provided in Articles III and IV of the proposed Charter of the Town of Castle Hayne. If the majority of votes is not cast "FOR Incorporation of the Town of Castle Hayne," the election of officers is null and void. The filing period for candidacies is the same as provided by G.S. 163-294.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 237:
Incorporate Castle Hayne

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 1, 2011
Introduced by:	Sen. Goolsby	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S237-CSRBx-45		Committee Counsel

SUMMARY: ***Senate Bill 237 would incorporate the Town of Castle Hayne, subject to a referendum on November 8, 2011. In its Report to the General Assembly dated May 23, 2011, the Joint Legislative Commission on Municipal Corporations found that the proposed Town of Castle Hayne meets the standards required by Article 20 of Chapter 120 of the General Statutes and recommended incorporation of the area as the Town of Castle Hayne.***

The proposed committee substitute reduces the size of the town council from six to four, changes the form of government from council-manager to mayor-council, and restricts the council's ability to make zoning changes for the first five years.

CURRENT LAW: Article VII of the North Carolina Constitution provides that the General Assembly may create cities and towns. The General Assembly created the Joint Legislative Commission on Municipal Incorporations in 1986 to conduct an independent review and evaluation of proposed municipal incorporations. The evaluation is conducted in accordance with a statutory set of objective criteria found in Article 20 of Chapter 120 of the General Statutes. The statutory criteria include a review of community support, population, land development, nearness to other urban areas, and ability to provide municipal services at a reasonable rate. Chapter 160A of the General Statutes provides the general laws applicable to the administration, powers, and duties of municipalities. Municipalities may share in the following revenue sources: local sales tax distributions, Powell Bill allocations, franchise tax revenues on electricity, beer and wine excise taxes, piped natural gas excise tax revenues, and telecommunications and video programming sales tax revenues.[1]

BILL ANALYSIS: The proposed committee substitute for Senate Bill 237 would incorporate the Town of Castle Hayne, subject to a referendum scheduled to be held on November 8, 2011. The Town would be governed by a six-member town council and a mayor. The Joint Legislative Commission on Municipal Incorporations found that the proposed incorporation met the standards required for incorporation under Article 20 of Chapter 120 of the General Statutes.

- The Town of Castle Hayne would be located in New Hanover County. The other cities and towns in New Hanover County include the City of Wilmington, the Town of Wrightsville Beach, the Town of Carolina Beach, and the Town of Kure Beach. None of these municipalities are located within five miles of the proposed town and no other municipality located outside New Hanover County is located within five miles of the proposed town.
- The estimated population of the Town would be 3,355. The estimated area to be incorporated is 12.85 square miles. The population density is 261 persons per square mile. The estimated assessed property tax valuation would be $338,603,057.

[1] A municipality must have a property tax rate greater than $0.05/$100 valuation and provide at least four services to receive the following shared revenues: local sales and use tax, beer and wine excise taxes, sales tax on telecommunications and video programming, and Powell Bill allocations.

- The Town plans to offer the following services: police protection provided by the New Hanover County Sherriff's Office, fire protection provided by New Hanover County; street lighting; and planning and zoning service provided by the New Hanover County Planning Office.
- The Town would be entitled to the following estimated amounts of revenue from shared tax revenue sources: $80,000 of local sales tax; $5,000 of franchise tax; $3,000 of beer and wine excise taxes; $45,000 of sales tax on telecommunications; $50,000 of sales tax on video programming; $160,000 of excise tax on piped natural gas; and $70,000 of Powell Bill allocations. The Town is proposing a property tax rate of $0.10/$100 valuation for estimated property tax revenue of a little more than $262,387.

EFFECTIVE DATE: SB 237 would become effective when it becomes law, and is subject to voter referendum.

S237-SMRB-67(CSRBx-45) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 2

SENATE BILL 743
Health Care Committee Substitute Adopted 5/24/11

Short Title: Encourage Volunteer Health Care Providers. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE PROVISION OF MEDICAL SERVICES TO INDIGENT PERSONS BY PROVIDING FOR A RETIRED LIMITED VOLUNTEER LICENSE AND BY BROADENING THE APPLICABILITY OF A LIMITED VOLUNTEER LICENSE AND BY LIMITING LIABILITY FOR NONPROFIT COMMUNITY HEALTH REFERRAL SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-12.1A reads as rewritten:

"**§ 90-12.1A. Limited volunteer license.**

(a) The Board may issue a "~~military~~ limited volunteer license" to an applicant who:

(1) Has a license to practice medicine and surgery in another ~~state;~~state; and

(2) Produces a letter from the state of licensure indicating the ~~applicant is~~ applicant's license is active and in good ~~standing; and~~standing.

~~(3) Is authorized to treat personnel enlisted in a branch of the United States armed services or veterans.~~

~~(b) The Board may issue a "retired limited volunteer license" to an applicant who is a retired physician and has allowed his or her license to practice medicine and surgery in this State or another state to become inactive.~~

~~(c) A physician holding a limited license under this section shall comply with the continuing medical education requirements pursuant to rules adopted by the Board.~~

(d) The Board shall issue a limited license under this section within 30 days after an applicant provides the Board with information satisfying the requirements of this section.

(e) The holder of a limited license under this section may practice medicine and surgery only at clinics that specialize in the treatment of indigent patients. The holder of the limited license may not receive compensation for services rendered at clinics specializing in the care of indigent patients.

(e1) The holder of a limited volunteer license shall practice medicine and surgery within this State for no more than 30 days per calendar year.

(f) The holder of a limited license issued pursuant to this section who practices medicine or surgery at places other than clinics that specialize in the treatment of indigent patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00) for each offense. The Board, in its discretion, may revoke the limited license after due notice is given to the holder of the limited license.

(g) The Board may, by rule, require an applicant for a limited license under this section to comply with other requirements or submit additional information the Board deems appropriate."

SECTION 2. Article 1 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-12.1B. Retired limited volunteer license.**

(a) The Board may issue a "retired limited volunteer license" to an applicant who is a physician and who has allowed his or her license to practice medicine and surgery in this State or another state to become inactive.

(b) A physician holding a limited license under this section shall comply with the continuing medical education requirements pursuant to rules adopted by the Board.

(c) The holder of a limited license under this section may practice medicine and surgery only at clinics that specialize in the treatment of indigent patients. The holder of the limited license may not receive compensation for services rendered at clinics specializing in the care of indigent patients.

(d) The Board shall issue a limited license under this section within 30 days after an applicant provides the Board with information satisfying the requirements of this section.

(e) The holder of a limited license issued pursuant to this section who practices medicine or surgery at places other than clinics that specialize in the treatment of indigent patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00) for each offense. The Board, in its discretion, may revoke the limited license after due notice is given to the holder of the limited license.

(f) The Board may, by rule, require an applicant for a limited license under this section to comply with other requirements or submit additional information the Board deems appropriate."

SECTION 3. G.S. 90-13.1 reads as rewritten:

"**§ 90-13.1. License fees.**

(a) Each applicant for a license to practice medicine and surgery in this State under either G.S. 90-9.1 or G.S. 90-9.2 shall pay to the North Carolina Medical Board an application fee of three hundred fifty dollars ($350.00).

(b) Each applicant for a limited license to practice in a medical education and training program under G.S. 90-12.01 shall pay to the Board a fee of one hundred dollars ($100.00).

(c) An applicant for a limited volunteer license under G.S. 90-12.1A or G.S. 90-12.1B shall not pay a fee.

(d) A fee of twenty-five dollars ($25.00) shall be paid for the issuance of a duplicate license.

(e) All fees shall be paid in advance to the North Carolina Medical Board, to be held in a fund for the use of the Board.

(f) For the initial and annual licensure of an anesthesiologist assistant, the Board may require the payment of a fee not to exceed one hundred fifty dollars ($150.00)."

SECTION 4. G.S. 90-13.2 reads as rewritten:

"**§ 90-13.2. Registration every year with Board.**

(a) Every person licensed to practice medicine by the North Carolina Medical Board shall register annually with the Board within 30 days of the person's birthday.

(b) A person who registers with the Board shall report to the Board the person's name and office and residence address and any other information required by the Board, and shall pay an annual registration fee of one hundred seventy-five dollars ($175.00), except those who have a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training shall pay a registration fee of one hundred twenty-five dollars ~~($125.00) and~~ ($125.00), those who have a retired limited volunteer license pursuant to G.S. 90-12.1B shall pay an annual registration fee of twenty-five dollars ~~($25.00).~~ ($25.00), and those who have a limited volunteer license pursuant to G.S. 90-12.1A shall pay no annual registration fee. However, licensees who have a limited license to practice for the

purpose of education and training under G.S. 90-12.01 shall not be required to pay more than one annual registration fee for each year of training.

(c) A physician who is not actively engaged in the practice of medicine in North Carolina and who does not wish to register the license may direct the Board to place the license on inactive status.

(d) A physician who is not actively engaged in the practice of medicine in North Carolina and who does not wish to register the license may direct the Board to place the license on inactive status.

(e) A physician who fails to register as required by this section shall pay an additional fee of fifty dollars ($50.00) to the Board. The license of any physician who fails to register and who remains unregistered for a period of 30 days after certified notice of the failure is automatically inactive. The Board shall retain jurisdiction over the holder of the inactive license.

(f) Except as provided in ~~G.S. 90-12.1A,~~ G.S. 90-12.1B, a person whose license is inactive shall not practice medicine in North Carolina nor be required to pay the annual registration fee.

(g) Upon payment of all accumulated fees and penalties, the license of the physician may be reinstated, subject to the Board requiring the physician to appear before the Board for an interview and to comply with other licensing requirements. The penalty may not exceed the maximum fee for a license under G.S. 90-13.1."

SECTION 5. G.S. 90-21.16 reads as rewritten:

"**§ 90-21.16. Volunteer health care professionals; liability limitation.**

(a) This section applies as follows:

(1) Any volunteer medical or health care provider at a facility of a local health department or at a nonprofit community health center,

(2) Any volunteer medical or health care provider rendering services to a patient referred by a local health department as defined in ~~G.S. 130A-2(5) or~~G.S. 130A-2(5), nonprofit community health ~~center~~center, or nonprofit community health referral service at the provider's place of employment,

(3) Any volunteer medical or health care provider serving as medical director of an emergency medical services (EMS) ~~agency;~~agency, or

~~(4) Any retired physician holding a "Limited Volunteer License" under G.S. 90-12.1A, or~~

(5) Any volunteer medical or health care provider licensed or certified in this State who provides services within the scope of the provider's license or certification at a free clinic facility,

who receives no compensation for medical services or other related services rendered at the facility, center, agency, or clinic, or who neither charges nor receives a fee for medical services rendered to the patient referred by a local health ~~department or~~department, nonprofit community health ~~center~~center, or nonprofit community health referral service at the provider's place of employment shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the rendering of the services unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the person rendering the services. The free clinic, local health department facility, nonprofit community health center, nonprofit community health referral service, or agency shall use due care in the selection of volunteer medical or health care providers, and this subsection shall not excuse the free clinic, health department facility, community health center, or agency for the failure of the volunteer medical or health care provider to use ordinary care in the provision of medical services to its patients.

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person

while rendering health care services in the normal and ordinary course of his or her business or profession. Services provided by a medical or health care provider who receives no compensation for his or her services and who voluntarily renders such services at the provider's place of employment, facilities of free clinics, local health departments as defined in G.S. 130A-2, nonprofit community health centers, or as a volunteer medical director of an emergency medical services (EMS) agency, are deemed not to be in the normal and ordinary course of the volunteer medical or health care provider's business or profession.

(c) As used in this section, a "free clinic" is a nonprofit, 501(c)(3) tax-exempt organization organized for the purpose of providing health care services without charge or for a minimum fee to cover administrative costs and that maintains liability insurance covering the acts and omissions of the free clinic and any liability pursuant to subsection (a) of this section.

(d) A nonprofit community health referral service that refers low-income patients to physicians for free services is not liable for the acts or omissions of the physician in rendering service to that patient if the ~~physician maintains professional liability coverage for that service.~~nonprofit community health center maintains liability insurance covering the acts and omissions of the nonprofit health referral service and any liability pursuant to subsection (a) of this section.

(e) As used in this section, a "nonprofit community health referral service" is a nonprofit, 501(c)(3) tax-exempt organization organized to provide for no charge the referral of low-income, uninsured patients to volunteer health care providers who provide health care services without charge to patients."

SECTION 6. This act is effective when it becomes law.

SENATE BILL 743:
Encourage Volunteer Health Care Providers

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 1, 2011
Introduced by:	Sen. Goolsby	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 743 modifies the requirements and fee provisions for a limited volunteer license to practice surgery or medicine at clinics that specialize in the treatment of indigent patients.***

CURRENT LAW: The North Carolina Medical Board may issue a 'military limited volunteer license' and a 'retired limited volunteer license'. In both instances, the holder of the license may practice medicine and surgery only at clinics that specialize in the treatment of indigent patients and the holder may not receive compensation for the services rendered. A holder of the license who practices at places other than clinics that specialize in the treatment of indigent patients is guilty of a Class 3 misdemeanor.

The holder of a limited license does not have to pay an application fee of $350 or annual registration fee of $175. The holder of the limited license does have pay an annual registration fee of $25.

BILL ANALYSIS: Senate Bill 743 broadens the applicability of a 'military limited volunteer license' by removing the requirement that an applicant must be authorized to treat personnel enlisted in the United States armed services; the applicant must still be licensed to practice medicine in good standing in another state. The name of the license is changed to reflect the removal of the military connection. The bill retains the requirement that the holder of this license may only practice in a clinic that specializes in the treatment of indigent patients, but it limits the practice under the license to no more 30 days per calendar year. The holder of this license does not have to pay either an application fee or an annual registration fee.

The bill removes the provisions regarding a 'retired limited volunteer license' from G.S. 90A-12.1A and places them in a new G.S. 90A-12.1B. The bill does not change the requirements for this license, the limitations of this license, or the applicable fees associated with this license. The holder of this license must be a physician that has allowed his or her license in this or another state to practice medicine to become inactive. The holder of the license may only practice in clinics that specialize in the treatment of indigent patients and may not receive compensation for those services. The holder of the license must comply with continuing medical education requirements and other rules adopted by the Board and pay a $25 annual registration fee. As under current law, it is a Class 3 misdemeanor for a retired limited volunteer licensee to practice medicine at places other than clinics that specialize in the treatment of indigent patients.

Shawn Parker, counsel to the Senate Health Care Committee, substantially contributed to this summary.

S743-SMRB-65(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 743 (Second Edition)

SHORT TITLE: Encourage Volunteer Health Care Providers.

SPONSOR(S): Senator Goolsby

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	****No Fiscal Impact****				
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Medical Board

EFFECTIVE DATE: This act is effective when it becomes law

BILL SUMMARY:

Senate Bill 743 amends GS 90-12.1A, authorizing the NC Medical Board (Board) to issue a "limited volunteer license" (rather than a military limited volunteer license) to an applicant with a license to practice medicine and surgery in another state who shows a letter establishing active licensure in the other state (deletes requirement that the person be authorized to treat personnel enlisted in the U.S. armed services or veterans). It adds that a limited volunteer license holder may not practice medicine and surgery within NC for more than 30 days per calendar year. The bill amends GS 90-13.2, specifying that limited volunteer license holders will pay no registration fee.

The bill deletes requirement that limited license holders comply with continuing medical education requirements. It deletes a provision related to retired limited volunteer licenses, and instead enacts new GS 90-21.1B, authorizing the Board to issue a "retired limited volunteer license" to an applicant who is a physician with an inactive license to practice medicine and surgery issued by NC or another state. Senate Bill 743 requires retired limited volunteer license holders to practice only at clinics treating indigent patients, and makes a violation of this provision a Class 3 misdemeanor, with a fine not less than $25 and not more than $50 for each offense.

ASSUMPTIONS AND METHODOLOGY:

Senate Bill 743 expands the pool of possible limited volunteer licensees by removing the requirement that the licensee must be authorized to treat personnel enlisted in the U.S. armed services or veterans. It also eliminates the $25 annual registration fee for those who have a limited volunteer license. However, it keeps that $25 annual registration fee for those who have a retired limited volunteer license.

The North Carolina Medical Board estimates that there have only been five persons with a military limited volunteer license, ever. None of these are currently licensed. Since no licensees would be impacted by the elimination of the $25 annual registration fee, there would be no loss in annual revenue.

SOURCES OF DATA: North Carolina Medical Board

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 1, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 446*
PROPOSED COMMITTEE SUBSTITUTE S446-CSTD-43 [v.1]

5/31/2011 6:59:19 PM

Short Title: Comm. Coll. Tuition for Members of Military. (Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO PERMIT COMMUNITY COLLEGES TO INCLUDE THE COSTS OF TEXTBOOKS IN THE TUITION CHARGED FOR MEMBERS OF THE ARMED SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-39 is amended by adding a new subsection to read:

"(d) A community college may add the cost of textbooks purchased at the college's bookstore to the tuition rates established pursuant to subsection (a) of this section for all purposes associated with billing the armed services for the enrollment of members of the armed services, as defined in G.S. 116-143.3, if the student's branch of the armed services permits the addition of textbooks to tuition costs in its tuition assistance program. The college may retain the funds attributable to the cost of the textbooks."

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

SENATE BILL 446:
Comm. Coll. Tuition for Members of Military

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 1, 2011
Introduced by:	Sens. Meredith, Preston, Brown	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S446-CSTD-43		

SUMMARY: ***The PCS for Senate Bill 446 would include the cost of textbooks in the tuition at community colleges for active duty service members, so that these costs would be included as "tuition" for the purposes of payment by the armed forces. This act is effective when it becomes law. The PCS makes technical changes and amends the bill so that it is identical to H515, introduced by Reps. Boles, Floyd, which is currently in Senate Education/Higher Education.***

CURRENT LAW: The Armed Forces Tuition Assistance (TA) is a program that gives each branch of the military service the ability to pay up to 100% for the tuition expenses of its service members. Each service has its own criteria for eligibility, obligated service, application process and restrictions—including whether textbooks may be included in the program. The money is usually paid directly to the institution by the individual services.

BILL ANALYSIS: The PCS for Senate Bill 446 would include the cost of textbooks in the tuition costs for military members who are attending community colleges under the TA program, if the student's branch of service permits payment of textbook costs. In order for the cost to be covered, the books must be purchased at the college's bookstore.

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

Hal Pell, counsel to House Homeland Security, substantially contributed to this summary.

S446-SMTD-64(CSTD-43) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 532*
PROPOSED COMMITTEE SUBSTITUTE S532-CSTD-44 [v.1]

5/31/2011 7:42:32 PM

Short Title: ESC/Jobs Reform. (Public)

Sponsors:

Referred to:

April 12, 2011

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

PART I. TRANSFER; GENERAL PROVISIONS; RULE MAKING

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

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

SECTION 1.3. No action or proceeding pending on November 1, 2011, brought by or against the Employment Security Commission shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the Department of Commerce, Division of Employment Security. In these actions and proceedings, the Secretary of Commerce or the Department of Commerce shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.

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

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

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

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

(1) All of the executive functions of the State in relation to economic development and employment security, including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the administration of unemployment insurance, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:

a. The State Board of Alcoholic Control,
b. The North Carolina Utilities Commission,
~~c. The Employment Security Commission,~~
d. The North Carolina Industrial Commission,
e. State Banking Commission and the Commissioner of Banks,
f. Savings Institutions Division,
g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
h. Credit Union Commission,
i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17, 2004.
j. The North Carolina Mutual Burial Association Commission,
k. The North Carolina Rural Electrification Authority,
l. The North Carolina State Ports Authority,

all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and

...."

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

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

The Department of Commerce shall be organized to include:

(1) The following agencies:

a. The North Carolina Alcoholic Beverage Control Commission.
b. The North Carolina Utilities Commission.
~~c. The Employment Security Commission.~~
d. The North Carolina Industrial Commission.
e. State Banking Commission.
f. Savings Institutions Division.
g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.

h. Credit Union Commission.
i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17, 2004.
j. The North Carolina Mutual Burial Association Commission.
k. North Carolina Cemetery Commission.
l. The North Carolina Rural Electrification Authority.
m. Repealed by Session Laws 1985, c. 757, s. 179(d).
n. North Carolina Science and Technology Research Center.
o. The North Carolina State Ports Authority.
p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2, 2010.
q. Economic Development Board.
r. Labor Force Development Council.
s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective September 30, 2000.
u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
v. Repealed by Session Laws 1993, c. 321, s. 313b.

(2) Those agencies which are transferred to the Department of Commerce including the:
a. Community Assistance Division.
b. Community Development Council.
c. Employment and Training Division.
d. Job Training Coordinating Council.

(3) The Division of Employment Security.

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

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

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

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

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

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

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

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

the Department of Labor, and the Secretary of the Department of Commerce."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(c) Beginning January 1, 2006, the Department of Commerce, in conjunction with the ~~Employment Security Commission~~ Division of Employment Security and the Community Colleges System Office, shall publish a comprehensive annual written report on the Trade Jobs for Success initiative. The annual report shall include a detailed explanation of outcomes and future planning for the TJS initiative and legislative proposals and recommendations regarding statutory c

hanges needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the annual report shall be provided to the Governor, to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly."

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

"§ 150B-1. Policy and scope.

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

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

~~(5) The Employment Security Commission.~~

(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.

(7) The North Carolina State Lottery.

(8) **(Expires June 30, 2012)** Except as provided in G.S. 150B-21.1B, any agency with respect to contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

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

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

...

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

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

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

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

" Article 1.

~~Employment Security Commission.~~ Division of Employment Security.

§ 96-1. Title.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(b)~~(d) ~~Regulations and General and Special Rules.~~ Rule Making. – Rules adopted to implement the Employment Security Laws in accordance with this Chapter shall be made pursuant to Article 2A of Chapter 150B of the General Statutes, the Administrative Procedures Act. ~~General and special rules may be adopted, amended, or rescinded by the Commission only~~

~~after public hearing or opportunity to be heard thereon, of which proper notice has been given by mail to the last known address in cases of special rules, or by publication as herein provided, and by one publication as herein provided as to general rules. The Commission shall not take final action on a general or special rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), until 60 days after the Office of State Budget and Management has prepared a fiscal note for the rule. General rules shall become effective 10 days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Before the adoption, amendment, or repeal of any permanent regulation, the Commission shall publish notice of the public hearing and offer any person an opportunity to present data, opinions, and arguments. The notice shall be published in one or more newspapers of general circulation in this State at least 10 days before the public hearing and at least 20 days prior to the proposed effective date of the proposed permanent regulation. The published notice of public hearing shall include the time and place of the public hearing; a statement of the manner in which data, opinions, and arguments may be submitted to or before the Commission; a statement of the terms or substance of the proposed regulation; a statement of whether a fiscal note has been or will be prepared for the proposed regulation; and the proposed effective date of the regulation. Any permanent regulation adopted after following the above procedure shall become effective on its effective date and after it is published in the manner provided for in subsection (c) as well as such additional publication as the Commission deems appropriate. Additionally, the Commission shall provide notice of adoption by mail to the last known addresses of all persons who submitted data, opinions, or arguments to the Commission with respect to the regulation. Temporary regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission but shall remain in force for no longer than 120 days.~~

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

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

~~(e)~~(g) Advisory Councils. – ~~The Governor shall appoint a State Advisory Council composed of men and women representing employers, employees, and the general public, in equal numbers. The Chairman of the Commission shall be a member of the State Advisory Council and shall serve as its chairman. There shall be 15 members of the Council (other than its chairman) who shall each be appointed for a term of four years.~~ The State Advisory Council shall be composed of the Assistant Secretary and 15 persons representing employers, employees, and the general public, to be appointed as follows:

(1) Five members appointed by the Governor.
(2) Five members appointed by the President Pro Tempore of the Senate.
(3) Five members appointed by the Speaker of the House of Representatives.

Each member shall be appointed for a term of four years. Vacancies on the State Advisory Council shall be filled by the appointing authority. The Assistant Secretary shall serve as chair. A quorum of the State Advisory Council shall consist of the chairman, or such appointed member as he may designate, plus one half of the total appointed members. The function of the Council shall be to aid the ~~Commission~~ Division in formulating policies and discussing problems related to the administration of this Chapter. Each member of the State Advisory Council attending meetings of the Council shall be paid the same amount per diem for his or her services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office, and his actual mileage and subsistence at the same rate allowed to State officials.

~~(f)~~(h) Employment Stabilization. – The ~~Commission,~~ Secretary of Commerce, in consultation with the Assistant Secretary and with the advice and aid of ~~its~~ the advisory councils, ~~and through its appropriate divisions,~~ shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

~~(g)~~(i) Records and Reports. –

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

(2) If the ~~Commission~~ Division finds that any employer has failed to file any report or return required by this Chapter or any regulation made pursuant hereto, or has filed a report which the ~~Commission~~ Division finds incorrect or insufficient, the ~~Commission~~ Division may make an estimate of the information required from such employer on the basis of the best evidence reasonably available to it at the time, and make, upon the basis of such estimate, a report or return on behalf of such employer, and the report or return so made shall be deemed to be prima facie correct, and the ~~Commission~~ Division may make an assessment based upon such report and proceed to collect contributions due thereon in the manner as set forth in G.S. 96-10(b) of this Chapter: Provided, however, that no such report or

return shall be made until the employer has first been given at least 10 days' notice by registered mail to the last known address of such employer: Provided further, that no such report or return shall be used as a basis in determining whether such employing unit is an employer within the meaning of this Chapter.

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

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

(1) The subpoena requires the production of evidence that does not relate to a matter in issue.

(2) The subpoena fails to describe with sufficient particularity the evidence required to be produced.

(3) The subpoena is subject to being quashed for any other reason sufficient in law.

~~(h1)~~(l) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a subpoena pursuant to subsection ~~(h)~~(k) of this section shall be heard at least ~~10~~20 days prior to the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is subject to immediate judicial review in the Superior Court of Wake County or in the superior court of the county where the person subject to the subpoena resides.

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

~~(j)~~(n) Protection against Self-Incrimination. – No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the ~~Commission~~ Division, Board of Review, or in obedience to the subpoena of the ~~Commission~~ Division, Board of Review, or any member thereof, or any duly authorized representative of the ~~Commission,~~ Division, or Board of Review in any cause or proceeding

before the ~~Commission,~~ Division, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

~~(k)~~(o) State-Federal Cooperation. – In the administration of this Chapter, the ~~Commission~~ Division or Board of Review shall cooperate, to the fullest extent consistent with the provisions of this Chapter, with the federal agency, official, or bureau fully authorized and empowered to administer the provisions of the Social Security Act approved August 14, 1935, as amended, shall make such reports, in such form and containing such information as such federal agency, official, or bureau may from time to time require, and shall comply with such provisions as such federal agency, official, or bureau may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by such agency, official, or bureau governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this Chapter. The ~~Commission~~ Division or Board of Review shall further make its records available to the Railroad Retirement Board, created by the Railroad Retirement Act and the Railroad Unemployment Insurance Act, and shall furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board, such copies thereof as the Board shall deem necessary for its purposes in accordance with the provisions of section 303 (c) of the Social Security Act as amended.

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

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

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

~~(l)~~(p) Reciprocal Arrangements. –

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

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

1. In which any part of such individual's service is performed or
2. In which such individual has his residence or
3. In which the employing unit maintains a place of business, provided there is in effect, as to such services, an election by

the employing unit, approved by the agency charged with the administration of such state's employment security law, pursuant to which the services performed by such individual for such employing unit are deemed to be performed entirely within such state.

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

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

d. Contributions due under this Chapter with respect to wages for insured work shall for the purposes of G.S. 96-10 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment security law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the ~~Commission~~ Division finds will be fair and reasonable as to all affected interests.

e. The services of the ~~Commission~~ Division may be made available to such other agencies to assist in the enforcement and collection of judgments of such other agencies.

f. The services on vessels engaged in interstate or foreign commerce for a single employer, wherever performed, shall be deemed performed within this State or within such other state.

g. Benefits paid by agencies of other states may be reimbursed to such agencies in cases where services of the claimant were "employment" under this Chapter and contributions have been paid by the employer to this agency on remuneration paid for such services; provided the amount of such reimbursement shall not exceed the amount of benefits such claimant would have been entitled to receive under the provisions of this Chapter.

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

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

~~(m)~~(q) The ~~Commission~~ Division after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of any "employing unit" or "employer" as said terms are defined by G.S. 96-8(4) and 96-8(5) and subdivisions thereunder. The ~~Commission~~ Division shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of any employing unit or employer as heretofore defined by the Employment Security Law including the right to determine the amount of contributions, if any, which may be due the ~~Commission~~ Division by any employer. Hearings may be before the ~~Commission or a Deputy Commissioner~~ Board of Review or the Division and shall be held in the central office of the ~~Commission~~ Division or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the ~~Commission~~ Board of Review and a determination of the law applicable to that evidence. The ~~Commission~~ Division shall provide for the taking of evidence by a hearing ~~officer who shall be a member of the legal staff of the Commission.~~ officer. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the ~~Commission~~ Division and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the ~~Commission~~ Division or Board of Review for its determination. All such hearings conducted by such hearing officer shall be scheduled and held in any county in this State in which the employing unit or employer either resides, maintains a place of business, or conducts business; however, the ~~Commission~~ Division or Board of Review may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the ~~Commission or a Deputy Commissioner~~ Assistant Secretary or the Board of Review, any party affected thereby shall be entitled to an appeal to the superior court. Before ~~such~~ a party shall be allowed to appeal, ~~he~~ the party shall within 10 days after notice of such decision or determination, file with the ~~Commission~~ Board of Review exceptions to the decision or the ~~determination of the Commission,~~ determination, which exceptions will state the grounds of objection to ~~such~~ the decision or determination. If any one of ~~such~~ the exceptions shall be overruled then ~~such~~ the party may appeal from the order overruling the exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of his appeal. When an exception is made to the facts as found by the ~~Commission,~~ Board of Review, the appeal shall be to the superior court in term time but the decision or determination of the ~~Commission~~ Division upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the ~~Commission,~~ Board of Review, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within 10 days after the notice of appeal has been served, file with the ~~Commission~~ Board of Review exceptions to the decision or determination overruling the exception which statement shall assign the errors complained of and the grounds of the appeal. Upon the filing of such statement the ~~Commission~~ Board of Review shall, within 30 days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court holding court or residing in some district in which such appellant either resides, maintains a place of business or conducts business, or,

unless the appellant objects after being given reasonable opportunity to object, to a judge of the Superior Court of Wake County: Provided, however, the 30-day period specified herein may be extended by agreement of parties. ~~If there be no exceptions to any facts as found by the Commission the facts so found shall be binding upon the court and it shall be heard by the judge at chambers at some place in the district, above mentioned, of which all parties shall have 10 days' notice.~~

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

~~(o)~~(s) The decision or determination of the ~~Commission~~ Division when docketed in the office of the clerk of the superior court of any county and when properly indexed and cross-indexed shall have the same force and effect as a judgment rendered by the superior court, and if it shall be adjudged in the decision or determination of the ~~Commission~~ Division that any employer is indebted to the ~~Commission~~ Division for contributions, penalties and interest or either of the same, then said judgment shall constitute a lien upon any realty owned by said employer in the county only from the date of docketing of such decision or determination in the office of the clerk of the superior court and upon personalty owned by said employer in said county only from the date of levy on such personalty, and upon the execution thereon no homestead or personal property exemptions shall be allowed; provided, that nothing herein shall affect any rights accruing to the ~~Commission~~ Division under G.S. 96-10. The provisions of this section, however, shall not have the effect of releasing any liens for contributions, penalties or interest, or either of the same, imposed by other law, nor shall they have the effect of postponing the payment of said contributions, penalties or interest, or depriving the ~~said Employment Security Commission of North Carolina~~ Division of Employment Security of any priority in order of payment provided in any other statute under which payment of the said contributions, penalties and interest or either of the same may be required. The superior court or any appellate court shall have full power and authority to issue any and all executions, orders, decrees, or writs that may be necessary to carry out the terms of said decision or determination of the ~~Commission~~ Division or to collect any amount of contribution, penalty or interest adjudged to be due the ~~Commission~~ Division by said decision or determination. In case of an appeal from any decision or determination of the ~~Commission~~ Division to the superior court or from any judgment of the superior court to the appellate division all proceedings to enforce said judgment, decision, or determination shall be stayed until final determination of such appeal but no proceedings for the collection of any amount of contribution, penalty or interest due on same shall be suspended or stayed unless the employer or party adjudged to pay the same shall file with the clerk of the superior court a bond in such amount not exceeding double the amount of contribution, penalty, interest or amount due and

with such sureties as the clerk of the superior court deems necessary conditioned upon the payment of the contribution, penalty, interest or amount due when the appeal shall be finally decided or terminated.

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

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

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

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

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

(1) Confidentiality of Information Contained in Records and Reports. – (i) Except as hereinafter otherwise provided, it shall be unlawful for any person to obtain, disclose, or use, or to authorize or permit the use of any information which is obtained from any employing unit, individual, or unit of government pursuant to the administration of this Chapter or G.S. 108A-29. (ii) Any claimant or employer or their legal representatives shall be supplied with information from the records of the ~~Employment Security Commission~~ Division to the extent necessary for the proper presentation of claims or defenses in any proceeding under this Chapter. Notwithstanding any other provision of law, any claimant may be supplied, subject to restrictions as the ~~Commission~~ Division may by regulation prescribe, with any information contained in his payment record or on his most recent monetary determination, and any individual, as well as any interested employer, may be supplied with information as to the individual's potential benefit rights from claim records. (iii) Subject to restrictions as the ~~Commission~~ Secretary may by regulation provide, information from the records of the ~~Employment Security Commission~~ Division may be made available to any agency or public official for any purpose for which disclosure is required by statute or regulation. (iv) The ~~Commission~~ Division may, in its sole discretion, permit the use of information in its possession by public officials in the performance of their public duties. (v) The

~~Commission~~ Division shall release the payment and the amount of unemployment compensation benefits upon receipt of a subpoena in a proceeding involving child support. (vi) The ~~Commission~~ Division shall furnish to the State Controller any information the State Controller needs to prepare and publish a comprehensive annual financial report of the State or to track debtors of the State.

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

(3) Penalties for Disclosure or Improper Use. – Any person violating any provision of this section may be fined not less than twenty dollars ($20.00) nor more than two hundred dollars ~~($200.00), or imprisoned for not longer than 90 days, or both.~~($200.00).

(4) Regulations. – The ~~Commission~~ Division may provide by ~~regulation~~ rule for procedures by which requests for information will be considered and the methods by which such information may be disclosed. The ~~Commission~~ Division is authorized to provide by regulation for the assessment of fees for securing and copying information released under this section.

(5) Privileged Status of Letters and Reports and Other Information Relating to Administration of this Chapter. – All letters, reports, communication, or any other matters, either oral or written, including any testimony at any hearing, from the employer or employee to each other or to the ~~Commission~~ Division or any of its agents, representatives, or employees, which letters, reports, or other communication shall have been written, sent, delivered, or made in connection with the requirements of the administration of this Chapter, shall be absolutely privileged communication in any civil or criminal proceedings except proceedings pursuant to or involving the administration of this Chapter and except proceedings involving child support and only for the purpose of establishing the payment and amount of unemployment compensation benefits. Nothing in this subdivision shall be construed to prohibit the ~~Commission,~~ Division, upon written request and on a

reimbursable basis only, from disclosing information from the records of a proceeding ~~before an appeals referee, deputy commissioner, or other hearing officer by whatever name called,~~ compiled for the purpose of resolving issues raised pursuant to the Employment Security Law.

(6) Nothing in this subsection (t) shall operate to relieve any claimant or employing unit from disclosing any information required by this Chapter or by regulations promulgated thereunder.

(7) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~ Division from allowing any individual or entity to examine and copy any report, return, or any other written communication made by that individual or entity to the ~~Commission,~~ Division, its agents, or its employees.

(7a) Nothing in this subsection ~~(t)~~ shall be construed to prevent the ~~Commission~~ Division from disclosing, upon request and on a reimbursable basis only, to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency as defined in Section 303(i)(4) of the Social Security Act, any information from the records of the ~~Employment Security Commission~~ Division with respect to individuals applying for or participating in any housing assistance program administered by the Department of Housing and Urban Development who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development. It is the purpose of this paragraph to assure the ~~Employment Security Commission's~~ compliance with Section 303(i)(1) of the Social Security Act and it shall be construed accordingly.

(7b) Nothing in this subsection ~~(t)~~ shall be construed to prevent the ~~Commission~~ Division from disclosing, upon request and on a reimbursable basis, to the Secretary of Health and Human Services, any information from the records of the ~~Employment Security Commission~~ Division as may be required by Section 303(h)(1) of the Social Security Act. It is the purpose of this paragraph to assure compliance with Section 303(h)(1) of the Social Security Act and it shall be construed accordingly.

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

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

~~(u)~~(v) Service of process upon the ~~Commission~~ Division in any proceeding instituted before an administrative agency or court of this State shall be pursuant to G.S. 1A-1, Rule 4(j)(4); however, notice of the requirement to withhold unemployment compensation benefits

pursuant to G.S. 110-136.2(f) shall be served upon the process agent for the ~~Employment Security Commission~~ Division by regular or courier mail.

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

(1) All requests for advisory rulings shall be made in writing and submitted to the ~~Chief Counsel.~~Division. Such requests shall state the facts and statutes or rules on which the ruling is requested.

(2) The ~~Chief Counsel~~ Division may request from any person securing an advisory ruling any additional information that is necessary. Failure to supply such additional information shall be cause for the ~~Commission~~ Division to decline to issue an advisory ruling.

(3) The ~~Commission~~ Division may decline to issue an advisory ruling if any administrative or judicial proceeding is pending with the person requesting the ruling on the same factual grounds. The ~~Commission~~ Division may decline to issue an advisory ruling if such a ruling may harm the ~~Commission's~~Division's interest in any litigation in which it is or may be a party.

(4) All advisory rulings shall be issued no later than 30 days from the date all information necessary to make a ruling has been received by the ~~Chief Counsel.~~Division.

(5) No advisory ruling shall be binding upon the ~~Commission~~ Division provided that in any subsequent enforcement action initiated by the ~~Commission,~~ Division, any person's reliance on such ruling shall be considered in mitigation of any penalty sought to be assessed."

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

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

(a) Special Fund. – There is hereby created in the State treasury a special fund to be known as the Employment Security Administration Fund. All moneys which are deposited or paid into this fund shall be continuously available to the ~~Commission~~ Secretary for expenditure in accordance with the provisions of this Chapter, and shall not lapse at any time or be transferred to any other fund. The Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this State for the purpose described in G.S. 96-20 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this Chapter. The fund shall consist of all moneys appropriated by this State, all moneys received from the United States of America, or any agency thereof, including the Secretary of Labor, and all moneys received from any other source for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this Chapter: Provided, any interest collected on contributions and/or penalties collected pursuant to this Chapter shall be paid into the Special Employment Security Administration Fund created by subsection (c) of this section. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury,

and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Employment Security Administration Fund shall be deposited in said fund.

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

(c) There is hereby created in the State treasury a special fund to be known as the Special Employment Security Administration Fund. All interest and penalties, regardless of when the same became payable, collected from employers under the provisions of this Chapter subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly, shall be paid into this fund. No part of said fund shall be expended or available for expenditure in lieu of federal funds made available to the ~~Commission~~ Secretary for the administration of this Chapter. Said fund shall be used by the ~~Commission~~ Division for the payment of costs and charges of administration which are found by the Secretary of Labor not to be proper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source and shall also be used by the ~~Commission~~ Secretary for: (i) extensions, repairs, enlargements and improvements to buildings, and the enhancement of the work environment in buildings used for ~~Commission~~ Division business; (ii) the acquisition of real estate, buildings and equipment required for the expeditious handling of ~~Commission~~ Division business; and (iii) the temporary stabilization of federal funds cash flow. The ~~Employment Security Commission~~ Division may use funds either from the Special Employment Security ~~Commission~~ Administration Fund created by this subsection or from federal funds, or from a combination of the two, to offset the costs of compliance with Article 7A of Chapter 163 of the General Statutes of North Carolina or compliance with P.L. 103-31. Refunds of interest allowable under G.S. 96-10, subsection (e) shall be made from this special fund: Provided, such interest was deposited in said fund: Provided further, that in those cases where an employer takes credit for a previous overpayment of interest on contributions due by such employer pursuant to G.S. 96-10, subsection (e), that the amount of such credit taken for such overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the Special Employment Security Administration Fund. The Special Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the

provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Special Employment Security Administration Fund shall be deposited in said fund. The moneys in the Special Employment Security Administration Fund shall be continuously available to the ~~Commission~~ Division for expenditure in accordance with the provisions of this section.

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

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

(e) Reed Bill Fund Authorization. – Subject to a specific appropriation by the General Assembly of North Carolina to the ~~Employment Security Commission~~ Department of Commerce, Division of Employment Security out of funds credited to and held in this State's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act, the ~~Commission~~ Division is authorized to utilize such funds for the administration of the Employment Security Law, including personal services, operating and other expenses incurred in the administration of said law, as well as for the purchase or rental, either or both, of offices, lands, buildings or parts of buildings, fixtures, furnishings, equipment, supplies and the construction of buildings or parts of buildings, suitable for use in this State by the ~~Employment Security Commission,~~ Division, and for the payment of expenses incurred for the construction, maintenance, improvements or repair of, or alterations to, such real or personal property. Provided, that any such funds appropriated by the General Assembly shall not exceed the amount in the Unemployment Trust Fund which may be obligated for expenditure for such purposes; and provided that said funds shall not be obligated for expenditure, as herein provided, after the close of the two-year period which begins on the effective date of the appropriation.

(f) Employment Security ~~Commission~~ Reserve Fund. – There is created in the State treasury a special trust fund, separate and apart from all other public moneys or funds of this State, to be known as the Employment Security ~~Commission~~ Reserve Fund, hereinafter "Reserve Fund". Part of the proceeds from the tax on contributions imposed in G.S. 96-9(b)(3)j shall be credited to the Reserve Fund, as specified in that statute. The moneys in the Reserve Fund may be used by the ~~Commission~~ Secretary for loans to the Unemployment Insurance Fund, as security for loans from the federal Unemployment Insurance Trust Fund, and to pay any interest required on advances under Title XII of the Social Security Act, and shall be continuously available to the ~~Commission~~ Division for expenditure in accordance with the provisions of this section. The State Treasurer shall be ex officio the treasurer and custodian

and shall invest said moneys in accordance with existing law as well as rules and regulations promulgated pursuant thereto. Furthermore, the State Treasurer shall disburse the moneys in accordance with the directions of the ~~Commission~~ Secretary and in accordance with such regulations as the ~~Commission~~ Secretary may prescribe.

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

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

(1) Fund programs, specifically for the benefit of unemployed workers or workers who have received notice of long-term layoff or permanent unemployment, which will enhance the employability of workers, including, but not limited to, adult basic education, adult high school or equivalency programs, occupational skills training programs, assessment, job counseling and placement programs;

(2) Continue operation of local ~~Employment Security Commission~~ Division offices throughout the State; or

(3) Provide refunds to employers.

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

(g) Notwithstanding subsection (f) of this section, the State Treasurer may invest not more than a total of twenty-five million dollars ($25,000,000) of funds in the Employment Security ~~Commission~~ Reserve Fund established under subsection (f) of this section in securities issued by the North Carolina Technological Development Authority, Inc., the proceeds for which are directed to support investment in venture capital funds. The State Treasurer shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on October 1 and March 1 of each fiscal year on investments made pursuant to this subsection."

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

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

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

(1) All contributions collected under this Chapter, together with any interest earned upon any moneys in the fund;

(2) Any property or securities acquired through the use of moneys belonging to the fund;

(3) All earnings of such property or securities;

(4) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as amended;

(5) All moneys credited to this State's account in the Unemployment Trust Fund pursuant to section 903 of Title IX of the Social Security Act, as amended, (U.S.C.A. Title 42, sec. 1103 (a));

(6) All moneys paid to this State pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of 1970;

(7) Reimbursement payments in lieu of contributions.

All moneys in the fund shall be commingled and undivided.

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

(1) A clearing account,

(2) An unemployment trust fund account, and

(3) A benefit account.

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

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

~~Commission,~~Division, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust fund, as provided in subsection (b) of this section.

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

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

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

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

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

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

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

"**§ 96-8. Definitions.**

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

...

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

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

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

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

...

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

...."

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

"(5) "Employer" means:

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

b. Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this Chapter, or which acquired a part of the organization, trade, or business of another, which at the time of such acquisition was an employer subject to this Chapter; provided, such other would have been an employer under paragraph a of this subdivision if such part had constituted its entire organization, trade, or business; provided further, that G.S. 96-10, subsection (d), shall not be applicable to an individual or employing unit acquiring such part of the organization, trade or business. The provisions of G.S. 96-11(a) to the contrary notwithstanding, any employing unit which becomes an employer solely by virtue of the provisions of this paragraph shall not be liable for contributions based on wages paid or payable to individuals with respect to employment performed by such individuals for such employing unit prior to the date of acquisition of the organization, trade, business, or a part thereof as specified herein, or substantially all the assets of another, which at the time of such acquisition was an employer subject to this Chapter. This provision shall not be applicable with respect to any employing unit which is an employer by reason of any other provision of this Chapter. A successor by total acquisition under the provisions of this paragraph may be relieved from coverage hereunder by making written application with the ~~Commission~~ Division within 60 days from the date the ~~Commission~~ Division mails him a notification of his liability and provided the ~~Commission~~ Division finds the predecessor was an employer at the time of such acquisition only because such predecessor had failed to make application for termination of coverage as provided in G.S. 96-11 of this Chapter. A successor under the provisions of this

paragraph who becomes an employer by virtue of having acquired a part of the organization, trade or business of the predecessor hereunder may be relieved from coverage upon making written application with the ~~Commission~~ Division within 60 days from the date the ~~Commission~~ Division mails him a notification of his liability and the ~~Commission~~ Division finds that the predecessor could have terminated by making the application under G.S. 96-11 if the part acquired had constituted all of the predecessor's business."

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

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

...

f. The term "employment" shall include:

...

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

...

k. The term "employment" does not include:

...

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

...."

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

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

a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:

1. If the individual has payroll attachment but, because of lack of work during the payroll week for which the individual is requesting the establishment of a benefit year, the individual worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which the individual has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.
2. If the individual has no payroll attachment on the date the individual reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by ~~Commission regulation.~~rules adopted by the Division.

b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:
1. Totally unemployed, irrespective of job attachment, if a claimant's earnings for such week, including payments defined in subparagraph c below, would not reduce the claimant's weekly benefit amount as prescribed by G.S. 96-12(c).
2. Partially unemployed, if the claimant has payroll attachment but because of lack of work during the payroll week for which the claimant is requesting benefits the claimant worked less than three customary scheduled full-time days in the establishment, plant, or industry in which the claimant is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify the claimant for a reduced payment as prescribed by G.S. 96-12(c).
3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in subparagraph c below) would qualify the claimant for a reduced payment as prescribed by G.S. 96-12(c).

c. (For suspension of enforcement, see note) No individual shall be considered unemployed if, with respect to the entire calendar week, the individual is receiving, has received, or will receive as a result of the individual's separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) separation pay, or (v) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this

subsection. Benefits paid under this subdivision shall not be charged to the account or accounts of the base period employer or employers.

d. An individual's week of unemployment shall be deemed to commence only after ~~his~~ the individual's registration at an employment office, except as the ~~Commission may by regulation~~ Division by rule may otherwise prescribe.

e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009, and applicable to claims filed on or after that date.

f. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work unless the individual is or was employed as a full-time substitute during the period of time for which the individual is requesting benefits. For the purposes of this subsection, full-time substitute is defined as a substitute employee who works more than 30 hours a week on a continual basis for a period of six months or more.

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

a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:

1. If he has payroll attachment but, because of lack of work during the payroll week for which he is requesting the establishment of a benefit year, he worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which he has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.

2. If he has no payroll attachment on the date he reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by ~~Commission regulation.~~ rules adopted by the Division.

b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:

1. Totally unemployed, irrespective of job attachment, if his earnings for such week, including payments defined in subparagraph c below, would not reduce his weekly benefit amount as prescribed by G.S. 96-12(c).

2. Partially unemployed, if he has payroll attachment but because of lack of work during the payroll week for which he is requesting benefits he worked less than three customary scheduled full-time days in the establishment, plant, or industry in which he is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).

3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments

defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).

c. No individual shall be considered unemployed if, with respect to the entire calendar week, he is receiving, has received, or will receive as a result of his separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this subsection. Provided further, however, that an individual shall be considered to be unemployed as to receipt of severance pay for any week the individual is registered at or attending any institution of higher education as defined in G.S. 96-8(5)j., or secondary school as defined in G.S. 96-8(5)q., or ~~Commission~~ Division approved vocational, educational, or training programs as defined in G.S. 96-13.

d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the ~~Commission~~ Division may by ~~regulation~~ rule otherwise prescribe.

e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009, and applicable to claims filed on or after that date.

f. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work unless the individual is or was employed as a full-time substitute during the period of time for which the individual is requesting benefits. For the purposes of this subsection, full-time substitute is defined as a substitute employee who works more than 30 hours a week on a continual basis for a period of six months or more."

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

"(13) a. "Wages" shall include commissions, bonuses, any sums paid to an employee by an employer pursuant to an order of any court, the National Labor Relations Board, or any other lawfully constituted adjudicative agency or by private agreement, consent, or arbitration for loss of pay by reason of discharge, and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the ~~Commission;~~ Division; provided, if the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an

individual's right to unemployment benefits only shall be determined in such manner as may by authorized regulations be prescribed. The regulations shall, so far as possible, secure results reasonably similar to those that would prevail if the individual were paid his wages at regular intervals. The term "wages" shall not include the amount of any payment with respect to services to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of (i) retirement, or (ii) sickness or accident disability, or (iii) medical and hospitalization expenses in connection with sickness or accident disability or (iv) death. However, in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, only payments which are received under a worker's compensation law shall be excluded from the term "wages". Furthermore, the term "wages" shall not include payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under the Federal Insurance Contributions Act.

...

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

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

"(22) Average Weekly Insured Wage. – "Average weekly insured wage" is the quotient obtained by dividing the total of the wages, as defined in G.S. 96-8(12) and (13), reported by all insured employers by the monthly average in insured employment under this Chapter during the immediately preceding calendar year and further dividing the quotient obtained by 52 to obtain a weekly rate. (For this computation the data as released annually in the ~~Employment Security Commission's~~ Division's publication "North Carolina Insured Employment and Wage Payment" shall be used). The quotient thus obtained shall be deemed to be the average weekly wage for such year.

...

(24) Work, for purposes of this Chapter, means any bona fide permanent employment the acceptance of which would not result in an undue family hardship as defined in G.S. 96-8(10a). For purposes of this definition, "bona fide permanent employment" is presumed to include only those employments of greater than 30 consecutive calendar days duration (regardless of whether work is performed on all those days) provided: (a) the presumption that an employment lasting 30 days or less is not bona fide permanent employment may be rebutted by a finding by the ~~Commission,~~

Division, either on its own motion or upon a clear and convincing showing by an interested party that the application of the presumption would work a substantial injustice in view of the intent of this Chapter; (b) Any decision of the ~~Commission~~ Division on the question of bona fide employment may be disturbed on judicial review only upon a finding of plain error."

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

"**§ 96-9. Contributions.**

(a) Payment. –

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

...

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

...

(6) If the amount of the contributions shown to be due after all credits is less than five dollars ($5.00), no payment need be made. If an employer has paid contributions, penalties, and/or interest in excess of the amount due, this shall be considered an overpayment and refunded provided no other debts are owed to the ~~Commission~~ Division by the employer. Overpayments of

less than five dollars ($5.00) shall be refunded only upon receipt by the Chairman of a written demand for such refund from the employer. Nothing herein shall be construed to change or extend the limitation set forth in G.S. 96-10(e), (f), and (i).

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

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

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

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

(10) Employers electing to do so may pay their quarterly tax contributions by electronic funds transfer. When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the ~~Commission~~ Division shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). The ~~Commission~~ Division may waive this penalty for good cause shown. As used in this section, the term "electronic funds transfer" means a transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

(11) The ~~Commission~~ Division may establish policies to allow taxes to be payable under certain conditions by credit card. A condition of payment by credit card is receipt by the ~~Commission~~ Division of the full amount of taxes, penalties, and interest due. The ~~Commission~~ Division shall require an employer who pays by credit card to include an amount equal to any fee charged the ~~Commission~~ Division for the use of the card. A payment of

taxes that is made by credit card and is not honored by the card issuer does not relieve the employer of the obligation to pay the taxes.

(b) Rate of Contributions. –

...

(2) Experience Rating. –

...

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

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

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

Whenever contributions are erroneously paid into one account which should have been paid into another account or which should have been paid into a new account, that erroneous payment can be adjusted only by refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an existing account may be made, nor can a new account be created by transferring any portion of the erroneously paid amount, notwithstanding that the entities involved may be owned, operated, or controlled by the same person or organization. No adjustment of a contribution rate can be made reducing the rate below the standard rate for any period in which the

account was not in actual existence and in which it was not actually chargeable for benefits. Whenever payments are found to have been made to the wrong account, refunds can be made to the entity making the wrongful payment for a period not exceeding five years from the last day of the calendar year in which it is determined that wrongful payments were made. Notwithstanding payment into the wrong account, if an entity is determined to have met the requirements to be a covered employer, whether or not the entity has had paid on the account of its employees any sum into another account, the ~~Commission~~ Division shall collect contributions at the standard rate or the assigned rate, whichever is higher, for the five years preceding the determination of erroneous payments, which five years shall run from the last day of the calendar year in which the determination of liability for contributions or additional contributions is made. This requirement applies regardless of whether the employer acted in good faith.

(3) ...

d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 does not apply, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the ~~Commission~~ Division in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the ~~Commission~~ Division in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%

0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0% & OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

...

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

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)

		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0% & OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

...

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

h. If, within the calendar month in which the computation date occurs, the ~~Commission~~ Division finds that any employing unit has failed to file any report required in connection therewith or has filed a report which the ~~Commission~~ Division finds incorrect or insufficient, the ~~Commission~~ Division shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time and shall notify the employing unit thereof by registered mail addressed to its last known address.

Unless such employing unit shall file the report or a corrected or sufficient report, as the case may be, within 15 days after the mailing of such notice, the ~~Commission~~ Division shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increases but not to reduction, on the basis of subsequently ascertained information.

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

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

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

of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. No provision in this section shall in any way be subject to or affected by any provisions of the Executive Budget Act, as amended. Nothing in this Act shall be construed to grant any employer or individual in his service prior claims or rights to the amount paid by him into the fund either on his own behalf or on behalf of such individuals.

(2) Charging of benefit payments. –

...

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

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

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

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by ~~an Adjudicator, Appeals Referee or the Commission~~ the Division if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of

benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c).

...

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

(4) Transfer of account. –

a. ...

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

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

...

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

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

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

...

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

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

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

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

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

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

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

account of such employer shall be closed and shall not be used in any future computation of such employer's contribution rate in any manner whatsoever.

d1. Any nonprofit organization which makes an election in accordance with subparagraph b. of this paragraph must secure such election by making a payment in lieu of contributions as provided in subdivision (2) of this subsection, posting a surety bond from an insurance company duly licensed to conduct business in this State, or obtaining an irrevocable letter of credit with the ~~Commission~~ Division to insure the payments in lieu of contributions as provided in subdivision (2) of this subsection. Any surety bond posted under this paragraph shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the ~~Commission.~~ Division. The ~~Commission~~ Division may adopt rules to implement the provisions of this subparagraph.

e. The ~~Commission,~~ Division, in accordance with such regulations as it may adopt, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this subparagraph and shall be processed as provided herein.

a. Quarterly contributions and wage reports and advance payments shall be submitted to the ~~Commission~~ Division quarterly under the same conditions and requirements of G.S. 96-9 and 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on such reports; provided that such advance payments shall become effective only with respect to the first four thousand two hundred dollars ($4,200) in wages paid in a calendar year until January 1, 1978. On and after that date advance payments shall be effective with respect to the federally required wage base provided that after December 31, 1983, the wage base shall be the same as that provided for in G.S. 96-9(a)(5). Collection of such advance payments shall be made as provided for the collection of contributions in G.S. 96-10.

Beginning January 1, 1978, any employer making quarterly reports of employment to the ~~Commission~~ Division and if such employer is a newly electing reimbursement employer he shall pay contributions of one percent (1%) of taxable wages entered on such reports.

Any employer paying by reimbursement having been, prior to July 1, under the reimbursement method of payment for the preceding calendar year, shall continue to file quarterly reports but shall make no payments with those reports.

b. The ~~Commission~~ Division shall establish a separate account for each such employer and such account shall be credited, and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full and voluntary contributions are not applicable.

...

d. As of July 31 of each year, and prior to January 1 of the succeeding year, the ~~Commission~~ Division shall determine the balance of each such employer's account and shall furnish him with a statement of all charges and credits thereto.

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

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

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

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

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

...

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

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

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

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

b. To pay to the ~~Commission,~~ Division, within 25 days from the date a list of benefit charges is mailed to such employing unit, a sum equal to the amount which its account would be charged if it were a tax paying employer under G.S. 96-9(c)(2).

~~(3)~~ State or local governmental employing units paying for benefits as provided in subdivision (1) herein may establish pool accounts; provided, that such pool accounts are established and maintained according to ~~the~~ rules ~~and regulations of the Commission.~~adopted by the Division.

(4) Any governmental entity paying by reimbursement as provided in subdivision (1) hereof shall not have any benefits paid against its account noncharged or forgiven except as provided in G.S. 96-9(d)(2)c.

(g) Nothing contained in subsections (d), (f), and (i) of this section prevents the ~~Commission~~ Division from providing any reimbursing employer with informational bills or lists of charges on a basis more frequent than yearly, if in its sole discretion, the ~~Commission~~ Division considers such action to be in the best interest of the ~~Commission~~ Division and the affected employer(s).

(h) (1) Any nonprofit organization which has been paying contributions on a reimbursement basis for at least three consecutive calendar years during none of which years the benefit charges exceeded four tenths of one percent (.4%) of its taxable payroll may, before November 1 of the fourth or subsequent calendar year, elect to pay contributions by special reimbursement on the basis provided for in subdivision (2) below but only upon the following conditions:

...

b. The election shall apply to no less than the four calendar years following the year of election unless terminated by the ~~Commission~~ Division under subdivision (3) below.

...

e. No later than January 1 of the first year to which its election applies, the electing nonprofit organization shall furnish the ~~Commission~~ Division a letter of credit in an amount equal to one hundred fifty percent (150%) of the account balance required under subdivision (2) below.

f. The ~~Commission~~ Division shall by regulation prescribe the form of the letter of credit and the criteria for the financial institution issuing such letter of credit along with the form of election under this section.

(2) Any qualified nonprofit organization that meets the conditions of subdivision (1) above shall, upon the approval of its election by the ~~Commission,~~ Division, pay contributions by special reimbursement as follows:

...

b. On the first day of each quarter of any calendar year, the ~~Commission~~ Division shall bill the employer for an amount necessary to bring its account to the required minimum balance, and

the amount so billed is due no later than 25 days after the bill is mailed.

(3) If any electing organization shall fail to make any quarterly payment when due:

a. The ~~Commission~~ Division may draw the full amount of the letter of credit for application to the employer's account;

...

c. If, after demand, the organization shall fail to pay any sums required under paragraph b. above, the ~~Commission~~ Division may revoke the organization's election for special reimbursement and any difference between the employer's account balance and one percent (1%) of its total taxable payroll shall become immediately due and payable.

d. The ~~Commission~~ Division may, in addition, exercise any of the powers granted to it in G.S. 96-10 to collect any amount due.

e. Pursuant to ~~such regulations as the Commission may adopt,~~ rules adopted by the Division, the ~~Commission~~ Division shall afford any organization affected by this paragraph a hearing to determine if any increase in the organization's minimum required balance should be reduced, in whole or in part, or if any revocation of a special reimbursement election should be rescinded. If the ~~Commission,~~ Division, in its sole discretion, is satisfied that the conditions giving rise to the increase or revocation have been corrected, it may reduce such increase or rescind such revocation provided that it may require as a condition of such reduction or recision a new letter of credit up to three times the amount normally required.

...

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

(1) Election. –

a. An Indian tribe employing unit shall pay contributions under the provisions of this Chapter, unless it elects in accordance with this subsection to pay the ~~Commission~~ Division for the Unemployment Insurance Fund an amount equal to the amount of benefits paid that is attributable to service in the employ of the unit, to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election.

b. An Indian tribe employing unit may elect to become liable for payments in lieu of contributions for a period of not less than three calendar years by filing a written notice of its election with the ~~Commission~~ Division at least 30 days before the January 1 effective date of the election.

c. An Indian tribe employing unit that makes an election in accordance with this subsection will continue after the end of the three calendar years to be liable for payments in lieu of contributions until it files with the ~~Commission~~ Division a written notice terminating its election at least 30 days before the January 1 effective date of the termination.

d. The account of an Indian tribe employing unit that has been paying contributions under this Chapter for a period of at least three consecutive calendar years and that elects to change to a reimbursement basis shall be closed and shall not be used in any future computation of the unit's contribution rate in any manner.

e. The ~~Commission,~~ Division, in accordance with regulations it adopts, shall notify each Indian tribe employing unit of any determination of the effective date of any election it makes and of any termination of the election. These determinations shall be subject to reconsideration, appeal, and review.

(2) Procedure. – Indian tribe employing units' payments by reimbursement in lieu of contributions shall be made and processed as provided in this subdivision.

a. Quarterly contributions and wage reports and advance payments shall be submitted to the ~~Commission~~ Division quarterly under the same conditions and requirements of G.S. 96-9 and G.S. 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on the reports, and except that the wage base shall be the same as that provided for in G.S. 96-9(a)(5). Collection of these advance payments shall be made as provided for the collection of contributions in G.S. 96-10.

Any Indian tribe employing unit paying by reimbursement having been, prior to July 1, under the reimbursement method of payment for the preceding calendar year, shall continue to file quarterly reports but shall make no payments with those reports.

b. The ~~Commission~~ Division shall establish a separate account for each Indian tribe employing unit paying by reimbursement. The account shall be credited and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full, and voluntary contributions are not applicable.

...

d. As of July 31 of each year, and prior to January 1 of the succeeding year, the ~~Commission~~ Division shall determine the balance of each Indian tribe employing unit's account and shall furnish the unit with a statement of all charges and credits to the account.

If the balance in the account does not equal one percent (1%) of taxable wages, the Indian tribe employing unit must, upon notice and demand for payment mailed to its last known address, pay into the account an amount that will bring the balance to one percent (1%) of taxable wages. This amount becomes due on or before the 25th day after the notice and demand for payment is mailed. Any amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

If there is a debit balance in the account, the Indian tribe employing unit must, upon notice and demand for payment mailed to its last known address, pay into the account an amount necessary to bring the account to one percent (1%) of taxable wages. This amount becomes due on or before the 25th day after the notice and demand for payment is mailed. Any amount unpaid on the due date shall be

collected in the same manner, including interest, as prescribed in G.S. 96-10.

...

(4) Forfeiture of coverage. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this subsection after all collection activities considered necessary by the ~~Commission~~ Division have been exhausted, services performed for that employing unit are no longer treated as "employment" for the purpose of coverage under this Chapter. An Indian tribe employing unit that has lost coverage regains coverage under this Chapter for services performed for the employing unit if the ~~Commission~~ Division determines that all contributions, payments in lieu of contributions, penalties, and interest have been paid.

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

...."

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

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

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

(b) Collection. –

(1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the ~~Commission,~~ Division, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workers' Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the ~~Commission,~~ Division, under the hand of ~~its chairman,~~ the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the ~~Commission~~ Division has reason to believe the delinquent has property located. If the amount of a delinquency is less than fifty dollars ($50.00), the ~~Commission~~ Division

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

(2) Any representative of the ~~Employment Security Commission~~ Division may examine and copy the county tax listings, detailed inventories, statements of assets or similar information required under General Statutes, Chapter 105, to be filed with the tax supervisor of any county in this State by any person, firm, partnership, or corporation, domestic or foreign, engaged in operating any business enterprise in such county. Any such information obtained by an agent or employee of the ~~Commission~~ Division shall not be divulged, published, or open to public inspection other than to the ~~Commission's~~Division's employees in the performance of their public duties. Any employee ~~or member of the Commission~~ of the Division who violates any provision of this section shall be fined not less than twenty dollars ($20.00), nor more than two hundred dollars ($200.00), or imprisoned for not longer than 90 days, or both.

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

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

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

(d) Collections of Contributions upon Transfer or Cessation of Business. – The contribution or tax imposed by G.S. 96-9, and subsections thereunder, of this Chapter shall be a

lien upon the assets of the business of any employer subject to the provisions hereof who shall lease, transfer or sell out his business, or shall cease to do business and such employer shall be required, by the next reporting date as prescribed by the ~~Commission,~~ Division, to file with the ~~Commission~~ Division all reports and pay all contributions due with respect to wages payable for employment up to the date of such lease, transfer, sale or cessation of the business and such employer's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said contributions due and unpaid until such time as the former owner or employer shall produce a receipt from the ~~Commission~~ Division showing that the contributions have been paid, or a certificate that no contributions are due. If the purchaser of a business or a successor of such employer shall fail to withhold purchase money or any money due to such employer in consideration of a lease or other transfer and the contributions shall be due and unpaid after the next reporting date, as above set forth, such successor shall be personally liable to the extent of the assets of the business so acquired for the payment of the contributions accrued and unpaid on account of the operation of the business by the former owner or employer.

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

(f) No injunction shall be granted by any court or judge to restrain the collection of any tax or contribution or any part thereof levied under the provisions of this Chapter nor to restrain the sale of any property under writ of execution, judgment, decree or order of court for the nonpayment thereof. Whenever any employer, person, firm or corporation against whom taxes or contributions provided for in this Chapter have been assessed, shall claim to have a valid defense to the enforcement of the tax or contribution so assessed or charged, such employer, person, firm or corporation shall pay the tax or contribution so assessed to the ~~Commission;~~ Division; but if at the time of such payment he shall notify the ~~Commission~~ Division in writing that the same is paid under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within 30 days after such payment, demand the same in writing from the ~~Commission;~~ Division; and if the same shall not be refunded within 90 days thereafter, he may sue the ~~Commission~~ Division for the amount so demanded; such suit against the ~~Employment Security Commission of North Carolina~~ Division

must be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides, or in the county where the taxpayer conducts his principal place of business; and if, upon the trial it shall be determined that such tax or contribution or any part thereof was for any reason invalid, excessive or contrary to the provisions of this Chapter, the amount paid shall be refunded by the ~~Commission~~ Division accordingly. The remedy provided by this subsection shall be deemed to be cumulative and in addition to such other remedies as are provided by other subsections of this Chapter. No suit, action or proceeding for refund or to recover contributions or payroll taxes paid under protest according to the provisions of this subsection shall be maintained unless such suit, action or proceeding is commenced within one year after the expiration of the 90 days mentioned in this subsection, or within one year from the date of the refusal of ~~said Commission~~ the Division to make refund should such refusal be made before the expiration of said 90 days above mentioned. The one-year limitation here imposed shall not be retroactive in its effect, shall not apply to pending litigation nor shall the same be construed as repealing, abridging or extending any other limitation or condition imposed by this Chapter.

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

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

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

(i) Except as otherwise provided in this subsection, no suit or proceedings for the collection of unpaid contributions may be begun under this Chapter after five years from the date on which the contributions become due, and no suit or proceeding for the purpose of establishing liability and/or status may be begun with respect to any period occurring more than five years prior to the first day of January of the year within which the suit or proceeding is instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat or evade the payment of any contributions becoming due under this Chapter. A proceeding shall be deemed to have been instituted or begun upon the date of issuance of an order by the ~~chairman~~ Assistant Secretary of the ~~Commission~~ Division directing a hearing to be held to determine liability or nonliability, and/or status under this Chapter of an employing unit, or upon the date notice and demand for payment is mailed by certified mail to the last known address of the employing unit. The order shall be deemed to have been issued on the date the order is mailed by certified mail to the last known address of the employing unit. The running of the period of limitations provided in this subsection for the making of assessments or

collection shall, in a case under Title II of the United States Code, be suspended for the period during which the ~~Commission~~ Division is prohibited by reason of the case from making the assessment or collection and for a period of one year after the prohibition is removed.

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

(1) The death or serious illness of the employer or a member of his immediate family, or by the death or serious illness of the person in the employer's organization responsible for the preparation and filing of the report;

(2) Destruction of the employer's place of business or business records by fire or other casualty;

(3) Failure of the ~~Commission~~ Division to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;

(4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the ~~Commission~~ Division upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;

(5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and

(6) Other circumstances where, in the opinion of the ~~Chairman, the Assistant Administrator, or their~~ Secretary, Assistant Secretary, or their designees, the imposition of penalties would be inequitable.

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

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

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

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

...

(b) Prior to January 1, 1972, and except as otherwise provided in subsections (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter only as of the first day of January of any calendar year, if it files with the ~~Commission~~ Division prior to the first day of March of such calendar year a written application for termination of coverage and the ~~Commission~~ Division finds that there were no 20 different weeks in the preceding calendar year (whether or not such weeks are or were consecutive) within which said

employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week); provided that on and after January 1, 1972, except as otherwise provided in subsections (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter only as of the first day of January in any calendar year, if it files with the ~~Commission~~ Division prior to the first day of March of such year a written application for termination of coverage and the ~~Commission~~ Division finds that there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed one or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individual was employed in each such week), and the ~~Commission~~ Division finds that there was no calendar quarter within the preceding calendar year in which the total wages of its employees were one thousand five hundred dollars ($1,500) or more. Any employing unit, as defined in G.S. 96-8(5)n, shall cease to be an employer only if it files with the ~~Commission~~ Division by the first day of March of any calendar year an application for termination of coverage, and the ~~Commission~~ Division finds that there were no 20 different weeks within the preceding calendar year in which such employing unit had at least 10 individuals in employment, and that there was no calendar quarter within the preceding calendar year in which such employing unit paid twenty thousand dollars ($20,000) or more in wages for services in employment. Any employing unit, as defined in G.S. 96-8(5)o, shall cease to be an employer if it files with the ~~Commission~~ Division by the first day of March of any calendar year an application for termination of coverage and the ~~Commission~~ Division finds that there was no calendar quarter within the preceding calendar year in which such employing unit paid one thousand dollars ($1,000) or more in wages for services in employment. Provided further, except as otherwise provided in subsections (a), (c), and (d) of this section on and after January 1, 1974, an "employer" as the term is used in G.S. 96-8(5)k shall cease to be an employer subject to this Chapter only as of the first day of January in any calendar year, if it files with the ~~Commission~~ Division prior to the first day of March of such year a written application for termination of coverage and the ~~Commission~~ Division finds that there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). For the purpose of this subsection, the two or more employing units mentioned in paragraphs b or c of G.S. 96-8, subdivision (5) shall be treated as a single employing unit: Provided, however, that any employer, as the term is used in G.S. 96-8(5)k, whose liability covers a period of more than two years when first discovered by the ~~Commission,~~ Division, upon filing a written application for termination within 90 days after notification of his liability by the ~~Commission,~~ Division, may be terminated as an employer effective January 1; and for any subsequent year if the ~~Commission~~ Division finds there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). Provided further, any other employer whose liability covers a period of more than two years when first discovered by the ~~Commission,~~ Division, upon filing a written application for termination within 90 days after notification of his liability by the ~~Commission,~~Division, may be terminated as an employer effective January 1, and for any subsequent years if the ~~Commission~~Division finds that prior to January 1, 1972, there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such

week); and with respect to 1972 and subsequent years, if the ~~Commission~~Division finds that there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed one or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individual was employed in each such week), and the ~~Commission~~ Division finds that there was no calendar quarter within the preceding calendar year in which the total wages of its employees were one thousand five hundred dollars ($1,500) or more. In such cases, a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final; provided further, this provision shall not apply in any case of willful attempt in any manner to defeat or evade the payment of contributions becoming due under this Chapter.

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

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

(3) ...

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

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

(d) Except as provided in G.S. 96-9(c)(6), an employer who has not paid any covered wages for a period of two consecutive calendar years shall cease to be an employer subject to this Chapter. An employer who has not had individuals in employment and who has made due

application for exemption from filing contributions and wage reports required under this Chapter and has been so exempted may be terminated from liability upon written application within 120 days after notification of the reactivation of his account. Such termination shall be effective January 1 of any calendar year only if the ~~Commission~~ Division finds there were no 20 different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said employer employed one or more individuals in employment (four or more prior to January 1, 1972), not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week, and the ~~Commission~~ Division finds that there was no calendar quarter within the preceding calendar year in which the total wages of its employees were one thousand five hundred dollars ($1,500) or more, except as otherwise provided. Provided further, an employer, as the term is used in G.S. 96-8(5)k, who has not had individuals in employment and who has made due application for exemption from filing contributions and wage reports required under this Chapter and has been so exempted may be terminated from liability upon written application within 120 days after notification of the reactivation of its account. Such termination shall be effective January 1 of any calendar year only if the ~~Commission~~ Division finds that there were no 20 different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said employer employed four or more individuals in employment, not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week. In such cases a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final."

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

"**§ 96-12. Benefits.**

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

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

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

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

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

...

(d) Duration of Benefits. – The total benefits paid to an individual shall not be less than the minimum total benefit and shall not exceed the lesser of the maximum total benefit or the individual's total benefit amount. The total benefit amount for an individual is determined by dividing the individual's base-period wages by the individual's high-quarter wages, multiplying that quotient by eight and two thirds, rounding the result to the nearest whole number, and then multiplying the resulting amount by the individual's weekly benefit amount. The minimum total

benefit for an individual is 13 times the individual's weekly benefit amount. The maximum total benefit for an individual is 26 times the individual's weekly benefit amount, unless the benefits are extended further in accordance with G.S. 96-12.01. The ~~Commission~~ Division shall establish and maintain individual wage record accounts for each individual who earns wages in covered employment for as long as the wages would be included in a determination of benefits.

...

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

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

(2) Requirements exist pertaining to estimated tax payments.

(3) The individual may elect to have federal individual income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in section 3402 of the Internal Revenue Code.

(4) The individual may elect to have State individual income tax deducted and withheld from the individual's payment of unemployment compensation in an amount determined by the individual.

(5) The individual may change a previously elected withholding status.

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

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

"**§ 96-12.01. Extended benefits.**

...

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

...

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

...

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

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

b. Was less than five percent (5%).

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

a. The average weekly number of individuals filing claims for regular compensation in this State for weeks of unemployment with respect to the most recent 13 consecutive-week period, as determined by the ~~Commission~~ Division, on the basis of its reports to the United States Secretary of Labor, by

b. The average monthly employment covered under this Chapter for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.

...

(b) Effect of State Law Provisions Relating to Regular Benefits on Claims for, and for Payment of, Extended Benefits. – Except when the result would be inconsistent with the other provisions of this section and in matters of eligibility determination, as provided ~~in the regulations of~~ by rules adopted by the ~~Commission,~~ Division the provisions of this Chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

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

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

(2) ~~He~~ The individual has satisfied the requirements of this Chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits. Provided, however, that for purposes of disqualification for extended benefits for weeks of unemployment beginning after March 31, 1981, the term "suitable work" means any work which is within the individual's capabilities to perform if: (i) The gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in section 501(C)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and (ii) the gross wages payable for the work equal the higher of the minimum wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended (without regard to any exemption), or the State minimum wage; and (iii) the work is offered to the individual in writing and is listed with the State employment service; and (iv) the considerations contained in G.S. 96-14(3) for determining whether or not work is suitable are applied to the extent that they are not inconsistent with the specific requirements of this subdivision; and (v) the individual cannot furnish evidence satisfactory to the ~~Commission~~ Division that his prospects for obtaining work in his customary occupation within a reasonably short period of time are good, but if the individual submits evidence which the ~~Commission~~ Division deems satisfactory for this purpose, the determination of whether or not work is suitable with respect to such individual shall be made in accordance with G.S. 96-14(3) without regard to the definition contained in this subdivision. Provided, further, that no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth in this subdivision, but the employment service shall refer any individual claiming extended benefits to any work which is deemed suitable hereunder.

Provided, further, that any individual who has been disqualified for voluntarily leaving employment, being discharged for misconduct or substantial fault, or refusing suitable work under G.S. 96-14 and who has had the disqualification terminated, shall have such disqualification reinstated when claiming extended benefits unless the termination of the disqualification was based upon employment subsequent to the date of the disqualification.

(3) After March 31, 1981, he has not failed either to apply for or to accept an offer of suitable work, as defined in G.S. 96-12.01(c)(2), to which he was referred by an employment office of the ~~Commission,~~ Division, and he has furnished the ~~Commission~~ Division with tangible evidence that he has actively engaged in a systematic and sustained effort to find work. If an individual is found to be ineligible hereunder, he shall be ineligible beginning with the week in which he either failed to apply for or to accept the offer of suitable work or failed to furnish the ~~Commission~~ Division with tangible evidence that he has actively engaged in a systematic and sustained effort to find work and such individual shall continue to be ineligible for extended benefits until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times his weekly benefit amount.

...

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

(1) Whenever an extended benefit period is to become effective in this State as a result of an "on" indicator, or an extended benefit period is to be terminated in this State as a result of an "off" indicator, the ~~Commission~~ Division shall make an appropriate public announcement; and

(2) Computations required by the provisions of subsection (a)(6) shall be made by the ~~Commission,~~ Division, in accordance with regulations prescribed by the United States Secretary of Labor.

...."

SECTION 2.13. G.S. 96-12.1 reads as rewritten:

"**§ 96-12.1. Extended base period for certain job related injuries.**

If an individual lacks sufficient base period wages because of a job related injury for which he received workers' compensation, upon written application by the claimant, an extended base period will be substituted for the current base period on a quarter-by-quarter basis as needed to establish a valid claim. "Extended base period" means the four quarters prior to the claimant's base period. These four quarters may be substituted for base period quarters on a quarter-by-quarter basis to establish a valid claim regardless of whether the wages have been used to establish a prior claim, except any wages earned that would render the ~~Employment Security Commission of North Carolina~~ Division of Employment Security out of compliance with applicable federal law will be excluded if used in a prior claim. Benefits paid on the basis of an extended base period, which would not otherwise be payable, shall be noncharged."

SECTION 2.14. G.S. 96-13 reads as rewritten:

"**§ 96-13. Benefit eligibility conditions.**

(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the ~~Commission~~ Division finds that -

(1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the ~~Commission in accordance with such regulations as the Commission may prescribe;~~Division pursuant to rules adopted by the Division.

...

(3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by ~~Commission regulations,~~ Division rules, no individual shall be deemed available for work unless he establishes to the satisfaction of the ~~Commission~~ Division that ~~he~~ the individual is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the ~~Commission~~ Division that ~~such~~ the individual is actively seeking employment which ~~such~~ the individual is ~~qualified~~ able to perform ~~by past experience or training~~ during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the ~~Commission~~ Division finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the ~~Commission,~~Division, in accordance with ~~regulations adopted by the Commission,~~ rules adopted by the Division, each claimant that tests positive for a controlled substance under this subdivision. An unemployed individual shall not be disqualified for eligibility for unemployment compensation solely on the basis that the individual is in school. For the purposes of this subdivision:

a. No individual shall be deemed to be available for work during any week that the person is incarcerated or has received notice to report or is otherwise detained in any state or federal jail or penal institution.

b. An individual is exempted for any week that the individual participates in the Trade Jobs For Success initiative under G.S. 143B-438.16.

...

(c) Beginning February 16, 1977, an unemployed individual shall be eligible to receive benefits with respect to any week only if the ~~Commission~~ Division finds that he has been totally, partially, or part-totally unemployed for a waiting period of one week with respect to each benefit year. No week shall be counted as a week of unemployment for waiting-period credit under this provision unless the claimant except for the provisions of this subdivision was otherwise eligible for benefits. As to claims filed on or after September 5, 1999, the waiting period for a benefit year shall not be required of any claimant if all of the following conditions are met:

...

(4) The claimant files for a waiver of the waiting period week within 30 days after the date of notification or mailing of the notice of the right to have the waiting period week waived. The ~~Employment Security Commission,~~ Division for good cause shown, may at any time in its discretion, with or without motion or notice, order the period enlarged if the request for an enlargement of time is made before the expiration of the period originally prescribed or as extended by a previous order. After expiration of the specified period, the ~~Employment Security Commission~~ Division may permit the act to be done where the failure to act was a result of excusable neglect.

The benefits paid as a result of the waiver of the waiting period week shall not be charged to the account or accounts of the base period employer or employers in accordance with G.S. 96-9(c)(2)d. The ~~Employment Security Commission~~ Division shall implement regulations prescribing the procedure for the waiver of the waiting period week in accordance with G.S. 96-4(b).

(c1) As to claims filed on or after January 29, 2003, the waiting period for a benefit year shall not be required of a claimant if all of the following conditions are met:

...

(3) The Governor has issued an Executive Order directing and authorizing the ~~Employment Security Commission~~ Division to waive the waiting week for employees of the manufacturer.

(4) The ~~Employment Security Commission~~ Division shall implement regulations prescribing the procedure for the waiver of the waiting period week in accordance with G.S. 96-4(b).

(d) Benefit entitlement based on services for governmental entities that become subject to the Employment Security ~~Commission law~~ Law effective January 1, 1978, will be administered in the same manner and under the same conditions of the laws of this Chapter as are applicable to individuals whose benefit rights are based on other service subject to this Chapter.

...

(g) (1) Except as herein provided, no individual shall be eligible for benefits for any week during any part of which the ~~Commission~~ Division finds that work was not available to the individual because he had been placed on a bona fide disciplinary suspension by his employer. To be bona fide, a disciplinary suspension must be based on acts or omissions which constitute fault on the part of the employee and are connected with the work but such acts or omissions need not alone be disqualifying under G.S. 96-14.

...."

SECTION 2.15. G.S. 96-14 reads as rewritten:

"**§ 96-14. Disqualification for benefits.**

An individual shall be disqualified for benefits:

(1) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that such individual is, at the time such claim is filed, unemployed because he left work without good cause attributable to the employer.

Where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving; and

b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

Where an employee is notified by the employer that such employee will be separated from employment on some future date and the employee leaves work prior to this date because of the impending separation, the employee shall be deemed to have left work voluntarily and the leaving shall be without good cause attributable to the employer. However, if the employee shows to the satisfaction of the ~~Commission~~ Division that it was impracticable or unduly burdensome for the employee to work until the announced separation date, the permanent disqualification imposed for leaving work without good cause attributable to the employer may be reduced to the greater of four weeks or the period running from the beginning of the week during which the claim for benefits was made until the end of the week of the announced separation date.

An employer's placing an individual on a bona fide disciplinary suspension of 10 or fewer consecutive calendar days shall not constitute good cause for leaving work.

...

(1e) For the duration of an individual's unemployment, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits, if it is determined by the ~~Commission~~ Division that such individual is, at the time such claim is filed, unemployed because the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer when recalled within four weeks from a layoff, or when recalled in any week in which the work search requirements under G.S. 96-13 have been waived. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of separation from work and the individual is retained on the employer's payroll and is a continuing employee subject to recall by the employer.

...

(2) For the duration of the individual's unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that such individual is, at the time such claim is filed, unemployed because he or she was discharged for misconduct connected with the work. Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. ~~conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the~~

~~employer has the right to expect of an employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.~~

"Discharge for misconduct with the work" as used in this section is defined to include but not be limited to separation initiated by an employer for violating the employer's written alcohol or illegal drug policy; reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said ~~employer.~~ employer; being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, illegal drugs, or other activities which could negatively affect the employer's reputation in the community or business dealings; any physical violence whatsoever related to an employee's work for an employer including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public; inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment; theft in connection with the employment; forging or falsifying any document or data related to employment, including a previously submitted application for employment; violation of an employer's written absenteeism policy; refusing to perform reasonably assigned work tasks; and the failure to adequately perform any other employment duties as evidenced by no fewer than three written reprimands received in the 12 months immediately preceding the employee's termination. This phrase does not include discharge or employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for ~~acts or omissions~~ any act or omission of the veteran that the ~~Commission~~ Division determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service.

(2a) For a period of not less than four nor more than 13 weeks beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct. Substantial fault is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failures to perform work because of insufficient skill, ability, or equipment. Upon a finding of discharge under this subsection, the individual shall be disqualified for a period of nine weeks unless, based on findings by the

~~Commission~~ Division of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened within the limits set out above. The length of the disqualification so set by the ~~Commission~~ Division shall not be disturbed by a reviewing court except upon a finding of plain error.

(2b) For the duration of the individual's unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that the individual is, at the time such claim is filed, unemployed because the individual has been discharged from employment because a license, certificate, permit, bond, or surety that is necessary for the performance of the individual's employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to the individual, or the individual's ability to successfully apply or the individual's application therefor has been lost or denied for a cause that was within the individual's power to control, guard against, or prevent. No showing of misconduct connected with the work or substantial fault connected with the work not rising to the level of misconduct shall be required in order for an individual to be disqualified for benefits under this subdivision.

(2c) Discharge or employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for acts or omissions of the veteran that the ~~Commission~~ Division determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service, shall not disqualify the veteran from receiving benefits under the substantial fault provisions of subdivision (2a) of this section for any period of time.

(3) For the duration of his unemployment beginning with the first day of the first week in which the disqualifying act occurs if it is determined by the ~~Commission~~ Division that such individual has failed without good cause (i) to apply for available suitable work when so directed by the employment office of the ~~Commission;~~ Division; or (ii) to accept suitable work when offered him; or (iii) to return to his customary self-employment (if any) when so directed by the ~~Commission.~~ Division. Provided further, an otherwise eligible individual who is attending a vocational school or training program which has been approved by the ~~Commission~~ Division for such individual shall not be denied benefits because he refuses to apply for or accept suitable work during such period of training.

In determining whether or not any work is suitable for an individual, the ~~Commission~~ Division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Notwithstanding any other provisions of this Chapter, no work shall be deemed suitable and benefits shall not be denied under this Chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
b. If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
d. If the position offered is full-time work and the individual meets the part-time worker requirements of G.S. 96-13(a)(6).

(4) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that:
a. Such individual has failed without good cause to attend a vocational school or training program when so directed by the ~~Commission;~~ Division;
b. Such individual has discontinued his training course without good cause; or
c. If the individual is separated from his training course or vocational school due to misconduct.

(5) For any week with respect to which the ~~Commission~~ Division finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place within this State which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.

(6) If the ~~Commission~~ Division finds he is customarily self-employed and can reasonably return to self-employment.

(6a) For the duration of his unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that the individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of the sale:
a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation;
b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner; or
c. The employing entity was a proprietorship, and the individual was a proprietor.

...

(8) For any week with respect to which he has received any sum from the employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency, or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount so paid by the employer is in a lump sum and covers a period of more than one week, such amount shall be allocated to the weeks in the period on such a pro rata basis as the ~~Commission~~ Division may adopt and if the amount so prorated to a particular week would, if it had been earned by the claimant during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-12, the claimant shall be entitled to receive such reduced payment if the claimant was otherwise eligible.

Further provided, any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment of benefits and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly (or within 5 days) to the ~~Commission~~ Division by the employer for application against the overpayment. Provided, however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year in which the overpayment is transmitted to the ~~Commission,~~ Division and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the ~~Commission~~ Division or the failure of an employer to deduct an overpayment shall be subject to the same procedures for collection as is provided for contributions by G.S. 96-10. It is the purpose of this paragraph to assure the prompt collection of overpayments of U. I. benefits, and it shall be construed accordingly.

...

(10) Any employee disqualified for the duration of his unemployment due to the provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent disqualification removed if he meets the following three conditions:

a. Returns to work for at least five weeks and is paid cumulative wages of at least 10 times his weekly benefit amount;
b. Subsequently becomes unemployed through no fault of his own; and
c. Meets the availability requirements of the law.

Any time certain disqualification imposed by the provisions of subsections (1), (1D), and (2A) shall be removed by serving the disqualification imposed as provided by this subsection.

Provided for good cause shown the ~~Commission~~ Division in its discretion may as to any permanent disqualification provided in this Chapter reduce the disqualification period to a time certain but not less than five weeks. The maximum amount of benefits due any individual whose permanent disqualification is changed to a time certain shall be reduced by an amount determined by multiplying the number of weeks of disqualification by the weekly benefit amount.

Provided further, any permanent disqualification pursuant to the provisions of (1), (2), (3), (4), or (6A) shall terminate two years after the effective date of the beginning of said disqualification.

...

(12) Notwithstanding any other provision of this Chapter, no otherwise eligible individual shall be denied benefits for any weeks if it is determined by the ~~Commission~~ Division that such individual is, at the time such claim is filed, unemployed because he left work solely as a result of a lack of work caused by the bankruptcy of his employer."

SECTION 2.16. G.S. 96-15 reads as rewritten:

"**§ 96-15. Claims for benefits.**

(a) Filing. – Claims for benefits shall be made in accordance with such regulations as the ~~Commission~~ Division may prescribe. Employers may file claims for employees through the use of automation in the case of partial unemployment. Each employing unit shall post and maintain in places readily accessible to individuals performing services for it printed statements, concerning benefit rights, claims for benefits, and such other matters relating to the administration of this Chapter as the ~~Commission~~ Division may direct. Each employing unit shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits as the ~~Commission~~ Division may direct. Such printed statements and other materials shall be supplied by the ~~Commission~~ Division to each employing unit without cost to the employing unit.

(b) (1) Initial Determination. – A representative designated by the ~~Commission~~ Division shall promptly examine the claim and shall determine whether or not the claim is valid. If the claim is determined to be not valid for any reason other than lack of base period earnings, the claim shall be referred to an Adjudicator for a decision as to the issues presented. If the claim is determined to be valid, a monetary determination shall be issued showing the week with respect to when benefits shall commence, the weekly benefit amount payable, and the potential maximum duration thereof. The claimant shall be furnished a copy of such monetary determination showing the amount of wages paid him by each employer during his base period and the employers by whom such wages were paid, his benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to him for unemployment during the benefit year. When a claim is not valid due to lack of earnings in his base period, the determination shall so designate. The claimant shall be allowed 10 days from the earlier of mailing or delivery of his monetary determination to him within which to protest his monetary determination and upon the filing of such protest, unless said protest be satisfactorily resolved, the claim shall be referred to the ~~Chief Deputy Commissioner~~ Assistant Secretary or ~~his~~ designee for a decision as to the issues presented. All base period employers, as well as the most recent employer of a claimant on a temporary layoff, shall be notified upon the filing of a claim which establishes a benefit year.

At any time within one year from the date of the making of an initial determination, the ~~Commission~~ Division on its own initiative may reconsider such determination if it finds that an error in computation or identity has occurred in connection therewith or that additional wages pertinent to the claimant's benefit status have become available, or if such determination of benefit status was made as a result of a nondisclosure or misrepresentation of a material fact.

(2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification

should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the ~~Commission~~ Division unless within ~~15~~30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to ~~such regulations as the Commission may adopt. The Commission~~ rules adopted by the Division. The Division shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed ~~10~~30 days from the earlier of mailing or delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. A copy of the notice of the filing shall be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on file. Provided further, no question or issue may be raised or presented by the ~~Commission~~ Division as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, after 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.

An employer shall receive written notice of the employer's appeal rights and any forms that are required to allow the employer to protest the claim. The forms shall include a section referencing the appropriate rules pertaining to appeals and the instructions on how to appeal.

(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee or hearing officer shall set a hearing in which the parties are given reasonable opportunity to be heard. The conduct of hearings shall be governed by suitable ~~regulations established~~ rules adopted by the ~~Commission.~~ Division. The ~~regulations~~ rules need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but shall provide for the conduct of hearings in such manner as to ascertain the substantial rights of the parties. The hearings may be conducted by conference telephone call or other similar means provided that if any party files with the ~~Commission~~ Division prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the ~~Commission~~ Division by ~~regulation~~ rule shall provide. The hearing shall be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant. The appeals referee or hearing officer may affirm or modify the conclusion of the adjudicator or issue a new decision in which findings of fact and conclusions of law will be set out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly notified of the appeals hearing. The evidence taken at the hearings before the appeals referee shall be recorded and the decision of the appeals referee shall be deemed to be the final decision of the ~~Commission~~ Division unless within 10 days after the date of notification or mailing of the decision, whichever is earlier a written appeal is filed

pursuant to such ~~regulations~~ rules as the ~~Commission~~ Board of Review and the Division may adopt. No person may be appointed as an appeals referee or hearing officer unless he or she possesses the minimum qualifications necessary to be a staff attorney eligible for designation by the ~~Commission~~ Division as a hearing officer under ~~G.S. 96-4(m).~~ G.S. 96-4(q). No appeals referee or hearing officer in full-time permanent status may engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as appeals ~~referee;~~ referee or hearing officer; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken from a decision of the appeals ~~referee,~~ referee or hearings officer; the appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, the ~~Commission~~ Board of Review may dismiss the appeal.

(c1) Unless required for disposition of an ex parte matter authorized by law, a ~~Commissioner,~~ Division appeals referee, or employee assigned to make a decision or to make findings of facts and conclusions of law in a case shall not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for parties to participate.

(c2) Whenever a party is notified of ~~an Adjudicator's, Appeals Referee's, or Deputy Commissioner's~~ the Board of Review's or a hearing officer's decision by mail, G.S. 1A-1, Rule 6(e) shall apply, and three days shall be added to the prescribed period to file a written appeal.

(d) Repealed by Session Laws 1977, c. 727, s. 54.

(d1) No continuance shall be granted except upon application to the ~~Commissioner,~~ Division, the appeals referee, or other authority assigned to make the decision in the matter to be continued. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause for granting a continuance shall include, but not be limited to, those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State, such as service as a member of the North Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater jurisdiction.

(e) Review by the ~~Commission.~~ Board of Review. – The Board of Review may on its own motion affirm, modify, or set aside any decision of an appeals referee, hearing officer, or other employee assigned to make a decision on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the Board of Review finds appropriate. The Board of Review may remove itself or transfer to an appeals referee, hearing officer, or other employee assigned to make a decision the proceedings on any claim pending before an appeals referee, hearing officer, or other employee assigned to make a decision. Interested parties shall be promptly notified of the findings and decision of the Board of Review. ~~Commission or Deputy Commissioner may on its own motion affirm, modify, or set aside any decision of an appeals referee on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the Commission or Deputy Commissioner may deem proper. The Commission or Deputy Commissioner may remove to itself or transfer to another appeals referee the proceedings on any claim pending before an appeals referee. The Commission shall promptly notify the interested parties of its findings and the decision. In all Commission matters heard by a Deputy Commissioner, the decision of the Deputy Commissioner shall constitute the decision of the Commission; except, the Commission may remove unto itself, upon its own motion, any claim pending for rehearing and redetermination, provided such removal is done prior to the expiration of appeal period applicable to the decision of the Deputy Commissioner.~~

(f) Procedure. – The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with ~~regulations prescribed by the Commission~~ rules adopted by the Division for determining the rights of the parties, whether or not such regulations conform to common-law or statutory rules of evidence and other technical rules of procedure. All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded unless the ~~recording is waived by all interested parties,~~ the parties have waived the evidentiary hearing and entered into a stipulation resolving the issues pending before the appeals referee, hearing officer, or other employee assigned to make the decision, but need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under such ~~regulations as the Commission may prescribe,~~ rules as the Division may adopt, to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual receiving the transcript shall pay to the ~~Commission~~ Division such reasonable fee for the transcript as the ~~Commission~~ Division may by regulation provide. The fee so prescribed by the ~~Commission~~ Division for a party shall not exceed the lesser of sixty-five cents (65¢) per page or sixty-five dollars ($65.00) per transcript. The ~~Commission~~ Division may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the ~~Commission~~ Division shall waive the fee.

(g) Witness Fees. – Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the ~~Commission.~~ Division. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this Chapter.

(h) Judicial Review. – Any decision of the ~~Commission,~~ Division, in the absence of judicial review as herein provided, or in the absence of an interested party filing a request for reconsideration, shall become final 30 days after the date of notification or mailing thereof, whichever is earlier. Judicial review shall be permitted only after a party claiming to be aggrieved by the decision has exhausted his remedies before the ~~Commission~~ Division as provided in this Chapter and has filed a petition for review in the superior court of the county in which he resides or has his principal place of business. The petition for review shall explicitly state what exceptions are taken to the decision or procedure of the ~~Commission~~ Division and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the petitioner shall serve copies of the petition by personal service or by certified mail, return receipt requested, upon the ~~Commission~~ Division and upon all parties of record to the ~~Commission~~ Division proceedings. Names and addresses of the parties shall be furnished to the petitioner by the ~~Commission~~ Division upon request. The ~~Commission~~ Division shall be deemed to be a party to any judicial action involving any of its decisions and may be represented in the judicial action by any qualified attorney who has been designated by it for that purpose. ~~Upon motion of the Commission, the court shall dismiss any review for which the petition is untimely filed, untimely or improperly served, or for which it otherwise fails to comply with the requirements of this subsection.~~ Any questions regarding the requirements of this subsection concerning the service or filing of a petition shall be determined by the superior court. Any party to the ~~Commission~~ Division proceeding may become a party to the review proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

Within 45 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the ~~Commission~~ Division shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by

the court for such additional cost as is occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(i) Review Proceedings. – If a timely petition for review has been filed and served as provided in G.S. 96-15(h), the court may make party defendant any other party it deems necessary or proper to a just and fair determination of the case. The ~~Commission~~ Division may, in its discretion, certify to the reviewing court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of fact by the ~~Commission,~~ Division, if there is any competent evidence to support them and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all civil cases. An appeal may be taken from the judgment of the superior court, as provided in civil cases. The ~~Commission~~ Division shall have the right to appeal to the appellate division from a decision or judgment of the superior court and for such purpose shall be deemed to be an aggrieved party. No bond shall be required of the ~~Commission~~ Division upon appeal. Upon the final determination of the case or proceeding, the ~~Commission~~ Division shall enter an order in accordance with the determination. When an appeal has been entered to any judgment, order, or decision of the court below, no benefits shall be paid pending a final determination of the cause, except in those cases in which the final decision of the ~~Commission~~ Division allowed benefits.

(j) Repealed by Session Laws 1985, c. 197, s. 9.

(k) Irrespective of any other provision of this Chapter, the ~~Commission~~ Division may adopt minimum regulations necessary to provide for the payment of benefits to individuals promptly when due as required by section 303(a)(1) of the Social Security Act as amended (42 U.S.C.A., section 503(a)(1))."

SECTION 2.17. G.S. 96-16 reads as rewritten:

"**§ 96-16. Seasonal pursuits.**

(a) A seasonal pursuit is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a calendar year. No pursuit shall be deemed seasonal unless and until so found by the ~~Commission: Provided, however,~~ Division; except that from March 27, 1953, any successor under G.S. 96-8(5)b to a seasonal pursuit shall be deemed seasonal unless such successor shall within 120 days after the acquisition request cancellation of the determination of status of such seasonal pursuit; provided further that this provision shall not be applicable to pending cases nor retroactive in effect.

(b) Upon application therefor by a pursuit, the ~~Commission~~ Division shall determine or redetermine whether such pursuit is seasonal and, if seasonal, the active period or periods thereof. The ~~Commission~~ Division may, on its own motion, redetermine the active period or periods of a seasonal pursuit. An application for a seasonal determination must be made on forms prescribed by the ~~Commission~~ Division and must be made at least 20 days prior to the beginning date of the period of production operations for which a determination is requested.

(c) Whenever the ~~Commission~~ Division has determined or redetermined a pursuit to be seasonal, such pursuit shall be notified immediately, and such notice shall contain the beginning and ending dates of the pursuit's active period or periods. Such pursuits shall display notices of its seasonal determination conspicuously on its premises in a sufficient number of places to be available for inspection by its workers. Such notices shall be furnished by the ~~Commission.~~ Division.

...

(j) As used in this section:

...

(5) "Seasonal wages" mean the wages earned in a seasonal pursuit within its active period or periods. The ~~Commission~~ Division may prescribe by regulation the manner in which seasonal wages shall be reported.

...."

SECTION 2.18. G.S. 96-17 reads as rewritten:

"**§ 96-17. Protection of rights and benefits; attorney representation; prohibited fees; deductions for child support obligations.**

...

(b) Representation. – Any claimant or employer who is a party to any proceeding before the ~~Commission~~ Division may be represented by (i) an attorney; or (ii) any person who is supervised by an attorney, however, the attorney need not be present at any proceeding before the ~~Commission.~~ Division.

(b1) Fees Prohibited. – Except as otherwise provided in this Chapter, no individual claiming benefits in any administrative proceeding under this Chapter shall be charged fees of any kind by the ~~Commission~~ Division or its representative, and in any court proceeding under this Chapter each party shall bear its own costs and legal fees.

...

(d) (1) Definitions. – For the purpose of this subsection and when used herein:

a. "Unemployment compensation" means any compensation found by the ~~Commission~~ Division to be payable to an unemployed individual under the Employment Security Law of North Carolina (including amounts payable by the ~~Commission~~ Division pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment) provided, that nothing in this subsection shall be construed to limit the ~~Commission's~~ Division's ability to reduce or withhold benefits, otherwise payable, under authority granted elsewhere in this Chapter including but not limited to reductions for wages or earnings while unemployed and for the recovery of previous overpayments of benefits.

...

(2) a. An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether the individual owes child support obligations, as defined under subparagraph (1)b. of this subsection. If any such individual discloses that he or she owes child support obligations and is determined by the ~~Commission~~ Division to be eligible for payment of unemployment compensation, the ~~Commission~~ Division shall notify the State or local child support enforcement agency enforcing such obligation that such individual has been determined to be eligible for payment of unemployment compensation.

b. Upon payment by the State or local child support enforcement agency of the processing fee provided for in paragraph (4) of this subsection and beginning with any payment of unemployment compensation that, except for the provisions of this subsection, would be made to the individual during the then current benefit year and more than five working days after the receipt of the processing fee by the ~~Commission,~~ Division, the ~~Commission~~ Division shall deduct and withhold from any unemployment compensation

otherwise payable to an individual who owes child support obligations:

1. The amount specified by the individual to the ~~Commission~~ Division to be deducted and withheld under this paragraph if neither subparagraph 2. nor subparagraph 3. of this paragraph is applicable; or
2. The amount, if any, determined pursuant to an agreement submitted to the ~~Commission~~ Division under section 454(20)(B)(i) of the Social Security Act by the State or local child support enforcement agency, unless subparagraph 3. of this paragraph is applicable; or
3. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to properly served legal process, as that term is defined in section 462(e) of the Social Security Act.

c. Any amount deducted and withheld under paragraph b. of this subdivision shall be paid by the ~~Employment Security Commission~~ Division to the appropriate State or local child support enforcement agency.

d. The Department of Health and Human Services and the ~~Commission~~ Division are hereby authorized to enter into one or more agreements which may provide for the payment to the ~~Commission~~ Division of the processing fees referred to in subparagraph b. and the payment to the Department of Health and Human Services of unemployment compensation benefits withheld, referred to in subparagraph c., on an open account basis. Where such an agreement has been entered into, the processing fee shall be deemed to have been made and received (for the purposes of fixing the date on which the ~~Commission~~ Division will begin withholding unemployment compensation benefits) on the date a written authorization from the Department of Health and Human Services to charge its account is received by the ~~Commission.~~ Division. Such an authorization shall apply to all processing fees then or thereafter (within the then current benefit year) chargeable with respect to any individual name in the authorization. Any agreement shall provide for the reimbursement to the ~~Commission~~ Division of any start-up costs and the cost of providing notice to the Department of Health and Human Services of any disclosure required by subparagraph a. Such an agreement may dispense with the notice requirements of subparagraph a. by providing for a suitable substitute procedure, reasonably calculated to discover those persons owing child support obligations who are eligible for unemployment compensation payments.

...

(4) a. On or before April 1 of 1983 and each calendar year thereafter, the ~~Commission~~ Division shall set and forward to the Secretary of Health and Human Services for use in the next fiscal year, a schedule of processing fees for the withholding and payment of unemployment compensation as provided for in this subsection, which fees shall reflect its best estimate of the administrative cost to the ~~Commission~~ Division generated thereby.

b. At least 20 days prior to September 25, 1982, the ~~Commission~~ Division shall set and forward to the Secretary of Health and Human Services an interim schedule of fees which will be in effect until July 1, 1983.

c. The provisions of this subsection apply only if arrangements are made for reimbursement by the State or local child support agency for all administrative costs incurred by the ~~Commission~~ Division under this subsection attributable to child support obligations enforced by the agency."

SECTION 2.19. G.S. 96-18 reads as rewritten:

"**§ 96-18. Penalties.**

...

(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The ~~Commission~~ Division has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

(1) Any employing units employing more than 10 employees.

(2) A contribution of more than two thousand dollars ($2,000) has not been paid.

(3) An experience rating account balance is more than five thousand dollars ($5,000) overdrawn.

If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate offense.

If the ~~Commission~~ Division finds that any person violated G.S. 105-236(9a) and is not subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars ($500.00) per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement.

...

(g) (1) Any person who, under subsection (e) above, has been held ineligible for benefits and who, because of those same acts or omissions has received any sum as benefits under this Chapter to which ~~he~~ the person was not entitled, shall be liable to repay any such sum to the ~~Commission~~ Division as

provided in subparagraph (3) below, provided no such recovery or recoupment of such sum may be initiated after 10 years from the last day of the year in which the overpayment occurred.

(2) Any person who has received any sum as benefits under this Chapter by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) or has been paid benefits to which he was not entitled for any reason (including errors on the part of any representative of the ~~Commission)~~ Division) other than subparagraph (1) above shall be liable to repay such sum to the ~~Commission~~ Division as provided in subparagraph (3) below, provided no such recovery or recoupment of such sum may be initiated after three years from the last day of the year in which the overpayment occurred.

(3) The ~~Commission~~ Division may collect the overpayments provided for in this subsection by one or more of the following procedures as the ~~Commission~~ Division may, except as provided herein, in its sole discretion choose:

a. If, after due notice, any overpaid claimant shall fail to repay the sums to which he was not entitled, the amount due may be collected by civil action in the name of the ~~Commission,~~ Division, and the cost of such action shall be taxed to the claimant. Civil actions brought under this section to collect overpayments shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this Chapter.

b. If any overpayment recognized by this subsection shall not be repaid within 30 days after the claimant has received notice and demand for same, and after due notice and reasonable opportunity for hearing (if a hearing on the merits of the claim has not already been had) the ~~Commission,~~ Division, under the hand of ~~its Chairman,~~ the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the claimant resides or has property, and additional copies of said certificate for each county in which the ~~Commission~~ Division has reason to believe such claimant has property located; such certificate and/or copies thereof so forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said claimant may own in said county, with the same force and effect as a judgment rendered by the superior court. The ~~Commission~~ Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the ~~Commission,~~ Division, and when so forwarded and in the hands of such sheriff or agent of the ~~Commission,~~ Division, shall have all the force and effect of an execution issued to such sheriff or agent of the ~~Commission~~ Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. The ~~Commission~~ Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or a duly authorized agent of the ~~Commission~~ Division in all cases in which the sheriff or duly

authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the ~~Commission,~~ Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the ~~Commission~~ Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the ~~Commission,~~ Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case, no agent of the ~~Commission~~ Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution or alias execution, shall be made to the ~~Commission,~~ Division, together with all moneys collected thereunder, and when such order, execution or alias is referred to the agent of the ~~Commission~~ Division for service, the said agent of the ~~Commission~~ Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the ~~Commission~~ Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars ($3,000) approved by the ~~Commission~~ Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of execution. If any sheriff of this State or any agent of the ~~Commission~~ Division who is charged with the duty of serving executions shall willfully fail, refuse or neglect to execute any order directed to him by the said ~~Commission~~ Division and within the time provided by law, the official bond of such sheriff or of such agent of the ~~Commission~~ Division shall be liable for the overpayments and costs due by the claimant. Additionally, the ~~Commission~~ Division or its designated representatives in the collection of overpayments shall have the powers enumerated in G.S. 96-10(b)(2) and (3).

c. Any person who has been found by the ~~Commission~~ Division to have been overpaid under subparagraph (1) above shall be liable to have such sums deducted from future benefits payable to him under this Chapter.

d. Any person who has been found by the ~~Commission~~ Division to have been overpaid under subparagraph (2) above shall be liable to have such sums deducted from future benefits payable to him under this Chapter in such amounts as the ~~Commission~~ Division may by regulation prescribe but no such benefit payable for any week shall be reduced by more than fifty percent (50%) of that person's weekly benefit amount.

e. To the extent permissible under the laws and Constitution of the United States, the ~~Commission~~ Division is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other states or the United States Secretary of Labor, or both, whereby: (1) Overpayments of

unemployment benefits as determined under subparagraphs (1) and (2) above shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, and overpayments of unemployment benefits as determined under the unemployment compensation law of such other state shall be recovered by offset from unemployment benefits otherwise payable under this Chapter; and, (2) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under this Chapter or any such federal program, or under the unemployment compensation law of another state or any such federal unemployment benefit or allowance program administered by such other state under an agreement with the United States Secretary of Labor if such other state has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the federal Social Security Act, if the United States agrees, as provided in the reciprocal agreement with this State entered into under such Section 303(g)(2) of the Social Security Act, that overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above, and overpayment as determined under the unemployment compensation law of another state which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the Social Security Act, shall be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this State or such other state under an agreement with the United States Secretary of Labor.

f. The ~~Commission~~ Division may in its discretion decline to collect overpayments to claimants if the claimant has deceased after the payment was made. In such a case the ~~Commission~~ Division may remove the debt of the deceased claimant from its records."

SECTION 2.20. G.S. 96-19 reads as rewritten:

"**§ 96-19. Enforcement of Employment Security Law discontinued upon repeal or invalidation of federal acts; suspension of enforcement provisions contested.**

(a) It is the purpose of this Chapter to secure for employers and employees the benefits of Title III and Title IX of the Federal Social Security Act, approved August 14, 1935, as to credit on payment of federal taxes, of State contributions, the receipt of federal grants for administrative purposes, and all other provisions of the said Federal Social Security Act; and it is intended as a policy of the State that this Chapter and its requirements for contributions by employers shall continue in force only so long as such employers are required to pay the federal taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title III and Title IX of the said Federal Social Security Act shall be declared invalid by the United States Supreme Court, or if such law be repealed by congressional action so that the federal tax cannot be further levied, from and after the declaration of such invalidity by the United States Supreme Court, or the repeal of said law by congressional action, as the case may be, no further levy or collection of contributions shall be made hereunder. The enactment by the Congress of

the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance Act shall in no way affect the administration of this law except as herein expressly provided.

All federal grants and all contributions theretofore collected, and all funds in the treasury by virtue of this Chapter, shall, nevertheless, be disbursed and expended, as far as may be possible, under the terms of this Chapter: Provided, however, that contributions already due from any employer shall be collected and paid into the said fund, subject to such distribution; and provided further, that the personnel of the ~~State Employment Security Commission~~ Division of Employment Security shall be reduced as rapidly as possible.

The funds remaining available for use by the ~~North Carolina Employment Security Commission~~ Division of Employment Security shall be expended, as necessary, in making payment of all such awards as have been made and are fully approved at the date aforesaid, and the payment of the necessary costs for the further administration of this Chapter, and the final settlement of all affairs connected with same. After complete payment of all administrative costs and full payment of all awards made as aforesaid, any and all moneys remaining to the credit of any employer shall be refunded to such employer, or his duly authorized assignee: Provided, that the State employment service, created by Chapter 106, Public Laws of 1935, and transferred by Chapter 1, Public Laws of 1936, Extra Session, and made a part of the former Employment Security Commission of North Carolina, and that is now part of the Division of Employment Security of the North Carolina Department of Commerce, shall in such event return to and have the same status as it had prior to enactment of Chapter 1, Public Laws of 1936, Extra Session, and under authority of Chapter 106, Public Laws of 1935, shall carry on the duties therein prescribed; but, pending a final settlement of the affairs of the ~~Employment Security Commission of North Carolina,~~ Division, the said State employment service shall render such service in connection therewith as shall be demanded or required under the provisions of this Chapter or the provisions of Chapter 1, Public Laws of 1936, Extra Session.

(b) The ~~Employment Security Commission~~ Division of Employment Security may, upon receiving notification from the U.S. Department of Labor that any provision of this Chapter is out of conformity with the requirements of the federal law or of the U.S. Department of Labor, suspend the enforcement of the contested section or provision until the North Carolina Legislature next has an opportunity to make changes in the North Carolina law. The ~~Employment Security Commission shall,~~ Division, in order to implement the above suspension:

(1) Notify the Governor's office and provide that office with a copy of the determination or notification of the U.S. Department of Labor;

(2) Advise the Governor's office as to whether the contested portion or provision of the law would, if not enforced, so seriously hamper the operations of the agency as to make it advisable that a special session of the legislature be called;

(3) Take all reasonable steps available to obtain a reprieval from the implementation of any federal conformity failure sanctions until the State legislature has been afforded an opportunity to consider the existing conflict."

SECTION 2.21. G.S. 96-20 reads as rewritten:

"**§ 96-20. Duties of Division; conformance to Wagner-Peyser Act; organization; director; employees.**

The ~~Employment Service Division of the Employment Security Commission~~ Employment Security Section of the Division of Employment Security, Department of Commerce, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this Chapter, and for the purpose of performing such duties as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the

states in the promotion of such system and for other purposes," approved June 6, 1933, (48 Stat., 113; U.S.C., Title 29, section 49(c), as amended). The said Division shall be administered by a full-time salaried director. The ~~Employment Security Commission~~ Division shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of Congress, as amended, are hereby accepted by this State, in conformity with section 4 of said act, and this State will observe and comply with the requirements thereof. The ~~Employment Security Commission~~ Division is hereby designated and constituted the agency of this State for the purpose of said act. The ~~Commission~~ Secretary is directed to appoint the ~~director,~~ head, other officers, and employees of the Employment ~~Service Division.~~Security Section."

SECTION 2.22. G.S. 96-21 reads as rewritten:

"§ 96-21. Duties concerning veterans and worker profiling.

The duties of the ~~Employment Service Division~~ Employment Security Section include the following:

...

(2) To establish and use a worker profiling system that complies with 42 U.S.C. § 503(a)(10) to identify claimants for benefits whom the ~~Division~~ Section must refer to reemployment services in accordance with that law."

SECTION 2.23. G.S. 96-22 reads as rewritten:

"§ 96-22. Employment of and assistance to minors.

The Employment ~~Service Division~~ Security Section shall have jurisdiction over all matters contemplated in this Article pertaining to securing employment for all minors who avail themselves of the free employment service. The Employment ~~Service Division~~ Security Section shall have power to so conduct its affairs that at all times it shall be in harmony with laws relating to child labor and compulsory education; to aid in inducing minors over 16, who cannot or do not for various reasons attend day school, to undertake promising skilled employment; to aid in influencing minors who do not come within the purview of compulsory education laws, and who do not attend day school, to avail themselves of continuation or special courses in existing night schools, vocational schools, part-time schools, trade schools, business schools, library schools, university extension courses, etc., so as to become more skilled in such occupation or vocation to which they are respectively inclined or particularly adapted, including assisting those minors who are interested in securing vocational employment in agriculture and to aid in the development of good citizenship and in the study and development of vocational rehabilitation capabilities for handicapped minors."

SECTION 2.24. G.S. 96-24 reads as rewritten:

"§ 96-24. Local offices; cooperation with United States service; financial aid from United States.

The Employment ~~Service Division~~ Security Section is authorized to enter into agreement with the governing authorities of any municipality, county, township, or school corporation in the State for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and for the extension of vocational guidance in cooperation with the United States Employment Service, and under and by virtue of any such agreement as aforesaid to pay, from any funds appropriated by the State for the purposes of this Article, any part or the whole of the salaries, expenses or rent, maintenance, and equipment of offices and other expenses."

SECTION 2.25. G.S. 96-25 reads as rewritten:

"§ 96-25. Acceptance and use of donations.

It shall be lawful for the Employment ~~Service Division~~ Security Section to receive, accept, and use, in the name of the people of the State, or any community or municipal corporation, as the donor may designate, by gift or devise, any moneys, buildings, or real estate for the purpose of extending the benefits of this Article and for the purpose of giving assistance to handicapped citizens through vocational rehabilitation."

SECTION 2.26. G.S. 96-26 reads as rewritten:

"**§ 96-26. Cooperation of towns, townships, and counties with Division.**

It shall be lawful for the governing authorities of any municipality, county, township, or school corporation in the State to enter into cooperative agreement with the Employment ~~Service Division~~ Security Section and to appropriate and expend the necessary money upon such conditions as may be approved by the Employment ~~Service Division~~ Security Section and to permit the use of public property for the joint establishment and maintenance of such offices as may be mutually agreed upon, and which will further the purpose of this Article."

SECTION 2.27. G.S. 96-27 reads as rewritten:

"**§ 96-27. Method of handling employment service funds.**

All federal funds received by this State under the Wagner-Peyser Act (48 Stat. 113; Title 29, U.S.C., section 49) as amended, and all State funds appropriated or made available to the Employment ~~Service Division~~ Security Section shall be paid into the Employment Security Administration Fund, and said moneys are hereby made available to the State employment service to be expended as provided in this Article and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, ~~said Division~~ the Section is authorized to enter into agreements with any political subdivision of this State or with any private, nonprofit organization, and as a part of any such agreement the ~~Commission~~ Division may accept moneys, services, or quarters as a contribution to the Employment Security Administration Fund."

SECTION 2.28. G.S. 96-29 reads as rewritten:

"**§ 96-29. Openings listed by State agencies.**

Every State agency shall list with the ~~Employment Security Commission of North Carolina~~ Division of Employment Security every job opening occurring within the agency which opening the agency wishes filled and which will not be filled solely by promotion or transfer from within the existing State government work force. The listing shall include a brief description of the duties and salary range and shall be filed with the ~~Commission~~ Division within 30 days after the occurrence of the opening. The State agency may not fill the job opening for at least 21 days after the listing has been filed with the ~~Commission.~~ Division. The listing agency shall report to the ~~Commission~~ Division the filling of any listed opening within 15 days after the opening has been filled.

The ~~Employment Security Commission~~ Division may act to waive the 21-day listing period for job openings in job classifications declared to be in short supply by the State Personnel Commission, upon the request of a State agency, if the 21-day listing requirement for these classifications hinders the agency in providing essential services."

SECTION 2.29. G.S. 96-31 reads as rewritten:

"**§ 96-31. Definitions.**

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

(1) "CFS" means the common follow-up information management system developed by DES ~~the Employment Security Commission of North Carolina as authorized~~ under this Article.

(2) ~~"ESC" means the Employment Security Commission of North Carolina.~~ "DES" means the Division of Employment Security.

(3) Repealed by Session Laws 2000, c. 140, s. 93.1(d).

(4) "State job training, education, and placement program" or "State-funded program" means a program operated by a State or local government agency or entity and supported in whole or in part by State or federal funds, that provides job training and education or job placement services to program participants. The term does not include on-the-job training provided to current employees of the agency or entity for the purposes of professional development."

SECTION 2.30. G.S. 96-32 reads as rewritten:

"**§ 96-32. Common follow-up information management system created.**

(a) The ~~Employment Security Commission of North Carolina~~ DES shall develop, implement, and maintain a common follow-up information management system for tracking the employment status of current and former participants in State job training, education, and placement programs. The system shall provide for the automated collection, organization, dissemination, and analysis of data obtained from State-funded programs that provide job training and education and job placement services to program participants. In developing the system, the ~~ESC~~ DES shall ensure that data and information collected from State agencies is confidential, not open for general public inspection, and maintained and disseminated in a manner that protects the identity of individual persons from general public disclosure.

(b) The ~~ESC~~ DES shall adopt procedures and guidelines for the development and implementation of the CFS authorized under this section.

(c) Based on data collected under the CFS, the ~~ESC~~ DES shall evaluate the effectiveness of job training, education, and placement programs to determine if specific program goals and objectives are attained, to determine placement and completion rates for each program, and to make recommendations regarding the continuation of State funding for programs evaluated."

SECTION 2.31. G.S. 96-33 reads as rewritten:

"**§ 96-33. State agencies required to provide information and data.**

(a) Every State agency and local government agency or entity that receives State or federal funds for the direct or indirect support of State job training, education, and placement programs shall provide to the ~~Employment Security Commission of North Carolina~~ DES all data and information available to or within the agency or entity's possession requested by the ~~ESC~~DES for input into the common follow-up information management system authorized under this Article.

(b) Each agency or entity required to report information and data to the ~~ESC~~ DES under this Article shall maintain true and accurate records of the information and data requested by the ~~ESC.~~ DES. The records shall be open to ~~ESC~~ DES inspection and copying at reasonable times and as often as necessary. Each agency or entity shall further provide, upon request by ~~ESC~~DES, sworn or unsworn reports with respect to persons employed or trained by the agency or entity, as deemed necessary by the ~~ESC~~ DES to carry out the purposes of this Article. Information obtained by the ~~ESC~~DES from the agency or entity shall be held by ~~ESC~~ DES as confidential and shall not be published or open to public inspection other than in a manner that protects the identity of individual persons and employers."

SECTION 2.32. G.S. 96-35 reads as rewritten:

"**§ 96-35. Reports on common follow-up system activities.**

(a) The ~~Employment Security Commission of North Carolina~~ DES shall present annually by May 1 to the General Assembly and to the Governor a report of CFS activities for the preceding calendar year. The report shall include information on and evaluation of job training, education, and placement programs for which data was reported by State and local agencies subject to this Article. Evaluation of the programs shall be on the basis of fiscal year data.

(b) The ~~ESC~~ DES shall report to the Governor and to the General Assembly upon the convening of each biennial session, its evaluation of and recommendations regarding job training, education, and placement programs for which data was provided to the CFS."

PART III. OTHER CONFORMING AMENDMENTS TO THE GENERAL STATUTES

SECTION 3.1. G.S. 7A-343.1 reads as rewritten:

"**§ 7A-343.1. Distribution of copies of the appellate division reports.**

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environment and Natural Resources, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
Juvenile Justice and Delinquency Prevention, Department of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11
State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
Employment Security Commission	~~1~~
Department of Commerce	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2
Cultural Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.

Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1
University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell University	25
Federal, Out-of-State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1
Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1
Cherokee Supreme Court, Eastern Band of Cherokee Indians	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained personally to enable the justice or judge to keep up-to-date the personal set of reports."

SECTION 3.2. G.S. 8-45.3(a1) reads as rewritten:

"(a1) The ~~Employment Security Commission~~ Division of Employment Security is hereby specifically authorized to have photographed, photocopied, or microphotocopied all records of the ~~Commission,~~ Division, including filings required by law to be made to the ~~Commission,~~ Division, and said photographs, photocopies, or microphotocopies, when certified by the ~~Commission~~ Division as true and correct photographs, photocopies, or microphotocopies, shall be as admissible in evidence in all actions, proceedings, and matters as the originals thereof would have been."

SECTION 3.3. G.S. 52C-5-501(a) reads as rewritten:

"(a) An income-withholding order issued in another state may be sent to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. In the event that an obligor is receiving unemployment compensation benefits from ~~the North Carolina Employment Security Commission,~~ the Division of Employment Security (DES) in accordance with G.S. 96-17, an income-withholding order issued in another state may be sent to the ~~Employment Security Commission~~ DES without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer or the ~~Employment Security Commission~~ DES shall:

(1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;

(2) Immediately provide a copy of the order to the obligor; and

(3) Distribute the funds as directed in the withholding order. The ~~Employment Security Commission~~ DES shall not withhold an amount to exceed twenty-five percent (25%) of the unemployment compensation benefits."

SECTION 3.4. G.S. 58-89A-120 reads as rewritten:

"**§ 58-89A-120. Unemployment taxes; payroll.**

A licensee is the employer of an assigned employee for purposes of Chapters 95, 96 and 105 of the General Statutes. Nothing in this section shall otherwise affect the levy and collection of unemployment insurance contributions or the assignment of discrete employer numbers pursuant to G.S. 96-9(c)(4) and the definitions set forth in G.S. 96-8(4), 96-8(5), and 96-8(6). The ~~Employment Security Commission~~ Department of Commerce, Division of Employment Security (DES), shall cooperate with the Commissioner in the investigation of applicants and licensees and shall provide the Commissioner with access to all relevant records and data in the custody of the ~~Employment Security Commission.~~DES."

SECTION 3.5. G.S. 84-5(a) reads as rewritten:

"(a) It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the ~~Employment Security Commission,~~ Division of Employment Security, Department of Commerce, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.

To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

(1) A corporation authorized and licensed to act in a fiduciary capacity shall not:

a. Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in

connection with the attorney's performance of services for a client who desires to appoint the corporation executor or trustee or otherwise to utilize the fiduciary services of the corporation.

b. Give legal advice or legal counsel, orally or written, to any customer or prospective customer or to any person who is considering renunciation of the right to qualify as executor or administrator or who proposes to resign as guardian or trustee, or to any other person, firm or corporation.

c. Advertise to perform any of the acts prohibited herein; solicit to perform any of the acts prohibited herein; or offer to perform any of the acts prohibited herein.

(2) Except as provided in subsection (b) of this section, when any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.

b. Preparing and publishing notice of administration to creditors.

c. Handling formal court proceedings.

d. Drafting legal papers or giving legal advice to spouses concerning rights to an elective share under Article 1A of Chapter 30 of the General Statutes.

e. Resolving questions of domicile and residence of a decedent.

f. Handling proceedings involving year's allowances of widows and children.

g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.

h. Drafting instruments releasing deeds of trust.

i. Drafting assignments of rent.

j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.

k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:

1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

3. Handling petitions to the tax court.

l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.

m. In connection with the administration of an estate or trust:

1. Making application for letters testamentary or letters of administration.

2. Abstracting or passing upon title to property.

3. Handling litigation relating to claims by or against the estate or trust.

4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default.

(3) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, the corporation shall comply with the following:

a. The initial opening and inventorying of safe deposit boxes in connection with the administration of an estate for which the corporation is executor or administrator shall be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate.

b. The furnishing of a beneficiary with applicable portions of a testator's will relating to such beneficiary shall, if accompanied by any legal advice or opinion, be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate or matter.

c. In matters involving estate and inheritance taxes and federal and State income taxes, the corporation shall not execute waivers of statutes of limitations without the advice of an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services in connection with that particular estate or matter.

d. An attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with an estate or trust shall be furnished copies of inventories and accounts proposed for filing with any court and proposed federal estate and North Carolina inheritance tax returns and, on request, copies of proposed income and intangibles tax returns, and shall be afforded an opportunity to advise and counsel the corporate fiduciary concerning them prior to filing."

SECTION 3.6. G.S. 95-25.3(d) reads as rewritten:

"(d) The Commissioner, in order to prevent curtailment of opportunities for employment of the economically disadvantaged and the unemployed, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to all persons (i) who have been unemployed for at least 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are, receiving Work First Family Assistance or who are receiving supplemental security benefits under Title XVI of the Social Security Act.

Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for such subminimum wage shall be issued by the ~~Employment Security Commission.~~Division of Employment Security.

The regulation issued by the Commissioner shall not permit employment at the subminimum rate for a period in excess of 52 weeks."

SECTION 3.7. G.S. 94-144(b) reads as rewritten:

"(b) A listing of employment by area and industry of employers who have an assigned account number by the ~~Employment Security Commission~~ Department of Commerce, Division of Employment Security (DES), shall be supplied annually to the Commissioner by the ~~Employment Security Commission of this State.~~ DES. The listing of employment by area and industry shall contain at least the following: employer name; ~~Employment Security Commission~~ DES account number; indication of whether multiple or a single report unit;

number of reporting units; average employment; establishment size code; geographical area; any four-digit code; and any other information deemed necessary by the ~~Commissioner~~ Division to meet federal reporting requirements."

SECTION 3.8. G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs in an enterprise tier three, four, or five area if, for the calendar year the jobs are created, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central office or aircraft facility in a tier three, four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those positions are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer must use the wage standard for the calendar year in which the taxable year begins. No wage standard applies to credits for activities in an enterprise tier one or two area. For the purposes of this subsection, for a fiber, yarn, or thread mill that uses a sequential manufacturing process in which separate parts of the sequential manufacturing process are performed in different facilities within the same county, the term "location" may mean either the specific establishment or all facilities in the county in which parts of the process are performed.

Part-time jobs for which the taxpayer provides health insurance as provided in subsection (b2) of this section are considered to have an average weekly wage at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located. There may be a period of up to 100 days between the time at which an employee begins a part-time job and the time at which the taxpayer begins to provide health insurance for that employee.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to one hundred ten percent (110%) of the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the ~~Employment Security Commission~~ Division of Employment Security for the most recent period for which data are available. The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

SECTION 3.9. G.S. 105-259(b)(9) and (9a) read as rewritten:

"(9) To furnish to the ~~Employment Security Commission~~ Division of Employment Security the name, address, and account and identification numbers of a taxpayer when the information is requested by the ~~Commission~~ Division in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(9a) To furnish information to the ~~Employment Security Commission~~ Division of Employment Security to the extent required for its NC WORKS study of the working poor pursuant to G.S. 108A-29(r). The ~~Employment Security Commission~~ Division of Employment Security shall use information furnished to it under this subdivision only in a nonidentifying form for statistical and analytical purposes related to its NC WORKS study. The information that may be furnished under this subdivision is the following with respect to individual income taxpayers, as shown on the North Carolina income tax forms:

a. Name, social security number, spouse's name, spouse's social security number, and county of residence.
b. Filing status and federal personal exemptions.
c. Federal taxable income, additions to federal taxable income, and total of federal taxable income plus additional income.
d. Income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources.
e. Exemption for children, nonresidents' and part-year residents' exemption for children, and credit for children.
f. Expenses for child and dependent care, portion of expenses paid while a resident of North Carolina, portion of expenses paid while a resident of North Carolina that was incurred for dependents who were under the age of seven and dependents who were physically or mentally incapable of caring for themselves, credit for child and dependent care expenses, other qualifying expenses, credit for other qualifying expenses, total credit for child and dependent care expenses."

SECTION 3.10. G.S. 105A-8(b) reads as rewritten:

"(b) Hearing. – A hearing on a contested claim of a State agency, except a constituent institution of The University of North Carolina or the ~~Employment Security Commission,~~ Division of Employment Security must be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The University of North Carolina must be conducted in accordance with administrative procedures approved by the Attorney General. A hearing on a contested claim of the ~~Employment Security Commission~~ Division of Employment Security must be conducted in accordance with rules adopted by that ~~Commission.~~ Division. A request for a hearing on a contested claim of any State agency must be filed within 30 days after the State agency mails the debtor notice of the proposed setoff. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

If a debtor owes a debt to a State agency and the net proceeds credited to the State agency for the debt exceed the amount of the debt, the State agency must send the balance to the debtor. No part of the collection assistance fee retained by the Department may be returned when a debt is owed but it is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-241.21. A State agency that returns a refund to a taxpayer under this subsection must pay from the State agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer."

SECTION 3.11. G.S. 105A-9 reads as rewritten:

"**§ 105A-9. Appeals from hearings.**

Appeals from hearings allowed under this Chapter, other than those conducted by the ~~Employment Security Commission,~~ Division of Employment Security, shall be in accordance with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of initial judicial review shall be the superior court for the county in which the debtor resides. Appeals from hearings allowed under this Chapter that are conducted by the ~~Employment Security Commission of North Carolina~~ Division of Employment Security shall be in accordance with the provisions of Chapter 96 of the General Statutes."

SECTION 3.12. G.S. 108A-29 reads as rewritten:

"**§ 108A-29. Priority for employment services.**

(a) Repealed by Session Laws 2009-489, s. 12, effective August 26, 2009.

(b) Individuals seeking to apply or reapply for Work First Program assistance and who are not exempt from work requirements shall register with the ~~Employment Security Commission~~ Division of Employment Security for employment services. The point of registration shall be at an office of the ~~Employment Security Commission~~ Division in the county in which the individual resides or at another location designated in a Memorandum of Understanding between the ~~Employment Security Commission~~ Division and the local department of social services.

...

(f) Each county department of social services shall enter into a cooperative agreement with the local ~~Employment Security Commission~~ Division to operate the Job Search component on behalf of Work First Program registrants. The cooperative agreement shall include a provision for payment to the ~~Employment Security Commission~~Division by the county department of social services for the cost of providing those services, not otherwise available to all clients of the ~~Employment Security Commission,~~ Division, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant. The county department of social services may also enter into a cooperative agreement with the community college system or any other entity to operate the Job Preparedness component. This cooperative agreement shall include a provision for payment to that entity by the county department of social services for the cost of providing those services, not otherwise available to all clients of the ~~Employment Security Commission,~~ Division, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant.

(g) The ~~Employment Security Commission~~ Division shall further assist registrants through job search, job placement, or referral to community service, if contracted to do so.

(h) An individual placed in the Job Search component of the ~~Employment Security Commission~~ Division or other agency providing Job Search services shall look for work and shall accept any suitable employment. If contracted, the ~~Employment Security Commission~~ Division shall refer individuals to current job openings and shall make job development contacts for individuals. Individuals so referred shall be required to keep a record of their job search activities on a job search record form provided by the ~~Commission,~~ Division, and the ~~Employment Security Commission~~ Division will monitor these activities. A "job search record" means a written list of dates, times, places, addresses, telephone numbers, names, and circumstances of job interviews. The Job Search component shall include at least one weekly contact with the ~~Employment Security Commission.~~ Division. The ~~Employment Security Commission~~ Division shall adopt rules to accomplish this subsection.

(i) The ~~Employment Security Commission~~ Division of Employment Security shall notify all employers in the State of the "Exclusive No-Fault" Referral Service available through the ~~Employment Security Commission~~ Division of Employment Security to employers who hire personnel through Job Service referrals.

(j) All individuals referred to jobs through the ~~Employment Security Commission~~ Division of Employment Security shall be instructed in the procedures for applying for the Federal Earned Income Credit (FEIC). All individuals referred to jobs through the ~~Employment Security Commission~~ Division who qualify for the FEIC shall apply for the FEIC by filing a W-5 form with their employers.

...

(l) The ~~Employment Security Commission~~ Division of Employment Security shall work with the Department of Labor to develop a relationship with these private employment agencies to utilize their services and make referrals of individuals registered with the ~~Employment Security Commission.~~ Division of Employment Security.

...

(n) If after evaluation of an individual the ~~Employment Security Commission~~ Division of Employment Security believes it necessary, the ~~Employment Security Commission~~ Division or the county department of social services also may refer an individual to a Job Preparedness provider. The local community college should include General Education Development, Adult Basic Education, or Human Resources Development programs that are already in existence as a part of the Job Preparedness component. Additionally, the ~~Commission~~ Division or the county department of social services may refer an individual to a literacy council. Through a Memorandum of Understanding between the ~~Employment Security Commission,~~ Division of Employment Security, the local department of social services, and other contracted entities, a system shall be established to monitor an individual's progress through close communications with the agencies assisting the individual. The ~~Employment Security Commission~~ Division of Employment Security or Job Preparedness provider shall adopt rules to accomplish this subsection.

...

(p) The ~~Employment Security Commission~~ Division shall expand its Labor Market Information System. The expansion shall at least include: statistical information on unemployment rates and other labor trends by county; and publications dealing with licensing requirements, economic development, and career projections, and information technology systems which can be used to track participants through the employment and training process.

...."

SECTION 3.13. G.S. 110-129.2(g)(1) reads as rewritten:

"(g) Other Uses of Directory Information. – The following agencies may access information entered into the Directory from employer reports for the purposes stated:

(1) The ~~Employment Security Commission~~ Division of Employment Security for the purpose of administering employment security programs."

SECTION 3.14. G.S. 110-136.2 reads as rewritten:

"**§ 110-136.2. Use of unemployment compensation benefits for child support.**

...

(b) Upon notification of a voluntary assignment by the Department of Health and Human Services, the ~~Employment Security Commission~~ Division of Employment Security shall deduct and withhold the amount assigned by the responsible parent as provided in G.S. 96-17.

(c) Any amount deducted and withheld shall be paid by the ~~Employment Security Commission~~ Division of Employment Security to the Department of Health and Human Services for distribution as required by federal law.

(d) Voluntary assignment of unemployment compensation benefits shall remain effective until the ~~Employment Security Commission~~ Division of Employment Security receives notification from the Department of Health and Human Services of an express written revocation by the responsible parent.

...

(f) In the absence of a voluntary assignment of unemployment compensation benefits, the Department of Health and Human Services shall implement income withholding as provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of the requirement to withhold shall be served upon the ~~Employment Security Commission~~ Division and payment shall be made by the ~~Employment Security Commission~~ Division directly to the Department of Health and Human Services pursuant to G.S. 96-17 or to another state under G.S. 52C-5-501. Except for the requirement to withhold from unemployment compensation benefits and the forwarding of withheld funds to the Department of Health and Human Services or to another state under G.S. 52C-5-501, the ~~Employment Security Commission~~ Division is exempt from the provisions of G.S. 110-136.8."

SECTION 3.15. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the ~~North Carolina Employment Security Commission~~ Division of Employment Security on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes of purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and (6)a."

SECTION 3.16. G.S. 132-3(c) reads as rewritten:

"(c) Employment Security ~~Commission~~ Records. – Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the ~~Employment Security Commission~~ Division of Employment Security has been copied in any manner, the original record may be destroyed upon the order of the ~~Chairman of the Employment Security Commission.~~ Division. If a record of ~~the Commission~~ that Division has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the ~~Chairman of the Employment Security Commission.~~ Assistant Secretary of Commerce."

SECTION 3.17. G.S. 135-16 reads as rewritten:

"**§ 135-16. Employees transferred to North Carolina State Employment Service by act of Congress.**

Notwithstanding any provision contained in this Chapter, any employee of the United States Employment Service who was transferred to and became employed by the State of North Carolina, or any of its agencies, on November 16, 1946, by virtue of Public Laws 549, 79th Congress, Chapter 672, 2nd Session, and who was employed by the War Manpower Commission or the United States Employment Service between January 1, 1942, and November 15, 1946, shall be deemed to have been engaged in membership service as defined by this Chapter for any payroll period or periods between such dates: Provided, that any such employee or member on or before January 1, 1948, pays to the Board of Trustees for the benefit of the proper fund or account an amount equal to the accumulated contributions, with interest thereon, that such employee or member would have made during such period if he had been a member of the Retirement System with earnable compensation based on the salary received for such period and as limited by this Chapter: Provided, further that funds are made available by the United States Employment Service, or other federal agency, to the ~~Employment Security Commission~~ Division of Employment Security for the payment of and the ~~Employment Security Commission~~ Division of Employment Security pays to the Board of Trustees for the benefit of the proper fund a sum equal to the employer's contributions that would have been paid for such period for members or employees who pay the accumulated contributions provided in this section.

The Board of Trustees is authorized to adopt and issue all necessary rules and regulations for the purpose of administering and enforcing the provisions of this section."

SECTION 3.18. G.S. 138A-24(14)c. reads as rewritten:

"c. A covered person serving on, or a prospective appointee to, one of the following panels or boards:

1. Alcoholic Beverage Control Commission.
2. Coastal Resources Commission.
3. State Board of Education.
4. State Board of Elections.
5. ~~Employment Security Commission.~~Division of Employment Security.
6. Environmental Management Commission.
7. Industrial Commission.
8. State Personnel Commission.
9. Rules Review Commission.
10. Board of Transportation.
11. Board of Governors of the University of North Carolina.
12. Utilities Commission.
13. Wildlife Resources Commission."

SECTION 3.19. G.S. 143B-181 reads as rewritten:

"**§ 143B-181. Governor's Advisory Council on Aging – members; selection; quorum; compensation.**

The Governor's Advisory Council on Aging of the Department of Health and Human Services shall consist of 33 members, 29 members to be appointed by the Governor, two members to be appointed by the President Pro Tempore of the Senate, and two members to be appointed by the Speaker of the House of Representatives. The composition of the Council shall be as follows: one representative of the Department of Administration; one representative of the Department of Cultural Resources; one representative of the ~~Employment Security Commission;~~ Division of Employment Security; one representative of the Teachers' and State Employees' Retirement System; one representative of the Commissioner of Labor; one representative of the Department of Public Instruction; one representative of the Department of Environment and Natural Resources; one representative of the Department of Insurance; one representative of the Department of Crime Control and Public Safety; one representative of the Department of Community Colleges; one representative of the School of Public Health of The University of North Carolina; one representative of the School of Social Work of The University of North Carolina; one representative of the Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 19 members at large. The at large members shall be citizens who are knowledgeable about services supported through the Older Americans Act of 1965, as amended, and shall include persons with greatest economic or social need, minority older persons, and participants in programs under the Older Americans Act of 1965, as amended. The Governor shall appoint 15 members at large who meet these qualifications and are 60 years of age or older. The four remaining members at large, two of whom shall be appointed by the President Pro Tempore of the Senate and two of whom shall be appointed by the Speaker of the House of Representatives, shall be broadly representative of the major private agencies and organizations in the State who are experienced in or have demonstrated particular interest in the special concerns of older persons. At least one of each of the at-large appointments of the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be persons 60 years of age or older. The Council shall meet at least quarterly.

Members at large shall be appointed for four-year terms and until their successors are appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council as chair to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Health and Human Services."

SECTION 3.20. G.S. 143B-407(a) reads as rewritten:

"(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Health and Human Services, the ~~Director of the Employment Security Commission,~~ Assistant Secretary of Commerce in charge of the Division of Employment Security; the Secretary of Administration, the Secretary of Environment and Natural Resources, the Commissioner of Labor or their designees and 21 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa Saponi of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; the Sappony; the Occaneechi Band of the Saponi Nation of Alamance and Orange Counties, and the Native Americans located in Cumberland, Guilford, Johnston, Mecklenburg, Orange, and Wake Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa Saponi, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Sappony, one; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two; the Occaneechi Band of the Saponi Nation, one, the Triangle Native American Society, one. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122."

SECTION 3.21. G.S. 143B-417(1)bb. reads as rewritten:"

"(1) To determine the number of student interns to be allocated to each of the following offices or departments:

...

bb. ~~Employment Security Commission~~Division of Employment Security

...."

SECTION 3.22. G.S. 143B-426.25(b)(7) reads as rewritten:

"(b) The North Carolina Farmworker Council shall consist of 13 members as follows:

...

(7) The ~~Chairman of the Employment Security Commission~~ Assistant Secretary of Commerce in charge of the Division of Employment Security or ~~his~~ that officer's designee shall serve ex officio.

...."

SECTION 3.23. G.S. 147-86.1 reads as rewritten:

"**§ 147-86.1. Pool account for local government unemployment compensation.**

(a) The State Treasurer is authorized to establish a pool account, in accordance with rules ~~and regulations~~ of the ~~Employment Security Commission,~~ Division of Employment Security (DES), in cooperation with any one or more units of local government, for the purpose

of reimbursing the ~~Employment Security Commission~~ DES for unemployment benefits paid by the ~~Commission~~ DES and chargeable to each local unit of government participating in the pool account. In the pool account established pursuant to this section, the funds contributed by a unit of local government shall remain the funds of the particular unit, and interest or other investment income earned by the pool account shall be prorated and credited to the various contributing local units on the basis of the amounts thereof contributed, figured according to an average periodic balance or some other sound accounting principle.

(b) The State Treasurer shall pay to the ~~Employment Security Commission,~~ Division of Employment Security, within 25 days from receipt of a list thereof, all unemployment benefits charged by the ~~Commission~~ DES to each unit of local government participating in the pool account from the funds in the pool account belonging to each such unit, to the extent that said funds are sufficient to do so.

(c) Notwithstanding the participation by a unit of local government in the pool account authorized by this section, such unit shall remain liable to the ~~Employment Security Commission~~ Division of Employment Security for any benefits duly charged by the ~~Commission~~ Division to the unit which are not paid by the State Treasurer from funds in the pool account belonging to the unit. Notwithstanding its participation in the pool account, each unit of local government shall continue to maintain an individual account with the ~~Employment Security Commission.~~ DES.

(d) The Director of the Budget shall be authorized to transfer from the interest earned on the pool account, to the State Treasurer's departmental budget, such funds as may be necessary to defray the Treasurer's cost of administering the pool account."

SECTION 3.24. G.S. 158-7.1(d2)(1) reads as rewritten:

"(d2) In arriving at the amount of consideration that it receives, the Board may take into account prospective tax revenues from improvements to be constructed on the property, prospective sales tax revenues to be generated in the area, as well as any other prospective tax revenues or income coming to the county or city over the next 10 years as a result of the conveyance or lease provided the following conditions are met:

(1) The governing board of the county or city shall determine that the conveyance of the property will stimulate the local economy, promote business, and result in the creation of a substantial number of jobs in the county or city that pay at or above the median average wage in the county or, for a city, in the county where the city is located. A city that spans more than one county is considered to be located in the county where the greatest population of the city resides. For the purpose of this subdivision, the median average wage in a county is the median average wage for all insured industries in the county as computed by the ~~Employment Security Commission~~ Department of Commerce, Division of Employment Security, for the most recent period for which data is available."

SECTION 3.25. G.S. 165-10 reads as rewritten:

"**§ 165-10. Transfer of veterans' activities.**

The Governor may transfer to the Department such funds, facilities, properties and activities now being held or administered by the State for the benefit of veterans, their families and dependents, as he may deem proper; provided, that the provisions of this section shall not apply to the activities of the ~~North Carolina Employment Security Commission~~ Department of Commerce, Division of Employment Security, in respect to veterans."

PART IV. REPORTING; OTHER MATTERS

SECTION 4.1. By November 15, 2011, the Board of Review established by this act shall be appointed and the Department of Commerce shall assign staff to the Board.

SECTION 4.2. By June 30, 2012, the Secretary of the Department of Commerce shall make a detailed written report to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division on the consolidation of the Employment Security Commission into the Department of Commerce and on any changes the Secretary recommends to maintain the solvency of the Employment Security Fund.

PART V. AUTHORITY OF THE REVISOR

SECTION 5.1. Deletion of References. – The Revisor of Statutes may delete any reference in the General Statutes to the Employment Security Commission, or any derivative thereof, and substitute references to the Division of Employment Security (DES) of the Department of Commerce created by this act wherever conforming changes are necessary. The Revisor of Statutes may delete any reference in the General Statutes to the Chairman of the Employment Security Commission, or any derivative thereof, and substitute references to the Secretary of Commerce, as appropriate.

PART VI. EFFECTIVE DATE

SECTION 6.1. Except as otherwise provided, this act becomes effective November 1, 2011.

SENATE BILL 532: ESC/Jobs Reform

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 1, 2011
Introduced by:	Sens. Clary, Rucho	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S532-CSTD-44		

SUMMARY: ***House Bill 813 would transfer all of the statutory powers, duties, and functions of the Employment Security Commission to the Department of Commerce. The bill would establish a Division of Employment Security within the Department of Commerce and subject that Division to the rule-making requirements under the Administrative Procedure Act. The bill also makes other modifications and conforming changes to align the employment security functions under the Secretary of Commerce.***

BILL ANALYSIS:

Part I. Transfer; General Provisions; Rulemaking

House Bill 813 would eliminate the current Employment Security Commission and transfer all of its statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds to the Department of Commerce. The bill authorizes the establishment of the Division of Employment Security, under the direction of the Secretary of Commerce, to become the successor to the Commission for purposes of all the rights, powers, duties and obligations of the Employment Security Commission. The Secretary of Commerce is made the successor for purposes of any contract, or other document which refers to the Employment Security Commission. The bill also directs that the Secretary shall also be substituted as a party in any action or proceeding pending on January 1, 2012, brought by or against the Employment Security Commission.

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

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

This part of the bill rewrites Chapter 96 of the General Statutes to delete all references to the Employment Security Commission and substitutes "Department of Commerce, Division of Employment Security" or "Division". The current seven member commission is abolished. The Secretary is directed to appoint an Assistant Secretary to oversee the Division. A three member Board of Review, appointed by the Governor, is authorized to hear appeals arising from the decisions of the Division and to determine the policies and procedures for conducting appeals. The Board is composed of one member representing employers, one member representing employees, and one member representing the general public. The member representing the general public must be a licensed attorney and will serve as chair of the Board. The members will each serve four-year terms and will be subject to confirmation by the General Assembly. Two working sections are created within Division. The Employment Security

Section will administer the employment services functions and the Employment Insurance Section will administer the unemployment taxation and assessment functions.

Section 2.14 makes significant clarifications regarding benefit eligibility:

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

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

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

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

Part III Makes other conforming amendments to the General Statutes.

Part IV **Reporting; other matters.**

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

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

EFFECTIVE DATE: Except as otherwise provided, this act becomes effective November 1, 2011.

Karen Cochrane-Brown, counsel to House Commerce, contributed to this summary.

S532-SMTD-65(CSTD-44) v2

PAGES ATTENDING

COMMITTEE: ~~Health Care~~ Finance ROOM: 544

DATE: 6-1 TIME: 2:15 pm

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	David Scoggins	Denver	Forrester
5	~~Jeremy Glover~~	~~Bailey~~	~~Newton~~
6	~~Ruby Eddington~~	~~Wilson~~	~~Alexander~~
7	Noah Parrish	Greensboro	Vaughan
8	Joseph Curry	Angier	Blake
9	Abby Newsom	Raleigh	P. Berger
10			

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 1, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Alissa Willett	NCACC
Rebecca Trank	NCACC
Breeden Blackwell	NCHA
Michelle Frazier	MFTS
Dan Calloway	A-B
Edward Wilson	none
Anne Wilson	—
Jon Carr	Jordan Price Law Firm

SENATE FINANCE COMMITTEE
Tuesday, June 7, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 7, 2011 in room 544 of the Legislative Office Building. Twenty-seven members of the committee were present. Senator Hartsell presided as chair.

S.B. 312 – Roanoke Rapids Local Option Sales Tax

Senator Jones was recognized to explain the bill. Senator Newton moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The bill authorizes the Town of Roanoke Rapids to levy a 1% sales and use tax for the purpose of repaying debt related to the tax increment financing bonds issued to finance the Roanoke Rapids Theatre, formerly known as the Randy Parton Theatre. The PCS specifies the limited purpose of the tax levy in Section 1 of the bill. Eric Wayne, Director of the Sales & Use Division of the Department of Revenue, was recognized to answer questions. Cindy Avrette, a staff attorney with the Research Division, was recognized to further explain the bill and answer questions. Tony Solari, Treasurer's office, was recognized to answer questions. Senator Dannelly moved for a favorable report and the motion carried. A copy of the PCS, the fiscal note, and the summary is attached.

S.B. 274 – Greenville Alcoholic Beverage Fee

Senator Jenkins was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The bill authorizes the City of Greenville to levy either a 1% tax on the sale of alcoholic beverages or a license tax on the person holding a retail ABC permit for an establishment located in the City. The PCS removes the 1% sales tax from the bill and replaces the license tax with a license fee. The substance of the license fee does not differ from the license tax proposed in the original bill. Cindy Avrette was recognized to further explain the PCS and answer questions. The PCS was discussed, but no vote was taken. A copy of the PCS and the summary is attached.

H.B. 708 – Modify Property Tax Base Exclusions

Representative Ross was recognized to explain the bill which excludes from property tax a contiguous tract of commercial property that is significantly damaged by fire or explosion and donated to a nonprofit corporation. The bill would be effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expire for taxable years beginning on or after July 1, 2016. Senator Stevens moved for a favorable report and the motion carried. A copy of the bill, the fiscal note, and the summary is attached.

S.B. 542 – Community Colleges/E-Procurement Exemption

Senator Rucho was recognized to explain the bill which exempts community colleges from the E-Procurement system. Sam Byassee, Division of Purchase and Contract's

Director was recognized to speak in opposition to the bill. Joyce Peters, lobbyist for the NC Association of Community College Trustees, was recognized to speak in favor of the bill. Senator Tillman moved for a favorable report with a referral to the Appropriations Committee. The motion carried. A copy of the bill and the summary is attached.

H.B. 45 – Accelerate Cleanup of Industrial Properties

Representative Gillespie was recognized to explain the bill. It authorizes a risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site. Senator Allran moved for a favorable report and the motion carried. A copy of the bill, the fiscal note and the summary is attached.

Due to the time, the remaining bills were moved to a future agenda.

The meeting adjourned at 1:56 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Tuesday, June 7, 2011, 1:00 PM
544 LOB

AGENDA

Introduction of Pages

Bills

HB 45	Accelerate Cleanup of Industrial Properties.	Rep. Gibson Rep. Gillespie Rep. Cook
HB 206	Modify Property Tax Base Exclusions.	Rep. Jackson Rep. Ross Rep. Gill
HB 318	State Treasurer's Investments.-AB	Rep. Folwell Rep. McGee
HB 335	Maintenance of Prisons.	Rep. Horn Rep. Burr Rep. Daughtry Rep. Guice
HB 432	Swine in Transport/Regulate Feral Swine.	Rep. Dixon Rep. Bell Rep. LaRoque Rep. West
HB 692	Increase Payment of Unclaimed Property Claims.	Rep. Hurley Rep. Randleman
SB 267	Rev Laws Tech, Clarify., & Admin. Chngs.	Sen. Clodfelter Sen. Hartsell
SB 274	Greenville Alcoholic Beverage Tax.	Sen. Jenkins
SB 312	Roanoke Rapids Local Option Sales Tax.	Sen. Jones
SB 436	Extend Qualified Business Venture Tax Credit.	Sen. Hartsell
SB 542	Community Colleges/E-Procurement Exemption.	Sen. Rucho
SB 561	Sedimentation Civil Penalty Cap & Remissions.	Sen. Brock Sen. Rouzer Sen. Daniel

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, June 07, 2011

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

FAVORABLE

S.B. **542** Community Colleges/E-Procurement Exemption.
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget

H.B.(SCS #1) **45** Accelerate Cleanup of Industrial Properties.
Sequential Referral: None
Recommended Referral: None

H.B. **206** Modify Property Tax Base Exclusions.
Sequential Referral: None
Recommended Referral: None

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

S.B. **312** Roanoke Rapids Local Option Sales Tax.
Draft Number: 55310
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:

S542 – Sen. Rucho
H45 – Sen. Allran
H206 – Sen. Stevens
S312 – Sen. Jones

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 312*
PROPOSED COMMITTEE SUBSTITUTE S312-PCS55310-MEx-17

Short Title: Roanoke Rapids Local Option Sales Tax. (Local)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF ROANOKE RAPIDS TO LEVY A ONE-CENT LOCAL SALES AND USE TAX TO REPAY TAX INCREMENT FINANCING BONDS.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Roanoke Rapids only. The City of Roanoke Rapids may only place on the ballot initiative and may only use the proceeds to repay the tax increment financing bonds issued for the construction of the Roanoke Rapids Theatre, formerly known as the Randy Parton Theatre.

SECTION 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 47.

"One-Cent (1¢) Municipality Sales and Use Tax.

"**§ 105-539. Short title.**

This Article is the One-Cent (1¢) Municipality Sales and Use Tax.

"**§ 105-540. Levy.**

(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the city council may, by resolution and after 10 days' public notice, levy a local sales and use tax at a rate of one percent (1%).

(b) Vote. – The city council may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local sales and use tax in the county as provided in this Article. The election shall be held on a date jointly agreed upon by the city council and the board of elections and shall be held in accordance with the procedures of G.S. 163-287.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of the tax authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

Local sales and use tax at the rate of one percent (1%) in addition to all other State and local sales and use taxes for the sole purpose of repaying debt related to [insert name of project].'

"**§ 105-541. Administration.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. References to 'county' or 'counties' within Article 39 of this Chapter shall be

interpreted as referring to 'municipality' or 'municipalities,' respectively, for purposes of the tax authorized by this Article.

"**§ 105-542. Distribution and use of taxes.**

(a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing municipality for which the Secretary collects the tax the net proceeds of the tax collected in that municipality under this Article. If the Secretary collects local sales or use taxes in a month and the taxes cannot be identified as being attributable to a particular taxing municipality, the Secretary shall allocate the taxes among the taxing municipalities in proportion to the amount of taxes collected in each municipality under this Article during that month and shall include them in the monthly distribution. Amounts collected by electronic funds transfer payments are included in the distribution for the month in which the return that applies to the payment is received.

(b) Use. – A municipality may use the net proceeds of a tax levied under this Article only for the repayment of tax increment financing bonds for the project listed on the ballot initiative.

"**§ 105-543. Expiration.**

A tax levied under this Article expires upon the repayment of the tax increment financing bonds for the project listed on the ballot initiative that existed as of the date of the ballot initiative. The expiration of a tax pursuant to this Article does not affect the rights or liabilities of a municipality, a taxpayer, or another person arising under the expired tax; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before its expiration. If the Secretary receives a valid request for a refund of a tax levied under this Article after the tax has expired and the net proceeds have been distributed, the Secretary shall draw the refund from the taxing municipality's share of the net proceeds of the tax it levies under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, as applicable.

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

SENATE BILL 312:
Roanoke Rapids Local Option Sales Tax

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Sen. Jones	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S312-CSMEx-17		

SUMMARY: ***Senate Bill 312[1] would authorize the Town of Roanoke Rapids to levy 1% sales and use tax for the purpose of repaying debt related to the tax increment financing bonds issued to finance the Roanoke Rapids Theatre, formerly known as the Randy Parton Theatre. The proposed committee substitute specified the limited purpose of the tax levy in Section 1 of the bill.***

CURRENT LAW: Counties and cities are created by the State and have only the authority given to them by the State. The General Assembly has authorized counties to levy a local option sales tax on at least four different occasions. The counties must distribute a portion of the 2% local sales tax revenues to the cities. The distribution between the county and its municipalities is based upon one of two methods: ad valorem or per capita.

The General Assembly has not authorized any cities to levy a city-only sales tax. Cities do have general authority to local privilege license taxes and vehicle taxes. Cities also receive a distribution of beer and wine excise taxes, electric franchise taxes, piped natural gas excise taxes, telecommunications taxes, and video programming taxes.

The current local sales tax authority is as follows:

Authority	*Levy Amount*	*Distribution*	*Use of Proceeds by City*	*Counties*
Article 39	1 cent	Counties and cities	Any public purpose	100
Article 40	½ cent	Counties and cities	Any public purpose	100
Article 42	½ cent	Counties and cities	Any public purpose	100
Article 46	¼ cent	Counties only	N/A	19
Article 43	½ cent	Mecklenburg County	N/A	1

BILL ANALYSIS: The PCS for Senate Bill 312 would, for the first time, authorize a municipality in North Carolina to levy a city-only sales tax. The bill sets the rate at 1% and restricts its use to the repayment of tax increment financing bonds for the Roanoke Rapids Theatre, formerly known as the Randy Parton Theatre. The tax would be administered in the same manner as the county local option sales tax. The city council may not levy the tax unless the majority of the voters approve the levy. The tax levy expires, by a manner of law, upon the retirement of the tax increment financing bonds for the Roanoke Rapids Theatre.

[1] As introduced, this bill is identical to House Bill 369, sponsored by Reps. Bryant and Bradley. The bill is in House Finance.

BACKGROUND: Roanoke Rapids is located in Halifax County. Halifax County is in northeastern North Carolina, eight miles from the Virginia border. It has a population of 57,000 residents. The estimated population of Roanoke Rapids is 17,000. There are six other municipalities in Halifax County: Enfield, Halifax, Hobgood, Littleton, Scotland Neck, and Weldon.

The tentative annual budget estimate for Roanoke Rapids for Fiscal Year 2011-12, as published on its website, includes $1,774,578 for the Roanoke Rapids Theatre out of a $14,407,026 budget. The proposed budget includes a tax rate of $.624 per $100 of valuation.

The voters approved a constitutional amendment in November 2004 to allow local governments to finance development within defined districts by issuing tax increment financing bonds without a local referendum. This development tool, known as 'tax increment financing', allows local governments to set aside the additional property taxes that are generated by a new investment to pay for public facilities that support that new investment. A local government may also repay the debt with any available revenues of the unit, provided the financing agreement does not constitute of pledge of the unit's taxing power.

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

S312-SMRB-81(CSMEx-17) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 7, 2011

TO: Senate Finance Committee

FROM: Sandra Johnson
Fiscal Research Division

RE: Senate Bill 312 (Unknown Edition)

FISCAL IMPACT ($ In Millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
Local	**$2.34**	**$2.38**	**$2.42**	**$2.50**	**$2.75**
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
North Carolina Department of Revenue

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: Senate Bill 312 authorizes the City of Roanoke Rapids to levy a one-cent sales tax. Should the bill become law, the legislation would enact a new local sales tax option,

Article 47. The local authorization of Article 47 would be subject to public referendum. The revenue from the one-cent levy can only be used to pay the debt due on tax increment financing bonds.

ASSUMPTIONS AND METHODOLOGY: The enactment of Article 47, the Roanoke Rapids Local Option Sales Tax, would generate roughly $2.4 million per fiscal year. This fiscal estimate is based on Roanoke Rapid's taxable sales as reported by the North Carolina Department of Revenue during the 2008-09 fiscal year. The 2008-09 estimates include the taxable sales of businesses remitting State sales and use taxes during the 2008-09 fiscal year. The 2008-09 collection figures were then adjusted for changes in state sales and use collections and inflation to develop tax projections in future years.

SOURCES OF DATA: North Carolina Department of Revenue, State Sales and Use Tax Statistics for Fiscal Year 2008-09, available at: http://www.dor.state.nc.us/publications/fy08-09salesusestats.pdf.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 274
PROPOSED COMMITTEE SUBSTITUTE S274-CSRBx-51 [v.1]

6/6/2011 9:51:29 PM

Short Title: Greenville Alcoholic Beverage Fee. (Local)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF GREENVILLE TO LEVY A FEE ON ESTABLISHMENTS HAVING A RETAIL ABC PERMIT TO OFFSET LAW ENFORCEMENT EXPENSE.

The General Assembly of North Carolina enacts:

SECTION 1. Intent. – This act authorizes the City of Greenville to levy a fee on all or a class of establishments having retail ABC permits with the proceeds of the fee being dedicated for law enforcement purposes.

SECTION 2. Definitions. – The definitions in G.S. 105-113.68, 18B-101, and 18B-1000 apply to this act to the extent they are not inconsistent with the provisions of this act. The following definitions also apply in this act:

(1) Alcoholic beverage. – Any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(2) Licensed establishment. – A place that has been issued a retail ABC permit by the North Carolina Alcoholic Beverage Control Commission and is subject to the license fee levied pursuant to this act or to the license tax levied pursuant to this act.

(3) Net proceeds. – The gross proceeds of the tax levied pursuant to this act less the cost to the city of administering and collecting the tax.

(4) Retail ABC permit. – Any written or printed authorization issued by the North Carolina Alcoholic Beverage Control Commission that authorizes the retail sale of an alcoholic beverage for consumption on or off the premises.

SECTION 3. Authorization and Scope. – The City Council of the City of Greenville may require a person holding a retail ABC permit for an establishment located in the city for which the city may impose a license tax under G.S. 105-113.77 to pay a license fee, in addition to the local license tax, to operate in the city. The license fee may be required by the city council for all establishments for which a retail ABC permit has been issued or for establishments which qualify as one or more of the categories of eligible places for which a retail ABC permit may be issued, as provided in G.S. 18B-1001, and for which has been issued a retail ABC permit. The exclusive license requirement of G.S. 105-113.70(d) does not apply to this fee.

SECTION 4. Levy. – The license fee may be levied only by ordinance after a public hearing held on the license fee requirement. Notice of the public hearing must be advertised at least 10 days, but not more than 25 days, before the scheduled date of the hearing. The license fee shall become effective on the date specified in the ordinance levying the fee.

SECTION 5. License Fee. – The license fee amount may vary as provided in this section. The aggregate amount of the proceeds of the license fees levied in any fiscal year pursuant to this act may not exceed the expense incurred by the city in the previous fiscal year of the city for law enforcement purposes related to the licensed establishments.

The city council must set the fee schedule annually based upon the following criteria:

(1) The occupancy of the licensed establishment.

(2) The total occupancy of the licensed establishment combined with other licensed establishments which are located within a specified distance, not to exceed one-quarter mile, from the licensed establishment.

(3) The hours of operation of the licensed establishment.

(4) Any other criteria, as determined by the city council, associated with the expense incurred by the city for law enforcement purposes related to the licensed establishments.

SECTION 6. Collection and Penalties. – A licensed establishment must pay the fee at the same time and in the same manner as the local license tax that may be imposed under G.S. 105-113.77. A licensed establishment may not engage in the business authorized by the retail ABC permit within the City of Greenville unless the license fee is paid. A person, firm, corporation, or association who fails or refuses to pay the license fee is subject to the civil and criminal penalties set in G.S. 105-236 for failure to pay the tax due. The city council may, for good cause shown, compromise or forgive the penalties imposed.

SECTION 7. Use of Proceeds. – The net proceeds of the fee levied pursuant to this act shall be used only for law enforcement purposes related to the licensed establishments.

SECTION 8. Repeal. – The fees levied pursuant to this act may be repealed by the city council by enacting an ordinance of repeal. The repeal shall be effective on the date specified in the repeal ordinance. Repeal of a fee levied pursuant to this act does not affect a liability for a fee that was attached before the effective date of the repeal, nor does it affect a right to a refund of a fee that accrued before the effective date of the repeal.

SECTION 9. This act is effective upon ratification.

SENATE BILL 274:
Greenville Alcoholic Beverage Tax

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Sen. Jenkins	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S274-CSRBx-51		

SUMMARY: ***Senate Bill 274 would authorize the City of Greenville to levy either a 1% tax on the sale of alcoholic beverages or a license tax on the person holding a retail ABC permit for an establishment located in the City. The proposed committee substitute removes the 1% sales tax from the bill and replaces the license tax with a license fee. The substance of the license fee does not differ from the license tax proposed in the original bill.***

CURRENT LAW: Article II, Sec. 24(1)(j) prohibits the General Assembly from enacting local acts regulating labor, trade, mining, or manufacturing. Caselaw clearly defines the retail sale of beer and wine and the purchase, sale, and serving of alcoholic beverages by a restaurant as a "trade" within the meaning of this constitutional provision.

Article 2C of Chapter 105 of the General Statutes allows the local governing board of a city or county to impose a license tax on the privilege of engaging in the activities authorized by an ABC permit. The amount of the license is set by G.S. 105-113.77 at $15 for the on-premises sale of beer and wine; $5 for the off-premises sale of beer; and $10 for the off-premises sale of wine. The local license is an annual license. G.S. 105-113.70(d) specifically prohibits a local government from requiring any other license for activities related to the manufacture or sale of alcoholic beverages.

Cities and counties also receive a distribution of the State tax imposed on beer and wine. Revenue received by a city from either the local privilege license tax or the distribution of the State excise tax may be used for any public purpose.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 274 would create a local modification to the exclusive license requirement of G.S. 105-113.70(d) by requiring establishments in the City of Greenville that have a retail ABC permit to not only obtain and pay the local privilege license tax but also pay an additional license fee. The amount of the fee could vary based upon the occupancy of the establishment, the total occupancy of the establishment combined with other establishments located within a specified distance, the hours of operation, and any other criteria determined by the council.

The revenue derived from the fee could only be used to pay the cost of law enforcement related to the licensed establishments. The aggregate amount of the fee revenue in any fiscal year could not exceed the expense incurred by the city in the previous fiscal year for law enforcement purposes related to the licensed establishments.

The fee would be collected in the same manner as the local license tax. The local license is an annual license for the period from May 1 to April 30. A person who did not pay the license fee would be subject to the penalties imposed for failure to pay a tax due.

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

CONSTITUTIONAL CONCERN: The bill may violate the North Carolina Constitutional provision in Article II, Sec. 24(1)(j) that prohibits local acts relating to trade.

S274-SMRB-74(CSRBx-51) v1

HOUSE BILL 206*

Short Title:	Modify Property Tax Base Exclusions.	(Public)
Sponsors:	Representatives Ross, Jackson, and Gill (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Finance.	

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROPERTY TAX BASE EXCLUSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-275 is amended by adding a new subdivision to read:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are designated special classes under Article V, Sec. 2(2), of the North Carolina Constitution and are excluded from tax:

...

(7a) Real and personal property that meets each of the following requirements:

a. It is a contiguous tract of land previously (i) used primarily for commercial or industrial purposes and (ii) damaged significantly as a result of a fire or explosion.

b. It was donated to a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes by an entity other than an affiliate, as defined in G.S. 105-163.010.

c. No portion is or has been leased or sold by the nonprofit corporation."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expires for taxes imposed for taxable years beginning on or after July 1, 2016.

HOUSE BILL 206:
Modify Property Tax Base Exclusions

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Reps. Ross, Jackson, Gill	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 206[1] would exclude from property tax a contiguous tract of commercial property that is significantly damaged by fire or explosion and donated to a nonprofit corporation. The bill would be effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expiring for taxable years beginning on or after July 1, 2016.***

CURRENT LAW: All real and personal property is subject to property tax unless it is excluded or exempted from the tax base. Article V, section 2(2) of the North Carolina Constitution provides that the power to classify property for taxation lies with the General Assembly and that the power of classifying property for taxation must be exercised on a State-wide basis and made by general law uniformly applicable in every county and city.

Article V, section 2(3) of the Constitution allows the General Assembly to exempt property from taxation if it is held for educational, scientific, literary, cultural, charitable, or religious purposes. The exemption must apply on a State-wide basis and be made by general law uniformly applicable in every county and city. G.S. 105-278.7 provides a property tax exemption for property used for educational, scientific, literary, or charitable purposes. Property exempt from taxation under this classification must meet certain ownership and use requirements. In 2002, the Attorney General's office issued an opinion that property owned by the Charlotte/Mecklenburg Development Corporation was not entitled to a charitable exemption where the corporation's goal was to undertake site development and sell the property to businesses. Although the property was owned by a nonprofit entity, it was not held for a charitable purpose.

BILL ANALYSIS: House bill 206 would designate property meeting the following requirements as a special class of property under Article V, section 2(2) of the North Carolina Constitution and exclude it from property taxation. The exclusion would apply for five years: 2011 through 2015. To be included within the classification, property must meet all of the following requirements:

- The property must be a contiguous tract of land previously used primarily for commercial or industrial purposes and damaged significantly as a result of a fire or explosion.
- The property must have been donated to a nonprofit corporation by an entity other than an affiliate.
- The property must not have been leased or sold by the nonprofit corporation.

EFFECTIVE DATE: The bill would become effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expire for taxes imposed for taxable years beginning on or after July 1, 2016.

BACKGROUND: The Garner Economic Development Corporation was formed on November 22, 2010, as a nonprofit corporation. One of its stated purposes is to acquire funds and real property related to the ConAgra plant and to maintain, develop, and market the property for economic development. The ConAgra plant in Garner was damaged significantly as a result of a fire or explosion in June 2009.

H206-SMRB-75(e1) v1

[1] Senate Bill 164, sponsored by Senators Stevens, Hunt, and Blue, is identical to House Bill 206. It is in Senate Finance.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 18, 2011

TO: Representatives Howard, Starnes, and Setzer

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 206 (First Edition)

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
Local Governments:	***Insignificant Property Tax Revenue Loss***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments; NC Department of Revenue

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expires for taxes imposed for taxable years beginning on or after July 1, 2016.

BILL SUMMARY:

HB 206 would allow a property tax exclusion for a commercial property that is heavily damaged by fire or explosion and donated to a nonprofit corporation. The bill also requires that no portion of the property has been sold by the nonprofit.

ASSUMPTIONS AND METHODOLOGY:
The bill would allow a qualifying property to be removed from the property tax base, resulting in a property tax revenue loss for the taxing jurisdictions. Fiscal Research is aware of only one property that would satisfy the requirements for exclusion under the bill. Due to the narrow circumstances under which a property would qualify, the revenue impact is expected to be minimal.

SOURCES OF DATA: NC Association of Assessing Officers

TECHNICAL CONSIDERATIONS: None

SENATE BILL 542

Short Title:	Community Colleges/E-Procurement Exemption.	(Public)
Sponsors:	Senators Rucho; Hartsell, Hise, and Rouzer.	
Referred to:	Finance.	

April 12, 2011

A BILL TO BE ENTITLED

AN ACT EXEMPTING COMMUNITY COLLEGES FROM THE NORTH CAROLINA E-PROCUREMENT SYSTEM AND REPEALING A SECTION OF THE E-PROCUREMENT STATUTE THAT HAS EXPIRED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-48.3 reads as rewritten:

"**§ 143-48.3. Electronic procurement.**

...

(b) The Department of Administration, in conjunction with the Office of the State Controller and the Office of Information Technology Services may, upon request, provide to all State ~~agencies, universities, and community colleges,~~agencies and universities training in the use of the electronic procurement system.

...

~~(f) Any State entity or community college operating a functional electronic procurement system established prior to September 1, 2001, may until May 1, 2003, continue to operate that system independently or may opt into the North Carolina E-Procurement Service. Each entity subject to this section shall notify the Office of Information Technology Services by January 1 of each year of its intent to participate in the North Carolina E-Procurement Service.~~

(g) Notwithstanding any provision of this section, this Article, or any rule adopted by the Secretary of Administration, community colleges are exempt from the North Carolina E-Procurement Service."

SECTION 2. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

...

(8) To establish and maintain a procurement card program for use by State ~~agencies, community colleges,~~ agencies and nonexempted constituent institutions of The University of North Carolina. The Secretary of Administration may adopt temporary rules for the implementation and operation of the program in accordance with the payment policies of the State Controller, after consultation with the Office of Information Technology Services. These rules would include the establishment of appropriate order limits that leverage the cost savings and efficiencies of the procurement card program in conjunction with the fullest possible use of the North Carolina E-Procurement Service. Prior to implementing the program,

the Secretary shall consult with the State Controller, the UNC General Administration, the Community Colleges System Office, the State Auditor, the Department of Public Instruction, a representative chosen by the local school administrative units, and the Office of Information Technology Services. The Secretary may periodically adjust the order limit authorized in this section after consulting with the State Controller, the UNC General Administration, ~~the Community Colleges System Office,~~ the Department of Public Instruction, and the Office of Information Technology Services.

...."

SECTION 3. This act becomes effective July 1, 2011.

SENATE BILL 542:
Community Colleges/E-Procurement Exemption

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Sen. Rucho	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 542 would exempt community colleges from the E-Procurement system.

CURRENT LAW: In 2000, the General Assembly enacted the E-Procurement system. This system allows governmental entities to aggregate their purchase power to obtain better prices from suppliers. The E-Procurement system is maintained by the Department of Administration.

In 2001, any State entity or community college with its own electronic procurement system established prior to 2001 was given the option to continue to operate its own system until May 1, 2003.

BILL ANALYSIS: Senate Bill 543 would exempt community colleges from the E-Procurement system.

The bill would also repeal the obsolete reference to the option to operate an independent system before May 1, 2003.

EFFECTIVE DATE: This act becomes effective July 1, 2011.

S542-SMTD-69(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 4

HOUSE BILL 45*

Committee Substitute Favorable 3/3/11
Committee Substitute #2 Favorable 3/10/11
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/6/11

Short Title: Accelerate Cleanup of Industrial Properties. (Public)

Sponsors:

Referred to:

February 8, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND PRIVATE RESOURCES.

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a remediation process that requires that contaminated industrial sites be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that there are contaminated industrial sites in North Carolina, including land and other property, surface water, and groundwater, that are adversely affected by environmental contamination due to the presence of drilling waste; hazardous and toxic materials, substances, and wastes; solid waste; oil; and other wastes, contaminants, and regulated substances; and

Whereas, the General Assembly finds that the presence of environmental contamination on industrial sites creates both potential and actual harm to public health, safety, and welfare and to the environment; and

Whereas, the General Assembly finds that this potential and actual harm results in substantial economic losses, including reduced property values and tax revenues, decreased ability to develop and expand the beneficial use of these sites, and other opportunity costs because of the uncertainties and concerns that result from the environmental contamination of these sites; and

Whereas, the General Assembly finds that it is in the public interest that contaminated industrial sites are cleaned up or managed in a manner that protects public health, safety, and welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987; the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976; the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988; the Brownfields

Property Reuse Act of 1997; the Dry-Cleaning Solvent Cleanup Act of 1997; the federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986; and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that North Carolina's groundwater is a valuable public and private resource, serving as the drinking water source for one-half of the State's population and also as a water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of North Carolina's surface water and groundwater resources will become increasingly important to the continued economic vitality of the State in the future; and

Whereas, the General Assembly finds that use of site-specific remediation standards based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated site can be protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that use of site-specific remediation standards in appropriate circumstances may encourage accelerated cleanup of contaminated industrial sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated site are to be applicable or relevant under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or release of contaminants to the environment that would result in additional contaminated sites; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310.62 through G.S. 130A-310.64 are reserved for future codification purposes.

SECTION 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 8. Risk-Based Environmental Remediation of Industrial Sites.

"**§ 130A-310.65. Definitions.**

As used in this Part:

(1) "Background standard" means the naturally occurring concentration of a substance in the absence of the release of a contaminant.

(2) "Commission" means the Environmental Management Commission created pursuant to G.S. 143B-282.

(3) "Contaminant" means any substance regulated under any program listed in G.S. 130A-310.67(a).

(4) "Contaminated industrial site" or "site" means any real property that meets all of the following criteria:

a. The property is contaminated and may be subject to remediation under any of the programs or requirements set out in G.S. 130A-310.67(a).

b. The property is or has been used primarily for manufacturing or other industrial activities for the production of a commercial product. This includes a property used primarily for the generation of electricity.

c. No contaminant associated with activities at the property is located off of the property at the time the remedial action plan is submitted.

d. No contaminant associated with activities at the property will migrate to any adjacent properties above unrestricted use standards for the contaminant.

(5) "Contamination" means a contaminant released into an environmental medium that has resulted in or has the potential to result in an increase in the concentration of the contaminant in the environmental medium in excess of unrestricted use standards.

(6) "Fund" means the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11.

(7) "Institutional controls" means nonengineered measures used to prevent unsafe exposure to contamination, such as land-use restrictions.

(8) "Registered environmental consultant" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to Part 3 of Article 9 of Chapter 130A of the General Statutes and rules adopted to implement the Part.

(9) "Remedial action plan" means a plan for eliminating or reducing contamination or exposure to contamination.

(10) "Remediation" means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.

(11) "Systemic toxicant" means any substance that may enter the body and have a harmful effect other than causing cancer.

(12) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses; that are protective of public health, safety, and welfare and the environment; and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Commission, the Commission for Public Health, or the Department.

"**§ 130A-310.66. Purpose.**

It is the purpose of this Part to authorize the Department to approve the remediation of contaminated industrial sites based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety, and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination.

"**§ 130A-310.67. Applicability.**

(a) This Part applies to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9 of Chapter 130A of the General Statutes, including voluntary actions under G.S. 130A-310.9 of that act, and rules promulgated pursuant to those statutes.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976,

Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, and Article 9 of Chapter 130A of the General Statutes.

(3) The solid waste management program administered pursuant to Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article 9 of Chapter 130A of the General Statutes.

(5) The groundwater protection corrective action requirements adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes.

(b) This Part shall not apply to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Leaking Petroleum Underground Storage Tank Cleanup program under Part 2A of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(3) The pre-1983 landfill assessment and remediation program established under G.S. 130A-310.6(c) through (g).

(c) This Part shall apply only to sites where a discharge, spill, or release of contamination has been reported to the Department prior to March 1, 2011.

"**§ 130A-310.68. Remediation standards.**

(a) When conducting remediation activities pursuant to this Part, a person who proposes to or is required to respond to the release of a contaminant at a contaminated industrial site shall comply with one of the following standards:

(1) The unrestricted use standards applicable to each affected medium.

(2) The background standard, if the background standard exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

(b) Site-specific remediation standards shall be developed for each medium as provided in this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property comprising the site. Site-specific remediation standards shall be developed in accordance with all of the following:

(1) Remediation methods and technologies that result in emissions of air pollutants shall comply with applicable air quality standards adopted by the Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated

whether the receptors are located on or off the site where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Permits for facilities located at sites covered by any of the programs or requirements set out in G.S. 130A-310.67(a) shall contain conditions to avoid exceedances of applicable groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to operation of the facility.

(5) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(6) Soil shall be remediated to unrestricted use standards on residential property with the following exceptions:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to contaminated soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures or impracticability of removal, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(7) The potential for human inhalation of contaminants from the outdoor air and other site-specific indoor air exposure pathways shall be considered, if applicable.

(8) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(9) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one-in-1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (July 1, 2003 Edition). The cumulative excess lifetime cancer risk to an exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

(10) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.

(11) The site-specific remediation standards for each medium shall be adequate to avoid foreseeable adverse effects to other media or the environment that are inconsistent with the risk-based approach under this Part.

"**§ 130A-310.69. Remedial investigation report; remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall submit a remedial investigation report to the Department prior to submitting a remedial action plan. The remedial investigation report shall include, but is not limited to, a legal description of the location of the site; a map showing the location of the site; a description of the contaminants involved and their concentration in the media of the site; a narrative description of the methodology used in the investigation; a description of all on-site releases of contamination; a site map, drawn to scale, showing benchmarks, directional arrow, location of property boundaries, buildings, structures, all perennial and nonperennial surface water features, drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities, storage vessels, and existing on-site wells; identification of adjacent property owners and adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the site and adjacent properties for the existence of environmentally sensitive areas; a description of groundwater monitoring well design and installation procedures; a map, drawn to scale, that shows all groundwater sample locations; a description of field and laboratory quality control and quality assurance procedures followed during the remedial investigation; a description of methods used to manage investigation-derived wastes; tabulation of analytical results for all sampling; copies of all laboratory reports; a description of procedures and the results of any special assessments; and any other information required by the Department or considered relevant by the investigator. The remedial investigation shall assess all contaminated areas of the site, including types and levels of contamination, and the risk that the contamination poses to public health, safety, and welfare and to the environment.

(b) A person who proposes to conduct remediation pursuant to this Part shall develop and submit a proposed remedial action plan to the Department. A remedial action plan shall provide for the protection of public health, safety, and welfare and the environment. A remedial action plan shall do all of the following:

(1) Identify actions required to remove, treat, or otherwise appropriately mitigate or isolate the source of contamination to ensure that the source will not cause unrestricted use standards to be exceeded in any medium.

(2) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 130A-310.68. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(3) Identify the current and anticipated future uses of property comprising the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(4) Identify the current and anticipated future uses of groundwater in the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(5) Determine the appropriate method of remediation to achieve the site-specific remediation standards.

(6) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.

(7) Specify any measures that may be necessary to prevent any discharge into surface waters during implementation of the remedial action plan that violates applicable surface water quality standards adopted by the Commission.

(8) Specify any measures that may be necessary to prevent any air emission during implementation of the remedial action plan that violates applicable air quality standards adopted by the Commission.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 130A-310.68.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated site at the conclusion of the contaminant-reduction phase of remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide for the imposition and recordation of land-use restrictions as provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.

(12) Provide for submission of an annual certification to the Department by the property owner that land use at the site is in compliance with land-use restrictions recorded pursuant to this Part and that the land-use restrictions are still properly recorded in the chain of title for the property.

(13) Provide a detailed description of the proposed remedial action to be taken; the results of any treatability studies and additional site characterization needed to support the proposed remedial action; plans for postremedial and confirmatory sampling; a project schedule; a schedule for progress reports to the Department; and any other information required by the Department or considered relevant by the person who submits the proposed remedial action plan.

(14) Provide a description of measures that will be employed to ensure that the safety and health of persons on properties in the vicinity of the site and persons visiting or doing business on the site will not be adversely affected by any remediation activity.

(15) Provide a reasonable estimate of the probable cost of the remedial action sufficient for the Department to determine an acceptable level of financial assurance.

(16) Provide proof of financial assurance as required by G.S. 130A-310.72.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation, including an evaluation of all of the following:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any postremediation activity that may be required, including, but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

e. Time required to achieve remediation standards.

(2) Toxicity, mobility, and volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, and volume; and the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

(3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures; expected operational reliability; available capacity and location of needed treatment, storage, and disposal services for wastes; time to initiate remediation; and approvals necessary to implement the remediation.

(d) The development of a remedial action plan may require supplemental submissions and revisions based on Department review, remedial action pilot studies, and public comment from local government and citizens.

"**§ 130A-310.70. Notice of intent to remediate.**

In addition to the public participation requirements of the individual programs listed in G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site, and to all adjoining landowners. The notice shall include all of the information required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to site-specific remediation standards. The person shall submit to the Department a copy of the notice of intent provided to local governments and adjoining landowners, a certification that the notice of intent to remediate was so provided to those parties, and all information and comments that the person received in response to the notice. In addition, the person shall, when appropriate, describe how the remedial action plan was modified to address comments received in response to the notice.

"**§ 130A-310.71. Review and approval of proposed remedial action plans.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall do all of the following:

(1) Determine whether site-specific remediation standards are appropriate for a particular contaminated site. In making this determination, the Department shall consider proximity of the contamination to water supply wells or other receptors; current and probable future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(2) Determine whether the party conducting the remediation has adequately demonstrated through modeling or other scientific means acceptable to the Department that no contamination will migrate to adjacent property at levels above unrestricted use standards.

(3) Determine whether the proposed remedial action plan meets the requirements of G.S. 130A-310.69.

(4) Determine whether the proposed remedial action plan meets the requirements of any other applicable remediation program except those pertaining to remediation standards.

(5) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(6) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated site at the conclusion of the contaminant-reduction phase of the remediation.

(7) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(8) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(9) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment.

(10) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan has the burden of demonstrating with reasonable assurance that contamination from the site will not migrate to adjacent property above unrestricted use levels and that the remedial action plan is protective of public health, safety, and welfare and the environment by virtue of its compliance with this Part. The demonstration shall (i) take into account actions proposed in the remedial action plan that will prevent contamination from migrating off the site; and (ii) use scientifically valid site-specific data.

(c) The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments and adjoining landowners pursuant to G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 120 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved at the end of that time period.

"**§ 130A-310.72. Financial assurance requirement.**

The person conducting remediation of a contaminated industrial site pursuant to the provisions of this Part shall establish financial assurance that will ensure that sufficient funds are available to implement and maintain the actions or controls specified in the remedial action plan for the site. The person conducting remediation of a site may establish financial assurance through one of the following mechanisms, or any combination of the following mechanisms, in a form specified or approved by the Department: insurance products issued from entities having no corporate or ownership association with the person conducting the remediation; funded trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local government financial tests; corporate guarantees; local government guarantees; capital reserve funds; or any other financial mechanism authorized for the demonstration of financial assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition) and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina

Administrative Code. Proof of financial assurance shall be provided in the remedial action plan and annually thereafter on the anniversary date of the approval of the plan.

"**§ 130A-310.73. Attainment of the remediation standards.**

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been implemented and applicable soil, groundwater, surface water, and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering, or institutional controls, except that the person conducting the remediation may not demonstrate attainment of an unrestricted use standard or a background standard through the use of institutional controls alone. When the remedial action plan has been fully implemented, the person conducting the remediation shall submit a final report to the Department, with notice to all local governments with taxing and land-use jurisdiction over the site, that demonstrates that the remedial action plan has been fully implemented, that any land-use restrictions have been certified on an annual basis, and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a determination that no further remediation beyond that specified in the approved remedial action plan is required.

(b) The person conducting the remediation has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the person conducting the remediation has completed remediation to the approved remediation standard and met all the requirements of the approved remedial action plan, the Department shall issue a determination that no further remediation beyond that specified in the approved remedial action plan is required at the site. Once the Department has issued a no further action determination, the Department may require additional remedial action by the responsible party only upon finding any of the following:

(1) Monitoring, testing, or analysis of the site subsequent to the issuance of the no further action determination indicates that the remediation standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the site as part of the remediation have been violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or no further action determination for the site are not adequately funded or are not adequately implemented.

(4) A contaminant or hazardous substance release is discovered at the site that was not the subject of the remedial investigation report or the remedial action plan.

(5) A material change in the facts known to the Department at the time the written no further action determination was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

(6) The no further action determination was based on fraud, misrepresentation, or intentional nondisclosure of information by the person conducting the remediation.

(7) Installation or use of wells would induce the flow of contaminated groundwater off the site.

(d) The Department shall issue a final decision on a request for a determination that remediation has been completed to approved standards and that no further remediation beyond

that specified in the approved remedial action plan is required within 180 days after receipt of a complete final report. Failure of the Department to issue a final decision on a no further remediation determination within 180 days after receipt of a complete final report and request for a determination of no further remediation may be treated as a denial of the request for a no further remediation determination. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

"**§ 130A-310.74. Compliance with other laws.**

Where a site is covered by an agreement under the Brownfields Property Reuse Act of 1997, as codified as Part 5 of Article 9 of Chapter 130A of the General Statutes, any work performed by the prospective developer pursuant to that agreement is not required to comply with this Part, but any work not covered by such agreement and performed at the site by another person not a party to that agreement may be performed pursuant to this Part.

"**§ 130A-310.75. Use of registered environmental consultants.**

The Department may approve the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part. If remediation under this Part is not undertaken voluntarily, the Department may not require the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part.

"**§ 130A-310.76. Fees; permissible uses of fees.**

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund in an amount equal to four thousand five hundred dollars ($4,500) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than one hundred twenty-five thousand dollars ($125,000) to the Fund for any individual site, regardless of its size. This one-time fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

(b) Funds collected pursuant to subsection (a) of this section may be used only for the following purposes:

(1) To pay for administrative and operating expenses necessary to implement this Part.

(2) To establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to this Part.

"**§ 130A-310.77. Construction of Part.**

This Part shall not be construed or implemented in any of the following ways:

(1) In any manner that would jeopardize federal authorization under any of the federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or would otherwise conflict with federal authority under those statutes, programs, and requirements. This Part is supplemental to the programs and requirements set out in G.S. 130A-310.67(a) that would otherwise govern the remediation of a contaminated industrial site. Where the definitions, provisions, or requirements of this Part conflict with the definitions, provisions, or requirements of an otherwise applicable remediation program, this Part shall control, unless expressly stated to the contrary.

(2) To limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law necessary to address an imminent threat to public health, safety, or welfare or the environment.

(3) To alter the requirements of programs to prevent or mitigate the release or discharge of contaminants to the environment, including permitting requirements that regulate the handling of hazardous substances or wastes.

(4) To supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a site and any land-use restrictions imposed as part of a remedial action plan shall comply with land-use and development controls adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

SECTION 3. G.S. 130A-310.78 through G.S. 130A-310.80 are reserved for future codification purposes.

SECTION 4. G.S. 130A-310.10(a) reads as rewritten:

"(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division on or before 1 October of each year. The report shall include at ~~least:~~least the following:

(1) The Inactive Hazardous Waste Sites Priority ~~List;~~List.

(2) A list of remedial action plans requiring State funding through the Inactive Hazardous Sites Cleanup ~~Fund;~~Fund.

(3) A comprehensive budget to implement these remedial action plans and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of said ~~plans;~~plans.

(4) A prioritized list of sites that are eligible for remedial action under CERCLA/SARA together with recommended remedial action plans and a comprehensive budget to implement such plans. The budget for implementing a remedial action plan under CERCLA/SARA shall include a statement as to any appropriation that may be necessary to pay the State's share of such ~~plan;~~plan.

(5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental ~~approval;~~approval.

(6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the possible costs of said ~~plans;~~plans.

(7) A list of sites that pose an imminent ~~hazard;~~hazard.

(8) A comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Inactive Hazardous Sites Cleanup ~~Fund; and~~Fund.

(8a) The amounts and sources of funds collected by year received under G.S. 130A-310.76, the amounts and sources of those funds paid into the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11, the number of acres of contamination for which funds have been received pursuant to G.S. 130A-310.76, and a detailed annual accounting of how the funds collected pursuant to G.S. 130A-310.76 have been utilized by the Department to advance the purposes of Part 8 of Article 9 of Chapter 130A of the General Statutes.

(9) Any other information requested by the General Assembly or the Environmental Review Commission."

SECTION 5. The Secretary of Environment and Natural Resources shall make all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 8 of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 2 of this act, is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended.

SECTION 6. G.S. 143-215.104M(f) reads as rewritten:

"**§ 143-215.104M. (Repealed effective January 1, 2012 – See notes) Notice of Dry-Cleaning Solvent Remediation; land-use restrictions in deeds.**

...

(f) Enforcement. – Any restriction on the current or future use of property subject to a Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall be enforced by any owner of the property or by any other potentially responsible party. Any land-use restriction may also be enforced by the Commission through the remedies provided in this Part or by means of a civil action in the superior court. The Commission may enforce any land-use restriction without first having exhausted any available administrative remedies. Restrictions also may be enforced by any unit of local government having jurisdiction over any part of the property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of privity of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction. Failure to submit an annual certification that land-use restrictions are properly recorded and followed shall result in a notice from the Commission to the property owner. The notice shall inform the person of the actions that need to be taken in order for the person to come into compliance and specify a date by which the person must comply, which shall not be less than 30 calendar days from the date the notice is mailed. Any person who fails to comply within the time specified shall then be subject to enforcement procedures as provided in this Part."

SECTION 7. The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially viable responsible party. The Commission shall also identify potential sources of funds to address the projected need for assessment and remediation. The Environmental Review Commission shall report its findings and recommendations, including any legislative proposals, to the 2012 General Assembly upon its convening.

SECTION 8. This act is effective when it becomes law.

HOUSE BILL 45:
Accelerate Cleanup of Industrial Properties

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Representatives Gillespie, Cook, and Gibson	**Prepared by:**	Jeff Hudson
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: ***House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site.***

[As introduced, this bill was identical to S48, as introduced by Sen. Allran, which is currently in Senate Agriculture/Environment/Natural Resources.]

CURRENT LAW AND BACKGROUND:

North Carolina, in conjunction with the federal government, has implemented a number of programs to address remediation or cleanup of environmental contamination. Based on the source, location, and nature of the contaminants present, requirements for oversight and cleanup are established within an applicable program. Each program has its own standards, methods, and requirements. In some cases, a contaminated site may come under the authority of multiple programs.

Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning contaminant concentrations present at a location are acceptable for all uses; are protective of public health, safety, and welfare and the environment; and comply with an applicable program's standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or the Department of Environment and Natural Resources (DENR). Some State programs for cleanup of environmental contamination, however, allow cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards. These programs include the Petroleum Underground Storage Tank Cleanup Program, the Dry-Cleaning Solvent Cleanup Program, and the State's Brownfields Property Reuse Act.

BILL ANALYSIS:

House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site.

Applicability:

Risk-based cleanup would be available for contaminated industrial sites that are governed by cleanup programs for hazardous and solid waste management, groundwater protection, and oil pollution control and where the release of contamination was reported to DENR prior to March 1, 2011. Risk-based cleanup would not be available for contaminated industrial sites that are governed by cleanup programs for leaking underground storage tanks, dry-cleaning facilities, and certain landfills.

Site-specific Remediation Standards:

Site-specific remediation or cleanup standards would be developed for contaminated industrial sites to eliminate or reduce to protective levels any substantial or probable future risk to human health and the environment based on the present or anticipated future use of the site. The standards would have to be developed in accordance with a number of specific requirements for the protection of air quality, surface water and groundwater quality, and human health.

Remedial Investigation Report and Remedial Action Plan:

A person who proposes a risk-based cleanup must prepare and submit to DENR a remedial investigation report that provides detailed information on the site, contamination at the site, risks posed by the contamination, adjacent properties, and any other information required by DENR. The person would then prepare and submit to DENR a proposed remedial action plan that provides for how the site would be cleaned up in order to protect public health, safety, and welfare and the environment and proof of financial assurance that sufficient funds are available to carry out the cleanup.

Notice of Intent to Remediate:

A person who proposes a risk-based cleanup must send a notice of intent to conduct the risk-based cleanup to all local governments having jurisdiction over the site and to all adjoining landowners. The notice must include all of the information contained in the remedial investigation report. The person must also submit to DENR a certification that the notice of intent was properly distributed, information and comments received in response to the notice, and a description of how the remedial action plan was modified in response to the comments.

Review and Approval of Proposed Remedial Action Plans:

DENR must review each proposed remedial action plan and make a number of determinations prior to approving a plan, including whether the site-specific cleanup standards are appropriate for the site, that no unauthorized levels of contaminants will migrate from the site to adjacent properties, and that the plan is protective of public health, safety, and welfare and the environment. In its review and consideration of the proposed plan, DENR must consider information provided by the person who proposes the plan as well as information provided by the local governments and adjoining landowners.

Attainment of the Remediation Standard:

When DENR determines that an approved remedial action plan has been implemented and applicable cleanup standards have been attained, it will issue a determination that no further cleanup is required. Once a determination has been issued, DENR may only require additional cleanup under specific circumstances, such as a finding that subsequent monitoring indicates that cleanup standards were not achieved; an undocumented contaminant release is discovered; or one or more of the restrictions imposed on the site as part of the cleanup have been violated.

Fees:

The fee for participation in a risk-based cleanup is $4,500 for each acre or portion of an acre of contamination, with a cap of $125,000 regardless of the size of the site. The fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program.

Construction of the Act:

The Act may not be construed or implemented to jeopardize federal authorization under any of the federal statutes, programs, or requirements for the cleanup of contamination; limit the authority of DENR to require investigation, response, or cleanup of environmental contamination necessary to address an imminent threat to public health, safety, or welfare or the environment; or to affect or prevent the enforcement of any local government land-use or development regulation or ordinance.

Dry-cleaning Site Compliance with Land-use Restrictions:

House Bill 45 would provide that if a person responsible for a property subject to land-use restrictions under the Dry-Cleaning Solvent Cleanup Act fails to submit an annual certification that the land-use restrictions are properly recorded and followed, the Environmental Management Commission shall issue a notice of such failure to the person. The notice must inform the person of the actions needed to come into compliance and give the person at least 30 calendar days within which to come into compliance. If the person fails to come into compliance during this time, the person will then be subject to enforcement procedures.

Study of Costs Associated with Inactive Hazardous Substance or Waste Disposal Sites:

House Bill 45 would direct the Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, to study the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially-viable responsible party. The Commission will report its findings and recommendations including any legislative proposals to the 2012 General Assembly, upon its convening.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 45 (Second Edition)

SHORT TITLE: Accelerate Cleanup of Industrial Properties.

SPONSOR(S): Representatives Gillespie, Cook, and Gibson

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	$420,000	$420,000	$420,000	$420,000	$420,000
EXPENDITURES	$321,131	$310,562	$331,734	$346,842	$359,555
POSITIONS (cumulative):	3	3	3	3	3

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources

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

BILL SUMMARY:

House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site. The bill would require payment of a fee by a person undertaking a risk-based cleanup, the amount of which would be based on the size of the site to be remediated. The fee would be used by the Department of Environment and Natural Resources for expenses necessary to implement a risk-based cleanup program, and to establish and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated under such a program

(Source: Committee Counsel, Research Division)

ASSUMPTIONS AND METHODOLOGY:

In conjunction with the federal government, DENR's Division of Waste Management has several programs that address remediation or cleanup of environmental contamination. Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning contaminant concentrations present at a location are acceptable for all uses, protect public health, safety, and welfare and the environment, and comply with applicable standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or DENR. Some State programs for cleanup of environmental contamination,

however, allow cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards. These programs include the Petroleum Underground Storage Tank Cleanup Program, the Dry-Cleaning Solvent Cleanup Program, and the State's Brownfields Property Reuse Act.

House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site. Risk-based cleanup would be available for contaminated industrial sites that are governed by cleanup programs for hazardous and solid waste management, groundwater protection, and oil pollution control and where the release of contamination was reported to the Department of Environment and Natural Resources (DENR) prior to March 1, 2011. Risk-based cleanup would not be available for contaminated industrial sites that are governed by cleanup programs for leaking underground storage tanks, dry-cleaning facilities, and certain landfills.

Site-specific remediation or cleanup standards would be developed for contaminated industrial sites to eliminate or reduce any substantial or probable future risk to human health and the environment based on the present or anticipated future use of the site.

A person who proposes a risk-based cleanup must prepare and submit: a remedial investigation report and a remedial action plan to DENR; a notice of intent to conduct the risk-based cleanup to all local governments having jurisdiction over the site and to all adjoining landowners; and certification to DENR that the notice of intent was properly distributed and responses processed.

When DENR determines that an approved remedial action plan has been implemented and applicable cleanup standards have been attained, it will issue a determination that no further cleanup is required. Once a determination has been issued, DENR may only require additional cleanup under specific circumstances, such as a finding that subsequent monitoring indicates that cleanup standards were not achieved; an undocumented contaminant release is discovered; or one or more of the restrictions imposed on the site as part of the cleanup have been violated.

The fee for participation in a risk-based cleanup is $3,500 for each acre or portion of an acre of contamination, with a cap of $125,000. The fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program.

DENR expects that approximately 12 industrial sites per year would qualify for risk-based cleanup as defined in this legislation. This estimate is based on the assumption that current levels of voluntary cleanup participation would remain constant, and that approximately half of those sites would meet the legislation's criteria. DENR noted that participation in the first few years is expected to be much greater than subsequent years, as current remedial action projects would likely petition to change their statuses to the risk-based remedial option as defined in this legislation.

Expenditures

According to DENR, there would be no increase in voluntary cleanup participation, and therefore existing project managers and the Registered Environmental Consultant Program (which provides oversight under the Inactive Hazardous Sites Program) would be sufficient to oversee the remediation projects affected by this legislation.

However, House Bill 45 also introduces new demands for special reviews from toxicologists, financial analysts, and hydrogeologists to examine the transportation of groundwater contamination as well as to oversee land use restriction compliance and tracking. DENR estimated that a total of five new positions would be needed in order to meet the demands of this bill: a Hydrogeologist, an Engineer, an Industrial Hygiene Consultant (Toxicologist), a Financial Analyst, and an Environmental Program Supervisor II. Fiscal Research concurs that there will be sufficient increased workload to require three of these five positions, as follows:

- A Hydrogeologist to perform fate and transport modeling of contaminant migration, which are special reviews beyond that which the Division currently conducts.
- An Environmental Engineer position to develop and maintain a Geographic Information System, to track recorded land use restrictions, and to inspect compliance with those restrictions.
- A Toxicologist to conduct site-specific risk assessments at much higher levels of toxicological review than are currently conducted by existing staff.

Position Title	Annual Salary	Soc Sec	Ret	Health	Total Salary & Benefits FY 2011-12
Hydrogeologist-J	$ 61,956	$ 4,740	$ 6,512	$ 4,930	$ 78,137
Engineer-J	$ 62,523	$ 4,783	$ 6,571	$ 4,930	$ 78,807
Industrial Hygiene Consultant (Toxicologist)	$ 67,816	$ 5,188	$ 7,127	$ 4,930	$ 85,061
				Total	**$ 242,006**

Although DENR estimated that an additional Financial Analyst and Environmental Program Supervisor II would also be needed to fulfill the requirements of House Bill 45, Fiscal Research estimates that DENR's existing staff can absorb the remainder of the work required by this bill. At this time, 19 staff are working on the 290 sites addressed by the Inactive Hazardous Sites Program. Based on the Department's estimate that only 12 sites would be affected by this legislation, Fiscal Research concludes that the additional supervisory and financial work required by this bill could be absorbed by existing staff.

The total salaries and benefits of positions required by this legislation are calculated to include inflationary increases for each year. Additional operating costs, including travel, supplies, maintenance agreements and communications, would be $79,125 in FY 2011-12 and $54,500 in subsequent years. The initial costs in FY 2011-12 are due to the contractual services, computer hardware and software costs related to establishing the GIS system required by the legislation;

additionally, travel for the three new positions will be extensive due to required training and multiple visits to projects statewide. The total amount required by DENR for FY 2011-12, including salaries, benefits, and operating costs, is estimated to be $321,131.

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Salaries and Fringes	$ 242,006	$ 256,062	$ 277,234	$ 292,342	$ 305,055
Operating Costs	$ 79,125	$ 54,500	$ 54,500	$ 54,500	$ 54,500
Total	**$ 321,131**	**$ 310,562**	**$ 331,734**	**$ 346,842**	**$ 359,555**

Revenues

The revenues gained by fees included in this legislation may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions. The fee for participation in a risk-based cleanup is $3,500 for each acre or portion of an acre of contamination, with a cap of $125,000 regardless of the size of the site.

Based on DENR's data on existing groundwater contaminant plume sites, the average site size is 10 acres. Twelve sites per year multiplied by 10 acres per site totals 120 acres that would be affected by this legislation. The average amount per site that could be realized as revenue from fees would be $35,000 (10 acres * $3,500 per acre). The total amount of annual revenue that could be realized from fees would be $420,000 (12 sites * $35,000 per site). The revenues realized from this fee would be deposited in the existing Inactive Hazardous Sites Cleanup Fund, within which an account specifically designated for tracking these funds would need to be established.

SOURCES OF DATA: Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS:

House Bill 45 provides that the fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program. Based on DENR's estimate of 12 sites per year at an average of 10 acres each, the $3,500 fee in House Bill 45 would generate more revenue than needed to support the staff and operating costs estimated to be required by the legislation.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Claire Hester

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 3, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 7, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Roberson	TUC
Elizabeth Biser	Brooks Pierce
Lisa Martin	NC Home Builders
Heather Barrett	Williams Mullen
David McSwain	NCAR
BRANDON WRIGHT	NCBA

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 7, 2011

Name of Committee — **Date**

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Tony Beasley	Town of Garner
Mitch Leonard	SEANC
Chuck Stone	SEANC
Ardis Watkins	SEANC
Karl Knapp	NCLM
Dixie Mathus	NC DENR. Waste Mgmt
Charlotte Jesnick	NC DENR - DWM
Sam Byassee	NC DOA (P&C)
David Baker	NCDOR
Tina Dunlap	Henderson Co. Assessor + Tax Collector
LEE KING	HENDERSON COUNTY DELINQUENT TAX COLLECTOR

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Senate Finance Committee — June 7, 2011

Name of Committee — **Date**

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Matthew Gilmore	DST
Allan Martin	DSI
Kelly Chambers	AG's Office
Andrew Myers	ENC
Nicole Sullivan	DOC
Paul Stam	NCBA
Dana Fenton	Atty at Charlotte
James Jones	NCAA
Michael Hamson	NC DOR
Terri Burke	NWC
Mark Cannon	NC Wildlife Res. Com.

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 7, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
MICHELLE HENRY	SMITH ANDERSON
Amy McConkey	NC Beverage Assn
McCrae Goff	Smith Anderson
Don McLeod	Dept. of Correction - Purchasing
Mary Thompson	Weyerhaeuser
Kaun Ray	NCMA
Dave Horn	S.A.
Bill Craig	Verizon
Will Culpepper	AVA

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 7, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Allison Waller	Nelson Mullins
Amit Bhagvandass	NMRS
Laetitia Cheltenham	NMRS
Kelly McElwee	NCCN
Whitney Christensen	Jordan Price
Susan Carter	DST - Investments
Rodney Overcash	DST - Investments
Joy Wilks	NCDA&CS
Dave Marshall	NCDA&CS
Angel Sams	NSS
Theresa Kostrzewa	NSS

SENATE FINANCE COMMITTEE
Wednesday, June 8, 2011 at 2:00 PM
Room 545, Legislative Office Building

MINUTES

The Senate Finance Committee met at 2:00 PM on June 8, 2011 in room 544 of the Legislative Office Building. Twenty-five members of the committee were present. Nick Pruthi and Chris Brasier of Durham, Ben Hinson of Lexington, Randi Gibbs of Youngsville, Blythe Layne of Cary and Metta Longo of Holly Springs served as pages. Senator Rucho presided as chair.

H.B. 432 – Swine in Transport/Regulate Feral Swine

Representative LaRoque was recognized to explain the bill. It places restrictions on the transportation of swine, creates a statutory definition of feral swine, provides for the taking of feral swine as a nongame animal, and prohibits the removed of live feral swine from traps, as recommended by the Feral Swine Study Committee. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 167 – Extend Assessment Refund Period

Representative Iler was recognized to explain the bill, which authorizes local governments to refund assessments imposed before 2012 where the assessment financed a capital project that was assumed by another local government. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 335 – Maintenance of Prisons

Representative Guice was recognized to explain the bill. It repeals the 2010 prohibition on contracting for the maintenance of prison facilities, and directs the Department of Correction to study the potential benefits and costs of contracting for maintenance services at prison facilities. Senator Rabon moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 292 – Incorporate Rougement

Senator Apodaca was recognized to explain the bill, which incorporates the Town of Rougement in Durham County, subject to a referendum. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 414 – Amend Rutherford County Occupancy Tax

Representative Hager was recognized to explain the bill. It recodifies the previously authorized Rutherford County occupancy tax to make it more uniform with current

occupancy tax guidelines. By doing so, Rutherford County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law. The bill also allows the county, upon requests of the TDA to manage the TDA's receipts and disbursements and provide services related to the operation of the TDA, such as finance, human resources, legal and information technology. The county could charge service fees for the indirect costs related to these services. Senator Clary moved for a favorable report and the motion carried. A copy of the bill, the summary, and the fiscal note is attached.

H.B. 532 – Graham County/Cemetery Tax by General Law

Representative West was recognized to explain the bill. It repeals a section of a 1957 Session Law authorizing Graham County to call for a special election for the purpose of submitting to the voters the question of levying a special ad valorem tax for the maintenance of cemeteries in Graham County. Upon repeal, the general law would apply. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 545 – Amend Moore County Occupancy Tax

Senator Blake was recognized to explain the bill. It recodifies the previously authorized Moore County Occupancy Tax to make it consistent with the current House Finance Occupancy Tax Guidelines. This change would allow the county to use up to one-third of the net proceeds for tourism-related expenditures. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

S.B. 131 – AOC Collection Assistance Fee

Senator Clodfelter was recognized to explain the bill. It authorizes expanded methods of collecting fines, fees, costs, and restitution from offenders not sentenced to supervised probation or active time and would permit the county in which the collection assistance fee is collected to retain the fee, providing the fee is collected by a collections program funded by the county government. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 313 – Repeal Savings Bond Payroll Savings Program

Representative Hager was recognized to explain the bill, which repeals the statutory provisions that authorize the payroll deduction plan for the purchase of United States Savings Bonds by State employees and school employees. Senator Clary moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 571 – Prepaid Wireless

Representative Brawley was recognized to explain the bill. It provides for the collection of the 911 service charge on prepaid wireless service at the point of retail sale. Senator Newton moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 527 – Life Sciences Act

Senator Hartsell and Norris Tolson, NC Biotechnology Center, were recognized to explain the bill. It creates a mechanism for raising funds to make loans to life science companies through the issuance of equity certificates by qualifying entities. If the qualifying entity is unable to redeem the equity certificate when it is due, the qualifying entity may issue the holder of the equity certificate a tax credit certificate in the amount of the required payment the entity is unable to make. A taxpayer that presents a tax credit certificate is allowed a tax credit equal to 100% of the amount specified in the certificate. The tax credit is refundable and may be used against the franchise tax, the income tax, or the gross premiums tax. Senator Hartsell offered a technical amendment and moved for its adoption. The motion carried. Senator Stein moved for a favorable report as amended and the motion carried. A copy of the bill, the summary, the fiscal note and the amendment is attached.

H.B. 243 – Certificates Under Seal in Indigent Cases/Fees

Representative Jackson was recognized to explain the bill which waives the $3.00 fee charged by the Clerk of Superior Court for certificates under seal for appointed attorneys representing indigent clients. Senator Newton moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 447 – Rewrite Landscape Contractors Laws

Senator Meredith and Senator Stevens recused themselves from the discussion and vote on this bill. Senator Brown was recognized to explain the bill which rewrites Chapter 89D of the General Statutes, which regulates landscape contractors. Senator Jenkins was recognized to offer a clarifying amendment and moved for it adoption. The motion carried. Senator Tillman moved for a favorable report as amended and the motion carried. A copy of the bill, the summary and the amendment is attached.

H.B. 692 – Increase Payment of Unclaimed Property Claims

Senator Tillman was recognized to explain the bill. It amends the escheat and unclaimed property laws to facilitate the sharing of data from State agencies to the Treasurer; requires reports of abandoned property to provide more information; amends the reporting requirements based on the dollar value of the property; and changes the notice requirements prior to the sale of abandoned property. Senator Meredith moved

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

The meeting recessed at 2:54 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 08, 2011

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

FAVORABLE

S.B.	**131**	AOC Collection Assistance Fee.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #2)	**167**	Extend Assessment Refund Period.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**243**	Certificates Under Seal in Indigent Cases/Fee.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**292**	Incorporate Rougemont.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**313**	Repeal Savings Bond Payroll Savings Program.-AB	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #1)	**318**	State Treasurer's Investments.-AB	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**335**	Maintenance of Prisons.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**414**	Amend Rutherford County Occupancy Tax.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(SCS #1)	**432**	Swine in Transport/Regulate Feral Swine.	
		Sequential Referral:	None
		Recommended Referral:	None

H.B. **532** Graham County/Cemetery Tax By General Law.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **545** Amend Moore County Occupancy Tax.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **571** Prepaid Wireless/Point of Sale Collection.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **692** Increase Payment of Unclaimed Property Claims.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

S.B.(CS #1) **447** Rewrite Landscape Contractor Laws.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **527** Life Sciences Development Act.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 15

Committee Clerk Comments:
H167 – Sen. Rabon
H292 – Sen. Apodaca
H414 – Sen. Clary
H532 – Sen. Davis
H545 – Sen. Blake
S131 – Sen. Clodfelter
S447 – Sen. Brown
S527 – Sen. Hartsell
H243 –
H313 –
H318 – Sen. Hise
H335 – Sen. Clodfelter
H432 – Sen. Newton
H571 – Sen. Hartsell
H692 – Sen. Tillman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Wednesday, June 08, 2011

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

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

S.B. **507** Clarify Exception/Real Estate Broker Laws.

Draft Number:	55309
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **683** Residential Building Inspections.

Draft Number:	35261
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

S507 – Sen. Hunt
S683 – Sen. Hunt

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 08, 2011

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **486** Release Subdivided Lots From Tax Liens.

Draft Number:	85216
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:
S486 – Sen. Stein

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 432

Committee Substitute Favorable 4/6/11
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/20/11

Short Title: Swine in Transport/Regulate Feral Swine. (Public)

Sponsors:

Referred to:

March 23, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE TRANSPORTATION OF LIVE SWINE UNLESS THE SWINE HAS AN OFFICIAL FORM OF IDENTIFICATION APPROVED BY THE STATE VETERINARIAN FOR THIS PURPOSE, TO CLASSIFY ALL FREE-RANGING MAMMALS OF THE SPECIES SUS SCROFA AS FERAL SWINE, TO PROVIDE FOR THE TAKING OF FERAL SWINE AS A NONGAME ANIMAL, AND TO PROHIBIT THE REMOVAL OF LIVE FERAL SWINE FROM TRAPS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"Article 66A.

"Transportation of Swine.

"**§ 106-798. Identification required to transport swine.**

(a) No live swine shall be transported on a public road within the State unless the swine has an official form of identification approved by the State Veterinarian for this purpose.

(b) Any live swine that is transported on a public road within this State without identification as required by this section is presumed to be a feral swine and is also subject to regulation by the Wildlife Resources Commission under Chapter 113 of the General Statutes. Any person transporting a swine without identification is subject to a civil penalty under this Article.

(c) Swine that do not leave the premises of the swine owner are not subject to the identification requirement under this section.

(d) The Board of Agriculture shall adopt rules to charge any swine owner a fee for the identification required under this section. The fee may not exceed the actual cost to the Department of Agriculture and Consumer Services for the identification approved by the State Veterinarian and any direct administrative costs associated with providing the identification to swine owners. The Board of Agriculture shall adopt any other rules necessary to implement this Article.

"**§ 106-798A. Penalty for unlawful transport of swine without identification.**

Any person who fails to obtain identification as required under this Article shall be subject to a civil penalty of up to five thousand dollars ($5,000) for each violation. Each swine that has no identification is a separate violation.

"**§ 106-798B. Penalty for misuse of identification.**

Any person who misuses the identification required under this Article shall be subject to a civil penalty of one thousand dollars ($1,000) for each occurrence. A person misuses

identification required under this Article by knowingly providing it to other than the owner of the swine or by engaging in other activity that is in violation of this Article."

SECTION 2. G.S. 113-129 reads as rewritten:

"**§ 113-129. Definitions relating to resources.**

The following definitions and their cognates apply in the description of the various marine and estuarine and wildlife resources:

...

(1b) Big Game. – Bear, ~~wild boar,~~ wild turkey, and white-tailed deer.

...

(5c) Feral Swine. – Free-ranging mammals of the species Sus scrofa.

...

(7c) Game Animals. – Bear, fox, rabbit, squirrel, ~~wild boar,~~ white-tailed deer, and, except when trapped in accordance with provisions relating to fur-bearing animals, bobcat, opossum, and raccoon.

...

(15) Wild Animals. – Game animals; fur-bearing animals; feral swine; and all other wild mammals except marine mammals found in coastal fishing waters. In addition, this definition includes members of the following groups which are on the federal list of endangered or threatened species: wild amphibians, wild reptiles except sea turtles inhabiting and depending upon coastal fishing waters, and wild invertebrates except invertebrates declared to be pests under the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. Nothing in this definition is intended to abrogate G.S. 113-132(c), confer jurisdiction upon the Wildlife Resources Commission as to any subject exclusively regulated by any other agency, or to authorize the Wildlife Resources Commission by its regulations to supersede valid provision of law or regulation administered by any other agency.

...

~~(15b) Wild Boar. – Free-ranging mammals of the species Sus scrofa that occur in counties identified in the rules of the Wildlife Resources Commission.~~

...."

SECTION 3. G.S. 113-270.3(b)(1a) reads as rewritten:

"(1a) Nonresident ~~Bear/Wild Boar~~Bear Hunting License – $125.00. This license is valid for use only by an individual within the State and must be procured before taking any bear ~~or wild boar~~ within the State. Notwithstanding any other provision of law, a nonresident individual may not take any bear ~~or wild boar~~ within the State without procuring this license; provided, that those persons who have a nonresident lifetime sportsman combination license purchased prior to May 24, 1994, shall not have to purchase this license."

SECTION 4. G.S. 113-291.1 reads as rewritten:

"**§ 113-291.1. Manner of taking wild animals and wild birds.**

...

(b) No wild animals or wild birds may be taken:

(1) From or with the use of any vehicle; vessel, other than one manually propelled; airplane; or other conveyance except that the use of vehicles and vessels is authorized:

a. As hunting stands, subject to the following limitations. No wild animal or wild bird may be taken from any vessel under sail, under power, or with the engine running or while still in motion from such

propulsion. No wild animal or wild bird may be taken from any vehicle if it is in motion, the engine is running, or the passenger area of the vehicle is occupied. The prohibition of occupying the passenger area of a vehicle does not apply to a disabled individual whose mobility is restricted.

b. For transportation incidental to the taking.

(2) With the use or aid of any artificial light, net, trap, snare, electronic or recorded animal or bird call, or fire, except as may be otherwise provided by statute[;] provided, however, that ~~crows and coyotes may be taken with the aid of electronic calling devices.~~the Wildlife Resources Commission may adopt rules prescribing seasons and the manner of taking of wild animals and wild birds with the use of artificial light and electronic calls. No wild birds may be taken with the use or aid of salt, grain, fruit, or other bait. No black bear ~~or wild boar~~ may be taken with the use or aid of any salt, salt lick, grain, fruit, honey, sugar-based material, animal parts or products, or other bait, and no wild turkey may be taken from an area in which bait has been placed until the expiration of 10 days after the bait has been consumed or otherwise removed. The taking of wild animals and wild birds with poisons, drugs, explosives, and electricity is governed by G.S. 113-261, G.S. 113-262, and Article 22A of this Subchapter.

Upon finding that the placement of processed food products in areas frequented by black bears is detrimental to the health of individual black bears or is attracting and holding black bears in an area to the extent that the natural pattern of movement and distribution of black bears is disrupted and bears' vulnerability to mortality factors, including hunting, is increased to a level that causes concern for the population, the Wildlife Resources Commission may adopt rules to regulate, restrict, or prohibit the placement of those products and prescribe time limits during which hunting is prohibited in areas where those products have been placed.

Any person who is convicted of unlawfully taking bear ~~or wild boar~~ with the use or aid of any type of bait as provided by this subsection or by rules adopted pursuant to this subsection is punishable as provided by G.S. 113-294(c1).

...

(g) If a season is open permitting such method of taking for the species in question, a hunter may take rabbits, squirrels, opossum, raccoons, fur-bearing animals, and nongame animals and birds open to hunting with a ~~pistol of .22 caliber with a barrel not less than five and one half inches in length.~~pistol. In addition, a hunter or trapper lawfully taking a wild animal or wild bird by another lawful method may use a knife, pistol, or other swift method of killing the animal or bird taken. The Wildlife Resources Commission may, however, restrict or prohibit the carrying of firearms during special seasons or in special areas reserved for the taking of wildlife with primitive weapons or other restricted methods.

...."

SECTION 5. G.S. 113-291.8(a) reads as rewritten:

"(a) Any person hunting game animals other than foxes, bobcats, raccoons, and opossum, or hunting upland game birds other than wild turkeys, or hunting feral swine, with the use of firearms, must wear a cap or hat on his head made of hunter orange material or an outer garment of hunter orange visible from all sides. Any person hunting deer during a deer firearms season shall wear hunter orange. Hunter orange material is a material that is a daylight fluorescent orange color.

This section does not apply to a landholder, his spouse, or children, who are hunting on land held by the landholder. This subsection shall be enforced by warning ticket only until October 1, 1992, with respect to those hunting rabbit, squirrel, grouse, pheasant, and quail."

SECTION 6.(a) Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-291.12. Unlawful to remove live feral swine from traps.**

It is unlawful to remove feral swine from a trap while the swine is still alive or to transport the live swine after that removal."

SECTION 6.(b) G.S. 113-294 is amended by adding a new subsection to read:

"(s) Any person who violates the provisions of G.S. 113-291.12 by unlawfully removing feral swine from a trap while the swine is still alive or by transporting such swine after that removal is guilty of a Class 2 misdemeanor. The acts of removal from a trap and of transporting the swine after removal shall constitute separate offenses."

SECTION 7. G.S. 106-798A and G.S. 106-798B, as enacted by Section 1 of this act, become effective October 1, 2012. The remainder of this act becomes effective October 1, 2011. This act applies to acts that occur on or after the effective date.

HOUSE BILL 432:
Swine in Transport/Regulate Feral Swine

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Reps. LaRoque, Bell, Dixon, West	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 432 would place restrictions on the transportation of swine, create a statutory definition of feral swine, provide for the taking of feral swine as a nongame animal, and prohibit the removal of live feral swine from traps, as recommended by the Feral Swine Study Committee.***

CURRENT LAW: Pursuant to G.S. 113-129(1b), **wild boar**, along with bears, turkeys, and white-tailed deer, is a big game animal. Wild Boar is defined as a "free ranging mammals of the species Sus scrofa that occur in counties identified in the rules of the Wildlife Resources Commission." There is no definition of **feral swine** in the statutes.

BILL ANALYSIS: **Section 1** would add a new article entitled "Transportation of Swine" to Chapter 106 of the General Statutes. An approved form of identification would be required in order to transport swine off the premises of their owner and on a public road within the State; otherwise, the swine are presumed feral and subject to regulation by the Wildlife Resources Commission (WRC). The Board of Agriculture would be given the authority to adopt rules regarding the required identification and the fee for the required identification. The fee adopted may not exceed the cost of the identification. Failure to obtain the required identification could result in a civil penalty of up to $5,000 per swine. Further, anyone who knowingly provides swine identification to someone other than the owner or engages in any other prohibited activity could be subject to a $1,000 fine per occurrence.

Section 2 would add "Feral Swine" and its scientific name to the definitions section of G.S. 113-129, and would delete "Wild Boar" and its definition.

Section 3 would eliminate the requirement to have a wild boar hunting license.

Section 4 would amend G.S. 113-291.1 to provide that the WRC may adopt rules prescribing seasons and the manner of taking wild animals and wild birds with the use of artificial light and electronic calls. It also would delete wild boar from the prohibition against taking specified animals with certain kinds of bait. Finally, it would eliminate the .22 caliber limitation for the pistol a hunter can use during the open season for particular species.

Section 5 would provide that a person hunting feral swine with the use of firearms must wear a hunter orange cap, hat, or garment.

Sections 6.(a) and 6.(b) would create a new provisions making it a separate Class 2 misdemeanor either to remove live feral swine from traps or to transport the live swine after removal.

EFFECTIVE DATE: G.S. 106-798A and G.S. 106-798B, as enacted by Section 1, would become effective October 1, 2012. The remainder of the act would become effective October 1, 2011. The act would apply to acts or offenses that occur on or after the effective date.

BACKGROUND: Section 3(a) of S.L. 2009-89 directed "[t]he Department of Agriculture and Consumer Services, in consultation with the Wildlife Resources Commission, the United States Department of Agriculture's Animal and Plant Health Inspection Service, and a cross section of interested agricultural organizations, [to] study issues related to the importation of feral swine in North

Carolina, including associated risks and potential economic impact of that importation. In the course of its study, the Department may consider population estimates, disease risks, and efforts that could be undertaken to mitigate any risks posed by feral swine to the ecosystem or the agricultural industry of the state, including examination of enforcement issues and existing penalties for the illegal transportation of feral swine into and around the State. In conducting its study, the Department shall solicit input from the following, as well as any other persons or groups with expertise on the subject:

(1) Swine veterinarians working in the pork industry;

(2) Confinement operation-type swine farmers;

(3) Pasture-raised operation-type swine farmers; and

(4) Sportsmen."

The full text of S.L. 2009-89 (House Bill 1118) can be found online at:
http://www.ncleg.net/sessions/2009/bills/house/pdf/h1118v3.pdf

The full Feral Swine Study Committee report (May 2010) can be found in the Legislative Library (SF 397.83 .N8 F56 2010) or online at:
http://digital.ncdcr.gov/cdm4/document.php?CISOROOT=/p249901coll22&CISOPTR=176548&REC=2

Janice Paul, Committee Counsel to House Agriculture, substantially contributed to this summary.

H432-SMTD-76(e3) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note
(G.S. 120-36.7)

BILL NUMBER: House Bill 432 (Third Edition)
SHORT TITLE: Swine in Transport/Regulate Feral Swine.
SPONSOR(S): Representatives West, Bell, Dixon, and LaRoque

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUE					
Fine & Forfeitures Fund		Exact amount cannot be determined			
DACS		Exact amount cannot be determined			
WRC	$0	$0	$0	$0	$0
Correction		No significant impact			
Probation		Exact amount cannot be determined			
Judicial		Exact amount cannot be determined			
EXPENDITURES:					
Fine & Forfeitures Fund		Exact amount cannot be determined			
DACS		Exact amount cannot be determined			
WRC	$0	$0	$0	$0	$0
Correction		No significant impact			
Probation		Exact amount cannot be determined			
Judicial		Exact amount cannot be determined			
POSITIONS:					
DACS	0	0	0	0	0
WRC	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Agriculture & Consumer Services (DACS), Wildlife Resources Commission (WRC), Department of Correction, Judicial Branch.

EFFECTIVE DATE: October 1, 2011 except for G.S. 106-798A and G.S. 106-798B which are effective October 1, 2012.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:

House Bill 432, Swine in Transport/ Regulate Feral Swine, changes existing and adds new General Statues relevant to the Department of Agriculture and Consumer Services (DACS) and the Wildlife Resources Commission (WRC). First, HB 432 creates Article 66A (beginning with G.S. 106-798), Transportation of Swine, which requires an official form of identification approved by the State Veterinarian for all swine transported on public roads. Swine transported without identification is presumed to be feral swine and is subject to regulation by WRC pursuant to G.S. Chapter 113. Swine that do not leave the premises of the swine owner are exempt from the identification requirement. The Board of Agriculture is directed to adopt rules to charge a fee, not to exceed DACS' cost of providing the program, to swine owners for the identification required under this Article. Anyone transporting swine without proper identification is subject to a civil penalty of up to $5,000 for each violation; each swine without identification is considered a separate violation. Anyone who misuses the identification required by HB 432 is subject to a civil penalty of $1,000 for each occurrence. The civil penalty provisions are effective October 1, 2012.

HB 432 also makes changes to the G.S. related to WRC. These changes:

(1) Remove wild boar from the definition for Big Game, removing the definition for wild boar, and adding a definition for feral swine. Feral swine are any free-ranging mammals of the species Sus scrofa (G.S. 113-129);
(2) Delete the provision in G.S. 113-291.1 that permitted the taking of crows and coyotes with the aid of electronic calling device and, instead, provides that WRC may adopt rules prescribing seasons and the manner of taking wild animals and wild birds with the use of artificial light and electronic calls;
(3) Substitute the term "pistol" for the existing language that defines type of pistol that may be used for hunting certain species during open season (a .22 caliber with a barrel not less than five and one-half inches in length);
(4) Add feral swine hunters to those who must wear a cap or outer garment made of hunter orange material (G.S. 113-291.8(a)); and
(5) Makes it unlawful to either remove feral swine from a trap while the swine is still alive or to transport the live swine after it is removed (G.S. 113-291.12). Committing either of these acts constitutes a Class 2 misdemeanor.

ASSUMPTIONS AND METHODOLOGY:

Department of Agriculture & Consumer Services (DACS)

HB 432 adds two new requirements for DACS, including (1) providing an official form of identification approved by the State Veterinarian for all swine transported on public roads and (2) adopting rules to charge a fee, not to exceed DACS' cost of providing the program, to swine owners for the identification. Anyone transporting swine without proper identification is subject to a civil penalty of up to $5,000 for each violation; each swine without identification is considered a separate violation. Anyone who misuses the identification required by HB 432 is subject to a civil penalty of $1,000 for each occurrence. The increase in civil penalties will come into effect in October 1, 2012

Expected Revenue

HB 432 creates two new possible sources of revenue: (1) new civil penalties and (2) a new fee on swine owners for official identification.

Civil Penalties
In FY 2011-12, the State, through DACS, will receive no new revenue from the civil penalties outlined in HB 432; these civil penalties are not in place until October 1, 2011. However, in future years, due to the new civil penalties, it is possible that the Fine and Forfeiture Fund will receive additional funds. DACS is allowed to retain a portion of these funds to cover administration. Neither the Department nor the Fiscal Research Division has an accurate estimate of the number of violations that will be expected in any given year; thus, an estimate of revenue from civil penalties is not available. The Department has indicated that rather than strict enforcement from the outset, both DACS and WRC plan to provided educational information and warnings as HB 432 is phased-in to ensure that producers understand the requirements of HB 432.

Fees for Identification Tags/ Program
HB 432 allows DACS to adopt fees to cover the cost of the identification program. Currently, the United States Department of Agriculture (USDA) provides the identification tags that would be used in this program free of charge to states, and funds for program operations such as mileage, travel expenses, and compliance inspections will be funded through a federal cooperative agreement, resulting in little cost to the DACS. The Board of Agriculture would establish a fee to offset any incidental expenses incurred by the Department and increase the fee if the USDA funding declines or program costs exceed currently expected levels. At this point, DACS does not expect any substantial cost to the State, meaning any fee would be minimal. In addition, DACS does not have an estimate of the number of producers who would be subject to the fee. Therefore, neither DACS nor the Fiscal Research Division can estimate the potential revenue from a fee. All future revenue from the fee would be used to offset program costs and not provide additional availability to the General Fund.

Expected Expenditures
Identification Tags and Tag Tracking
The Fiscal Research Division expects that HB 432 will increase DACS' expenditures; the Department will have to develop, distribute, and track identification tags. At present, DACS does not have an estimate of the cost of providing tags and no estimate of the cost of this program is available. The USDA provides the identification tags and many of the incidental costs associated with HB 432 can be covered with federal funds through existing cooperative agreements. In addition, the Department is building a system that will track tags as part of the NCFarmID and national animal disease traceability system. While the final distribution system for identification tag has not been finalized, DACS anticipates existing field staff to be heavily involved in the logistics and implementation of providing tags to producers. These responsibilities will be added to existing field staff duties. The Department's NCFarmID website will provide access for producers to not only get information but request needed tags. At this time, due to the availability of federal funds, the State will not have to bear the costs associated with HB 432.

Enforcement
Enforcement of the HB 432 identification tag requirements will be through existing law enforcement personnel and protocols (i.e., routine enforcement of state rules and regulations). Law enforcement officials will be provided basic educational information regarding the new statute and their role in its enforcement, which would involve reporting of un-tagged swine when enforcing normal transportation and other livestock/wildlife-related laws. If a transporter is stopped and does not have the necessary animal identification, law enforcement will contact DACS Veterinary Division personnel, who will

begin compliance actions. Such actions fall within the existing responsibilities of field staff and existing protocols of civil actions within the Veterinary Division. Veterinary field staff currently have the authority and responsibility of enforcing identification compliance in a variety of setting and species and office staff currently assumes the duties of initiating communications, collections, and follow-up in working with the Attorney General's office in civil actions that result from the enforcement of existing regulations under DACS' authority; HB 432 would not require additional personnel or training of office staff for the Department.

Wildlife Resources Commission (WRC)

HB 432 makes changes to existing General Statutes enforced by the Wildlife Management Section of WRC. These changes are described in the Bill Summary at the beginning of this Fiscal Note. According to the Wildlife Management Section Chief, the bill will bring no additional revenue to WRC nor should it increase the total cost in the operation of the agency. The enforcement of the bill will be performed with existing resources and will not require any additional resources.

Justice and Public Safety Issues

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

The proposed legislation enacts G.S. 113-291.12, Unlawful to remove live feral swine from traps, making it unlawful to remove a live feral swine[1] from a trap or transport the live swine after removal. Section 6 also adds subsection (s) to G.S. 113-294, Specific Violations, to make violation of G.S. 113-291.12 a Class 2 misdemeanor.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

In FY 2009-10, 25 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Department of Correction – Division of Community Corrections

[1]The bill, *inter alia*, amends G.S. 113-129, Definitions relating to resources, for purposes of G.S. Chapter 113, Article 22 (Regulation of Wildlife), by (1) removing "wild boar" from the categories of "big game" and "game animals" in G.S. 113-129(1b) and (7c); (2) deleting the term "wild boar" in G.S. 113-129(15b) and substituting the term "feral swine" in new G.S. 113-129(5c) ; and (3) adding "feral swine" to the category of "wild animals" in G.S. 113-129(15). The terms "wild boar" and "feral swine" both denote "free-ranging mammals of the species Sus scrofa" under the current and proposed versions of G.S. 113-129.

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.[2]

General supervision of intermediate and community offenders by a probation officer costs DCC $2.49 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from $8.93 to $14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is $14.96 for the initial six-month intensive duration, and $2.49 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The proposed legislation would create a new Class 2 misdemeanor criminal offense for removing feral swine from a trap while the swine is still alive or to transport the live swine after the removal. The bill allows for a defendant to be charged with two offenses, if one were to both remove the feral swine from the trap while the swine was still alive, and to transport the live swine after the removal. Because this is a new offense, AOC cannot project the number of charges that would result. New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff; superior court personnel could be impacted due to appeals.

On average, the monetary value of court personnel time to process a misdemeanor is estimated at $131. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was $225 (three hours at $75 per hour) per indigent defendant.

Overall, in FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

[2] DCC incurs costs of $0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

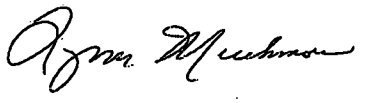
SOURCES OF DATA: Judicial Branch; North Carolina Sentencing and Policy Advisory Commission;

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lanier McRee and Sarah Stone

APPROVED BY:



Lynn Muchmore, Director
Fiscal Research Division

DATE: June 3, 2011

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note
(G.S. 120-36.7)

BILL NUMBER: House Bill 432 (Third Edition)
SHORT TITLE: Swine in Transport/Regulate Feral Swine.
SPONSOR(S): Representatives West, Bell, Dixon, and LaRoque

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUE					
Fine & Forfeitures Fund		Exact amount cannot be determined			
DACS		Exact amount cannot be determined			
WRC	$0	$0	$0	$0	$0
Correction		No significant impact			
Probation		Exact amount cannot be determined			
Judicial		Exact amount cannot be determined			
EXPENDITURES:					
Fine & Forfeitures Fund		Exact amount cannot be determined			
DACS		Exact amount cannot be determined			
WRC	$0	$0	$0	$0	$0
Correction		No significant impact			
Probation		Exact amount cannot be determined			
Judicial		Exact amount cannot be determined			
POSITIONS:					
DACS	0	0	0	0	0
WRC	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Agriculture & Consumer Services (DACS), Wildlife Resources Commission (WRC), Department of Correction, Judicial Branch.

EFFECTIVE DATE: October 1, 2011 except for G.S. 106-798A and G.S. 106-798B which are effective October 1, 2012.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:

House Bill 432, Swine in Transport/ Regulate Feral Swine, changes existing and adds new General Statues relevant to the Department of Agriculture and Consumer Services (DACS) and the Wildlife Resources Commission (WRC). First, HB 432 creates Article 66A (beginning with G.S. 106-798), Transportation of Swine, which requires an official form of identification approved by the State Veterinarian for all swine transported on public roads. Swine transported without identification is presumed to be feral swine and is subject to regulation by WRC pursuant to G.S. Chapter 113. Swine that do not leave the premises of the swine owner are exempt from the identification requirement. The Board of Agriculture is directed to adopt rules to charge a fee, not to exceed DACS' cost of providing the program, to swine owners for the identification required under this Article. Anyone transporting swine without proper identification is subject to a civil penalty of up to $5,000 for each violation; each swine without identification is considered a separate violation. Anyone who misuses the identification required by HB 432 is subject to a civil penalty of $1,000 for each occurrence. The civil penalty provisions are effective October 1, 2012.

HB 432 also makes changes to the G.S. related to WRC. These changes:

(1) Remove wild boar from the definition for Big Game, removing the definition for wild boar, and adding a definition for feral swine. Feral swine are any free-ranging mammals of the species Sus scrofa (G.S. 113-129);
(2) Delete the provision in G.S. 113-291.1 that permitted the taking of crows and coyotes with the aid of electronic calling device and, instead, provides that WRC may adopt rules prescribing seasons and the manner of taking wild animals and wild birds with the use of artificial light and electronic calls;
(3) Substitute the term "pistol" for the existing language that defines type of pistol that may be used for hunting certain species during open season (a .22 caliber with a barrel not less than five and one-half inches in length);
(4) Add feral swine hunters to those who must wear a cap or outer garment made of hunter orange material (G.S. 113-291.8(a)); and
(5) Makes it unlawful to either remove feral swine from a trap while the swine is still alive or to transport the live swine after it is removed (G.S. 113-291.12). Committing either of these acts constitutes a Class 2 misdemeanor.

ASSUMPTIONS AND METHODOLOGY:

Department of Agriculture & Consumer Services (DACS)

HB 432 adds two new requirements for DACS, including (1) providing an official form of identification approved by the State Veterinarian for all swine transported on public roads and (2) adopting rules to charge a fee, not to exceed DACS' cost of providing the program, to swine owners for the identification. Anyone transporting swine without proper identification is subject to a civil penalty of up to $5,000 for each violation; each swine without identification is considered a separate violation. Anyone who misuses the identification required by HB 432 is subject to a civil penalty of $1,000 for each occurrence. The increase in civil penalties will come into effect in October 1, 2012

Expected Revenue

HB 432 creates two new possible sources of revenue: (1) new civil penalties and (2) a new fee on swine owners for official identification.

Civil Penalties
In FY 2011-12, the State, through DACS, will receive no new revenue from the civil penalties outlined in HB 432; these civil penalties are not in place until October 1, 2011. However, in future years, due to the new civil penalties, it is possible that the Fine and Forfeiture Fund will receive additional funds. DACS is allowed to retain a portion of these funds to cover administration. Neither the Department nor the Fiscal Research Division has an accurate estimate of the number of violations that will be expected in any given year; thus, an estimate of revenue from civil penalties is not available. The Department has indicated that rather than strict enforcement from the outset, both DACS and WRC plan to provided educational information and warnings as HB 432 is phased-in to ensure that producers understand the requirements of HB 432.

Fees for Identification Tags/ Program
HB 432 allows DACS to adopt fees to cover the cost of the identification program. Currently, the United States Department of Agriculture (USDA) provides the identification tags that would be used in this program free of charge to states, and funds for program operations such as mileage, travel expenses, and compliance inspections will be funded through a federal cooperative agreement, resulting in little cost to the DACS. The Board of Agriculture would establish a fee to offset any incidental expenses incurred by the Department and increase the fee if the USDA funding declines or program costs exceed currently expected levels. At this point, DACS does not expect any substantial cost to the State, meaning any fee would be minimal. In addition, DACS does not have an estimate of the number of producers who would be subject to the fee. Therefore, neither DACS nor the Fiscal Research Division can estimate the potential revenue from a fee. All future revenue from the fee would be used to offset program costs and not provide additional availability to the General Fund.

Expected Expenditures
Identification Tags and Tag Tracking
The Fiscal Research Division expects that HB 432 will increase DACS' expenditures; the Department will have to develop, distribute, and track identification tags. At present, DACS does not have an estimate of the cost of providing tags and no estimate of the cost of this program is available. The USDA provides the identification tags and many of the incidental costs associated with HB 432 can be covered with federal funds through existing cooperative agreements. In addition, the Department is building a system that will track tags as part of the NCFarmID and national animal disease traceability system. While the final distribution system for identification tag has not been finalized, DACS anticipates existing field staff to be heavily involved in the logistics and implementation of providing tags to producers. These responsibilities will be added to existing field staff duties. The Department's NCFarmID website will provide access for producers to not only get information but request needed tags. At this time, due to the availability of federal funds, the State will not have to bear the costs associated with HB 432.

Enforcement
Enforcement of the HB 432 identification tag requirements will be through existing law enforcement personnel and protocols (i.e., routine enforcement of state rules and regulations). Law enforcement officials will be provided basic educational information regarding the new statute and their role in its enforcement, which would involve reporting of un-tagged swine when enforcing normal transportation and other livestock/wildlife-related laws. If a transporter is stopped and does not have the necessary animal identification, law enforcement will contact DACS Veterinary Division personnel, who will

begin compliance actions. Such actions fall within the existing responsibilities of field staff and existing protocols of civil actions within the Veterinary Division. Veterinary field staff currently have the authority and responsibility of enforcing identification compliance in a variety of setting and species and office staff currently assumes the duties of initiating communications, collections, and follow-up in working with the Attorney General's office in civil actions that result from the enforcement of existing regulations under DACS' authority; HB 432 would not require additional personnel or training of office staff for the Department.

Wildlife Resources Commission (WRC)

HB 432 makes changes to existing General Statutes enforced by the Wildlife Management Section of WRC. These changes are described in the Bill Summary at the beginning of this Fiscal Note. According to the Wildlife Management Section Chief, the bill will bring no additional revenue to WRC nor should it increase the total cost in the operation of the agency. The enforcement of the bill will be performed with existing resources and will not require any additional resources.

Justice and Public Safety Issues

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

The proposed legislation enacts G.S. 113-291.12, Unlawful to remove live feral swine from traps, making it unlawful to remove a live feral swine[1] from a trap or transport the live swine after removal. Section 6 also adds subsection (s) to G.S. 113-294, Specific Violations, to make violation of G.S. 113-291.12 a Class 2 misdemeanor.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

In FY 2009-10, 25 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Department of Correction – Division of Community Corrections

[1]The bill, *inter alia*, amends G.S. 113-129, Definitions relating to resources, for purposes of G.S. Chapter 113, Article 22 (Regulation of Wildlife), by (1) removing "wild boar" from the categories of "big game" and "game animals" in G.S. 113-129(1b) and (7c); (2) deleting the term "wild boar" in G.S. 113-129(15b) and substituting the term "feral swine" in new G.S. 113-129(5c) ; and (3) adding "feral swine" to the category of "wild animals" in G.S. 113-129(15). The terms "wild boar" and "feral swine" both denote "free-ranging mammals of the species Sus scrofa" under the current and proposed versions of G.S. 113-129.

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SOURCES OF DATA: Judicial Branch; North Carolina Sentencing and Policy Advisory Commission;

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lanier McRee and Sarah Stone

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 3, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 167
Committee Substitute Favorable 3/7/11
Committee Substitute #2 Favorable 4/13/11

Short Title: Extend Assessment Refund Period. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE PERIOD FOR LOCAL GOVERNMENTS TO REFUND SPECIFIED UNUSED ASSESSMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2010-129 reads as rewritten:

"**SECTION 7.** A local government that imposed an assessment prior to ~~2007~~ 2012 to finance a capital project that has been assumed by another unit of local government may return unused assessments to the person that paid the assessment."

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

HOUSE BILL 167:
Extend Assessment Refund Period

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Reps. Iler, Hill	**Prepared by:**	Greg Roney
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 167 authorizes local governments to refund assessments imposed before 2012 where the assessment financed a capital project that was assumed by another local government.

CURRENT LAW: Counties are authorized to impose assessments for certain capital improvements under Article 9 of Chapter 153A. Cities are authorized to impose assessments for certain capital improvements under Article 10 of Chapter 160A. These statutes do not provide a mechanism for refunds of unused assessments because assessments are imposed to reimburse local governments for the cost of completed projects.

S.L. 2010-129 authorized local governments to refund assessments imposed before 2007 where the assessment financed a capital project that was assumed by another local government.

BILL ANALYSIS: House Bill 167 would extend by five years the authority granted to local governments under S.L. 2010-129 to refund unused assessments. The bill does not change the other requirements of S.L. 2010-129 that the assessment finance a capital project and that the capital project be assumed by another local government.

BACKGROUND: House Bill 167 would allow Boiling Spring Lakes to refund unused assessments made to finance a capital project that was assumed by the county. Boiling Spring Lakes obtained a federal loan to pay for a water project, transferred its water project to the county, and now seeks to refund the unused assessments. On April 5, 2011, the Board of Commissioners of the City of Boiling Spring Lakes approved a resolution that the refunds would be issued by June 30, 2012.

EFFECTIVE DATE: Effective when it becomes law.

R. Erika Churchill, counsel to House Government, substantially contributed to this summary.

H167-SMTM-33(e3) v1

HOUSE BILL 335
Second Edition Engrossed 4/14/11

Short Title:	Maintenance of Prisons.	(Public)
Sponsors:	Representatives Guice, Horn, Burr, and Daughtry (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government.	

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE PROHIBITION ON CONTRACTING FOR THE MAINTENANCE OF PRISON FACILITIES AND TO DIRECT THE DEPARTMENT OF CORRECTION TO STUDY CONTRACTING FOR MAINTENANCE SERVICES AT PRISON FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 19.10 of S.L. 2010-31 is repealed.

SECTION 2. The Department of Correction may proceed with its current request for proposals for prison maintenance for Tabor City Correctional Institution, Bertie Correctional Institution, and Maury Correctional Institution.

SECTION 3. The Department of Correction shall study the potential benefits and costs of contracting for maintenance services at prison facilities and report its findings to the 2013 Session of the General Assembly. The Department shall not expand private maintenance contracts to additional prison facilities unless authorized by the 2013 Session of the General Assembly.

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

HOUSE BILL 335:
Maintenance of Prisons

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Reps. Guice, Horn, Burr, Daughtry	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 335 repeals a 2010 prohibition on contracting for the maintenance of prison facilities, and directs the Department of Correction to study the potential benefits and costs of contracting for maintenance services at prison facilities.

CURRENT LAW: Section 19.10 of S.L. 2010-31, the Appropriations Act of 2010, provided that the Department of Correction is prohibited, on or after the effective date of the section (July 1, 2010) to (1) enter into any contract for maintenance services at prison facilities, or (2) expand any existing contract for maintenance services at prison facilities to additional prison facilities. This section did not apply to the renewal of contracts existing at the time the section becomes effective.

BILL ANALYSIS: House Bill 335 does three things:

- It repeals Section 19.10 of S.L. 2010-31, which prohibited contracting for prison maintenance services.
- It allows the Department of Correction to proceed with its current request for proposals for prison maintenance for Tabor City Correctional Institution, Bertie Correctional Institutional, and Maury Correctional Institution. The Department may not expand private maintenance contracts to additional prison facilities unless so authorized by the General Assembly.[1]
- It directs the Department of Correction to study the potential benefits and costs of contracting for maintenance services at prison facilities. The Department must report its findings to the 2013 Session of the General Assembly.

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

BACKGROUND: Senators Clodfelter, Brown, and Jenkins introduced Senate Bill 363. Senate Bill 363 would repeal the section of the 2010 budget that prohibited contracting for prison maintenance services. Senate Bill 363 did not impose any limitations, as contained in section 2 of House Bill 335; and it did not require a study, as contained in section 3 of House Bill 335.

H335-SMRB-77(e2) v1

[1] The first edition of the bill would have expanded the scope of the current request for proposals to the Division of Prisons' Eastern and South Central operational regions.

HOUSE BILL 292
Second Edition Engrossed 5/25/11

Short Title:	Incorporate Rougemont.	(Local)
Sponsors:	Representative Wilkins (Primary Sponsor) For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government.	

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF ROUGEMONT, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Rougemont is enacted to read:

"CHARTER OF THE TOWN OF ROUGEMONT.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Rougemont are a body corporate politic under the name 'Town of Rougemont.' Under that name they shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Rougemont are as follows:

Beginning at the intersection of the Flat River and Red Mountain Road, thence in an easterly direction following the Flat River north and west to the northeast corner of PIN 190702, thence in a southerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction along the southern boundary of aforementioned parcel, thence in a northerly direction along the eastern boundary of PIN 190703, thence in a westerly direction along the northern boundaries of aforementioned parcel and PIN 190701 to the eastern boundary of PIN 196596, thence in a northerly direction along the western boundary of PIN 190700, thence in an easterly direction along the northern boundary of aforementioned property to the Flat River, thence in a northerly, westerly, and southwesterly direction following the Flat River to the northeast corner of PIN 190725, thence in a southerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction following Bowen Road to its intersection with Moore's Mill Road, thence in a southerly direction along Moore's Mill Road to the northeast corner of PIN 190584, thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the western boundary of aforementioned parcel, thence in a westerly direction along the southern boundary of PIN 190585, thence in a northerly direction along the western boundaries of PIN 190585, PIN 190586, PIN 190717, PIN 190715, PIN 190714, PIN 190712, and PIN 190713 to the Durham/Person County line, thence in a westerly direction following the Durham/Person County line to the northwest corner of PIN 190783, thence in a southerly direction along the western boundaries of PIN 190783, PIN 190784, PIN 190785, PIN 190786, PIN 190787, and PIN 190788, thence in a westerly direction and along the northern boundaries of PIN 190788

and PIN 190803, thence in a southerly direction along the eastern boundary of PIN 189591 to the northwest corner of PIN 189592, thence in an easterly direction along the northern boundary of PIN 189592, thence in a southerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction along the southern boundary of aforementioned parcel to PIN 189593, thence in a southerly direction along the eastern boundary of PIN 189593, thence in a westerly direction along the southern boundary of PIN 189593 to the northwest corner of PIN 190804, thence in an easterly direction along the northern boundary of aforementioned property, thence in a southerly direction along the eastern boundary of aforementioned property, thence in a westerly direction along the southern boundary of aforementioned property, thence in a northwesterly direction along the western boundary of aforementioned property and the eastern boundary of PIN 190768, thence in a westerly direction along the southern boundary of PIN 189593 to Equestrian Chase, thence in a southerly direction along the western boundary of Equestrian Chase to the southeastern boundary of PIN 190812, thence in a southwesterly direction along the eastern boundary of aforementioned property, thence in a northerly direction along the western boundary of aforementioned property and PIN 189595 and continuing northerly along the western boundary of PIN 189594 to PIN 189599, thence in an easterly direction along the southern boundary of aforementioned parcel, thence in a northerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a northerly direction along the western boundaries of PIN 189590 and PIN 189589 to Harris Mill Road, thence in a northerly direction along the eastern boundary of the Norfolk Southern Railroad right-of-way to the Durham/Person County line, thence in a westerly direction along the Durham/Person County line to the western right-of-way of U.S. Highway 501, thence in a southerly direction along the western right-of-way of U.S. Highway 501 to PIN 189580, thence in an easterly direction along the southern boundary of PIN 189580 to the northwest corner of PIN 189542, thence in a southerly direction along the western boundary of PIN 189542, thence in an easterly direction along the southern boundary of aforementioned parcel to the western boundary of right-of-way of U.S. Highway 501, thence in a southerly direction along the western boundary of U.S. Highway 501 right-of-way to the northeast corner of PIN 189662, thence in a westerly direction along the northern boundary of PIN 189662, thence in an easterly direction along the southern boundary of aforementioned parcel to the western boundary of the U.S. Highway 501 right-of-way, thence in a southerly direction along the western boundary of U.S. Highway 501 right-of-way to northeast corner of PIN 189657, thence in a southwesterly direction along the northern boundary of aforementioned parcel, thence in a southeasterly direction along the western boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of PIN 189656, thence in a southerly direction along the western boundaries of PIN 189656 and PIN 189655, thence in a westerly direction along the northern boundaries of PIN 189654 and PIN 189636, thence in a southerly direction along the western boundary of PIN 189636, thence in a westerly direction along the northern boundary of PIN 189653, thence in a northwesterly direction along the eastern boundary of PIN 189665, thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the western boundary of aforementioned parcel to the northern right-of-way of Bacon Road, thence in a westerly direction along the northern right-of-way of Bacon Road to the intersection of the southern section (between Bacon Road and Bill Poole Road) of Chambers Road, thence in a southerly direction along the western boundary of the right-of-way of Chambers Road to the northeast corner of PIN 189521, thence in a westerly direction along the northern boundary of the aforementioned parcel, thence in a southerly direction along the western boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of aforementioned parcel to the western boundary of the Chambers Road right-of-way, thence in a southerly direction along the western boundary of the Chambers Road right-of-way to the

northeast corner of PIN 189519, thence in a westerly direction along the northern boundary of the aforementioned parcel, thence in a southerly direction along the western boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of PIN 189517, thence in a southerly direction along the western boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of aforementioned parcel to the western boundary of the Chambers Road right-of-way, thence in a southerly direction along the western boundary of the Chambers Road right-of-way to the northeast corner of PIN 189515, thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the eastern boundary of PIN 189511 to the northern boundary of the Cothran Road right-of-way, thence in a westerly direction along the northern boundary of the Cothran Road right-of-way to the southeast corner of PIN 189507, thence in a northerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the western boundary of aforementioned parcel and PIN 189484, thence in an easterly direction along the southern boundary of PIN 189484, thence in a southerly direction along the western boundaries of PIN 189483, PIN 189488, and PIN 189489 to the northern boundary of the Bill Poole Road right-of-way, thence in a southwesterly direction along the northern boundary of the Bill Poole Road right-of-way to its intersection with Rougemont Road, thence in a southerly direction along the western boundary of the Rougemont Road right-of-way to the southwest corner of PIN 189890, thence in an easterly direction along the southern boundary of aforementioned parcel, thence in a northerly direction along the eastern boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of PIN 189498, thence in a southeasterly direction along the western boundary of PIN 189494, thence in an easterly direction along the southern boundary of aforementioned parcel, thence in a northerly direction along the eastern boundaries of aforementioned parcel and PIN 189493, thence in an easterly direction along the southern boundaries of PIN 189885 and PIN 189886 to the western boundary of the Harris Road right-of-way, thence in a northerly direction along the western boundary of the right-of-way of Harris Road to the northern boundary of the Bill Poole Road right-of-way, thence in a northeasterly direction along the northern right-of-way of Bill Poole Road to the southeastern corner of PIN 189884, thence in a northwesterly direction along the eastern boundary of aforementioned parcel, thence in a southwesterly direction along the northern boundaries of aforementioned parcel to PIN 189879, thence in a northwesterly direction along the eastern boundary of aforementioned parcel, thence in a northerly direction along the western boundary of PIN 189848, thence in an easterly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the eastern boundary of aforementioned parcel, thence in a southwesterly direction along the northwest boundary of PIN 197183, thence in a southeasterly direction along the southwest boundary of aforementioned parcel and crossing Bill Poole Road, thence in a westerly direction along the southern right-of-way of Bill Poole Road to the western boundary of PIN 189847, thence in a southerly direction along the western boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of aforementioned parcel and continuing in an easterly direction along the southern boundaries of parcels through PIN 189831 to the northwest corner of PIN 189830, thence in a southerly direction along the western boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of aforementioned parcel to the western right-of-way of U.S. Highway 501, thence in a southerly direction along the western boundary of the U.S. Highway 501 right-of-way to PIN 189824, thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the eastern boundaries of PIN 189834, PIN 189835, and PIN 189867, thence in a southeasterly direction along the northern boundary of PIN 190517, thence in a southeasterly direction along the southwest boundary of PIN 190513, thence in a northeasterly direction along the southeast boundary of aforementioned parcel to the western right-of-way of U.S.

Highway 501, thence crossing U.S. Highway 501 and continuing along the southeastern boundary of PIN 190530, thence in a northwesterly direction along the northeast boundary of aforementioned parcel, thence in a southwesterly direction along the northwestern boundary of aforementioned parcel to the northeastern boundary of the U.S. Highway 501 right-of-way, thence in a northwesterly and then northerly direction along the eastern right-of-way of U.S. Highway 501 to the southwestern corner of PIN 189820, thence in a northeasterly direction along the southeastern boundary of aforementioned parcel to the western boundary of the Norfolk Southern Railroad right-of-way, thence in a southerly direction along the western boundary of the Norfolk Southern Railroad right-of-way to the southwest corner of PIN 189793, thence in an easterly direction along the southern boundary of aforementioned parcel, thence in a southeasterly direction along the northeastern boundary of PIN 190625, thence in a southerly direction along the northeastern boundary of PIN 190512, thence in a southeasterly and then easterly direction along the northern boundary of aforementioned parcel to the southeast corner of PIN 190645, thence in a northerly direction along the eastern boundary of aforementioned parcel to the southern right-of-way of Lake Winds Trail, thence in an easterly direction along the southern right-of-way of Lake Winds Trail, thence in a southerly direction along the western boundary of PIN 190644, thence in an easterly direction along the southern boundary of aforementioned parcel and continuing in an easterly direction to the western right-of-way of Moore's Mill Road, thence in a northerly direction crossing Lake Winds Trail to the northeast corner of PIN 190663, thence in a westerly direction along the northern boundary of aforementioned parcel and continuing in a westerly direction to the northwest corner of PIN 190677, thence in a southerly direction along the western boundary of aforementioned parcel to the northern right-of-way of Lake Winds Trail, thence in a westerly direction along the northern right-of-way of Lake Winds Trail to the southeastern corner of PIN 190665, thence in a northerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of aforementioned parcel and continuing to the northeastern boundary of PIN 190671, thence in a northerly direction and continuing to the northeast corner of PIN 190627 (located north of PIN 190628), thence in a westerly direction along the northern boundary of aforementioned parcel and continuing in a westerly direction to PIN 190697, thence in a northeasterly direction along the eastern boundary of aforementioned parcel, thence in a northwesterly direction along the northeastern boundary of aforementioned parcel, thence in a southwesterly direction along the northwestern boundary of aforementioned parcel, thence in a northwesterly direction along the eastern right-of-way of Lake Winds Trail, thence in a southwesterly direction crossing Lake Winds Trail and continuing to the northwest corner of PIN 190688, thence in a southeasterly direction along the western boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of PIN 190627 (located west of PIN 190688) to the southeast corner of PIN 189793, thence in a northerly direction along the eastern boundary of aforementioned parcel and continuing to the southwest corner of PIN 190638, thence in an easterly direction along the southern boundary of aforementioned parcel and continuing in an easterly direction to the northwest corner of PIN 190629, thence in a southerly direction along the western boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of aforementioned parcel to the western right-of-way of Moore's Mill Road, thence in a northerly direction along the western right-of-way of Moore's Mill Road to the northwest corner of PIN 190706, thence in an easterly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the eastern boundary of aforementioned parcel and continuing across Red Mountain Road along the western boundary of PIN 190587, thence in an easterly direction along the southern boundary of aforementioned parcel, thence in a northerly direction along the eastern boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of PIN 190704 and continuing in an easterly direction to the Flat River, thence in a northerly and northeasterly direction along the Flat River to the bridge over

the Flat River on Red Mountain Road. PIN 190576 and PIN 189728 are located within the contiguous outer boundaries of the Town of Rougemont, but are excluded from the corporate boundaries of the Town.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Rougemont is the Town Council, which shall consist of a Mayor and four members.

"Section 3.2. **Manner of Electing Town Council.** The qualified voters of the entire Town shall elect the members of the Town Council and, except as provided in this section, they shall serve four-year terms. In 2011, the three candidates receiving the highest numbers of votes shall be elected to four-year terms and the two candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2013, and quadrennially thereafter, two members shall be elected to four-year terms. In 2015, and quadrennially thereafter, three members shall be elected to four-year terms.

"Section 3.3. **Manner of Electing Mayor; Term of Office; Duties.** At the organizational meeting following each municipal election, the Town Council shall elect one of its members as Mayor, and the Mayor shall serve at the pleasure of the Town Council. The Mayor shall be the official head of Town government, shall preside at all meetings of the Town Council, and shall exercise the powers and duties conferred by law or as directed by the Town Council.

"Section 3.4. **Residency Requirement.** Members of the governing body of the Town of Rougemont, whether elected or appointed, must be qualified voters who reside within the corporate limits of the Town in order to qualify to take, hold, and continue in office.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and the results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, with the first regular municipal election to be held on November 8, 2011.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by the general law of North Carolina, local acts of the General Assembly, or as provided for in this Charter.

"ARTICLE V. ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town shall operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties as required by law or as directed by the Town Council.

"Section 5.3. **Town Clerk.** The Town Council shall appoint a Town Clerk who shall perform duties as required by law or as directed by the Town Council. The Town Clerk shall serve at the pleasure of the Town Council.

"Section 5.4. **Other Officers and Employees.** The Town Council may appoint other officers and positions as deemed appropriate, subject to the requirements of general law.

"Section 5.5. **Consolidation of Functions.** Where positions are not incompatible, the Town Council may combine in one person the powers and duties of two or more officers created or authorized by this Charter.

"Section 5.6. **Compensation for Mayor and Town Council Members.** The Mayor and members of the Town Council shall be reimbursed for ordinary and necessary expenses and may receive salary and honoraria only upon a majority vote of the qualified voters of the Town who vote on the question in a special referendum.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Town Council shall be required to change the ad valorem tax from that rate established during the prior fiscal year.

"Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2011, the citizens and property in the Town of Rougemont shall be subject to municipal taxes levied for the year beginning July 1, 2011, and for that purpose the Town shall obtain from Durham County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2011.

"Section 6.3. **Budget.** The Town may adopt a budget ordinance for fiscal year 2011-2012 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2011-2012, ad valorem taxes may be paid at par or face amount within 90 days of the adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360.

"Section 6.4. **Ad Valorem Taxes.** The Town Council shall not levy an ad valorem tax at a rate more than $0.05/$100.00 valuation, except for fire protection services, without the approval of the qualified voters of the Town of Rougemont. The election on the question of increasing the ad valorem tax rate shall be conducted in accordance with G.S. 160A-209.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Rougemont is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town.

"ARTICLE VIII. MISCELLANEOUS.

"Section 8.1. **Enlargement of Town Council.** The qualified voters of the Town of Rougemont may seek to enlarge the number of members of the Town Council by submitting a petition to that effect signed by twenty percent (20%) of the qualified voters. Upon the passage of a resolution as provided in G.S. 160A-102 or upon receipt of a valid petition, the Town Council shall immediately take steps as provided in Part 4 of Article 5 of Chapter 160A of the General Statutes to determine by referendum whether the number of members of the Town Council should be increased. If a majority of the votes cast in the referendum are in the affirmative, a special election shall be held at the earliest possible date to elect the additional members required to enlarge the Town Council to the number set forth in the referendum.

"Section 8.2. **Amendments to Charter.** The Town Council may propose and enact amendments to this Charter in accordance with Part 4 of Article 5 of Chapter 160A of the General Statutes. No amendment to this Charter shall become effective until public notice is given and a public hearing is held to receive comments on the proposed Charter amendment. Notwithstanding G.S. 160A-103, upon receipt of a referendum petition bearing the signatures and residence addresses of twenty percent (20%) of the qualified voters of the Town, the Town Council shall submit ordinances adopted under G.S. 160A-102 to a vote of the people.

"Section 8.3. **Provision of Services and Administration of Functions.** The Town Council may enter into agreements with other governmental bodies and private enterprises for the provision of services and administration of corporate functions in order to provide the services and administer the functions in the most efficient and cost-effective manner.

"Section 8.4. **Conflict of Interest.** No person, or a member of the person's immediate family, who is employed by or is an official of the Town of Rougemont shall do business with the Town unless the Town Council specifically approves the activity. All appointed officials of the Town must inform the Town Council of any conflicts of interest and the failure to so inform shall constitute grounds for immediate dismissal for cause. No official of the Town may accept any gratuity from any business, person, or other official if the gratuity is related to his or her official duties.

"Section 8.5. **Nepotism.** No person who is an immediate family member of an elected official of the Town of Rougemont shall be appointed to or employed in a position within Town government unless the appointment or employment is approved by the entire Town Council.

"Section 8.6. **Annexation.** The Town of Rougemont shall not extend its boundaries into an adjoining county.

"Section 8.7. **Planning and Regulation of Development.** (a) Notwithstanding any other provision of this Charter or general law, including the provisions of Article 19 of Chapter 160A of the General Statutes, the Town shall not adopt any ordinance creating a planning agency, regulating or restricting the subdivision, zoning, or use of any land, or providing for building inspections. All planning duties, regulation of development, and building inspections within the jurisdiction of the Town shall be conducted as if the area was not in the corporate limits of any municipality.

(b) The provisions of subsection (a) of this section shall not apply if the County of Durham and the City of Durham, by amendment to their zoning ordinances, agree to allow the Town to adopt and enforce ordinances under Article 19 of Chapter 160A of the General Statutes.

"ARTICLE IX. SPECIAL PROVISIONS.

"Section 9.1. **Fire Protection.** The Town of Rougemont shall contract with the Bahama Volunteer Fire, Rescue, and EMS Company, Inc., to provide fire protection for the Town. The contract terms and amount paid by the Town of Rougemont to the Bahama Volunteer Fire, Rescue, and EMS Company, Inc., shall be mutually agreed upon and annually renewed by the Board of Directors of the Bahama Volunteer Fire, Rescue, EMS Company, Inc., and the Town Council.

"Section 9.2. **Safety Protection.** The Town of Rougemont shall contract with the Durham County Sheriff's Department to provide safety protection for the Town. The contract terms and amount paid by the Town of Rougemont to the Durham County Sheriff's Department shall be mutually agreed upon and annually renewed by the Durham County Commissioners and the Town Council."

SECTION 2. The Durham County Board of Elections shall conduct an election on November 8, 2011, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Town of Rougemont the question of whether or not the area shall be incorporated as the Town of Rougemont. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

SECTION 3. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST
Incorporation of the Town of Rougemont."

SECTION 4. In the election, if a majority of the votes are cast "FOR Incorporation of the Town of Rougemont," Section 1 of this act shall become effective on the date that the Durham County Board of Elections certifies the results of the election. Otherwise, Section 1 of this act shall have no force and effect.

SECTION 5. At the same time as the election held under Section 2 of this act, the Durham County Board of Elections shall hold an election for the initial Town Council as provided in Articles III and IV of the proposed Charter of the Town of Rougemont. If the majority of votes is not cast "FOR Incorporation of the Town of Rougemont," the election of officers is null and void. The filing period for candidacies is the same as provided by G.S. 163-294.

SECTION 6. If the Charter of the Town of Rougemont, as enacted by Section 1 of this act, becomes effective, and the City of Durham and Durham County subsequently become a unified government under the provisions of any general or local law, the Town of Rougemont's Charter shall be repealed and the Town shall comply with any and all requirements prescribed by the North Carolina General Assembly to ensure that the unified

government of the City of Durham and Durham County assume all the powers, duties, functions, rights, privileges, and immunities authorized by general or local law over the area described in Section 2.1 of the Charter of the Town of Rougemont, as enacted by Section 1 of this act.

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 292:
Incorporate Rougemont

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Rep. Wilkins	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 292 incorporates the Town of Rougemont in Durham County, subject to a referendum.

CURRENT LAW: Municipalities may be created by the General Assembly, with powers and duties it deems advisable, pursuant to Article VII, Section 1 of the North Carolina Constitution. Rule 35.1(b) of the House Rules requires that a legislative proposal proposing incorporation must have attached to its bill jacket a report of the Joint Municipal Incorporations Commission prior to a favorable report by a committee of the House. Article 20 of Chapter 120 of the General Statutes creates the Joint Municipal Incorporation Commission and sets forth the criteria for review of a proposed incorporation.

BILL ANALYSIS: House Bill 292 would incorporate the Town of Rougemont in Durham County, subject to a referendum on November 8, 2011.

The proposed Charter of Rougemont includes standard incorporation provisions and provides:

- A Town Council of four members and a Mayor. The Council members shall be elected on a nonpartisan, at-large basis for staggered four-year terms. The mayor is to elected for a two-year term.
- The Mayor and Town Council may receive a salary only if approved by a majority of the town voters in a special referendum.
- Ad valorem taxes are limited to $0.05/$100, except for fire protection, unless approved by a majority of the town voters.
- Annexation into an adjoining county is prohibited.
- The Town shall not adopt any ordinance creating a planning agency, regulating or restricting the subdivision, zoning, or use of any land, or providing for building inspections unless the County of Durham and the City of Durham, by amendment to their zoning ordinances, agree to allow the Town to adopt and enforce ordinances under Article 19 (Planning and Regulation of Development) of Chapter 160A of the General Statutes.
- The Town shall contract with the Bahama Volunteer Fire, Rescue, and EMS Company, Inc., to provide fire protection for the Town.
- The Town of Rougemont shall contract with the Durham County Sheriff's Department to provide safety protection for the Town.

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

BACKGROUND: The proposed incorporation of the Town of Rougemont received a favorable recommendation from the Joint Legislative Commission on Municipal Incorporation in its report, dated July 13, 2005, revised as to development only, May 30, 2007.

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

HOUSE BILL 414

Short Title:	Amend Rutherford County Occupancy Tax.	(Local)
Sponsors:	Representative Hager (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

March 22, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RUTHERFORD COUNTY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Rutherford County Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention

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

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

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

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

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

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

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

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

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

HOUSE BILL 414:
Amend Rutherford County Occupancy Tax

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Rep. Hager	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

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

The bill would also allow the county, upon request of the TDA, to manage the TDA's receipts and disbursements and provide services related to the operation of the TDA, such as finance, human resources, legal and information technology. The county could charge service fees for the indirect costs related to these services.

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

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

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

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

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

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

[1] G.S. 153A-155 and G.S. 160A-215.

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

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

H414-SMSV-66(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 414 (First Edition)

SHORT TITLE: Amend Rutherford County Occupancy Tax.

SPONSOR(S): Representative Hager

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	****No Fiscal Impact****				
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Rutherford County

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

BILL SUMMARY:

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

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

ASSUMPTIONS AND METHODOLOGY:

There is no fiscal impact due to these changes.

SOURCES OF DATA: Committee Counsel

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: April 26, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 414 (First Edition)

SHORT TITLE: Amend Rutherford County Occupancy Tax.

SPONSOR(S): Representative Hager

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	****No Fiscal Impact****				
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Rutherford County

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

BILL SUMMARY:

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

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

ASSUMPTIONS AND METHODOLOGY:

There is no fiscal impact due to these changes.

SOURCES OF DATA: Committee Counsel

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: April 26, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

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HOUSE BILL 532

Short Title:	Graham County/Cemetery Tax By General Law.	(Local)
Sponsors:	Representative West (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

March 31, 2011

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE MAINTENANCE OF CEMETERIES IN GRAHAM COUNTY FROM AD VALOREM TAXES UNDER GENERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Section 9 of Chapter 797 of the 1957 Session Laws is repealed so that the general law applies.

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

HOUSE BILL 532:
Graham County/Cemetery Tax By General Law

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Rep. West	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 532 repeals a section of a 1957 Session Law authorizing Graham County to call for a special election for the purpose of submitting to the voters the question of levying a special ad valorem tax for the maintenance of cemeteries in Graham County. Upon repeal, the general law would apply.

CURRENT LAW: Chapter 797 of the 1957 Session Laws created the Graham County Cemetery Commission giving it full charge of all public cemeteries within the county, including supervision and maintenance. Section 9 of that act authorized the Graham County Board of Elections, upon request from the Cemetery Commission, to call a special election for the purpose of submitting the question of a levy of an ad valorem tax for the maintenance of the county cemeteries. The rate provided was $0.06 on the $100 of real and personal property. If a majority of voters approve a tax for cemetery maintenance, the tax is to be levied yearly and turned over the Cemetery Commission.

G.S. 153A-149(c) allows counties to levy property taxes, subject to a rate limitation, for specific purposes including the provision of cemeteries. For the purposes listed in G.S. 153A-149(c), the county may levy property taxes up to a combined rate of $1.50 on the $100.00 appraised value of property subject to taxation.

BILL ANALYSIS: House Bill 532 would repeal Section 9 of Chapter 797 of the 1957 Session Laws so that the general law would apply.

EFFECTIVE DATE: House Bill 532 would become effective when it becomes law.

BACKGROUND: After the passage of the 1957 local act, the Graham County Board of Commissioners held a referendum in which the ad valorem tax was approved. At some point in time, however, the county stopped collecting the special ad valorem tax specifically for cemetery maintenance and starting funding it as a county department through the appropriations process and based on its needs for the fiscal year. According to the county, the 6¢ on the $100 rate is far more than is necessary for cemetery maintenance. The Cemetery Commission continues to function and currently has 9 members. The Board has indicated that, if this bill passes, the Commission will continue to exist and act in an advisory capacity to assist the Board with regard to cemetery maintenance.

Susan Barham, Research Assistant, contributed to this summary.

H532-SMSV-67(e1) v1

HOUSE BILL 545
Committee Substitute Favorable 4/20/11

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

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MOORE COUNTY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

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

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

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

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

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

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Moore County Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 2.(d) Distribution and Use of Tax Revenue. – Moore County shall, on a quarterly basis, remit to the Moore County Tourism Development Authority the net proceeds of the occupancy tax. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Moore County and shall use the remainder for tourism-related expenditures.

SECTION 3. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Moore County Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following members:

(1) A county commissioner appointed by the Board of County Commissioners.

(2) Five owners or operators of hotels, motels, or other taxable tourist accommodations, two of which own or operate the largest hotels, motels, or other accommodations in the county by rental unit count and three of which own or operate other hotels, motels, or other accommodations by rental unit count, who shall be appointed by the Board of County Commissioners,

(3) The President and CEO of the Moore County Chamber of Commerce.

(4) Two individuals interested in the tourist business who have demonstrated an interest in tourist development but do not own or operate a hotel, motel, or other taxable tourist accommodation, who shall be appointed by the Board of County Commissioners.

All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled in the same manner as the initial appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve terms as provided in the rules of procedure and bylaws of the Authority.

The Board of Commissioners shall designate one member of the Authority as chair. The Authority shall meet at the call of the chair and shall adopt rules of procedure and bylaws to govern its meetings. The Finance Officer for Moore County shall be the ex officio finance officer of the Authority.

SECTION 3.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 2 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 3.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Moore County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

SECTION 4. Administrative provisions. – G.S. 153A-155(g) reads as rewritten:

"(g) Applicability. – Subsection (c) of this section applies to all counties and county districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell, Montgomery, Moore, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson Counties, to Surry County District S, to Watauga County District U, to Wilkes County District K, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District."

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 545:
Amend Moore County Occupancy Tax

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Rep. Boles	**Prepared by:**	Judy Collier
Analysis of:	Second Edition		Research Assistant

SUMMARY: House Bill 545 recodifies the previously authorized Moore County Occupancy Tax to make it consistent with the current House Finance Occupancy Tax Guidelines. This change would allow the county to use up to one-third of the net proceeds for tourism-related expenditures. House Bill 545 received a Favorable Recommendation from the House Finance Subcommittee on Occupancy Tax on April 19, 2011.

CURRENT LAW: In 1987, the General Assembly authorized Moore County to levy a room occupancy tax of 3% of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp or other similar place within the county that is subject to the sales tax imposed under G.S. 105-164. The net proceeds must be remitted to the county Tourism Development Authority and must be used to further the development of travel and tourism through advertising and promotion.

The Moore County Tourism Development Authority is made up of 9 members:

- A county commissioner.
- 5 hotel operators, 2 of which operate the largest hotels by rental unit count.
- The Executive Vice President of the Sandhills Area Chamber of Commerce.
- 2 individuals interested in the tourist business but who do not operate a hotel.

BILL ANALYSIS: House Bill 545 recodifies the existing law authorizing a room occupancy tax in Moore County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," promote travel and tourism" and tourism-related expenditures". The bill also makes the Moore County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155.

By conforming to the House Finance occupancy tax guidelines, Moore County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

EFFECTIVE DATE: House Bill 545 would become effective when it becomes law.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

Trina Griffin, counsel to Finance Committees, substantially contributed to this summary.

H545-SMRE-4(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 545 (First Edition)

SHORT TITLE: Amend Moore County Occupancy Tax.

SPONSOR(S): Representative Boles

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	****No Fiscal Impact****				
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Moore County

EFFECTIVE DATE: This act is effective when it becomes law

BILL SUMMARY:

House Bill 545 recodifies the existing law authorizing a room occupancy tax in Moore County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," promote travel and tourism" and tourism-related expenditures". The bill also makes the Moore County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155.

By conforming to the House Finance occupancy tax guidelines, Moore County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

ASSUMPTIONS AND METHODOLOGY:

There is no fiscal impact due to these changes.

SOURCES OF DATA: Committee Counsel's Bill Summary

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: April 19, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE BILL 131

Short Title:	AOC Collection Assistance Fee.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary II.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE EXPANDED METHODS OF COLLECTING FINES, FEES, COSTS, AND RESTITUTION FROM OFFENDERS NOT SENTENCED TO SUPERVISED PROBATION OR ACTIVE TIME AND TO PERMIT THE COUNTY IN WHICH THE COLLECTION ASSISTANCE FEE IS COLLECTED TO RETAIN THE FEE, PROVIDING THE FEE IS COLLECTED BY A COLLECTIONS PROGRAM FUNDED BY THE COUNTY GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-321 reads as rewritten:

"**§ 7A-321. Collection of offender fines and fees assessed by the court; collection assistance fee.**

(a) The Judicial Department may, in lieu of payment by cash or check, accept payment by credit card, charge card, or debit card for the fines, fees, and costs owed to the courts by offenders.

(b) In attempting to collect the fines, fees, ~~and costs~~ costs, and restitution owed by offenders not sentenced to supervised ~~probation,~~ probation or active time, the Department ~~may:~~may do the following:

(1) Assess a collection assistance fee if an amount due remains unpaid for 30 days after the time period allotted by the court. The collection assistance fee may be retained by the county in which the fee is collected, provided that the fee is collected by a collections program funded by the county government. The amount of the collection assistance fee shall not exceed the average cost of collecting the debt or twenty percent (20%) of the amount past due, whichever is less.

(2) Enter into contracts with a collection agency or agencies to collect unpaid fines, fees, ~~and costs~~ costs, and restitution owed by offenders not sentenced to supervised ~~probation.~~probation or to active time.

(3) Intercept tax refund checks under Chapter 105A of the General Statutes, the Setoff Debt Collection Act.

(4) Make referrals to credit counseling agencies and debt restructuring services.

~~(c) Should the Judicial Department use any method listed in subdivision (b)(1) or (2) of this section to collect fines owed by offenders not sentenced to supervised probation, the Department may not charge any additional cost of collection pursuant to G.S. 115C-437 or G.S. 7A-304(f).~~

(d) The court shall retain a collection assistance fee in the amount of ten percent (10%) of any cost or fee collected by the Department pursuant to this Article or Chapter 20 of the General Statutes and remitted to an agency of the State or any of its political subdivisions, other

than a cost or fee listed in this subsection. The court shall remit the collection assistance fee to the State Treasurer for the support of the General Court of Justice.

The collection assistance fee shall not be retained from the following:

(1) Costs and fees designated by law for remission to or use by an agency or program of the Judicial Department or for support of the General Court of Justice.

(2) Costs and fees designated by law for remission to the General Fund."

SECTION 2. This act becomes effective July 1, 2011, and applies to cases adjudicated on or after that date.

SENATE BILL 131:
AOC Collection Assistance Fee

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Susan Sitze Committee Counsel for Senate JII
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 131 would authorize expanded methods of collecting fines, fees, costs, and restitution from offenders not sentenced to supervised probation or active time and would permit the county in which the collection assistance fee is collected to retain the fee, providing the fee is collected by a collections program funded by the county government.***

BILL ANALYSIS: Senate Bill 131 would amend G.S. 7A-131 to provide that the Judicial Department's authority to collect fines, fees, and costs, also includes restitution and applies to offenders not sentenced to supervised probation or active time. It would also allow the Department to make referrals to credit counseling agencies and debt restructuring services. The bill would also authorize a county to retain the collection assistance fee if the fee is collected by a collections program funded by the county government and removes the prohibition against the Department *charging* additional costs of collection.

EFFECTIVE DATE: This act becomes effective July 1, 2011, and applies to cases adjudicated on or after that date.

HOUSE BILL 313

Short Title:	Repeal Savings Bond Payroll Savings Program.-AB	(Public)
Sponsors:	Representatives Hastings and T. Moore (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	State Personnel, if favorable, Finance.	

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE PAYROLL SAVINGS PROGRAM FOR SAVINGS BONDS DUE TO RECENT CHANGES MADE BY THE UNITED STATES TREASURY DEPARTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 32 of Chapter 143 of the General Statutes is repealed.

SECTION 2. G.S. 115C-343 is repealed.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 313:
Repeal Savings Bond Payroll Savings Program.- AB

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Reps. Hastings, T. Moore	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 313 would repeal the statutory provisions that authorize the payroll deduction plan for the purchase of United States Savings Bonds by State employees and school employees.

CURRENT LAW: Article 32 of Chapter 143 authorizes the Payroll Savings Plan for State Employees and contains the following sections:

- § 143-301 pertains to the authority of the Governor to establish a voluntary payroll deduction plan for the purchase of United States savings bonds by State employees.
- § 143-302 describes how funds may be allotted to defray expenses.
- § 143-303 authorizes employees of the State to enter into written agreements to authorize deductions from their salary to be invested in US savings bonds.
- § 143-304 authorizes State departments, institutions, or agencies to deduct the sum specified by the employee from the weekly or monthly salary, to show the deduction, and to hold the sums until sufficient amounts have accumulated to purchase a bond.
- § 143-305 pertains to the cancellation of agreements.

G.S. 115C-343 permits the State Board of Education to authorize any local school administrative unit to establish a voluntary payroll deduction plan for the purchase of United States Savings Bonds by employees.

BILL ANALYSIS: House Bill 313 would repeal Article 32 of Chapter 143 and G.S. 115C-343.

EFFECTIVE DATE: House Bill 313 would become effective when it becomes law.

BACKGROUND: This bill was requested by the Office of the State Controller.

The information below is from the TreasuryDirect website[1] and pertains to the phasing out of paper savings bonds through employer-sponsored payroll savings plans as of January 1, 2011.

> "The U.S. Department of Treasury phased out the issuance of paper savings bonds through traditional employer-sponsored payroll savings plans. As of September 30, 2010, federal employees are no longer able to purchase paper savings bonds through payroll deduction. The end date for all other (non-federal) employees is January 1, 2011. With TreasuryDirect, Treasury can continue to offer employees the convenience of payroll savings while reducing the cost of the savings bond program. Savings bonds in TreasuryDirect are electronic securities in an account; they have all of the benefits of paper bonds but can't be misplaced or destroyed. Printing fewer paper bonds reduces the cost of the savings bond program and fits with our long-term goal of one day issuing all of our securities electronically. To continue your payroll savings, you'll need to open a TreasuryDirect account. You can continue purchasing savings bonds (or other Treasury securities) and hold them electronically in TreasuryDirect."

Theresa Matula, analyst for the House State Personnel Committee, substantially contributed to this summary.

H313-SMRB-84(e1) v1

[1] Source: http://www.treasurydirect.gov/news/news_elimination_paperpayrollqa.htm

HOUSE BILL 571*
Committee Substitute Favorable 5/18/11
Committee Substitute #2 Favorable 6/2/11

Short Title: Prepaid Wireless/Point of Sale Collection. (Public)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT IMPOSING A SERVICE CHARGE ON EACH RETAIL TRANSACTION OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR ANY PURPOSE OTHER THAN RESALE OCCURRING IN THIS STATE, REQUIRING THAT THE SERVICE CHARGE BE COLLECTED BY THE SELLER OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE AND REMITTED TO THE DEPARTMENT OF REVENUE, AND PROVIDING THAT THE DEPARTMENT OF REVENUE SHALL TRANSFER ALL SERVICE CHARGES COLLECTED, MINUS THE COSTS OF COLLECTION, TO THE 911 FUND TO SUPPORT 911 SERVICES IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 62A-43(b) reads as rewritten:

"(b) Prepaid Wireless. – ~~A voice communications service provider of prepaid wireless telephone service must collect and remit to the 911 Board the monthly service charge imposed upon prepaid wireless telephone subscribers in the State under one of the following methods:~~

~~(1) Collecting the service charge from each active prepaid wireless telephone service subscriber whose account balance is equal to or greater than the amount of the service charge.~~

~~(2) Dividing the provider's total earned prepaid wireless telephone service revenue received for the month from each active prepaid wireless telephone service subscriber by fifty dollars ($50.00) and multiplying the quotient by the amount of the service charge.~~The monthly service charge for 911 service is not imposed on prepaid wireless telephone service."

SECTION 1.(b) This section is effective when it becomes law.

SECTION 2. G.S. 62A-40 reads as rewritten:

"**§ 62A-40. Definitions.**

The following definitions apply in this Article.

...

(15) Prepaid wireless ~~telephone~~ telecommunications service. – A wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.~~A right that meets all of the following requirements:~~

~~a. Authorizes the purchase of CMRS, either exclusively or in conjunction with other services.~~

~~b. Must be paid for in advance.~~

~~c. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.~~

...

(18a) Retail transaction. – The sale of prepaid wireless telecommunications service for any purpose other than resale."

SECTION 3. G.S. 62A-43, as amended by Section 1 of this act, reads as rewritten:

"**§ 62A-43. Service charge for 911 service.**

(a) Charge Imposed. – A monthly 911 service charge is imposed on each active voice communications service connection that is capable of accessing the 911 system. The service charge for service other than prepaid wireless telecommunications service is seventy cents (70¢) or a lower amount set by the 911 Board under subsection (d) of this section. The service charge is payable by the subscriber to the voice communications service provider. The provider may list the service charge separately from other charges on the bill. Partial payments made by a subscriber are applied first to the amount the subscriber owes the provider for the voice communications service.

(b) Prepaid Wireless. ~~The monthly service charge for 911 service is not imposed on prepaid wireless service.~~ A 911 service charge is imposed on each retail purchase of prepaid wireless telecommunications service occurring in this State of seventy cents (70¢) for each retail transaction of prepaid wireless telecommunications service or a lower amount set as provided by subsection (d) of this section. The service charge is collected and remitted as provided in G.S. 62A-54.

(c) Remittance to 911 Board. – A voice communications service provider must remit the service charges collected by it under subsection (a) of this section to the 911 Board. The provider must remit the collected service charges by the end of the calendar month following the month the provider received the charges from its subscribers. A provider may deduct and retain from the service charges it receives from its subscribers and remits to the 911 Board an administrative allowance equal to the greater of one percent (1%) of the amount of service charges remitted or fifty dollars ($50.00) a month.

(d) Adjustment of Charge. – The 911 Board must monitor the revenues generated by the service ~~charge.~~charges imposed by this section. If the 911 Board determines that the ~~rate produces~~rates produce revenue that exceeds or is less than the amount needed, the 911 Board may adjust the ~~rate.~~rates. The ~~rate~~rates must ensure full cost recovery for voice communications service providers and for primary PSAPs over a reasonable period of time. The 911 Board must set the service charge for prepaid wireless telecommunications service at the same rate as the monthly service charge for nonprepaid service. A change in ~~the amount of~~ the rate becomes effective only on July 1. The 911 Board must notify providers of a change in the ~~rate~~ rates at least 90 days before the change becomes effective. The 911 Board must notify the Department of Revenue of a change in the rate for prepaid wireless telecommunications service at least 90 days before the change becomes effective. The Department of Revenue must provide notice of a change in the rate for prepaid wireless telecommunications service at least 45 days before the change becomes effective only on the Department's Web site.

...."

SECTION 4. G.S. 62A-44(b) reads as rewritten:

"(b) Allocation of Revenues. – The 911 Board may deduct and retain for its administrative expenses a percentage of the total service charges remitted to it under G.S. 62A-43 for deposit in the 911 Fund. The percentage may not exceed two percent (2%). The percentage is one percent (1%) unless the 911 Board sets the percentage at a different amount. The 911 Board must monitor the amount of funds required to meet its financial commitment to provide technical assistance to primary PSAPs and set the rate at an amount that enables the 911 Board to meet this commitment. The remaining revenues remitted to the 911 Board for deposit in the 911 Fund are allocated as follows:

(1) A percentage of the funds remitted by CMRS ~~providers~~providers, other than the funds remitted by the Department of Revenue from prepaid wireless telecommunications service, to the 911 Fund are allocated for reimbursements to CMRS providers pursuant to G.S. 62A-45.

(2) A percentage of the funds remitted by CMRS ~~providers~~ providers, all funds remitted by the Department of Revenue from prepaid wireless telecommunications service, and all funds remitted by all other voice communications service providers are allocated for monthly distributions to primary PSAPs pursuant to G.S. 62A-46 and grants to PSAPs pursuant to G.S. 62A-47.

(3) The percentage of the funds remitted by CMRS providers allocated to CMRS providers and PSAPs shall be set by the 911 Board and may be adjusted by the 911 Board as necessary to ensure full cost recovery for CMRS providers and, to the extent there are excess funds, for distributions to primary PSAPs."

SECTION 5. Article 3 of Chapter 62A of the General Statutes is amended by adding a new section to read:

"**§ 62A-54. Service charge for prepaid wireless telecommunications service; seller collects 911 service charge on each retail transaction occurring in this State; remittances to Department of Revenue and transfer to 911 Fund.**

(a) Retail Collection. – A seller of prepaid wireless telecommunications service shall collect the 911 service charge for prepaid wireless telecommunications service from the consumer on each retail transaction occurring in this State. The 911 service charge for prepaid wireless telecommunications service is in addition to the sales tax imposed on the sale or recharge of prepaid telephone calling service under G.S. 105-164.4(4d). The amount of the 911 service charge for prepaid wireless telecommunications service must be separately stated on an invoice, receipt, or other reasonable notification provided to the consumer by the seller at the time of the retail transaction. For purposes of this Article, a retail transaction is occurring in this State if the sale is sourced to this State under G.S.105-164.4B(a).

(b) Administrative Allowance; Remittance to Department of Revenue. – A seller may deduct and retain from the 911 service charges it collects from consumers and remits to the Department of Revenue an administrative allowance of five percent (5%). A seller shall remit the 911 service charge for prepaid wireless telecommunications service collected by it under subsection (a) of this section in either of the following ways:

(1) Monthly to the Department of Revenue. The service charges collected in a month are due by the 20th day of the month following the calendar month covered by the return.

(2) Semiannually to the Department of Revenue. The service charges collected in the first six months of the calendar year are due by July 20. The service charges collected in the second six months of the calendar year are due by January 20.

(c) Administration. – Administration, auditing, requests for review, making returns, promulgation of rules and regulations by the Secretary of Revenue, additional taxes and liens, assessments, refunds, and penalty provisions of Article 9 of Chapter 105 of the General Statutes apply to the collection of the 911 service charge for prepaid wireless telecommunications service. An audit of the collection of the 911 service charge for prepaid wireless telecommunications service shall only be conducted in connection with an audit of the taxes imposed by Article 5 of Chapter 105 of the General Statutes. Underpayments shall be subject to the same interest rate as imposed for taxes under G.S. 105-241.21. Overpayments shall be subject to the same interest rate as imposed for taxes under G.S. 105-241.21(c)(2). Excessive and erroneous collections of the service charge will be subject to G.S. 105-164.11. The

Department of Revenue shall establish procedures for a seller of prepaid wireless telecommunications service to document that a sale is not a retail transaction, and the procedures established shall substantially coincide with the procedures for documenting a sale for resale transaction under G.S. 105-164.28. The Secretary of Revenue may retain the costs of collection from the remittances received under subsection (b) of this section, not to exceed five hundred thousand dollars ($500,000) a year of the total 911 service charges for prepaid wireless telecommunications service remitted to the Department. Within 45 days of the end of each month in which 911 service charges for prepaid wireless telecommunications service are remitted to the Department, the Secretary of Revenue shall transfer the total 911 service charges remitted to the Department less the costs of collection to the 911 Fund established under G.S. 62A-44.

(d) Liability of Consumer. – The 911 service charge for prepaid wireless telecommunications service is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable for remitting to the Department of Revenue all 911 service charges for prepaid wireless telecommunications service that the seller collects from consumers as provided in subsection (b) of this section.

"**§ 62A-55. Limitation of liability, prepaid wireless.**

In addition to the limitation of liability provided in subsection G.S. 62A-53, each provider and seller of prepaid wireless telecommunications service is entitled to the following limitations of liability:

(1) No provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of or the failure to provide 911 service, or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 911 service.

(2) No provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to any investigative or law enforcement officer of the United States, this State or any other state, or any political subdivision of this State or any other state in connection with any lawful investigation or other law enforcement activity by the law enforcement officer.

"**§ 62A-56. Exclusivity of 911 service charge for prepaid wireless telecommunications service.**

The 911 service charge for prepaid wireless telecommunications service imposed by this Article is the only 911 funding obligation imposed with respect to prepaid wireless telecommunications service in this State, and no tax, fee, surcharge, or other charge shall be imposed in this State, any subdivision of this State, or any intergovernmental agency for 911 funding purposes upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service."

SECTION 6. Chapter 105 of the General Statutes is amended by adding a new Article to read as follows:

"Article 5H.

"911 Service Charge for Prepaid Wireless Telecommunications Service.

"**§ 105-187.70. Department comply with Article 4 of Chapter 62A of the General Statutes.**

The Department of Revenue shall comply with the provisions of Article 3 of Chapter 62A of the General Statutes to receive and transfer to the 911 Fund the 911 service charge for prepaid wireless telecommunications service collected on retail transactions occurring in this State."

SECTION 7. Notwithstanding G.S. 62A-60(b), as enacted by Section 5 of this act, sellers that collect the 911 service charge for prepaid wireless telecommunications service may retain all of the service charges collected in the first three calendar months beginning on or after July 1, 2013.

SECTION 8. Notwithstanding G.S. 62A-60(c), as enacted by Section 5 of this act, the Department of Revenue may retain the cost of collection not to exceed seven hundred thousand dollars ($700,000) of the 911 service charges for prepaid wireless telecommunications service remitted to it from collections by sellers of the charge for the first 12 calendar months beginning on or after July 1, 2013.

SECTION 9. Unless otherwise provided, this act becomes effective July 1, 2013, and applies to all retail transactions occurring in this State, as that term is defined in this act, on or after that date.

HOUSE BILL 571:
Prepaid Wireless/Point of Sale Collection

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2011
Introduced by:	Reps. Sager, Justice, Bryant, Brawley	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***The proposed committee substitute for House Bill 571 would provide for the collection of the 911 service charge on prepaid wireless service at the point of retail sale.***

[As introduced, this bill was identical to S302, as introduced by Sens. Hartsell, McKissick, which is currently in Senate Finance.]

CURRENT LAW: Prior to 2007, North Carolina local government entities collected a 911 service charge from subscribers of local telephone providers, and the Wireless 911 Board collected a monthly service charge from subscribers of wireless providers. In 2007, the local 911 service charge was eliminated, and a new statewide administrative system was adopted for collection and distribution of the 911 service charge. Part of the 2007 changes addressed the collection of the 911 charge from prepaid wireless customers. G.S. 62A-40 authorizes the collection of the 911 fee from prepaid wireless providers in one of the following two ways:

- Decrement – collecting the service charge from each active prepaid wireless customer with an account balance equal to or greater than the amount of the service charge.
- Average Rate Per User - A monthly payment for 911 charges for each provider of prepaid wireless service is determined based on its sales of prepaid revenue in the State during the month. The provider's prepaid revenue in the state is divided by the "average revenue per user" and then multiplied by the amount of the fee. The average rate per user in the statute is currently $50.

There has been a moratorium on the collection of the 911 charge from prepaid customers since the 2007 changes. The moratorium on collection of the 911 fee from prepaid wireless is in effect through calendar year 2011.[1]

The current charge for 911 service is 60¢ per month. The charge is imposed on each subscriber of postpaid phone service, regardless of the technology used to offer the service. The statutes provide that the fee may not be greater than 70¢ per month, however, the 911 Board may set the fee at a lower amount if the revenues are sufficient to fund 911 service.

BILL ANALYSIS:

Section 1: Repeals the current method of collection of the 911 service charge for prepaid wireless service.

Sections 2 and 3: Provides the 911 service charge for prepaid wireless service is 70¢ on each retail transaction of prepaid wireless service, or a lower amount set by the Board. The 911 service charge for prepaid wireless would be the same as the monthly charge for 911 service imposed on all other phone subscribers. The current fee is 60¢ per month.

Section 4: Currently a portion of the 911 service charges is allocated to reimburse wireless providers to pay for upgrades to their system necessary for the implementation for enhanced 911. The upgrades

[1] Section 43 of S.L. 2010-95.

allow the wireless phone systems to provide address and location information to the 911 call centers. The remainder of the 911 service charges are distributed to public safety answering points (PSAPs) for 911 service. This section clarifies that the 911 service charge from prepaid wireless service will be allocated for reimbursements for wireless providers. The 911 service charge from prepaid wireless will be distributed to PSAPs.

Section 5: Provides for the collection of the 911 service charge for prepaid wireless at retail.

Retail collection: Each seller of prepaid wireless will collect the 911 service charge and remit the charge to the Department of Revenue. A seller must remit the charges either monthly, or semiannually. Each retailer is allowed to retain for administrative costs 5% of the 911 service charges for prepaid wireless that it collects. However, **Section** 7 of the bill provides that each retailer is allowed to retain for administrative costs all of the fees collected in the first three months after the effective date of the act.

Administration by Department of Revenue: The Department of Revenue will collect the 911 service charge for prepaid wireless from the retailers and remit the fee to the 911 Board each month within 45 days of the end of the month the service charges were collected. The Department of Revenue may retain the costs of collection not to exceed $500,000 a year. However, **Section 8** of the bill provides that the Department may retain the cost of collection not to exceed $700,000 for the first year after the effective date of this act.

EFFECTIVE DATE: This act is effective July 1, 2013 and applies to retail transactions on or after that date.

H571-SMTD-80(e3) v2

SENATE BILL 527

Short Title:	Life Science Development Act.	(Public)
Sponsors:	Senators Hartsell, Brunstetter, Clodfelter; and Rucho.	
Referred to:	Commerce.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND EMPLOYMENT AND ENCOURAGE PRIVATE INVESTMENTS IN LIFE SCIENCE FACILITIES AND EQUIPMENT IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3M.

"Life Sciences Investments.

"**§ 105-129.105. Findings and purpose.**

The General Assembly finds that life science companies generate employment opportunities for the State, expand local tax bases, and engage in the discovery, development, and commercialization of new pharmaceuticals, biologic products, medical devices, and diagnostic products. The General Assembly finds that there exists in the State a serious shortage of credit for life science companies to finance new and expanded facilities and acquire equipment for the production and delivery of life science products and services. The purpose of this Article is to create a mechanism to facilitate the establishment of permanent life science production and service facilities in North Carolina.

"**§ 105-129.106. Definitions.**

The following definitions apply in this Article:

(1) Designated investor. – A person who purchases an equity interest in a qualified entity and who is issued an equity certificate.

(2) Economic interest. – Matters involving a business with which associated, as defined in G.S. 138A-3.

(3) Equity certificate. – A document that evidences ownership of an equity interest in a qualified entity by a designated investor and that sets forth the amount of investment, the return on the investment, and the repayment terms of the investment.

(4) Life science company. – A company engaged in any of the following:

a. Biotechnology, including agricultural and industrial uses.

b. Pharmaceuticals.

c. Biologic products.

d. Medical devices.

e. Diagnostic devices.

f. Service laboratories or facilities providing support services to the foregoing companies.

(5) Immediate family. – A parent, child, or sibling or the spouse of one of these relations.

(6) Nonprofit corporation. – The nonprofit corporation established pursuant to G.S. 105-129.106A.

(7) Qualified entity. – A business entity that satisfies all of the conditions of G.S. 105-129.107.

(8) Tax credit certificate. – A certificate issued by the Secretary to a designated investor under which a tax credit is issued to the designated investor.

"**§ 105-129.106A Development corporation.**

(a) The Secretary of Commerce and the President of the North Carolina Biotechnology Center shall cause to be filed with the Secretary of State articles of incorporation organizing a nonprofit corporation pursuant to Chapter 55A of the General Statutes to perform the functions described in this Article. The articles of incorporation shall provide as follows:

(1) The primary purpose of the nonprofit corporation shall be to foster the development of the life science industry in this State.

(2) Upon dissolution, all assets of the nonprofit corporation shall revert to the State.

(3) The State of North Carolina shall be the sole voting members of the nonprofit corporation.

(4) The articles of incorporation shall not be amended except by the voting members of the nonprofit corporation.

(5) The nonprofit corporation shall have no power to impose dues, assessments, admission and transfer fees upon its voting members.

Except as otherwise provided in this section, the Governor and the State Treasurer shall jointly vote the State's interest in the nonprofit corporation.

(b) The initial board of directors of the nonprofit corporation shall be composed of the Secretary of Commerce, the Secretary, and the President of the North Carolina Biotechnology Center. The initial board of directors shall organize the affairs of the nonprofit corporation. The initial board of directors shall adopt bylaws providing for the subsequent election of additional directors, which shall include at least one director nominated by the President Pro Tempore of the Senate and one member nominated by the Speaker of the House of Representatives.

"**§ 105-129.107. Qualified entities.**

(a) Requirements. – A qualified entity is a business entity that satisfies all of the following conditions:

(1) The entity is established as a for-profit limited liability company pursuant to Chapter 57C of the General Statutes whose sole purpose is to foster economic development in this State by making loans to life science companies to finance any of the following:

a. The acquisition or expansion of capital facilities in this State.

b. The acquisition of capital equipment to be located at facilities in this State.

c. Regulatory, documentation, and other costs required to make the facilities and equipment to be located in North Carolina operational.

(2) The entity does not make loans for any property located outside of this State.

(3) The entity has as its sole managing member the nonprofit corporation.

(4) The entity raises funds for making loans to life science companies by issuing equity certificates for investments made by designated investors with a specified rate of return on those investments.

(5) Equity certificates issued by the entity reflect all of the following:

a. That the holder of the equity certificate is a nonmanaging member of the entity.

b. The amount of the investment.

c. The date and amount of each return on the investment.

d. The dates and amounts to redeem the equity certificate.
e. That the entity is not obligated to provide the return on investment nor the equity redemption except as funds are available as provided in G.S. 105-129.108.
f. That the holder of the equity certificate may be entitled to a tax credit as provided in this Article.
g. That the Secretary receives a copy of the equity certificate.

(6) The entity provides a copy of each equity certificate to the Secretary.

(7) The total amount payable under equity certificates, including tax certificates that have already been issued and for which the State has not been reimbursed by the entity, does not exceed one hundred million dollars ($100,000,000) at any time. To the extent to which the entity has reimbursed the State for tax certificates that it has issued, the total amount due may be increased, but not to exceed one hundred million dollars ($100,000,000).

(8) The total amount of outstanding loans from the entity to any one life science company does not exceed thirty million dollars ($30,000,000) at any time.

(9) The entity has adopted conflict of interest policies that include a prohibition on an employee, officer, or director of the entity, or a member of the same household as or the immediate family of an employee, officer, or director of the entity, from having any economic interest in an investor in the entity or a company to which the entity makes in excess of limits, or in violation of disclosure requirements, set by the board of directors of the nonprofit corporation.

(10) The organizational documents of the entity require that upon dissolution all assets of the entity revert to the State.

(11) The organizational documents of the entity require the entity to pay reasonable costs and expenses to the nonprofit corporation that serves as the managing member, but do not allow the managing member to receive any other compensation from the entity.

(12) The organizational documents of the entity provide that other than payments to designated investors, all cash flow or profits of the entity must be used only for the purposes of this Article, including the operating expenses of the entity.

(13) The entity makes loans to life science companies for facilities or equipment to be located in this State based on an evaluation of the following factors:
a. The borrower's written business plan.
b. The borrower's written manufacturing or service plan.
c. The borrower's history of attracting operating capital from investors, grants, or other lenders.
d. The borrower's management team.
e. The borrower's demonstration of engaging in the life science industry in this State.
f. The borrower's job creation potential in this State.
g. The borrower's financial resources.
h. Any other factors deemed by the entity to be relevant to the likelihood of the success of the project and not inconsistent with this Article.

(14) On at least an annual basis, the entity contracts with an independent auditor to perform an audit of all activities of the entity to be completed within three months after the end of the entity's fiscal year and, except for the contract for

auditing services, the independent auditor has no business, contractual, or other connection to the entity or its managing member.

(15) The bylaws of the entity require that the audit described under subdivision (14) of this subsection be submitted to the board of directors of the entity's managing member, the Governor, and the Joint Legislative Commission on Governmental Operations.

(16) On at least an annual basis, the entity publishes a report of the activities conducted by the entity that includes a review of the progress of the entity in implementing the purposes stated in G.S. 105-129.105 and the business plan of the entity, a report of the calculation of outstanding equity certificates and tax credits pursuant to subdivision (7) of this subsection, and a description, including amounts, of the issuance of any tax credit certificates.

(17) The organizational documents of the entity require the entity to comply with the requirements of Chapter 132 of the General Statutes and Article 33 of Chapter 143 of the General Statutes as if the entity were a State agency.

(b) Certification Statement. – Upon written request from time to time by the entity accompanied by a certification under oath that each of the requirements of subsection (a) of this section have been met, the Secretary must within 30 days issue a statement of qualification for the entity if the Secretary finds the certification to be satisfactory. The Secretary may obtain from the entity upon request any information as reasonable to determine whether the certification is accurate.

(c) No Pledge. – Neither a qualifying entity nor the nonprofit corporation that is the sole managing member of a qualifying entity has any power to pledge the credit or taxing power of the State or any political subdivision of the State, or to make its debts payable out of any moneys or resources except those of the qualifying entity or the nonprofit corporation. The obligations of the qualifying entity and the nonprofit corporation are not obligations of the State or any political subdivision of the State but are obligations of the qualifying entity or non-profit corporation payable solely and only from the qualifying entity's or nonprofit corporation's resources.

"**§ 105-129.108. Tax credit.**

(a) Notification From Qualifying Entity. – When a qualifying entity determines that it will be unable to make a payment required under an equity certificate, the entity must notify in writing both the designated investor and the Secretary of the entity's inability to make the payment. This notice must be made at least 30 days before the due date of the payment. The entity may consider its cash flow needs, including funding its continuing operations and obligations to other investors or its managing member, in making this determination. The notification to the Secretary required under this subsection must be made under oath and contain the following information:

(1) The amount of the initial equity investment.

(2) The rate of return on the invested capital.

(3) The calculation formula for determining the scheduled aggregate return on the initial equity investment.

(4) The due date of the payment.

(5) The amount of the tax credit that should be issued.

(6) The designated investor to whom the payment is due.

(b) Issuance of Tax Certificate. – Within 30 days after receiving a notification from a qualifying entity under subsection (a) of this section, the Secretary must deliver to the qualifying entity a tax credit certificate for each designated investor in the amount certified by the qualifying entity to be due. The tax credit certificate must be in an amount equal to the amount of the required payment that the qualifying entity certifies it is unable to make.

(c) Credit. – A taxpayer that presents a tax credit certificate is allowed a tax credit equal to one hundred percent (100%) of the amount specified in the certificate. The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B of this Chapter.

(d) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax liability against which it is imposed for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(e) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this Article. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the equity, the credit allowed under this Article does not affect the entity's payment of tax on behalf of its owners.

"**§ 105-129.109. Substantiation.**

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary that is necessary to determine the validity of the claim. Each taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.110. Reports.**

The Department of Revenue must include in the economic incentives report required by G.S. 105-256 the following information, itemized by taxpayer:

(1) The number of taxpayers that claimed a credit allowed in this Article.

(2) The amount of each credit claimed and the taxes against which it was applied.

(3) The total cost to the General Fund of the credits claimed."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2011.

SENATE BILL 527:
Life Science Development Act

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2011
Introduced by:	Sens. Hartsell, Brunstetter, Clodfelter	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 527 creates a mechanism for raising funds to make loans to life science companies through the issuance of equity certificates by qualifying entities. If the qualifying entity is unable to redeem the equity certificate when it is due, the qualifying entity may issue the holder of the equity certificate a tax credit certificate in the amount of the required payment the entity is unable to make. A taxpayer that presents a tax credit certificate is allowed a tax credit equal to 100% of the amount specified in the certificate. The tax credit is refundable and may be used against the franchise tax, the income tax, or the gross premiums tax.***

BILL ANALYSIS: This bill would set up an investment procedure wherein a qualified entity (defined at the end of this analysis) would sell equity interests in the entity to investors and would use the money generated by those sales to make loans to life science companies[1] for (i) the acquisition or expansion of capital facilities in the State and to acquire capital equipment to be located in the State or (ii) regulatory, documentation, and other costs required to make the facilities or equipment to be located in the State operational. The investor's equity interest is represented by an equity certificate, which is a contract between the investor and the qualified entity that states the amount, return, and repayment terms of the investment.

If a qualified entity determines it cannot make a payment required by an equity certificate, it must give written notification to the investor and the Secretary[2] at least 30 days before the payment is due. This determination can include the entity's cash flow needs, including continuing operations expenses and obligations to other investors or its managing member.

Within 30 days of when the Secretary receives a notice of inability to pay, the Secretary must give the qualifying entity a tax credit certificate for each investor equal to the amount the qualifying entity has certified it owes but cannot pay. An investor with a tax credit certificate is allowed a tax credit in that amount against its franchise tax liability, income tax liability, or gross premiums tax liability. Should the tax credit exceed the chosen tax liability, the excess is refundable.

Other notable features of the bill include:

- A qualifying entity may request in writing a statement of qualification from the Secretary of Revenue. The request must be accompanied by a certification under oath by the entity that each of the requirements for qualifying entities has been met. The statement of qualification must be returned within 30 days of receiving the request if the Secretary finds the certification satisfactory. The Secretary may obtain any information reasonably necessary to determine whether the certification is correct.

[1] A life science company is one engaged in biotechnology, pharmaceuticals, biologic products, human health care and medical devices, diagnostic devices, and service laboratories or facilities providing support services to any of the preceding.

[2] The notification to the Secretary must be under oath and include the amount of the initial equity investment, the rate of return on the investment, the formula for calculating the scheduled aggregate return on the initial equity investment, the payment due date, the amount of the tax credit that should be issued, and the investor to whom the payment is due.

- Qualifying entities and managing members have no power to pledge the credit or taxing power of the State or its subdivisions or make its debts payable from sources other than the entity or member. The obligations of the entity or member are not obligations of the State.
- To claim a tax credit, the investor must provide all information required by the Secretary and have records available to be inspected by the Secretary. Failure to do so results in no credit being allowed. The burden of proof for eligibility and amount is on the investor.
- The Department of Revenue must annually publish, by May 1 for the previous calendar year, the number of taxpayers that claimed a credit under the Life Sciences Investments Act, the amount of each credit and the taxes it was applied against, and the total cost to the General Fund of the credits claimed.

A qualified entity is a business that satisfies all of the following:

- It is established as a for-profit LLC and has the sole purpose of fostering economic development by loaning money to life science companies for facilities or equipment to be located within the State.
- It makes no loans for any property located outside the State.
- It has one managing member and that member is the nonprofit development corporation created by this Act. The primary purpose of the development corporation is to foster the development of the life science industry in the State. The corporation's initial board of directors would be the Secretary of Commerce, the Secretary of Revenue, and the President of the North Carolina Biotechnology Center. The initial board of directors is charged with organizing the corporation and adopting its bylaws. The bylaws provide that the President Pro Tempore of the Senate and the Speaker of the House of Representatives may each appoint one director to the board.
- It raises funds for loans to life science companies via the equity certificate procedure described above. The equity certificates must state (i) that the holder of the certificate is a non-managing member of the entity, (ii) the investment amount, (iii) the date and amount of investment, (iv), the dates and amounts to redeem the certificate, (v) that the entity is not obligated to provide the return or redemption, except as provided in the Act, (vi) that the holder may be entitled to a tax credit against income, franchise, or gross premiums taxes, and (vii) that a copy of the certificate must be provided by the entity to the Secretary.
- It provides a copy of each certificate issued to the Secretary.
- It issues equity certificates and un-reimbursed tax certificates to investors not exceeding $100 million.
- It limits its outstanding loans to any one life science company to $30 million or less at all times.
- It makes loans to life science companies on a factor-based evaluation that includes the borrower's (i) written business plan, (ii) written manufacturing or service plan, (iii) history of attracting operating capital from investors, grants, or other lenders, (iv) management team, (v) demonstration of engaging in life science industry within NC, (vi) job creation potential in NC, (vii) financial resources, and (viii) any other factors the entity deems relevant to success.
- It contracts, at least annually, with an independent and unconnected auditor to audit all entity activities, to be completed within three months of the end of the entity's fiscal year. The audit, per the entity bylaws, must be submitted to the Governor, the Joint Legislative Committee on Governmental Operations, and the board of directors of the entity's managing member.

- It publishes, at least annually, a progress report on implementing its purpose and business plan and describing any issued tax credit certificates (including amounts).
- It adopts a conflict of interest policy that prohibits employees, officers, and directors of the entity (and their family members) from having an economic interest in an investor in the entity or any company receiving a loan from the entity.
- It adopts bylaws that provide all of the following:
    - Upon dissolution, entity assets revert to the State.
    - Entity payments to its managing member are limited solely to reasonable costs and expenses.
    - All cash flow and profits must be used solely for purposes of the Article, other than payments to investors.
    - The entity must comply with certain requirements for State agencies as if it were a State agency.

EFFECTIVE DATE: This act would be effective for taxable years beginning on or after January 1, 2011.

AMENDMENT: The amendment is technical.

Dan Ettefagh, counsel in the Bill Drafting Division; substantially contributed to this summary.

S527-SMRB-88(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 527

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S527-ARB-41 [v.2]

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Date _____,2011

Senator _____

moves to amend the bill on page 1, line 7, by deleting "Article 3M." and substituting "Article 3L.";

and on page 1, line 9, by deleting "G.S. 105-129.105." and substituting "G.S. 105-129.100." and by renumbering the remaining sections of the Article created by Section 1 of this act sequentially thereafter;

and on page 2, line 2, by deleting "G.S. 105-129.106A." and substituting "G.S. 105-129.102.";

and on page 2, line 4, by deleting "G.S. 105-129.107." and substituting "G.S. 105-129.103.";

and on page 2, line 8, by inserting immediately before the word "The " the following: "Incorporation. – ";

and on page 2, line 17, by rewriting the line to read:
"nonprofit corporation. The Governor and the State Treasurer shall jointly vote the State's interest in the nonprofit corporation.";

and on page 2, lines 22 and 23, by deleting those lines;

and on page 2, line 24, by inserting immediately before the word "The" the following: "Board of Directors. – ";

and on page 2, line 29, by deleting the word "member" and substituting the word "director";

and on page 3, line 4, by deleting " G.S. 105-129.108." and substituting "G.S. 105-129.104.";

and on page 4, line 9, by rewriting the line to read:
"implementing the purposes of this Article and the business plan".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 527

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S527-ARB-41 [v.2]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 8, 2011

TO: Senate Finance Committee

FROM: Rodney Bizzell and Kristin Walker
Fiscal Research Division

RE: Senate Bill 527 (First Edition)

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES					

*** Minimal impact in first ten years – potential loss of $3.5 million annually in 10 – 15 years. See Assumptions and Methodology ***

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Commerce; Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 2011

BILL SUMMARY:

SB 527 enacts new Article 3M to GS Chapter 105 titled Life Sciences Investments. This new chapter defines certain terms, including life sciences company, which is a company engaged in any of the following: biotechnology, including agricultural and industrial uses, pharmaceuticals, biologic products, medical devices, diagnostic devices, and service laboratories or facilities

providing support services to the foregoing companies. The bill also directs the Secretary of Commerce and the President of the North Carolina Biotechnology Center to establish a nonprofit corporation whose primary purpose is to foster the development of the life science industry in NC. The bill further directs that the Governor and the State Treasurer shall jointly vote the State's interest in the nonprofit corporation. The bill specifies the members of the initial board of directors of the nonprofit corporation and authorizes them to organize its affairs, including adopting bylaws providing for the subsequent election of additional directors.

The bill sets forth detailed criteria that a business entity must satisfy to be a qualified entity, including (1) that the entity be established as a for-profit limited liability company whose sole purpose is to foster economic development in the state by making certain loans to life science companies, (2) that the entity has as its sole managing member the nonprofit corporation; and (3) that the entity raises funds for making loans to life science companies by issuing equity certificates for investments made by designated investors with a specified rate of return. The bill further requires the Secretary of Revenue to issue a statement of qualification within 30 days of receiving a certification from an entity under oath that each of the statutory criteria have been met if the Secretary finds the certification to be satisfactory. The bill specifies that neither a qualifying entity nor the nonprofit corporation that is the sole managing member of a qualifying entity has any power to pledge the credit or taxing power of the state or any of its local governments, or to make debts payable out of any monies or resources except those of the qualifying entity or the nonprofit corporation.

The bill provides as follows: (1) requires a qualifying entity that determines it will be unable to make a payment required under an equity certificate to comply with specified notice requirements to the investor and the Secretary of Revenue; (2) directs the Secretary of Revenue to deliver to the qualifying entity a tax credit certificate for each designated investor in the amount certified by the qualifying entity to be due within 30 days after receiving notification that a qualifying entity will be unable to make a payment required under an equity certificate; (3) specify that a taxpayer that presents a tax credit certificate is allowed a tax credit equal to 100% of the amount specified in the certificate against the franchise tax levied in Article 3, the income taxes levied in Article 4, or the gross premiums tax levied in Article 8B of GS Chapter 105; (4) specify that the tax credit is refundable; and (5) provides that a pass-through entity is considered the taxpayer for purposes of claiming the credit.

The bill further requires a taxpayer to provide any information required by the Secretary of Revenue to determine the validity of a claim for the credit. It places the burden of proving eligibility for credit and the amount of the credit on the taxpayer. It also adds additional information that the Department of Revenue must include in the economic incentives report required by GS 105-256.

Source: Bill Digest

ASSUMPTIONS AND METHODOLOGY:

Department of Commerce

The Department of Commerce does not feel that there will be any new costs to the Department based on this bill. Any additional work required, such as assisting with filing for non-profit status,

could be accomplished by existing staff as part of their duties. Thus, Fiscal Research estimates that there will be no new costs to Commerce as a result of this bill.

Revenue Impact

Upon passage of the bill, the qualifying entity would begin the process of recruiting investment and accepting applications for loans and determining which projects are eligible. For purposes of this memo, it is assumed that $70 million in loans would be made within five years. The financial model calls for interest-only payments to be made to investors for the first ten years. Because a reserve fund will be established from investments, it is expected that all scheduled payments would be able to be made for at least ten years.

Principal obligations would begin to be repaid to investors after ten years. If any of the tax credit certificates are used, it would most likely occur in 10-15 years when the principal repayments become due. A model developed for the NC Biotechnology Center projected a "worst-case scenario" loss of 25% of principal, or $17.5 million. In the event that this scenario occurred, the credits would be taken over the 5-year period with an average annual amount of $3.5 million.

SOURCES OF DATA: Department of Commerce; NC Biotechnology Center

TECHNICAL CONSIDERATIONS: None

HOUSE BILL 243

Short Title:	Certificates Under Seal in Indigent Cases/Fee.	(Public)
Sponsors:	Representative Jackson (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee B, if favorable, Finance.	

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE FEE CHARGED BY THE CLERK OF SUPERIOR COURT FOR CERTIFICATES UNDER SEAL IS WAIVED FOR APPOINTED ATTORNEYS REPRESENTING INDIGENT CLIENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-308(b1) reads as rewritten:

"(b1) The fees set forth in ~~subdivision~~subdivisions (9) and (12) of subsection (a) of this section are not chargeable when copies or certificates under seal are requested by an attorney who has been appointed or who is under contract with the Office of Indigent Defense Services to represent an indigent person at State expense, if the request is made in connection with the appointed case or the contract and during the duration of the appointment or the contract."

SECTION 2. This act becomes effective July 1, 2011, and applies to fees assessed or collected on or after that date.

HOUSE BILL 243:
Certificates Under Seal in Indigent Cases/Fee

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Rep. Jackson	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 243 would waive the $3.00 fee charged by the Clerk of Superior Court for certificates under seal for appointed attorneys representing indigent clients.

CURRENT LAW: G.S. 7A-308(b1) waives the cost of copies for attorneys who are appointed or under contract with the Office of Indigent Defense Services (IDS) to represent an indigent person at State expense, if the request is made in connection with the appointed case or the contract and during the duration of the appointment or contract.

G.S. 7A-308(a)(9) directs clerks to charge a $3.00 fee for certifying that a document is a true and accurate copy of the original document on file in the case. Unlike the copying fees, there is no exemption from the fee for *certifying* copies for attorneys who are appointed or under contract with IDS. Some examples of when appointed attorneys need certified copies of documents include expert witness fee orders, orders to strike a call and failed, and judgments as evidence in superior court and in abuse/neglect/dependency cases.

Currently, some clerks' offices charge this fee to appointed attorneys representing indigent clients and others waive it in those cases. In the counties where fees are being collected from appointed counsel, attorneys have to advance the costs and then bill IDS for reimbursement from State funds. The clerks collect the money from the appointed attorneys and enter the payments into the Financial Management System for remittance to the General Fund.

BILL ANALYSIS: House Bill 243 would waive the $3.00 fee for certifying that a document is a true and accurate copy of the original document on file for attorneys representing indigent defendants as part of an appointed case.

BACKGROUND: This bill has been requested by IDS because it believes the current process of reimbursement is cumbersome and causes an unnecessary transfer of State funds. It also generates transaction costs that increase the overall cost to the State for providing indigent representation. IDS believes this bill would simplify the process and eliminate unnecessary transaction costs.

EFFECTIVE DATE: This act would become effective July 1, 2011, and apply to fees assessed or collected on or after that date.

Susan Sitze, counsel to House Judiciary Subcommittee B, substantially contributed to this summary.

H243-SMSV-68(e1) v1

SENATE BILL 447
Commerce Committee Substitute Adopted 6/7/11

Short Title: Rewrite Landscape Contractor Laws. (Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT REWRITING THE LAWS REGULATING LANDSCAPE CONTRACTORS AND AUTHORIZING THE NORTH CAROLINA LANDSCAPE CONTRACTORS' LICENSING BOARD TO INCREASE CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89D-1 through G.S. 89D-10 are repealed.

SECTION 2. Chapter 89D of the General Statutes is amended by adding the following new sections to read:

"**§ 89D-11. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Landscape Contractors' Licensing Board.

(2) Landscape construction or contracting. – The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.

(3) Landscape contractor. – Any person who, for compensation or other consideration, does any of the following:

a. Engages in the business requiring the art, experience, ability, knowledge, science, and skill to prepare contracts and bid for the performance of landscape services, including installing, planting, repairing, and managing gardens, lawns, shrubs, vines, trees, or other decorative vegetation, including the finish grading and preparation of plots and areas of land for decorative utilitarian treatment and arrangement.

b. Practices the act of horticulture consultation or planting design for employment purposes.

c. Constructs, installs, or maintains landscape drainage systems and cisterns; provided the landscaping contractor makes no connection to pipes, fixtures, apparatus, or appurtenances installed upon the premises, or in a building, to supply water thereto or convey sewage or other waste therefrom as defined in G.S. 87-21.

d. Designs, installs, or maintains low voltage landscape lighting systems; provided such low voltage lighting systems do not exceed 50 volts and constitute a Class II or III cord and plug connected power system within the meaning of G.S. 87-43.1(7).

e. Engages in the construction of garden pools, fountains, pavilions, arbors, retaining walls, fences, walks, patios, driveways, or other

decorative landscape features, excluding poured concrete or asphalt driveways.

(4) Person. – An individual, firm, partnership, association, corporation, or other legal entity.

"**§ 89D-12. License required; use of seal; posting license.**

(a) Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation 'landscape contractor,' or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscape contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter.

(b) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in any of the following:

(1) The practice of landscape architecture as defined in G.S. 89A-1.

(2) The practice of engineering as defined in G.S. 89C-3.

(3) Practice as a well contractor certified under Article 7A of Chapter 87 of the General Statutes.

(4) The practice of irrigation contracting as defined in G.S. 89G-1.

(5) The practice of architecture as defined in G.S. 83A-1.

(6) The practice of plumbing, heating group number one, heating group number two, heating group number three, fire sprinkler or fuel piping contracting as defined in G.S. 87-21, provided the landscaping contractor may install piping, fittings, valves, and associated components for the purpose of landscape contracting that is downstream of potable water source, groundwater source, or grey water source, and downstream of a backflow prevention assembly.

(7) The practice of electrical contracting as defined in G.S. 87-43.

(c) Upon licensure by the Board, each landscape contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the legend 'N.C. Licensed Landscape Contractor.' A landscape contractor may use the seal only while the license is valid.

(d) Every landscape contractor issued a license under this Chapter shall display the license conspicuously in the landscape contractor's place of business. Every landscape contractor shall display the license number issued to the contractor by the Board on all business cards, contracts, and vehicles used by the contractor in the landscape contracting business.

"**§ 89D-13. Exemptions.**

The provisions of this Chapter shall not apply to the following:

(1) Any federal, State, or local governmental agency performing landscaping on public property.

(2) The North Carolina Department of Transportation (NCDOT). However, for landscape installations or establishment periods for any project that exceeds the current contract amount requiring performance and payment bonds according to State law, NCDOT shall require a licensed landscape contractor to perform the work. NCDOT, at its discretion, may require a licensed landscape contractor for landscape projects of any cost.

(3) Any property owner performing landscape work on his or her own property.

(4) Any person or business owning or operating a golf course.

(5) Any landscaping work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than two thousand five hundred dollars ($2,500).

(6) Any person or business licensed pursuant to Article 1 of Chapter 87 of the General Statutes who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor when the contractor uses the contractor's own employees to perform landscape construction or contracting. A public utilities contractor exempted by this subdivision may only perform the activities described in G.S. 87-10(b)(3)a.

(7) Any person or business licensed as an electrical contractor under Article 4 of Chapter 87 of the General Statutes who is designing, installing, or maintaining any electric work, wiring, devices, appliances, or equipment.

(8) Any person or business licensed as a plumbing contractor under Article 2 of Chapter 87 of the General Statutes who is installing pipes, fixtures, apparatus, or appurtenances to supply water thereto or convey sewage or other waste therefrom, including the installation, repair, or maintenance of water mains, water taps, services lines, water meters, or backflow prevention assemblies supplying water for irrigation systems or repairs to an irrigation system.

(9) A professional engineer licensed pursuant to Chapter 89C of the General Statutes.

(10) A professional landscape architect licensed under Chapter 89A of the General Statutes.

(11) An individual or a business engaged in any of the following activities in performing that activity:

a. Clearing and grading plots and areas of land.

b. Erosion control.

c. Arboriculture, including consultations on pruning and removal of trees.

d. North Carolina Department of Agriculture and Consumer Services certified sod producers that install sod, seed, or plugs.

e. Landscape construction performed by utilities contractors for the purpose of grading and erosion control.

f. Lawn mowing, turf edging, and debris removal services.

g. Turf management or lawn care services only, including fertilization, aeration, weed control, or other turf management or lawn care practices other than mowing or edging.

h. Design, installation, and maintenance of on-site wastewater disposal or reuse systems within the on-site wastewater permit specifications.

"**§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.**

(a) There is created the North Carolina Landscape Contractors' Licensing Board. The Board shall consist of nine members appointed as follows:

(1) One member appointed by the Governor who is a member of the general public.

(2) One member appointed by the Commissioner of Agriculture pursuant to recommendations from The North Carolina Green Industry Council.

(3) One member appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc., who is a practicing nurseryman operating a nursery certified by the North Carolina Department of Agriculture and Consumer Services Plant Pest Inspection Program.

(4) Four members who are licensed landscape contractors in the business of landscape construction or contracting. One of the four members shall be appointed by the General Assembly upon the recommendation of the

Speaker of the House of Representatives pursuant to recommendations from The North Carolina Green Industry Council; one shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate pursuant to recommendations from the Carolinas Irrigation Association, who is also a licensed irrigation contractor; and two shall be appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc.

(5) One member appointed by the Board of Directors of the North Carolina Chapter of the American Society of Landscape Architects who is a registered landscape architect.

(6) One member appointed by the President of The University of North Carolina from within the land grant university community who is knowledgeable in landscaping methods and practices.

(b) All appointments shall be for three-year terms. No member shall serve more than two complete consecutive terms.

(c) A vacancy on the Board created by death, resignation, or otherwise shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors are appointed and qualified.

(d) The Board shall elect annually a chair and other officers as it deems necessary to carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) The Board shall be entitled to the services of the Attorney General in connection with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent it in the enforcement of this Chapter.

"**§ 89D-15. Powers and duties.**

The Board shall have the following powers and duties to:

(1) Administer and enforce the provisions of this Chapter.

(2) Adopt, amend, or repeal rules to carry out the provisions of this Chapter.

(3) Examine and determine the qualifications and fitness of applicants for licensure and licensure renewal.

(4) Issue, renew, deny, restrict, suspend, or revoke licenses.

(5) Reprimand or otherwise discipline licensees under this Chapter.

(6) Receive and investigate complaints from members of the public.

(7) Conduct investigations to determine whether violations of this Chapter exist or constitute grounds for disciplinary action against licensees under this Chapter.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Seek injunctive relief through any court of competent jurisdiction for violations of this Chapter.

(10) Collect fees required by G.S. 89D-21 and any other monies permitted by law to be paid to the Board.

(11) Require licensees to file and maintain an adequate surety bond.

(12) Establish and approve continuing education requirements for persons licensed under this Chapter.

(13) Employ a secretary-treasurer and any other clerical personnel the Board deems necessary to carry out the provisions of this Chapter and to fix compensation for employees.

(14) Maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.

(15) Adopt and publish a code of professional conduct for all persons licensed under this Chapter.

(16) Adopt and publish a code of minimum practice standards for landscape construction and contracting.

(17) Adopt a seal containing the name of the Board for use on licenses and official reports issued by the Board.

"**§ 89D-16. Application for license; qualifications; examination; issuance.**

(a) Upon application to the Board and payment of the required fees, an applicant for licensure as a landscape contractor may sit for the examination if the applicant submits evidence demonstrating the applicant's qualifications for licensure under this Chapter as prescribed in rules adopted by the Board and meets all of the following qualifications:

(1) Is at least 18 years of age.

(2) Is of good moral character as determined by the Board.

(3) Provides evidence of business identification as required by the Board.

(4) Has at least three years of experience in landscape construction or contracting or the educational equivalent. Two years of educational training in landscape construction or contracting shall be the equivalent of one year of experience.

(5) Files with the Board and maintains a corporate surety bond executed by a company authorized to do business in this State or an irrevocable letter of credit issued by an insured institution. The surety bond or the letter of credit shall be in the amount of ten thousand dollars ($10,000). The surety bond or letter of credit shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Chapter. Any person claiming to be injured by an act of a licensed landscape contractor that constitutes a violation of this Chapter may institute an action to recover against the licensee and the surety.

(b) If the applicant meets all the qualifications in subsection (a) of this section, the applicant shall be required to pass an examination administered by the Board before the Board may issue the license. The Board shall establish the scope and subject matter of the examination to be administered. The Board shall administer examinations at least twice a year at a time and place to be determined by the Board.

(c) When the Board determines that an applicant has met all the qualifications for licensure, submitted the required fee, and passed the examination, the Board shall issue a license to the applicant.

"**§ 89D-17. Corporations; partnerships; persons doing business under trade name.**

(a) The Board may issue a license in the name of a corporation if the corporation pays the license fee required by G.S. 89D-21 and complies with the following:

(1) One or more officers or full-time employees, or both, empowered to act for the corporation, are individuals licensed under this Chapter.

(2) Only the officers or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of a corporation and exercise direct supervision over the work performed pursuant to the contract.

(b) The Board may issue a license in the name of a limited liability company if the company pays the fee required by G.S. 89D-21 and complies with the following:

(1) One or more managers or executives, as defined in G.S. 57C-1-03, or full-time employees, or a combination thereof, are individuals licensed under this Chapter.

(2) Only the managers, executives, or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the limited liability company and exercise direct supervision over the work performed pursuant to the contract.

(c) The Board may issue a license in the name of a partnership if the partnership pays the fee required by G.S. 89D-21 and complies with the following:

(1) One or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter.

(2) Only the partners or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the partnership and exercise direct supervision over the work performed pursuant to the contract.

(d) The Board may issue a license in an assumed or designated trade name if the owner of the business pays the fee required by G.S. 89D-21 and complies with the following:

(1) The owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter.

(2) Only the persons described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the assumed or designated trade name of the business and exercise direct supervision over the work performed pursuant to the contract.

(e) When the Board issues a license under this section, the Board shall indicate on the license the name and license number of the individual licensee connected to the corporation, partnership, or business conducted under an assumed or designated trade name.

(f) A person licensed pursuant to this section shall exercise direct supervision over a contract for landscape construction or contracting until the contract is completed.

(g) When a licensee executes a contract for landscape construction or contracting in any capacity other than as a sole proprietor contracting on the licensee's own behalf, the person on whose behalf the licensee is executing the contract shall be licensed under this section.

(h) A corporation, partnership, or person doing business under an assumed or designated trade name shall notify the Board in accordance with rules adopted by the Board if an individual licensee who is indicated in the license issued under this section ceases to be an officer, partner, owner, or employee of the corporation, partnership, or person doing business under the assumed or designated trade name. If the corporation, partnership, or person no longer has an officer, general partner, owner, or employee described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the corporation, partnership, or person shall have 90 days from the date the officer, general partner, owner, or employee ceases the relationship with the corporation, partnership, or person to satisfy the requirements described in subdivision (a)(1), (b)(1), or (c)(1) of this section. After 90 days, if the corporation, partnership, or person does not have an officer, general partner, owner, or employee as described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the license issued under this section is automatically suspended, and the corporation, partnership, or person shall cease practicing landscape construction or contracting.

"**§ 89D-18. Licensing of nonresidents.**

(a) Definitions. – The following definitions apply in this section:

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
(2) Foreign corporation. – A corporation as defined in G.S. 55-1-40.
(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
(4) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.
(5) Foreign partnership. – One of the following that does not have a permanent place of business in this State:
a. A foreign limited partnership as defined in G.S. 59-102.
b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – Except as provided in this section, the Board may issue a license to a nonresident individual or a foreign entity that meets the requirements for licensure under this Chapter.

(c) Certificate of Authority Required. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(d) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information to be provided under this section shall be in a form required by the Secretary of Revenue.

(e) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of the nonresident individual and foreign entity and instruct the Board not to renew the nonresident individual or foreign entity's license. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that (i) the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement.

"**§ 89D-19. Reciprocity.**

The Board may issue a license, without examination, to any person who is a landscape contractor licensed, certified, or registered in another state or country if the requirements for licensure, certification, or registration in the other state or country are substantially equivalent to the requirements for licensure in this State.

"**§ 89D-20. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before the first day of August of each year. Any person who desires to continue to practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration if (i) the applicant pays the required renewal fee and late renewal fee; (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of landscape construction or contracting after notice of revocation; and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require licensees to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, a licensee shall meet the continuing education requirements set by the Board. Each licensee shall complete seven continuing education units

per year. The Board may suspend a licensee's license for 30 days for failure to obtain continuing education units required by this subsection. Upon payment of a reinstatement fee, the license shall be reinstated. Failure to request a reinstatement of the license and payment of the reinstatement fee shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter.

"**§ 89D-21. Expenses and fees.**

(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	$100.00
(2)	Examination fee	250.00
(3)	Individual license fee and individual license renewal	100.00
(4)	Initial corporate, limited liability company, partnership, or trade-name license	100.00
(5)	Corporate, limited liability company, partnership, or trade-name license renewal	100.00
(6)	Late renewal fee	50.00
(7)	Reinstatement fee	500.00
(8)	License by reciprocity	250.00
(9)	Duplicate license	25.00

(b) When the Board uses a testing service for the preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services and a prorated portion of the examination fee.

"**§ 89D-22. Disciplinary action.**

The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant does any of the following:

(1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) Practices or attempts to practice landscape construction or contracting by fraudulent misrepresentation.

(3) Commits an act of gross malpractice or incompetence as determined by the Board.

(4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a landscape contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

"**§ 89D-23. Civil penalties.**

(a) In addition to taking any of the actions permitted under G.S. 89D-22, the Board may assess a civil penalty not in excess of two thousand dollars ($2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

"**§ 89D-24. Injunction to prevent violation; notification of complaints.**

(a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

(b) A licensed landscape contractor shall notify the Board of any written complaints filed against the landscape contractor not resolved within 30 days from the date the complaint was filed by registered mail to the Board."

SECTION 3.(a) Members serving on the North Carolina Landscape Contractors' Registration Board on the effective date of this act shall continue to serve until members of the North Carolina Landscape Contractors' Licensing Board, newly structured under G.S. 89D-14(a), as enacted by Section 2 of this act, are appointed.

SECTION 3.(b) Once the term of one of the current public members appointed by the Governor expires, the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a licensed landscape contractor in the business of landscape construction and contracting. Once the term of one of the current members appointed by the Commissioner of Agriculture expires, the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a licensed landscape contractor in the business of landscape construction and contracting. All records, staff, funds, and other items of the North Carolina Landscape Contractors' Registration Board are transferred to and made the property of the North Carolina Landscape Contractors' Licensing Board.

SECTION 4. Any person, who on or before December 31, 2011, meets at least one of the following criteria shall be issued a landscape contractor's license by the North Carolina Landscape Contractors' Licensing Board, without the requirement of examination, upon submission of a completed application and payment of the application fee on or before August 1, 2012:

(1) Is registered as a landscape contractor.
(2) Is licensed as an irrigation contractor.
(3) Is certified as a turf grass professional.
(4) Has 10 years of documented experience in the person's own business as a landscape contractor or 10 years of documented experience as an employee in a landscape contracting business, meets all other requirements and qualifications for licensure as a landscape contractor, and has one of the following:
    a. One year of credit for a two-year degree in related educational training.
    b. Two years of credit for a four-year degree in related educational training.
    c. Up to two years of credit for education or business experience in general business management.

Landscape contractors currently registered under Chapter 89D of the General Statutes shall not be required to renew the registration for the 2012 calendar year to qualify for the landscape contractor's license, as enacted by Section 2 of this act.

SECTION 5. Section 1 of this act becomes effective August 1, 2012. The remainder of this act is effective when it becomes law.

SENATE BILL 447:
Rewrite Landscape Contractor Laws

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2011
Introduced by:	Sens. Apodaca, Brown	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***Senate Bill 447 rewrites Chapter 89D of the General Statutes, which regulates landscape contractors.***

CURRENT LAW: G.S. 89D-1 through 89D-10 in Chapter 89D provide for certification of landscape contractors in North Carolina. The statutes define 'landscape contractor', establish a Landscape Contractor's Registration Board, provide for examination and certification of contractors, set fees, and sets out powers and duties of the Board.

BILL ANALYSIS: Senate Bill 447 rewrites the landscape contractor laws as follows:

Section 1 repeals G.S. 89D-1 through 89D-10, which are all of the existing statutes regulating landscape contractors in North Carolina.

Section 2 rewrites the statutes regulating landscape contractors as G.S. 89D-11 through 89D-24:

G.S. 89D-11 provides new definitions that apply in Chapter 89D, including a more detailed definition of what constitutes landscape contracting.

G.S. 89D-12 requires a license for any person engaging in the practice of landscape construction or contracting and using the designation 'landscape contractor'. The section specifies that landscape contractors are not authorized to engage in the following practices: landscape architecture; engineering; well contracting; architecture; plumbing and heating contracting; and electrical contracting.

A licensed landscape contractor is required to display the license conspicuously in the licensee's place of business and to display the license number on all business cards, contracts, and vehicles.

G.S. 89D-13 provides exemptions from licensing for government agencies landscaping public property; the Department of Transportation; property owners landscaping the owner's own property; persons owning or operating a golf course; landscaping work costing less than $2500 for a 12-month period; license general contractors possessing classification as building, residential, or public utilities contractor; licensed electrical contractors engaging in electric work, wiring, devices, appliances, or equipment; licensed plumbing contractors installing pipes, fixtures, apparatus, or appurtenances; licensed professional engineers; licensed professional landscape architects; and individuals or businesses engaged in specified activities.

G.S. 89D-14 creates a new North Carolina Contractors' Licensing Board with the following members: one member appointed by the Governor; one member appointed by the Commissioner of Agriculture; one practicing nurseryman appointed by the Board of Directors of the NC Nursery and Landscaping Association; four licensed landscape contractors, two appointed by the General Assembly and two by the Board of Directors of the NC Nursery and Landscaping Association; one registered landscape architect appointed by the Board of Directors of the NC Chapter of the American Society of Landscape Architects; and one member that is knowledgeable in landscaping methods and practices appointed by the President of the University of North Carolina.

G.S. 89D-15 specifies powers and duties of the Board, including administering and enforcing the Chapter; adopting rules; examining applicants; issuing, denying, and revoking licenses; disciplining

licensees; conducting investigations of violations by licensees; conducting administrative hearings; seeking injunctive relief; collecting fees; requiring licensees to maintain surety bonds; requiring continuing education; and publishing a code of professional conduct and minimum practice standards for licensees.

G.S. 89D-16 requires an applicant for licensure to meet the following qualifications: is at least 18 years old; is of good moral character; provides evidence of business identification; has at least 3 years of experience or the educational equivalent; and files with the Board a surety bond or letter of credit in the amount of $10,000.

If the applicant meets all qualifications, then the applicant must pass an examination administered by the Board.

G.S. 89D-17 provides requirements for licensing of corporations, limited liability companies, partnerships, and persons doing business under a trade name.

G.S. 89D-18 provides for licensing of nonresident individuals and foreign entities. The Board is required, upon request, to provide the Secretary of Revenue information about nonresidents licensed by the Board. If the Secretary of Revenue determines that a nonresident owes a delinquent income tax debt, the Board may be required not to renew the license of the nonresident.

G.S. 89D-19 provides for reciprocity with other states and countries, allowing the Board to issue a license to any person who is licensed in another state or country if that state or country has licensing requirements that are substantially equivalent to North Carolina.

G.S. 89D-20 requires that licenses be renewed on or before August 1 each year. If they are not renewed, they are automatically revoked. A license may be renewed in the year following expiration if the applicant pays a late fee; the Board finds the licensee has not misused the license or engaged in landscape contracting after the license was revoked; and the applicant is otherwise eligible.

This section also requires licensees to complete seven units of continuing education per year.

G.S. 89D-21 sets fees to be collected by the Board. The act increases the application, examination, license, and renewal fees from $75 to $100, increases the late renewal fee from $25 to $50, and increases the fee for a duplicate license from $5 to $25. The act also provides for a reinstatement fee of $500 and a fee of $250 for license by reciprocity.

G.S. 89D-22 authorizes the Board to deny, restrict, suspend, or revoke a license, or refuse to issue or renew a license if the applicant uses fraud or misrepresentation to obtain a license; practices landscape contracting by misrepresentation; commits gross malpractice; has been convicted of a crime indicating the person is unfit to practice landscape contracting; has been declared incompetent by a court; has violated the provisions of the Chapter or rules adopted by the Board; uses the seal in an unauthorized manner; or fails to file the required surety bond.

G.S. 89D-23 authorizes the Board, after taking into consideration specific listed factors, to assess a civil penalty not in excess of $2000 for each violation of the Chapter or the violation of any rule adopted by the Board.

G.S. 89D-24 authorizes the Board to seek injunctive relief in superior court to prevent any person from violating the provisions of the Chapter or rules adopted by the Board.

Section 3 provides for the phasing out of the current Landscape Contractors' Registration Board and the phasing in of the new Landscape Contractors' Licensing Board, which is established in this act.

Section 4 is a grandfather clause, providing that an applicant who applies and pays the required fee on or before August 12, 2012, shall be issued a license without examination, if he or she meets one of the following criteria: is registered as a landscape contractor; is licensed as an irrigation contractor; is certified as a turf grass professional; or has 10 years of experience, meets all other qualifications, and has required educational experience.

EFFECTIVE DATE: Section 1 of the bill becomes effective August 1, 2012. The remainder of the bill is effective when it becomes law.

Wendy Graf Ray, counsel to Senate Commerce, substantially contributed to this summary.

S447-SMTD-83(e2) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 447

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S447-ATD-107 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date June 8, 2011

Senator ~~Brown~~ Jenkins

moves to amend the bill on page 3, lines 37 and 38, by inserting between the lines:

"(12) Any person performing landscaping work on a farm for use in agriculture production, farming, or ranching.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL 692
Committee Substitute Favorable 5/5/11

Short Title: Increase Payment of Unclaimed Property Claims. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE STATUTES GOVERNING UNCLAIMED PROPERTY IN ORDER TO INCREASE CLAIMS PAID TO RIGHTFUL OWNERS AND REDUCE REPORTING BURDENS ON BUSINESS HOLDERS OF UNCLAIMED PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-6 is amended by adding a new subsection to read:

"(j) Data Sharing. – On or before February 1 of each year, the North Carolina Division of Motor Vehicles, the North Carolina Department of Revenue, and the North Carolina Employment Security Commission shall provide to the Treasurer, for the Treasurer's confidential use, information to facilitate locating owners of unclaimed property. The Treasurer may not use any information obtained pursuant to this section for any purpose except for locating owners of unclaimed property."

SECTION 2. G.S. 116B-52(11) reads as rewritten:

"(11) "Property" means (i) tangible personal property physically located in a safe deposit box or other safekeeping depository held by a financial institution within this State or (ii) a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

a. Money, a check, draft, deposit, interest, or dividend;

b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

c. Stock or other evidence of ownership of an interest in a business association;

d. A bond, debenture, note, or other evidence of indebtedness;

e. Money deposited to redeem stocks, bonds, coupons, or other securities, or to make distributions;

f. An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

g. An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits."

SECTION 3. G.S. 116B-53(c)(13) reads as rewritten:

"(13) Wages or other compensation for personal services, ~~two years~~ one year after the compensation becomes payable."

SECTION 4. G.S. 116B-60 reads as rewritten:

"**§ 116B-60. Report of abandoned property; certification by holders with tax return.**

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property. Holders reporting 50 or more property owner records shall file the report in an electronic format prescribed by ~~the National Association of Unclaimed Property Administrators and approved by~~ the Treasurer. Holders reporting less than 50 property owner records may file the report electronically. Holders reporting electronically may file an electronically signed affidavit in order to comply with subsection (f) of this section.

(b) ~~The~~ For amounts due to the apparent owner of property of the value of fifty dollars ($50.00) or more, the report must be verified and ~~must contain:~~ must contain the following, if known by the holder:

(1) ~~A description of the property;~~ Except with respect to a traveler's check or money order, full name, last known address, social security number or taxpayer identification number, date of birth, drivers license or state identification number, and e-mail address of each person who, from the records of the holder of the property, appears to be the apparent owner of the property.

(2) ~~Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;~~ A description of the property, the identification number, if any, and the property amount.

~~(3) An aggregated amount of items valued under fifty dollars ($50.00) each;~~

(4) In the case of an amount ~~of fifty dollars ($50.00) or more~~ held or owing under an annuity or a life or endowment insurance policy, the full name and last known ~~address~~ address, social security number or taxpayer identification number, date of birth, drivers license or state identification number, and e-mail address of the annuitant or insured and of the ~~beneficiary;~~ beneficiary.

(5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the ~~property; and~~ property.

(6) Other information that the Treasurer by rule prescribes as necessary for the administration of this Chapter.

(b1) Amounts due an apparent owner less than fifty dollars ($50.00) may be reported in an aggregate amount without furnishing any of the information required by subsection (b) of this section.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. A request for an extension for filing a report shall be accompanied by an extension processing fee of ten dollars ($10.00). The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension,

may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(f1) Any holder who has intangible property due to be reported with a cumulative value of two hundred fifty dollars ($250.00) or less in a single reporting year shall not be required to report the property in that year but shall report the property in any year when the value or aggregate value exceeds two hundred fifty dollars ($250.00).

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day."

SECTION 5. G.S. 116B-65(a) reads as rewritten:

"(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. ~~A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.~~ The Treasurer shall give reasonable notice of the sale as he or she deems appropriate and cost-effective, but, at a minimum, notice must be published at least two times a year in a major newspaper in the State's major media markets. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash."

SECTION 6. This act becomes effective October 1, 2011.

HOUSE BILL 692:
Increase Payment of Unclaimed Property Claims

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Reps. Hurley, Randleman	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 692 amends the escheat and unclaimed property laws to facilitate the sharing of data from State agencies to the Treasurer; to require reports of abandoned property to provide more information; to amend the reporting requirements based on the dollar value of the property, and to change the notice requirements prior to the sale of abandoned property.***

BILL ANALYSIS:

Section 1 of House Bill 692 amends G.S. 116B-6 to add a subsection pertaining to data sharing as it relates to escheats and abandoned property. G.S. 116B-6(j) would require that on or before February 1 of each year, the Division of Motor Vehicles, Department of Revenue, and Employment Security Commission must provide to the Treasurer for confidential use, information to facilitate locating owners of unclaimed property. The Treasurer is prohibited from using this information for any purpose except locating owners of unclaimed property.

Section 2 amends the definition of "property" in G.S. 116B-52(11) to specify that tangible personal property must be physically located in a safe deposit box or other safekeeping depository held by a financial institution within the State.

Section 3 amends G.S. 116B-53(c)(13) to decrease the amount of time that must lapse, from two years to one year after compensation becomes payable, before it is presumed that wages or other compensation for personal services is abandoned if unclaimed by the apparent owner.

Section 4 makes technical corrections to the lettering and numbering of subsections and subdivisions in G.S. 116B-60. Amendments to G.S. 116B-60 are provided below.

- Holders reporting 50 or more owners of property presumed abandoned must file the report in an electronic format prescribed by the Treasurer, rather than a format prescribed by the National Association of Unclaimed Property Administrators and approved by the Treasurer.
- Amends G.S. 116B-60(b) to provide that for property valued at $50 or more, the report of abandoned property must contain the following if known by the holder:
    - Except for traveler's check or money order, reports should also contain a date of birth, drivers license or state identification number, and email address of each person who appears to be the apparent owner of the property.
    - Specifies that reports providing a description of the property should also contain the identification number, if any, and the property amount.
    - Provides that for an amount held or owing under an annuity or a life or endowment insurance policy, the report must also include the social security number or taxpayer identification number, date of birth, drivers license or state identification number, and email address of the annuitant or insured and of the beneficiary.

- Adds a new subsection to specify that amounts due an apparent owner less than $50 may be reported in an aggregate amount without furnishing any of the more detailed information listed above.
- Adds a new subsection to provide that any holder who has intangible property due to be reported with a cumulative value of $250 or less in a single reporting year will not be required to report the property in that year, but must report the property in a year when the value or aggregate value exceeds $250.

Section 5 of the bill amends G.S. 116B-65 regarding the public sale of abandoned property to delete the requirement for publication of a notice in a newspaper of general circulation in the county in which the property is to be sold. Instead, the Treasurer would be required to give reasonable notice of the sale as he or she deems appropriate and cost-effective but, at a minimum, notice must be published at least two times a year in a major newspaper in the State's major media markets.

EFFECTIVE DATE: House Bill 692 would become effective October 1, 2011.

Theresa Matula, counsel to the House Committee on Government, substantially contributed to this summary.

H692-SMRB-78(e2) v1

2pm

PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 6-8 **TIME:** 1 PM

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Carmen Hooker	T.A.C.
Peyton Baldwin	North Carolina Wholesalers Assoc
Ken Melton	K.M.A.
Doug Howey	NCPCM

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 8, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tom Cagle	NMRS
Kimberly Moore	NC Mutual Life Insurance
Steven Sawyer	Medical Mutual Insurance Company of NC
Mitch Lunard	SEANC
Ardis Watkins	SEANC
Gary Harris	NC Petroleum & Convenience Marketers
Butler Gunnells	NCBA
Maeu Goff	Smith Anderson
J Goodmon	NC CHAMBER
Jake Cashion	nc chamber

SENATE FINANCE COMMITTEE
Wednesday, June 8, 2011 at 5:30 PM
Room 545, Legislative Office Building

MINUTES

The Senate Finance Committee reconvened at 5:30 PM on June 8, 2011 in room 544 of the Legislative Office Building. Twenty-seven members of the committee were present. Senator Rucho and Senator Hartsell presided as chairs.

H.B. 352 – Delay Kannapolis Annexation

Senator Hartsell was recognized to explain the bill. It delays for two years the legislative annexation of the Southland Development tracts in southern Rowan County at the request of the City of Kannapolis. Senator Garrou moved for a favorable report and the motion carried. A copy of the bill is attached.

S.B. 647 – Mutual Insurance Holding Companies

Senator Rucho was recognized to explain the bill. A "mutual insurance company" is a company that is owned by its policy holders. No stock is available for purchase. This bill authorizes a domestic mutual insurance company, with the approval of two-thirds of its policyholders voting, to reorganize as a mutual insurance holding company. Members of a mutual insurance company would receive ownership interest in the mutual insurance holding company. The mutual insurance company would then be converted into a stock insurance company held by the holding company. In addition to approval by the policy holders, the Commissioner of Insurance must approve the reorganization as fair and equitable to the policyholders. Also, the holding company must at all times own a majority of the voting shares of the mutual insurance company. As a stock insurance company, the mutual insurer would be able to raise capital. In addition, under the bill, the mutual insurance holding company would not be subject to the limitations on investments applicable to insurers. Following reorganization, the Commissioner of Insurance would, however, retain jurisdiction over the mutual insurance holding company, the mutual insurance company, and any stock insurance subsidiaries, including the approval of all stock offerings and mergers. Senator Garrou moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 619 – Combined Reporting Language

Senator Rucho was recognized to explain the bill and Senator Meredith moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. Mike Hannah, Senate Tax Counsel, was recognized to explain the bill with the use of a powerpoint presentation. The bill closes the loophole that allows modern corporations using multiple related entities and intercompany transactions to reduce taxes owed to the State. Linda Millsaps, Assistant Secretary to the NC Department of Revenue, was recognized to answer questions. Senator Rabon moved for a favorable report and the motion carried. A copy of the PCS and the powerpoint is attached.

S.B. 181 – Underground Storage Tank Program Amends

Senator East was recognized to explain the bill. He requested that Jennifer McGinnis, an attorney with the Research Division, and Claire Hester, an analyst with Fiscal Research, explain the bill. The bill makes various changes to the laws governing the State's underground storage tank program and petroleum discharges. Robin Smith, Assistant Secretary for Environment at NC Department of Environment and Natural Resources (DENR), and Grover Nicholson, Head of the State's Wastewater Management Program, were recognized to answer questions. Doug Howie, NC Petroleum Marketers' lobbyist, was recognized to speak in favor of the bill and answer questions. Elizabeth Ouzts, Environment NC, was recognized to speak in opposition to the bill. Senator Goolsby was recognized to offer an amendment that requires fees be paid quarterly to DENR, prohibits DENR from creating new limitations, and changes the effective date. Senator Newton moved to adopt the amendment and the motion carried. Senator Tillman moved for a favorable report as amended and the motion carried. A copy of the bill, the fiscal note, and the amendment is attached.

S.B. 246 – Expand Pharmacists' Immunizing Authority

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS authorizes an "immunizing pharmacist" to administer certain vaccines or immunizations pursuant to protocols developed by the State Health Director. Senator Rabon moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 6:26 PM.

Senator Fletcher Hartsell, Presiding Chair

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 08, 2011

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **556** Public Disclosure Charitable Solicitations.
Sequential Referral: None
Recommended Referral: None

S.B. **699** Div. of Criminal Information (DCI) Changes.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

HOUSE BILL 692:
Increase Payment of Unclaimed Property Claims

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Reps. Hurley, Randleman	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 692 amends the escheat and unclaimed property laws to facilitate the sharing of data from State agencies to the Treasurer; to require reports of abandoned property to provide more information; to amend the reporting requirements based on the dollar value of the property, and to change the notice requirements prior to the sale of abandoned property.***

BILL ANALYSIS:

Section 1 of House Bill 692 amends G.S. 116B-6 to add a subsection pertaining to data sharing as it relates to escheats and abandoned property. G.S. 116B-6(j) would require that on or before February 1 of each year, the Division of Motor Vehicles, Department of Revenue, and Employment Security Commission must provide to the Treasurer for confidential use, information to facilitate locating owners of unclaimed property. The Treasurer is prohibited from using this information for any purpose except locating owners of unclaimed property.

Section 2 amends the definition of "property" in G.S. 116B-52(11) to specify that tangible personal property must be physically located in a safe deposit box or other safekeeping depository held by a financial institution within the State.

Section 3 amends G.S. 116B-53(c)(13) to decrease the amount of time that must lapse, from two years to one year after compensation becomes payable, before it is presumed that wages or other compensation for personal services is abandoned if unclaimed by the apparent owner.

Section 4 makes technical corrections to the lettering and numbering of subsections and subdivisions in G.S. 116B-60. Amendments to G.S. 116B-60 are provided below.

- Holders reporting 50 or more owners of property presumed abandoned must file the report in an electronic format prescribed by the Treasurer, rather than a format prescribed by the National Association of Unclaimed Property Administrators and approved by the Treasurer.
- Amends G.S. 116B-60(b) to provide that for property valued at $50 or more, the report of abandoned property must contain the following if known by the holder:
    - Except for traveler's check or money order, reports should also contain a date of birth, drivers license or state identification number, and email address of each person who appears to be the apparent owner of the property.
    - Specifies that reports providing a description of the property should also contain the identification number, if any, and the property amount.
    - Provides that for an amount held or owing under an annuity or a life or endowment insurance policy, the report must also include the social security number or taxpayer identification number, date of birth, drivers license or state identification number, and email address of the annuitant or insured and of the beneficiary.

may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(f1) Any holder who has intangible property due to be reported with a cumulative value of two hundred fifty dollars ($250.00) or less in a single reporting year shall not be required to report the property in that year but shall report the property in any year when the value or aggregate value exceeds two hundred fifty dollars ($250.00).

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day."

SECTION 5. G.S. 116B-65(a) reads as rewritten:

"(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. ~~A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.~~ The Treasurer shall give reasonable notice of the sale as he or she deems appropriate and cost-effective, but, at a minimum, notice must be published at least two times a year in a major newspaper in the State's major media markets. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash."

SECTION 6. This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 1

HOUSE BILL 352

Short Title:	Delay Kannapolis Annexation.	(Local)
Sponsors:	Representative Steen (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

March 15, 2011

A BILL TO BE ENTITLED

AN ACT AT THE REQUEST OF THE CITY OF KANNAPOLIS TO DELAY FOR TWO YEARS THE LEGISLATIVE ANNEXATION OF THE SOUTHLAND DEVELOPMENT TRACTS IN SOUTHERN ROWAN COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2009-113 reads as rewritten:

"**SECTION 2.** This act becomes effective September 30, ~~2011.~~2013."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 647
Insurance Committee Substitute Adopted 6/7/11

Short Title: Mutual Insurance Holding Companies. (Public)

Sponsors:

Referred to:

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CREATION OF MUTUAL INSURANCE HOLDING COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 8. Mutual Insurance Holding Companies.

"**§ 58-10-275. Definitions.**

The following definitions apply in this Part:

(1) Affiliated. – Defined in G.S. 58-19-5.

(2) Control. – Defined in G.S. 58-19-5.

(3) Domestic mutual insurance company. – An insurance company organized on a mutual plan and incorporated under the laws of North Carolina.

(4) Interested person. – With respect to another person, includes any of the following:

a. Any affiliated person.

b. Any member of the immediate family of any natural person who is an affiliated person of such company.

c. Any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company.

d. Any natural person whom the Commissioner by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company.

(5) Intermediate holding company. – A holding company that is a subsidiary of a mutual insurance holding company or part of a holding company system controlled by a mutual insurance holding company subject to the terms and conditions of Article 19 of this Chapter and that either directly or through a subsidiary intermediate holding company has one or more subsidiary reorganized insurance companies of which a majority of the voting shares of the capital stock would otherwise have been required by this section to be at all times owned by the mutual insurance holding company.

(6) Limited application. – An application by a domestic mutual insurance company for reorganization to a mutual insurance holding company which will hold, at all times, one hundred percent (100%) of the stock of its insurance subsidiaries.

(7) Majority of the voting shares of the capital stock of the reorganized insurance company. – Shares of the capital stock of a reorganized insurance company which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurance company for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurance company.

(8) Member of the immediate family. – Any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, including step and adoptive relationships.

(9) Mutual insurance holding company. – A holding company organized on a mutual plan and incorporated under the laws of North Carolina, resulting from the reorganization of a domestic mutual insurance company pursuant to this Part, with one or more stock insurance holding company subsidiaries or stock insurance company subsidiaries.

(10) Plan of reorganization. – A plan to reorganize a domestic mutual insurance company by forming a mutual insurance holding company.

(11) Standard application. – An application by a domestic mutual insurance company for reorganization to a mutual insurance holding company which may sell interests in its subsidiaries to third parties.

(12) Stock. – Any security evidencing an equity interest in the issuing entity.

(13) Stock offering. – Any proposed sale, exchange, transfer, or other change of ownership of stock or of securities convertible into or exchangeable or exercisable for stock. For the purposes of this Article, "stock offering" shall not include any of the following:

a. An offering of preferred stock which is not convertible or exchangeable into common stock and which has no ordinary voting rights.

b. A transfer of stock among any of the following:

1. A mutual insurance holding company.
2. An insurance company subsidiary of a mutual insurance holding company.
3. An intermediate holding company subsidiary of a mutual insurance holding company.
4. An insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company.

(14) Subsidiary. – Defined in G.S. 58-19-5.

"**§ 58-10-280. General provisions.**

(a) A domestic mutual insurance company, upon approval of the Commissioner, may reorganize by forming an insurance holding company based upon a mutual plan and by continuing the corporate existence of the reorganizing insurance company as a stock insurance company. If the Commissioner, after a public comment period as provided in G.S. 58-10-285, or, if applicable, a public hearing, is satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, the Commissioner may approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain

consultants as provided in G.S. 58-10-285 to assist in the review of the proposed plan. The Commissioner shall retain jurisdiction over a mutual insurance holding company organized under this Part to assure that policyholder interests are protected. All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company, pursuant to the terms and conditions of the plan of reorganization approved by the Commissioner. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.

(b) A domestic mutual insurance company, after approval by the Commissioner, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed under subsection (a) of this section and continuing the corporate existence of the reorganizing insurance company as a stock insurance company subsidiary of the mutual insurance holding company. If the Commissioner is satisfied that the interests of the policyholders are properly protected and that the merger of interests is fair and equitable to the policyholders, the Commissioner may approve the proposed merger of interests and may require as a condition of approval such modifications of the proposed merger of interests as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain consultants as provided in G.S. 58-10-285. The Commissioner has jurisdiction over the mutual insurance holding company organized under this Part to assure that policyholder interests are protected. All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall, pursuant to the terms and conditions of the plan of reorganization approved by the Commissioner, become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with subsection (a) of this section and the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.

(c) A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company that was organized under Articles 7 and 8 and other applicable provisions of this Chapter shall be incorporated under this Chapter. The articles of incorporation and any amendments to such articles of the mutual insurance holding company shall be subject to approval of the Commissioner in the same manner as those of a mutual insurance company.

(d) A mutual insurance holding company is an insurer subject to Article 30 of this Chapter and shall automatically be a party to any proceeding under Article 30 of this Chapter involving an insurance company which, as a result of a reorganization under subsection (a) or (b) of this section, is a subsidiary of the mutual insurance holding company. In any proceeding under Article 30 of this Chapter involving the reorganized insurance company, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the Commissioner or as ordered by the court pursuant to Article 30 of this Chapter.

(e) G.S. 58-10-10 and G.S. 58-10-12 are not applicable to a reorganization or merger of interests under this Part. G.S. 58-10-10 and G.S. 58-10-12 are applicable to demutualization of

a mutual insurance holding company that resulted from the reorganization of a domestic mutual insurance company organized under this Chapter as if the mutual insurance holding company was a mutual insurance company.

(f) A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in Chapter 78A of the General Statutes.

(g) The majority of the voting shares of the capital stock of the reorganized insurance company, which is required by this section to be at all times owned by a mutual insurance holding company, shall not be conveyed, transferred, assigned, pledged, subjected to a security interest or lien, encumbered, or otherwise hypothecated or alienated by the mutual insurance holding company or intermediate holding company. Any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation of, in, or on the majority of the voting shares of the reorganized insurance company is a violation of this section and shall be void in inverse chronological order of the date of such conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation, as to the shares necessary to constitute a majority of such voting shares. The majority of the voting shares of the capital stock of the reorganized insurance company shall not be subject to execution and levy as provided in Chapter 1 of the General Statutes. The shares of the capital stock of the surviving or new company resulting from a merger or consolidation of two or more reorganized insurance companies or two or more intermediate holding companies that were subsidiaries of the same mutual insurance holding company are subject to the same requirements, restrictions, and limitations to which the shares of the merging or consolidating reorganized insurance companies or intermediate holding companies were subject by this section prior to the merger or consolidation. The ownership of a majority of the voting shares of the capital stock of the reorganized insurance company that are required by this section to be at all times owned by a parent mutual insurance holding company includes indirect ownership through one or more intermediate holding companies in a corporate structure approved by the Commissioner. However, indirect ownership through one or more intermediate holding companies shall not result in the mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the reorganized insurance company. The Commissioner shall have jurisdiction over an intermediate holding company as if it were a mutual insurance holding company.

(h) The applicant's articles of incorporation or bylaws, as appropriate, shall require a policyholder vote of approval of the reorganization by a two-thirds majority of the domestic mutual insurance company's policyholders voting on it in person, by proxy, or by mail at a meeting called for the purpose of voting on the reorganization.

"**§ 58-10-285. Application; contents; process.**

(a) An application shall be designated as either a limited application or a standard application. The filing of a limited application shall not preclude the subsequent filing of an application for approval of an initial sale of stock as provided in G.S. 58-10-315.

(b) The application shall be filed in triplicate with the Commissioner and shall include the following items:

(1) Designation as a limited or standard application.

(2) A plan of reorganization as set forth in G.S. 58-10-290.

(3) A plan to obtain the approval of the policyholders in accordance with this Part and the applicant's articles of incorporation and bylaws.

(4) A copy of the mutual insurance holding company's proposed articles of incorporation and bylaws specifying all membership rights.

(5) The names, addresses, and occupational information of all corporate officers and members of the initial mutual insurance holding company board of directors.

(6) Information sufficient to demonstrate that the financial condition of the applicant will not be diminished upon reorganization.
(7) A copy of the proposed articles of incorporation and bylaws for any insurance company subsidiary or intermediate holding company subsidiary.
(8) A "Form A" filing as described in Chapter 11 of Title 11 of the North Carolina Administrative Code.
(9) A statement that the application is in compliance with all pertinent North Carolina General Statutes and Administrative Rules and that the requirements for a plan of reorganization have been fulfilled.
(10) An index demonstrating wherein the application information supplied in compliance with this subsection is found.
(11) The applicable fee required by subsection (f) of this section.
(12) Any other information requested by the Commissioner at any time during the course of proceedings.

(c) Upon receipt and review by the Commissioner of all information provided pursuant to subsection (b) of this section, the Commissioner may establish a period during which the Department will receive and consider public comments on the proposed reorganization. The Commissioner may inform the public of the limited or standard application in a manner deemed appropriate by the Commissioner and may hold a public hearing concerning the application.

(d) The Commissioner may contract, at the expense of the person filing the application, with any attorneys, actuaries, economists, accountants, consultants, or other professional advisors not otherwise a part of the Commissioner's staff to assist the Commissioner in reviewing the application. These contracts are personal professional service contracts exempt from Articles 3 and 3C of Chapter 143 of the General Statutes.

(e) The expenses of mailing any notices and other materials required by this section shall be borne by the person filing the application.

(f) An applicant filing a limited application under this section shall submit with the application under subsection (b) of this section an application fee of two hundred fifty dollars ($250.00). An applicant filing a standard application under this section shall submit with the application under subsection (b) of this section an application fee of five hundred dollars ($500.00).

"**§ 58-10-290. Plan of reorganization.**

(a) A limited application plan of reorganization shall include the following provisions:
(1) Establishing a mutual insurance holding company with at least one stock insurance company subsidiary or one intermediary stock holding company with a stock insurance company subsidiary, the shares of which shall be held exclusively by the mutual insurance holding company.
(2) Protecting the interests of existing policyholders.
(3) Ensuring immediate membership in the mutual insurance holding company of all existing policyholders of the reorganizing domestic mutual insurance company.
(4) Describing a plan providing for membership interests of future policyholders.
(5) Describing the number of members of the board of directors of the mutual insurance holding company required to be policyholders.
(6) Demonstrating that, in the event of proceedings under Article 30 of this Chapter involving a stock insurance company subsidiary of the mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurance company.

(7) Describing how any accumulation or prospective accumulation of earnings by the mutual insurance holding company in excess of that determined by the board of directors of the mutual insurance holding company to be necessary shall inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members.

(8) Describing the nature and content of the annual report and financial statement to be sent to each member.

(9) Describing any other relevant matters the applicant deems appropriate.

(b) A standard application plan of reorganization shall include the following provisions:

(1) Establishing a mutual insurance holding company with at least one stock insurance company subsidiary or one wholly owned intermediate stock holding company with a stock insurance company subsidiary, the shares of which shall be held exclusively by the wholly owned intermediate holding company.

(2) Protecting the interests of existing policyholders.

(3) Ensuring immediate membership in the mutual insurance holding company of all existing policyholders of the reorganizing domestic mutual insurance company.

(4) Providing for membership interests of future policyholders.

(5) Describing the number of members of the board of directors of the mutual insurance holding company required to be policyholders.

(6) Demonstrating that, in the event of proceedings under Article 30 of this Chapter involving a stock insurance company subsidiary of the mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurance company.

(7) Describing how any accumulation or prospective accumulation of earnings by the mutual insurance holding company in excess of that determined by the board of directors of the mutual insurance holding company to be necessary shall inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members.

(8) Describing the nature and content of the annual report and financial statement to be sent to each member.

(9) Describing the applicant's plan for a stock offering in accordance with the provisions of G.S. 58-10-315.

(10) Describing any other relevant matters the applicant deems appropriate.

(c) With regard to either a limited or standard application, the plan of reorganization submitted to the Commissioner shall demonstrate the following:

(1) Policyholder interests are properly preserved and protected.

(2) The plan is fair and equitable to policyholders.

(3) The financial condition of the applicant will not be diminished.

"**§ 58-10-295. Powers of the Commissioner.**

(a) The Commissioner shall at all times retain jurisdiction over the mutual insurance holding company, its intermediate holding company subsidiaries with stock insurance company subsidiaries, and its stock insurance company subsidiaries.

(b) Following any public comment period or hearing pursuant to G.S. 58-10-285, the Commissioner by order shall approve, conditionally approve, or deny an application. The Commissioner may require, as a condition of approval of the proposed reorganization, modifications of the proposed plan of reorganization that the Commissioner finds necessary. The applicant shall accept the required modifications by filing appropriate amendments to the

proposed plan of reorganization with the Commissioner within 30 days of the date of the Commissioner's order requiring the modifications. If the applicant does not accept the required modifications by failing to file the required amendments to the proposed plan of reorganization within 30 days, the proposed reorganization shall be deemed denied.

(c) An approval or conditional approval of a plan of reorganization shall expire if the reorganization is not completed within 210 days after the approval or conditional approval unless the time period is extended by the Commissioner upon a showing of good cause.

(d) The Commissioner may revoke approval or conditional approval of an applicant's plan of reorganization in the event the Commissioner finds the applicant has failed to comply with the plan of reorganization. The Commissioner may compel completion of a plan of reorganization unless the plan is abandoned in its entirety, in accordance with the applicant's provisions for governance.

(e) Upon completion of all elements of a plan of reorganization, the applicant shall provide a notice of completion to the Commissioner.

"**§ 58-10-300. Special financial requirements.**

(a) Mutual insurance holding companies and their insurance company subsidiaries and affiliates shall comply with the provisions of Article 19 of this Chapter except as expressly provided in this Part. Mutual insurance holding companies' investments in subsidiaries, including intermediate holding companies, shall not be subject to any of the restrictions on investment activities set forth in G.S. 58-19-10.

(b) When a mutual insurance holding company acquires or plans to acquire more than fifty percent (50%) of a stock insurance company, the mutual insurance holding company shall submit to the Commissioner a plan describing any membership interests of policyholders.

(c) Each mutual insurance holding company shall supply to the Commissioner, by April 1 of each year, an annual statement consisting of the following:

(1) An income statement.
(2) A balance sheet.
(3) A cash flow statement.
(4) Complete information on the status of any closed block formed as a part of a plan of reorganization.
(5) An investment plan covering all assets.
(6) A statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company.

(d) At least fifty percent (50%) of the net worth of the mutual insurance holding company, based upon generally accepted accounting practices, shall be invested in insurance company subsidiaries. The Commissioner may waive the fifty percent (50%) limitation upon a showing of good cause.

(e) No policyholder who is a member of a mutual insurance holding company shall receive on account of such membership interest any payment of a policy credit, dividend, or other distribution unless the payment has been approved by the Commissioner. The Commissioner, if satisfied the proposed payment is fair and equitable to policyholders who are members, may approve the proposed payment and may require as a condition of the approval modification of the proposed payment that the Commissioner finds necessary for the protection of the policyholders.

(f) Mutual insurance holding companies shall comply with Part 3 of this Article and shall be considered a domestic insurer for the purposes of compliance with Part 3.

"**§ 58-10-305. Reorganization of domestic mutual insurer with mutual insurance holding company.**

A domestic mutual insurance company may apply to reorganize by merging its policyholders' membership interests into a mutual insurance holding company by filing with the

Commissioner a joint application with the mutual insurance holding company complying with the provisions of G.S. 58-10-285.

"**§ 58-10-310. Mergers of mutual insurance holding companies.**

A mutual insurance holding company may apply to merge with another mutual insurance holding company by filing with the Commissioner a plan of merger and complying with the provisions of Article 19 of this Chapter.

"**§ 58-10-315. Stock offerings.**

(a) No stock offering by a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company shall occur without the prior approval of the Commissioner.

(b) Every application for approval of a stock offering shall contain the following information:

(1) A description of the stock intended to be offered by the applicant, including a description of all shareholder rights.

(2) The total number of shares authorized to be issued, the estimated number the applicant requests permission to offer, and the intended date or range of dates for the offer.

(3) A justification for a uniform planned offering price or a justification of the method by which the offering price will be determined.

(4) The name or names of any underwriter, syndicate member, or placement agent involved and, if known, the name or names of each entity, person, or group of persons to whom the stock offering is to be made who will control five percent (5%) of the total outstanding class of shares, and the manner in which the offer is to be tendered. If any such entity or person is a corporation or business organization, the name of each member of its board of directors or equivalent management team shall be provided along with the name of each member of the board of directors of the offeror. Copies of any filings with the United States Securities and Exchange Commission disclosing intended acquisitions of the stock shall be included in the application.

(5) A description of stock subscription rights to be afforded members of the mutual insurance holding company in conjunction with the stock offering.

(6) A detailed description of all expenses to be incurred in conjunction with the stock offering.

(7) An explanation of how funds raised by the stock offering are to be used.

(8) Any other information requested by the Commissioner.

(c) No application regarding a planned stock offering shall be approved unless the plan contains the following provisions:

(1) Prohibiting officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates from purchase or ownership of shares of the stock offering, or issuance of stock options to or for the benefit of such officers, directors, and insiders, in excess of five percent (5%) of the stock offering. The Commissioner may waive this requirement upon a showing of good cause. This subdivision does not limit the rights of officers, directors, and insiders from exercising subscription rights that are generally accorded members of the mutual insurance holding company. However, pursuant to those subscription rights, the officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or own, in the aggregate, more than five percent (5%) of the stock offering.

(2) Requiring that, after the initial stock offering, a majority of the board of directors of the mutual insurance holding company be persons who are not interested persons of the mutual insurance holding company or of an affiliated person of the company. For purposes of this subdivision, a member of the mutual insurance holding company or a policyholder of any of its insurance company subsidiaries shall not be considered an "interested person" or an "affiliated person." The Commissioner may waive this requirement upon a showing of good cause.

(3) For the mutual insurance holding company to adopt articles of incorporation prohibiting any waiver of dividends from stock subsidiaries except under conditions specified in its articles of incorporation and after approval of the waiver by the board of directors of the mutual insurance holding company and the Commissioner.

(4) Requiring that, after the initial stock offering by an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary of a mutual insurance holding company, the boards of directors of each insurance company or intermediate holding company include at least three directors who are not interested persons of the mutual insurance holding company. The Commissioner may waive this requirement upon a showing of good cause.

(5) Establishing, within the board of directors of the corporation offering stock, a pricing committee consisting exclusively of directors who are not members of management of the insurance company subsidiary whose responsibility is to evaluate and approve the price of any stock offering.

(d) An insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company may issue more than one class of stock, provided, however, that the issuer complies with all of the following requirements:

(1) At all times a majority of the voting stock is held by the mutual insurance holding company or its subsidiary.

(2) No class of common stock may possess greater dividend or other rights than the class held by the mutual insurance holding company or its subsidiary.

(e) The Commissioner may retain, at the expense of the person filing the application, any attorneys, actuaries, economists, accountants, consultants, or other professional advisors not otherwise a part of the Commissioner's staff to assist the Commissioner in reviewing the application. These contracts are personal professional service contracts exempt from Articles 3 and 3C of Chapter 143 of the General Statutes.

(f) The expenses of mailing any notices and other materials required by this section shall be borne by the person filing the application.

(g) Upon receipt and review by the Commissioner of all information provided under this section, the Commissioner may establish a period during which the Department will receive and consider public comments about the proposed offering. The Commissioner shall inform the public of the offering by posting information about the application in a manner deemed appropriate by the Commissioner. The Commissioner may hold a public hearing concerning the application or the proposed offering. Following any public comment period or hearing, if applicable, the Commissioner may approve, conditionally approve, or deny the application. The Commissioner may approve the application if the following apply:

(1) The offering complies with this Part and other provisions of law.

(2) The method for establishing the price of a stock offering is consistent with generally accepted market or industry practices for establishing stock offering prices in similar transactions.

(3) The plan and offering will not unfairly impact the interests of members of the mutual insurance holding company.

Nothing in this subsection shall be deemed to prohibit the filing of a registration statement with the United States Securities and Exchange Commission before or concurrently with the giving of notice to members.

(h) Notwithstanding the provisions of subsections (a) through (g) of this section, stock offerings which are not an initial stock offering, and which are proposed by entities with a class of securities regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the Commissioner, or designated on the National Association of Securities Dealers Automated Quotations national market system (NASDAQ), may be sold in accordance with the following procedure: if a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company, or an insurance company subsidiary of an intermediate holding company intends to make a stock offering which would be governed by the provisions of this subsection, that entity shall deliver to the Commissioner, not less than 60 days prior to the offering, a notice of the planned stock offering and all of the following information:

(1) The total number of shares intended to be offered.

(2) The intended date of sale.

(3) Evidence the stock is regularly traded on one of the public exchanges specified in this subsection.

(4) A record of the trading price and trading volume of the stock during the prior 52 weeks.

The Commissioner shall be deemed to have approved the sale unless, within 60 days following receipt of such notice, the Commissioner issues an objection to the sale. If the Commissioner issues an objection to the sale, the application process set forth in subsections (a) through (g) of this section shall be followed to determine whether the Commissioner approves of the proposed sale.

(i) Approval of a stock offering obtained under either subsection (g) or (h) of this section shall expire 120 days following the date of the approval or deemed approval, except as otherwise provided by order of the Commissioner.

(j) No prospectus, information, sales material, or sales presentation by the applicant, or by any representative, agent, or affiliate of the applicant, shall contain a representation that the Commissioner has endorsed the price, price range, or any other information relating to the stock.

(k) No company making a stock offering under this section shall engage in any of the following practices:

(1) Borrow funds from the mutual insurance holding company, or its subsidiaries and affiliates, to finance the purchase of any portion of a stock offering.

(2) Pay any commissions, "special fees," or any other special payments or extraordinary compensation to officers, directors, interested persons, and affiliates for arranging, promoting, aiding, or assisting in reorganization to a mutual insurance holding company or for arranging, promoting, aiding, assisting, or participating in the structuring and placement of a stock offering.

(3) Enter into an understanding or agreement transferring legal or beneficial ownership of stock to another person to avoid the requirements of this Part.

"**§ 58-10-320. Regulation of holding company system.**

(a) All material transactions, as that term is defined under Part 3 of this Article, between or among subsidiaries and affiliates of the mutual insurance holding company, must, after review and exercise of director duties by the directors of the mutual insurance holding company, be approved by a majority of the directors of the mutual insurance holding company as being fair and reasonable.

(b) If the Commissioner determines that activities within a mutual insurance holding company system have violated provisions of the General Statutes of North Carolina or the North Carolina Administrative Code or acted to circumvent requirements or prohibitions contained in the General Statutes or Administrative Code, the Commissioner may prohibit or order rescission of any transaction relating to those activities.

"**§ 58-10-325. Reporting of stock ownership and transactions.**

(a) Any director or officer of a mutual insurance holding company, its subsidiary, or affiliate, who acquires directly or indirectly the beneficial ownership of any security issued by any intermediate holding company or any insurance company subsidiary of an intermediate holding company or mutual insurance holding company shall, within 15 days following the transaction, file with the Commissioner a statement of the transaction on the form prescribed by the Commissioner.

(b) A mutual insurance holding company, and its subsidiaries and affiliates, shall file with the Commissioner, within 15 days of receipt, copies of Form 3, Form 4, and Schedule 13D, or any equivalent filings, such filings made under the federal Securities Exchange Act of 1934, as amended."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 647:
Mutual Insurance Holding Companies

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2011
Introduced by:	Sen. Rucho	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***A "mutual insurance company" is a company that is owned by its policyholders. No stock is available for purchase. Senate Bill 647 would authorize a domestic mutual insurance company, with the approval of two-thirds of its policyholders voting, to reorganize as a mutual insurance holding company. Members of the mutual insurance company would receive ownership interest in the mutual insurance holding company. The mutual insurance company would then be converted into a stock insurance company held by the holding company. In addition to approval by the policyholders, the Commissioner of Insurance must approve the reorganization as fair and equitable to the policyholders. Also, the holding company must at all times own a majority of the voting shares of the mutual insurance company.***

As a stock insurance company, the mutual insurer would be able to raise capital. In addition, under the bill, the mutual insurance holding company would not be subject to the limitations on investments applicable to insurers. Following reorganization, the Commissioner of Insurance would, however, retain jurisdiction over the mutual insurance holding company, the mutual insurance company, and any stock insurance subsidiaries, including the approval of all stock offerings and mergers.

BILL ANALYSIS: Senate Bill 647 adds a new Part 8 to Article 10 of Chapter 58 of the General Statutes, entitled "*Mutual Insurance Holding Companies.*" Among its provisions, the bill creates the following new sections:

➢ ***G.S. 58-10-275. Definitions.***

The bill defines terms used in the act. Definitions include the following:

- "Domestic mutual insurance company" -- an insurance company organized on a mutual plan and incorporated under the laws of North Carolina.
- "Mutual insurance holding company" -- a holding company organized on a mutual plan and incorporated under the laws of North Carolina, resulting from the reorganization of a domestic mutual insurance company...with one or more stock insurance holding company subsidiaries or stock insurance company subsidiaries.
- "Limited application" -- an application for reorganization to a mutual insurance holding company which will hold one hundred percent of the stock of its insurance subsidiaries.
- "Standard application" -- an application for reorganization to a mutual insurance holding company which may sell interests in its subsidiaries to third parties.

➢ ***G.S. 58-10-280. General provisions.***

With the Commissioner's approval, the bill authorizes a domestic mutual insurance company to form an insurance holding company based upon a mutual plan and continue its corporate existence as a stock insurance company subsidiary of the holding company. The membership interest of the policyholders in the mutual company shall, subject to the Commissioner's approval, become membership interests in the mutual insurance holding company. The Commissioner may require modification of the plan as necessary to protect the policyholders' interests. The Commissioner also retains jurisdiction over the holding company. The holding company shall at all times own a majority of the voting shares of stock of the reorganized stock

insurance company. The policyholders of the mutual company must approve the reorganization by a two-thirds majority of those voting. In any delinquency proceeding under Chapter 58, the assets of the holding company are deemed to be assets of the reorganized mutual insurance company.

➢ ***G.S. 58-10-285. Application; contents; process.***

A limited or standard application, including a plan of reorganization, must be filed with the Commissioner. The Commissioner receives and considers public comment and may hold a public hearing. Applicants must pay to the Commissioner a fee of $250 for each limited application and $500 for each standard application under this section.

➢ ***G.S. 58-10-290. Plan of reorganization.***

A limited or standard plan of reorganization submitted to the Commissioner must include provisions as outlined and must demonstrate the following:

- Policyholder interests are properly preserved and protected
- Plan is fair and equitable
- The financial condition of the applicant will not be diminished.

➢ ***G.S. 58-10-295. Powers of the Commissioner.***

The Commissioner retains jurisdiction over the mutual insurance holding company, intermediate holding company subsidiaries with stock insurance subsidiaries, and stock insurance subsidiaries. Approval of a plan of operation may be conditioned on modifications deemed necessary by the Commissioner. If modifications are not made within 30 days, the plan is deemed to be denied. If the reorganization is not completed within 210 days of approval or conditional approval by the Commissioner, the approval expires unless the time period is extended by the Commissioner. The Commissioner may revoke approval if the applicant fails to comply with the plan of reorganization.

➢ ***G.S. 58-10-300. Special financial requirements.***

A mutual insurance holding company is subject to the provisions of the Insurance Holding Company System Regulatory Act, Article 19 of Chapter 58, but is not subject to the restrictions on investment activities by domestic insurers as provided in G.S. 58-19-10 of the Act. (G.S. 58-19-10 regulates the investment activities of domestic insurers, not insurance holding companies.)

This section also requires a mutual insurance holding company to do the following:

- Upon acquisition or plan to acquire more than 50% of a stock insurance company, submit to the Commissioner of a plan describing the membership interests of policyholders.
- Invest at least 50% or more of its net worth in insurance company subsidiaries, unless waived by the Commissioner.
- File a report with the Commissioner disclosing all material transactions (acquisition and disposition of assets, nonrenewal and cancellation of reinsurance).

➢ ***G.S. 58-10-315. Stock offerings.***

The Commissioner must give prior approval of all stock offerings of a mutual insurance holding company, and its insurance company subsidiaries, intermediate holding company subsidiaries, and any insurance company subsidiaries of an intermediate holding company subsidiary of a mutual insurance holding company. Applications for approval of a stock offering must include a description of the stock, the total number of shares to be issued, justification for offering price, and a description of rights afforded members of the mutual insurance holding company.

Planned stock offerings must:

- Prohibit officers, directors and insiders of the holding company and its subsidiaries and affiliates from purchase or ownership of shares in excess of 5% of the offering.
- Require that after the offering a majority of the Board of directors be persons who are not interested persons of the holding company or of an affiliated person of the company as defined under the Article.
- Provide for the holding company to adopt articles of incorporation prohibiting waiver of dividends from stock subsidiaries except under specified circumstances.
- Require that after the initial stock offering the boards of directors of each insurance company or intermediate holding company include at least three members who are not interested persons of the holding company. (This may be waived by the Commissioner.)
- Establish within the board of the offering corporation a pricing committee consisting exclusively of directors who are not members of management of the insurance company subsidiary.

Insurance company subsidiaries and intermediate holding company subsidiaries may only issue more than one class of stock if the mutual holding company retains at all times a majority of the voting stock and no class of common stock possesses a greater dividend or other rights than the mutual holding company's class of stock.

The Commissioner may establish a period for public comment on the proposed offering and may hold a public hearing. The offering may be approved if it: (1) complies with this Part; (2) the price is established by generally accepted market or industry practices; (3) the plan and offering will not unfairly impact the interests of mutual insurance holding company's members.

Approval of a stock offering under this section expires 120 days following approval, unless the Commissioner orders otherwise.

➢ ***G.S. 58-10-320. Regulation of holding company system.***

All material transactions (acquisition and disposition of assets, nonrenewal and cancellation of reinsurance) between or among subsidiaries and affiliates of a mutual insurance holding company must be approved by a majority of the board of directors of the mutual holding company. Also, if the Commissioner determines that a mutual holding company's activities have violated the General Statutes or the Administrative Code, the Commissioner may prohibit or order rescission of the transaction.

➢ ***G.S. 58-10-325. Reporting of stock ownership and transactions.***

Directors and officers of a mutual insurance holding company or its subsidiaries or affiliates who acquire beneficial ownership of any security issued by any intermediate holding company or any insurance company subsidiary must file a statement with the Commissioner within 15 days of the transaction.

EFFECTIVE DATE: The Proposed Committee Substitute for Senate Bill 647 is effective when it becomes law.

Tim Hovis, counsel to Senate Insurance, substantially contributed to this summary.

S647-SMTD-84(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 647 (Second Edition)

SHORT TITLE: Mutual Insurance Holding Companies.

SPONSOR(S): Senator Rucho

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	***See Assumptions and Methodology***				
EXPENDITURES	***See Assumptions and Methodology***				
POSITIONS (cumulative):	***See Assumptions and Methodology***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance

EFFECTIVE DATE: Effective when it becomes law

BILL SUMMARY:

Senate Bill 647 adds a new Part 8 to Article 10 of Chapter 58 of the General Statutes, entitled "*Mutual Insurance Holding Companies.*" Among its provisions, the bill creates the following new sections:

➢ ***G.S. 58-10-275. Definitions.***

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- "Limited application" -- an application for reorganization to a mutual insurance holding company which will hold one hundred percent of the stock of its insurance subsidiaries.

- "Standard application" -- an application for reorganization to a mutual insurance holding company which may sell interests in its subsidiaries to third parties.

➢ ***G.S. 58-10-280. General provisions.***

With the Commissioner's approval, the bill authorizes a domestic mutual insurance company to form an insurance holding company based upon a mutual plan and continue its corporate existence as a stock insurance company subsidiary of the holding company. The membership interest of the policyholders in the mutual company shall, subject to the Commissioner's approval, become membership interests in the mutual insurance holding company. The Commissioner may require modification of the plan as necessary to protect the policyholders' interests. The Commissioner also retains jurisdiction over the holding company. The holding company shall at all times own a majority of the voting shares of stock of the reorganized stock insurance company. The policyholders of the mutual company must approve the reorganization by a two-thirds majority of those voting. In any delinquency proceeding under Chapter 58, the assets of the holding company are deemed to be assets of the reorganized mutual insurance company.

➢ ***G.S. 58-10-285. Application; contents; process.***

A limited or standard application, including a plan of reorganization, must be filed with the Commissioner. The Commissioner receives and considers public comment and may hold a public hearing. Applicants must pay to the Commissioner a fee of $250 for each limited application and $500 for each standard application under this section.

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A limited or standard plan of reorganization submitted to the Commissioner must include provisions as outlined and must demonstrate the following:

- Policyholder interests are properly preserved and protected
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➢ ***G.S. 58-10-295. Powers of the Commissioner.***

The Commissioner retains jurisdiction over the mutual insurance holding company, intermediate holding company subsidiaries with stock insurance subsidiaries, and stock insurance subsidiaries. Approval of a plan of operation may be conditioned on modifications deemed necessary by the Commissioner. If modifications are not made within 30 days, the plan is deemed to be denied. If the reorganization is not completed within 210 days of approval or conditional approval by the Commissioner, the approval expires unless the time period is extended by the Commissioner. The Commissioner may revoke approval if the applicant fails to comply with the plan of reorganization.

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This section also requires a mutual insurance holding company to do the following:

- Upon acquisition or plan to acquire more than 50% of a stock insurance company, submit to the Commissioner of a plan describing the membership interests of policyholders.
- Invest at least 50% or more of its net worth in insurance company subsidiaries, unless waived by the Commissioner.
- File a report with the Commissioner disclosing all material transactions (acquisition and disposition of assets, nonrenewal and cancellation of reinsurance).

➢ ***G.S. 58-10-315. Stock offerings.***

The Commissioner must give prior approval of all stock offerings of a mutual insurance holding company, and its insurance company subsidiaries, intermediate holding company subsidiaries, and any insurance company subsidiaries of an intermediate holding company subsidiary of a mutual insurance holding company. Applications for approval of a stock offering must include a description of the stock, the total number of shares to be issued, justification for offering price, and a description of rights afforded members of the mutual insurance holding company.

Planned stock offerings must:

- Prohibit officers, directors and insiders of the holding company and its subsidiaries and affiliates from purchase or ownership of shares in excess of 5% of the offering.
- Require that after the offering a majority of the Board of directors be persons who are not interested persons of the holding company or of an affiliated person of the company as defined under the Article.
- Provide for the holding company to adopt articles of incorporation prohibiting waiver of dividends from stock subsidiaries except under specified circumstances.
- Require that after the initial stock offering the boards of directors of each insurance company or intermediate holding company include at least three members who are not interested persons of the holding company. (This may be waived by the Commissioner.)
- Establish within the board of the offering corporation a pricing committee consisting exclusively of directors who are not members of management of the insurance company subsidiary.

Insurance company subsidiaries and intermediate holding company subsidiaries may only issue more than one class of stock if the mutual holding company retains at all times a majority of the voting stock and no class of common stock possesses a greater dividend or other rights than the mutual holding company's class of stock.

The Commissioner may establish a period for public comment on the proposed offering and may hold a public hearing. The offering may be approved if it: (1) complies with this Part; (2) the price is established by generally accepted market or industry practices; (3) the plan and offering will not unfairly impact the interests of mutual insurance holding company's members.

Approval of a stock offering under this section expires 120 days following approval, unless the Commissioner orders otherwise.

➢ ***G.S. 58-10-320. Regulation of holding company system.***

All material transactions (acquisition and disposition of assets, nonrenewal and cancellation of reinsurance) between or among subsidiaries and affiliates of a mutual insurance holding company must be approved by a majority of the board of directors of the mutual holding company. Also, if the Commissioner determines that a mutual holding company's activities have violated the General Statutes or the Administrative Code, the Commissioner may prohibit or order rescission of the transaction.

➢ ***G.S. 58-10-325. Reporting of stock ownership and transactions.***

Directors and officers of a mutual insurance holding company or its subsidiaries or affiliates who acquire beneficial ownership of any security issued by any intermediate holding company or any insurance company subsidiary must file a statement with the Commissioner within 15 days of the transaction.

Source: Research Division (June 8, 2011)

ASSUMPTIONS AND METHODOLOGY:

Revenue

With the Commissioner's approval, Senate Bill 647 authorizes a domestic mutual insurance company to form an insurance holding company based upon a mutual plan and continue its corporate existence as a stock insurance company subsidiary of the holding company. Also, Senate Bill 647 requires applicants seeking to form an insurance holding company to pay the Commissioner a fee of $250 for each limited application and $500 for each standard application under this section.

DOI reports that there are approximately 33 mutual insurance companies. Each of these companies could decide to submit an application. If these companies were to submit an application, DOI reports that it is uncertain as to whether these companies would choose the limited or standard application. The Department of Insurance (DOI) is not able to estimate the number or type of applications that it would receive under this bill.

Fiscal Research is not able to estimate the number of applications that would be filed under this bill or the revenue that would be generated. With that said—if the 33 mutual insurance companies were to submit a limited application, then $8,250 of revenue would be generated. If the 33 companies were to submit a standard limited application, then $16,500 of revenue would be generated. Within this scenario, Fiscal Research anticipates that the revenue generated from this bill could range from $0 to $16,550.

Any revenue that is generated from Senate Bill 647 would be deposited into the General Fund.

Expenditures

Senate Bill 647 allows DOI to hire experts to review the application or to review stock offerings. Because this expense would be billed to the applicable companies, Fiscal Research estimates that the reviews of applications or stock offering would have no fiscal impact on DOI or the State.

Under Senate Bill 647, DOI would also have to conduct a review of the financial condition of the mutual holding company's financial statements that would be filed annually as well as any transactions and filings that would have to be submitted pursuant to Article 19. DOI estimates that it would not be able to absorb the additional workload required by these reviews and would need an additional position.

Fiscal Research is not able to concur with DOI's assessment. Fiscal Research is not able to estimate the number of applications—and how many of these applications will be limited or standard—that DOI would receive under this bill. Therefore, it is not possible to determine whether or not DOI would require additional resources to administer this bill.

SOURCES OF DATA: Department of Insurance

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Tazra Mitchell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 8, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 619
Committee Substitute Favorable 5/26/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H619-CSRBxf-60 [v.1]

Short Title: Forced Combinations. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO SPECIFY THE SECRETARY OF REVENUE'S AUTHORITY TO ADJUST THE NET INCOME OF A CORPORATION OR TO REQUIRE A CORPORATION TO FILE A COMBINED RETURN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.6 is repealed.

SECTION 2. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.5A. Secretary's authority to adjust net income or require a combined return.**

(a) Notice. – When the Secretary has reason to believe that any corporation so conducts its trade or business in such manner as to fail to accurately report its State net income properly attributable to its business carried on in the State through the use of transactions that lack economic substance or are not at fair market value between members of an affiliated group of entities, the Secretary may, upon written notice to the corporation, require any information reasonably necessary to determine whether the corporation's intercompany transactions have economic substance and are at fair market value and for the accurate computation of the corporation's State net income properly attributable to its business carried on in the State. The corporation must provide the information requested within 90 days of the date of the notice.

(b) Adjust Net Income. – If upon review of the information provided, the Secretary finds as a fact that the corporation's intercompany transactions lack economic substance or are not at fair market value, the Secretary may redetermine the State net income of the corporation properly attributable to its business carried on in the State under this section by (i) adding back, eliminating or otherwise adjusting intercompany transactions to accurately compute the corporation's State net income properly attributable to its business carried on in the State, or, if such adjustments are not adequate under the circumstances to redetermine State net income, (ii) requiring the corporation to file a return that reflects the net income on a combined basis of all members of its affiliated group that are conducting a unitary business. The Secretary shall consider and be authorized to use any reasonable method proposed by the corporation for redetermining its State net income attributable to its business carried on in the State. In determining whether the corporation's intercompany transactions lack economic substance or are not at fair market value, the Secretary shall consider each taxable year separately.

(c) Combined Return. – If the Secretary finds as a fact that a combined return is required, the Secretary may, upon written notice to the corporation, require the corporation to

submit the combined return and the corporation shall submit the combined return within 60 days of the date of the notice. The submission by the corporation of the combined return required by the Secretary shall not be deemed to be a return, or construed as an agreement by the corporation that an assessment based on the combined return is correct or that additional tax is due by the Secretary's deadline for submitting the combined return. The Secretary or the corporation may propose a combination of fewer than all members of the unitary group, and the Secretary shall be authorized to consider whether such proposed combination is a reasonable means of redetermining State net income; provided, however, the Secretary shall not require a combination of fewer than all members of the unitary group without the consent of the corporation.

(d) Written Statement of Findings. – If the Secretary makes an adjustment or requires a combined return under this section, the Secretary shall provide the corporation with a written statement containing detail of the facts, circumstances and reasons for which the Secretary has found as a fact that the corporation did not accurately report its State net income properly attributable to its business carried on in the State and the Secretary's proposed method for computation of the corporation's State net income.

(e) Members of Affiliated Group. – The Secretary may require a combined return under this section regardless of whether the members of the affiliated group are or are not doing business in this State.

(f) Economic Substance. – A transaction has economic substance if (i) the transaction, or the series of transactions of which the transaction is a part, has one or more reasonable business purposes other than the creation of state income tax benefits, and (ii) the transaction, or the series of transactions of which the transaction is a part, has economic effects beyond the creation of state income tax benefits. In determining whether a transaction has economic substance, all of the following applies:

(1) Reasonable business purposes and economic effects include, but are not limited to, any material benefit from the transaction, other than state income tax benefits not allowable under subdivision (3) of this subsection.

(2) In determining whether to require a combined return, whether the transaction has economic effects beyond the creation of state income tax benefits may be satisfied by demonstrating material business activity of the entities involved in the transaction.

(3) If state income tax benefits resulting from a transaction, or a series of transactions of which the transaction is a part, are consistent with legislative intent, such state income tax benefits shall be considered in determining whether such transaction has business purpose and economic substance.

(4) Centralized cash management of an affiliated group as defined in subsection (i) of this section shall not constitute evidence of an absence of economic substance.

(5) Achieving a financial accounting benefit shall not be taken into account as a reasonable business purpose for entering into a transaction if the origin of such financial accounting benefit is a reduction of state income tax.

(g) Allocation of Income and Deductions. – In determining whether transactions between members of the affiliated group of entities are not at fair market value, the Secretary shall apply the standards contained in the regulations adopted under Section 482 of the Code.

(h) Apportionment. – If the Secretary requires a combined return under this section, the combined State net income of the corporation and the members of the affiliated group of entities shall be apportioned to this State by use of an apportionment formula that accurately reports the State net income properly attributable to the corporation's business carried on in the State, and which fairly reflects the apportionment formula in G.S. 105-130.4 applicable to the corporation and each member of the affiliated group included in the combined return.

(i) Affiliated Group Defined. – For purposes of this section, an affiliated group is a group of two or more corporations or noncorporate entities in which more than fifty percent (50%) of the voting stock of each member corporation or ownership interest of each member non-corporate entity is directly or indirectly owned or controlled by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations or non-corporate entities. Nothing in this subsection shall be construed to limit or negate the Secretary's authority to add back, eliminate or otherwise adjust intercompany transactions involving the listed entities to accurately compute the corporation's State net income properly attributable to its business carried on in the State as provided in subsection (b) of this section.

The following entities shall not be included in a combined return:

(1) A corporation not required to file a federal income tax return.

(2) An insurance company, other than a captive insurance company, which is: (i) subject to tax under Article 8B of this Chapter, (ii) whose premiums are subject to tax under Article 21 of Chapter 58 or a similar tax in another state, or (iii) licensed as a reinsurance company. A "captive insurance company" means an insurer that is part of an affiliated group where the insurer receives more than fifty percent (50%) of its net written premiums or other amounts received as compensation for insurance from members of the affiliated group.

(3) A corporation exempt from taxation under Section 501 of the Code.

(4) An S-Corporation.

(5) A foreign corporation as defined in section 7701 of the Code, other than a domestic branch thereof.

(6) A partnership, limited liability company, or other entity not taxed as a corporation.

(7) A corporation with at least eighty percent (80%) of its gross income from all sources in the tax year being active foreign business income as defined in Section 861(c)(1)(B) of the Code as in effect as of July 1, 2009.

(j) Proposed Assessment or Refund. – If the Secretary redetermines the State net income of the corporation in accordance with this section by adjusting the State net income of the corporation or requiring a combined return, the Secretary shall issue a proposed assessment or refund upon making such redetermination. The procedures for a proposed assessment or a refund in Article 9 of Chapter 105 shall be applicable to proposed assessments and refunds made under this section.

(k) Penalties. – If a combined return required by this section is not timely submitted by a corporation, then the corporation is subject to the penalties provided in G.S. 105-236(a)(3). Penalties shall not be imposed on an assessment under this section except as expressly authorized in this section and in G.S. 105-236(a)(5)f.

(l) Advice. – A corporation may request in writing from the Secretary specific advice regarding whether a redetermination of the corporation's State net income or a combined return would be required under this section under certain facts and circumstances. The Secretary may request information from the taxpayer that is required to provide the specific advice. The Secretary shall provide the specific advice within 120 days of the receipt of the requested information from the taxpayer. G.S. 105-264 governs the effect of this advice.

(m) Extension. – The Secretary and the taxpayer may extend any time limit contained in this section by mutual agreement.

(n) Other Tax Adjustments. – Nothing in this section shall be construed to limit or negate the Secretary's authority to make tax adjustments as otherwise permitted by law.

(o) Appeals. – If the corporation appeals a final determination by the Department under this section to the Office of Administrative Hearings in a contested tax case, the administrative law judge shall review de novo (i) whether the separate income tax returns submitted by the

taxpayer fail to report State net income properly attributable to its business carried on in this State through the use of intercompany transactions that lack economic substance or are not at fair market value between members of an affiliated group of entities; (ii) whether the Department's means of determining the corporation's State net income under this section is an appropriate means of determining the corporation's State net income properly attributable to this State; and, (iii) if a combined return is required by the Department, whether adjustments other than requiring the corporation to file a return on a combined basis are adequate under the circumstances to redetermine State net income."

SECTION 3. G.S. 105-130.15(a) reads as rewritten:

"(a) The net income of a corporation shall be computed in accordance with the method of accounting it regularly employs in keeping its books. The method must be consistent with respect to both income and ~~deductions. If this method does not clearly reflect the income, the computation shall be made in accordance with a method that, in the Secretary's opinion, does clearly reflect the income, but~~ deductions and shall follow as nearly as practicable the federal practice, unless contrary to the context and intent of this Part.

The Secretary may adopt the rules and regulations and any guidelines administered or established by the Internal Revenue Service unless contrary to any provisions of this Part."

SECTION 4. G.S. 105-130.16 reads as rewritten:

"**§ 105-130.16. Returns.**

~~(a) Return.~~—Every corporation doing business in this State must file with the Secretary an income tax return showing specifically the items of gross income and the deductions allowed by this Part and any other facts the Secretary requires to make any computation required by this Part. The return of a corporation must be signed by its president, vice-president, treasurer, or chief financial officer. The officer signing the return must furnish an affirmation verifying the return. The affirmation must be in the form required by the Secretary.

~~(b) Correction of Distortions. When the Secretary has reason to believe that any corporation so conducts its trade or business in such manner as to either directly or indirectly distort its true net income and the net income properly attributable to the State, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, the Secretary may require any facts the Secretary considers necessary for the proper computation of the entire net income and the net income properly attributable to the State, and in determining these computations, the Secretary must have regard to the fair profit that would normally arise from the conduct of the trade or business.~~

~~(c) Other Corrections. When any corporation liable to taxation under this Part conducts its business in such a manner as to either directly or indirectly benefit the members or stockholders thereof or any person interested in the business by selling its products or goods or commodities in which it deals at less than the fair price which might be obtained therefor, or when a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of the corporations, or when a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products of the corporation of which it so owns a substantial portion of the stock in such manner as to create a loss or improper net income for either of the corporations, the Secretary may determine the amount of taxable income of the such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained by the corporations liable to taxation under this Part from dealing in such products, goods or commodities."~~

SECTION 5. G.S. 105-236(a)(5)f. reads as rewritten:

"(a) Penalties. – The following civil penalties and criminal offenses apply:

...

(5) Negligence. –

...

f. Consolidated or combined return. – The amount of tax shown as due on a consolidated or combined return filed at the request of the Secretary under Part 1 of Article 4 of this Chapter is not considered a deficiency and is not subject to this subdivision unless one or more of the following applies:

1. The return is an amended consolidated or combined return that includes the same corporations as the initial consolidated or combined return filed at the request of the Secretary. In this case the deficiency is the extent to which the amount shown as due on the amended return exceeds the amount shown as due on the initial return.

~~2. The Secretary has adopted permanent rules in accordance with G.S. 105-262 that describe the facts and circumstances under which the Secretary will require a consolidated or combined return under G.S. 105-130.6, and the Secretary requires the taxpayer to file a consolidated or combined return under that statute because the taxpayer's facts and circumstances meet those described in the rules.~~

3. Pursuant to a written request from a taxpayer, the Secretary has provided written advice to that taxpayer stating that the Secretary will require a consolidated or combined return under the facts and circumstances set out in the request, and the Secretary requires a taxpayer to file a consolidated or combined return under ~~G.S. 105-130.6~~ G.S. 105-130.5A because the taxpayer's facts and circumstances meet those described in the written advice."

SECTION 6. G.S. 105-264 is amended by adding a new subsection to read:

"(d) Fee. – The Secretary may charge a fee for providing specific written advice at the request of a taxpayer. The fee is a receipt of the Department and must be applied to the costs of providing the specific advice. The proceeds of the fee must be credited to a special account within the Department and do not revert but remain in the special account until spent by the Department for the costs of providing the specific advice. The Secretary may adopt a tiered fee structure based on the taxpayer's income or gross receipts, the relative complexity of the advice requested, or the tax schedule for which advice is requested. The fee shall not be less than one hundred dollars ($100.00) or more than five thousand dollars ($5,000). The fee may be waived by the Secretary."

SECTION 7. The date by which the Department must issue a final determination under G.S. 105-241.14 for any request for review pending as of the effective date of this act under G.S. 105-130.6 is extended until June 30, 2012.

SECTION 8. This act is effective when it becomes law and applies to assessments and requests for refunds which have not become final by the issuance of a final decision of the Department of Revenue in a contested case commenced at the Office of Administrative Hearings pursuant to G.S. 105-241.15 as of the effective date of this act. This act does not apply to taxes and penalties that are the subject of pending litigation in the General Court of Justice as of the effective date of this act, and shall not be construed to affect the interpretation of any statute that is the subject of pending litigation in the General Court of Justice or an

appeal from a final decision by the Court of General Justice, or to affect any other aspect of such pending litigation.

Forced Combinations in North Carolina

Addressing the Issues---
Fixing the Problem

A Summary of PCS HB 619

Michael A. Hannah, Esq., CPA
Senate Finance Committee
Tax Counsel
June 8, 2011

The Problem

- North Carolina is a "separate entity" state"--- corporations file separate tax returns even if they are related to or owned by other corps that also file tax returns in the state
- Modern corporations commonly use multiple related entities and intercompany transactions for legitimate business reasons other than tax reduction
- But "separate entity" states, including NC, have had problems with some related corporations using intercompany transactions to artificially reduce income taxes

The Problem

- NC has 3 different statutes written in the 1930's being applied by NCDOR in the new & changed economy to complicated corporate structures with varied fact patterns
- These statutes give NCDOR nearly unlimited authority to require separate but related corporations to file combined returns because of intercompany transactions that improperly reduce NC taxable income
- Statutes are outdated and contain many undefined, nebulous and confusing terms

The Problem

- Forced combination statutes were infrequently enforced by NCDOR prior to 2001, so there is little guidance available to interpret the statutes
- NCDOR has not issued formal guidelines regarding how it interprets the existing statutes despite repeated requests from taxpayers and practitioners
- 5 years of litigating two cases involving the issue, but there remain many questions and confusion among corporate taxpayers

The Problem

- Wal-Mart decision did little to clarify the definition of terms used in current statute
- Judges have no clear guidelines and standards by which to decide cases and apply the current confusing statute
- Even if NCDOR wins current litigation, other taxpayers could appeal their own cases
- Taxpayers are confused and frustrated by absence of guidelines and lack of certainty when preparing tax returns and financial statements

What Can Be Done?

- Secretary should have authority to adjust intercompany transactions or require combined returns in reasonably defined situations to prevent abusive tax planning
- Taxpayers should be able to arrange their corporate affairs as they choose within reasonable guidelines and have certainty regarding how to properly file tax returns in NC & prepare financial statements without going to court

The Proposed Answer

- Give Secretary clear authority to adjust intercompany transactions or require combined returns when intercompany transactions do not meet reasonable standards established by statute
- Require corporate intercompany transactions to meet established standards similar to those in the Internal Revenue Code and related regulations to prevent artificial reduction of NC taxable income

How the Proposed Statute Works

- G.S. §105-130.6 completely rewritten
- Secretary can request additional information from corporation when he believes NC net income has not been correctly reported because of intercompany transactions
- Secretary must provide written statement to taxpayer with facts and reasons for proposing adjustments to taxable income or requiring a combined return
- Intercompany transactions must have economic substance AND be at fair market value as determined in IRC §482 regulations

How the Proposed Statute Works

- If intercompany transactions don't have economic substance, or are not at fair market value, Secretary may add back, eliminate or adjust transactions OR
- require a combined return if adjustments are insufficient to report correct NC income
- Transactions must meet both economic substance and fair market value tests

How the Proposed Statute Works

- Defines Economic Substance ---
- An intercompany transaction has economic substance if it has a reasonable business purpose other than the creation of state income tax benefits, AND the transaction has some economic effect other than creation of state tax benefits
- Defines Fair Market Value--- as determined under the regulations for §482 of the Internal Revenue Code

How the Proposed Statute Works

- Reasonable business purpose and economic effects include material benefits from the transaction other than state income tax benefits
- Material business activity of entities involved in a transaction is a factor in determining economic effects
- State tax benefits consistent with legislative intent is a factor in determining business purpose and economic substance

How the Proposed Statute Works

- Required combined return must include all members of taxpayer's unitary group in U.S. unless taxpayer and NCDOR agree to some other combination of entities
- Some entities specifically excluded from the combined return: exempt corporations, regular insurance companies (not captives); exempt corps, S-corps, foreign corps (except U.S. divisions), partnerships, LLC's

How the Proposed Statute Works

- If taxpayer fails to file the required combined return as requested, the Secretary may impose failure to file penalties
- Taxpayers may seek, and Secretary must provide within 120 days, written advice regarding whether adjustments to intercompany transactions or a combined return will be required under the new standards

How the Proposed Statute Works

- Wording of G.S. §105-130.15 and G.S. §105-130.16 are changed to remove references to Secretary's income adjustment authority and put that authority into one statute with defined terms and some guidelines
- Penalties are only appropriate in limited situations
- Clarify statutory intent, eliminate duplicity, provide a reasonable standard, consistency & guidance to taxpayers

How the Proposed Statute Works

- The new standards and guidelines will apply to assessments and requests for refund that are not yet finalized by the issuance of a final decision of the Secretary in a contested case commenced at the Office of Administrative Hearings
- Pending litigation will not be affected by the changes

QUESTIONS?

SENATE BILL 181

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/6/11

Short Title: Underground Storage Tank Prgrm. Amends. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE LAWS GOVERNING THE STATE'S UNDERGROUND STORAGE TANK PROGRAM AND PETROLEUM DISCHARGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.3(a) reads as rewritten:

"(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

...

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may not incorporate standards and restrictions which exceed ~~and~~ or are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143.

(18) To adopt rules pertaining to the discharge or release of petroleum, from any source, which provide for risk-based assessment and cleanup."

SECTION 2. G.S. 143-215.94B(b) reads as rewritten:

"(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

...

(8) The costs of a site investigation required by the Department for the purpose of determining whether a release from a tank system has occurred, whether or not the investigation confirms that a release has occurred."

SECTION 3. G.S. 143-215.94B(b1) reads as rewritten:

"(b1) In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:

(1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars ($75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.

(2) The multiple discharge amount shall be the lesser of:

a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or

b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1½).

(3) If in the process of investigating a discharge or release from an underground storage tank system an owner or operator discovers a separate discharge or release for which the owner or operator is not responsible, the responsible party cannot be identified, and the releases are commingled, the owner or operator may elect to clean up both releases, in which case the amount the owner or operator is responsible for shall be the lesser of the applicable costs under subdivision (1), (2), (2a), (3), or (4) of subsection (b) of this section, whichever are applicable."

SECTION 4.(a) G.S. 143-215.94B is amended by adding a new subsection to read:

"(b5) In the event a discharge or release of petroleum from an underground storage tank results in contamination in soil or groundwater that becomes commingled with contamination that is the result of a discharge or release of petroleum from another source, the Commercial Fund may be used to reimburse an owner, operator, or landowner that is otherwise eligible for reimbursement and proceeds with cleanup pursuant to this Part for any costs in accordance with subsection (b1) of this section."

SECTION 4.(b) G.S. 143-215.94B(d) reads as rewritten:

"(d) The Commercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or ~~vehicle.~~vehicle, unless the discharge or release becomes commingled with contamination from an underground storage tank.

...."

SECTION 4.(c) G.S. 143-215.94D(d) reads as rewritten:

"(d) The Noncommercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or ~~vehicle.~~ vehicle, unless the discharge or release becomes commingled with contamination from an underground storage tank.

...."

SECTION 5. G.S. 143-215.94B is amended by adding a new subsection to read:

"(i) During each fiscal year, the Department shall use up to one million dollars ($1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges or releases for which a responsible party has

been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. The Commission shall adopt rules to define severe financial hardship; establish criteria for assistance due to severe financial hardship pursuant to this section; and establish a process for evaluation and determinations of eligibility with respect to applications for assistance due to severe financial hardship. The rules shall provide that the determinations of eligibility shall be made by the Petroleum Underground Storage Tank Funds Council established under G.S. 143-215.94O."

SECTION 6. G.S. 143-215.94C reads as rewritten:

"**§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.**

(a) For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank. The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee of four-hundred twenty dollars ($420.00) for each petroleum commercial underground storage tank.

(a1) Payment of a fee shall not be required for a compartment of a commercial underground storage tank that has not contained a petroleum product at any point during the applicable calendar year. The owner or operator of a commercial petroleum underground storage tank that does not pay an annual operating fee for a compartment pursuant to this subsection shall complete and submit an attestation under penalty of perjury that the compartment for which a fee is not paid did not contain a petroleum product at any point during the applicable calendar year. A compartment for which an annual operating fee is not paid is ineligible for reimbursement of any costs associated with a discharge or release from the compartment from the Commercial Leaking Petroleum Underground Storage Tank Fund.

(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. The annual operating fee shall be due and payable in equal installments on a quarterly basis on the first day of the month of each quarter in accordance with a staggered schedule established by the ~~Department. The~~ Department ~~shall implement a staggered schedule to the end~~in order that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. The fee for all commercial underground storage tanks located at the same facility shall be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.

...."

SECTION 7. G.S. 143-215.94T reads as rewritten:

"**§ 143-215.94T. Adoption and implementation of regulatory program.**

...

(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all components of underground storage tank systems, including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall tanks, piping, and fittings and for sump containment for pump heads and dispensers. The rules shall provide for monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any component of an underground storage tank system on or after that date. This section shall not be construed to limit the right of an owner or operator to repair any existing component of an underground storage tank system. If an existing underground storage tank is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced piping.

(d) The Department shall allow non-tank unprotected metallic components that are visible or can be accessed for visual inspection, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of these components if the component does not have visible corrosion and passes a tightness test."

SECTION 8.(a) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed after January 1, 1991, shall not be required to provide secondary containment until January 1, 2020.

SECTION 8.(b) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), the Commission shall establish a process for the grant of variances from the setbacks required for UST systems from certain public water supply wells, particularly those that serve only a single facility which are not community water systems, if the Commission finds facts to demonstrate that such variance will not endanger human health and welfare or groundwater.

SECTION 8.(c) No later than January 1, 2012, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 8(a) and Section 8(b) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 8(a) and Section 8(b) of this act.

SECTION 9. G.S. 143-215.94V reads as rewritten:

"**§ 143-215.94V. Standards for petroleum underground storage tank cleanup.**

(a) Legislative findings and intent.

(1) The General Assembly finds that:

a. The goals of the underground storage tank program are to protect human health and the environment. Maintaining the solvency of the Commercial Fund and the Noncommercial Fund is essential to these goals.

b. The sites at which discharges or releases from underground storage tanks occur vary greatly in terms of complexity, soil types, hydrogeology, other physical and chemical characteristics, current

and potential future uses of groundwater, and the degree of risk that each site may pose to human health and the environment.

c. Risk-based corrective action is a process that recognizes this diversity and utilizes an approach where assessment and remediation activities are specifically tailored to the conditions and risks of a specific site.

d. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics, and allowing no action or no further action at sites that pose little risk to human health or the environment.

e. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.

(2) The General Assembly intends:

a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases ~~from petroleum underground storage tanks.~~of petroleum. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.

b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.

c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.

d. That these rules and decisions of the Commission and the Department in implementing these rules facilitate the completion of more cleanups in a shorter period of time.

e. That neither the Commercial Fund nor the Noncommercial Fund be used to clean up sites where the Commission has determined that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission.

f. Repealed by Session Laws 1998-161, s. 11(c), effective retroactively to January 1, 1998.

g. That the Commercial Fund and the Noncommercial Fund be used to perform the most cost-effective cleanup that addresses imminent threats to human health and the environment.

(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases ~~from petroleum underground storage tanks.~~ of petroleum. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk.

(c) The Commission may require an owner or operator or a landowner eligible for payment or reimbursement under subsections (b), (b1), (c), and (c1) of G.S. 143-215.94E to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release from a petroleum underground storage and to identify the most cost-effective cleanup that addresses imminent threats to human health and the environment.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify an owner, operator, or landowner who provides the information required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that requires further cleanup, the Commission shall notify the owner, operator, or landowner who provides the information required by subsection (c) of this section of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site. This section shall not be construed to prohibit an owner, operator, or landowner from selecting a cleanup method other than the cost-effective cleanup method approved by the Commission so long as the Commission determines that the alternative cleanup method will address imminent threats to human health and the environment.

(e) If the Commission concludes under subsection (d) of this section that no cleanup, no further cleanup, or no further action will be required, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial or Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment required by this section, unless:

(1) Cleanup is ordered or damages are awarded in a finally adjudicated judgment in an action against the owner or landowner.

(2) Cleanup is required or damages are agreed to in a consent judgment approved by the Department prior to its entry by the court.

(3) Cleanup is required or damages are agreed to in a settlement agreement approved by the Department prior to its execution by the parties.

(4) The payment or reimbursement is for costs that were incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup, or no action is required.

(5) The payment or reimbursement is for costs that were incurred as a result of a later determination by the Commission that the discharge or release poses a threat or potential threat to human health or the environment as provided in subsection (d) of this section.

(e1) If the Commission concludes under subsection (d) of this section that further cleanup is required and notifies the owner, operator, or landowner of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial Fund or Noncommercial Fund, other than those costs that are reasonable and necessary to conduct the risk assessment and to implement the cost-effective cleanup method approved by the Commission. If the owner, operator, or landowner selects a cleanup method other than the one identified by the Commission as the most cost-effective cleanup, the Department shall not pay or reimburse for costs in excess of the cost of implementing the approved cost-effective cleanup.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a

determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required.

(g) Subsections (c) through (e1) of this section apply only to assessments and cleanups in progress or begun on or after 2 January 1998.

(h) If a discharge or release of petroleum from an underground storage tank results in contamination in soil or groundwater that becomes commingled with contamination that is the result of a discharge or release of petroleum from a source of contamination other than an underground storage tank, the cleanup of petroleum may proceed under rules adopted pursuant to this section. ~~The Department shall not pay or reimburse any costs associated with the assessment or remediation of that portion of contamination that results from a release or discharge of petroleum from a source other than an underground storage tank from either the Commercial Fund or the Noncommercial Fund.~~"

SECTION 10.(a) Notwithstanding subsection (a) of 15A NCAC 02N .0903 (Underground Storage Tanks: Tanks), from the effective date of this act the Department of Environment and Natural Resources shall not prohibit the use of tanks that are constructed of steel and cathodically protected as provided in 40 Code of Federal Regulations § 280.20(a)(2) (July 1, 2010 Edition) in order to meet the external corrosion protection standards of that rule.

SECTION 10.(b) No later than January 1, 2012, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 10(a) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 10(a) of this act.

SECTION 11. This act is effective when it becomes law and applies to assessments that are initiated on or after that date, except that (i) Section 3 applies to discharges or releases discovered or reported on or after January 1, 2009, and (ii) G.S. 143-215.94V(c1), as enacted by Section 9 of this act, applies to discharges or releases reported on or before January 2, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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DATE:

TO: Senator East

FROM: Claire Hester
Fiscal Research Division

RE: PCS Senate Bill 181 Amended 3

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES					
Commercial LUST Fund	**Potential loss of up to $858,900. See Assumptions & Methodology**				
EXPENDITURES	*See Assumptions and Methodology, Section 4*				
POSITIONS (cumulative):	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources

EFFECTIVE DATE: Effective when becomes law and applies to assessments initiated on or after that date, except for Section 3 (applies to discharges discovered or reported on or after January 1, 2009) and Section 9 (applies to discharges reported on or before January 1, 1998).

BILL SUMMARY:

Section 1 – Power of EMC with regard to tanks.
The PCS for SB 181 amends powers granted to the Environmental Management Commission (EMC) with respect to underground storage tanks (USTs) as follows:

- **State rules relative to federal law:** currently the statutes explicitly provide that the rules may incorporate standards and restrictions which exceed and are more comprehensive than federal regulations. The PCS *prohibits* EMC from adopting standards or restrictions that exceed or are more comprehensive than comparable federal regulations.
- **Use of risk-based assessment:** Current rules allow use of risk-based assessment and cleanup only for discharges resulting from underground storage tanks. The PCS directs EMC to adopt rules that provide for risk-based assessment and cleanup for discharges of petroleum resulting from *any* source.

Section 2 – Reimbursement for costs of investigation.
Currently, site investigation costs are reportedly not reimbursed for investigations that do not confirm a discharge. The PCS clarifies that costs associated with a site investigation that is required by the Department of Environment and Natural Resources (Department) for the purpose of determining whether a discharge from a tank system has occurred *are* reimbursable, whether or not the investigation confirms that a discharge has occurred.

Section 3 – Reimbursement of costs for multiple discharges at same facility.
Currently, if two or more discharges are discovered at one facility, whether or not both are caused by the current owner or operator, if the current owner or operator elects to cleanup both discharges the owner or operator must pay a deductible for each discharge. The amount of the deductible is determined based on the nature of the discharge, and, depending on the nature of the discharge, a portion of the reasonable and necessary costs of the cleanup. The PCS amends the statute governing the reimbursement of costs from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund ("Commercial LUST Fund") for cleanup of multiple discharges at the same facility. The PCS would provide that if an owner or operator discovers a separate discharge *for which the owner or operator is not responsible*, the responsible party for the other discharge cannot be identified, and the discharges are comingled, the owner or operator may elect to cleanup both discharges in which case the amount the owner or operator is responsible for would be the lesser of those deductibles applicable to the discharges.

Section 4 – Reimbursement for cleanup of petroleum discharges from sources other than USTs if comingled with UST discharges.
Currently, the Department is prohibited from using either the Commercial or the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund ("Noncommercial LUST Fund") to pay or reimburse any costs associated with the assessment or remediation of that portion of contamination which results from a discharge of petroleum from a source other than an UST. The PCS makes changes to the General Statutes to provide that both the Commercial and Noncommercial LUST Funds will be used for the payment of the costs of cleanup of contamination in soil or groundwater that results from comingling of a discharge of petroleum from a UST and a discharge of petroleum from another source (from an aboveground tank, for example).

Section 5 – Establish process to assist in cases of severe financial hardship.
The PCS for SB 181 requires the Department to use up to $1,000,000 of the funds in the Commercial LUST Fund to fund necessary assessment and cleanup. The assessment and cleanup are to be conducted by the Department for discharges for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. The provision directs EMC to adopt rules in this regard, which, among other things, would provide that determinations of eligibility for such assistance would be made by the Petroleum Underground Storage Tank Funds Council.

Section 6 – Annual operating fees.
Currently the applicable statute provides that each compartment of a commercial UST that is designed to independently contain a petroleum product is a separate UST, and that an annual operating fee of $420 for each compartment must be paid once yearly.
The PCS provides (1) that annual operating fees are due *only* for commercial tanks that have contained a petroleum product at any point during the year to which the fee is applicable, but not for individual compartments of a UST that have not contained a petroleum product during the applicable year; and, (2) that payment of annual operating fees applicable to USTs would be payable on a *quarterly* basis in equal installments.

Section 7 – Certain requirements for USTs.
Currently, State rules on secondary containment do not allow an owner to repair only a section of piping; rather, the entire piping run must be replaced and brought into compliance with the rules requiring secondary containment.
The PCS amends the statute that mandates adoption of rules to require secondary containment for all components of USTs to clarify that the provision is not to be construed to limit the right of an owner or operator to repair any existing component of a UST. Under the provision, if an existing UST is replaced, the secondary containment and interstitial monitoring requirements would only apply to the replaced tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements would only apply to the replaced piping. This provision brings State law into line with Federal law.

Federal regulations require all metallic components of UST systems to be protected from corrosion. Corrosion protection can be added to unprotected metal tanks if the integrity of the tank walls is sufficient to prevent the tanks from leaking and to allow the addition of corrosion protection. For other metallic components (such as piping, metal elbows, valves, and flex connectors) there is no cost-effective test to measure the amount of corrosion damage in order to know whether a discharge is imminent. According to DENR, if it an unprotected metallic component is found during a compliance inspection, the remedy typically has been to replace the component and add corrosion protection. Since November 1, 2007, State law has required secondary containment for new and replacement components of UST system which can add significant costs.
The PCS requires DENR to allow non-tank unprotected metallic components that are visible or can be accessed for visual inspection, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of

these components if the component does not have visible corrosion and passes a tightness test.

Section 8 – Well setback requirements for USTs.
In 1991, the State adopted rules requiring a 500-foot separation between petroleum UST systems and public water supply wells and certain critical surface waters. The separation distance can be reduced if the UST system has secondary containment. These setbacks applied immediately to UST systems installed after 1991 and were phased in for existing UST systems. Under current rules, the final deadline for tanks to meet the well setback requirements or provide secondary containment for the system is January 1, 2016. This final deadline applies to a small category of tanks installed after the 1991 rules went into effect, but which did not comply with the rules at the time of installation. In the meantime, those tank owners have been required to check twice a year for petroleum discharges. According to the Department, of the nearly 9,000 UST facilities in North Carolina, most have met the requirement. For a few of those remaining facilities, the costs of upgrading to meet the setback requirement may force the UST owner to either stop operating the UST system or close the well.
The PCS (1) extends the final deadline of a rule requiring certain USTs to meet well setback requirements or provide secondary containment for the system from January 1, 2016 to January 1, 2020; and (2) requires EMC to establish a variance process applicable to the setbacks required for UST systems from certain public water supply wells, particularly those that serve only a single facility which are not community water systems, if EMC finds facts to demonstrate that such variance will not endanger human health and welfare or groundwater.

Section 9 – Standards for cleanup.
The PCS allows for risk-based assessment and cleanup for discharges of petroleum from *any* source.
Use of proximity to wells in determining risk of discharges: Currently, State rules provides the criteria by which the Department classifies sites as high, intermediate, or low risk. Under the rule, a site must be classified as high risk if, among other things: (i) a water supply well, including one used for non-drinking purposes, has been contaminated by the discharge; (ii) a water supply well used for drinking water is located within 1,000 feet of the source area of a confirmed discharge; or, (iii) a water supply well not used for drinking water is located within 250 feet of the source area of a confirmed discharge.
The PCS provides that the rule that uses the distance between a source area of a confirmed discharge to a water supply well or a private drinking water well to determine the risk of a discharge must include a determination whether a nearby well is likely to be affected by the discharge as a factor in determining the level of risk.
Time limitation for information to be requested: Currently, statute authorizes EMC to require an owner/operator eligible for reimbursement for cleanup of a UST to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge from the UST and to identify the most cost-effective cleanup that addresses imminent threats to human health and the environment. The statutes currently impose no time limitation on EMC's ability to require information on sites from a responsible party.
The PCS amends this provision to provide that if EMC fails to require a responsible party to provide such information within three years of the date the discharge is reported, EMC must notify the party that no cleanup, further cleanup, or further action will be required unless EMC later determines that the discharge poses an unacceptable level of risk or a potentially unacceptable

level of risk to human health or the environment. Recordation of a notice of residual petroleum would be required in such cases. The new provision would only apply to discharges at which initial abatement activities, recovery of any free product resulting from the discharge, and investigation or assessment have occurred in compliance with the provisions of this Article, the rules adopted thereunder, and requirements under federal law.

Section 10 – Allow cathodically protected steel tanks.
State rules currently prohibit the use of cathodically protected steel tanks to meet the external corrosion protection standards of that rule. Such tanks are, however, acceptable under federal law. The PCS provides that, from the effective date of the PCS, the Department must not prohibit the use of such tanks, and requires EMC to adopt rules accordingly by January 1, 2012.

Section 11 – Effective date.
The PCS would make the bill effective when it becomes law and apply to assessments that are initiated on or after that date, except that: (i) Section 3 would apply to discharges discovered or reported on or after January 1, 2009; and (ii) G.S. 143-215.94V(c1) as enacted by Section 9 of the PCS would apply to discharges reported on or before January 1, 1998.

Bill Summary Source: Committee Counsel

ASSUMPTIONS AND METHODOLOGY:

Background
The Commercial and Non-Commercial Leaking Underground Storage Tank Cleanup Funds are special funds that are used to reimburse owners/operators of commercial leaking petroleum USTs for assessment and costs incurred during the cleanup of soil and groundwater contamination resulting from a release of petroleum from an underground storage tank. The Funds are supported by a portion of the gas tax, a portion of the gas inspection tax, and permits/deductibles paid by owners/operators.

Section 2
Currently, site investigation costs are not reimbursed for investigations that do not confirm a discharge. The PCS for SB 181 clarifies that costs associated with a site investigation that is required by DENR for the purpose of determining whether a discharge from a tank system has occurred *are* reimbursable, whether or not the investigation confirms that a discharge has occurred. DENR reports that it has received approximately 50 site checks per year over the past five years, of which 90% have resulted in discoveries of releases which allow the costs of many of the site check tasks to be reimbursed from the Funds. Due to the variety of the complexity and amount of work required at each site, there is no standard "reasonable rate" for a site check, but recent site checks processed by DENR have ranged from $5,000 to $15,000. Therefore the total spent by UST owners ranged from $250,000 (50*$5,000) to $750,000 (50*$15,000) per year. Of these amounts, between $112,500 and $337,500 has been reimbursed to eligible tank owners. The difference between these amounts would increase payouts from the Funds between $137,500 ($250,000 - $112,500) and $412,500 ($750,000 - $337,500) per year, or an average of $275,000 per year.

Section 4

The PCS makes changes to the General Statutes to provide that both the Commercial and Noncommercial LUST Funds will be used for the payment of the costs of cleanup of contamination in soil or groundwater that results from comingling of a discharge of petroleum from a system and a discharge of petroleum from another source. Based on DENR's count of the current number of incidents where petroleum releases from UST systems were comingled with non-UST releases, it is reasonable to assume that almost all comingled releases are petroleum and from non-UST sources. DENR reports that the costs to clean non-UST releases range from $97,222 to $207,500 each. Approximately 2% of known releases are comingled and DENR expect this ratio to apply to the approximately 300 new commercial UST releases reported each year. If so, 6 new comingled releases each year may be added, which will cost the Fund $583,332 (6*$97,222) to $1,245,000 (6*$207,500) in non-UST cleanup costs, delaying 7 to 15 UST release cleanups annually.

Additionally, the requirements of this PCS will increase DENR staff workload. Currently, at comingled petroleum release sites, DENR personnel are responsible for evaluating the technical efficacy of the assessment and cleanup of an entire release, using risk-based standards, and evaluating the cost-effectiveness of the UST portion of the assessments and cleanups. At non-UST petroleum releases which are not comingled with UST petroleum releases, because the Funds are not involved, the Department is currently responsible for evaluating *only* the unrestricted use assessment and cleanup of the release, without regard for the cost-effectiveness of the work. However, the PCS will require DENR to evaluate the technical efficacy *and* cost-effectiveness of the entire comingled petroleum release, including the non-UST portion, as well as evaluate the risk-based technical efficacy of assessments and cleanups of all non-UST petroleum releases. Currently, DENR employs 4.8 full-time Incident Managers/Hydrogeologists to conduct these tasks for 1,918 non-UST petroleum releases, some of which are comingled with UST petroleum releases. DENR estimates that the additional evaluation requirements of SB 181 would need an additional three full-time Hydrogeologists (salaries and benefits totaling $175,540 in FY 2011-12). However, as amended, SB 181 would prohibit DENR from creating any new receipt-supported or General Fund positions related to the requirements of the bill, and thus DENR would need to use existing staff to fulfill these requirements.

Section 5

The PCS for SB 181 requires the Department to use up to $1,000,000 of the funds in the Commercial LUST Fund to fund necessary assessment and cleanup. Assessment and cleanup shall be conducted by the Department for discharges for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. This will decrease the funds available for other projects in the Commercial LUST Fund by $1,000,000.

Section 6

The PCS for SB 181 provides that annual operating fees are due only for commercial tanks that have contained a petroleum product at any point during the year to which the fee is applicable, but not for individual compartments of a UST that have not contained a petroleum product during the applicable year. Currently, DENR has 2,045 USTs registered as being in temporary closure, which means that the tanks contain less than one inch of product, have discontinued leak detection, maintain corrosion protection, and maintain financial responsibility. Operating fees for these tanks

currently generate $858,900 of revenue for the Commercial LUST Fund; the provisions of this PCS would eliminate some of this annual income for the Commercial LUST Fund. According to the North Carolina Petroleum & Convenience Marketers, few owners would be likely to opt to discontinue paying fees, as non-payment would render them ineligible for reimbursement from the Commercial LUST Funds for any costs associated with releases. Fiscal Research is unable to predict the number of owners that would opt to stop paying this fee. Therefore the corresponding loss in revenue for the Commercial LUST Fund could range from $0 to $858,900.

The PCS further provides that owners/operators may opt to pay annual operating fees applicable to USTs on a quarterly basis in equal installments, as opposed to the current practice of annual payments. Currently DENR employs two full-time Processing Assistants to process annual invoices for the operating fees and permits of 9,000 UST facilities. Quarterly invoicing requirements could require DENR to process a maximum of 36,000 invoices per year for these 9,000 facilities and to issue operating permits accordingly; however, according to the North Carolina Petroleum & Convenience Marketers, only eight companies have expressed interest in moving to a quarterly billing system. As it is unlikely that many companies will opt to move to a quarterly billing system, the increased workload for DENR staff is expected to be minimal and can be absorbed by current staff.

Section 8
The PCS for SB 181 requires EMC to establish a variance process applicable to the setbacks required for UST systems from certain public water supply wells, particularly those that serve only a single facility which are not community water systems, if EMC finds facts to demonstrate that such variance will not endanger human health and welfare or groundwater. DENR estimates that this requirement will create additional workload equivalent to 0.1 full-time Environmental Supervisor position, which Fiscal Research estimates could be absorbed into DENR's existing staff and workload.

SOURCES OF DATA: Department of Environment and Natural Resources; North Carolina Petroleum & Convenience Marketers

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 181

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S181-ARI-21 [v.4]

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date June 8, 2011

Senator ~~East~~ Goolsby

moves to amend the bill on page 3, line 40 through 50,
by rewriting those lines to read:

"replacement tank. ~~The~~ Except as provided in this subsection, the annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. ~~The fee for all commercial underground storage tanks located at the same facility shall be due at the same time.~~ A person ~~who owns or operates 12 or more commercial petroleum storage tanks~~ may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter.~~quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.~~";

and on page 7, lines 22 through 26,
by rewriting those lines to read:

"**SECTION 11.** The Department of Environment and Natural Resources is prohibited from creating any new receipt-supported or General Fund positions related to the requirements of this act.

SECTION 12. This act is effective when it becomes law and applies to assessments that are initiated on or after that date, except that Section 3 applies to discharges or releases discovered or reported on or after January 1, 2009.".

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S181-ARI-21 [v.4]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 246
PROPOSED COMMITTEE SUBSTITUTE S246-PCS85219-SQ-47

Short Title: Expand Pharmacists' Immunizing Authority. (Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE PUBLIC'S HEALTH BY INCREASING ACCESS TO IMMUNIZATIONS AND VACCINES THROUGH THE EXPANDED ROLE OF IMMUNIZING PHARMACISTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-85.3 is amended by adding the following new subsection to read:

"(i1) "Immunizing pharmacist" means a licensed pharmacist who meets all of the following qualifications:

(1) Holds a current provider level cardiopulmonary resuscitation certification issued by the American Heart Association or the American Red Cross, or an equivalent certification.

(2) Has successfully completed a certificate program in vaccine administration accredited by the Centers for Disease Control and Prevention, the Accreditation Council for Pharmacy Education, or a similar health authority or professional body approved by the Board.

(3) Maintains documentation of three hours of continuing education every two years, designed to maintain competency in the disease states, drugs, and vaccine administration.

(4) Has successfully completed training approved by the Division of Public Health's Immunization Branch for participation in the North Carolina Immunization Registry.

(5) Enrolls with a local supervising health department and pays an annual enrollment fee.

(6) Registers with the North Carolina Board of Pharmacists as an immunizing pharmacist.

(7) Administers vaccines or immunizations in accordance with G.S. 90-18.15B."

SECTION 2. G.S. 90-85.3(r) reads as rewritten:

"(r) "Practice of pharmacy" ~~means the responsibility for: interpreting and evaluating drug orders, including prescription orders; compounding, dispensing and labeling prescription drugs and devices; properly and safely storing drugs and devices; maintaining proper records; and controlling pharmacy goods and services. A pharmacist may advise and educate patients and health care providers concerning therapeutic values, content, uses and significant problems of drugs and devices; assess, record and report adverse drug and device reactions; take and~~

~~record patient histories relating to drug and device therapy; monitor, record and report drug therapy and device usage; perform drug utilization reviews; and participate in drug and drug source selection and device and device source selection as provided in G.S. 90-85.27 through G.S. 90-85.31. A pharmacist who has received special training may be authorized and permitted to administer drugs pursuant to a specific prescription order in accordance with rules adopted by each of the Boards of Pharmacy, the Board of Nursing, and the North Carolina Medical Board. The rules shall be designed to ensure the safety and health of the patients for whom such drugs are administered. An approved clinical pharmacist practitioner may collaborate with physicians in determining the appropriate health care for a patient, subject to the provisions of G.S. 90-18.4.~~is as specified in G.S. 90-85.3A."

SECTION 3. Article 4A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-85.3A. Practice of pharmacy.**

(a) A pharmacist is responsible for interpreting and evaluating drug orders, including prescription orders; compounding, dispensing, and labeling prescription drugs and devices; properly and safely storing drugs and devices; maintaining proper records; and controlling pharmacy goods and services.

(b) A pharmacist may advise and educate patients and health care providers concerning therapeutic values, content, uses, and significant problems of drugs and devices; assess, record, and report adverse drug and device reactions; take and record patient histories relating to drug and device therapy; monitor, record, and report drug therapy and device usage; perform drug utilization reviews; and participate in drug and drug source selection and device and device source selection as provided in G.S. 90-85.27 through G.S. 90-85.31.

(c) An immunizing pharmacist may be authorized and permitted to administer drugs as provided in G.S. 90-85.15B.

(d) A pharmacist who has received special training may be authorized and permitted to administer drugs pursuant to a specific prescription order in accordance with rules adopted by each of the Boards of Pharmacy, the Board of Nursing, and the North Carolina Medical Board. The rules shall be designed to ensure the safety and health of the patients for whom such drugs are administered.

(e) An approved clinical pharmacist practitioner may collaborate with physicians in determining the appropriate health care for a patient, subject to the provisions of G.S. 90-18.4."

SECTION 4. Article 4A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-85.15B. Immunizing pharmacists.**

(a) An immunizing pharmacist may administer vaccines or immunizations recommended or required by the Centers for Disease Control and Prevention, including vaccines recommended or required for travel outside the United States, with the following limitations:

(1) Vaccines or immunizations shall not be administered to patients under the age of 14.

(2) For patients at least 14 years of age, but less than 18 years of age, vaccines or immunizations shall be administered (i) with a specific prescription order, and (ii) at the request of the patient's parent, guardian, or person standing in loco parentis to the minor.

(3) For patients at least 14 years of age, influenza vaccines shall be administered only pursuant to protocol as provided in 21 NCAC 46 .2507 and, if the patient is less than 18 years of age, at the request of the minor's parent, guardian, or person standing in loco parentis to the minor.

(4) For patients at least 18 years of age, vaccines or immunizations shall be administered with a specific prescription order, with a standing order, or

pursuant to protocols developed by the State Health Director, in consultation with the Commission for Public Health, and implemented by rules adopted by the North Carolina Board of Pharmacy and the North Carolina Medical Board.

(b) An immunizing pharmacist who administers a vaccine or immunization to any patient pursuant to this section shall do all of the following:

(1) Maintain a record of any vaccine or immunization administered to the patient in a patient profile.

(2) Notify within 24 hours after administration the patient's primary care provider, if the patient has identified a primary care provider and, dependent upon the authority under which the vaccine or immunization was administered, (i) the prescribing physician, (ii) the physician who issued the standing order, or (iii) the local health department.

(3) Access the North Carolina Immunization Registry prior to administering the vaccine or immunization and record any vaccine or immunization administered to the patient in the registry within 24 hours after administration."

SECTION 5. G.S. 130A-39(g) reads as rewritten:

"(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", for services performed pursuant to Part 11, Article 8 of this Chapter, "Tattooing", for services performed pursuant to G.S. 90-85.15B, and for services performed pursuant to G.S. 87-97. Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act."

SECTION 6. G.S. 130A-153 reads as rewritten:

"(a) The required immunization may be obtained from a physician licensed to practice ~~medicine or from~~ medicine; a local health ~~department.~~ department; or an immunizing pharmacist, in accordance with the provisions of G.S. 90-85.15B. Local health departments shall administer required and State-supplied immunizations at no cost to uninsured or underinsured patients with family incomes below two hundred percent (200%) of the federal poverty level. A local health department may redistribute these vaccines only in accordance with the rules of the Commission.

(b) Local health departments shall file monthly immunization reports with the Department. The report shall be filed on forms prepared by the Department and shall state, at a minimum, each patient's age and the number of doses of each type of vaccine administered.

(c) Immunization certificates and information concerning immunizations contained in medical or other records shall, upon request, be shared with the Department, local health departments, immunizing pharmacist, and the patient's attending physician. In addition, an insurance institution, agent, or insurance support organization, as those terms are defined in G.S. 58-39-15, may share immunization information with the Department. The Commission may, for the purpose of assisting the Department in enforcing this Part, provide by rule that other persons may have access to immunization information, in whole or in part.

(d) A ~~physician~~ physician, immunizing pharmacist, or local health department may immunize a minor with the consent of a parent, guardian, or person standing in loco parentis to

the minor. A ~~physician~~ physician, immunizing pharmacist, or local health department may also immunize a minor who is presented for immunization by an adult who signs a statement that he or she is authorized by a parent, guardian, or person standing in loco parentis to the minor to obtain the immunization for the minor. Notwithstanding any other provision of this Chapter, an immunizing pharmacist's authority to administer vaccines or immunizations to a minor is limited to the authority specified in G.S. 90-85.15B."

SECTION 7. G.S. 130A-154(a) reads as rewritten:

"(a) A ~~physician~~ physician, immunizing pharmacist, or local health department administering a required vaccine shall give a certificate of immunization to the person who presented the child for immunization. The certificate shall state the name of the child, the name of the child's parent, guardian, or person responsible for the child obtaining the required immunization, the address of the child and the parent, guardian or responsible person, the date of birth of the child, the sex of the child, the number of doses of the vaccine given, the date the doses were given, the name and address of the ~~physician~~ physician, immunizing pharmacist, or local health department administering the required immunization and other relevant information required by the Commission."

SECTION 8. 21 NCAC 46 .2507 shall govern the administration of influenza, pneumococcal, and zoster vaccines by an immunizing pharmacist; provided, however, an immunizing pharmacist shall be granted the authority to administer influenza vaccine to patients aged 14 years and older.

SECTION 9. Not later than January 1, 2012, the State Health Director, in consultation with the Commission for Public Health, shall establish standards for the administration of immunizations by pharmacists in accordance with G.S. 90-85.15. The standards shall include the following:

(1) Record-keeping procedures for all vaccines or immunizations administered by an immunizing pharmacist.
(2) Physician accessibility to the immunizing pharmacist.
(3) A protocol establishing the oversight of the immunizing pharmacist by the local health department and the process for the administration of any vaccine or immunization to an individual at least 18 years of age when that vaccine or immunization is administered without a specific prescription order and without a standing order.
(4) A uniform protocol specific to each vaccine or immunization recommended or required by the Centers for Disease Control and Prevention. The protocol shall include, but not be limited to, the following:
    a. Any contraindications of the specific vaccine.
    b. Emergency procedures associated with the administration of the specific vaccine.
    c. Information to be disclosed to patients regarding the specific vaccine.
    d. A procedure for annual updates on vaccine administration.

The North Carolina Board of Pharmacy and the North Carolina Medical Board shall adopt rules to implement the standards under this section by the State Health Director in consultation with the Commission for Public Health.

SECTION 10. This act becomes effective October 1, 2011.

SENATE BILL 246:
Expand Pharmacists' Immunizing Authority

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 246 authorizes an "immunizing pharmacist" (defined term) to administer certain vaccines or immunizations pursuant to protocols developed by the State Health Director.

CURRENT LAW: Currently a pharmacist who has received special training is permitted to administer drugs pursuant to a specific prescription order in accordance with rules adopted by the Board of Pharmacy, Board or Nursing, and Board of Medicine.

The current rule provides standards for pharmacists engaged in the administration of influenza, pneumococcal and zoster vaccines for persons 18 years and older.

BILL ANALYSIS: Senate Bill 246 amends the Pharmacy Practice Act as follows:

Section 1 defines the term "immunizing pharmacist" as a licensed pharmacist who holds a current CPR certification, completed a certificate program in vaccine administration, maintains documentation of continuing education in vaccine administration, has successfully completed training for participation in the NC Immunization Registry, enrolls with a local supervising health department, registers with the NC Board of Pharmacy, and administers vaccines or immunizations in accordance with the Article.

Sections 2 and 3 recodify the definition of the practice of pharmacy as a new section G.S. 90-85.3A, but adds the authority for an immunizing pharmacist to administer drugs in accordance to this act.

Section 4 authorizes an immunizing pharmacist to administer vaccines or immunizations in accordance with rules and with the following limitations:

Age	Parental Permission	Standing Order	Prescription:	Under Protocol*
Under 14 Years Old	No	No	No	N/A
At Least 14 (Flu Vaccine)	<18	N/A	N/A	Current
At Least 14 < 18 Years Old (Vaccines other than Flu)	Yes, and	No	Required	
At Least 18 Years Old	N/A	Yes, or	Yes, or	Developed by SHD

and requires an immunizing pharmacist who administers vaccines or immunizations to do the following:

- Maintain a record of the vaccine or immunization administered in the patient profile.
- Notify the primary care provider (if the patient so identifies) within 24 hours of the administration, and notify either the prescribing physician, physician who issued standing order, or the local health department depending on which authority the vaccine was administered.
- Access the NC Immunization Registry prior to administering any vaccine or immunization and record the administration in the Registry within 24 hours of the administration.

Section 5 provides local health departments the authority to charge a fee for services performed (enrolling, oversight) pursuant to rules adopted to implement the act.

Sections 6-7 make conforming changes in the public health law to provide for an immunizing pharmacist.

Section 8 provides that the current rule governing the administration of vaccines by pharmacists remains in effect, but reduces the age of influenza vaccine recipients from 18 to 14.

Section 9 directs the State Health Director in consultation with the Commission for Public Health to establish standards for the administration of vaccines by pharmacists by January 1, 2012. The standards shall include: record keeping requirements, physician accessibility, protocols providing oversight of the immunizing pharmacist by local health departments, protocols developed per each vaccine recommended or required by the CDC including contraindications, emergency procedures, information to be disclosed to patients, a procedure for annual updates on vaccine administration. The section directs the North Carolina Board of Pharmacy to adopt rules to implement the standards.

EFFECTIVE DATE: This act becomes effective October 1, 2011.

S246-SMTD-85(e2) v1

SENATE FINANCE COMMITTEE
Wednesday, June 8, 2011 at 8:00 PM
Room 545, Legislative Office Building

MINUTES

The Senate Finance Committee convened at 8:00 PM on June 8, 2011 in room 544 of the Legislative Office Building. Twenty-one members of the committee were present. Senator Hartsell presided as chair.

S.B. 699 – Div. of Criminal Information (DCI) Changes

Senator Stein was recognized to explain the bill. The bill changes the name of the Division of Criminal Statistics to the Division of Criminal Information (DCI) and allows the DCI to promulgate rules and access fees relating to the Criminal Information Network. Senator Newton moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 486 – Release Subdivided Lots From Tax Liens

Senator Stein moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The bill requires the release of a subdivided tract of land from a tax lien upon payment of the taxes due on that subdivide parcel. The PCS represents a negotiated agreement between the county commissioners, the county assessors, and the Bar Association. A subdivided tract of land must be released from a tax lien upon payment of all of the following: any past due taxes on the parent parcel, taxes on the tract to be released and any penalties, interest, and costs allowed by law. Senator Brown moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 556 – Public Disclosure Charitable Solicitations

Senator McKissick was recognized to explain the bill. The bill amends the charitable solicitations act to ensure public disclosure on collection receptacles. Senator Harrington moved for a favorable report and the motion carried. A copy of the bill is attached.

The meeting adjourned at 8:40 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

SENATE BILL 699

Short Title:	Div. of Criminal Information (DCI) Changes.	(Public)
Sponsors:	Senator Stein.	
Referred to:	Judiciary II.	

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE NAME OF THE DIVISION OF CRIMINAL INFORMATION; TO ALLOW THE DIVISION OF CRIMINAL INFORMATION TO PROMULGATE RULES FOR USAGE OF THE CRIMINAL INFORMATION NETWORK; AND TO ALLOW THE DIVISION OF CRIMINAL INFORMATION TO ASSESS FEES FOR SET-UP, ACCESS TO, AND USE OF THE CRIMINAL INFORMATION NETWORK.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 114 of the General Statutes reads as rewritten:

"Article 3.

"Division of Criminal ~~Statistics.~~Information.

"**§ 114-10. Division of Criminal ~~Statistics.~~Information.**

The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal ~~Statistics.~~Information. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, the necessary data to make a trace regarding all firearms seized, forfeited, found, or otherwise coming into the possession of any State or local law enforcement agency of the State that are believed to have been used in the commission of a crime, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, sexual offender registration as provided under Article 27A of Chapter 14 of the General Statutes, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information

available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(2a) Recodified as G.S. 114-10.1 by Session Laws 2002-159, s. 18(a).

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(5) To perform such other duties as may be from time to time prescribed by the Attorney General.

(6) To promulgate rules and regulations for the administration of this Article.

"**§ 114-10.01. Collection of traffic law enforcement statistics.**

(a) In addition to the duties set forth in G.S. 114-10, the Division of Criminal ~~Statistics~~ Information shall collect, correlate, and maintain the following information regarding traffic law enforcement by law enforcement officers:

(1) The number of drivers stopped for routine traffic enforcement by law enforcement officers, the officer making each stop, the date each stop was made, the agency of the officer making each stop, and whether or not a citation or warning was issued.

(2) Identifying characteristics of the drivers stopped, including the race or ethnicity, approximate age, and sex.

(3) The alleged traffic violation that led to the stop.

(4) Whether a search was instituted as a result of the stop.

(5) Whether the vehicle, personal effects, driver, or passenger or passengers were searched, and the race or ethnicity, approximate age, and sex of each person searched.

(6) Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the basis for the request for consent, or the circumstances establishing probable cause or reasonable suspicion.

(7) Whether any contraband was found and the type and amount of any such contraband.

(8) Whether any written citation or any oral or written warning was issued as a result of the stop.

(9) Whether an arrest was made as a result of either the stop or the search.

(10) Whether any property was seized, with a description of that property.

(11) Whether the officers making the stop encountered any physical resistance from the driver or passenger or passengers.

(12) Whether the officers making the stop engaged in the use of force against the driver, passenger, or passengers for any reason.

(13) Whether any injuries resulted from the stop.

(14) Whether the circumstances surrounding the stop were the subject of any investigation, and the results of that investigation.

(15) The geographic location of the stop; if the officer making the stop is a member of the State Highway Patrol, the location shall be the Highway Patrol District in which the stop was made; for all other law enforcement officers, the location shall be the city or county in which the stop was made.

(b) For purposes of this section, "law enforcement officer" means any of the following:
(1) All State law enforcement officers.
(2) Law enforcement officers employed by county sheriffs or county police departments.
(3) Law enforcement officers employed by police departments in municipalities with a population of 10,000 or more persons.
(4) Law enforcement officers employed by police departments in municipalities employing five or more full-time sworn officers for every 1,000 in population, as calculated by the Division for the calendar year in which the stop was made.

(c) The information required by this section need not be collected in connection with impaired driving checks under G.S. 20-16.3A or other types of roadblocks, vehicle checks, or checkpoints that are consistent with the laws of this State and with the State and federal constitutions, except when those stops result in a warning, search, seizure, arrest, or any of the other activity described in subdivisions (4) through (14) of subsection (a) of this section.

(d) Each law enforcement officer making a stop covered by subdivision (1) of subsection (a) of this section shall be assigned an anonymous identification number by the officer's employing agency. The anonymous identifying number shall be public record and shall be reported to the Division to be correlated along with the data collected under subsection (a) of this section. The correlation between the identification numbers and the names of the officers shall not be a public record, and shall not be disclosed by the agency except when required by order of a court of competent jurisdiction to resolve a claim or defense properly before the court.

(d1) Any agency subject to the requirements of this section shall submit information collected under subsection (a) of this section to the Division within 60 days of the close of each month. Any agency that does not submit the information as required by this subsection shall be ineligible to receive any law enforcement grants available by or through the State until the information which is reasonably available is submitted.

(e) The Division shall publish and distribute by December 1 of each year a list indicating the law enforcement officers that will be subject to the provisions of this section during the calendar year commencing on the following January 1.

"**§ 114-10.02. Collection of statistics on the use of deadly force by law enforcement officers.**

(a) In addition to the duties set forth in G.S. 114-10, the Division of Criminal ~~Statistics~~ Information shall collect, maintain, and annually publish the number of deaths, by law enforcement agency, resulting from the use of deadly force by law enforcement officers in the course and scope of their official duties.

(b) For purposes of this section, "law enforcement officer" means sworn law enforcement officers with the power of arrest, both State and local.

"**§ 114-10.1. Police Information Network.**

(a) The Division of Criminal ~~Statistics~~ Information is authorized to establish, devise, maintain and ~~operate, under the control and supervision of the Attorney General,~~operate a system for receiving and disseminating to participating agencies information collected, maintained and correlated under authority of G.S. 114-10 of this Article. The system shall be known as the ~~Police~~ Division of Criminal Information Network.

(b) The ~~Attorney General~~Division of Criminal Information is authorized to cooperate with the Division of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The ~~Attorney General,~~Division of Criminal Information, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the ~~Police~~ Division of Criminal Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the ~~Police~~ Division of Criminal Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The rules and regulations governing access to the ~~Police~~ Division of Criminal Information Network shall not prohibit an attorney who represents a person in adjudicatory or dispositional proceedings for an infraction from obtaining the person's driving record or criminal history.

(d) The ~~Attorney General~~Division of Criminal Information may impose an initial set up fee of two thousand six hundred fifty dollars ($2,650) for agencies to participate in the ~~Police~~ Division of Criminal Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The ~~Attorney General~~Division of Criminal Information may also impose monthly fees on participating agencies. The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network

(1) The ~~Attorney General~~ Division of Criminal Information may impose a monthly circuit fee on agencies that access the ~~Police~~ Division of Criminal Information Network through a circuit maintained and operated by the Department of Justice. The amount of the monthly fee is three hundred dollars ($300.00) plus an additional fee amount for each device linked to the Network. The additional fee amount varies depending upon the type of device. For a desktop device after the first seven desktop devices, the additional monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the additional monthly fee is twelve dollars ($12.00) per device.

(2) The ~~Attorney General~~ Division of Criminal Information may impose a monthly device fee on agencies that access the Police Information Network through some other approved means. The amount of the monthly device fee varies depending upon the type of device. For a desktop device, the monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the fee is twelve dollars ($12.00) per device."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 699:
Div. of Criminal Information (DCI) Changes

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2011
Introduced by:	Sen. Stein	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act changes the name of the Division of Criminal Statistics to the Division of Criminal Information (DCI), and allows the DCI to promulgate rules and assess fees relating to the Criminal Information Network.***

CURRENT LAW: The Division of Criminal Statistics is a division within the Department of Justice that collects and correlates information to assist in the performance of duties required in the administration of criminal justice throughout the State. The Division also collects information on traffic law enforcement statistics and statistics on the use of deadly force by law enforcement officers. The Division operates an Information Network that is accessible to participating agencies for a fee.

BILL ANALYSIS: This act changes the name of the Division of Criminal Statistics to the Division of Criminal Information (DCI); changes the name of the Police Information Network to the Division of Criminal Information Network; and transfers the rule promulgation authority from the Attorney General to the DCI. The DCI would also have the authority to impose the fees on Network users currently imposed by the Attorney General.

EFFECTIVE DATE: This act is effective when it becomes law.

Hal Pel contributed to this summary.

S699-SMTD-81(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 486
Judiciary I Committee Substitute Adopted 4/26/11
PROPOSED COMMITTEE SUBSTITUTE S486-CSRB-56 [v.1]

6/8/2011 7:35:06 AM

Short Title: Release Subdivided Lots From Tax Liens. (Public)

Sponsors:

Referred to:

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE RELEASE OF A SUBDIVIDED TRACT OF LAND FROM A TAX LIEN UPON PAYMENT OF TAXES DUE ON THAT TRACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-362(b) reads as rewritten:

"(b) Release of Separate Parcels from Tax Lien. –

...

(2) When real property listed as one parcel is divided, a part thereof ~~may~~ shall be released as provided in subdivision (b)(1), above, after the assessed valuation of the part to be released has been determined and certified to the tax collector by the ~~tax supervisor.~~county assessor and payment of all past due taxes on the parent parcel, the taxes on the part to be released, plus any penalties, interest, and costs allowed by law, have been fully paid. The county assessor shall have five business days from receipt of a written request for valuation under this subdivision to provide the valuation; provided, however, this subdivision shall not apply upon a showing of good cause by the tax collector based on the tax payment history of the owner of the parent parcel.

..."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.

SENATE BILL 486:
Release Subdivided Lots From Tax Liens

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2011
Introduced by:	Sens. Stein, Vaughan, Newton	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to Second Edition		

SUMMARY: ***Senate Bill 486 would require the release of a subdivided tract of land from a tax lien upon payment of the taxes due on that subdivided parcel. The proposed committee substitute represents a negotiated agreement between the county commissioners, the county assessors, and the Bar Association. Under the PCS, a subdivided tract of land must be released from a tax lien upon payment of all of the following:***

- ***Any past due taxes on the parent parcel.***
- ***Taxes on the tract to be released.***
- ***Any penalties, interest, and costs allowed by law.***

CURRENT LAW: A tax lien is a claim the county has upon the property of the taxpayer as security for the payment of the taxes due on that property. The lien attaches to real property on January 1 of the year in which the property is listed and assessed. Once the lien attaches, it may only be released by payment in accordance with law. The payment may include interest, penalties, and costs that are made part of the lien and that relate back to the tax-listing date.

Under current law, when a parcel of land subject to a tax lien is divided, a part of the parcel *may* be released from the lien prior to advertisement of tax foreclosure sale upon the payment of the taxes plus all personal property taxes owed by the taxpayer for the same year once the assessed valuation of the part to be released has been determined and certified by the tax supervisor.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 486 would amend the law to require that a subdivided parcel be released from a tax lien after the assessed valuation of the part to be released has been determined and certified to the tax collector by the county assessor and upon payment of all of the following: Any past due taxes on the parent parcel; taxes on the tract to be released; any penalties, interest, and costs allowed by law.

When developers subdivide land after the January 1 listing date, the subdivided parcels cannot be separately listed until January 1 of the following calendar year. The Bar Association notes that this situation creates a problem for the purchasers of the subdivided lots during that first year in which the tax lien attaches to the entire parent parcel. Where there is a real estate closing prior to issuance of the tax bill for the entire parent parcel, the buyers are given a credit at closing for what the closing attorney believes is the buyer's share of the taxes on the subdivided parcel. The buyers must rely upon the developer to pay the taxes later in the year.[1] If the developer does not pay the taxes, the buyer of the subdivided parcel may be forced to pay the taxes due on the entire parent tract to prevent a tax foreclosure upon the buyer's property.

The PCS balances the needs of the counties to collect the taxes due on the property with the buyer's need to be held harmless by inaction of the developer. It does so by requiring that all past due taxes on the parent parcel be paid, as well as any taxes on the part purchased by the buyer. The original bill did not address any past due taxes on the parent parcel.

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.

[1] Tax rates are typically set by July 1st and property taxes become due on September 1. Taxes due become delinquent if paid on or after January 6.

SENATE BILL 556

Short Title:	Public Disclosure Charitable Solicitations.	(Public)
Sponsors:	Senators McKissick; Atwater, D. Berger, Bingham, Brock, Graham, Kinnaird, Meredith, Purcell, Rabon, Stein, and Vaughan.	
Referred to:	Finance.	

April 12, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CHARITABLE SOLICITATIONS ACT TO ENSURE PUBLIC DISCLOSURE ON COLLECTION RECEPTACLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131F-2 reads as rewritten:

"**§ 131F-2. Definitions.**

The following definitions apply in this Chapter:

...

(4a) "Collection Receptacle" means an unattended box, bin, canister, or other similar container used for the solicitation and collection of clothing and household goods and other miscellaneous items.

...

(12a) "Maintenance" means to keep in working order in order to ensure that something continues to work properly and includes regular checks and the completion of any required repairs and adjustments.

...."

SECTION 2. G.S. 131F-2(18) is amended by adding a new sub-subdivision to read:

"e. Placing or maintaining a collection receptacle in public view for the purpose of collecting donated clothing, household items, and other items for resale."

SECTION 3. G.S. 131F-9 is amended by adding a new subsection to read:

"(d) Collection Receptacle Disclosure. – Any person who is required to obtain a license under any provision of this Chapter and who is soliciting donated clothing, household items, and other items for resale through the use of a collection receptacle shall display on all sides of each collection receptacle a permanent sign or label with the name of the charitable organization or sponsor for whom the solicitation is made and the phone number or electronic mail address of a contact at the charitable organization or sponsor. The sign or label shall be placed on all sides of the collection receptacle with the required information printed in letters that are no less than three inches in height and no less than one-half inch in width and in a color that contrasts with the color of the collection receptacle so that the sign or label is clearly visible. Upon request, the charitable organization or sponsor must provide the donor with documentation of its tax exempt status and license issued under this Chapter."

SECTION 4. Chapter 131F of the General Statutes is amended by adding a new section to read:

"**§ 131F-10. Disclosure requirements for other organizations.**

Any person who is not a charitable organization or sponsor and who places or maintains a collection receptacle in public view for the purpose of collecting donated clothing, household items, and other items for resale shall display on all sides of each collection receptacle a permanent sign or label with the phone number or electronic mail address of a contact for the person and the following statement: "This is not a charity. Donations made here support a for-profit business and are not tax deductible." The sign or label shall be placed on all sides of the collection receptacle with the required information printed in letters that are no less than three inches in height and no less than one-half inch in width and in a color that contrasts with the color of the collection receptacle so that the sign or label is clearly visible. Upon request, the person must provide the donor with documentation of its license issued under this Chapter."

SECTION 5. Nothing in this act is intended to limit the authority of units of local government to impose additional requirements beyond those set forth in this act.

SECTION 6. This act becomes effective October 1, 2011.

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 8, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	Smith Anderson
Grover Nicholson	DERR / DWM / UST
Dexter Matthews	DENR / DWM
	NCACC
Mike Watson	NCRPA
AL MILAK	NCDOR
	NCSBA
	Sierra Club
Will Morgan	Sierra Club
Doug Howay	NCPCM
	CAA

NAME	FIRM OR AGENCY
Kim Lovell	NCBA
Peyton Baldwin	NCWA
Rose Williams	NCDOI
Tom Bean	NCSEA, EDF
Dan Conrad	NCCN
Gary Harris	NC Petroleum Marketers & Convenience Stores
Jay Leutze	SAHC
Tom Cors	TNC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 8, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
KAREN Ray	NCMA
John LEDFORD	NCALE
ALAN FIELDS	NCALE
BILL SLOGGIN	ITS
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Mitch Lorand	SEANC
Joey GARDNER	DMV License & Theft
Steven Sawyer	Medical Mutual Insurance Company of NC
[illegible]	NMRS
[illegible]	[illegible]
Angel Sams	NSS

Frank Gray — NCSLA

Henry Jones — Attorney Raleigh

J Goodman — NC CHAMBER

L Pennington — CSS

Mike Lupetis — NCABA

Gary Salamido	C&L
Sam Taylor	NCBIO
John Rainey	Altria
Sandy Sands	WM
Nancy Pendleman	WM
Robert Shaw	WM
Wendy Kelly	Policy Group
Evelyn Hawthorne	ETOR
Thom Mason	Fidelity for Wilson
John McMillan	MF+S
NBM	WM
	NC Dems
Kyle Haney	
Dana Fenton	Cof Charlotte
Chuck Allen	VS Attorneys
Kelli Wilkie	NCLM
[illegible]	TSS
Paul Shumaker	NCPB

- Adds a new subsection to specify that amounts due an apparent owner less than $50 may be reported in an aggregate amount without furnishing any of the more detailed information listed above.
- Adds a new subsection to provide that any holder who has intangible property due to be reported with a cumulative value of $250 or less in a single reporting year will not be required to report the property in that year, but must report the property in a year when the value or aggregate value exceeds $250.

Section 5 of the bill amends G.S. 116B-65 regarding the public sale of abandoned property to delete the requirement for publication of a notice in a newspaper of general circulation in the county in which the property is to be sold. Instead, the Treasurer would be required to give reasonable notice of the sale as he or she deems appropriate and cost-effective but, at a minimum, notice must be published at least two times a year in a major newspaper in the State's major media markets.

EFFECTIVE DATE: House Bill 692 would become effective October 1, 2011.

Theresa Matula, counsel to the House Committee on Government, substantially contributed to this summary.

H692-SMRB-78(e2) v1

SENATE FINANCE COMMITTEE
Thursday, June 9, 2011 at 10:30 AM
Room 545, Legislative Office Building

MINUTES

The Senate Finance Committee convened at 10:30 AM on June 9, 2011 in room 544 of the Legislative Office Building. Twenty members of the committee were present. Lee Payne of Lexington, Lizzy Sirkin or New Bern, Jake Anthony and Brad Yougnovich of Raleigh, Blythe Layne of Cary and Metta Longo of Holly Springs served as pages. Senator Hartsell presided as chair.

S.B. 289 – Cape Carteret Deannexation

Senator Preston was recognized to explain the bill. The bill removes a described area from the corporate limits of the Town of Cape Carteret. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill is attached.

H.B. 96 – Additional Alleghany Occupancy Tax

Senator Stevens was recognized to explain the bill. Senator Clary moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS includes occupancy tax provisions as follows: *in authorizes Alleghany County to levy an additional occupancy tax of up to 3%. It would also require the County to establish a TDA upon levy of the additional 3% tax. It authorizes Jackson County to levy an additional 3% occupancy tax and it authorizes the Town of Grover to levy an additional 3% occupancy tax. Senator Jenkins moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the fiscal note is attached.

S.B. 267 – Revenue Laws Technical Changes

Senator Clodfelter was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The bill includes several technical, administrative, and clarifying changes to the revenue laws and other related statutes. It came as a recommendation of the Revenue Laws Study Committee. Senator Clodfelter offered a technical amendment to insert a word and moved for its adoption. The motion carried. Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the PCS and answer questions. Senator Clodfelter moved for a favorable report and the motion carried. A copy of the PCS, the summary and the amendment is attached.

H.B. 94 – Tax Law Changes

Senator Rucho was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The bill allows the renewable energy tax credit to be allocated by a pass-through entity to its owners and changes the definition of cost. Senator Brock moved for a favorable report and the motion carried. A copy of the PCS and talking points is attached.

S.B. 683 – Residential Inspections

Senator Hunt was recognized to explain the bill. He moved to adopt the PCS for discussion and the motion carried. The PCS requires counties and cities to have reasonable cause before inspecting residential buildings or structures. It defines reasonable cause. Senator Hunt was recognized to offer an amendment to further outline what would generate an inspection. He moved for the adoption of the amendment and the motion carried. Senator Garrou moved for a favorable report and the motion carried. A copy of the PCS and the amendment is attached.

S.B. 599 – Rendering Acts Amends

Senator Brock was recognized to explain the bill. The bill adds a licensing requirement for collectors of waste kitchen grease to the statutes governing the licensing and regulation of rendering plants. Senator Brock moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 10:45 AM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Thursday, June 09, 2011

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	**289**	Cape Carteret Deannexation.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.(CS #1)	**599**	Rendering Act Amendments.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Thursday, June 09, 2011

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE, AS AMENDED

H.B.(CS #1) **96** Addl. Alleghany/Jackson OT.

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

HB 96 Sen Brown

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Thursday, June 09, 2011

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE, AS AMENDED

H.B.(CS #1) **96** Addl. Alleghany/Jackson OT.

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

HB 96 Sen Brown

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Thursday, June 09, 2011

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE, AS AMENDED

H.B.(CS #1) **96**	Addl. Alleghany/Jackson OT.		
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

HB 96 Sen Brown

Senate Finance Committee
Thursday, June 9, 2011, 10:30 AM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 96	Addl. Alleghany/Jackson OT.	Rep. Stevens
HB 469	Addl. Lumberton & St. Pauls Occup. Tax.	Rep. Graham Rep. Pierce Rep. Pridgen
SB 94	Tax Law Changes	Sen. Rucho
SB 267	Rev Laws Tech, Clarify., & Admin. Chngs.	Sen. Clodfelter Sen. Hartsell
SB 289	Cape Carteret Deannexation.	Sen. Preston
SB 599	Rendering Act Amendments.	Sen. Brock Sen. Rouzer Sen. Bingham
SB 683	Residential Building Inspections.	Sen. Hunt

Adjournment

SENATE BILL 289

Short Title:	Cape Carteret Deannexation.	(Local)
Sponsors:	Senator Preston.	
Referred to:	Rules and Operations of the Senate.	

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO REMOVE A DESCRIBED AREA FROM THE CORPORATE LIMITS OF THE TOWN OF CAPE CARTERET.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Cape Carteret are reduced by removing the following described area:

The area known as Blackbeard's Galley, beginning at a point in the western right-of-way line of S.R. 1111; said point being located S 87-16-51 E 261.48 feet from a point in the eastern right-of-way line of NC Highway 58, which is 817.79 feet in a northerly direction from the Northeast right of way intersection of NC Highway 58 and S.R. 1111; thence from said point of beginning N 87-16-51 W 111.67 feet to a point, the common corner between L. E. McNeill Property, Blackbeard's Galley Property, and Blackbeard's Pantry Property, thence along the eastern property line of Blackbeard's Pantry Property, N 15-03-05 W 245.00 feet to a point, thence S 86-34-29 E 122.37 feet to a point in the western right-of-way line of the S.R. 1111; thence along the western right of way line of S.R. 1111 the following courses: S 08-46-47 E 103.86 feet; S 15-03-07 E 102.35 feet; thence S 17-41-54 E 34.80 feet to the point and place of beginning and containing 0.6 acres.

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 96
Committee Substitute Favorable 6/3/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H96-CSSVx-33 [v.1]

6/8/2011 8:33:44 PM

Short Title: Alleghany/Jackson/Grover OT. (Local)

Sponsors:

Referred to:

February 16, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ALLEGHANY AND JACKSON COUNTIES AND THE TOWN OF GROVER TO LEVY AN ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

PART I: ALLEGHANY COUNTY OCCUPANCY TAX

SECTION 1. Chapter 162 of the 1991 Session Laws, as amended by S.L. 2004-106, reads as rewritten:

"**Section 1.** Occupancy tax. (a) Authorization and ~~scope.~~ Scope. – The Alleghany County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by a summer camp for minors, or by a nonprofit charitable, educational, or religious organization.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Alleghany County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Alleghany County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Repealed.

(c) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(d) Repealed.

(e) Distribution and ~~use of tax revenue.~~ Use of Tax Revenue. – Except as otherwise provided in this act, Alleghany County shall, on a quarterly basis, remit one hundred percent (100%) of the net proceeds of the occupancy tax to the Alleghany County Chamber of Commerce. The chamber of commerce shall use at least two-thirds of the funds remitted to it

under this subsection to promote travel and tourism in Alleghany County and shall use the remainder for tourism-related expenditures. The chamber of commerce shall report quarterly and at the close of the fiscal year to the Alleghany County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

When the Alleghany County Board of Commissioners adopts a resolution levying a room occupancy tax under subsection (a1) of this act, the resolution shall require that the county remit, on a quarterly basis, one hundred percent (100%) of the net proceeds of the occupancy tax levied under this act to the Alleghany Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Alleghany County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the entity responsible for expending the net proceeds of the tax, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

(f) Repealed.

(g) Repealed.

"**Sec. 1.1.** Alleghany Tourism Development Authority. – (a) Appointment and Membership. – When the ~~annual net proceeds of the occupancy tax exceed one hundred thousand dollars ($100,000), the~~ Alleghany Board of Commissioners adopts a resolution levying a room occupancy tax under subsection (a1) of this section, it shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filing of vacancies on the Authority. At least ~~one third~~ one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least ~~three fourths~~ one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to the members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Alleghany County shall be the ex officio finance officer of the Authority.

"**Sec. 1.2.** Duties. – If the board of commissioners establishes a Tourism Development Authority as provided in Section 1.1 of this act, then the Authority shall expend the net proceeds of the tax levied under this Act for the purposes provided in this Act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

"**Sec. 1.3.** Reports. – If the board of commissioners establishes a Tourism Development Authority as provided in Section 1.1 of this act, then the Authority shall report quarterly and at the close of the fiscal year to the Alleghany County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"**Sec. 2.** This act is effective upon ratification."

PART II: JACKSON COUNTY OCCUPANCY TAX

SECTION 2.1. Chapter 969 of the 1985 Session Laws, as amended by Chapters 118 and 195 of the 1987 Session Laws and Section 21(k) of S.L. 2007-527, and only as it applies to Jackson County, is rewritten and recodified as Part II of this act. Part II of this act does not affect the rights or liabilities of the county, a taxpayer, or another person arising under the law rewritten and recodified by this Part before the effective date of this Part, nor does it affect the right to any refund or credit of a tax that accrued under the law rewritten and recodified by this Part before the effective date of this Part.

SECTION 2.2. Occupancy tax. – (a) Authorization and Scope. – The Jackson County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Jackson County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Jackson County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

SECTION 2.2.(b) Administration. – A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this Part.

SECTION 2.2.(c) Definitions. – The following definitions apply in this Part:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Jackson County Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 2.2.(d) Distribution and Use of Tax Revenue. – Jackson County shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under this Part to the

Jackson County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Jackson County and shall use the remainder for tourism-related expenditures.

SECTION 2.3. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this Part, it shall also adopt a resolution creating the Jackson County Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution adopted by the Board of Commissioners shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the county. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Jackson County shall be the ex officio finance officer of the Authority.

SECTION 2.3.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in Section 2.2 of this Part. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 2.3.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Jackson County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

SECTION 2.4. Section 3 of Chapter 969 of the 1985 Session Laws reads as rewritten:

"Sec. 3. This act applies only to the following counties: Graham, Clay, ~~Jackson,~~ Durham, Macon, Polk, and Transylvania."

SECTION 2.5. Section 3 of Chapter 118 of the 1987 Session Laws reads as rewritten:

"Sec. 3. This act applies only to the following counties: Clay, Graham, ~~Jackson,~~ and Macon."

SECTION 2.6. Section 2 of Chapter 195 of the 1987 Session Laws reads as rewritten:

"Sec. 2. This act applies only to the following counties: Clay, Graham, ~~Jackson,~~ and Macon."

PART III: TOWN OF GROVER

SECTION 3.1. Occupancy tax. – (a) Authorization and Scope. – The Grover Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.1(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.1(c) Definitions. – The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Grover Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 3.1(d) Distribution and Use of Tax Revenue. – The Town of Grover shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Grover Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Grover and shall use the remainder for tourism-related expenditures.

SECTION 3.2. Tourism Development Authority. – (a) Appointment and Membership. – When the Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Grover Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Grover Town Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Grover shall be the ex officio finance officer of the Authority.

SECTION 3.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section # of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 3.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Grover Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Town Council may require.

PART IV: ADMINISTRATION AND EFFECTIVE DATE

SECTION 4. G.S. 153A-155(g) reads as rewritten:

"(g) Applicability. – Subsection (c) of this section applies to all counties and county districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,

Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Jackson, Madison, Martin, McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson Counties, to Surry County District S, to Watauga County District U, to Wilkes County District K, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District."

SECTION 5. G.S. 160A-215(g) reads as rewritten:

"(g) Applicability. – Subsection (c) of this section applies to all cities that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this section applies only to Beech Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lenoir, Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville, Roanoke Rapids, Salisbury, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Bermuda Run, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach, Carrboro, Cooleemee, Cramerton, Dallas, Dobson, Elkin, Franklin, Grover, Jonesville, Kenly, Kure Beach, Leland, McAdenville, Mocksville, Mooresville, Murfreesboro, North Topsail Beach, Pembroke, Pilot Mountain, Ranlo, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 96:
Alleghany/Jackson/Grover OT

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 9, 2011
Introduced by:	Rep. Stevens	**Prepared by:**	Trina Griffin
Analysis of:	PCS to Second Edition H96-CSSVx-33		Committee Counsel

SUMMARY: House Bill 96 includes occupancy tax provisions as follows:

- ***It would authorize Alleghany County to levy an additional occupancy tax of up to 3%. It would also require the county to establish a TDA upon levy of the additional 3% tax.***
- ***It would authorize Jackson County to levy an additional 3% occupancy tax.***
- ***It would authorize the Town of Grover to levy an additional 3% occupancy tax.***

CURRENT LAW & BILL ANALYSIS:

PART I: ALLEGHANY COUNTY

In 1991, the General Assembly authorized Alleghany County to levy an occupancy tax of 3%.[1] In 2004, the legislation was amended to more closely conform to the Occupancy Tax Guidelines adopted by the House Finance Committee. At least two-thirds of the proceeds must be used to promote travel and tourism in Alleghany County, and remainder must be used for tourism-related purposes. The proceeds are remitted quarterly to the Chamber of Commerce until the annual net proceeds exceed $100,000, at which point, the county must establish a Tourism Development Authority for the purpose of administering the proceeds. The current 3% occupancy tax generates less than $40,000 annually.

House Bill 96 would authorize the Alleghany County Board of Commissioners to levy an additional occupancy tax of up to 3%.

The PCS adds a provision requiring Alleghany County to establish a Tourism Development Authority upon adopting a resolution levying the additional 3% occupancy tax, as recommended by the House Finance Occupancy Tax Subcommittee. Once the additional tax is levied and the TDA is created, all net proceeds of the occupancy tax, including both the original 3% and the additional 3%, must be remitted to the TDA. The TDA must use at least two-thirds of the total funds remitted to it for tourism promotion and the remainder for tourism-related expenditures.

PART II: JACKSON COUNTY

In 1985, the General Assembly authorized several western counties, including Jackson, to levy an occupancy tax of 3%. The net proceeds of the tax are placed in a special Travel and Tourism Fund and be used only to promote travel and tourism in the county. The county has discretionary authority to establish a tourism development authority to administer the funds.

The PCS for HB House Bill 96 rewrites and recodifies the existing law authorizing the 3% room occupancy tax in Jackson County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," promote travel and tourism" and tourism-related expenditures." The bill also makes the Jackson County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155. By conforming to the House Finance occupancy tax guidelines, Jackson

[1] S.L. 1991-162, as amended by S.L. 2004-106.

County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

The PCS also authorizes Jackson County to levy an additional 3% occupancy tax with the same conditions and requirements that apply to the first 3%.

PART III: TOWN OF GROVER

The Town of Grover, which is located in Cleveland County, does not have authority to levy an occupancy tax. Cleveland County has authority to levy a 3% tax, the proceeds of which may be used for any public purpose.

The PCS for House Bill 96 would authorize the Town of Grover to levy a 3% room occupancy tax. The Town would be required to establish a tourism development authority to administer the proceeds. The proceeds must be used as follows: at least two-thirds for tourism promotion and the remainder for tourism-related expenditures.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,[2] which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

H96-SMSV-71(CSSVx-33) v2

[2] G.S. 153A-155 and G.S. 160A-215.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 96 (Second Edition)

SHORT TITLE: Addl. Alleghany/Jackson OT.

SPONSOR(S): Representative Stevens

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES					
Alleghany County	**$42,669**	**$45,465**	**$48,044**	**$50,067**	**$51,770**
Jackson County	**$386,071**	**$411,370**	**$434,707**	**$453,011**	**$468,415**
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Alleghany County, Jackson County

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY:

House Bill 96 authorizes Alleghany County to levy an additional (3%) three percent room occupancy and tourism development tax. The bill details the authorization of the additional tax, administration of the tax, distribution, and use of tax revenues, and creation of the Alleghany County Tourism Development Authority (Tourism Authority). It details membership, duties, and reporting requirements of the Tourism Authority.

Also, House Bill 96 authorizes Jackson County to levy an additional (3%) three percent room occupancy tax to provide as follows. The bill details the additional room occupancy tax, authorization of additional tax, administration of the tax, distribution, and use of tax revenues, and creation of the Jackson County Tourism Development Authority (Tourism Authority). It details membership, duties, and reporting requirements of the Tourism Authority.

ASSUMPTIONS AND METHODOLOGY:

Alleghany County currently levies a (3%) three percent room occupancy tax. According to the North Carolina Department of State Treasurer, the county collected $37,509 in occupancy taxes for tax year 2010. Assuming the county continues to collect occupancy taxes at that level, and grown by the leisure and hospitality portion of Gross State Product, it's estimated that an additional (3%) three percent room occupancy tax would yield an additional $42,669 in FY11-12 for the county.

Jackson County currently levies a (3%) three percent room occupancy tax. According to the County Manager's Office, the county has budgeted $366,047 in occupancy tax revenues for FY10-11. Assuming the county continues to collect occupancy taxes at that level, and grown by the leisure and hospitality portion of Gross State Product, it's estimated that an additional (3%) three percent room occupancy tax would yield an additional $386,071 in FY11-12 for the county.

SOURCES OF DATA: North Carolina Department of State Treasurer; Moody's Economy.com, Jackson County Manager's Office

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: June 9, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 267*
PROPOSED COMMITTEE SUBSTITUTE S267-PCS35273-RBx-54

Short Title: Rev Laws Tech, Clarify., & Admin. Chngs. (Public)

Sponsors:

Referred to:

March 9, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

BUSINESS AND EXCISE TAXES

SECTION 1. Section 31.7(e) of S.L. 2010-31 reads as rewritten:

"**SECTION 31.7.(e)** G.S. 105-37.1(a)(1), as amended by subsection (a) of this section, becomes effective ~~August 1, 2010,~~February 1, 2009, and applies retroactively to charges for admission received before that date or on or after that date. G.S. 105-37.1(a)(2), as amended by subsection (a) of this section, becomes effective January 1, 2011, and applies to admission tickets sold on or after that date. The remainder of this section is effective when it becomes law."

SECTION 2.(a) G.S. 105-113.4 reads as rewritten:

"**§ 105-113.4. Definitions.**

The following definitions apply in this Article:

(1) Affiliate. – A person who directly or indirectly controls, is controlled by, or is under common control with another person.

(1a) Affiliated manufacturer. – A manufacturer licensed under G.S. 105-113.12 who is an affiliate of a manufacturer licensed under G.S. 105-113.12.

~~(1)~~(1b) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

~~(1a)~~(1c) Cigarette. – Any of the following:

a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.

b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.

...

(4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, and is not a retail

dealer. ~~An "affiliate" is a person who directly or indirectly controls, is controlled by, or is under common control with another person.~~

...."

SECTION 2.(b) G.S. 105-113.10 reads as rewritten:

"**§ 105-113.10. Manufacturers ~~shipping to distributors exempt.~~exempt from paying tax.**

(a) Shipping to Other Distributors. – Any manufacturer shipping cigarettes to other distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part. No manufacturer may be relieved of the requirement to be licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate user.

(b) Shipping for Affiliated Manufacturer. – A manufacturer may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part on cigarettes that are manufactured by an affiliated manufacturer and temporarily stored at and shipped from its facilities."

SECTION 2.(c) G.S. 105-113.21(b) reads as rewritten:

"(b) Refund. – A distributor in possession of packages of stale or otherwise unsalable cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer as provided in this subsection and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigarettes. The distributor must return the cigarettes to the manufacturer of the cigarettes or to the affiliated manufacturer who is contracted by the manufacturer of the cigarettes to serve as the manufacturer's agent for the purposes of validating quantities and disposing of unsalable cigarettes."

SECTION 3. G.S. 105-120.2(f) is repealed.

SECTION 4. G.S. 105-129.50 is amended by adding a new subdivision to read:

"**§ 105-129.50. Definitions.**

The definitions in section 41 of the Code apply in this Article. In addition, the following definitions apply in this Article:

(1) Development tier one area. – Defined in G.S. 143B-437.08.

...."

SECTION 5. G.S. 105-130.4(t2) and G.S. 105-122(c1)(3) are repealed.

SECTION 6. G.S. 105-41(a)(8) and (a)(9) read as rewritten:

"(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ($50.00).

...

(8) A real estate ~~broker or a real estate salesman,~~broker as defined in G.S. 93A-2. A real estate broker ~~or a real estate salesman~~ who is also a real estate appraiser is required to obtain only one license under this section to cover both activities.

(9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser who is also a real estate broker ~~or a real estate salesman~~ is required to obtain only one license under this section to cover both activities."

SECTION 7. G.S. 105-113.82(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute annually a percentage of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31 to the counties or cities in which the retail sale of these beverages is

authorized in the entire county or city. ~~For purposes of this subsection, the term "net amount" means gross collections less refunds and amounts credited to the Department of Commerce under G.S. 105-113.81A.~~ The percentages to be distributed are as follows:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty and forty-seven hundredths percent (20.47%).

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), forty-nine and forty-four hundredths percent (49.44%).

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), eighteen percent (18%)."

SECTION 8. G.S. 105-125(b) reads as rewritten:

"(b) Certain Investment Companies. – A corporation doing business in North Carolina that meets one or more of the following conditions may, in determining its ~~basis~~ capital stock, surplus, and undivided profits base for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or governments:

(1) A regulated investment company. – A regulated investment company is an entity that qualifies as a regulated investment company under section 851 of the Code.

(2) A REIT, unless the REIT is a captive REIT. – The terms "REIT" and "captive REIT" have the same meanings as defined in G.S. 105-130.12."

SECTION 9. G.S. 105-127(f) reads as rewritten:

"(f) After the end of the income year in which a domestic corporation is dissolved pursuant to Part 1 of Article 14 of Chapter 55 of the General Statutes, the corporation is no longer subject to the tax levied in this Article unless the Secretary of Revenue finds that the corporation has engaged in business activities in this State not appropriate to winding up and liquidating its business and affairs."

SECTION 10. G.S. 105-228.8(e) reads as rewritten:

"(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums. ~~For purposes of this section, seventy-five percent (75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall not be a special purpose obligation or assessment or a dedicated special purpose tax within the meaning of this subsection.~~"

PERSONAL TAXES

SECTION 11. Section 4 of S.L. 2011-5 reads as rewritten:

"**SECTION 4.** This act is effective when it becomes ~~law.~~ law and applies to the estates of decedents dying on or after January 1, 2011. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North Carolina taxable income for the 2010 taxable year become effective for taxable years beginning on or after January 1, 2011."

SECTION 12.(a) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.1(19), as repealed in that act, is reenacted.

SECTION 12.(b) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(a1) and (a2), as enacted in that act, read as rewritten:

"(a1) Personal Exemption. – In calculating North Carolina taxable income, a taxpayer may deduct an exemption amount equal to the amount listed in the table below based on the taxpayer's filing status and adjusted gross income. The taxpayer is allowed the same ~~number of~~ personal exemptions ~~claimed~~ allowed under section 151 of the Code for the taxable year.

Personal

Filing Status	Adjusted Gross Income	Exemption
Married, filing jointly	Up to $100,000	$2,500
	Over $100,000	$2,000
Head of Household	Up to $80,000	$2,500
	Over $80,000	$2,000
Single	Up to $60,000	$2,500
	Over $60,000	$2,000
Married, filing separately	Up to $50,000	$2,500
	Over $50,000	$2,000

(a2) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct either the standard deduction amount listed in the table below for that taxpayer's filing status or the itemized deductions amount ~~elected~~ claimed under ~~section 63 of~~ the Code. ~~A taxpayer may not deduct both the standard deduction amount and the itemized deductions amount.~~ In the case of a married couple filing separate returns, a taxpayer may not deduct the standard deduction amount if the taxpayer's spouse claims itemized deductions for State purposes.

A taxpayer that deducts the standard deduction amount under this subsection and is entitled to an additional deduction amount under section 63(f) of the Code for the aged or blind may deduct an additional amount under this subsection. The additional amount the taxpayer may deduct is six hundred dollars ($600.00) in the case of an individual who is married and seven hundred fifty dollars ($750.00) in the case of an individual who is not married and is not a surviving spouse. The taxpayer is allowed the same number of additional amounts that the taxpayer claimed under the Code for the taxable year.

Filing Status	Standard Deduction
Married, filing jointly	$6,000
Head of Household	4,400
Single	3,000
Married, filing separately	3,000."

SECTION 12.(c) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(b)(22), as enacted in that act, reads as rewritten:

"(22) ~~The first~~An amount not to exceed fifty thousand dollars ($50,000) of net business income the taxpayer receives during the taxable year. In the case of a married couple filing a joint return where both spouses receive or incur net business income, the maximum dollar amounts apply separately to each spouse's net business income, not to exceed a total of one hundred thousand dollars ($100,000). For purposes of this subdivision, the term "business income" does not include income that is considered passive income under the Code."

SECTION 12.(d) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(c)(3) reads as rewritten:

"(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income ~~tax or~~ tax, as state or local general sales ~~tax~~ tax, or as qualified motor vehicle tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under ~~the Code reduced by the amount the taxpayer is required to add to taxable income under subdivision (4) of this subsection.~~subsection (a2) of this section."

SECTION 12.(e) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(c)(12) is repealed.

SECTION 12.(f) This section is effective for taxable years beginning on or after January 1, 2012.

SECTION 13. G.S. 105-134.6(d)(8) reads as rewritten:

"(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

...

(8) For taxable years 2011 through 2013, a taxpayer who made an addition under subdivision (7) of this subsection may deduct one-third ~~of the taxpayer's net operating loss absorbed on the taxpayer's 2003, 2004, 2005, and 2006 federal returns under section 172(b)(1)(H) or section 810(b)(4) of the Code.~~of the amount added under that subdivision."

SECTION 14. Reserved.

SALES AND USE TAX AND ARTICLE 5F TAXES

SECTION 15.(a) G.S. 105-164.3(25) and (30a) reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(25a) Over-the-counter drug. – A drug that can be dispensed under federal law without a prescription and is required by 21 C.F.R. § ~~210.66~~201.66 to have a label containing a "Drug Facts" panel and a statement of its active ingredients.

...

(30a) Professional motorsports racing team. – A racing team that satisfies all of the following conditions:

a. The team is operated for profit.

b. ~~A majority of the revenues of the team is derived from sponsorship of the racing team and prize money.~~The team does not claim a deduction under section 183 of the Code.

c. The team competes in at least sixty-six percent (66%) of the races sponsored in a race series in a single season by a motorsports sanctioning body."

SECTION 15.(b) G.S. 105-164.3 is amended by adding a new subdivision to read:

"(33b) Related member. – Defined in G.S. 105-130.7A."

SECTION 15.(c) G.S. 105-164.14A(a)(4) and (a)(5) read as rewritten:

"**§ 105-164.14A. Economic incentive refunds.**

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

...

(4) Motorsports team or sanctioning body. – A professional motorsports racing ~~team or a~~team, a motorsports sanctioning ~~body~~ body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after January 1, 2011.

(5) Professional motorsports team. – A professional motorsports racing team or a related member of a team is allowed a refund of fifty percent (50%) of the

sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle. For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2014."

SECTION 15.(d) Subsection (b) this section and G.S. 105-164.14A(a)(4), as amended by subsection (c) of this section, apply retroactively to purchases made on or after January 1, 2005. G.S. 105-164.14A(a)(5), as amended by subsection (c) of this section, applies retroactively to purchases made on or after July 1, 2007.

SECTION 16. G.S. 105-164.4(a)(3) reads as rewritten:

"(3) A tax at the general rate applies to the gross receipts derived from the rental of an accommodation. The tax does not apply to (i) a private residence or cottage that is rented for fewer than 15 days in a calendar ~~year or to~~ year; (ii) an accommodation rented to the same person for a period of 90 or more continuous ~~days.~~days; or (iii) an accommodation provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity.

Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental.

A person who provides an accommodation that is offered for rent is considered a retailer under this Article. A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed and, within three business days of receiving the notice, the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales price. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this subdivision. The liability of a rental agent for the tax imposed by this subdivision relieves the provider of the accommodation from liability. A rental agent includes a real estate broker, as defined in G.S. 93A-2.

The following definitions apply in this subdivision:

a. Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.

b. Facilitator. – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation."

SECTION 17. G.S. 105-164.4C(h)(5) reads as rewritten:

"(h) Definitions. – The following definitions apply in this section:

...

(5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid ~~wireline~~ telephone calling service, except the exclusive use requirement.

...."

SECTION 18. G.S. 105-164.13(12), (26a), (33), (38), and (49) read as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(12) Sales of any of the following items:

a. Prosthetic ~~devices.~~devices for human use.

b. Mobility enhancing equipment sold on a prescription.

c. Durable medical equipment sold on prescription.

d. Durable medical supplies sold on prescription.

...

(26a) Food sold not for profit by a public school cafeteria to a child care center that participates in the Child and Adult Care Food Program of the Department of ~~Public Instruction.~~Health and Human Services.

...

(33a) Tangible personal property sold by a retailer to a purchaser within or without this State, when the property is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State and the purchaser does not subsequently use the property in this State.

...

(38) Food and other items lawfully purchased under the Food Stamp Program, 7 U.S.C. § 2011, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental ~~Food~~ Nutrition Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental ~~Food~~ Nutrition Program.

...

(49) Installation charges when the charges are separately ~~stated.~~stated on the invoice at the time of sale."

SECTION 19. G.S. 105-164.13D(a) reads as rewritten:

"(a) The taxes imposed by this Article do not apply to the Energy Star qualified products listed in this section if sold between 12:01 A.M. on the first Friday of November and 11:59 P.M. the following Sunday. The qualified products are:

(1) Clothes washers.

(2) Freezers and refrigerators.

(3) Central air conditioners and room air conditioners.
(4) Air-source heat ~~pumps and geothermal heat~~ pumps.
(5) Ceiling fans.
(6) Dehumidifiers.
(7) Programmable thermostats."

SECTION 20.(a) G.S. 105-164.14A(a)(1) and (a)(4), as amended by this act, read as rewritten:

"**§ 105-164.14A. Economic incentive refunds.**

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars ($2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after ~~January 1, 2011.~~January 1, 2013.

...

(4) Motorsports team or sanctioning body. – A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after ~~January 1, 2011.~~January 1, 2013.

...."

SECTION 20.(b) This section applies retroactively to purchases made on or after January 1, 2011.

SECTION 21. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases the items listed in this subsection ~~tangible personal property other than a boat or an aircraft, digital property, or a service~~ outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14. The items are:

(1) Tangible personal property other than a boat or an aircraft.
(2) Digital property.
(3) A service."

SECTION 22. G.S. 105-187.51C(c) reads as rewritten:

"(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the ~~combined general rate~~ applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the

lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed ~~at the combined general rate~~ from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 23. A facilitator is not liable for an overcollection or undercollection of sales tax or local occupancy tax if the facilitator has made a good faith effort to comply with the law and collect the proper amount of tax as the result of the change under Section 31.6 of S.L. 2010-31 regarding a facilitator's collection and remittance obligations imposed under G.S. 105-164.4(a)(3), 153A-155(c), and 160A-215(c). This applies only to the period beginning January 1, 2011, and ending April 1, 2011.

SECTION 24. Section 9 of S.L. 2010-91 reads as rewritten:

"**SECTION 9.** Section 6 of this act becomes effective January 1, 2010. Section 7 of this act is effective when it becomes law and applies retroactively to sales made on or after October 1, 2007. Section 8 of this act is effective when it becomes law, applies to all agreements in effect on or entered into after that date, and expires January 1, 2013. The remainder of this act becomes effective July 1, 2010, and applies to sales made on or after that date."

SECTION 25.(a) G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax due and paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

SECTION 25.(b) G.S. 105-187.52 reads as rewritten:

"**§ 105-187.52. Administration.**

(a) Administration. – The privilege taxes imposed by this Article are in ~~addition to~~ lieu of the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax due and paid to another state. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina.

(c) Exemption. – State agencies are exempted from the privilege taxes imposed by this Article."

SECTION 26.(a) G.S. 105-164.14 is amended by adding a new subsection to read:

"(p) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

SECTION 26.(b) G.S. 105-164.14A is amended by adding a new subsection to read:

"(d) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

SECTION 26.(c) G.S. 105-164.14B is amended by adding a new subsection to read:

"(g) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

SECTION 27. G.S. 105-164.15A(a)(1) reads as rewritten:

"(a) Services. – The effective date of a tax change for a service taxable under this Article is administered as follows:

(1) For a service that is provided and billed on a monthly or other periodic basis:

a. A new tax or a tax rate increase applies to the first billing period that starts on or after the effective date. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.

b. A tax repeal or a tax rate decrease applies to ~~bills rendered~~ the first billing period that starts on or after the effective date."

SECTION 28. G.S. 105-164.28 reads as rewritten:

"**§ 105-164.28. Certificate of ~~resale.~~exemption.**

(a) Seller's Responsibility. – A seller who accepts a certificate of ~~resale~~ exemption from a purchaser has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

(1) For a sale made in person, the certificate is signed by the purchaser and states the purchaser's name, address, registration number, and type of business.

(2) For a sale made in person, the item sold is the type of item typically sold by the type of business stated on the certificate.

(3) For a sale made over the Internet or by other remote means, the seller obtains the purchaser's name, address, registration number, and type of business and maintains this information in a retrievable format in its records.

(b) Purchaser's Liability. – A purchaser who does not resell an item purchased under a certificate of ~~resale~~ exemption is liable for any tax subsequently determined to be due on the sale."

SECTION 29. G.S. 105-164.41 is repealed.

EXCISE TAX ON CONVEYANCES

SECTION 30.(a) G.S. 105-228.37 reads as rewritten:

"**§ 105-228.37. Refund of overpayment of tax.**

(a) Refund Request. – A taxpayer who pays more tax than is due under this Article may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due.

(b) Hearing by County. – A board of county commissioners must conduct a hearing on a request for ~~refund in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property. If~~ refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the date set for the hearing, the board must notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing must be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the board. The board must make a decision on the requested refund within 90

days after conducting a hearing under this subsection. ~~the board decides that a refund is due, it must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission.~~

(c) ~~Review by Commission.~~ Process if Refund Granted. – If the board of commissioners decides that a refund is due, it must refund the overpayment, together with any applicable interest, to the taxpayer and inform the Department of the refund. The Department may assess the taxpayer for the amount of the refund in accordance with G.S. 105-241.9 if the Department disagrees with the board's decision. ~~The procedure in G.S. 105-290 for the appeal to the Property Tax Commission of a decision of a board of equalization and review concerning the listing or appraisal of property applies to the appeal of a denial by a board of county commissioners of a request for a refund of tax paid under this Article. If the Commission determines that a refund is due, the board of county commissioners must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. A decision of the Commission is binding on the Secretary and on a board of county commissioners.~~

(d) ~~Judicial Review.~~ Process if Refund Denied. – ~~A decision of the Property Tax Commission is subject to judicial review in accordance with G.S. 7A-29.~~ If the board of commissioners finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may request a departmental review of the denial of the refund in accordance with the procedures set out in G.S. 105-241.11.

(e) Recording Correct Deed. – Before a tax is refunded, the taxpayer must record a new instrument reflecting the correct amount of tax due. If no tax is due because an instrument was recorded in the wrong county, then the taxpayer must record a document stating that no tax was owed because the instrument being corrected was recorded in the wrong county. The taxpayer must include in the document the names of the grantors and grantees and the deed book and page number of the instrument being corrected.

When a taxpayer records a corrected instrument, the taxpayer must inform the register of deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the register of deeds a copy of the decision granting the refund that shows the correct amount of tax due. The correcting instrument must include the deed book and page number of the instrument being corrected. The register of deeds must notify the county finance officer and the Secretary when the correcting instrument has been recorded.

(f) Interest. – An overpayment of tax bears interest at the rate established in G.S. 105-241.21 from the date that interest begins to accrue. Interest begins to accrue on an overpayment 30 days after the request for a refund is filed by the taxpayer with the board of county commissioners."

SECTION 30.(b) G.S. 105-228.30(b) reads as rewritten:

"(b) The register of deeds of each county must remit the proceeds of the tax levied by this section to the county finance officer. The finance officer of each county must credit one-half of the proceeds to the county's general fund and remit the remaining one-half of the proceeds, less taxes refunded and the county's allowance for administrative expenses, to the Department of Revenue on a monthly basis. A county may retain two percent (2%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation for the county's cost in collecting and remitting the State's share of the tax. Of the funds remitted to it pursuant to this section, the Department of Revenue must credit seventy-five percent (75%) to the Parks and Recreation Trust Fund established under G.S. 113-44.15 and twenty-five percent (25%) to the Natural Heritage Trust Fund established under G.S. 113-77.7."

GENERAL ADMINISTRATION

SECTION 31.(a) G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(b) Definitions. – The following definitions apply in this Article:

...

(4b) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007.

...."

SECTION 31.(b) G.S. 105-129.81(13) and (18) read as rewritten:

"**§ 105-129.81. Definitions.**

The following definitions apply in this Article:

...

(13) Information technology and services. – An industry in one of the ~~following:~~following, as defined by NAICS:

a. ~~Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.~~Data processing industry group 518.

b. Software publishers industry group ~~5112 as defined by NAICS.~~5112.

c. Computer systems design and related services industry group ~~5415 as defined by NAICS.~~5415.

d. An Internet activity included in industry group 519130.

...

(18) NAICS. – ~~The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.~~Defined in G.S. 105-228.90.

...."

SECTION 31.(c) G.S. 105-164.3(23a) reads as rewritten:

"(23a) NAICS. – ~~The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007.~~Defined in G.S. 105-228.90."

SECTION 32. G.S. 105-236(a)(2) reads as rewritten:

"(a) Penalties. – The following civil penalties and criminal offenses apply:

...

(2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00). In cases in which the ~~taxpayer~~ taxpayer, after written notification by the Department, fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars ($1,000).

...."

SECTION 33.(a) G.S. 105-256(a)(9) reads as rewritten:

"(a) Publications. – The Secretary shall prepare and publish the following:

...

(9) A final decision of the Secretary in a contested tax case.~~The Secretary must redact identifying taxpayer information from a final decision prior to publication.~~"

SECTION 33.(b) G.S. 105-259(b)(27) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards

used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

(27) To provide a ~~report~~ publication required under this Chapter."

SECTION 33.(c) G.S. 150B-21.17(a)(5) is repealed.

SECTION 34. G.S. 105-241.9(b) reads as rewritten:

"(b) Time Limit. – The Secretary must propose an assessment within the statute of limitations for proposed assessments unless the taxpayer waives the limitations period ~~in writing.~~ before it expires by agreeing in writing to extend the period. A taxpayer may waive the limitations period for either a definite or an indefinite time. If the taxpayer waives the limitations period, the Secretary may propose an assessment at any time within the time extended by the waiver."

SECTION 35. G.S. 105-256(a)(7) is repealed.

SECTION 36. Section 24.18(g) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.18.(g)** This section is effective for taxable years beginning on or after January 1, 2006, and expires for taxable years beginning on or after ~~January 1, 2011.~~ January 1, 2013."

SECTION 37. G.S. 105-228.90(a) reads as rewritten:

"(a) Scope. – This Article applies to all of the following:

(1) Subchapters I, V, and VIII of this ~~Chapter, to the~~ Chapter.

(2) The annual report filing requirements of ~~G.S. 55-16-22, to the~~ G.S. 55-16-22.

(3) The primary forest product assessment levied under Article 12 of Chapter 113A of the General ~~Statutes, and to~~ Statutes.

(4) The inspection taxes levied under Article 3 of Chapter 119 of the General Statutes.

(5) Chapter 105A of the General Statutes."

SECTIONS 38-39. Reserved.

PROPERTY TAX

SECTION 40. G.S. 105-330.4 is amended by adding a new subsection to read:

"(d) Tax payments submitted by mail are deemed to be received as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark or if the postmark is not affixed by the United States Postal Service, the tax payment is deemed to be received when the payment is received in the office of the tax collector. In any dispute arising under this subsection, the burden of proof is on the taxpayer to show that the payment was timely made."

SECTION 41. G.S. 105-333(14) reads as rewritten:

"**§ 105-333. Definitions.**

The following definitions apply in this Article unless the context requires a different meaning:

...

(14) Public service company. – A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, or a motor freight carrier company. The term also includes any company performing a public service that is regulated by the United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a

water company, mobile telecommunications service as defined in G.S. 105-164.3, a cable television company, or a radio or television broadcasting company."

SECTION 42.(a) The prefatory language for Section 65 of S.L. 2008-134 reads as rewritten:

"Section 13 of S.L. 2005-294, as amended by Section 31.5 of S.L. 2006-259 and ~~Section 22(c)~~Section 22(b) of S.L. 2007-527, reads as rewritten:"

SECTION 42.(b) Section 22(a) of S.L. 2010-95 is repealed.

SECTION 42.(c) Section 22(e) of S.L. 2010-95 reads as rewritten:

"**SECTION 22.(e)** Section 79 of S.L. 2008-134, as amended by Section 25(b) of S.L. 2009-445, reads as rewritten:

"**SECTION 79.** Sections 16 through 60 of this act become effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law. ~~Section 63 of this act is repealed July 1, 2011.~~ Section 63 of this act is repealed July 1, 2013."

SECTIONS 43-44. Reserved.

LOCAL GOVERNMENT SALES AND USE TAX

SECTION 45. G.S. 105-467(a) reads as rewritten:

"(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the ~~transactions listed in this subsection. The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this subsection.~~following:

(1) A retailer's net taxable sales and gross receipts that are ~~The sales price of tangible personal property~~ subject to the general rate of sales tax imposed by the State under ~~G.S. 105-164.4(a)(1) and (a)(4b).~~G.S. 105-164.4.

~~(2) The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(2).~~

~~(3) The gross receipts derived from the rental of any room or other accommodations subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(3).~~

~~(4) The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).~~

(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to G.S. 105-164.13B.

(5a) The sales price of a bundled transaction that includes food subject to tax under subdivision (5) of this subsection, if the price of the food exceeds ten percent (10%) of the price of the bundle. A retailer must determine the price of food in a bundled transaction in accordance with G.S. 105-164.4D.

(5b) The sales price of bread, rolls, and buns that are sold at a bakery thrift store and are exempt from State tax under G.S.105-164.13(27a).

~~(6) The sales price of prepaid telephone calling service taxed as tangible personal property under G.S. 105-164.4(a)(4d).~~

~~(7) The gross receipts derived from providing satellite digital audio radio service subject to the general rate of tax under G.S. 105-164.4(a)(6a).~~"

MISCELLANEOUS

SECTION 46. Section 8 of S.L. 2006-209 reads as rewritten:

"**SECTION 8.** As applied to G.S. 20-79.4, the authority in G.S. 164-10 for the Division of Legislative Drafting and Codification to reletter or renumber section subdivisions includes the authority to renumber all the subdivisions in G.S. 20-79.4(b) in sequential and alphabetical order and to eliminate mixed number-letter subdivision designations. ~~This section expires July 1, 2011.~~"

SECTION 47.(a) G.S. 58-70-35(a) reads as rewritten:

"(a) Upon the filing of the application and information required by this Article, the applicant shall pay a nonrefundable fee of one thousand dollars ($1,000), and no permit may be issued until this fee is paid. Fees collected under this subsection shall be ~~used in paying the expenses incurred in connection with the consideration of such applications and the issuance of such permits.~~credited to the Insurance Regulatory Fund created under G.S. 58-6-25."

SECTION 47.(b) G.S. 143-143.10(a) reads as rewritten:

"(a) There is created the North Carolina Manufactured Housing Board within the Department. The Board shall be composed of 11 members as follows:

(1) The Commissioner of Insurance or the Commissioner's designee.
(2) A manufactured home manufacturer.
(3) A manufactured home dealer.
(4) A representative of the banking and finance industry.
(5) A representative of the insurance industry.
(6) A manufactured home supplier.
(7) A set-up contractor.
(8) Two representatives of the general public.
(9) A person who is employed with a HUD-approved housing counseling agency in the State.
(10) An accountant.

The Commissioner or the Commissioner's designee shall chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint to the Board the representative of the banking and finance industry, the employee of a HUD-approved housing counseling agency, and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint to the Board the manufactured home supplier, the accountant, and the set-up contractor. The Commissioner shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years. In the event of any vacancy of a position appointed by the Governor or Commissioner, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The members of the Board designated in subdivisions (8), (9), and (10) of this subsection shall have no current or previous financial interest connected with the manufactured housing

industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. ~~All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Part. In no case shall any salary, expense, or other obligation of the Board be charged against the General Fund of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Part. At the end of the fiscal year, the Board shall retain fifteen percent (15%) of the unexpended funds collected and received during that year. The remaining eighty five percent (85%) of these funds shall be credited to the General Fund.~~Fees collected by the Board under this Article shall be credited to the Insurance Regulatory Fund created under G.S. 58-6-25."

SECTIONS 48-49. Reserved.

EFFECTIVE DATE

SECTION 50. Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 267:
Rev Laws Tech, Clarify., & Admin. Chngs

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Sens. Clodfelter, Hartsell	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S267-CSRBx-54		Committee Counsel

SUMMARY: ***Senate Bill 267[1] includes several technical, administrative, and clarifying changes to the revenue laws and related statutes. The bill came as a recommendation of the Revenue Laws Study Committee. The proposed committee substitute includes the changes indicated by an asterisk.***

EFFECTIVE DATE: This act would become effective when it becomes law.

BILL ANALYSIS:

Section	Explanation
	Business Tax Changes
1	Changes the effective date for the exclusion of amenities from general admissions receipts. Prior to February 1, 2009, amenities were excluded from admissions receipts. Effective February 1, 2009, with one day's notice, the Department of Revenue issued a directive providing that amenities would be included in admissions receipts. The Revenue Laws Study Committee recommended, and the General Assembly enacted, a restoration of the prior understanding. The effective date of the legislation was August 1, 2010. Companies that paid the tax with amenities included in the admissions receipts sought a refund of the excess tax paid. The Department denied the refund request because the effective date of the legislative change was August 1, 2010, not February 1, 2009 (the day the directive took effect).
2*	Modifies the cigarette excise tax payment statute to accommodate operating procedural changes being implemented by certain cigarette manufacturers and their affiliates. It does not change the manufacturer that is responsible for paying the tax.
3	Repeals an obsolete provision. When the General Assembly enacted the qualified business venture tax credits in 1987, they applied to investments in North Carolina companies and to both corporations and individuals. In 1996, the General Assembly revised the tax credit to apply to all investments because the restriction to North Carolina companies was unconstitutional. In the same act, S.L. 1996-14, ES2, the General Assembly also restricted the tax credit to individuals and pass-through entities. The subsection being repealed is a carry-over from the original law as it applied to holding companies.
4	Provides a definition for development tier one area in the tax credit for research and development. The tax credit amount for research performed in a development tier one area is 3.25%.

[1] The companion bill is House Bill 122.

5	Repeals an obsolete provision. In S.L. 2010-89, the General Assembly provided an alternative apportionment formula for a corporation that signed a letter of commitment by September 15, 2010, certifying that it planned to invest at least $500 million in private funds to construct a facility in a development tier one area. No company signed such a letter. The General Assembly enacted the provision at the request of Microsoft; Microsoft announced in August that it would be locating in Virginia.
6*	Repeals obsolete term. S.L. 2005-395 amended the real estate licensing laws to eliminate real estate salespersons licenses, making all licensed real estate agents real estate brokers as of April 1, 2006.
7*	Removes reference to repealed statute. The General Assembly repealed G.S. 105-113.81A in the budget bill in 2009, S.L. 2009-451, as part of the special provision on "*Commerce/Enterprise Funds and Special Funds*".
8*	Clarifies the franchise tax base.
9*	Specifies the statutory reference. .
10*	Removes reference to obsolete provision. S.L. 2006-196 combined the statewide and local rates for insurance policies providing fire and lightning coverage and established a new statewide rate of 0.85% for the supplemental tax, effective January 1, 2008. The changes effectively replaced the tax on fire and lightening coverage with an additional tax on property coverage contracts.
Personal Tax Changes	
11*	Clarifies that the IRC Update bill applies to the estates of decedents dying on or after January 1, 2011.
12*	Makes changes to the provisions in the budget bill regarding the move from federal taxable income to adjusted gross income to ensure the bill does not inadvertently change the existing tax base in ways that were not intended.
13*	Ensures that a taxpayer may not take a double deduction for a 2009 net operating loss claimed on a 2006 return.
14	Reserved.
Sales and Use Tax and Article 5F Tax Changes	
15*	Clarifies the original intent of the sales tax refund granted to professional motorsports teams for aviation fuel and tangible personal property that comprises part of the racing vehicle. In the last couple of years, the Department of Revenue has changed its interpretation of how the refund is applied. This section modifies the statutes to allow a related entity that pays the tax on behalf of the team to claim the refund and ensures that the refund only applies to professional motorsports teams that compete in at least 66% of the races sponsored in a race series. There are three race series in a season. The narrowing of the refund's applicability becomes

	effective when it becomes law; the other changes apply retroactively to the date the General Assembly authorized the refunds. Subsection (a) of this section also corrects a reference in the definition of 'over-the-counter drug'.
16*	Clarifies that accommodations provided by schools, camps, and similar entities to a person who pays to attend the school or camp is not subject to sales tax. In the past, DOR did not consider summer camps, dorm rooms, or similar types of accommodations to be subject to sales tax. Recently, however, there appears to be some uncertainty. This section clarifies that there should not be a change in the application of the law in regards to these types of entities.
17	Removes the word "wireline" at the request of the Streamlined Sales Tax Compliance Review and Interpretations Committee. It makes no substantive change in the law.
18*	Clarifies that the sales tax exemption for prosthetic devices is for human use, corrects the name of the agency where the Child and Adult Care Food Program is located, and corrects the name of the federal supplemental food program. This section also makes technical changes requested by the Department of Revenue in subdivisions (33a) and (49).
19	Removes geothermal heat pumps from the Energy Star sales tax holiday because consumers are not able to purchase them. Only contractors can purchase geothermal heat pumps and they are not entitled to the exemption. The presence of the item in the list raises many questions and frustrates consumers.
20	Corrects the sunset dates of the sales tax refunds for fuel sold to passenger air carriers and motorsports teams. The General Assembly extended these sunsets from January 1, 2011, to January 1, 2013, in S.L. 2010-31. In a subsequent piece of legislation recommended by the Revenue Laws Study Committee, S.L. 2010-166, these refund provisions were reenacted in a new statute dedicated to economic incentive refunds. The later legislation failed to conform to the extended sunset dates.
21	Clarifies that use tax is payable by an individual on an annual basis for purchases made outside the State for a nonbusiness purpose of digital property and certain services. In 2009, the General Assembly imposed the State and local general rate of sales tax on certain digital goods, such as downloaded music and books. The legislation also made several conforming changes by adding the term "digital property" to a number of other sales tax statutes. Among them, the term "digital property" was added to the statute that sets out when an individual is required to pay use tax on out-of-State purchases. Since digital property was being subjected to sales tax, a corresponding change was made to subject it to use tax if it is purchased out of State. The Department of Revenue is interpreting the statute to exclude digital property and services from the annual use tax reporting requirement. This section clarifies that the "other than" phrase applies only to boats and aircraft. All other tangible personal property, digital property, and taxable services purchased outside the State for a nonbusiness use are subject to the annual reporting requirement for use tax.

22	Removes unnecessary and confusing words. If a datacenter fails to maintain its required levels of investments, it forfeits its incentive and must pay sales tax on its purchases. The statute stated that the sales tax would be calculated "*at the combined general rate*". The words are not necessary and may not correctly reference the right tax rate since the term "combined general rate" does not include the ¼ ¢ local sales tax applicable in some counties.
23	Provides that a facilitator would not be liable for an overcollection or an undercollection of sales tax or local occupancy tax during the period of January 1, 2011, through April 1, 2011, as the result of the new collection and remittance obligations imposed under Section 31.6 of S.L. 2010-31 as long as the facilitator made a good faith effort to comply with the law and collect the proper amount of tax. During the 2010 Session, the General Assembly established new sales and use tax reporting and remittance obligations on "facilitators," which are entities that enter into a contract with the providers of accommodations to market and collect payment for accommodation rentals. An example of a facilitator is an online travel company, such as Expedia or Travelocity.
24*	Gives effect to the changes the General Assembly made last session to the requirements for a datacenter to qualify for the 1% excise tax on the machinery and equipment it purchases. The modification allows a datacenter to meet its investment threshold through the construction of two facilities, rather than one facility. The language could be read to require a taxpayer to forfeit the reduced rate on all datacenter purchases made before July 1, 2010. This section clarifies that it applies to all investments made to date.
25*	Clarifying change.
26*	Clarifies that a refund of tax allowed under G.S. 105-164.14, 105-164.14A, and 105-164.14B are not an overpayment of tax entitled to interest.
27*	Clarifies the effective date of a tax change for services.
28*	Change the term 'certificate of resale' for 'certificate of exemption' to conform to the name on the certificate.
29*	Deletes a statute concerning the procedure for Department initiated refunds of sales and use tax because the procedure applicable for all Department initiated refunds is in G.S. 105-241.7.
Excise Tax on Conveyances	
30	Clarifies the refund process for the deed stamp tax.
General Administration Tax Changes	
31	Updates the reference to NAICS and places the definition in the statute applicable to most of Chapter 105. NAICS is the North American Industry Classification System adopted by the US Office of Management and Budget. It is updated every five years.

	Makes a conforming change to the term "information technology and services" to reflect the changes from the 2002 NAICS to the 2007 NAICS.
32	Clarifies that the higher penalty for failure to obtain a license under the motor fuel statutes only applies after the taxpayer has received written notification from the Department of Revenue to obtain the requisite license.
33	Reconciles two current conflicting provisions concerning whether the identity of certain taxpayers is public information. This section also makes conforming changes. The taxpayers affected are those who bring a contested case action at the Office of Administrative Hearings to obtain a review of an assessment or a denial of a refund by the Department of Revenue. Currently, G.S. 150B-31.1(e) states that the record, proceedings, and decision in a contested case are confidential until the final decision is issued. The Secretary of Revenue makes the final decision and, once that decision issued, the records with the taxpayer name is public. G.S. 105-256(a)(9) requires the Secretary of Revenue to publish the final decision in a contested case in a format that redacts identifying information. The requirement to redact the identifying information serves no purposes, however, because once the decision is published, the record in the contested case proceeding becomes public in an unredacted form under G.S. 150B-31.1. Subsection (a) reconciles these provisions by amending G.S. 105-269(a)(9) to delete the requirement that the Secretary redact identifying taxpayer information when publishing final decisions. Subsection (b) makes a conforming change to the secrecy statute, G.S. 105-259, to change the word "report" to "publication" to ensure that the final decisions are included within the current exception for reports. G.S. 150B-31.1 and G.S. 105-256(a)(9) were both enacted in 2007 in Senate Bill 242, S.L. 2007-491. Under prior law, the Tax Review Board reviewed administrative decisions of the Secretary and made a decision, called an order, after the review. Orders of the Tax Review Board were published in the North Carolina Register, as required by G.S. 150B-21.17(a)(5),and were not redacted. S.L. 2007-491 revised the procedure for the review of contested tax cases and, as part of the revisions, eliminated the Tax Review Board. Subsection (c) makes a conforming change and repeals the obsolete requirement in G.S. 150B-21.17(a)(5) to publish orders of the Tax Review Board in the North Carolina Register.
34	Clarifies that a waiver of a statute of limitations must be executed before the statute of limitations expires.
35*	Repeals an obsolete reporting provision. The reporting provisions were consolidated into a single statute in S.L. 2010-166.
36	Conforms the sunset provisions of miscellaneous provisions associated to the tax credit for recycling oyster shells. The General Assembly extended the sunset on this credit from January 1, 2011, to January 1, 2013, in S.L. 2010-147.
37*	Ensures that the definition of 'person' for purposes of the Setoff Debt Collection Act

	of Chapter 105A is the same as the definition of 'person' for tax purposes under Chapter 105.
38-39	Reserved.
Property Tax Changes	
40*	Clarifies the postmark rule for property taxes on registered motor vehicles. The provision is the same as the rule for other property tax payments and is the same as current administrative practice.
41	Clarifies that the definition of "public service company" in the property tax statutes does not include mobile telecommunication service.
42*	Corrects errors in the effective date section of the legislation regarding the change in the collection of motor vehicle property taxes.
43-44	Reserved.
Local Government Sales and Use Tax Changes	
45	Modernizes the local sales tax base to conform to the State sales tax base for items taxed at the general rate of tax. This change will remove the need to amend the local sales tax statute whenever an item is added to the State sales tax base and taxed at the general rate of tax. It effectively includes digital products in the local sales tax base, as intended by the General Assembly.
Miscellaneous Changes	
46	Removes the sunset from the provision that allows the Codifier of Statutes to renumber the subdivisions in the special license plates statute in sequential and alphabetical order.
47*	Clarifies the fees that should be credited to the Insurance Regulatory Fund.
48-49	Reserved.
Effective Date	
50	Except as otherwise provided, the bill is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 267*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S267-ARB-45 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
PCS35273-RBx-54

Date _____,2011

Senator _____

moves to amend the bill on page 6, line 15, by inserting between the words "accommodation" and "provided" the words "arranged or".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 94*
Finance Committee Substitute Adopted 2/23/11
PROPOSED COMMITTEE SUBSTITUTE S94-CSRBx-65 [v.1]

Short Title: Allocation of Renewable Energy Tax Credit. (Public)

Sponsors:

Referred to:

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE RENEWABLE ENERGY TAX CREDIT TO BE ALLOCATED BY A PASS-THROUGH ENTITY TO ITS OWNERS AND TO THE CHANGE THE DEFINITION OF COST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.15(2) reads as rewritten:

"**§105-129.15. Definitions.**

The following definitions apply in this Article:

...

(2) Cost. – In the case of property owned or leased by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from ~~another, cost is~~ another pursuant to a lease agreement entered into on or before December 31, 2011, the taxpayer may elect to determine cost as value ~~as~~ determined pursuant to G.S. ~~105-130.4(j)(2), unless the property is renewable energy property for which the taxpayer claims either a federal energy credit under section 48 of the Code or a federal grant in lieu of that credit and makes a lease pass-through election under the Code. In this circumstance, the cost of the leased renewable energy property is the cost determined under the Code.~~ 105-130.4(j)(2).

...."

SECTION 2. G.S. 105-129.16A is amended by adding a new subsection to read:

"(a1) Allocation. – Notwithstanding G.S. 105-131.8 and G.S. 105-169.15, a pass-through entity that qualifies for the credit allowed by this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code at the end of the taxable year in which the renewable energy property is placed into service, is at least forty percent (40%) of the amount of credit allocated to that owner. An owner to whom a credit is allocated is allowed the credit as if the owner had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the

allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15."

SECTION 3. This act becomes effective for taxable years beginning on or after January 1, 2012.

Changes to Renewable Energy Credits (2 changes)

- Changes to the definition of "cost" for purposes of calculating the amount of the renewable energy credit available under 105-129.16A added language that inadvertently resulted in restricting the use of "cost" as a basis for calculating the credit by certain lessees of renewable energy property.
- Existing statute provides for "cost" to be determined using the definition in the Internal Revenue Code for property that is owned, and 8 times the annual rent for property that is leased.
- Allowing 8 times rent as the basis for determining cost of leased property can result in inflated values for calculating the tax credits available under Article 3B
- Cost as determined under the Internal Revenue Code is the standard for calculating credits.
- This change provides for following the Internal Revenue Code to determine "cost" for property that is either owned by a taxpayer or leased from another. Leased property that is subject to a lease signed by 12/31/11 will have the option of using either "cost" as determined under the IRC or 8 times annual rent as the cost as provided under the current statute to allow time for the transition to the change.
- The second change allows the discretionary allocation of the renewable energy credit among the partners in a project in the same manner as the existing discretionary allocation available under current law for low income housing projects and mill rehabilitation projects.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 683
Commerce Committee Substitute Adopted 6/8/11
PROPOSED COMMITTEE SUBSTITUTE S683-CSRC-47 [v.2]

6/9/2011 10:08:40 AM

Short Title: Residential Building Inspections. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING COUNTIES AND CITIES TO HAVE REASONABLE CAUSE BEFORE INSPECTING RESIDENTIAL BUILDINGS OR STRUCTURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-364 reads as rewritten:

"**§ 153A-364. Periodic inspections for hazardous or unlawful conditions.**

(a) The inspection department ~~shall~~ may make periodic inspections, subject to the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term 'reasonable cause' means any of the following: (i) the landlord or owner has a history of more than two verified violations of the housing ordinances or codes within a 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily buildings. ~~In addition, it shall make any necessary inspections when it has reason to believe that such conditions may exist in a particular building.~~ In exercising these powers, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(b) A county may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the county commissioners. The county shall not discriminate in its selection or areas or properties to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

(c) In no event may a county do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission from the county to lease or rent residential real property, except for those properties that have more than three verified violation in a twelve month period; (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; or (iii) except as provided in subsection (d) of this section, levy a special fee or tax on residential rental property that is not also levied against other commercial and residential properties.

(d) A county may levy a fee for residential rental property registration under subsection (c) of this section for those properties which have been found in violation of local ordinances within the previous 12 months. The fee shall be an amount that covers the cost of operating a residential registration program and shall not be used to supplant revenue in other areas. Counties using registration programs that charge registration fees for all residential rental properties as of June 1, 2011, may continue levying a fee on all residential rental properties as follows:

(1) For properties with 20 or more residential rental units, the fee shall be no more than $50.00 per year.

(2) For properties with less than 20, but more than three residential rental units, the fee shall be no more than $25.00 per year.

(3) For properties with three or fewer residential rental units, the fee shall be no more than $15.00 per year. "

SECTION 2. G.S. 160A-424 reads as rewritten:

"**§ 160A-424. Periodic inspections.**

(a) The inspection department ~~shall~~ may make periodic inspections, subject to the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term 'reasonable cause' means any of the following: (i) the landlord or owner has a history of more than two verified violations of the housing ordinances or codes within a 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily buildings. ~~In addition, it shall make inspections when it has reason to believe that such conditions may exist in a particular structure.~~ In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials.

(b) A city may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the city council. The municipality shall not discriminate in its selection or areas or properties to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

(c) In no event may a city do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission

from the city to lease or rent residential real property, except for those properties that have more than three verified violations in a twelve month period; (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; or (iii) except as provided in subsection (d) of this section, levy a special fee or tax on residential rental property that is not also levied against other commercial and residential properties.

(d) A city may levy a fee for residential rental property registration under subsection (c) of this section for those properties which have been found in violation of local ordinances within the previous 12 months. The fee shall be an amount that covers the cost of operating a residential registration program and shall not be used to supplant revenue in other areas. Cities using registration programs that charge registration fees for all residential rental properties as of June 1, 2011, may continue levying a fee on all residential rental properties as follows:

(1) For properties with 20 or more residential rental units, the fee shall be no more than $50.00 per year.

(2) For properties with less than 20, but more than three residential rental units, the fee shall be no more than $25.00 per year.

(3) For properties with three or fewer residential rental units, the fee shall be no more than $15.00 per year. ""

SECTION 4. G.S. 153A-360 reads as rewritten:

"**§ 153A-360. Inspections of work in progress.**

(a) As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(b) In no event may a county require inspections of residential buildings or structures that are additional to those required by the North Carolina Building Code council without first obtaining approval from the Council. The Council shall review all applications for inspections greater than those required by the Council and shall, in a timely manner, approve or disapprove the additional inspections except that the county may require any additional inspection where unforeseen or unique circumstances exist and require immediate action."

SECTION 5. 160A-420 reads as rewritten:

"**§ 160A-420. Inspections of work in progress.**

(a) As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials.

(b) In no event may a city require inspections of residential buildings or structures that are additional to those required by the North Carolina Building Code council without first obtaining approval from the Council. The Council shall review all applications for inspections greater than those required by the Council and shall, in a timely manner, approve or disapprove the additional inspections except that the city may require any additional inspection where unforeseen or unique circumstances exist and require immediate action."

SECTION 6. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-9-11

S. B. No. 683 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hunt
Sen.)

moves to amend the bill on page 2 + 3 (2) 10+11 (3) 10+11, line

( ) WHICH CHANGES THE TITLE

by deleting the words "in violation of local ordinances within the previous 12 months." and adding "with more than 2 verified violations of local ordinances within the previous 12 months."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 2

SENATE BILL 599*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/7/11

Short Title: Rendering Act Amendments. (Public)

Sponsors:

Referred to:

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING RENDERING PLANTS AND OPERATIONS AND TO BRING THE COLLECTION OF WASTE KITCHEN GREASE WITHIN THE PURVIEW OF THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14A of Chapter 106 of the General Statutes reads as rewritten:

"Article 14A.

"Licensing and Regulation of Rendering ~~Plants and~~ Plants, Rendering ~~Operations.~~Operations, and Waste Kitchen Grease Collection.

"**§ 106-168.1. Definitions.**

For the purposes of this Article, unless the context or subject matter otherwise clearly ~~requires,~~ requires:

(1) "Collector" means any person, as defined in this section, who collects raw material or waste kitchen grease for the purpose of selling the same to any renderer or other person for further processing. "Collector" does not include restaurants or other food establishments that generate kitchen grease.

(1a) "Farmer" means any person actively engaged in agriculture as defined in G.S. 106-581.1. "Farmer" does not include a person who cultivates a garden solely for personal use.

...

(6) "Waste kitchen grease" means animal fats or vegetable oils that have been used, and will not be reused, for cooking in a food establishment. "Waste kitchen grease" does not include grease septage as defined in G.S. 130A-290.

"**§ 106-168.2. License required.**

No person shall engage in rendering operations or act as a collector of waste kitchen grease unless such person shall hold a valid license to do so issued as hereinafter provided.

"**§ 106-168.3. Exemptions.**

Nothing in this Article shall apply to the premises or the rendering operations on the premises of any establishment operating under a numbered permit from the North Carolina Department of Agriculture and Consumer Services as provided by the North Carolina Meat Inspection Act, or under United States government ~~inspection.~~inspection; provided, however, no person shall be exempt from the requirements of this Article when acting as a collector of waste kitchen grease.

"**§ 106-168.4. Application for rendering license.**

Application for license shall be made to the Commissioner of Agriculture, hereinafter called the "Commissioner," on forms provided by ~~him.~~the Commissioner. The application shall set forth the name and residence of the applicant, ~~his~~ the applicant's present or proposed place of business, the particular method which ~~he~~ the applicant intends to employ or employs in the processing of raw material, and such other information as the Commissioner may ~~require, except that the Commissioner shall not require the submission of blueprints, plans, or specifications of the existing plant or equipment of any person owning and operating a rendering plant in North Carolina on January 1, 1953.~~ require. The applicant shall pay a fee of ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) with each ~~application, which said fee shall be the only charge made in connection with licensure.~~application and a renewal fee of one hundred dollars ($100.00) annually after meeting the renewal requirements of this Article.

"§ 106-168.5. Duties of Commissioner upon receipt of ~~application;~~ the application for a rendering license; inspection committee.

Upon receipt of the ~~application,~~ application for a rendering license, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee," which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture and Consumer Services, one member who shall be designated by the Secretary of Health and Human Services and who shall be an employee of the Department of Health and Human Services, and one member who shall be designated by the ~~director~~ board of directors of the North Carolina ~~Division of the Southeastern~~ Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member.

"§ 106-168.6. Inspection by committee; certificate of specific findings.

...

"§ 106-168.7. Issuance of rendering license.

Upon receipt of the certificate of compliance from the committee, the Commissioner shall issue a rendering license to the applicant to conduct rendering operations as specified in the application. A license shall be valid ~~until revoked for cause as hereinafter provided.~~for one year and shall be renewed upon submission of a certification under oath of compliance with the requirements of this Article for licensure and payment of the annual renewal fee.

"§ 106-168.8. Minimum standards for conducting rendering operations.

The following minimum standards shall be required for all rendering operations subject to the provisions of this Article:

...

(8) Proof of general liability insurance of one million dollars ($1,000,000) shall be made in a manner satisfactory to the Commissioner.

"§ 106-168.9. Transportation by licensee.

Any person holding a rendering license under the provisions of this Article, or acting as a collector as herein defined, may haul and transport raw ~~material,~~ material or waste kitchen grease, except such material or waste kitchen grease as may be specifically prohibited by law or by the rules and regulations promulgated by the Commissioner, when such transporting and hauling is done in accordance with the provisions of this Article.

"§ 106-168.10. Disposal of diseased animals.

Any person holding a rendering license under the provisions of this Article is authorized to kill diseased, sick, old or crippled animals on the premises of the owner upon his request; provided that no animal known to have tuberculosis, Bang's disease, anthrax, or any other disease for which quarantine may be imposed, shall be removed from any premises placed

under quarantine without permission of the State Veterinarian, or his authorized agent. The licensee shall keep and make available to the Commissioner, upon request, such records as the Commissioner may require with respect to the collection and disposal of dead animals.

"§ 106-168.11. Authority of agents of rendering licensee.

Authority granted to any person holding a valid rendering license under the provisions of this Article shall extend also to the agents and employees of such person while acting within the scope of their authority. All such agents and employees shall comply with the provisions of this Article and rules and regulations not inconsistent therewith, and shall display evidence of such employment or agency upon proper request at any time while so acting.

"§ 106-168.12. Commissioner authorized to adopt rules and regulations.

...

"§ 106-168.13. Effect of failure to comply.

...

"§ 106-168.14. Collectors of raw material subject to certain provisions.

Any ~~collector,~~ collector of raw material, as defined in ~~this Article,~~G.S. 106-168.1, shall be subject to the provisions of subdivision (5) and subdivision (6) of G.S. ~~106-168.8~~106-168.8 and the provisions of G.S. 106-168.9, and any rules and regulations adopted by the Commissioner pursuant thereto.

"§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

(a) Any collector of waste kitchen grease shall submit an application for licensure to the Commissioner not less than 30 days before conducting any such collection or transportation. Licensure shall be for one year. The application shall be submitted in accordance with a procedure established by the Commissioner for this purpose. The application shall include all of the following:

(1) The applicant's name and address.

(2) A description of the operations to be performed by the applicant.

(3) The make, model, license number, and vehicle identification number of any vehicle to be used for the transportation of waste kitchen grease.

(4) A nonrefundable application fee of one hundred dollars ($100.00).

(b) The Commissioner shall issue each licensee a unique license number and a certificate. The license shall be renewable annually January 1, when accompanied by a one hundred dollar ($100.00) licensing renewal fee and certification of compliance with the provisions of this Article.

(c) Every licensee shall record, maintain for two years, and make available for inspection by the Department all of the following information:

(1) The name and address of each location or person from which the registrant obtained the waste kitchen grease for transportation.

(2) The quantity of material received from each location or person.

(3) The date on which the waste kitchen grease was obtained from each location or person.

(4) The waste kitchen grease operation or other processor to whom the waste kitchen grease was delivered.

(d) No person required to be licensed under this Article shall collect or transport waste kitchen grease without all of the following:

(1) Having in his or her possession a copy of the license required by this Article or other proof that the person is in compliance with the licensure requirement of this Article.

(2) Conspicuously displaying the licensee's name and the license number in letters not less than three inches high on any vehicle used for the transportation of waste kitchen grease.

(e) It shall be a violation of this Article for a collector to do any of the following:

SENATE BILL 599:
Rendering Act Amendments

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 7, 2011
Introduced by:	Sens. Bingham, Brock, Rouzer	**Prepared by:**	Mariah Matheson Research Assistant to the Senate Ag Comm.
Analysis of:	Second Edition		

SUMMARY: Senate Bill 599[1] would add a licensing requirement for collectors of waste kitchen grease to the statutes governing the licensing and regulation of rendering plants.

CURRENT LAW: The collection of waste kitchen grease currently is not regulated. Persons engaged in rendering operations are required to obtain a rendering license for $50. The license is valid until revoked for cause. Rendering operations is defined as the processing of inedible whole or portion of animal or poultry carcasses and includes collection of such raw material for the purpose of processing.

BILL ANALYSIS: Senate Bill 599 would amend the laws governing the licensing and regulation of rendering plants to include the collection of waste kitchen grease. The bill would add a definition of "waste kitchen grease" to mean animal fats or vegetable oils that have been used and will not be reused for cooking in a food establishment. It does not include grease septage.

Section 1 would do the following:

- Require persons engaged in collecting waste kitchen grease to obtain an annual license for $100, similar to a rendering operations license. Collectors of waste kitchen grease would be required to apply for a license not less than 30 days before beginning collection or transportation of the waste. Applications are to include (1) name and address, (2) description of operations, (3) make, model, license number and vehicle id number of vehicles used to transport waste kitchen grease, and (4) $100 application fee.
- Require waste kitchen grease licensees to have a copy of their license in their possession at all times or other proof of compliance when collecting or transporting waste, waste kitchen grease. The licensee's name and license number must be conspicuously displayed (3" or greater letters) on any vehicle used to transport waste kitchen grease.
- Require waste kitchen grease licensees to keep records for two years and these records must be made open to the Department for inspection. Records must contain (1) name and address of each location or person from whom waste kitchen grease was obtained, (2) quantity of material from each location, (3) date on which material was obtained, and (4) the waste kitchen grease operation or other processor to whom the waste was delivered.
- Make it unlawful for collectors to (1) sell or offer to sell waste kitchen grease to a person not licensed to transport the waste, (2) steal, contaminate, or damage any waste kitchen grease container or grease, (3) take grease from an unlicensed collector or knowingly take possession of grease that has been stolen, or (4) place a label on a waste kitchen grease container owned by another in order to assert ownership of the container.
- Increase the application fee for a rendering license from $50 to $100 and add an annual renewal fee of $100.

[1] As introduced, the bill was identical to House Bill 512, introduced by Rep. Torbett. House Bill 512 is in the House Finance Committee.

- Add a requirement for proof of general liability insurance in the amount of $1 million dollars for a rendering operation.
- Clarify that a person holding a rendering license or acting as a collector may haul and transport raw materials or waste kitchen grease.
- Clarify that a person holding a rendering license (and not a collector of waste kitchen grease) may kill diseased, old, or crippled animals on the premises of the owner if asked.

Any person collecting waste kitchen grease in violation of these provisions would be subject to a Class 1 misdemeanor[2] and up to a $5,000 civil penalty assessed by the Commissioner of Agriculture. (Under current law, violations of rendering operations are already subject to a Class 1 misdemeanor and up to $5,000 in civil penalties assessed by the Commissioner.)

These provisions do not apply to a farmer who collects waste kitchen grease for use related to his or her farm. There is a presumption that a waste kitchen grease container belongs to the person whose name is on the container.

Section 2 would make it a Class H felony[3] to take or aid in the taking of a waste kitchen grease container or the waste kitchen grease contained therein, if the container bears a notice that unauthorized removal is prohibited without the written consent of the owner, and the value of the container or the container with the grease, is more than $1,000. If the value is $1,000 or less, then the offense is a Class 1 misdemeanor.

EFFECTIVE DATE: The act would become effective January 1, 2012 and apply to offenses occurring on or after that date.

Barbara Riley, committee counsel to House Agriculture, substantially contributed to this summary.

S599-SMRB-85(e2) v1

[2] Assuming no prior convictions, a Class 1 misdemeanor would be subject to 1 to 45 days community punishment.
[3] Assuming no prior points, a Class H felony would be subject to 3 to 8 months of community punishment, intermediate punishment, or active punishment.

PAGES ATTENDING

COMMITTEE: Finance ROOM: 544

DATE: 6-9 TIME: 10:30

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Lee Payne	Lexington	Bingham
2 Lizzy Sirkin	New Bern	Preston
3 Jake Anthony	Raleigh	Harrington
4 Brad Yovanovich	Raleigh	Harrington
5 Blythe Layne	Cary	R. Stevens
6 ~~Nicole Daut~~ Metta Longo	~~Raleigh~~ Holly Springs	R. Stevens ~~Hunt~~
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 9, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
MIKE WATERS	NCRPA
Chris Williams	AANC
Tonya Hucks	TAA
Michelle Johnson	TAA
Courtney Duffy Coyle	TAA
Sharon Hatfield	TAA
Tonya Presby	TAA
Ann Dyer	TAA
Terry Ragland	TAA
Brenda Brantley	TAA
Latoya Patterson	Triangle Apt. Assoc. Raleigh NC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 9, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tom Bean	NCSEA
Jennie Renner-Heavrons	NC Housing Coalition
Brittany Teague	NC Housing Coalition
Megan Bryant	TAA
Katie Tracker	TAA
Norm Pract	Triangle Apartment Associates
Jeff Massengill	TAA
Jerome Goldberg	SELF (LANDLORD)
Walt Morgan	TAA
Matt Stewart	TAA
Martha Russell	TAA
Shannon Green	TAA
Rebecca Rosario	TAA

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 9, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Eric Wayne	DOR
Bill Rowe	NC Justice Center
Colleen Kachurek	AANC
Elizabeth Biser	Brooks Pierce
Amy Ellen	MBA
Karl Knapp	NCLM
Tammy Beason	TWC
Brad Phillips	TWC
Daniel Baum	Troutman Sanders
Thomas McCormick	City of Raleigh
Bruce Thompson	Parker Poe
Thom Moore	Elliott W Moore

Finance 6/9/11

Name	Firm or Agency
Keri Bruce	NWC
Rick Zechini	Progress Energy
Lisa Mat	NC HBA
Cady Thomas	NCAR
Candace Weaver	AANC
Tara Gerberich	AANC
Patti Bowden	AANC
Hegg Cronshaw	AT+T
Mel Sober	DCR
Cliff Webster	Citizen
Amanda Foley	Citizen
Sterling Kelly	AANC
Jim Frin	GTP
Jay Lenta	SAAC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 9, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Paul Sherman	NCAFB
Paul Stone	NCHCA
Frank Gray	NCHCA
Gene Ainsworth	AGA
Henry Jones	Henry - Raleigh
Durwood Lambeth	NS
J Rodd	BCS

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 9, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Crawford	AIANC
Susan Passmore	AANC
JON LOWDER	PTAA
Kellie Falk-Tillett	AANC
Matthew Eisley	Smith Anderson
Dave Horne	"
Mitch Leonard	SEANC
[illegible]	PTAA
Karen Ray	NCMA
Doug Lassiter	NCSTA
[illegible]	TSS

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

June 9, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
JUDY STALDER	TREBIC TRIAD REAL ESTATE & BUILDING INDUSTRY COALITION
LINDSEY	PTAA / SIGNATUREPROPERTY GROUP
W. Gardner Culpepper	DLC & Assoc
Will Culpepper	MVH
Stephanie Nalem	PTAA / Ginkgo Residential
Crystal Bibee	PTAA / Ginkgo
Brenda Jaquith	PTAA / Ginkgo
Joanie W Cobb	PTAA / Ginkgo
Nikel Edwards	PTAA / Apartment Guide
Jamie Herrera	PTAA / Apartment Guide
Andra Padgett	PTAA / Apartment Guide

SENATE FINANCE COMMITTEE
Monday, June 13, 2011 at 3:30 PM
Room 545, Legislative Office Building

MINUTES

The Senate Finance Committee convened at 3:30 PM on June 13, 2011 in room 544 of the Legislative Office Building. Twenty-six members of the committee were present. Senator Hartsell presided as chair.

H.B. 469 – Addl. Lumberton & St. Pauls Occup. Tax

Senator Walters was recognized to explain the bill which authorizes the City of Lumberton and the Town of St. Pauls to each levy an additional 3% occupancy tax. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 164 – Release of Upset Bid Deposit

Representative Randleman was recognized to explain the bill. It authorizes the release of funds deposited by the high bidder or upset bidder in a Power of Sale Foreclosure when a bankruptcy petition is filed during the 10 day upset bid process. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 350 – Property Tax Uniformity for Conservation Land

Representative McGrady was recognized to explain the bill. The bill clarifies and modifies the tax exemption for real property for education and scientific purposes as a protected natural area, creates a five-year rollback for avoided taxes if conservation property is no longer used for conservation purposes or is sold without an easement requiring perpetual use of the listed conservation purposes; and expressly aligns divination for education and scientific purposes with the property tax exemption for education property. It also requires that the entity owning the property must be organized to receive and administer lands for conservation purposes and adds the requirement that property qualifying under this exemption either not earn income or only earn income that is merely incidental to and not inconsistent with conservation purposes. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 642 – Justice Reinvestment Act

Representative Guice was recognized to explain the bill which revises criminal laws, criminal procedure laws, and probation statutes based upon the recommendations of the Justice Reinvestment Project. Doug Holbrook, a fiscal analyst with the Fiscal Research Division, was recognized to answer questions. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 160 – Tax Check-off

Representative Dollar was recognized to explain the bill which provides a check-off box on the income tax return for individuals to make donations for early detection of breast and cervical cancer. The State Treasurer shall distribute the contributions to the Cancer Prevention and Control Branch of the Department of Health and Human Services. The funds shall be used only for early detection of breast and cervical cancer. Senator Hunt moved for a favorable report and the motion carried. A copy of the bill is attached.

H.B. 49 – Laura's Law

Senator Harrington was recognized to explain the bill. It increases the punishment for DWI offenders with three or more grossly aggravating factors, authorizes the court to require continuous alcohol monitoring for certain offenders, and imposes $100 in court costs for DWI offenders. Susan Sitze, an attorney with the Research Division, was recognized to answer questions. Senator Goolsby was recognized to offer an amendment. The amendment removes credit for time in an inpatient treatment program in lieu of imprisonment. Senator Goolsby moved for its adoption and Senator Harrington was recognized to oppose the amendment. The motion carried. Senator Rabon made a motion for unfavorable as to bill, but favorable to committee substitute and the motion carried. A copy of the bill, the summary and the amendment is attached.

S.B. 572 – Omnibus County Bill

Senator Apodaca was recognized to explain the bill. It creates the Record Preservation Modernization Commission to study issues related to the preservation of records. It also amends the property tax laws to extend the time for filing an application for a property tax exemption and requires a zip + 4 as part of the address for a determination of where to source the sale of a product delivered to a purchaser who is required to make monthly prepayments of sales and use taxes. Senator Stevens moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 617 – Portable Electronic Insurance Coverage

Senator Apodaca explained the bill which requires companies offering insurance against loss, theft, or mechanical failure for portable electronic devices and accessories hold a limited lines license issued by the NC Department of Insurance. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 896 – Facilitate Electronic Listing

Senator Tillman was recognized to explain the bill. He requested that Trina Griffin, a staff attorney with the Research Division, explain the bill and answer any questions. The bill authorizes the Department of Revenue, in consultation with the counties, to

establish standards and requirements for the electronic listing of personal property allowed by counties. Senator Hunt moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 397 – DHHS Penalties

Senator Apodaca was recognized to explain the bill. It amends the penalty provisions for nursing home facilities, adult care facilities, and facilities providing services to the mentally ill, developmentally disabled, and substance abusers. The penalty provisions for each type of facility are substantially similar. Heather Fennell, a staff attorney with the Research Division, and Jesse Goodman, Division of Health Regulations – NC Department of Health and Human Services, were recognized to answer questions. Senator Apodaca offered a technical amendment and moved for its adoption. The motion carried. Senator Apodaca made a motion for unfavorable as to bill, but favorable as to committee substitute and the motion carried. A copy of the bill, the summary and the amendment is attached.

At this point in the meeting, Senator Apodaca took over as the presiding chair.

S.B. 436 – QBV Tax Credit

Senator Hartsell was recognized to explain the bill and Senator Stevens moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The bill extends the sunset on the tax credit for qualified business ventures from January 1, 2013, to January 1, 2016. The PCS extends for one year the sales tax refund allowed to a joint governmental agency created to operate a cable television system. Senator Stein moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the fiscal note is attached.

S.B. 249 – Restore Cigarette Tax Stamps and **S.B. 306 – Eliminate Tobacco Discount**

The bills were jointly heard, for discussion only. Senator Hartsell was recognized to explain them. Senator Stevens moved to adopt the PCSs for discussion and the motion carried. The PCS to Senate Bill 249 requires a tax stamp be attached to packages of cigarettes sold in North Carolina as evidence of payment of the tax on cigarettes and creates a criminal penalty for counterfeiting stamps or stamp impression devices. The PCS to Senate Bill 306 reduces the discount granted for distributors that make timely tax payments on the cigarette excise tax. At this point a WRAL and CNBC news reports on Hezbollah cigarette smuggling in NC were shown. Thomas Caves, liaison for NC Crime Control and Public Safety, was recognized to speak in favor of SB 249. Pete Bosley, NC Wholesalers Association representative, and Andy Ellen, a lobbyist with the NC Retail Merchants Association, were recognized to speak in opposition to the bills. Sandy Sands, representing Altria and Phillip Morris, spoke in favor of the bill. A copy of the PCSs, the summaries, the fiscal notes, and the WRAL and CNBC DVDs is attached.

The meeting adjourned at 4:40 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Monday, June 13, 2011, 3:30 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 49	Laura's Law.	Rep. Warren Rep. Torbett Rep. Hastings Rep. Moore
HB 160	Check-Off Donation: Breast Cancer Screening.	Rep. Justice Rep. Dollar Rep. Howard Rep. Stevens
HB 164	Release of Upset Bid Deposit.	Rep. Jordan Rep. Hurley Rep. Randleman Rep. Spear
HB 289	Authorize Various Special Plates.	Rep. Gillespie
HB 350	Property Tax Uniformity for Conservation Land.	Rep. McGrady Rep. Starnes Rep. Brubaker Rep. Harrison
HB 397	DHHS Penalties and Remedies Revision.-AB	Rep. Lewis
HB 469	Addl. Lumberton & St. Pauls Occup. Tax.	Rep. Graham Rep. Pierce Rep. Pridgen
HB 617	Portable Electronics Insurance Coverage.	Rep. Dockham
HB 642	Justice Reinvestment Act.	Rep. Bordsen Rep. Parmon

		Rep. Faircloth
		Rep. Guice
HB 896	Facilitate Electronic Listing.	Rep. Brubaker
SB 195	Operation of Mopeds.	Sen. Apodaca
SB 249	Restore Cigarette Tax Stamps.	Sen. Hartsell
SB 306	Eliminate Tobacco Discount.	Sen. Hartsell
SB 436	Extend Qualified Business Venture Tax Credit.	Sen. Hartsell
SB 572	Omnibus County Bill.	Sen. Davis

Adjournment

HOUSE BILL 469
Committee Substitute Favorable 6/3/11

Short Title: Addl. Lumberton & St. Pauls Occup. Tax. (Local)

Sponsors:

Referred to:

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AUTHORIZATION TO LEVY AN OCCUPANCY TAX IN THE CITY OF LUMBERTON AND THE TOWN OF ST. PAULS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 1997-361, as amended by S.L. 2007-332, is amended by adding a new subsection to read:

"(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Lumberton City Council may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The City of Lumberton may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section."

SECTION 2. Section 1 of S.L. 1998-112, as amended by S.L. 2006-34, is amended by adding a new subsection to read:

"(a2) Authorization of Second Additional Tax. – In addition to the tax authorized by subsections (a) and (a1) of this section, the board of commissioners of the Town of St. Pauls may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under this section. The levy, collection, administration, use, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. St. Pauls may not levy a tax under this subsection unless it also levies the tax authorized under subsections (a) and (a1) of this section."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 469:
Addl. Lumberton & St. Pauls Occup. Tax

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Reps. Graham, Pierce, Pridgen	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 469 authorizes the City of Lumberton and the Town of St. Pauls to each levy an additional 3% occupancy tax. The provisions of both existing local acts conform to the occupancy tax guidelines adopted by the House Finance Committee.***

CURRENT LAW & BILL ANALYSIS:

LUMBERTON

The City of Lumberton, which is located in Robeson County, is currently authorized to levy a room occupancy tax of up to 3%. Robeson County does not have authority to levy a room occupancy tax. In 1997, the City obtained temporary authorization to levy an additional 3%, which expired on August 1, 2000. The proceeds of the existing tax must be remitted to a Tourism Development Authority, which must use at least two-thirds of the proceeds for tourism promotion and the remainder for tourism-related expenditures. The current local act conforms to the occupancy tax guidelines.

Section 1 of the bill would authorize the City of Lumberton to levy an additional 3% occupancy tax to be used in the same manner as the existing 3% occupancy tax.

ST. PAULS

In 1998 and 2006, the General Assembly authorized the Town of St. Pauls to levy a 1% room occupancy tax and a 2% room occupancy tax, respectively. The town is located in Robeson County, which does not have authority to levy a room occupancy tax. Therefore, the current total occupancy tax rate in the town is 3%. The proceeds are remitted to the St. Pauls Tourism Development Authority, which is required to spend at least two-thirds of the proceeds on tourism promotion and the remainder on tourism-related expenditures.

Section 2 of the bill would authorize the Town of St. Pauls to levy an additional 3% occupancy tax to be used in the same manner as the existing 3% occupancy tax.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,[1] which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a

[1] G.S. 153A-155 and G.S. 160A-215.

Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

H469-SMSV-74(e2) v1

HOUSE BILL 164
Committee Substitute Favorable 4/13/11

Short Title: Release of Upset Bid Deposit. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE RELEASE OF FUNDS DEPOSITED BY AN UPSET BIDDER OR A HIGH BIDDER IN A FORECLOSURE PROCEEDING WHEN A BANKRUPTCY PETITION IS FILED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-21.22 reads as rewritten:

"**§ 45-21.22. Procedure upon dissolution of order restraining or enjoining sale, or upon ~~lifting of automatic~~ debtor's bankruptcy ~~stay.~~ before completion of sale.**

(a) When, before the date fixed for a sale, a judge dissolves an order restraining or enjoining the sale, he may, if the required notice of sale has been given, provide by order that the sale shall be held without additional notice at the time and place originally fixed therefor, or he may, in his discretion, make an order with respect thereto as provided in subsection (b).

(b) When, after the date fixed for a sale, a judge dissolves an order restraining or enjoining the sale, he shall by order fix the time and place for the sale to be held upon notice to be given in such manner and for such length of time as he deems advisable.

(c) When, after the entry of any authorization or order by the clerk of superior court pursuant to G.S. 45-21.16 and before the expiration of the 10-day upset bid period, the foreclosure sale is stayed ~~by the debtor filing a bankruptcy petition~~ pursuant to 11 U.S.C. § 105 or 362, and thereafter the stay is lifted, terminated, or dissolved, the trustee or mortgagee shall not be required to comply with the provisions of G.S. 45-21.16, but shall advertise and hold the sale in accordance with the provisions of G.S. 45-21.16A, 45-21.17, and 45-21.17A.

(d) In the event that completion of the foreclosure sale is stayed pursuant to 11 U.S.C. § 105 or 362, before the expiration of the 10-day upset bid period:

(1) The clerk of superior court who received a deposit from an upset bidder shall release any deposits held on behalf of the upset bidder to the upset bidder upon receipt of a certified copy of an order or notice from the bankruptcy court indicating that the debtor has filed a bankruptcy petition; or

(2) The trustee or mortgagee who received a cash deposit from the high bidder at the foreclosure sale, upon notification of the bankruptcy stay, shall release any deposits held on behalf of the high bidder to the high bidder."

SECTION 2. This act becomes effective October 1, 2011.

HOUSE BILL 164:
Release of Upset Bid Deposit

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Reps. Randleman, Hurley, Spear; Jordan	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 164 authorizes the release of funds deposited by the high bidder or upset bidder in a Power of Sale foreclosure when a bankruptcy petition is filed during the 10 day upset bid process.***

CURRENT LAW: Foreclosure sales under a Power of Sale are governed by Article 2A of Chapter 45 of the General Statues.

G.S. 45-21.22 provides the procedure for a foreclosure sale when:

- before or after the date fixed for a sale, a judge lifts an order enjoining the sale; or
- after the entry of any authorization or order by the clerk of superior court and before the expiration of the 10-day upset bid period, the foreclosure is stayed by the debtor filing a bankruptcy petition and thereafter the stay is lifted.

State statutes do not specifically address what happens to the deposit of a high bidder held by a trustee or mortgagee, or of an upset bidder held by the clerk of superior court, if a sale is enjoined by the filing of a bankruptcy action after the authorization or order of sale, and prior to the expiration of the 10-day upset bid period.

BILL ANALYSIS: House Bill 164 (PCS) provides that if the completion of a foreclosure sale is stayed pursuant to federal bankruptcy law before the expiration of the 10-day upset bid period:

- the clerk of superior court may release any deposits held on behalf of an upset bidder, upon receipt of a certified copy of an order or notice from the Bankruptcy Court indicating that the debtor has filed a bankruptcy petitioner; or
- the trustee or mortgagee who received cash deposit from the high bidder shall release any deposits held on behalf of the high bidder, upon notification of the bankruptcy stay.

EFFECTIVE DATE: This act becomes effective October 1, 2011.

Giles Perry, counsel to House Judiciary, substantially contributed to this summary.

H164-SMTD-88(e2) v2

HOUSE BILL 350
Committee Substitute Favorable 6/1/11

Short Title: Property Tax Uniformity for Conservation Land. (Public)

Sponsors:

Referred to:

March 15, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY WHEN LAND USED FOR CONSERVATION PURPOSES IS TO BE EXCLUDED FROM THE PROPERTY TAX BASE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-275 reads as rewritten:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are designated special classes under Article V, Sec. 2(2), of the North Carolina Constitution and are excluded from tax:

....

(12) Real property that (i) is owned by a nonprofit corporation or association organized to receive and administer lands for conservation purposes, (ii) is exclusively held and used ~~by its owner for educational and scientific purposes as a protected natural area.~~ for one or more of the purposes listed in this subdivision, and (iii) produces no income or produces income that is incidental to and not inconsistent with the purpose or purposes for which the land is held and used. ~~(For purposes of this subdivision, the term "protected natural area" means a nature reserve or park in which all types of wild nature, flora and fauna, and biotic communities are preserved for observation and study.)~~The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding five fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property (i) is no longer exclusively held and used for one or more of the purposes listed in this subdivision, (ii) produces income that is not incidental to and consistent with the purpose or purposes for which the land is held and used, or (iii) is sold or transferred without an easement recorded at the time of sale that requires perpetual use of the land for one or more of the purposes listed in this subdivision and that prohibits any use of the land that would generate income that is not incidental to and consistent with the purpose or purposes for which the land is held and used. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished upon the real property being sold or transferred to a local, state, or federal government unit for conservation purposes or subject to an easement recorded at the time of sale that requires perpetual use of the land for one or

more of the purposes listed in this subdivision. The purposes allowed under this subdivision are any of the following:

a. Used for an educational or scientific purpose as a nature reserve or park in which wild nature, flora and fauna, and biotic communities are preserved for observation and study. For purposes of this sub-subdivision, the terms "educational purpose" and "scientific purpose" are defined in G.S. 105-278.7(f).

b. Managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission.

c. Managed under a forest stewardship plan developed by the Forest Stewardship Program.

d. Used for public access to public waters or trails.

e. Used for protection of water quality and subject to a conservation agreement under the provision of the Conservation and Historic Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes.

f. Held by a nonprofit land conservation organization for sale or transfer to a local, state, or federal government unit for conservation purposes.

...."

SECTION 2. G.S. 105-277.1F(a) is amended by adding a new subdivision to read:

"(a) Scope. – This section applies to the following deferred tax programs:

(1) G.S. 105-275(12)f., real property held for future transfer to government unit for conservation purposes.

(1a) G.S. 105-275(29a), historic district property held as future site of historic structure.

(2) G.S. 105-277.1B, the property tax homestead circuit breaker.

(2a) G.S. 105-277.1D, the inventory property tax deferral.

(3) G.S. 105-277.4(c), present-use value property.

(4) G.S. 105-277.14, working waterfront property.

(4a) G.S. 105-277.15, wildlife conservation land.

(5) G.S. 105-278(b), historic property.

(6) G.S. 105-278.6(e), nonprofit property held as future site of low- or moderate-income housing."

SECTION 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.

HOUSE BILL 350:
Property Tax Uniformity for Conservation Land

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Reps. McGrady, Starnes, Brubaker, Harrison	**Prepared by:**	Dan Ettefagh Committee Counsel
Analysis of:	Second Edition		

SUMMARY: HB 350 does the following:

- Clarifies and modifies the tax exemption for real property for educational and scientific purposes as a protected natural area[1] by listing certain, enumerated conservation purposes.
- Creates a 5-year rollback for avoided taxes if conservation property is no longer used for conservation purposes, is used to generate income inconsistent with conservation, or is sold or transferred without an easement requiring perpetual use of the listed conservation purposes and without a prohibition on income generation.
- Expressly aligns definitions for educational and scientific purposes with the property tax exemption for property used for educational and scientific purposes.
- Requires, as does the income tax credit for real property donations for conservation purposes, that the entity owning the property must be "organized to receive and administer lands for conservation purposes".
- Adds the requirement that property qualifying under this exemption either not earn income or only earn income that is merely incidental to and not inconsistent with conservation purposes.

[As introduced, this bill was identical to S579, as introduced by Sen. Hartsell, which is currently in Senate Finance.]

CURRENT LAW: G.S. 105-275 lists classes of property that are authorized by the North Carolina Constitution to be excluded from the property tax base. One of those classes is real property that is (i) owned by a nonprofit corporation or association and (ii) exclusively held and used by its owner for educational and scientific purposes as a protected natural area.

BILL ANALYSIS: The proposed committee substitute makes the following changes to the exemption in G.S. 105-275 (12):

- Clarifies that the definitions for educational purpose and scientific purpose have the same meanings as defined in G.S. 105-278.7 (real and personal property used for, *inter alia*, educational or scientific purposes.)
- Adds to the previous qualifying use (that land be used as a protected natural area) the following conservation purposes:
    - Managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission
    - Managed under a forest stewardship plan developed by the Forest Stewardship Program.[2]

[1] A protected natural area is a nature reserve or park in which all types of wild nature, flora and fauna, and biotic communities are preserved for observation and study

- Used for public access to public waters or trails.
- Used for protection of water quality and subject to a conservation agreement.[3]
- Held by a nonprofit land conservation organization for sale or transfer to a local, state, or federal government unit for conservation purposes.

- Property taxes avoided for up to the preceding 5 fiscal years are no longer eliminated but, instead, are carried forward as deferred taxes that become due and payable if a disqualifying event occurs. The following are disqualifying events:
  - The land is no longer used for one of the qualifying conservation purposes or is used to produce income inconsistent with the conservation use/s to which the land is applied.
  - The conservation organization transfers the land without an easement that requires the conservation use/s required for the land to qualify for the property tax benefit will continue to be applied and that prohibits income generation.
- It adds a requirement that property excluded from the tax base for conservation purposes not earn income or only earn income that is both incidental to and not inconsistent with the conservation purpose (e.g., a forest tract could not be managed for the commercial production of timber but some trees could be harvested if the harvesting is incidental and needed to accomplish the overall conservation purposes for which the tract is being managed).

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.

H350-SMMC-4(e2) v1

[2] Authorized by the Cooperative Forestry Assistance Act of 1978, this Program provides technical assistance, through State forestry agency partners, to nonindustrial private forest owners to encourage and enable active long-term forest management.
[3] Conservation agreements are governed by the provisions of the Conservation and Historical Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 350 (Second Edition)

SHORT TITLE: Property Tax Uniformity for Conservation Land.

SPONSOR(S): Representatives McGrady, Starnes, Brubaker, and Harrison

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					

Local Governments: *Insignificant Property Tax Revenue Change to Local Governments*

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments; NC Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after July 1, 2011.

BILL SUMMARY:

HB 350 does the following:

- Clarifies and modifies the conservation property tax exemption by listing certain, enumerated conservation purposes.
- Creates a 5-year rollback for avoided taxes if conservation property is no longer used for conservation purposes, used to generate income inconsistent with conservation, or is sold or transferred without an easement requiring perpetual use of the listed conservation purposes.
- Expressly aligns definitions for educational and scientific purposes with the property tax exemption for property used for educational and scientific purposes.
- Requires, as does the income tax credit for real property donations for conservation purposes, that the entity owning the property must be "organized to receive and administer lands for conservation purposes".
- Adds the requirement that property qualifying under this exemption not earn income or earn income that is merely incidental to and not inconsistent with conservation purposes.

Source: Dan Ettefagh, Committee Counsel

ASSUMPTIONS AND METHODOLOGY:

HB 350 would potentially reduce property tax revenues to local governments by increasing the uses for which conservation land qualifies for a property tax exclusion. Under current law, property owned by a nonprofit and used "exclusively for scientific or educational purposes as a protected natural area" qualifies for a property tax exclusion under 105-275. HB 350 expands this exclusion by including five additional enumerated purposes in Section 1. Although the additional purposes may increase the property acreage that qualifies for the exclusion, the additional purposes are closely aligned with scientific and educational purposes and may be interpreted in some counties to qualify under current law.

The 5-year rollback included in the bill would potentially increase property tax revenues in circumstances in which property that is exempt under current law is disqualified as a result of a disqualifying event. In the event of a disqualification, the deferred taxes for the preceding five years will become due. The rollback will also serve to mitigate the property tax loss resulting from the expansion of purposes for which property can be excluded.

Because the bill includes provisions which will potentially reduce local revenues (the expansion of qualifying purposes) and increase local revenues (a 5-year roll-back for disqualifying events), it is not clear whether the bill will result in an overall reduction or increase in local revenues. The overall change in revenue is expected to be minimal.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 13, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 642

Committee Substitute Favorable 4/14/11
Committee Substitute #2 Favorable 5/31/11
Fourth Edition Engrossed 6/2/11
Judiciary I Committee Substitute Adopted 6/9/11

Short Title: Justice Reinvestment Act. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE JUSTICE REINVESTMENT PROJECT AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE JUSTICE REINVESTMENT ACT OF 2011."

The General Assembly of North Carolina enacts:

PART I. STRENGTHEN PROBATION SUPERVISION

SECTION 1.(a) G.S. 15A-1340.11(2) reads as rewritten:

"(2) Community punishment. – A sentence in a criminal case that does not include an active punishment or assignment to a drug treatment court. ~~punishment, an intermediate punishment, or any of the conditions of probation listed in subdivision (6) of this section.~~It may include any one or more of the conditions set forth in G.S. 15A-1343(a1)."

SECTION 1.(b) G.S. 15A-1340.11(6) reads as rewritten:

"(6) Intermediate punishment. – A sentence in a criminal case that places an offender on supervised probation. ~~probation and includes at least one~~ It may include drug treatment court, in addition to one or more of the ~~following conditions:~~conditions set forth in G.S. 15A-1343(a1).

~~a. Special probation as defined in G.S. 15A-1351(a).~~
~~b. Assignment to a residential program.~~
~~c. House arrest with electronic monitoring.~~
~~d. Intensive supervision.~~
~~e. Assignment to a day reporting center.~~
~~f. Assignment to a drug treatment court program.~~"

SECTION 1.(c) G.S. 15A-1343 is amended by adding a new subsection to read:

"(a1) Community and Intermediate Probation Conditions. – In addition to any conditions a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any one or more of the following conditions as part of a community or intermediate punishment:

(1) House arrest with electronic monitoring.
(2) Special probation as defined in G.S. 15A-1351(a).
(3) Perform community service.
(4) Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month

confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods.

(5) Substance abuse assessment, monitoring, or treatment.

(6) Participation in an educational or vocational skills development program, including an evidence-based program.

(7) Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2)."

SECTION 1.(d) G.S. 15A-1343.2(e) reads as rewritten:

"(e) Delegation to Probation Officer in Community Punishment. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to community punishment ~~to:~~to do any of the following:

(1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this ~~supervision;~~supervision.

(2) Report to the offender's probation officer on a frequency to be determined by the ~~officer; or~~officer.

(3) Submit to substance abuse assessment, monitoring or treatment.

(4) Submit to house arrest with electronic monitoring.

(5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods.

(6) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.

(7) Participate in an educational or vocational skills development program, including an evidence-based program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to subsection (e) of this section after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (5) of this subsection may not be imposed unless the Division determines that the offender failed to comply with one or more of the conditions imposed by the court. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

~~If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.~~

The Department shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. Upon the signing of a waiver of rights by the probationer, with both the probation officer and a supervisor signing as witnesses, the probationer may be confined for the period designated on the violation report."

SECTION 1.(e) G.S. 15A-1343.2(f) reads as rewritten:

"(f) Delegation to Probation Officer in Intermediate Punishments. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to intermediate punishment ~~to:~~to do any of the following:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this ~~supervision;~~supervision.

(2) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored ~~electronically;~~ electronically.

(3) Submit to substance abuse assessment, monitoring or ~~treatment;~~ treatment.

(4) Participate in an educational or vocational skills development ~~program.~~program, including an evidence-based program.

(5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2).

(6) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods.

(7) Submit to house arrest with electronic monitoring.

(8) Report to the offender's probation officer on a frequency to be determined by the officer.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to subsection (f) of this section after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (6) of this subsection may not be imposed unless the Division determines that the offender failed to comply with one or more of the conditions imposed by the court. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

~~If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.~~

The Department shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (6) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. Upon the signing of a waiver of rights by the probationer, with both the probation officer and a supervisor signing as witnesses, the probationer may be confined for the period designated on the violation report."

SECTION 1.(f) G.S. 15A-1343.2 is amended by adding a new subsection to read:

"(b1) Departmental Risk Assessment by Validated Instrument Required. – As part of the probation program developed by the Department of Correction pursuant to subsection (b) of this section, the Department of Correction shall use a validated instrument to assess each probationer for risk of reoffending and shall place a probationer in a supervision level based on the probationer's risk of reoffending and criminogenic needs."

SECTION 1.(g) G.S. 15A-1343(b1)(3b) is repealed.

SECTION 1.(h) G.S. 15A-1340.11(3) is repealed.

SECTION 1.(i) G.S. 15A-1340.11(5) is repealed.

SECTION 1.(j) G.S. 15A-1340.11(8) is repealed.

SECTION 1.(k) G.S. 15A-1343.2(c) reads as rewritten:

"(c) Probation Caseload Goals. – It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons who are determined to be high or moderate risk of rearrest as determined by the Department's validated risk assessment should not exceed an average of 60 offenders per officer.~~sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998.~~"

SECTION 1.(l) This section becomes effective December 1, 2011, and applies to persons placed on probation based on offenses which occur on or after December 1, 2011; however, this section and the provisions of this act requiring the Department of Correction to adopt guidelines and procedures are effective when this act becomes law.

PART II. POST-RELEASE SUPERVISION CHANGES

SECTION 2.(a) G.S. 15A-1368.1 reads as rewritten:

"**§ 15A-1368.1. Applicability of Article 84A.**

This Article applies to all felons ~~in Class B1 through Class E~~ sentenced to an active punishment under Article 81B of this Chapter, but does not apply to felons in Class A and Class B1 sentenced to life imprisonment without parole. Prisoners subject to Articles 85 and 85A of this Chapter are excluded from this Article's coverage."

SECTION 2.(b) G.S. 15A-1368.2 reads as rewritten:

"**§ 15A-1368.2. Post-release supervision eligibility and procedure.**

(a) A prisoner to whom this Article applies shall be released from prison for post-release supervision on the date equivalent to his maximum imposed prison term less ~~nine~~

~~months,~~ 12 months in the case of Class B1 through E felons and less nine months in the case of Class F through I felons, less any earned time awarded by the Department of Correction or the custodian of a local confinement facility under G.S. 15A-1340.13(d). If a prisoner has not been awarded any earned time, the prisoner shall be released for post-release supervision on the date equivalent to his maximum prison term less nine months.

(b) A prisoner shall not refuse post-release supervision.

(c) A supervisee's period of post-release supervision shall be for a period of ~~nine months,~~ 12 months in the case of Class B1 through E felons and nine months in the case of Class F through I felons, unless the offense is an offense for which registration is required pursuant to Article 27A of Chapter 14 of the General Statutes. For offenses subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes, the period of post-release supervision is five years. The conditions of post-release supervision are as authorized in G.S. 15A-1368.5.

...."

SECTION 2.(c) G.S. 15A-1368.4(e) is amended by adding a new subdivision to read:

"(7a) Not to abscond, by willfully avoiding supervision or by willfully making the supervisee's whereabouts unknown to the supervising probation officer."

SECTION 2.(d) G.S. 15A-1368.3(c) reads as rewritten:

"(c) Effect of Violation. – If the supervisee violates a condition, described in G.S. 15A-1368.4, at any time before the termination of the supervision period, the Commission may continue the supervisee on the existing supervision, with or without modifying the conditions, or if continuation or modification is not appropriate, may revoke post-release supervision as provided in G.S. 15A-1368.6 and reimprison the supervisee for a term consistent with the following requirements:

(1) ~~The supervisee~~Supervisees who were convicted of an offense for which registration is required under Article 27A of Chapter 14 of the General Statutes and supervisees whose supervision is revoked for a violation of the required controlling condition under G.S. 15A-1368.4(b) or for absconding in violation of G.S. 15A-1368.4(e)(7a) will be returned to prison up to the time remaining on ~~his~~their maximum imposed ~~term.~~terms. All other supervisees will be returned to prison for three months and may be returned for three months on each of two subsequent violations, after which supervisees who were Class B1 through E felons may be returned to prison up to the time remaining on their maximum imposed terms.

(2) The supervisee shall not receive any credit for days on post-release supervision against the maximum term of imprisonment imposed by the court under G.S. 15A-1340.13.

(3) Pursuant to Article 19A of Chapter 15, the Department of Correction shall award a prisoner credit against any term of reimprisonment for all time spent in custody as a result of revocation proceedings under G.S. 15A-1368.6.

(4) The prisoner is eligible to receive earned time credit against the maximum prison term as provided in G.S. 15A-1340.13(d) for time served in prison after the revocation."

SECTION 2.(e) G.S. 15A-1340.17(d) reads as rewritten:

"(d) Maximum Sentences Specified for Class F through Class I Felonies. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

~~3-4~~	~~4-5~~	~~5-6~~	~~6-8~~	~~7-9~~	~~8-10~~	~~9-11~~	~~10-12~~
~~11-14~~	~~12-15~~	~~13-16~~	~~14-17~~	~~15-18~~	~~16-20~~	~~17-21~~	~~18-22~~
~~19-23~~	~~20-24~~	~~21-26~~	~~22-27~~	~~23-28~~	~~24-29~~	~~25-30~~	~~26-32~~
~~27-33~~	~~28-34~~	~~29-35~~	~~30-36~~	~~31-38~~	~~32-39~~	~~33-40~~	~~34-41~~
~~35-42~~	~~36-44~~	~~37-45~~	~~38-46~~	~~39-47~~	~~40-48~~	~~41-50~~	~~42-51~~
~~43-52~~	~~44-53~~	~~45-54~~	~~46-56~~	~~47-57~~	~~48-58~~	~~49-59~~	
3-13	4-14	5-15	6-17	7-18	8-19	9-20	10-21
11-23	12-24	13-25	14-26	15-27	16-29	17-30	18-31
19-32	20-33	21-35	22-36	23-37	24-38	25-39	26-41
27-42	28-43	29-44	30-45	31-47	32-48	33-49	34-50
35-51	36-53	37-54	38-55	39-56	40-57	41-59	42-60
43-61	44-62	45-63	46-65	47-66	48-67	49-68".	

SECTION 2.(f) G.S. 15A-1340.17(e) reads as rewritten:

"(e) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms up to 339 Months. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

~~15-27~~	~~16-29~~	~~17-30~~	~~18-31~~	~~19-32~~	~~20-33~~	~~21-35~~	~~22-36~~
~~23-37~~	~~24-38~~	~~25-39~~	~~26-41~~	~~27-42~~	~~28-43~~	~~29-44~~	~~30-45~~
~~31-47~~	~~32-48~~	~~33-49~~	~~34-50~~	~~35-51~~	~~36-53~~	~~37-54~~	~~38-55~~
~~39-56~~	~~40-57~~	~~41-59~~	~~42-60~~	~~43-61~~	~~44-62~~	~~45-63~~	~~46-65~~
~~47-66~~	~~48-67~~	~~49-68~~	~~50-69~~	~~51-71~~	~~52-72~~	~~53-73~~	~~54-74~~
~~55-75~~	~~56-77~~	~~57-78~~	~~58-79~~	~~59-80~~	~~60-81~~	~~61-83~~	~~62-84~~
~~63-85~~	~~64-86~~	~~65-87~~	~~66-89~~	~~67-90~~	~~68-91~~	~~69-92~~	~~70-93~~
~~71-95~~	~~72-96~~	~~73-97~~	~~74-98~~	~~75-99~~	~~76-101~~	~~77-102~~	~~78-103~~
~~79-104~~	~~80-105~~	~~81-107~~	~~82-108~~	~~83-109~~	~~84-110~~	~~85-111~~	~~86-113~~
~~87-114~~	~~88-115~~	~~89-116~~	~~90-117~~	~~91-119~~	~~92-120~~	~~93-121~~	~~94-122~~
~~95-123~~	~~96-125~~	~~97-126~~	~~98-127~~	~~99-128~~	~~100-129~~	~~101-131~~	~~102-132~~
~~103-133~~	~~104-134~~	~~105-135~~	~~106-137~~	~~107-138~~	~~108-139~~	~~109-140~~	~~110-141~~
~~111-143~~	~~112-144~~	~~113-145~~	~~114-146~~	~~115-147~~	~~116-149~~	~~117-150~~	~~118-151~~
~~119-152~~	~~120-153~~	~~121-155~~	~~122-156~~	~~123-157~~	~~124-158~~	~~125-159~~	~~126-161~~
~~127-162~~	~~128-163~~	~~129-164~~	~~130-165~~	~~131-167~~	~~132-168~~	~~133-169~~	~~134-170~~
~~135-171~~	~~136-173~~	~~137-174~~	~~138-175~~	~~139-176~~	~~140-177~~	~~141-179~~	~~142-180~~
~~143-181~~	~~144-182~~	~~145-183~~	~~146-185~~	~~147-186~~	~~148-187~~	~~149-188~~	~~150-189~~
~~151-191~~	~~152-192~~	~~153-193~~	~~154-194~~	~~155-195~~	~~156-197~~	~~157-198~~	~~158-199~~
~~159-200~~	~~160-201~~	~~161-203~~	~~162-204~~	~~163-205~~	~~164-206~~	~~165-207~~	~~166-209~~
~~167-210~~	~~168-211~~	~~169-212~~	~~170-213~~	~~171-215~~	~~172-216~~	~~173-217~~	~~174-218~~
~~175-219~~	~~176-221~~	~~177-222~~	~~178-223~~	~~179-224~~	~~180-225~~	~~181-227~~	~~182-228~~
~~183-229~~	~~184-230~~	~~185-231~~	~~186-233~~	~~187-234~~	~~188-235~~	~~189-236~~	~~190-237~~
~~191-239~~	~~192-240~~	~~193-241~~	~~194-242~~	~~195-243~~	~~196-245~~	~~197-246~~	~~198-247~~
~~199-248~~	~~200-249~~	~~201-251~~	~~202-252~~	~~203-253~~	~~204-254~~	~~205-255~~	~~206-257~~
~~207-258~~	~~208-259~~	~~209-260~~	~~210-261~~	~~211-263~~	~~212-264~~	~~213-265~~	~~214-266~~
~~215-267~~	~~216-269~~	~~217-270~~	~~218-271~~	~~219-272~~	~~220-273~~	~~221-275~~	~~222-276~~
~~223-277~~	~~224-278~~	~~225-279~~	~~226-281~~	~~227-282~~	~~228-283~~	~~229-284~~	~~230-285~~
~~231-287~~	~~232-288~~	~~233-289~~	~~234-290~~	~~235-291~~	~~236-293~~	~~237-294~~	~~238-295~~
~~239-296~~	~~240-297~~	~~241-299~~	~~242-300~~	~~243-301~~	~~244-302~~	~~245-303~~	~~246-305~~
~~247-306~~	~~248-307~~	~~249-308~~	~~250-309~~	~~251-311~~	~~252-312~~	~~253-313~~	~~254-314~~
~~255-315~~	~~256-317~~	~~257-318~~	~~258-319~~	~~259-320~~	~~260-321~~	~~261-323~~	~~262-324~~

1	~~263-325~~	~~264-326~~	~~265-327~~	~~266-329~~	~~267-330~~	~~268-331~~	~~269-332~~	~~270-333~~
2	~~271-335~~	~~272-336~~	~~273-337~~	~~274-338~~	~~275-339~~	~~276-341~~	~~277-342~~	~~278-343~~
3	~~279-344~~	~~280-345~~	~~281-347~~	~~282-348~~	~~283-349~~	~~284-350~~	~~285-351~~	~~286-353~~
4	~~287-354~~	~~288-355~~	~~289-356~~	~~290-357~~	~~291-359~~	~~292-360~~	~~293-361~~	~~294-362~~
5	~~295-363~~	~~296-365~~	~~297-366~~	~~298-367~~	~~299-368~~	~~300-369~~	~~301-371~~	~~302-372~~
6	~~303-373~~	~~304-374~~	~~305-375~~	~~306-377~~	~~307-378~~	~~308-379~~	~~309-380~~	~~310-381~~
7	~~311-383~~	~~312-384~~	~~313-385~~	~~314-386~~	~~315-387~~	~~316-389~~	~~317-390~~	~~318-391~~
8	~~319-392~~	~~320-393~~	~~321-395~~	~~322-396~~	~~323-397~~	~~324-398~~	~~325-399~~	~~326-401~~
9	~~327-402~~	~~328-403~~	~~329-404~~	~~330-405~~	~~331-407~~	~~332-408~~	~~333-409~~	~~334-410~~
10	~~335-411~~	~~336-413~~	~~337-414~~	~~338-415~~	~~339-416~~			
11	15-30	16-32	17-33	18-34	19-35	20-36	21-38	22-39
12	23-40	24-41	25-42	26-44	27-45	28-46	29-47	30-48
13	31-50	32-51	33-52	34-53	35-54	36-56	37-57	38-58
14	39-59	40-60	41-62	42-63	43-64	44-65	45-66	46-68
15	47-69	48-70	49-71	50-72	51-74	52-75	53-76	54-77
16	55-78	56-80	57-81	58-82	59-83	60-84	61-86	62-87
17	63-88	64-89	65-90	66-91	67-93	68-94	69-95	70-96
18	71-98	72-99	73-100	74-101	75-102	76-104	77-105	78-106
19	79-107	80-108	81-110	82-111	83-112	84-113	85-114	86-115
20	87-117	88-118	89-119	90-120	91-122	92-123	93-124	94-125
21	95-126	96-128	97-129	98-130	99-131	100-132	101-134	102-135
22	103-136	104-137	105-138	106-140	107-141	108-142	109-143	110-144
23	111-146	112-147	113-148	114-149	115-150	116-152	117-153	118-154
24	119-155	120-156	121-158	122-159	123-160	124-161	125-162	126-164
25	127-165	128-166	129-167	130-168	131-170	132-171	133-172	134-173
26	135-174	136-176	137-177	138-178	139-179	140-180	141-182	142-183
27	143-184	144-185	145-186	146-188	147-189	148-190	149-191	150-192
28	151-194	152-195	153-196	154-197	155-198	156-200	157-201	158-202
29	159-203	160-204	161-206	162-207	163-208	164-209	165-210	166-212
30	167-213	168-214	169-215	170-216	171-218	172-219	173-220	174-221
31	175-222	176-224	177-225	178-226	179-227	180-228	181-230	182-231
32	183-232	184-233	185-234	186-236	187-237	188-238	189-239	190-240
33	191-242	192-243	193-244	194-245	195-246	196-248	197-249	198-250
34	199-251	200-252	201-254	202-255	203-256	204-257	205-258	206-260
35	207-261	208-262	209-263	210-264	211-266	212-267	213-268	214-269
36	215-270	216-271	217-273	218-274	219-275	220-276	221-278	222-279
37	223-280	224-281	225-282	226-284	227-285	228-286	229-287	230-288
38	231-290	232-291	233-292	234-293	235-294	236-296	237-297	238-298
39	239-299	240-300	241-302	242-303	243-304	244-305	245-306	246-308
40	247-309	248-310	249-311	250-312	251-314	252-315	253-316	254-317
41	255-318	256-320	257-321	258-322	259-323	260-324	261-326	262-327
42	263-328	264-329	265-330	266-332	267-333	268-334	269-335	270-336
43	271-338	272-339	273-340	274-341	275-342	276-344	277-345	278-346
44	279-347	280-348	281-350	282-351	283-352	284-353	285-354	286-356
45	287-357	288-358	289-359	290-360	291-362	292-363	293-364	294-365
46	295-366	296-368	297-369	298-370	299-371	300-372	301-374	302-375
47	303-376	304-377	305-378	306-380	307-381	308-382	309-383	310-384
48	311-386	312-387	313-388	314-389	315-390	316-392	317-393	318-394
49	319-395	320-396	321-398	322-399	323-400	324-401	325-402	326-404
50	327-405	328-408	329-407	330-408	331-410	332-411	333-412	334-413
51	335-414	336-416	337-417	338-418	339-419".			

SECTION 2.(g) G.S. 15A-1340.17(e1) reads as rewritten:

"(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. – Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus ~~nine~~ 12 additional months."

SECTION 2.(h) This section becomes effective December 1, 2011, and applies to offenses committed on or after that date.

PART III. STATUS OFFENSE OF HABITUAL BREAKING AND ENTERING

SECTION 3.(a) Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Habitual Breaking and Entering Status Offense.

"**§ 14-7.25. Definitions.**

The following definitions apply in this Article:

(1) "Breaking and entering." – The term means any of the following felony offenses:

a. First degree burglary (G.S. 14-51).

b. Second degree burglary (G.S. 14-51).

c. Breaking out of dwelling house burglary (G.S. 14-53).

d. Breaking or entering buildings generally (G.S. 14-54(a)).

e. Breaking or entering a building that is a place of religious worship (G.S. 14-54.1).

f. Any repealed or superseded offense substantially equivalent to any of the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.

g. Any offense committed in another jurisdiction substantially similar to any of the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.

(2) "Convicted." – The person has been adjudged guilty of or has entered a plea of guilty or no contest to the offense of breaking and entering.

(3) "Status offender." – A person who is a habitual breaking and entering status offender as described in G.S. 14-7.26.

"**§ 14-7.26. Habitual breaking and entering status offender.**

Any person who has been convicted of or pled guilty to one or more prior felony offenses of breaking and entering in any federal court or state court in the United States, or combination thereof, is guilty of the status offense of habitual breaking and entering and may be charged with that status offense pursuant to this Article.

This Article does not apply to a second felony offense of breaking and entering unless it is committed after the conviction of the first felony offense of breaking and entering. For purposes of this Article, felony offenses of breaking and entering committed before the person is 18 years of age shall not constitute more than one felony of breaking and entering. Any felony to which a pardon has been extended shall not, for the purposes of this Article, constitute a felony offense of breaking and entering.

"**§ 14-7.27. Punishment.**

When any person is charged with a felony offense of breaking and entering and is also charged with being a status offender as defined in G.S. 14-7.26, the person must, upon conviction, be sentenced and punished as a status offender as provided by this Article.

"**§ 14-7.28. Charge of habitual breaking and entering status offender.**

(a) The district attorney, in his or her discretion, may charge a person with the status offense of habitual breaking and entering pursuant to this Article. To sustain a conviction of a person as a status offender, the person must be charged separately for the felony offense of breaking and entering and for the habitual breaking and entering status offense. The indictment charging the defendant as a status offender shall be separate from the indictment charging the person with the principal felony offense of breaking and entering.

(b) An indictment that charges a person with being a status offender must set forth the date that the prior felony offense of breaking and entering was committed, the name of the state or other sovereign against whom the felony offense of breaking and entering was committed, the dates that the plea of guilty was entered into or conviction returned in the felony offense of breaking and entering, and the identity of the court in which the plea or conviction took place. No defendant charged with being a status offender in a bill of indictment shall be required to go to trial on the charge within 20 days of the finding of a true bill by the grand jury; provided, the defendant may waive this 20-day period.

"**§ 14-7.29. Evidence of prior convictions of breaking and entering.**

In all cases in which a person is charged under the provisions of this Article with being a status offender, the record of prior conviction of the felony offense of breaking and entering shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of a former felony offense of breaking and entering. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court and shall be prima facie evidence of the facts set out therein.

"**§ 14-7.30. Verdict and judgment.**

(a) When an indictment charges a person with a felony offense of breaking and entering as provided by this Article and an indictment also charges that the person is a status offender, the defendant shall be tried for the principal offense of breaking and entering as provided by law. The indictment that the person is a status offender shall not be revealed to the jury unless the jury shall find that the defendant is guilty of the principal felony offense of breaking and entering with which the defendant is charged.

(b) If the jury finds the defendant guilty of the felony offense of breaking and entering, the bill of indictment charging the defendant as a status offender may be presented to the same jury. Except that the same jury may be used, the proceedings shall be as if the issue of status offender were a principal charge.

(c) If the jury finds that the defendant is a status offender, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not a status offender, the trial judge shall pronounce judgment on the principal felony offense of breaking and entering as provided by law.

"**§ 14-7.31. Sentencing of status offenders.**

(a) When a status offender as defined in this Article commits a felony offense of breaking and entering under the laws of the State of North Carolina, the status offender must, upon conviction or plea of guilty under indictment as provided in this Article, be sentenced as a Class E felon.

(b) In determining the prior record level, any conviction used to establish a person's status as a status offender shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(c) A conviction as a status offender under this Article shall not constitute commission of a felony for the purpose of either Article 2A or Article 2B of Chapter 14 of the General Statutes."

SECTION 3.(b) G.S. 14-7.1 reads as rewritten:

"**§ 14-7.1. Persons defined as habitual felons.**

Any person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof is declared to be an habitual ~~felon.~~ felon and may be charged as a status offender pursuant to this Article. For the purpose of this Article, a felony offense is defined as an offense which is a felony under the laws of the State or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. Provided, however, that federal offenses relating to the manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be considered felonies for the purposes of this Article. For the purposes of this Article, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article. Any felony offense to which a pardon has been extended shall not for the purpose of this Article constitute a felony. The burden of proving such pardon shall rest with the defendant and the State shall not be required to disprove a pardon."

SECTION 3.(c) G.S. 14-7.3 reads as rewritten:

"**§ 14-7.3. Charge of habitual felon.**

The district attorney, in his or her discretion, may charge a person as an habitual felon pursuant to this Article. An indictment which charges a person who is an habitual felon within the meaning of G.S. 14-7.1 with the commission of any felony under the laws of the State of North Carolina must, in order to sustain a conviction of habitual felon, also charge that said person is an habitual felon. The indictment charging the defendant as an habitual felon shall be separate from the indictment charging him with the principal felony. An indictment which charges a person with being an habitual felon must set forth the date that prior felony offenses were committed, the name of the state or other sovereign against whom said felony offenses were committed, the dates that pleas of guilty were entered to or convictions returned in said felony offenses, and the identity of the court wherein said pleas or convictions took place. No defendant charged with being an habitual felon in a bill of indictment shall be required to go to trial on said charge within 20 days of the finding of a true bill by the grand jury; provided, the defendant may waive this 20-day period."

SECTION 3.(d) G.S. 14-7.6 reads as rewritten:

"**§ 14-7.6. Sentencing of habitual felons.**

When an habitual felon as defined in this Article commits any felony under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced ~~as a Class C felon.~~ at a felony class level that is four classes higher than the principal felony for which the person was convicted; but under no circumstances shall an habitual felon be sentenced at a level higher than a Class C felony. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section."

SECTION 3.(e) This section becomes effective December 1, 2011, and applies to any offense that occurs on or after that date and that is the principal felony offense for a charge of either the status offenses of habitual breaking and entering or habitual felon. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

PART IV. LIMIT TIME/CERTAIN VIOLATIONS OF PROBATION

SECTION 4.(a) G.S. 15A-1343(b) is amended by adding a new subdivision to read:

"(3a) Not to abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer."

SECTION 4.(b) G.S. 15A-1344(a) reads as rewritten:

"(a) Authority to Alter or Revoke. – Except as provided in subsection (a1) or (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. Upon a finding that an offender sentenced to community punishment under Article 81B has violated one or more conditions of probation, the court's authority to modify the probation judgment includes the authority to require the offender to comply with conditions of probation that would otherwise make the sentence an intermediate punishment. The court may only revoke probation for a violation of a condition of probation under G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), except as provided in G.S. 15A-1344(d2). Imprisonment may be imposed pursuant to G.S. 15A-1344(d2) for a violation of a requirement other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a). The district attorney of the prosecutorial district as defined in G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to affect probation substantially."

SECTION 4.(c) G.S. 15A-1344 is amended by adding a new subsection to read:

"(d2) Confinement in Response to Violation. – When a defendant has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a 90-day period of confinement, but may not revoke probation unless the defendant has previously received a total of two 90-day periods of confinement under this subsection. A defendant may receive only two 90-day periods of confinement under this subsection. If the time remaining on the defendant's maximum imposed sentence is less than 90 days, then the term of confinement is for the remaining period of the sentence. Confinement under this section shall be credited pursuant to G.S. 15-196.1."

SECTION 4.(d) This section is effective December 1, 2011, and applies to probation violations occurring on or after that date.

PART V. DIVERSION PROGRAM/FELONY DRUG POSSESSION

SECTION 5.(a) G.S. 90-96 reads as rewritten:

"§ 90-96. Conditional discharge for first offense.

(a) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under this ~~Article~~ Article; or (iii) an offense under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter ~~90~~90 of the General Statutes pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules ~~II~~ I through VI of this Article or by possessing drug paraphernalia as prohibited by G.S. 90 113.22, or (ii) a felony under G.S. 90-95(a)(3), ~~G.S. 90-95(a)(3) by possessing less than one gram of cocaine,~~ the court ~~may,~~ shall, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A 1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the

court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human ~~Services.~~ Services or in the Treatment for Effective Community Supervision Program under Article 6B of Chapter 143B of the General Statutes. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90 113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions ~~under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.~~as provided in this subsection.

(a1) Upon the first conviction only of any offense ~~included in G.S. 90-95(a)(3) or G.S. 90-113.22 and subject to the provisions of this subsection (a1),~~ which qualifies under the provisions of subsection (a) of this section, and the provisions of this subsection, the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90 96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to G.S. 15A-145.2. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the

course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to G.S. 15A-145.2. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the discharge of such person, and dismissal of the proceedings against the person under subsection (a) or (a1) of this section, such person, if he or she was not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(a).

(c) Repealed by Session Laws 2009-510, s. 8(b), effective October 1, 2010.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules ~~II~~ I through VI of this Article or a felony under ~~G.S. 90-95(a)(3) by possessing less than one gram of cocaine,~~ G.S. 90-95(a)(3), upon dismissal by the State of the charges against such person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b).

(e) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under this Article; or (iii) an offense under any statute of the United States or any state relating to ~~Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to~~ controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules ~~II~~ I through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under ~~G.S. 90-95(a)(3) by possessing less than one gram of cocaine,~~G.S. 90-95(a)(3), the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).

...."

SECTION 5.(b) G.S. 15A-145.2 reads as rewritten:

"**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

...

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules ~~II~~ I through VI of Article 5 of Chapter 90 of the General Statutes or a felony under ~~G.S. 90-95(a)(3) by possessing less than one gram of cocaine,~~ G.S. 90-95(a)(3), upon dismissal by the State of the charges against the person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his or her arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason

of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

(c) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), ~~Whenever any person who has not previously been convicted of an offense under Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules through VI of Article 5 of Chapter 90 of the General Statutes or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under~~ the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules ~~II~~ I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under ~~G.S. 90-95(a)(3) for possession of less than one gram of cocaine,~~ G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge

such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 5.(c) Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.18. Advanced supervised release.**

(a) Definitions. – For the purposes of this section, the following definitions apply:

(1) "Advanced supervised release" or "ASR" means release from prison and placement on post-release supervision under this section if an eligible defendant is sentenced to active time.

(2) "Eligible defendant" means a defendant convicted and sentenced based upon any of the following felony classes and prior record levels:

a. Class D, Prior Record Level I-III.

b. Class E, Prior Record Level I-IV.

c. Class F, Prior Record Level I-V.

d. Class G, Prior Record Level I-VI.

e. Class H, Prior Record Level I-VI.

(3) "Risk reduction incentive" is a sentencing condition which, upon successful completion during incarceration, results in a prisoner being placed on ASR.

(b) The Department of Correction is authorized to create risk reduction incentives consisting of treatment, education, and rehabilitative programs. The incentives shall be designed to reduce the likelihood that the prisoner who receives the incentive will reoffend.

(c) The court, in its discretion and without objection from the prosecutor, may include a risk reduction incentive or incentives in sentencing an eligible defendant to an active sentence.

(d) The court shall impose a sentence calculated pursuant to Article 81B of the General Statutes. The ASR date shall be the shortest mitigated sentence for the offense at the offender's prior record level. If the court utilizes the mitigated range in sentencing the defendant, then the ASR date shall be eighty percent (80%) of the minimum sentence imposed.

(e) The defendant shall be notified at sentencing that if the defendant completes the risk reduction incentives as identified by the Department, then he or she will be released on the ASR date. If the Department determines that the defendant is unable to complete the incentives by the ASR date, through no fault of the defendant, then the defendant shall be released at the ASR date.

(f) Termination from the risk reduction incentive program shall result in the nullification of the ASR date, and the defendant's release date shall be calculated based upon the adjudged sentence. A prisoner who has completed the risk reduction incentives prior to the ASR date may have the ASR date nullified due to noncompliance with Department rules or regulations.

(g) A defendant released on the ASR date is subject to post-release supervision under this Article. Notwithstanding the provisions in G.S. 15A-1368.3(c), if the defendant has been returned to prison for three, three-month periods of confinement, a subsequent violation shall result in the defendant returning to prison to serve the time remaining on the maximum

imposed term, and is ineligible for further post-release supervision regardless of the amount of time remaining to be served.

(h) The Department shall adopt policies and procedures for the assessment to occur at diagnostic processing, for documentation of the inmate's progress, and for termination from the incentive program due to a lack of progress or a pattern of noncompliance in the program or with other Department rules or regulations."

SECTION 5.(d) G.S. 15A-1340.13(d) reads as rewritten:

"(d) Service of Minimum Required; Earned Time Authorization. – An offender sentenced to an active punishment shall serve the minimum term ~~imposed.~~ imposed, except as provided in G.S. 15A-1340.18. The maximum term may be reduced to, but not below, the minimum term by earned time credits awarded to an offender by the Department of Correction or the custodian of the local confinement facility, pursuant to rules adopted in accordance with law."

SECTION 5.(e) This section becomes effective January 1, 2012, and applies to persons entering a plea or who are found guilty of an offense on or after that date.

PART VI. REFOCUS CRIMINAL JUSTICE PARTNERSHIP PROGRAM

SECTION 6.(a) Article 6A of Chapter 143B of the General Statutes is repealed.

SECTION 6.(b) Chapter 143B of the General Statutes is amended by adding a new Article to read:

"Article 6B.

"Treatment for Effective Community Supervision Program.

"**§ 143B-274.1. Short title.**

This Article is the "Treatment for Effective Community Supervision Act of 2011" and may be cited by that name.

"**§ 143B-274.2. Legislative policy.**

The policy of the General Assembly with respect to the Treatment for Effective Community Supervision Program is to support the use of evidence-based practices to reduce recidivism and to promote coordination between State and community-based corrections programs.

"**§ 143B-274.3. Definitions.**

The following definitions apply in this Article:

(1) Certified and licensed. – North Carolina Substance Abuse Professional Practice Board certified or licensed substance abuse professionals or Department of Health and Human Services licensed agencies.

(2) Department. – The Department of Correction.

(3) Division. – The Department of Correction, Division of Community Corrections.

(4) Eligible entity. – A local or regional government, a nongovernmental entity, or collaborative partnership that demonstrates capacity to provide services that address the criminogenic needs of offenders.

(5) Program. – A community-based corrections program.

(6) Secretary. – The Secretary of the Department of Correction.

(7) State Board. – The State Community Corrections Advisory Board.

"**§ 143B-274.4. Goals of community-based corrections programs funded under this Article.**

The goals of community-based programs funded under this Article are to reduce recidivism and to reduce the rate of probation and post-release supervision revocations from the rate in the 2009-2010 fiscal year.

"**§ 143B-274.5. Eligible population.**

(a) An eligible offender is an adult offender who was convicted of a misdemeanor or a felony offense or is sentenced under the conditional discharge program as defined in G.S. 90-96 and meets any one of the following criteria:

(1) Received a nonincarcerative sentence of a community punishment.

(2) Received a nonincarcerative sentence of an intermediate punishment.

(3) Is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall be as follows:

(1) Offenders convicted of a felony or offenders sentenced under G.S. 90-96 conditional discharge for a felony offense.

(2) Offenders identified by the Department of Correction using a validated risk assessment instrument to have a high likelihood of reoffending and a moderate to high need for substance abuse treatment.

"**§ 143B-274.6. Duties of Department of Correction.**

(a) In addition to those otherwise provided by law, the Department of Correction shall have the following duties:

(1) To enter into contractual agreements with eligible entities for the operation of community-based corrections programs and monitor compliance with those agreements.

(2) To develop the minimum program standards, policies, and rules for community-based corrections programs and to consult with the Department of Health and Human Services on those standards, policies, and rules that are applicable to licensed and credentialed substance abuse services.

(3) To monitor, oversee, and evaluate contracted service providers.

(4) To act as an information clearinghouse regarding community-based corrections programs.

(5) To collaborate with the Department of Health and Human Services on focusing treatment resources on high-risk and moderate to high need offenders on probation, parole, and post-release supervision.

(b) The Department of Correction, Division of Community Corrections, shall develop and publish a recidivism reduction plan for the State that accomplishes the following:

(1) Articulates a goal of reducing revocations among people on probation and post-release supervision by twenty percent (20%) from the rate in the 2009-2010 fiscal year.

(2) Identifies the number of people on probation and post-release supervision in each county that are in the priority population and have a likely need for substance abuse and/or mental health treatment, employment, education, and/or housing.

(3) Identifies the program models that research has shown to be effective at reducing recidivism for the target population and ranks those programs based on their cost-effectiveness.

(4) Propose a plan to fund the provision of the most cost-effective programs and services across the State. The plan shall describe the number and types of programs and/or services to be funded in each region of the State and how that program capacity compares with the needs of the target population in that region.

(c) The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees, the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status

of the Treatment for Effective Community Supervision Program. The report shall include the following information:

(1) The dollar amount and purpose of funds provided on a contractual basis to service providers for the previous fiscal year.

(2) An analysis of offender participation data received, including the following:

a. The number of people on probation and post-release supervision that are in the priority population that received services.

b. The number of people on probation and post-release supervision that are in the priority population that did not receive services.

c. The number of people on probation and post-release supervision outside of the priority population that received services.

d. The type of services provided to these populations.

e. The rate of revocations and successful completions for people who received services.

f. Other measures as determined appropriate.

(3) The dollar amount needed to provide additional services to meet the needs of the priority population in the upcoming budget year.

(4) Details of personnel, travel, contractual, operating, and equipment expenditures for each program type.

"**§ 143B-274.7. Contract for services.**

(a) The Department of Correction shall contract with service providers through a competitive procurement process to provide community-based services to offenders on probation, parole, or post-release supervision.

(b) Contracts for substance abuse treatment services shall be awarded to certified or licensed substance abuse professionals and appropriately licensed agencies to provide services and use practices that have a demonstrated evidence base.

(c) The Department of Correction, in partnership with the Department of Health and Human Services, shall develop standard service definitions and performance measures for substance abuse and aftercare support services for inclusion in the contracts.

(d) The percentage of funds received by a service provider that may be used for administrative purposes is up to fifteen percent (15%).

"**§ 143B-274.8. State Community Corrections Advisory Board.**

(a) The State Board shall act as an advisory body to the Secretary with regard to this Article. The State Board shall consist of 23 members as follows, to be appointed as provided in subsection (b) of this section:

(1) A member of the Senate.

(2) A member of the House of Representatives.

(3) A judge of the superior court.

(4) A judge of the district court.

(5) A district attorney.

(6) A criminal defense attorney.

(7) A county sheriff.

(8) A chief of a city police department.

(9) Two county commissioners, one from a predominantly urban county and one from a predominantly rural county.

(10) A representative of an existing community-based corrections program.

(11) A member of the public who has been the victim of a crime.

(12) Two rehabilitated ex-offenders.

(13) A member of the business community.

(14) Three members of the general public, one of whom is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services.

(15) A victim service provider.

(16) A member selected from each of the following service areas: mental health, substance abuse, and employment and training.

(17) A clerk of superior court.

(b) The membership of the State Board shall be selected as follows:

(1) The Governor shall appoint the following members: the county sheriff, the chief of a city police department, the member of the public who has been the victim of a crime, a rehabilitated ex-offender, and the members selected from each of the service areas.

(2) The Lieutenant Governor shall appoint the following members: the member of the business community, one member of the general public who is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services, and the victim service provider.

(3) The Chief Justice of the North Carolina Supreme Court shall appoint the following members: the superior court judge, the district court judge, the district attorney, the clerk of superior court, the criminal defense attorney, and the representative of an existing community-based corrections program.

(4) The President Pro Tempore of the Senate shall appoint the following members: the member of the Senate, the county commissioner from a predominantly urban county, and one member of the general public.

(5) The Speaker of the House of Representatives shall appoint the following members: the member of the House of Representatives, the county commissioner from a predominantly rural county, and one member of the general public.

In appointing the members of the State Board, the appointing authorities shall make every effort to ensure fair geographic representation of the State Board membership and to ensure that minority persons and women are fairly represented.

(c) The initial members shall serve staggered terms; one-third shall be appointed for a term of one year, one-third shall be appointed for a term of two years, and one-third shall be appointed for a term of three years. The members identified in subdivisions (1) through (7) of subsection (a) of this section shall be appointed initially for a term of one year. The members identified in subdivisions (8) through (13) in subsection (a) of this section shall be appointed initially for a term of two years. The members identified in subdivisions (14) through (16) of subsection (a) of this section shall each be appointed for a term of three years. The additional member identified in subdivision (17) in subsection (a) of this section shall be appointed initially for a term of three years.

At the end of their respective terms of office their successors shall be appointed for terms of three years. A vacancy occurring before the expiration of the term of office shall be filled in the same manner as original appointments for the remainder of the term. Members may be reappointed without limitation.

(d) Each appointing authority shall have the power to remove a member it appointed from the State Board for misfeasance, malfeasance, or nonfeasance.

(e) The members of the State Board shall, within 30 days after the last initial appointment is made, meet and elect one member as Chair and one member as Vice-Chair.

(f) The State Board shall meet at least quarterly and may also hold special meetings at the call of the Chair. For purposes of transacting business, a majority of the membership shall constitute a quorum.

(g) Any member who has an interest in a governmental agency or unit or private nonprofit agency which is applying for a Treatment for Effective Community Supervision Program contract or which has received a contract and which is the subject of an inquiry or vote by a contract oversight committee, shall publicly disclose that interest on the record and shall take no part in discussion or have any vote in regard to any matter directly affecting that particular grant applicant or grantee. "Interest" in a grant applicant or grantee means a formal and direct connection to the entity, including, but not limited to, employment, partnership, serving as an elected official, board member, director, officer, or trustee, or being an immediate family member of someone who has such a connection to the grant applicant or grantee.

(h) The members of the State Board shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses.

"**§ 143B-274.9. State Community Corrections Advisory Board; powers and duties.**

(a) The State Community Corrections Advisory Board, as defined under this Article, has the following duties and responsibilities:

(1) To review the criteria for monitoring and evaluating community-based corrections programs.

(2) To recommend community-based corrections program priorities.

(3) To review the minimum program standards, policies, and rules for community-based corrections programs.

(4) To review the evaluation of programs funded by this Article.

"**§ 143B-274.10. North Carolina Sentencing and Policy Advisory Commission report.**

The North Carolina Sentencing and Policy Advisory Commission shall report by April 30 of each even-numbered year to the General Assembly and the Governor on recidivism rates for offenders on probation, parole, and post-release supervision participating in programming funded through this Article according to risk level.

"**§ 143B-274.11. Program types eligible for funding; community-based corrections programs.**

Based on the prioritized populations in G.S. 143B-274.5(b), program types eligible for funding may include, but are not limited to, the following:

(1) Substance abuse treatment services, to include co-occurring substance abuse and mental health disorder services, residential, intensive outpatient, outpatient, peer support, and relapse prevention.

(2) Cognitive behavioral programming and other evidence-based programming deemed to be the most cost-effective method to reduce criminogenic needs identified by the risk/needs assessment."

SECTION 6.(c) This section becomes effective July 1, 2011. The Department of Correction may enter into contracts under this section with current program providers in the Criminal Justice Partnership Program on a sole-source basis during the 2011-2012 fiscal year.

PART VII. MOST MISDEMEANANTS TO SERVE SENTENCES IN JAIL

SECTION 7.(a) G.S. 148-32.1 is amended by adding a new subsection to read:

"(b1) It is the intent of the General Assembly to authorize the Department of Correction to enter into voluntary agreements with counties to provide housing for misdemeanants serving periods of confinement of more than 90 days and up to 180 days, except for those serving a sentence for an impaired driving offense. It is further the intent of the General Assembly that the Department of Correction, in conjunction with the North Carolina Sheriffs' Association, Inc., establish a program for housing misdemeanants serving periods of confinement of more than 90 days and up to 180 days, except for those serving sentences for an impaired driving offense. It is also the intent of the General Assembly that the Department of Correction contract with the North Carolina Sheriffs' Association, Inc., to provide a service that identifies space in local confinement facilities that is available for housing these misdemeanants.

The General Assembly intends that the cost of housing and caring for these misdemeanants, including, but not limited to, care, supervision, transportation, medical, and any other related costs, be covered by State funds and not be imposed as a local cost. Therefore, the General Assembly intends that the funds in the Statewide Misdemeanor Confinement Fund be used to provide funding to cover the costs of managing a system for providing that housing of misdemeanants in local confinement facilities as well as reimbursing the counties for housing and related expenses for those misdemeanants."

SECTION 7.(b) G.S. 15A-1352(b) reads as rewritten:

"(b) A person sentenced to imprisonment for a felony under this Article shall be committed for the term designated by the court to the custody of the Department of ~~Correction; except that, upon request of the sheriff or the board of commissioners of a county, the presiding judge may, in his discretion, sentence the person to a local confinement facility in that county.~~Correction."

SECTION 7.(c) G.S. 15A-1352 is amended by adding a new subsection to read:

"(e) A person sentenced for a misdemeanor who has a sentence imposed that requires confinement for a period of more than 90 days and up to 180 days, except for those serving sentences for an impaired driving offense under G.S. 20-138.1 under this Article or for nonpayment of a fine under Article 84 of this Chapter, shall be committed for the term designated by the court to confinement pursuant to the Statewide Misdemeanant Confinement Program established by G.S. 148-32.1."

SECTION 7.(d) G.S. 148-32.1(b) reads as rewritten:

"(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which ~~said~~ the local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that ~~the~~ a prisoner not housed pursuant to the Statewide Misdemeanor Confinement Program established in subsection (b2) of this section be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred ~~prisoner, if the prison population has exceeded a manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility.~~prisoner.

If no other local confinement facility is available and the reason for the requested transfer is that the local confinement facility that would be required to house the prisoner cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners or the local facility does not meet the minimum standards published pursuant to G.S. 153A-221, then the judge may order that a prisoner not housed pursuant to the Statewide Misdemeanor Confinement Program established in subsection (b2) of this section be transferred to a facility operated by the Department of Correction as designated by the Department of Correction. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to a facility operated by the Department of Correction."

SECTION 7.(e) G.S. 148-32.1 is amended by adding a new subsection to read:

"(b2) The Statewide Misdemeanor Confinement Program is established. The Program shall provide for the housing of misdemeanants from all counties serving sentences imposed for a period of more than 90 days and up to 180 days, except for those serving sentences for an impaired driving offense under G.S. 20-138.1. Those misdemeanants shall be confined in local confinement facilities except as provided in subsections (b3) and (b4) of this section. The Program shall address methods for the placement and transportation of inmates and reimbursement to counties for the housing of those inmates. Any county that voluntarily agrees to house misdemeanants from that county or from other counties pursuant to the Program may enter into a written agreement with the Department of Correction to do so.

This Program shall only operate as long as sufficient State funds are available through the Statewide Misdemeanor Confinement Fund established in G.S. 148-10.4(c). "

SECTION 7.(f) The North Carolina Sheriffs' Association in consultation with the Department of Correction shall develop the Statewide Misdemeanor Confinement Program established in G.S. 148-32.1, as enacted in subsection (e) of this section, by September 1, 2011.

Notwithstanding any other provision of law, no later than November 1, 2011, the Secretary of Correction shall contract with the North Carolina Sheriffs' Association to implement the Program. The contract terms shall include all of the following:

(1) A provision that the Program shall be operated on a statewide basis no later than January 1, 2012, but may be phased in beginning at an earlier date.

(2) A provision addressing the method of payment to the North Carolina Sheriffs' Association for the costs of administering the Program.

(3) A provision authorizing reimbursement by the North Carolina Sheriffs' Association to counties or to the Department of Correction, as appropriate, for all expenses incurred on behalf of those misdemeanants.

SECTION 7.(g) G.S. 148-32.1 is amended by adding new subsections to read:

"(b3) The custodian of a local confinement facility may request a judicial order to transfer a misdemeanant housed pursuant to the Statewide Misdemeanor Confinement Program to a facility operated by the Department of Correction by certifying in writing to the clerk of the superior court in the county in which the local confinement facility is located that:

(1) The misdemeanant poses a security risk because the misdemeanant:

a. Poses a serious escape risk;

b. Exhibits violently aggressive behavior that cannot be contained and warrants a higher level of supervision;

c. Needs to be protected from other inmates, and the county jail facility cannot provide such protection;

d. Is a female or a person 18 years of age or younger, and the county jail facility does not have adequate housing for such prisoners;

e. Is in custody at a time when a fire or other catastrophic event has caused the county jail facility to cease or curtail operations; or

f. Otherwise poses an imminent danger to the staff of the county jail facility or to other prisoners in the facility.

(2) The misdemeanant requires medical or mental health treatment that the county decides can best be provided by the Department of Correction.

(3) The local confinement facility that would be required to house the prisoner (i) cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or the local facility does not meet the minimum standards published pursuant to G.S. 153A-221; and (ii) no other local confinement facility is available.

Upon receiving such request and certification in writing, any superior or district court judge for the district in which the local confinement facility is located may, after ascertaining that the

request meets the criteria set forth in subdivision (1), (2), or (3) of this subsection, order the misdemeanant transferred to a unit of the State prison system designated by the Secretary of Correction or the Secretary's authorized representative. The Department of Correction shall be reimbursed from the Statewide Misdemeanor Confinement Fund for the costs of housing the misdemeanant, including the care, supervision, and transportation of the misdemeanant.

(b4) A misdemeanant housed under the Statewide Misdemeanor Confinement Program established pursuant to subsection (b2) of this section may be transferred to a facility operated by the Department of Correction if the North Carolina Sheriffs' Association determines that the local confinement facilities available for housing misdemeanants under the Program are filled to capacity. The Department of Correction shall be reimbursed from the Statewide Misdemeanor Confinement Fund for the costs of housing the misdemeanant, including the care, supervision, and transportation of the misdemeanant."

SECTION 7.(h) Article 1 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-10.4. Statewide Misdemeanor Confinement Fund.**

(a) Definitions. – The following definitions apply in this section:

(1) Department. – Department of Correction.

(2) Fund. – The Statewide Misdemeanor Confinement Fund established by this section.

(3) Program. – Statewide Misdemeanor Confinement Program established under G.S. 148-32.1(b3).

(4) Sheriffs' Association. – North Carolina Sheriffs' Association, Inc.

(b) Intent and Purpose. – It is the intent of the General Assembly that the funds in the Fund established by this section be used to reimburse local governments for expenses incurred for housing misdemeanants under the Program, and other related expenses; and to cover administrative costs incurred by the North Carolina Sheriffs' Association for services provided by it regarding the housing of these misdemeanants.

(c) Statewide Misdemeanor Confinement Fund established. – There is created within the Department of Correction a special nonreverting fund called the Statewide Misdemeanor Confinement Fund.

(d) Fund Uses. – Moneys in the Fund may be used for the following:

(1) Reimbursements by the Sheriffs' Association to counties for the costs of housing misdemeanants under the Program, including the care, supervision, and transportation of those misdemeanants.

(2) Reimbursements to the Department of Correction for the cost of housing misdemeanants transferred to the Department pursuant to G.S. 148-32.1(b3), including the care, supervision, and transportation of those misdemeanants.

(3) To pay the Sheriffs' Association for administrative and operating expenses pursuant to subsection (e) of this section.

(4) To pay the Department of Correction for administrative and operating expenses pursuant to subsection (e) of this section.

(e) Operating and Administrative Expenses. – Ten percent (10%) of the monthly receipts collected and credited to the Statewide Misdemeanor Confinement Fund shall be transferred on a monthly basis to the Sheriffs' Association to be used to support the Program and for administrative and operating expenses of the Association and its staff. One percent (1%) of the monthly receipts collected and credited to the Statewide Misdemeanor Confinement Fund shall be transferred on a monthly basis to the General Fund to be allocated to the Department of Correction for its administrative and operating expenses for the Program."

SECTION 7.(i) The North Carolina Sheriffs' Association shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2011, on the implementation of this Part, and shall report thereafter as requested by the

Committee. The report shall include relevant information collected monthly by the Sheriffs' Association regarding the jail capacity and population in each county.

SECTION 7.(j) The General Assembly finds that while the Program developed pursuant to G.S. 148-32.1(b2), as enacted by subsection (e) of this section shall be available statewide on January 1, 2012, it may be available to some counties at an earlier date. Therefore, notwithstanding any other provision of law, a misdemeanant, who has a sentence imposed of more than 90 days and up to 180 days prior to January 1, 2012, excluding those serving sentences for an impaired driving offense under G.S. 20-138.1, may be transferred or reassigned to a local confinement facility designated by the Sheriffs' Association as provided by the Program developed pursuant to G.S. 148-32.1(b2).

SECTION 7.(k) Of the funds appropriated to the Department of Correction for the 2011-2012 fiscal year, the Department shall transfer the sum of three hundred thousand dollars ($300,000) to the North Carolina Sheriffs' Association for expenses related to initiating the provisions of this Part.

SECTION 7.(l) If there is not adequate capacity in the Statewide Misdemeanor Confinement program, such that the Department of Correction must continue to house prisoners serving more than 90 and up to 180 days pursuant to G.S. 148-32.1(b4), then the Department of Correction is authorized to use funds received from the Statewide Misdemeanor Confinement Fund to operate facilities previously identified for closure and for diagnostic staff positions.

SECTION 7.(m) G.S. 148-32.1(b2), as enacted by subsection (e) of this section, and subsections (a), (h), (i), (j), (k), (l), and (m) of this section become effective July 1, 2011. The remainder of this section becomes effective January 1, 2012, and applies to sentences imposed on or after that date.

PART VIII. ANNUAL REPORT AND SENTENCING COMMISSION DUTIES

SECTION 8.(a) Article 4 of Chapter 164 of the General Statutes is amended by adding a new section to read:

"**§ 164-50. Annual report on implementation of Justice Reinvestment Project.**

The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction shall jointly conduct ongoing evaluations regarding the implementation of the Justice Reinvestment Act of 2011. The Commission shall present the first evaluation report to the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee and to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 15, 2012, and future reports shall be made annually by April 15 of each year."

SECTION 8.(b) G.S. 164-44(a) reads as rewritten:

"(a) The Commission shall have the secondary duty of collecting, developing, and maintaining statistical data relating to sentencing, corrections, and juvenile justice so that the primary duties of the Commission will be formulated using data that is valid, accurate, and relevant to this State. All State agencies shall provide data as it is requested by the Commission. For the purposes of G.S. 114-19.1, the Commission shall be considered to be engaged in the administration of criminal justice. All meetings of the Commission shall be open to the public and the information presented to the Commission shall be available to any State agency or member of the General Assembly."

PART IX. TITLE

SECTION 9. This act shall be known as "The Justice Reinvestment Act of 2011."

PART X. EFFECTIVE DATE

SECTION 10. Except as otherwise provided in this act, this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 642:
Justice Reinvestment Act

2011-2012 General Assembly

Committee:	Senate Re-ref to Finance. If fav, re-ref to Appropriations/Base Budget	**Date:**	June 13, 2011
Introduced by:	Reps. Guice, Faircloth, Bordsen, Parmon	**Prepared by:**	Hal Pell
Analysis of:	Fifth Edition		Staff Attorney

SUMMARY: ***This act revises State criminal laws, criminal procedure laws, and probation statutes based upon the recommendations of the Justice Reinvestment Project. Unless otherwise provided in the act, it is effective when it becomes law.***

BACKGROUND: Since 2009, the Council of State Governments (CSG) Justice Center has been developing a statewide policy framework [Justice Reinvestment Project] to reduce spending on corrections and reinvest in strategies to increase public safety. The Justice Reinvestment Project was the result of a request for technical assistance by the Governor and other State officials. The CSG has been collecting data from multiple sources including FBI Uniform Crime Reports, the North Carolina Department of Correction (DOC), the North Carolina Sentencing and Policy Advisory Commission, the North Carolina Administrative Office of the Courts, and the North Carolina Department of Health and Human Services, along with other state agencies, county agencies and organizations.

In addition to these quantitative analyses, the CSG Justice Center staff conducted meetings and interviews with criminal justice practitioners and stakeholders from around the state, including superior and district court judges, district attorneys, defense attorneys, behavioral health treatment providers, family members, consumers, law enforcement officials, victim advocates, and probation officers.

BILL ANALYSIS:

PART I. STRENGTHEN PROBATION SUPERVISION

Section 1.(a) – Redefines Community Punishment in the Structured Sentencing Act. The amendment will authorize a sentencing court to impose drug treatment court or any one or more of the conditions listed in the G.S. 15A-1343(a1) [see the description of G.S. 15A-1343(a1) at **Section 1.(c),** below]. The change broadens the court's discretion by enlarging the scope of sentences which may be ordered by the court. In order to allow for these conditions to be "delegated" to the Department of Correction [see **Section 1.(d)** below], they must initially be available to the sentencing court.

Section 1(b) – Redefines Intermediate Punishment in the Structured Sentencing Act. In addition to the current requirement of placement on supervised probation, the amendment will authorize a sentencing court to impose drug treatment court or any one or more of the conditions listed in the G.S. 15A-1343(a1) [see the description of G.S. 15A-1343(a1) at **Section 1.(c),** below]. The change broadens the court's discretion by enlarging the scope of sentences which may be ordered by the court. In order to allow for these conditions to be "delegated" to the Department of Correction [see **Section 1.(e)** below], they must initially be available to the sentencing court.

Section 1.(c) – Enacts a new subsection that lists the probation conditions for either community or intermediate punishments. In addition to any special conditions of probation that may be ordered, the court may impose any one or more of the following:

- House arrest with electronic monitoring.
- Special probation (probation with confinement portion)
- Community service.
- Periods of confinement in a local confinement facility (up to six days per month, limited to consecutive 2 or 3 day periods, in any three months of the period of probation).
- Substance abuse assessment, monitoring, or treatment.
- Participation in an educational or vocational skills development program, including an evidence-based program.
- Satellite-monitoring based on sex offender statutes [if authorized by statute].

Section 1.(d) – Amends the current statute which delegates authority to the Department to require offenders sentenced to community punishment to comply with certain conditions, unless the court decides that delegation is not appropriate. Currently, the Department can require: up to 20 hours of community service; a frequency for reporting; and that the probationer submit to substance abuse assessment, monitoring or treatment. The act would add the following: house arrest with electronic monitoring; confinement for up to six days per month in 2 or 3 day consecutive periods (in any of 3 months of the probation); curfew with electronic monitoring; and participation in an educational or vocational skills program, including an evidence-based program.

- The conditions may be imposed if the Department determines that either: (1) the probationer has failed to comply with one or more court-ordered conditions, or (2) the offender is determined to be a "high risk" offender based upon a departmental assessment. The periods of confinement may only be used upon the failure to comply with one or more court-ordered conditions.
- The offender has the right to judicial review of any imposed condition.
- Probation officers must obtain administrative review and approval before exercising any delegated authority.
- The Department of Correction must establish guidelines and procedures for the imposition of the requirements, including a waiver of rights form if the Department wants to impose a period of confinement. The form must include waiver of a hearing before the court, assistance of counsel, and other procedural rights.
- The use of any of the requirements does not prevent the Department from utilizing the statutes which provide for probation revocation.

Section 1.(e) – Amends the current statute which delegates authority to the Department to require offenders sentenced to intermediate punishment to comply with certain conditions, unless the court decides that delegation is not appropriate. Currently, the Department can require: up to 50 hours of

community service; curfew with electronic monitoring; substance abuse assessment, monitoring or treatment; participation in an educational or vocational skills program (act adds "including evidence-based programs"); and satellite monitoring for sex offenders (if authorized by statute). The act would add the following: house arrest with electronic monitoring; confinement for up to six days per month in 2 or 3 day consecutive periods (in any of 3 months during the probation); and reporting on a frequency determined by the officer.

- The conditions may be imposed if the Department determines that either: (1) the probationer has failed to comply with one or more court-ordered conditions, or (2) the offender is determined to be a "high risk" offender based upon a departmental assessment. The periods of confinement may only be used upon the failure to comply with one or more court-ordered conditions.
- The offender has the right to judicial review of any imposed condition.
- Probation officers must obtain administrative review and approval before exercising any delegated authority.
- The Department of Correction must establish guidelines and procedures for the imposition of the requirements, including a waiver of rights form if the Department wants to impose a period of confinement. The form must include waiver of a hearing before the court, assistance of counsel, and other procedural rights.
- The use of any of the requirements does not prevent the Department from utilizing the statutes which provide for revocation of probation.

Section 1.(f) – Requires the Department to use a validated risk assessment instrument in assessing each probationer for determining (i) the offender's risk of reoffending, and (ii) an appropriate supervision level based upon the risk of reoffending and the offender's criminogenic needs.

Section 1.(g) – Repeals intensive supervision as a special condition of probation.

Section 1.(h) – Repeals the definition of "day-reporting center" as a conforming change.

Section 1.(i) – Repeals the definition of "intensive probation" as a conforming change.

Section 1.(j) – Repeals the definition of "residential program" as a conforming change.

Section 1.(k) – Amends the statute setting forth the Department's caseload goals. The amendment uses the characterization of "high or moderate risk of rearrest" offenders in lieu of offenders sentenced to community or intermediate punishments. The goal states that a probation officer should have an average of no more than 60 "high or moderate risk of rearrest" offenders.

Section 1.(l) – This section becomes effective December 1, 2011, and applies to persons placed on probation based on offenses which occur on or after December 1, 2011; however, this section and the provisions of this act requiring the Department of Correction to adopt a risk assessment instrument are effective when the act becomes law.

PART II. POST RELEASE SUPERVISION CHANGES

Section 2.(a) – Amends the post-release supervision statutes to include all felons, except Class A and Class B1 prisoners sentenced to life imprisonment without parole. Currently, only Class B1 (non-life without parole) through Class E felons are included.

Section 2.(b) – Amends the post-release supervision release date to 12 months (from 9 months) before the maximum imposed prison term for Class B1 through Class E felons, and sets the post-supervision release date for Class F through Class I felons at 9 months before the maximum imposed prison term.

The period of post-release supervision is set at 12 months for Class B1 through Class E felons, and 9 months for Class F through Class I felons. Sex offenders have a 5 year period of post-release supervision. [Note: It would be possible for a sex offender to serve the maximum imposable term of confinement prior to the end of the 5 year period; consequently, further confinement would not be possible for violations of post-release supervision].

Secton 2.(c) – Amends the conditions of probation that can result in a revocation of post-release supervision to add a "non-absconding" condition. A probationer who willfully avoids supervision, or willfully makes his or her whereabouts unknown to the probation officer, is subject to revocation of post-release supervision.

Section 2.(d) – Amends the statute providing for imprisonment for violation of post-release supervision conditions. A person required to register on the sex offender registry who commits a new offense or absconds is returned to prison to complete the maximum imposed term. Other felons are returned for 3 months, and may be returned for 3 months on 2 subsequent occasions. If the supervisee is a Class B1 through Class E felon, and has completed 3 periods of confinement of 3 months each, then a fourth violation can result in the completion of the maximum imposed prison term.

Section 2.(e) – Adds 9 months to the maximum term for Class F through Class I felonies, to provide for a post-release supervision release date that is equivalent to the current maximum imposed term.

Section 2.(f) – Adds 3 months to the maximum term for Class B1 through Class E felonies. Nine months have already been included in the maximum in the table to account for the current release date, which is 9 months prior to the maximum term. The addition of 3 months adjusts the time to take into account the increase of post-release supervision from 9 months to 12 months for these offenders.

Section 2.(g) – Amends the statute which provides for the period of post-release supervision for offenders with a minimum sentence of 340 months or more (adds 3 months, to bring the total period to 12 months—equal to that of Class B1 through E offenders).

Section 2.(h) – This section becomes effective December 1, 2011, and applies to offenses committed on or after that date.

PART III. STATUS OFFENSE OF HABITUAL BREAKING AND ENTERING

Section 3.(a) – Creates a new status offense for habitual breaking and entering. If a defendant has one or more prior convictions for any of the listed offenses, then he or she is subject to separate indictments for the offense upon which he or she was arrested, and for the habitual breaking and entering felony charge. A person with more than one felony conviction prior to the age of 18 will only considered to have one prior felony conviction for the purposes of determining the number of prior convictions.

Section 3.(b) – Changes the law to allow discretion in charging the offense.

Section 3.(c) – Conforming change authorizing the district attorney to charge the offense in his or her discretion.

Section 3.(d) – Changes the penalty for a conviction under the habitual felon statute. The felon must be sentenced at a level that is four levels higher than the underlying felony for which the person was convicted, with a maximum sentence at the Class C felony level.

Section 3.(e) – The section becomes effective December 1, 2011, and applies to any offense that occurs on or after that date, and that is the principal offense for a charge of either the status offenses of habitual breaking and entering or habitual felon. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

PART IV. LIMIT TIME/CERTAIN VIOLATIONS OF PROBATION

Section 4.(a) -- The act adds a duty not to abscond to the regular conditions of probation, which are applicable to all offenders placed on probation.

Section 4.(b) – The section provides that the court may not revoke probation for violations of conditions of probation other than for a new criminal offense or for absconding (except as provided in Section 4.(c) below), but that the court may impose imprisonment for the other types of violations. **[See Section 4.(c), below].**

Section 4.(c) – Provides that if a probation commits a violation of a condition of probation (other than a new crime or absconding, which can result in probation revocation), then the court may impose a 90-day period of confinement on two occasions. The court may not revoke the probation for a violation unless the two 90-day periods have previously been imposed. If there are less than 90 days left on the maximum imposed term, then the term of confinement is for the remaining part of the sentence. If the probationer serves confinement under the section, then that period counts toward service of the maximum imposed term.

Section 4.(d) – This section is effective December 1, 2011, and applies to probation violations occurring on or after that date.

PART V. DIVERSION PROGRAM/FELONY DRUG POSSESSION/ADVANCED SUPERVISED RELEASE PROGRAM

Section 5.(a) and 5.(b) -- Amends the controlled substance diversion program, which provides for dismissal of charges upon successful completion of probation.

The act adds all first-time felony drug possession offenders eligible for the program. If the defendant has had no prior felony convictions, and no prior misdemeanor convictions under the Controlled Substances Act, then the court "shall" enter the defendant into the program. Currently, the program is discretionary and only allows drug offense misdemeanants, and persons convicted of felony possession of less than one gram of cocaine. The sections also amend the expunction statutes that provide for expunction of all first-time drug possession offenses.

Section 5.(c) – The act creates a procedure for a defendant, through completion of designated "risk reduction incentives" to be released on post-release supervision in advance of the minimum imposed term. The section:

- Designates who is an eligible defendant.

- Authorizes the Department to create incentives consisting of treatment, education, and rehabilitative programs. The programs must be designed to reduce the likelihood that the offender will reoffend.
- Authorizes the court, in its discretion (and without objection of the prosecutor) to include a risk reduction incentive or incentives in a sentence which includes an active term. The court would first adjudge and impose an authorized sentence for the offense class pursuant to the Structured Sentencing Act, which will have a minimum and maximum imposed term.
- The Advanced Supervised Release (ASR) date would be the shortest mitigated sentence for the offense at the offender's prior record level. If the court utilized the mitigated range in determining the sentence, then the ASR date would be 80% of the minimum term imposed by the court.
- The defendant would be notified at sentencing that if the defendant completes the risk reduction incentive or incentives, then he or she will be released on the ASR date. If the prisoner cannot complete the incentives through no fault of the defendant, then the prisoner would still be released on the ASR date.
- If the prisoner is terminated from the program due to a lack of progress or a rules violation, then the ASR date is nullified. The prisoner's release date would then revert back to the original imposed sentence. A prisoner who completes the incentives prior to the ASR date, and then violates rules, may have the ASR date nullified.
- A prisoner released on the ASR date will be placed on post-release supervision. If the prisoner is returned to prison three times (a total of nine months), a subsequent violation shall result in revocation of post-release status and the prisoner must serve the remainder of the maximum imposed sentence.
- The Department is required to adopt policies and procedures for assessment of the prisoner; documentation of the prisoner's progress; and for termination from the program.

Section 5.(d) – Adds a conforming change to include the ASR program in the statute which designates the minimum time which must be served by a prisoner.

Section 5.(e) -- The section becomes effective January, 2012, and applies to persons entering a plea or who are found guilty of an offense on or after that date.

PART VI. REFOCUS CRIMINAL JUSTICE PARTNERSHIP PROGRAM

Section 6.(a) and 6.(b) – Repeals the current Criminal Justice Partnership Program (CJPP), eliminates the local CJPP boards, and creates a new Article entitled the "Treatment for Effective Community Supervision Act of 2011." The Article provides for a program called Treatment for Effective Community Supervision. The act does the following:

- Establishes the eligibility criteria for offenders. Persons who were (i) convicted of drug offenses, (ii) have a high likelihood of reoffending, and (iii) have a high to moderate need for substance abuse treatment are designated as priority participants.
- Provides for duties of the Department, including the formulation of a recidivism reduction plan.
- Requires the Department to report annually on funds expended by contract, and to provide an analysis of the participants and services.

- Establishes a State Community Corrections Advisory Board, with the following duities and responsibilities: review the criteria for monitoring and evaluating community-based corrections programs; recommend community-based corrections program priorities; review minimum program standards, policies, and rules for community-based corrections programs; and review the evaluation of programs.
- Requires the North Carolina Sentencing Policy and Advisory Commission to report by April 30 on each even-numbered year to the General Assembly and the Governor on recidivism rates for offenders on probation, parole, and post-release supervision who are Program participants.
- Establishes types of programs which are eligible for funding, to include: substance abuse treatment services and cognitive behavioral programming.

Section 6.(c) -- This section becomes effective July 1, 2011. Authorizes the Department of Correction to enter into contracts with current program providers in the Criminal Justice Partnership Program on a sole-source basis during the 2011-2012 fiscal year.

PART VII. MISDEMEANANTS TO SERVE SENTENCES IN JAIL

Sections 7.(a) through 7.(k) –

- States the intent of the General Assembly to authorize the Department of Correction to enter into voluntary agreements with counties to provide housing for misdemeanants serving periods of confinement of more than 90 days and up to 180 days. The costs of housing these prisoners, including, but not limited to, care, supervision, transportation, medical, and any other related costs, are to be covered by State funds and not be imposed as local costs. The agreements would not apply to misdemeanants sentenced for violations of the impaired driving laws. Also states the intent of the General Assembly that the Department of Correction contract with the North Carolina Sheriffs' Association to provide a service that identifies space in local confinement facilities that is available for housing these misdemeanants.
- Provides that persons convicted of a felony must be committed to the custody of the Department of Correction.
- States that a person sentenced for a misdemeanor who must serve more than 90 days and up to 180 days are committed for the term designated by the court pursuant to the Statewide Misdemeanant Confinement program. Excepted from the program are persons serving sentences for an impaired driving offense, or for the nonpayment of a fine.
- Provides that the North Carolina Sheriffs' Association, in consultation with the Department of Correction, shall develop a plan for the Statewide Misdemeanant Confinement Program by September 1, 2011. By November 1, 2011, the Secretary shall contract with the North Carolina Sheriffs' Association to implement the Program. The contract terms shall include:
    - A provision that the Program shall be operated on a statewide basis by January 1, 2012, but may be phased in beginning at an earlier date.
    - A provision addressing the method of payment to the North Carolina Sheriffs' Association for the costs of administering the Program.

- A provision authorizing reimbursement by the Sheriffs' Association to counties or to the Department of Correction, as appropriate, for all expenses incurred on behalf of those misdemeanants.

- Allows, by judicial order, the transfer of a program prisoner into the custody of the Department of Correction if the inmate is a security risk, or needs medical or mental health treatment. The prisoner may also be transferred for segregation requirements or if the local facility does not meet minimum standards, if no other local facility is available.
- States that the Program shall only operate as long as sufficient State funds are available through the Statewide Misdemeanant Confinement Fund established in G.S. 148-10.4(c).
- Creates the Statewide Misdemeanant Confinement Fund, a non-reverting fund established within the Department of Correction. Moneys in the Fund may be used for the following:
  - Reimbursements by the Sheriffs' Association to counties for the costs of housing misdemeanants under the Program, including the care, supervision, and transportation of those misdemeanants.
  - Reimbursements to the Department of Correction for the cost of housing misdemeanants transferred to the Department pursuant to G.S. 148-32.1(b2), including the care, supervision, and transportation of those misdemeanants.
  - To pay the Sheriffs' Association for administrative and operating expenses.
  - To pay the Department of Correction for administrative and operating expenses.
- Ten percent (10%) of the monthly receipts collected and credited to the Statewide Misdemeanant Confinement Fund will be transferred on a monthly basis to the Sheriffs' Association to be used to support the Program and for administrative and operating expenses of the Association and its staff.
- One percent (1%) of the monthly receipts collected and credited to the Statewide Misdemeanant Confinement Fund will be transferred on a monthly basis to the General Fund to be allocated to the Department of Correction for its administrative and operating expenses for the Program.
- Allows for implementation of the program to some counties at a date earlier than the planned statewide implementation date of January 1, 2012. Authorizes the transfer of prisoners serving more than 90 and up to 180 days to be transferred or reassigned to a local confinement facility designated by the Sheriffs' Association as provided by the program.
- Of the funds appropriated to the Department of Correction for the 2011-2012 fiscal year, the Department is to transfer the sum of three hundred thousand dollars ($300,000) to the North Carolina Sheriffs' Association for expenses related to initiating the program.
- Provides that the Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction shall jointly conduct ongoing evaluations regarding the implementation of the Justice Reinvestment Act of 2011.
- Provides that the North Carolina Sheriffs' Association shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2011, on the implementation of the program, and shall report thereafter as requested by the Committee. The report shall include relevant information collected monthly by the Sheriffs' Association regarding the jail capacity and population in each county.

- The sections relating to the fund, and for planning and contracting for the program, are effective July 1, 2011; the remaining sections are effective January 1, 2012.

PART VIII. ANNUAL REPORT

Section 8.(a) – Requires the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction, to report on the implementation and results of the implementation of the act to the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee and to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, by April 15, 2012. Reports are to be made annually by April 15 of each year.

Section 8.(b) – Amends the statutes so that the Sentencing Commission will not be required to pay fees to the Department of Justice for information necessary to fulfilling its statutory obligations.

PART IX. TITLE

Section 9. – Provides for the title of the act: The Justice Reinvestment Act of 2011.

EFFECTIVE DATE: Unless otherwise provided in the act, it is effective when it becomes law.

H642-SMRK-120(e5) v1

HOUSE BILL 160
Second Edition Engrossed 4/28/11

Short Title:	Check-Off Donation: Breast Cancer Screening.	(Public)
Sponsors:	Representatives Dollar, Justice, Howard, and Stevens (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Health and Human Services, if favorable, Finance.	

February 23, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SPACE ON THE INCOME TAX RETURN FOR INDIVIDUALS TO MAKE DONATIONS FOR EARLY DETECTION OF BREAST AND CERVICAL CANCER AS PROVIDED BY THE BREAST AND CERVICAL CANCER CONTROL PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-269.7. Contribution by individual for early detection of breast and cervical cancer.**

An individual entitled to a refund of income taxes under Part 2 of Article 4 of this Chapter may elect to contribute all or part of the refund to be used for early detection of breast and cervical cancer at the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The Secretary shall include in the income tax instructions an explanation that the contributions will be used for early detection of breast and cervical cancer only. The election becomes irrevocable upon filing the individual's income tax return for the taxable year.

The Secretary shall transmit the contributions made pursuant to this section to the State Treasurer to be distributed for early detection of breast and cervical cancer. The State Treasurer shall distribute the contributions to the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services. Funds distributed pursuant to this section shall be used only for early detection of breast and cervical cancer and shall be used in accordance with North Carolina's Breast and Cervical Cancer Control Program's policies and procedures."

SECTION 2. The General Assembly finds that the funds generated by this act are intended to be additional funding for early detection of breast and cervical cancer and are not intended to replace current appropriations for early detection of breast and cervical cancer.

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2011 and expires for tax years beginning on or after January 1, 2015.

HOUSE BILL 49
Committee Substitute Favorable 2/24/11
Committee Substitute #2 Favorable 3/9/11

Short Title: Laura's Law. (Public)

Sponsors:

Referred to:

February 9, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR DWI OFFENDERS WITH THREE OR MORE GROSSLY AGGRAVATING FACTORS, TO AUTHORIZE THE COURT TO REQUIRE CONTINUOUS ALCOHOL MONITORING FOR CERTAIN OFFENDERS, AND TO INCREASE THE COURT COSTS FOR DWI OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-179 reads as rewritten:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. – After a conviction under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

...

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection, or whether a conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Aggravated Level One punishment under subsection (f3) of this section if it is determined that three or more grossly aggravating factors apply. The judge must impose the Level One punishment under subsection (g) of this section if it is determined that two ~~or more~~ grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or

c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing an Aggravated Level One, a Level ~~One~~ One, or a Level Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

...

(f3) Aggravated Level One Punishment. – A defendant subject to Aggravated Level One punishment may be fined up to ten thousand dollars ($10,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 12 months and a maximum term of not more than 36 months. Notwithstanding G.S. 15A-1371, a defendant sentenced to a term of imprisonment pursuant to this subsection shall not be eligible for parole. However, the defendant shall be released from the Department of Correction on the date equivalent to the defendant's maximum imposed term of imprisonment less four months and shall be supervised by the Division of Community Corrections under and subject to the provisions of Article 84A of Chapter 15A of the General Statutes and shall also be required to abstain from alcohol consumption for the four-month period of supervision as verified by a continuous alcohol monitoring system. For purposes of revocation, violation of the requirement to abstain from alcohol or comply with the use of a continuous alcohol monitoring system shall be deemed a controlling condition under G.S. 15A-1368.4.

The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. Subsection (k1) of this section shall not apply to a defendant sentenced pursuant to this subsection. If the defendant is placed on probation, the judge shall impose as requirements that the defendant (i) abstain from alcohol consumption for a minimum of 120 days to a maximum of the term of probation, as verified by a continuous alcohol monitoring system pursuant to subsections (h1) and (h3) of this section and (ii) obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by

G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

...

(h1) The judge may impose, as a condition of probation for defendants subject to Level One or Level Two punishments, that the defendant abstain from alcohol consumption for a minimum of 30 days, to a maximum of ~~60 days,~~ the term of probation, as verified by a continuous alcohol monitoring system. ~~The total cost to the defendant for the continuous alcohol monitoring system may not exceed one thousand dollars ($1,000).~~ The defendant's abstinence from alcohol shall be verified by a continuous alcohol monitoring system of a type approved by the Department of Correction.

~~(h2) Notwithstanding the provisions of subsection (h1), if the court finds, upon good cause shown, that the defendant should not be required to pay the costs of the continuous alcohol monitoring system, the court shall not impose the use of a continuous alcohol monitoring system unless the local governmental entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the costs of the system.~~

(h3) Any fees or costs paid pursuant to ~~subsections (h1) or (h2)~~ subsection (h1) of this section shall be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees or costs collected under this subsection shall be transmitted to the entity providing the continuous alcohol monitoring system.

...

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under ~~any level of punishment~~ subsection (g), (h), (i), (j), or (k) of this section be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

...."

SECTION 2. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which the person has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which the person's license is being ~~revoked, or (ii)~~revoked, (ii) G.S. 20-17(a)(2) and the person was sentenced pursuant to G.S. 20-179(f3) for the offense resulting in the revocation, or (iii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent."

SECTION 3. G.S. 20-17.8 reads as rewritten:

"**§ 20-17.8. Restoration of a license after certain driving while impaired convictions; ignition interlock.**

(a) Scope. – This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.15 or ~~more; or~~more;

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding

the date of the offense for which the person's license has been ~~revoked.~~revoked; or

(3) The person was sentenced pursuant to G.S. 20-179(f3).

For purposes of subdivision (1) of this subsection, the results of a chemical analysis, as shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the Division to determine that person's alcohol concentration.

...

(b) **(Effective until December 1, 2014)** Ignition Interlock Required. – Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) or (a)(3) of this section, or subsection (a1) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00.

(b) **(Effective December 1, 2014)** Ignition Interlock Required. – Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) or (a)(3) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00.

...."

SECTION 4. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(10) For support of the General Court of Justice, the sum of one hundred dollars ($100.00) is payable by a defendant convicted under G.S. 20-138.1 or G.S. 20-138.2, for a second or subsequent conviction under G.S. 20-138.2A, or for a second or subsequent conviction under G.S. 20-138.2B, to be remitted to the State Treasurer. This fee shall be in addition to the fee required by subdivision (4a) of this subsection."

SECTION 5. G.S. 15A-534 is amended by adding a new subsection to read:

"(i) In addition to any other condition of pretrial release, the judicial official authorizing pretrial release may order any defendant (i) charged with an offense involving impaired driving, as defined by G.S. 20-4.01(24a), and (ii) having a prior conviction for an offense involving impaired driving that occurred within seven years before the date of the offense for which the defendant is being placed on pretrial release to abstain from alcohol consumption as verified by an approved continuous alcohol monitoring system for the period of pretrial release or until this condition is removed by entry of order of a court of competent jurisdiction."

SECTION 6. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

HOUSE BILL 49: Laura's Law

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Reps. T. Moore, Hastings, Torbett, H. Warren	**Prepared by:**	Susan Sitze
Analysis of:	Third Edition		Staff Attorney

SUMMARY: House Bill 49 would increase the punishment for DWI offenders with three or more grossly aggravating factors, would authorize the court to require continuous alcohol monitoring for certain offenders, and would impose an additional $100 in court costs for DWI offenders.

[As introduced, this bill was identical to S86, as introduced by Sens. Harrington, Clary, Forrester, which is currently in Senate Judiciary I.]

BILL ANALYSIS:

Section 1 would amend subsections (c) and (k1) of G.S. 20-179 and would create a new subsection (f3) to create a new, higher, Aggravated Level One punishment for DWI offenders with 3 or more grossly aggravating factors. The punishment would allow a fine up to $10,000 and a term of imprisonment of 12 months to 36 months. A defendant would not be eligible for parole on any term of imprisonment under this level of sentencing. However, the defendant would be released 4 months prior to the maximum imposed prison term for a period of supervision including continuous alcohol monitoring.

The term of imprisonment could be suspended if a special condition of probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. The defendant would not be able to receive credit for inpatient treatment towards the term of imprisonment. The defendant would also be required to comply with continuous alcohol monitoring for a minimum of 120 days to a maximum of the term of probation.

This section would also amend subsections (h1), (h2), and (h3) of G.S. 20-179 to make the following changes to the current provisions relating to the use of continuous alcohol monitoring:

- Would remove the current limitation of 60 days on the use of continuous alcohol monitoring, and allow the court to require the use for the full term of probation.
- Would remove the current restriction that the total cost to the defendant for continuous alcohol monitoring not be more than $1,000.
- Would remove the provision in current law that allows the court to find that the defendant should not be required to pay the costs of continuous alcohol monitoring, and in that case to not impose the requirement unless the local government entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the cost of the system.

Section 2 would provide for a permanent revocation for persons sentenced as an Aggravated Level One offender. This particular "permanent" revocation authorizes a person to apply for conditional license restoration after 3 years.

Section 3 would require a person sentenced as an Aggravated Level One offender to have an ignition interlock system installed on their vehicle for a period of 7 years after license restoration, and that they not drive with an alcohol concentration (BAC) of greater than 0.00.

Section 4 would impose an additional court cost of $100 on all persons convicted of a driving while impaired offense. This fee would be in addition to the current fees, which total approximately $141, plus any fines, restitution, attorneys' fees, or other fees, such as probation supervision or lab fees, that may be imposed.

Section 5 would authorize, but not require, that a person charged with an offense involving impaired driving be required to comply with continuous alcohol monitoring as a condition of pre-trial release if they have a prior conviction of an offense involving impaired driving that occurred within 7 years.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

BACKGROUND:

There are currently 5 levels of DWI sentencing described briefly as follows:

Level One – 2 or more grossly aggravating factors, fine up to $4,000, imprisonment of 30 days to 24 months, with mandatory 30 days active

Level Two – 1 grossly aggravating factor, fine up to $2,000, imprisonment of 7 days to 12 months, with mandatory 7 days active

Level Three – no grossly aggravating factors, but the aggravating factors outweigh the mitigating factors, fine up to $1,000, imprisonment of 72 hours to 6 months, with mandatory 72 hours active or 72 hours community service or both

Level Four – no aggravating and mitigating factors, or aggravating factors are substantially counterbalanced by mitigating factors, fine up to $500, imprisonment of 48 hours to 120 days, with mandatory 48 hours active or 48 hours community service or both

Level Five – mitigating factors substantially outweigh any aggravating factors, fine up to $200, imprisonment of 24 hours to 60 days, with mandatory 24 hours active or 24 hours community service or both

Grossly aggravating factors are:

- Prior DWI conviction within 7 years
- Driving while license revoked for an impaired driving conviction
- Serious injury to another person caused by the impaired driving
- Driving while impaired with a child under 16 in the vehicle

Aggravating factors include factors such as: a BAC level of 0.15 or more, reckless driving, driving while license revoked, an accident resulting from the impaired driving, and some previous motor vehicle convictions.

Mitigating factors include factors such as: a BAC level of less than 0.09, safe driving except for the impairment, a safe driving record, impairment caused by lawfully prescribed drug for an existing medical condition, and voluntary submission to substance abuse assessment..

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 49

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H49-ASA-11 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Date June 13 ,2011

Senator Goolsby

moves to amend the bill on page 2, lines 37-38
by deleting the following sentence:
"Subsection (k1) of this section shall not apply to a defendant sentenced pursuant to this subsection."

And on page 3, lines 20-33
By deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SENATE BILL 572

Short Title:	Omnibus County Bill.	(Public)
Sponsors:	Senator Davis.	
Referred to:	State and Local Government.	

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE OMNIBUS COUNTY BILL OF 2011.

The General Assembly of North Carolina enacts:

SECTION 1.1. Commission Established. – There is created the Records Preservation Modernization Commission. The Commission shall consist of 13 members to be appointed as follows:

(1) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) Three members of the Senate appointed by the President Pro Tempore of the Senate.

(3) The Secretary of Cultural Resources, or the Secretary's designee.

(4) Three members of the public appointed by the Speaker of the House of Representatives with two of the appointments based on the recommendation of the North Carolina Association of County Commissioners and one of the appointments based on the recommendation of the North Carolina League of Municipalities.

(5) Three members of the public appointed by the President Pro Tempore of the Senate with two of the appointments based on the recommendation of the North Carolina Association of County Commissioners and one of the appointments based on the recommendation of the North Carolina League of Municipalities.

SECTION 1.2. Administration. – The Speaker of the House of Representatives shall designate one representative as cochair, and the President Pro Tempore of the Senate shall designate one senator as cochair. Vacancies on the Commission shall be filled by the same appointing authority making the initial appointment.

The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 1.3. Duties. – The Commission shall study issues relating to records preservation standards, procedures, and techniques and consider any other issues the Commission deems relevant.

SECTION 1.4. Report. – The Commission may make a report, including any proposed legislation, to each regular session of the General Assembly upon its convening.

SECTION 2. G.S. 105-282.1(a1) reads as rewritten:

"(a1) Late Application. – ~~Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed.~~An application for a property tax exemption or exclusion provided by this section should be filed during the regular listing period but may be filed and must be accepted through June 1 preceding the tax year for which the exemption or exclusion is claimed."

SECTION 3. G.S. 105-164.4B(a) reads as rewritten:

"(a) General Principles. – The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the product.

(1) Over-the-counter. – When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.

(2) Delivery to specified address. – When a purchaser receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser receives the product. For taxpayers required to make monthly prepayments of sales and use taxes pursuant to G.S. 105-164.16(b2), the appropriate expanded zip code of the United States Postal Service Zip + 4 system shall be used for the location where the purchaser receives the product.

(3) Delivery address unknown. – When a seller of a product does not know the address where a product is received, the sale is sourced to the first address or location listed in this subdivision that is known to the seller:

a. The business or home address of the purchaser.

b. The billing address of the purchaser or, if the product is prepaid wireless calling service, the location associated with the mobile telephone number.

c. The address from which tangible personal property was shipped or from which a service was provided."

SECTION 4. Section 3 of this act becomes effective July 1, 2011. The remainder of this act is effective when it becomes law.

SENATE BILL 572:
Omnibus County Bill

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Sen. Davis	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 572 creates the Record Preservation Modernization Commission to study issues related to the preservation of records. The bill also amends the property tax laws to extend the time for filing an application for a property tax exemption and requires a zip + 4 as part of the address for a determination of where to source the sale of a product delivered to a purchaser who is required to make monthly prepayments of sales and use taxes.***

BILL ANALYSIS: Section 1 of Senate Bill 572 creates the Record Preservation Modernization Commission to study issues related to the preservation of records. The Commission is established as a permanent commission under Chapter 120 of the General Statutes. The Commission shall consist of 13 members: three House members appointed by the Speaker, three Senate members appointed by the President Pro Tem, the Secretary of Cultural Resources or the Secretary's designee, three members of the public appointed by the Speaker with 2 of those appointments based on recommendation of the County Commissioners Association and 1 based on recommendation by the League of Municipalities, and 3 members of the public appointed by the President Pro Tem, with 2 of those appointments based on recommendation of the County Commissioners Association and 1 based on recommendation by the League of Municipalities.

Section 2 of the bill amends the property tax laws to extend the time for filing an application for a property tax exemption to June 1 preceding the tax year for which the exemption is filed.

Section 3 amends the sales and use tax law to require a zip + 4 as part of the address for a determination of where to source the sale of a product delivered to a purchaser who is required to make monthly prepayments of sales and use taxes.

EFFECTIVE DATE: Section 3 of the act becomes effective July 1, 2011. The remainder of the act is effective when it becomes law.

Barbara Riley, counsel to Senate State and Local Government, substantially contributed to this summary.

S572-SMTD-87(e1) v2

HOUSE BILL 617
Committee Substitute Favorable 5/18/11

Short Title: Portable Electronics Insurance Coverage. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE REGULATION OF PORTABLE ELECTRONICS INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 44A.

"Portable Electronics Insurance.

"**§ 58-44A-1. Definitions.**

As used in this Article, the following definitions apply:

(1) Customer. – A person who purchases portable electronics or services.

(2) Enrolled customer. – A customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

(3) Location. – Any physical location in the State of North Carolina or any Web site, call center site, or similar location directed to residents of the State of North Carolina.

(4) Portable electronics. – Electronic devices that are portable in nature, their accessories, and services related to the use of the device.

(5) Portable electronics insurance. – Insurance providing coverage for the repair or replacement of portable electronics which may provide coverage for portable electronics against any one or more of the following causes of loss: (i) loss, (ii) theft, and (iii) inoperability due to mechanical failure, malfunction, damage, or other similar causes of loss. The term does not include the following:

a. A service contract or extended warranty providing coverage limited to the repair, replacement, or maintenance of property for the operational or structural failure of the property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear.

b. A policy of insurance covering a seller's or a manufacturer's obligations under a warranty.

c. A homeowner's, renter's, private passenger automobile, commercial multiperil, or similar policy.

(6) Portable electronics transaction. – Either of the following:

a. The sale or lease of portable electronics by a vendor to a customer.

b. The sale of a service related to the use of portable electronics by a vendor to a customer.

(7) Supervising entity. – A business entity that is a licensed insurer or insurance producer.

(8) Vendor. – A person in the business of engaging in portable electronics transactions directly or indirectly.

"**§ 58-44A-5. Licensure of vendors.**

(a) A vendor is required to hold a limited lines license to sell or offer coverage under a policy of portable electronics insurance.

(b) A limited lines license issued under this section shall authorize any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(c) Notwithstanding any other provision of law, a license issued pursuant to this section shall authorize the licensee and its employees or authorized representatives to engage in those activities that are permitted in this section.

"**§ 58-44A-10. Requirements for sale of portable electronics insurance.**

(a) At every location where portable electronics insurance is offered to customers, brochures or other written materials shall be made available to a prospective customer. Those materials shall do the following:

(1) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage.

(2) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services.

(3) Summarize the material terms of the insurance coverage, including:

a. The identity of the insurer.

b. The identity of the supervising entity.

c. The amount of any applicable deductible and how it is to be paid.

d. Benefits of the coverage.

e. Key terms and conditions of coverage, such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment.

(4) Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event the enrolled customer fails to comply with any equipment return requirements.

(5) State that the enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

(b) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable electronics for its enrolled customers.

(c) Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.

(d) The terms of the termination or modification of coverage under a policy of portable electronic insurance offered in compliance with this section shall be as set forth in the policy.

"**§ 58-44A-15. Authority of vendors of portable electronics.**

(a) The employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this Chapter provided that the following are true:

(1) The vendor obtains a limited lines license to authorize its employees or authorized representatives to sell or offer portable electronics insurance pursuant to this section.

(2) The insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of the program, including development of a training program for employees and authorized representatives of the vendors. The training required by this subdivision shall comply with the following:

a. The training shall be delivered to employees and authorized representatives of a vendor who are directly engaged in the activity of selling or offering portable electronics insurance.

b. The training may be provided in electronic form. If conducted in an electronic form, the supervising entity shall implement a supplemental education program regarding portable electronics insurance that is conducted and overseen by licensed employees of the supervising entity.

c. Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under G.S. 58-44A-10.

(3) No employee or authorized representative of a vendor of portable electronics shall advertise, represent, or otherwise hold himself or herself out as a non-limited lines licensed insurance producer.

(b) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services. Vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account, provided that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within 60 days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection services in accordance with G.S. 58-33-85.

"**§ 58-44A-20. Suspension or revocation of license.**

If a vendor of portable electronics or its employee or authorized representative violates any provision of this section, the Commissioner may do any of the following:

(1) Revoke or suspend a limited lines license issued under this Part in accordance with the provisions of G.S. 58-33-46.

(2) After notice and hearing, impose other penalties, including suspending the transaction of insurance at specific locations where violations of this Article have occurred, as the Commissioner deems necessary and reasonable to carry out the purpose of this Article.

"**§ 58-44A-25. Application for license.**

The prerequisites for issuance of a limited lines license under this Article are the filing with the Commissioner of the following:

(1) A license application, signed by an officer of the applicant, for the limited lines license in such form or forms, and supplements thereto, and containing such information, as the Commissioner may prescribe.

(2) A certificate by the insurer that is to be named in such limited lines license, stating that it has satisfied itself that the named applicant is trustworthy and competent to act as its insurance agent for this limited purpose and that the insurer will appoint such applicant to act as the agent in reference to the kinds of insurance as are permitted by this section, if the limited lines license applied for is issued by the Commissioner. Such certificate shall be subscribed to by an officer or managing agent of such insurer and affirmed as true under the penalties of perjury."

SECTION 2. This act becomes effective January 1, 2012.

HOUSE BILL 617:
Portable Electronics Insurance Coverage

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Rep. Dockham	**Prepared by:**	Greg Roney Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 617 would require companies offering insurance against loss, theft, or mechanical failure for portable electronic devices and accessories hold a limited lines license issued by the NC Department of Insurance.***

CURRENT LAW: Retailers selling portable electronic devices in NC appear to offer portable electronics insurance through an exception to insurance license requirements for group property and casualty insurance found in G.S. 58-33-26(n)(2).

BILL ANALYSIS: House Bill 617 would expressly authorize insurance for portable electronic devices under a limited lines license. The limited lines license allows any employee or agent of the license holder to sell insurance for portable electronic devices at all the license holder's locations. The NC Department of Insurance would have the same regulatory authority over portable electronics insurance as it has with all limited lines insurance.

House Bill 617 would impose consumer protection measures on limited lines insurance for portable electronic devices including:

- Written materials available to prospective customer must
  - Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage.
  - State that purchase of insurance is optional.
  - Summarize the material terms of the insurance coverage, including the identity of the insurer, the identity of the supervising entity, the amount of any deductible and how it is to be paid, benefits of the coverage, and key terms and conditions of coverage (such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal-manufacturer parts or equipment).
  - Summarize the process for filing a claim, including the maximum fee if the customer fails to comply with any equipment return requirements.
  - State that the customer may cancel coverage at any time and receive a refund of any applicable unearned premium.
- The insurance policy must contain the terms of the termination or modification of coverage.
- The insurer underwriting the portable electronics insurance must administer a training program for employees of the license holder. The training program must provide basic instruction about the portable electronics insurance offered to customers and the disclosures required in the written materials available to prospective customer.

EFFECTIVE DATE: House Bill 617 would be effective January 1, 2012.

Tim Hovis, counsel to House Insurance, substantially contributed to this summary.

H617-SMTM-38(e2) v1

HOUSE BILL 896
Committee Substitute Favorable 6/2/11

Short Title: Facilitate Electronic Listing. (Public)

Sponsors:

Referred to:

May 5, 2011

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ELECTRONIC LISTING OF PERSONAL PROPERTY FOR PROPERTY TAX PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-304(a1) and (b)(3) are repealed.

SECTION 2. G.S. 105-296(c) reads as rewritten:

"(c) At least 10 days before the date as of which property is to be listed, ~~he~~ the assessor shall advertise in a newspaper having general circulation in the county and post in at least five public places in each township in the county a notice containing ~~at least the following:~~ all of the items listed in this subsection. If the listing period is extended in any county by the board of county commissioners, the assessor shall advertise in the newspaper in which the original notice was published and post in the same places a notice of the extension and of the times during which and the place or places at which lists will be accepted during the extended period. The items that must be included in the notice are:

(1) The date as of which property is to be listed.
(2) The date on which listing will begin.
(3) The date on which listing will end.
(4) The times between the date mentioned in subdivision (c)(2), above, and the date mentioned in subdivision (c)(3), above, during which lists will be accepted.
(5) The place or places at which lists will be accepted at the times established under subdivision (c)(4), above.
(6) A statement that all persons who, on the date as of which property is to be listed, own property subject to taxation must list such property within the period set forth in the notice and that any person who fails to do so will be subject to the penalties prescribed by law.
(7) If the county has provided for electronic listing of personal property under G.S. 105-310.1, a statement that the county allows electronic listing of personal property and the timetable and procedures for electronic listing.

~~If the listing period is extended in any county by the board of county commissioners, the assessor shall advertise in the newspaper in which the original notice was published and post in the same places a notice of the extension and of the times during which and the place or places at which lists will be accepted during the extended period.~~"

SECTION 3. G.S. 105-307 reads as rewritten:

"**§ 105-307. Length of listing period; extension; preliminary work.**

(a) Listing Period. – Unless extended as provided in this section, the period during which property is to be listed for taxation each year begins on the first business day of January and ends on January 31.

(b) General Extensions. – The board of county commissioners may, by resolution, extend the time during which property is to be listed for taxation as provided in this subsection. Any action by the board of county commissioners extending the listing period must be recorded in the minutes of the board, and notice of the extensions must be published as required by G.S. 105-296(c). The entire period for listing, including any extension of time granted, is considered the regular listing period for the particular year within the meaning of this Subchapter.

(1) In nonrevaluation years, the listing period may be extended for up to 30 additional days.

(2) In years of octennial appraisal of real property, the listing period may be extended for up to 60 additional days.

(3) If the county has provided for electronic listing of personal property under G.S. ~~105-304,~~ 105-310.1, the period for electronic listing of ~~business~~ personal property may be extended up to June 1. A resolution that provides a general extension of time for the electronic listing of personal property shall continue in effect until revised or rescinded unless otherwise stated in the resolution.

(c) Individual Extensions. – The board of county commissioners shall grant individual extensions of time for the listing of real and personal property upon written request and for good cause shown. The request must be filed with the assessor no later than the ending date of the regular listing period. The board may delegate the authority to grant extensions to the assessor. Extensions granted under this subsection shall not extend beyond April 15. Notwithstanding the individual extension time limitation in this subsection, ~~If~~ if the county has provided for electronic listing of personal property under G.S. ~~105-304, the period for electronic listing of business personal property is as provided in subsection (b) of this section.~~ 105-310.1, extensions granted for electronic listing of personal property shall not extend beyond June 1.

(d) Preliminary Work. – The assessor may conduct preparatory work before the listing period begins, but may not make a final appraisal of property before the day as of which the value of the property is to be determined under G.S. 105-285."

SECTION 4. Article 17 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-310.1. Electronic listing of personal property.**

(a) Personal property may be listed by electronic listing as provided in this section.

(b) The Department of Revenue may establish, after consultation with the counties, the standards and requirements for electronic listing of personal property, including the minimum requirements that must exist before electronic listing will be allowed in a county.

(c) The board of county commissioners may, by resolution, provide for electronic listing of personal property in accordance with the standards and requirements prescribed by the Department of Revenue. The board of county commissioners may, by resolution, delegate its authority to provide for electronic listing of personal property to the county assessor.

(d) Definitions. – The following definitions apply in this section:

(1) Electronic listing. – The filing by electronic means of the abstract required by G.S. 105-309 and the affirmation required by G.S. 105-310.

(2) Electronic. – Defined in G.S. 66-312."

SECTION 5. G.S. 105-311 reads as rewritten:

"**§ 105-311. ~~Duty to appear for purposes of listing~~Listing and signing affirmation; use of ~~agents and mail.~~agents, mail, and electronic listing.**

(a) Except as otherwise provided in this section, the person whose duty it is to list property for taxation shall ~~appear before~~ file the completed abstract with the assessor for purposes of listing and shall sign the affirmation required by G.S. 105-310 to be annexed to the completed abstract on which the property is listed. The abstract must be filed with the assessor on a form approved by the Department of Revenue.

(1) In the case of an individual taxpayer who is unable to list his property, a guardian, authorized agent, or other person having knowledge of and charged with the care of the person and property of the taxpayer shall ~~appear for purposes of listing~~ file the completed abstract and shall sign the required affirmation in the name of the taxpayer, noting thereon the capacity in which he signs.

(2) In the case of a corporation, partnership, limited liability company, or unincorporated association, a person specified in ~~subdivision a. or subdivision b.~~sub-subdivision a., b., or c. below, shall ~~appear for purposes of listing the taxpayer's property~~ file the completed abstract and shall sign the required affirmation in the name of the taxpayer, noting thereon the capacity in which he signs, and no other agent shall be permitted to sign the affirmation required on such a taxpayer's abstract:

a. A principal officer of the ~~taxpayer or~~taxpayer.

b. A full-time employee of the taxpayer who has been officially empowered by a principal officer of the taxpayer in his behalf to list the taxpayer's property for taxation in the county and to sign the affirmation annexed to the abstract or abstracts on which its property is listed.

c. An agent of the taxpayer authorized by a principal officer of the taxpayer in a manner prescribed by the Department of Revenue.

~~(3) In the case of an individual who is not a resident of the county in which his property is to be listed, the taxpayer shall sign the affirmation required on the abstract on which his property is listed, but he may submit the completed abstract by mail or by an authorized agent.~~

(b) ~~Any abstract submitted by mail may be accepted or rejected by the assessor in the assessor's discretion. However, the board of county commissioners, with the approval of the Department of Revenue, may by resolution provide for the general acceptance of completed abstracts submitted by mail or submitted electronically.~~Abstracts may be submitted in person or by mail. Additionally, if the county has provided for electronic listing of personal property under G.S. 105-310.1, personal property abstracts may be submitted by electronic listing.

(1) Submission by mail. – In no event shall an abstract submitted by mail be accepted unless the affirmation on the abstract is signed by the individual prescribed in subsection (a) of this section. ~~An electronic listing may be signed electronically in accordance with the Electronic Commerce Act, Article 11A of Chapter 66 of the General Statutes.~~ For the purpose of this Subchapter, abstracts submitted by mail are considered filed as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark, or if the postmark is not affixed by the United States Postal Service, the abstract is considered filed when received in the office of the assessor.

(2) Submission by electronic listing. – In no event shall an abstract submitted by electronic listing be accepted unless the affirmation on the abstract is signed by the individual prescribed in subsection (a) of this section. The affirmation may be signed using an electronic signature method approved by the Department of Revenue. For the purpose of this Subchapter, ~~Abstracts~~

abstracts submitted by electronic listing are considered filed when received in the office of the ~~assessor.~~assessor as denoted by timestamps applied by the receiving equipment or programs.

(c) In any dispute arising under this Subchapter, the burden of proof is on the taxpayer to show that the abstract was timely filed."

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 896:
Facilitate Electronic Listing

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Rep. Brubaker	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 896 would authorize the Department of Revenue, in consultation with the counties, to establish standards and requirements for the electronic listing of personal property allowed by counties.***

CURRENT LAW: All property, real and personal, within the jurisdiction of this State is subject to property tax unless it is excluded by statute or exempted by the Constitution. The property must be listed annually. A board of county commissioners may, by resolution, provide for electronic listing of personal property. If a county allows electronic listing of personal property, the assessor must publish this information, including the timetable and procedures for electronic listing.

BILL ANALYSIS:

Section 1 of the bill would repeal the current statutory authority that allows counties to provide for electronic listing of personal property. The bill creates a new statute in its place (see Section 4) that allows counties to provide for electronic listing of personal property only after the Department of Revenue has established standards and minimum requirements.

Section 2 of the bill would require that a county include in the published notice regarding the listing of personal property whether the county allows electronic listing and the timetable and procedures for doing so.

Section 3 of the bill provides that a resolution that includes a general extension of time for the electronic listing of personal property continues to be in effect until the resolution is revised or rescinded. It further provides that if a board grants an individual taxpayer an extension for good cause shown for the electronic listing of personal property, the extension may not extend beyond June 1. Under current law, the period for electronic listing may only be extended to June 1, both generally and in individual cases. Other individual extensions may not extend beyond April 15.

Section 4 of the bill creates a new statute that would authorize the Department of Revenue to establish, upon consultation with the counties, standards and requirements for the electronic listing of personal property. Once the standards have been established, a county may, by resolution, provide for electronic listing. A county may also delegate this authority to the county tax assessor.

Section 5 of the bill would eliminate the requirement that a person with a duty to list property to appear before the assessor and would substitute a requirement to file a completed abstract along with the required affirmation.

EFFECTIVE DATE: This act is effective when it becomes law.

H896-SMSV-78(e2) v1

HOUSE BILL 397
Committee Substitute Favorable 4/20/11

Short Title: DHHS Penalties and Remedies Revision.-AB (Public)

Sponsors:

Referred to:

March 17, 2011

A BILL TO BE ENTITLED

AN ACT REVISING PENALTIES AND REMEDIES CONCERNING HEALTH FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-24.1 reads as rewritten:

"**§ 122C-24.1. Penalties; remedies.**

(a) ~~Violations Classified.~~ Violation Classification and Penalties. – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility licensed under this Article which is found to be in violation of Article 2 or 3 of this Chapter or applicable State and federal laws and regulations. Citations ~~issued~~ for violations shall be classified and penalties assessed according to the nature of the violation as follows:

(1) "Type ~~A~~ A1 Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, abuse, neglect, or exploitation. ~~harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation.~~ The person making the findings shall do the following:

a. Orally and immediately inform the ~~administrator of the~~ facility of the Type A1 Violation and the specific ~~findings and what must be done to correct them, and set a date by which the violation must be corrected;~~ findings.

a1. Require a written plan of protection regarding how the facility will immediately abate the Type A1 Violation in order to protect clients from further risk or additional harm.

b. Within ~~10~~ 15 working days of the investigation, ~~confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and~~ send a report of the findings to the facility.

c. ~~Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.~~ Require a plan of correction to be submitted to the Department, based on a written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

The Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) for each Type ~~A~~ A1 Violation in facilities or programs that serve six or fewer persons. The Department shall impose a civil penalty in an amount not less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000) for each Type ~~A~~ A1 Violation in facilities or programs that serve seven or more persons.

Where a facility has failed to correct a Type A1 Violation, the Department shall access the facility a civil penalty in the amount of up to one thousand dollars ($1,000) for each day that the violation continues beyond the time specified for correction. The Department or its authorized representative shall determine whether the violation has been corrected.

(1a) "Type A2 Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur. The person making the findings shall do the following:

a. Orally and immediately inform the facility of the Type A2 Violation and the specific findings.

b. Require a written plan of protection regarding how the facility will immediately abate the Type A2 Violation in order to protect clients or residents from further risk or additional harm.

c. Within 15 working days of the investigation, send a report of the findings to the facility.

d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

The violation or violations shall be corrected within the time specified for correction by the Department or its authorized representative. The Department may or may not assess a penalty taking into consideration the compliance history, preventative measures, and response to previous violations by the facility. Where a facility has failed to correct a Type A2 Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars ($1,000) for each day that the deficiency continues beyond the time specified for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

(1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the violation was not previously identified by the Department or its authorized representative or (ii) the violation was discovered by the facility as was self-reported, but in either case the violation has been corrected. In determining whether a penalty should be assessed under this section, the Department shall consider the following factors:

a. Preventative measures in place prior to the violation.

b. Whether the violation or violations were abated immediately.

c. Whether the facility implemented corrective measures to achieve and maintain compliance.

d. Whether the facility's system to ensure compliance is maintained and continues to be implemented.

e. Whether the regulatory area remains in compliance.

(2) "Type B Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which ~~present a direct relationship~~ is detrimental to the health, safety, or welfare of any client or patient, but which does not result in substantial risk that death or serious physical ~~harm~~ harm, abuse, neglect, or exploitation will occur. ~~The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.~~ The person making the findings shall do the following:

a. Orally and immediately inform the facility of the Type B Violation and the specific findings.

b. Require a written plan of protection regarding how the facility will immediately abate the Type B Violation in order to protect clients or residents from further risk or additional harm.

c. Within 15 working days of the investigation, send a report of the findings to the facility.

d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

~~(b) Penalties for Failure to Correct Violations Within Time Specified.~~

~~(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars ($1,000) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.~~

~~(2)~~ Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to four hundred dollars ($400.00) for each day that the ~~deficiency~~ violation continues beyond the date specified for correction without just reason for the failure. The Department or its authorized representative shall ensure that the violation has been corrected.

(3) Repeat Violations. – The Department shall impose a civil penalty which is treble the amount assessed under ~~subdivision (1) of~~ this subsection ~~(a) of this section~~ when a facility under the same ~~management, ownership, or control~~ management or ownership has received a citation during the previous 12 months for which the appeal rights are exhausted and penalty payment is expected or has occurred, and ~~has received a citation and paid a penalty for~~ the current violation is for ~~violating~~ the same specific provision of a statute or regulation for which it received a ~~citation~~ violation during the previous 12 months.

(c) Factors to Be Considered in Determining Amount of Initial Penalty. – In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) There is substantial risk that serious physical harm, abuse, neglect, or exploitation will occur, and this has not been corrected within the time specified by the Department or its authorized representative; ~~The gravity of the violation, including the fact that death or serious physical harm to a~~

~~client or patient has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;~~

(2) Serious physical harm, abuse, neglect, or exploitation, without substantial risk for client death, did occur;~~The gravity of the violation, including the probability that death or serious physical harm to a client or patient will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;~~

(3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk for client death, did occur;~~The gravity of the violation, including the probability that death or serious physical harm to a client or patient may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;~~

(3a) A client died;

(3b) A client died and there is substantial risk to others for serious physical harm, abuse, neglect, or exploitation;

(3c) A client died and there is substantial risk for further client death;

(4) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and other applicable State and federal laws and regulations;

(5) Efforts by the licensee to correct violations;

(6) The number and type of previous violations committed by the licensee within the past 36 months; and

~~(7) The amount of assessment necessary to ensure immediate and continued compliance; and~~

(8) The number of clients or patients put at risk by the violation.

(d) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Department shall document the findings in written record and shall make the written record available to all affected parties including:

(1) The licensee involved;

(2) The clients or patients affected; and

(3) The family members or guardians of the clients or patients affected.

(e) The Department shall impose a civil penalty of fifty dollars ($50.00) per day on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(f) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and

(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.

(g) Any penalty imposed by the Department of Health and Human Services under this section shall commence on the ~~day the violation began.~~ date of the letter of notification of the penalty amount.

(h) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(i) In lieu of assessing ~~an~~ all or some of the administrative penalty, the Secretary may order a facility to provide staff training ~~if:~~ if the training is:

(1) Specific to the violation;

(2) Approved by the Department of Health and Human Services; and

(3) Taught by someone approved by the Department.

~~(1) The penalty would be for the facility's only violation within a 12-month period preceding the current violation and while the facility is under the same management; and~~

~~(2) The training is:~~

~~a. Specific to the violation;~~

~~b. Approved by the Department of Health and Human Services; and~~

~~c. Taught by someone approved by the Department and other than the provider.~~

(j) The clear proceeds of civil penalties provided for in this section shall be remitted to the State Treasurer for deposit in accordance with State law.

(k) In considering renewal of a license, the Department shall not renew a license if outstanding fines and penalties imposed by the Department against the facility or program have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration for nonrenewal under this subsection."

SECTION 2. G.S. 131D-34 reads as rewritten:

"**§ 131D-34. Penalties; remedies.**

(a) ~~Violations Classified.~~ Violation Classification and Penalties. – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations ~~issued~~ for violations shall be classified and penalties assessed according to the nature of the violation as follows:

(1) "Type ~~A~~ A1 Violation" means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, abuse, neglect, or exploitation. ~~or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation.~~ The person making the findings shall do the following:

a. Orally and immediately inform the ~~administrator of the~~ facility of the Type A1 Violation and the specific ~~findings~~ findings.~~and what must be done to correct them, and set a date by which the violation must be corrected;~~

a1. Require a written plan of protection regarding how the facility will immediately abate the Type A1 Violation in order to protect residents from further risk or additional harm.

b. Within ~~10~~ 15 working days of the investigation, ~~confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and~~send a report of the findings to the facility.

c. ~~Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.~~ Require a

plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

The Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) for each Type ~~A~~ A1 Violation in ~~homes~~ facilities licensed for six or fewer beds. The Department shall impose a civil penalty in an amount not less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000) for each Type ~~A~~ A1 Violation in facilities licensed for seven or more beds. Where a facility has failed to correct a Type A1 Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars ($1,000) for each day that the violation continues beyond the time specified for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

(1a) "Type A2 Violation" means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur. The person making the findings shall do the following:

a. Orally and immediately inform the facility of the Type A2 Violation and the specific findings.

b. Require a written plan of protection regarding how the facility will immediately abate the Type A2 Violation in order to protect clients or residents from further risk or additional harm.

c. Within 15 working days of the investigation, send a report of the findings to the facility.

d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

The violation or violations shall be corrected within the time specified for correction by the Department or its authorized representative. The Department may or may not assess a penalty taking into consideration the compliance history, preventative measures, and response to previous violations by the facility. Where a facility has failed to correct a Type A2 Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars ($1,000) for each day that the deficiency continues beyond the time specified for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

(1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the violation was not previously identified by the Department or its authorized representative or (ii) the violation was discovered by the facility and was self-reported, but in either case the violation has been corrected. In determining whether a penalty should be assessed under this section, the Department shall consider the following factors:

a. Preventive systems in place prior to the violation.

b. Whether the violation or violations were abated immediately.

c. Whether the facility implemented corrective measures to achieve maintain compliance.

d. Whether the facility's system to ensure compliance is maintained and continues to be implemented.

e. Whether the regulatory area remains in compliance.

(2) "Type B Violation" means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which is detrimental ~~present a direct relationship~~ to the health, safety, or welfare of any resident, but which does not result in substantial risk that death or serious physical ~~harm~~ harm, abuse, neglect, or exploitation will occur. ~~The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a reasonable time period to address the violation. The required plan cannot exceed requirements imposed by existing rule or law.~~The person making the findings shall do the following:

a. Orally and immediately inform the facility of the Type B Violation and the specific findings.

b. Require a written plan of protection regarding how the facility will immediately abate the Type B Violation in order to protect residents from further risk or additional harm.

c. Within 15 working days of the investigation, send a report of the findings to the facility.

d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

~~(b) Penalties for failure to correct violations within time specified.~~

~~(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars ($1,000) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.~~

~~(2)~~ Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to four hundred dollars ($400.00) for each day that the ~~deficiency~~ violation continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall ensure that the violation has been corrected.

(3) Repeat Violations. – The Department shall impose a civil penalty which is treble the amount assessed under ~~subdivision (1) of~~ subsection (a) of this section when a facility under the same ~~management, ownership, or control has received a citation~~ management or ownership has received a citation during the previous 12 months for which the appeal rights are exhausted and penalty payment is expected or has occurred, and the current violation is ~~and paid a penalty~~ for ~~violating~~ the same specific provision of a statute or regulation for which it received a ~~citation~~ violation during the previous 12 months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.

(c) ~~Factors to be considered in determining amount of initial penalty.~~ Factors to Be Considered in Determining Amount of Initial Penalty. – In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) ~~The gravity of the violation, including the fact that death or serious physical harm to a resident has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;~~There is substantial risk that serious physical harm, abuse, neglect, or exploitation will occur;

(1a) ~~The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;~~ Serious physical harm, abuse, neglect, or exploitation, without substantial risk for resident death, did occur;

(1b) ~~The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;~~ Serious physical harm, abuse, neglect, or exploitation, with substantial risk for resident death, did occur;

(1c) A resident died;

(1d) A resident died and there is substantial risk to others for serious physical harm, abuse, neglect, or exploitation;

(1e) A resident died and there is substantial risk for further resident death;

(2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and ~~G.S. 131E-265~~ G.S. 131D-21 and other applicable State and federal laws and regulations;

(2a) Efforts by the licensee to correct violations;

(3) The number and type of previous violations committed by the licensee within the past 36 months; and

~~(4) The amount of assessment necessary to insure immediate and continued compliance; and~~

~~(5)~~ (4) The number of ~~patients~~ residents put at risk by the violation.

(c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The ~~Secretary~~ Department shall document the findings in written record and shall make the written record available to all affected parties including:

(1) The penalty review committee;

(2) The local department of social services who is responsible for oversight of the facility involved;

(3) The licensee involved;

(4) The residents affected; and

(5) ~~The family members or guardians of the residents affected.~~ The family member who serves as a responsible party or those who have legal authority on behalf of the affected resident.

(c2) Local county departments of social services and Division of Health Service Regulation personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty of fifty dollars ($50.00) per day on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(d1) The Department shall impose a civil penalty on any applicant for licensure who provides false information or omits information on the portion of the licensure application requesting information on owners, administrators, principals, or affiliates of the facility. The amount of the penalty shall be as is prescribed for a Type ~~A~~ A1 Violation.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in ~~the Administrative Procedure Act,~~ Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and

(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.

(f) ~~Notwithstanding the notice requirements of G.S. 131D-26(b), any~~ Any penalty imposed by the Department of Health and Human Services under this section shall commence on the ~~day the violation began.~~ date the violation was identified.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g1) In lieu of assessing ~~an~~ all or some of the administrative penalty, the Secretary may order a facility to provide staff training ~~if:~~ if the training is:

(1) Specific to the violation;

(2) Approved by the Department of Health and Human Services; and

(3) Taught by someone approved by the Department.

~~(1) The cost of training does not exceed one thousand dollars ($1,000);~~

~~(2) The penalty would be for the facility's only violation within a 12-month period preceding the current violation and while the facility is under the same management; and~~

~~(3) The training is:~~

~~a. Specific to the violation;~~

~~b. Approved by the Department of Health and Human Services; and~~

~~c. Taught by someone approved by the Department and other than the provider.~~

(h) The Secretary shall establish a penalty review committee within the Department, which shall meet as often as needed, but no less frequently than once each quarter of the year, to review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129 as follows:

(1) The Secretary shall administer the work of the Committee and provide public notice of its meetings via Web site, and provide direct notice to the following parties involved in the penalties the Committee will be reviewing:

a. The licensed provider, who upon receipt of the notice, shall post the notice of the scheduled Penalty Review Committee meeting in a conspicuous place available to residents, family members, and the public;

b. The local department of social services that is responsible for oversight of the facility involved;
c. The residents affected; and
d. Those individuals lawfully designated by the affected resident to make health care decisions for the resident.

(2) The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:
a. A licensed pharmacist;
b. A registered nurse experienced in long term care;
c. A representative of a nursing home;
d. A representative of an adult care home; and
e. Two public members. One shall be a "near" relative of a nursing home patient, chosen from a list prepared by the Office of State Long Term Care Ombudsman, Division of Aging, Department of Health and Human Services. One shall be a "near" relative of a rest home patient, chosen from a list prepared by the Office of State Long Term Care Ombudsman, Division of Aging, Department of Health and Human Services. For purposes of this subdivision, a "near" relative is a spouse, sibling, parent, child, grandparent, or grandchild.

(3) Neither the pharmacist, nurse, nor public members appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or adult care home.

(4) Repealed by Session Laws 2005-276, s. 10.40A(l), effective July 1, 2005.

(4a) Repealed by Session Laws 2007-544, s. 1, effective October 1, 2007.

(4b) Prior to serving on the Committee, each member shall complete a training program provided by the Department of Health and Human Services that covers standards of care and applicable State and federal laws and regulations governing facilities licensed under Chapter 131D and Chapter 131E of the General Statutes.

(5) Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee.

(6) The Committee shall be cochaired by:
a. One member of the Department outside of the Division of Health Service Regulation; and
b. One member who is not affiliated with the Department.

(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the ~~Civil Penalty and Forfeiture Fund~~ State Treasurer for deposit in accordance with ~~G.S. 115C-457.2.~~State law."

SECTION 3. G.S. 131E-129 reads as rewritten:

"**§ 131E-129. ~~Penalties.~~Penalties; remedies.**

(a) ~~Violations classified.~~ Violation Classification and Penalties. – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this ~~Part~~ Article on any ~~facility's licensee~~ facility which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations ~~issued~~ for violations shall be classified and penalties assessed according to the nature of the violation as follows:

(1) "Type ~~A~~ AI Violation" means a violation by a ~~facility's licensee~~ facility of the ~~regulations, standards,~~ regulations and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical ~~harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation.~~ harm. The person making the findings shall do the following:

a. Orally and immediately inform the ~~administrator of the~~ facility of the Type A1 Violation and the specific ~~findings and what must be done to correct them and set a date by which the violation must be corrected;~~ findings.

~~b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and~~

~~c. Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.~~

d. Require a written, credible allegation regarding how the facility will immediately remove the Type A1 Violation in order to protect residents from further risk or additional harm.

e. Within 15 working days of the investigation, send a report of the findings to the facility.

f. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance by the date specified by the Department.

The Department shall impose a civil penalty in an amount not less than ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) nor more than ~~ten thousand dollars ($10,000)~~ twenty thousand dollars ($20,000) for each Type ~~A~~ AI Violation. Where a facility has failed to correct a Type A1 Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars ($1,000) for each day that the violation continues beyond the date specified for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

(1a) "Type A2 Violation" means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in substantial risk that death or serious physical harm will occur. The person making the findings shall do the following:

a. Orally and immediately inform the facility of the Type A2 Violation and the specific findings.

b. Require a credible allegation regarding how the facility will immediately remove the Type A2 Violation in order to protect residents from further risk or additional harm.

c. Within 10 working days of the investigation, send a report of the findings to the facility.

d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility

will take to achieve and maintain compliance by the date specified by the Department.

The violation or violations shall be corrected within the time specified for correction by the Department or its authorized representative. The Department may or may not assess a penalty taking into consideration the compliance history, preventative measures, and response to previous violations by the facility. Where a facility has failed to correct a Type A2 Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars ($1,000) for each day that the deficiency continues beyond the time specified for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

(1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the violation was not previously identified by the Department or its authorized representative or (ii) the violation was discovered by the facility and was self-reported, but in either case the violation has been corrected. In determining whether a penalty should be assessed under this section, the Department shall consider the following factors:

a. Preventive systems in place prior to the violation.
b. Whether the violation or violations were abated immediately. and
c. Whether the facility implemented corrective measures to achieve and maintain compliance.
d. Whether the facility's system to ensure compliance is maintained and continues to be implemented.
e. Whether the regulatory area remains in compliance.

(2) "Type B Violation" means a violation by a facility's licensee of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which ~~presents a direct relationship~~ is detrimental to the health, safety, or welfare of any resident, but which does not result in substantial risk that death or serious physical harm will occur. ~~The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.~~The person making the findings shall do the following:

a. Orally and immediately inform the facility of the Type B Violation and the specific findings.
b. Require a written plan regarding how the facility will immediately remove the Type B Violation in order to protect residents from further risk or additional harm.
c. Within 10 working days of the investigation, send a report of the findings to the facility.
d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance by the date specified by the Department.

Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to four hundred dollars ($400.00) for each day that the violation continues

beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall ensure that the violation has been corrected.

(3) Repeat Violations. – The Department shall impose a civil penalty which is treble the amount assessed under subsection (a) of this section when a facility under the same management or ownership has received a citation during the previous 12 months for which the appeal rights are exhausted and penalty payment is expected or has occurred, and the current violation is for the same specific provision of a statute or regulation for which it received a violation during the previous 12 months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to law.

~~(b) Penalties for failure to correct violations within time specified.~~

~~(1) Where a facility's licensee has failed to correct a Type A Violation, the Department shall assess the facility's licensee a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.~~

~~(2) Where a facility's licensee has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility's licensee a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative without just reason for such failure. The Department or its authorized representative shall ensure that the violation has been corrected.~~

~~(3) The Department shall impose a civil penalty on a facility's licensee which is treble the amount assessed under subdivision (1) of subsection (a) when a facility under the management, ownership, or control of that same licensee has received a citation and paid a penalty for violating the same specific provision of a statute or regulation for which the facility's licensee has received a citation during the previous 12 months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 13 of this Chapter.~~

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

~~(1) The gravity of the violation, including the fact that death or serious physical harm to a resident has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;~~

~~(1a) The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;~~

~~(1b) The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;~~

~~(2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal laws and regulations;~~

~~(2a) Efforts by the licensee to correct violations;~~

~~(3) The number and type of previous violations committed by the licensee within the past 36 months;~~

~~(4) The amount of assessment necessary to insure immediate and continued compliance; and~~

~~(5) The number of patients put at risk by the violation.~~

(1) There is substantial risk that serious physical harm, abuse, neglect, or exploitation will occur.

(2) Serious physical harm, abuse, neglect, or exploitation, without substantial risk for resident death, did occur.

(3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk for resident death, did occur.

(4) A resident died.

(5) A resident died and there is substantial risk to others for serious physical harm, abuse, neglect, or exploitation.

(6) A resident died and there is substantial risk for further resident death.

(7) Reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 did occur.

(8) Efforts by the licensee to correct violations.

(9) The number and type of previous violations committed by the licensee within the past 36 months.

(10) The number of residents put at risk by the violations.

(c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Secretary shall document the findings in written record and shall make the written record available to all affected parties including:

(1) The penalty review committee;

(2) The local department of social services who is responsible for oversight of the facility involved;

(3) The licensee involved;

(4) The residents affected; and

(5) ~~The family members or guardians of the residents affected.~~The family member who serves as a responsible party or those who have legal authority on behalf of the affected resident.

(c2) Local county departments of social services and Division of Health Service Regulation personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty of fifty dollars ($50.00) per day on any ~~facility's licensee~~ facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any ~~facility's licensee~~ facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and

(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.

(e1) Notwithstanding the notice requirements of G.S. 131E-24, any penalty imposed by the Department of Health and Human Services under this section shall commence on the day the penalty is imposed.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a ~~facility's licensee:~~ facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this section.

(g1) In lieu of assessing ~~an~~ all or some of the administrative penalty, the Secretary may order a facility to provide staff training ~~if:~~ if the training is:

~~(1) The cost of training does not exceed one thousand dollars ($1,000);~~

~~(2) The penalty would be for the facility's only violation within a 12-month period preceding the current violation and while the facility is under the same management; and~~

~~(3) The training is:~~

~~a.~~ (1) Specific to the violation;

~~b.~~ (2) Approved by the Department of Health and Human Services; and

~~c.~~ (3) Taught by ~~someone~~ an individual approved by the ~~Department and other than the provider.~~ Department.

(h) The Department shall not assess an administrative penalty against a facility under this section if a civil monetary penalty has been assessed for the same violation under federal enforcement laws and regulations.

(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 397:
DHHS Penalties and Remedies Revision.-AB

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Rep. Lewis	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: HB 397 amends the penalty provisions for nursing home facilities, adult care facilities, and facilities providing services to the mentally ill, developmentally disabled, and substance abusers. The penalty provisions for each type of facility are substantially similar.

CURRENT LAW: G.S. 122C-24.1 provides for the imposition of administrative penalties on licensed facilities providing services to the mentally ill, developmentally disabled, and substance abusers.

G.S. 131D-34 provides for the imposition of administrative penalties on licensed adult care facilities that are in violation of residents' rights set forth in G.S. 131D-21, or other State or federal law or regulation.

G.S. 131E-129 provides for the imposition of administrative penalties for nursing homes which are in violation of residents' rights as set forth in G.S. 131E-117 or applicable State and federal laws and regulations.

BILL ANALYSIS: House Bill 357 amends the provisions for the imposition of administrative penalties on nursing care facilities, G.S. 131E-129, adult care facilities, G.S. 131D-34, and facilities providing services to the mentally ill, developmentally disabled and substance abusers, G.S. 122C-24.1. Violations at these facilities will be classified and processed as follows:

1. Type A1 violations. Violations by a facility of State or federal laws or regulations that result in death or serious physical harm, abuse, neglect or exploitation.

The person making the finding of violation must:

- Orally and immediately inform the facility of the Type A1 violation and the specific findings.
- Require a written plan of protection for the abatement of the violation in order to protect clients from further risk of harm.
- Within 15 working days of the investigation, send a report of the findings to the facility.
- Require a plan of correction from the facility describing the steps the facility will take to achieve and maintain compliance.

For a Type A1 violation the Department of Health and Human Services (DHHS) must impose a civil penalty. For facilities serving 6 or fewer persons, the fines shall be not less than $500 nor more than $10,000. Facilities serving 7 or more may be assessed not less than $1,000 nor more than $20,000 *(These penalty amounts are in the current statute.)*

Failure to correct a Type A1 shall result in the assessment of a penalty of $1000 for each day the violation continues beyond the time specified for correction.

2. Type A2 violations. Violations by a facility of the laws and regulations that results in a substantial risk of death, serious physical harm, abuse, neglect, or exploitation.

The person making the finding of Type A2 violation must follow the same procedure as for a Type A1 violation.

DHHS may or may not assess a penalty taking into consideration the compliance history, preventative measures, and response to previous violations by the facility. Failure to correct a Type A2 violation shall result the assessment of a civil penalty of up to $1,000 for each day the deficiency continues beyond the time specified for correction.

3. Past Corrected Type A1 or A2 Violation. A violation that either (1) was not previously identified by DHHS or (2) was discovered by the facility and self reported, but in either case the violation was corrected. In determining whether a penalty should be assessed, DHHS shall consider:

- Preventative measures in place prior to the violation.
- Whether the violation was abated immediately.
- Whether corrective measures were implemented.
- Whether the facility's system to ensure compliance is maintained and implemented.
- Whether the regulatory area remains in compliance.

4. Type B Violation. A Type B violation is one that is detrimental to the health, safety, or wellbeing of a resident, but which does not result in substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur.

The person making the finding of a violation shall follow the same procedure as for a Type A1 or A2 violation.

5. Repeat Violations. DHHS shall impose a civil penalty 3x the amount earlier assessed when a facility under the same management or ownership has received a citation for violating the same specific provisions of the law or regulations during the previous 12 months for which the appeal rights are exhausted and penalty payment is expected or has occurred. *(The trebling of the penalty is in the current statute. Current law also provides for the penalty to be assessed if a facility has received a citation for the same specific violation).*

6. Factors to be considered in determining amount of initial penalty.

- Substantial risk that serious physical harm, abuse, neglect, or exploitation will occur.
- Serious physical harm, abuse, neglect, or exploitation, without substantial risk of death did occur.
- Serious physical harm, abuse, neglect, or exploitation, with substantial risk of death did occur.
- A client died.
- A client died and there is substantial risk to others of serious physical harm, abuse, neglect, or exploitation.
- A client died, and there is substantial risk for further client death.
- The reasonable diligence of the facility to comply with State and federal law and regulations.
- Efforts to correct violations.
- Number and type of violations within the previous 36 months.
- Number of clients put at risk by the violation.

7. Staff Training in Lieu of Penalty. In lieu of assessing all or part of a penalty, the Secretary may order a facility to provide staff training that is specific to the violation, approved by DHHS and taught by someone approved by DHHS.

8. Miscellaneous. In addition to the above provisions, the bill provides that DHHS shall impose a $50/day penalty for failure to allow an authorized DHHS representative to inspect the premises and records of the facility.

For facilities serving the mentally ill, developmentally disabled, or substance abusers, any penalty imposed shall commence on the date of the letter of notification of the penalty amount. For adult care facilities and nursing homes, any penalty imposed shall commence the date the violation was identified.

In addition to the above:

Section 2 amends G.S. 131D-34(c1), which provides for the findings in support of an administrative penalty to be made available to all affected parties, to add the family member who serves as a responsible party or those who have legal authority on behalf of the affected resident, to the list of those who are entitled to receive the written record.

Section 2 also amends G.S. 131D-34(d1) to provide that the penalty for the provision of false information or omission of information on a licensure application requesting information on owners, administrators, principals, or affiliates of the facility is the same as for a Class A1 violation.

Section 3 amends G.S. 131E-129(c1), which provides for the findings in support of an administrative penalty to be made available to all affected parties, to add the family member who serves as a responsible party or those who have legal authority on behalf of the affected resident, to the list of those who are entitled to receive the written record.

Section 3 also amends G.S. 131E-129(e) to provide that a petition for a contested case shall be filed within 30 days after DHHS mails a notice of penalty to a licensee.

EFFECTIVE DATE: The act is effective when it becomes law.

Barbara Riley, counsel to House Judiciary A, substantially contributed to this summary.

H397-SMTD-89(e2) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 397

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H397-ASQ-80 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Date _____,2011

Senator Bingham

moves to amend the bill on page 2, line ~~43~~ 42, by deleting the word "as" and substituting the word "and";

and on page 8, line 25, by deleting the phrase" G.S. 131D-21" and substituting the phrase "G.S. 131D-40";

and on page 15, line 5, by rewriting the line to read:
"the citation imposed".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 436
PROPOSED COMMITTEE SUBSTITUTE S436-CSRB-67 [v.1]

6/13/2011 12:32:49 PM

Short Title: Extend Sunsets. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE QUALIFIED BUSINESS VENTURE TAX CREDIT SUNSET AND TO EXTEND THE SALES TAX REFUND ALLOWED TO A JOINT GOVERNMENTAL AGENCY CREATED TO OPERATE A CABLE TELEVISION SYSTEM FOR ONE YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-163.015 reads as rewritten:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after January 1, ~~2013.~~2016."

SECTION 2. Section 1 of S.L. 2010-153 reads as rewritten:

"**SECTION 1.** A joint agency created by an interlocal agreement pursuant to G.S. 160A-462 to operate a cable system that provides video programming services is allowed a refund of sales and use tax paid by it on purchases made on or after July 1, 2007, and before ~~June 30, 2010,~~ June 30, 2011, to the same extent allowed to a city under G.S. 105-164.14(c). Notwithstanding G.S. 105-164.14, the joint agency must make a request for a refund in writing before January 1, 2011."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 436: Extend Sunsets

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S436-CSRB-67		

SUMMARY: ***Senate Bill 436 would extend the sunset on the tax credit for qualified business ventures from January 1, 2013, to January 1, 2016. The proposed committee substitute would also extend for one year the sales tax refund allowed to a joint governmental agency created to operate a cable television system. The bill would become effective when it becomes law.***

QUALIFIED BUSINESS VENTURE TAX CREDIT: The General Assembly enacted the tax credit for investments in qualified business ventures in August 1987 to promote economic development for North Carolina businesses. The purpose of the credit is to stimulate early stage investments that help move new technologies from universities and other research laboratories to commercialization. The qualified business investment tax credit is allowed for an individual taxpayer who invests in a qualifying small business. Qualifying small businesses include a business that engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, a business that has received within the preceding three years funding from a federal agency under the Small Business Innovation Research Programs, or a business that has been certified by a research university as currently performing under a licensing agreement with the institution for commercializing technology developed at the institution.

The credit is equal to 25% of the amount invested and may not exceed $50,000 per individual in a single taxable year. The total amount of tax credits allowed to taxpayers for investments made in a calendar year may not exceed $7.5 million. If the total amount of tax credits claimed exceeds this maximum amount, the credit is allocated proportionately among the taxpayers.

Section 1 of the bill would extend the sunset on the credit from January 1, 2013, to January 1, 2016. The General Assembly last extended the credit in S.L. 2010-31 from January 1, 2011, to January 1, 2013.

SALES TAX REFUND FOR MI CONNECTION: Last session, the General Assembly allowed cities that jointly operate a cable television system to obtain a refund of State and local sales and use tax paid by the entity on purchases made between July 1, 2007, and June 30, 2010. Section 2 of the bill would extend the refund for one year, for purchases made through June 30, 2011.

The only entity that fits this description is MI Connection. MI Connection is a locally owned and operated cable and Internet system serving the towns of Mooresville, Davidson and Cornelius in the counties of Mecklenburg and Iredell. The municipalities have created a joint agency through an interlocal agreement pursuant to G.S. 160A-462 to operate a cable television system. A cable television system is one of the listed systems that a municipality has the authority to operate as a public enterprise under Article 16 of Chapter 160A of the General Statutes.

Under G.S. 105-164.14(c) a city may obtain a sales tax refund of the purchases it makes. Under that authority, a city that operates a cable television system may obtain a sales tax refund; MI Connection was not allowed a refund under that subsection because it was operated as a joint venture, rather than by the cities themselves.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 13, 2011

TO: Senate Finance Committee

FROM: Sandra Johnson and Jonathan Tart
Fiscal Research Division

RE: Senate Bill 436 (Unknown Edition)

FISCAL IMPACT ($ In millions)

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
QBV Tax Credit	**$0.0**	**$0.0**	**$(7.5)**	**$(7.5)**	**$(7.5)**
Sales Tax Refund	**(0.03)**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Effective when the bill becomes law.

BILL SUMMARY: The proposed committee substitute for Senate Bill 436 extends the sunset for the qualified business venture tax credit from January 1, 2013 to January 1, 2016. The qualified business venture tax credit is allowed for an individual taxpayer who invests in a qualifying small business. The PCS also extends the sunset for the sales tax refund for MI Connection for one year for purchases made through June 30, 2011.

The 2010 session of the General Assembly enacted HB 455 authorizing MI Connection as an institution eligible for a sales and use tax refund under G.S. 105-164.14. The legislation redefined

the types of joint governmental agencies eligible for a sales tax refund under G.S.105-164.14(c). Under the bill, an agency created by an interlocal agreement pursuant to G.S. 160A-462 became eligible for a sales and use tax refund. The agency must also operate a public broadcast station or "communication system that provides high-speed broadband Internet access service or other Internet access service" or provide other video programming services.

Qualifying small businesses include a business that engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, a business that has received within the preceding three years funding from a federal agency under the Small Business Innovation Research Programs, or a business that has been certified by a research university as currently performing under a licensing agreement with the institution for commercializing technology developed at the institution. The credit is equal to 25% of the amount invested and may not exceed $50,000 per individual in a single taxable year. The total amount of tax credits allowed to taxpayers for investments made in a calendar year may not exceed $7.5 million.

ASSUMPTIONS AND METHODOLOGY: Credit utilization is expected to equal the cap. Therefore, the impact for each year the credit is extended equals the $7.5 million cap.

SB 436 extends the annual sales and use tax refund allowed to MI Connection for an additional fiscal year. This change reduces General Fund availability by $25,000 for the 2011-12 fiscal year and local revenues by $5,000 per fiscal year.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 249
PROPOSED COMMITTEE SUBSTITUTE S249-CSTD-15 [v.15]

6/10/2011 2:09:27 PM

Short Title: Restore Cigarette Tax Stamps. (Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF THE CIGARETTE EXCISE TAX AND TO DETER THE UNLAWFUL SALE OF NON-TAX-PAID CIGARETTES BY REINSTATING THE REQUIREMENT THAT CIGARETTES BEAR A STAMP INDICATING PAYMENT OF THE TAX, AND TO MODIFY THE DISCOUNT DISTRIBUTORS RECEIVE FOR PAYMENT OF THE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-113.8A. Stamps required on packages of cigarettes.**

(a) Requirement. – A package of cigarettes subject to tax in this State must be marked by a heat transfer stamp indicating that the package of cigarettes is taxable under this Article.

(b) Responsibility of Distributor. – It is unlawful for a person that is not a licensed distributor to receive or possess a package of unstamped cigarettes or to place a stamp on a package of cigarettes. A licensed distributor that receives a package of unstamped cigarettes must place a stamp on the package prior to shipping to retail outlets. A licensed distributor may obtain a cigarette stamp from the Secretary or, with the approval of the Secretary, from the producer of the stamps. A licensed distributor must place a stamp on a package of cigarettes in a manner that ensures the stamp will be torn or mutilated if a person tries to remove the stamp from the package.

(c) Responsibility of Secretary. – The Secretary must prescribe the design, denominations, and other details of a cigarette stamp and must provide for the production of the stamp. A stamp must display a unique serial number that is visible at the point of sale or use. The Secretary must collect the amount due for a stamp when the Secretary transfers, or authorizes the transfer of, the stamp to a licensed distributor. The charge for a tax-paid stamp is the amount of tax payable under this Article on the package of cigarettes on which the stamp will be placed. The Secretary must keep a record of the stamps transferred to a licensed distributor. "

SECTION 2. G.S. 105-113.9 reads as rewritten:

"**§ 105-113.9. Out-of-state shipments.**

~~Any~~ A licensed distributor engaged in interstate business ~~shall be permitted to~~ may, with the approval of the Secretary, set aside ~~part of the stock as necessary~~ packages of cigarettes needed to conduct interstate business without ~~paying the tax~~ stamping the packages as otherwise required by this ~~Part, but only if the distributor complies with the requirements~~

~~prescribed by the Secretary concerning keeping of records, making of reports, posting of bond, and other matters for administration of this~~ Part.

"Interstate business" as used in this section ~~means:~~means any of the following:

(1) The sale to a nonresident of packages of cigarettes ~~to a nonresident where the cigarettes are delivered by~~ the distributor delivers to the business location of the nonresident purchaser in another ~~state; and~~state.

(2) The sale of cigarettes for resale outside the State to a nonresident wholesaler or retailer registered through the Secretary ~~who has~~ with no place of business in North ~~Carolina and who purchases the cigarettes for the purposes of resale not within this State~~Carolina. The ~~and where the~~ cigarettes ~~are~~ must be delivered to the purchaser at the business location in North Carolina of the distributor who is also licensed as a distributor under the laws of the state of the nonresident purchaser."

SECTION 3. G.S. 105-113.10 reads as rewritten:

"**§ 105-113.10. ~~Manufacturers shipping to distributors exempt.~~In-State shipments of manufacturers and other distributors.**

~~Any manufacturer shipping cigarettes to other distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part. No manufacturer may be relieved of the requirement to be licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate user.~~

(a) It is unlawful for a person that is not a licensed distributor to ship an unstamped package of cigarettes into this State or between locations in this State.

(b) A licensed distributor may ship a package of unstamped cigarettes in the following circumstances:

(1) To a facility the distributor owns.

(2) To a person in a transaction that is not subject to the federal excise tax on cigarettes.

(3) To an agency or an instrumentality of the United States.

(c) A manufacturer delivering cigarettes to a licensed distributor may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part. In addition to shipments authorized by subsection (b) of this section, a manufacturer may ship unstamped packages of cigarettes directly to a licensed distributor.

SECTION 4. G.S. 105-113.18 reads as rewritten:

"**§ 105-113.18. Payment of tax; reports.**

(a) Payment. – ~~The taxes levied in this Part are payable when a report is required to be filed. The~~ Payment in full must accompany an application for purchase of stamps unless the Secretary authorizes a licensed distributor to purchase stamps on credit. A licensed distributor may purchase stamps on credit if the distributor has filed a bond satisfactory to the Secretary. The Secretary may set the maximum number of stamps that may be purchased by a licensed distributor on credit. A bond required by the Secretary for the credit purchase of stamps may not be more than three times the average tax liability of a licensed distributor in a reporting period. A licensed distributor must pay for the stamps purchased on credit when a report is required to be filed. The tax levied in this Part on the sale or possession of a package of cigarettes by a person that is not a distributor is payable when the person is required to file a report.

(b) Reports. – The following reports are required to be filed with the ~~Secretary:~~Secretary. A report must be in the form required by the Secretary and contain the information required by the Secretary.

(1) Distributor's Report. – A distributor ~~shall~~ must file a monthly report ~~in the form prescribed by the Secretary. The report~~ that covers sales and other activities occurring in a calendar ~~month and~~ month. The report is due within 20 days after the end of the month covered by the report. The report ~~shall state the amount of tax due and shall identify any transactions to which the tax does not apply.~~must include the following information:

a. The number of unstamped cigarette packages on hand on the first and last days of the month.

b. The number of unstamped cigarette packages received during the month.

c. The number of unstamped cigarette packages sold during the month.

d. The number of unstamped cigarettes returned to the manufacturer during the month.

e. The number of stamps on hand on the first and last days of the month.

f. The number of cigarette stamps obtained during the month.

g. All authorized stamp adjustments authorized by the Secretary to be made during the month.

h. The number of cigarette stamps placed on packages of cigarettes during the month.

(1a) Report of Free Cigarettes. – A manufacturer ~~who~~ that distributes cigarettes without charge shall file a monthly report in the form prescribed by the Secretary. The report covers cigarettes distributed without charge in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the number of cigarettes distributed without charge and the amount of tax due.

(2) Use Tax Report. – ~~Every other person who has acquired non tax paid~~ A person that is not a distributor and that acquires a package of unstamped cigarettes for sale, use, or consumption subject to the tax imposed by this Part ~~shall,~~ must file a report within 96 hours after ~~receipt of the cigarettes, file a report in the form prescribed by the Secretary showing the amount of cigarettes so received and any other information required by the Secretary. The report shall be accompanied by payment of the full amount of the tax.~~receiving the package of cigarettes. The report must state the number of cigarettes acquired and the amount of tax due.

(3) Shipping Report. – ~~Any person, except a licensed distributor, who~~ A person that is not a licensed distributor and that transports cigarettes upon the public highways, roads, or streets of this ~~State,~~ State must, upon notice from the Secretary, ~~shall~~ file a report ~~in the form prescribed by the Secretary and~~ containing the information required by the Secretary.

(4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s. 1."

SECTION 5.(a) G.S. 105-113.21 reads as rewritten:

"**§ 105-113.21. Discount; refund.**

(a) Repealed by Session Laws 2003-284, s. 45A.1(a), effective for reporting periods beginning on or after August 1, 2003.

(a1) Discount. – A distributor who files a timely report under G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the report a discount of ~~two percent (2%).~~ 0.015¢ per cigarette. This discount covers expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.

(b) Refund. – A distributor in possession of packages of stale or otherwise unsalable cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer and

apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigarettes."

SECTION 5.(b) G.S. 105-113.21, as amended by section 5.(a) of this act, reads as rewritten:

"**§ 105-113.21. Discount; refund.**

(a) Repealed by Session Laws 2003-284, s. 45A.1(a), effective for reporting periods beginning on or after August 1, 2003.

(a1) Discount. – A distributor is eligible for ~~who files a timely report under G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the report~~ a discount of ~~0.015¢ per cigarette.~~ one and eight-tenths of a cent (1.8¢) for every stamp the distributor purchases, not to exceed two hundred thousand dollars ($200,000) a year. This discount covers the distributor's expenses ~~incurred~~ in placing stamps on packages of cigarettes, preparing the ~~records and~~ reports required by this Part, maintaining the records required by this Part, and ~~the expense of~~ furnishing a bond.

(b) ~~Refund.~~ Refund for Stale Product. – A distributor in possession of packages of stale or otherwise unsalable cigarettes upon which ~~the tax has been paid~~ a stamp has been placed may return the cigarettes to the manufacturer to dispose of the unsalable cigarettes and apply to the Secretary for a refund of the tax. The application ~~shall~~ must be in the form prescribed by the Secretary and ~~shall~~ be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary ~~shall~~ must refund the tax paid, less the discount allowed, on the unsalable cigarettes.

(c) Refund for Stamps. – A distributor that purchases a stamp is allowed a refund of the amount paid for the stamp, less the discount allowed, in the circumstances listed in this subsection. To obtain a refund, a distributor must apply to the Secretary for the refund. The circumstances are:

(1) When the distributor purchases a stamp that it does not place on a package of cigarettes.

(2) When the distributor purchases a stamp that is torn or otherwise unusable and cannot be placed on a package of cigarettes."

SECTION 5.(c) G.S. 105-113.21(a1), as amended by Sections 5.(a) and 5.(b) of this act, reads as rewritten:

"(a1) Discount. – A distributor is eligible for a discount of ~~one and eight tenths of a cent (1.8¢)~~ one and thirty five hundredths of a cent (1.35¢) for every stamp the distributor purchases, not to exceed two hundred thousand dollars ($200,000) a year. This discount covers the distributor's expenses in placing stamps on packages of cigarettes, preparing the reports required by this Part, maintaining the records required by this Part, and furnishing a bond."

SECTION 5.(d) Section 5.(a) is effective July 1, 2011. Section 5.(b) is effective July 1, 2012. Section 5.(c) is effective July 1, 2013.

SECTION 6. Part 2 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-113.21A. Bad debt deduction.**

(a) Bad debt. – As used in this section, "bad debt" means the taxes under this Part attributable to any portion of a debt that is related to a sale of cigarettes subject to tax under this Part that is not otherwise deductible or excludable, that has become worthless or uncollectible after the tax has been paid and that is eligible to be claimed, or could be claimed if the distributor kept accounts on an accrual basis, as a deduction under Section 166 of the Code. A bad debt does not include any of the following:

(1) Any interest on the wholesale price of cigarettes.

(2) Uncollectible amounts on property that remains in the possession of the distributor until the full purchase price is paid.
(3) Expenses incurred in attempting to collect any account receivable or any portion of the debt recovered.
(4) Any accounts receivable that have been sold to a third party for collection.
(5) Repossessed property.

(b) Deduction. – A distributor may deduct the amount of bad debts from the tax imposed by this Part. The amount deducted must be charged off as uncollectible on the books of the distributor. If a person pays all or part of a bad debt that a distributor claimed as a deduction under this section, the stamping agent is liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and must remit the taxes with the next report filed with the Secretary as required under G.S. 105-113.18.

(b) Supporting documentation. – A claim for a bad debt deduction must be supported by all of the following:

(1) A copy of the original invoice.
(2) Evidence the cigarettes described in the invoice were delivered to the person who ordered the cigarettes.
(3) Evidence the person who ordered and received the cigarettes did not pay the distributor for the cigarettes and the distributor used reasonable collection practices in attempting to collect the debt.

SECTION 7. G.S. 105-113.27 reads as rewritten:

"**§ 105-113.27. ~~Non-tax-paid~~ Restrictions and presumption concerning cigarettes.**

(a) Restrictions. – Except as otherwise provided in this Article, licensed distributors shall not sell, borrow, loan, or exchange ~~non-tax-paid~~ unstamped cigarettes to, from, or with other licensed distributors.

(b) ~~No~~ Except as otherwise provided in this Article, no person shall sell or offer for sale ~~non-tax-paid~~unstamped cigarettes.

(c) Presumption. – The possession of more than six hundred cigarettes on which tax has been paid to another state or country, by any person other than a licensed distributor, is prima facie evidence that the cigarettes are possessed in violation of this Part."

SECTION 8. G.S. 105-113.33 reads as rewritten:

"**§ 105-113.33. Criminal penalties.**

Any person who violates ~~any of the provisions~~ a provision of this Article for which no other punishment is specifically prescribed ~~shall be~~ is guilty of a Class 1 misdemeanor. A person who forges a stamp required under this Article or who knowingly places a forged stamp on a package of cigarettes is guilty of a Class H felony."

SECTION 9. Notwithstanding, G.S. 105-113.27 as amended by this act, cigarettes purchased by a retailer before July 1, 2012 may be possessed and sold prior to January 1, 2013. Any unstamped cigarettes possessed by a retailer January 1, 2013 must be destroyed or returned to the manufacturer.

SECTION 10. Unless otherwise noted, this act becomes effective July 1, 2012 and applies to cigarettes sold by distributors on after that date.

SENATE BILL 249:
Restore Cigarette Tax Stamps

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S249-CSTD-15		

SUMMARY: ***The proposed committee substitute to Senate Bill 249 would require a tax stamp be attached to packages of cigarettes sold in North Carolina as evidence of payment of the tax on cigarettes and would create a criminal penalty for counterfeiting stamps or stamp impression devices, effective July 1, 2012.***

[As introduced, this bill was identical to H319, as introduced by Rep. McGee, which is currently in House Commerce and Job Development, if favorable, Finance.]

CURRENT LAW: North Carolina first began taxing cigarettes in 1969. Tax stamps were required to be attached to packages of cigarettes as evidence of payment of the tax. In 1993, the tax stamp requirement was repealed and the payment of the cigarette tax was recorded by reports submitted by cigarette distributors. Currently, every state but North Carolina, North Dakota, and South Carolina requires cigarette tax stamps.[1] At the time North Carolina repealed its tax stamp requirement in 1993 four other states did not require tax stamps. Of those four states, three of those states have begun to require cigarette tax stamps: Alaska, Hawaii, and Michigan.

At the time of the original enactment, a discount of 7/24¢ per stamp was given for the expenses associated with the stamps. This discount amount equated to approximately 2.9¢ per carton. When the tax stamp was eliminated, the General Assembly changed the discount amount to 4% of the tax due and provided that the purpose of the discount is to cover a distributor's expenses associated with preparing the required tax reports. The General Assembly repealed the discount in 2003; then reinstated it in 2004 at its current rate of 2% of the tax due. With the 2009 increases in the cigarette tax rate, the 2% discount equals approximately 9¢ per carton.

BILL ANALYSIS: The PCS to Senate Bill 249 would reinstate cigarette tax stamps by requiring that a package of cigarettes for sale or use in this State must be marked by a tax-paid stamp. A person who forges a stamp or who knowingly places a forged stamp on a package of cigarettes is guilty of a Class H felony.

Administration: The Department of Revenue is required to arrange for the manufacture and sale of the stamps. Each stamp has a unique serial number. The Department may sell stamps directly to licensed distributors, or it may allow the manufacturer of the stamps to sell stamps directly to distributors. A distributor must affix the stamp to the package of cigarettes prior to shipping to retail outlets. The stamps must be affixed to the package of cigarettes in a manner that ensures the stamp cannot be removed without being mutilated or destroyed.

Payment: Payment for the stamps must accompany an application for purchase of stamps, unless the distributor is authorized by the Secretary to purchase stamps on credit. A licensed distributor may purchase stamps on credit after filing a bond with the Secretary. A distributor must pay for stamps purchased on credit when filing the next required report.

[1] South Carolina repealed its tax stamp requirement in 1997.

Reports: The monthly report distributors must file with the Department is amended to require the following additional information:

- The quantity of cigarettes on hand on the first and last days of the preceding calendar month.
- The amount of stamps purchased, used, and on hand during the reporting period.
- The amount of tax due.

Discount: Effective July 1, 2011, the discount for distributors is decreased to the amount of the discount the last year stamps were required as an indicia of payment for the tax. The discount for distributors is increased once stamping is required and the bill specifies that the discount covers the distributor's expenses in placing the stamps on the packages of cigarettes and maintaining the records required by the Department. The discount is as follows:

Effective Date	Tax Per pack	Discount Rate	Discount Amount	
			Pack	Carton
Current law	45¢	2%	0.9¢	9¢
July 1, 2011	45¢	0.015¢ per cig	0.3¢	3¢
July 1, 2012	45¢	0.09¢ per cig, $200,000 cap	1.8¢, $200,000 cap	18¢, $200,000 cap
July 1, 2013	45¢	0.0675¢ per cig, $200,000 cap	1.35¢, $200,000 cap	13.5¢, $200,000 cap

Once the discount is increased due to stamping, the discount for each distributor is subject to a $200,000 cap per year.

Bad Debt: Section 6 of the bill provides a deduction from the amount of taxes owed for uncollectible bad debt of a distributor that is attributable to taxes paid by the distributor. To qualify for the deduction, a distributor must provide supporting documentation.

EFFECTIVE DATE: Unless otherwise notice, this bill would be effective July 1, 2012.

S249-SMTD-73(CSTD-15) v7

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 13, 2011

TO: Senate Finance Committee

FROM: Sandra Johnson and Mark Bondo
Fiscal Research Division

RE: Senate Bill 249 (Proposed Committee Substitute)

FISCAL IMPACT ($ In Millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
Tax Revenue		$(5.1)	$(5.1)	$(5.0)	$(5.1)
Stamping Discount	$3.2	(0.0)	0.7	0.7	0.6
EXPENDITURES:					
DOR Admin		$(1.5)	$(1.3)	$(1.4)	$(1.4)
POSITIONS (cumulative):		14	14	14	14

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: July 1, 2011

BILL SUMMARY: Senate Bill 249 enacts a three step phase in of reinstating cigarette tax stamps. Under SB 249, the tax required in G.S. 105-113.5, the cigarette tax, must be evidenced by a heat transfer stamp placed on the package of cigarettes. The Department of Revenue (Department) must make arrangements for the manufacture and sale of the stamps. The Department may sell stamps directly to distributors, or may allow the manufacturer of the stamps to ship stamps directly to distributors.

Phase one of SB 249 occurs in fiscal year 2011-12. SB 249 reduces the wholesaler's discount to an amount equivalent to the inflation adjusted amount in place when the General Assembly initially repealed stamping in 1993. Phase two of the tax stamping phase in occurs in fiscal year 2012-13. SB 249 reinstates the requirement that a cigarette tax stamp be affixed and increases the wholesaler's discount as compensation for affixing the stamp. The wholesaler's discount in fiscal year 2012-13 increases from 0.3-cents per pack of the tax collected to 4% (1.8-cents per pack) of the collected taxes. The wholesaler's discount, however, is capped at $200,000 per distributor. Phase three of SB 249 begins in fiscal year 2013-14. The third phase reduces the wholesaler's discount to 3% or 1.35-cents per pack keeping in place the $200,000 per distributor cap.

Effective January 1, 1994, the North Carolina General Assembly discontinued the cigarette stamp program by enacting SB 1025 during the 1993-94 session. Prior to 1994, North Carolina law required all manufacturers to affix stamps to each package of cigarettes sold indicating that the state cigarette excise tax had been paid. North Carolina switched from the stamping program to a monthly reporting mechanism, eliminating the stamps and requiring manufacturers to report monthly sales. Coinciding with the elimination of the cigarette stamp program, the legislature also increased cigarette taxes by three-cents per pack, raising the total tax to five-cents per pack. Despite a three-cent per pack tax increase in 1994, removing the stamps resulted in an increase in cigarette sales. Cigarette sales increased by 18% between the 1993-94 and 1994-95 fiscal years from 722 million packs to 851 million packs generating an additional $6.4 million in tax revenue.

The national cigarette tax landscape in 1994 looked much like the scene North Carolina faces today. In 1994, the average cigarette per pack state excise tax for all 50 states equaled 30.5-cents, five times greater than North Carolina's cigarette tax of five cents per pack.[1] One of North Carolina's three neighboring states exhibited a lower per pack cigarette tax, South Carolina at seven cents per pack, Virginia at 2.5-cents per pack, and Tennessee at 13-cents per pack. The revenue increase that coincided with the stamp removal suggests that out-of state purchases played a significant role in North Carolina cigarette sales. Historical tax rate information suggests that the revenue increase between the 1994 and 1995 fiscal years was influenced more by long distance smuggling than cross-border sales.

Today, five states in the U.S., two of which are in the Southeast (Georgia and Virginia), exhibit lower state cigarette taxes than North Carolina's 45-cents per pack rate. Furthermore, North Carolina is one of three states (North Carolina, South Carolina, and Nebraska) that do not require cigarette stamps.

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[1]The Tax Burden on Tobacco. Historical Compilation, Volume 37, 2002. Table 13B-1994 Cigarette Taxes as a Percentage of Retail Price Generic Brands Included in Average Calculation. Page 130.

ASSUMPTIONS AND METHODOLOGY:

Revenue

Changes in SB 249 reduce General Fund availability by $5.0 million to $6.0 million per fiscal year. The reduction in availability represents the combined fiscal impact of the revenue reduction resulting from a decline in cigarette sales and the expenditures associated with Department of Revenue personnel needs.

The enactment of SB 249 is associated with a $5.1 million reduction in tax revenue due to a decline in long distance smuggling (out-of-state residents purchasing cigarettes from in-state vendors). This estimate assumes a moderate fiscal scenario—that smuggling will decrease fifty percent if stamping were implemented. The estimate utilizes research from a 2003 RTI study, *The Impact of Cigarette Excise Tax Increases in Low-Tax Southern States on Cigarette Sales, Cigarette Excise Tax Revenue, Tax Evasion, and Economic Activity.* North Carolina gains excise tax revenue from the cigarette sales associated with smuggling. RTI researchers estimated that in 2003 with a 5-cent per pack cigarette tax North Carolina derived roughly 7% of its sales or 105 million cigarette packs from long distance smuggling. Researchers assumed that the amount of revenue associated with smuggled cigarettes declined as the North Carolina cigarette tax rate approached the national average.

Fiscal Research also leaned heavily on the Mackinac Center's 2010 study, "Cigarette Taxes and Smuggling," which estimates cigarette smuggling in the contiguous United States. Mackinac Center researchers in both 2008 and 2010 were unable to generate a smuggling figure in North Carolina because "the state plays a central role in the model as a major source of illicitly trafficked cigarettes."[2] Mackinac researchers estimate that 55.44% of Virginia's and 8.20% of South Carolina's annual cigarette sales can be attributed to smuggling.[3] The study categorizes smuggling into two types of activities, casual smuggling and commercial/illegal smuggling. Illegal smuggling, according to researchers, accounts for 3.54% of South Carolina's and 1.28% of Virginia's annual cigarette sales.

Given recent cigarette tax increases across the nation, most notably South Carolina's tax increase to 57-cents per pack, Fiscal Research estimates that roughly 3.54% of North Carolina's annual cigarette sales, 15.5 million packs can be attributed to commercial smuggling.[4] North Carolina gains from long distance smuggling $6.8 million in cigarette tax revenue (15.5 million packs*$0.45 per pack tax* 98% adjusted collections after wholesaler's discount) and $3.5 million in sales tax revenue (15.5 million* average price of a pack of cigarettes $4.79*4.75%). If stamping were implemented, 50% of the revenue gains from smuggling would be lost, reducing North Carolina's General Fund Availability by approximately $5.1 million annually.

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[2] Lafaive, M., Fleenor, P., and Nesbitt, T. "A New Estimate of Interstate Cigarette Smuggling Rates." Published December 3, 2008. Available at: http://www.mackinac.org/10021.

[3] Lafaive, M., Fleenor, P., and Nesbitt, T. "Cigarette Taxes and Smuggling 2010." Published December 2010. Available at: http://www.mackinac.org/archives/2011/2010-09TobaccoSmugglingFINALweb.pdf. (Graphic 8: Estimated Smuggling Volumes and Smuggling Rates, 2009.)

[4] This figure assumes that smuggled cigarettes = current cigarette sales*7%-current cigarette sales*(2010 tax rate/2010 U.S. average cigarette tax rate)*7%. From a numerical perspective, the number of smuggled cigarettes equals 544.4mill packs*7%-544.4 million packs*($0.45/$1.35)*7%.

SB 249 reduces the wholesaler's discount from 2% (0.9-cents per pack) of the cigarette tax revenue remitted to the Department to an inflation adjusted amount equivalent to the discount in place in 1994 when stamping was initially repealed, 0.3-cents per pack. This change increases General Fund Availability by $3.2 million in FY 2011-12. In FY 2012-13, SB 249 also doubles the wholesaler's discount from 2% (0.9-cents per pack) of the cigarette tax revenue remitted to the Department to 4% (1.8-cents per pack), but caps the discount at $200,000 per wholesale distributor. For subsequent fiscal years beginning July 1, 2013, the bill adopts 3% (1.35-cents per pack) as the permanent wholesaler's discount rate and puts in place a $200,000 per distributor cap. Table 1 provides details on the various wholesaler discount options available.

In 2010, North Carolina's cigarette wholesalers received $5.1 million in discounts under G.S. 105-113.21. Given the reduced cigarette sales when stamping is instituted, doubling the wholesaler's discount to 1.8-cents per pack with no cap would reduce General Fund availability by $4.5 million in FY 2012-13 and FY 2013-14. The PCS to SB 249 puts in place a $200,000 cap, which would only affect 10 of North Carolina's 121 wholesale distributors. It is important to note that all distributors affected by the $200,000 discount cap currently stamp cigarettes for sale in other states. The remaining 111 distributors would see their discount amounts double under SB 249.

Table 1. Cigarette Stamping: The Fiscal Impact of Various Wholesaler Discount Rates, FY 2012-13

Current		**Discount Amount**	**Number of Distributors**
Calendar Year 2010		$5,112,324	121
Proposal		**General Fund Impact**	**Number of Distributors Affected by Cap**
Wholesaler's Discount: Year 1	1.8-cents per Pack Discount, $200 K cap	($8,907)	10
	1.8-cents per Pack Discount, No cap	($4,500,000)	0
Wholesaler's Discount: Subsequent Years	1.35-cents per Pack Discount, $200 K cap	$777,829	9
	1.35-cents per Pack Discount, $275 K cap	$115,110	8
	1.35-cents per Pack Discount, No cap	($2,200,000)	0

SB 249 allows for a permanent wholesaler's discount of 3% (1.35-cents per pack) in FY 2013-14 reducing General Fund availability by $2.2 million in subsequent years with no cap in place. When a $200,000 per distributor discount cap is in place, only nine of North Carolina's distributors are affected, and there is a slight net-gain to the General Fund.

The $400,000 accrued in wholesaler discounts during the first two years of SB 249 represents the resources needed to purchase a heat-transfer stamping machine ($63,800), a cigarette case cutter unit ($74,900), a cigarette case packing unit ($33,900) and hire two full-time employees ($70,000), leaving $157,400 in discretionary funds to purchase additional machinery, non-warrantied repair (2,000 hours of service), or cover other expenses.

Table 2 provides more information on tobacco wholesaler discounts across the U.S.

Table 2. Cigarette Wholesaler Discounts across U.S.

State	Tax Rate Per Pack as of January 2011	Stamping Allowance as of 2007	Wholesaler's Discount Cents Per Pack
Massachusetts	$2.51	FLAT RATE	0.0
Minnesota	$1.23	NO DISCOUNT	0.0
New Hampshire	$1.78	NO DISCOUNT	0.0
Oregon	$1.18	FLAT RATE	0.0
Washington	$3.03	FLAT RATE	0.0
Nevada	$0.80	0.50%	0.4
Missouri	$0.17	3.00%	0.5
Kansas	$0.79	0.80%	0.6
North Dakota	$0.44	1.50%	0.7
California	$0.87	0.85%	0.7
Colorado	$0.84	0.95%	0.8
Georgia	$0.37	3.00%	1.1
Nebraska	$0.64	1.85%	1.2
Indiana	$1.00	1.20%	1.2
Hawaii	$3.00	0.40%	1.2
Montana	$1.70	0.90%	1.5
Pennsylvania	$1.60	0.98%	1.6
Maryland	$2.00	0.82%	1.6
New Mexico	$1.66	1.00%	1.7
Tennessee	$0.62	2.75%	1.7
Illinois	$0.98	1.75%	1.7
New York	$4.35	0.40%	1.7
North Carolina	**$0.45**	***4.00%***	***1.8***
Idaho	$0.57	3.30%	1.9
South Carolina	$0.57	3.50%	2.0
Louisiana	$0.36	6.00%	2.2
West Virginia	$0.55	4.00%	2.2
Ohio	$1.25	1.80%	2.3
Maine	$2.00	1.15%	2.3
Florida	$1.34	2.00%	2.7
Iowa	$1.36	2.00%	2.7
Connecticut	$3.00	1.00%	3.0
Kentucky	$0.60	5.00%	3.0
Michigan	$2.00	1.50%	3.0
Virginia	$0.30	10.00%	3.0
South Dakota	$1.53	2.00%	3.1
Alabama	$0.43	7.50%	3.2
Delaware	$1.60	2.00%	3.2
Vermont	$2.24	1.50%	3.4
Wyoming	$0.60	6.00%	3.6
Wisconsin	$2.52	1.60%	4.0
Oklahoma	$1.03	4.00%	4.1
Texas	$1.41	3.00%	4.2
Rhode Island	$3.46	1.25%	4.3
Arkansas	$1.15	3.80%	4.4
New Jersey	$2.70	1.80%	4.9
Mississippi	$0.68	8.00%	5.4
Alaska	$2.00	3.00%	6.0
Utah	$1.70	4.00%	6.8
Arizona	$2.00	4.00%	8.0
AVERAGE	**$1.44**	**3%**	**2.5**

Sources: Center for Disease Control, Phillip Morris USA

Personnel and Administrative Costs

The Department of Revenue (DOR) estimates that reinstatement of the cigarette tax stamp program would require the addition of 17 new positions in DOR. According to DOR, a Revenue Administrative Officer II would handle administration of the program. Ten Revenue Officer I positions would perform retail inspections, and four Revenue Tax Auditors would be needed to conduct due diligence audits for enforcement purposes. It is expected that the distributors would incur the cost of the stamps. The estimated cost of the stamps from DOR is $754,750.

Based on the number of inspections, audits, and enforcement that would be required by implementation of this program, as well as comparable staffing levels of tobacco tax programs in other states, Fiscal Research generally concurs with DOR's estimate. However, the current supervisor and assistant supervisor of the Cigarette Excise Tax Unit should be able to absorb any additional supervisory duties and thus an additional Revenue Administrative Officer II position would not be required. Fiscal Research estimates that implementation of this program would require 14 additional positions, rather than 17. The estimated recurring costs of the salaries and benefits of these 14 positions are shown below:

Table 3. North Carolina Department of Revenue Personnel Costs under SB 249, FY 2011-12 thru FY 2015-16

	2011-12	2012-13	2013-14	2014-15	2015-16
Salary and Benefits	-	$1,044,721	$1,135,403	$1,210,794	$1,274,239
Position Total	-	14	14	14	14

Additionally, the following recurring and non-recurring administrative expenses would be needed to support the 14 positions listed above during the next biennium. DOR is in the preliminary stages of developing and implementing the State's new Tax Information Management System (TIMS). Over the next 36 months, TIMS will replace the State's integrated tax system as well as a host of other miscellaneous tax systems. In order to process the activities of a cigarette tax stamp program, DOR would need to initiate a change order with the TIMS project's contractor. Based on the contractor's estimated hours needed to make these changes to the TIMS application, the additional nonrecurring costs for FY 2011-12 would be $340,000.

Table 4. North Carolina Department of Revenue Infrastructure Costs under SB 249, FY 2011-12 thru FY 2015-16

	2011-12	2012-13	2013-14	2014-15	2015-16
TIMS - CGI implementation Cost	-	$340,000			
Data and Communications	-	$40,363	$41,569	$42,596	$43,657
Travel	-	$19,476	$20,059	$20,554	$21,066
Supplies	-	$89,344	$92,016	$94,289	$96,636
Total	-	**$489,183**	**$153,644**	**$157,439**	**$161,359**

Figures were inflated based on inflation guidelines in the 2011 Legislative Fiscal Note Manual.

SOURCES OF DATA:
North Carolina Department of Revenue

California Bureau of State Audits

Farrelly, Matthew C. "State Cigarette Excise Taxes: Implications for Revenue and Tax Evasion." RTI International. Published May 2003.

The Tax Burden on Tobacco. Historical Compilation, Volume 37, 2002. Table 13B-1994 Cigarette Taxes as a Percentage of Retail Price Generic Brands Included in Average Calculation, Page 130.

Center for Disease Control, State Tobacco Activities Tracking and Evaluation (STATE) System

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 306
PROPOSED COMMITTEE SUBSTITUTE S306-CSTD-52 [v.3]

6/13/2011 11:52:07 AM

Short Title: Reduce Cigarette Discount. (Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE DISCOUNT TO TOBACCO VENDORS WHO FILE A TIMELY REPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.21 reads as rewritten:

"**§ 105-113.21. Discount; refund.**

(a) Repealed by Session Laws 2003-284, s. 45A.1(a), effective for reporting periods beginning on or after August 1, 2003.

(a1) Discount. – A distributor who files a timely report under G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the report a discount of ~~two percent (2%).~~ 0.015¢ per cigarette. This discount covers expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.

(b) Refund. – A distributor in possession of packages of stale or otherwise unsalable cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigarettes."

SECTION 2. This act becomes effective July 1, 2011.

SENATE BILL 306:
Reduce Cigarette Discount

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 10, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: The PCS to Senate Bill 306 would reduce the discount granted for distributors that make timely tax payments on the cigarette excise tax.

CURRENT LAW: North Carolina first began taxing cigarettes in 1969. Tax stamps were required to be attached to packages of cigarettes as evidence of payment of the tax. In 1993, the tax stamp requirement was repealed and the payment of the cigarette tax was recorded by reports submitted by cigarette distributors. Currently, every state but North Carolina, North Dakota, and South Carolina requires cigarette tax stamps.[1] At the time North Carolina repealed its tax stamp requirement in 1993 four other states did not require tax stamps. Of those four states, three of those states have begun to require cigarette tax stamps: Alaska, Hawaii, and Michigan.

At the time of the original enactment, a discount of 7/24¢ per stamp was given for the expenses associated with the stamps. This discount amount equated to approximately 2.9¢ per carton. When the tax stamp was eliminated, the General Assembly changed the discount amount to 4% of the tax due and provided that the purpose of the discount is to cover a distributor's expenses associated with preparing the required tax reports. The General Assembly repealed the discount in 2003; then reinstated it in 2004 at its current rate of 2% of the tax due. With the 2009 increases in the cigarette tax rate, the 2% discount equals approximately 9¢ per carton. Below is a history of the discount:

Year	Tax Rate Per pack	Discount Rate	Discount Amount	
			Pack	Carton
1969	2¢	7/24¢ per stamp	7/24¢	2.9¢
1991	5¢	7/24¢ per stamp	7/24¢	2.9¢
1993	5¢	4%	0.2¢	2¢
2003	5¢	Repealed	0	0
2004	5¢	2%	0.1¢	1¢
2005	30¢	2%	0.6¢	6¢
2006	35¢	2%	0.7¢	7¢
2009	45¢	2%	0.9¢	9¢

BILL ANALYSIS: The PCS to Senate Bill 306 would repeal the discount granted for distributors that make timely tax payments on the cigarette excise tax.

Effective Date	Tax Per pack	Discount Rate	Discount Amount	
			Pack	Carton
Current law	45¢	2%	0.9¢	9¢
July 1, 2011	45¢	0.015¢ per cig	0.3¢	3¢

EFFECTIVE DATE: This act is effective July 1, 2011.

S306-SMTD-86(e1) v4

[1] South Carolina repealed its tax stamp requirement in 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 13, 2011

TO: Senate Finance Committee

FROM: Sandra Johnson
Fiscal Research Division

RE: Senate Bill 306 (Proposed Committee Substitute)

FISCAL IMPACT ($ In Millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:	$3.19	$3.12	$3.06	$3.00	$2.94
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
NC Department of Revenue

EFFECTIVE DATE: July 1, 2011

BILL SUMMARY: The PCS to Senate Bill 306 decreases the discount cigarette distributors are allowed, from 2% to 0.7% of the total amount due. The discount of 9¢ per carton would be reduced to 3¢ per carton.

Under current law, North Carolina first began taxing cigarettes in 1969. Tax stamps were required to be attached to packages of cigarettes as evidence of payment of the tax. In 1993, the tax stamp requirement was repealed and the payment of the cigarette tax was recorded by reports submitted by cigarette distributors.

At the time of the original enactment, a discount of 7/24¢ per stamp was given for the expenses associated with the stamps. This discount amount equaled 2.9¢ per carton. When the tax stamp was eliminated, the General Assembly changed the discount amount to 4% of the tax due, an amount equivalent to 2.0¢ per carton. The 1993 legislation provided that the purpose of the discount was to cover a distributor's expenses associated with preparing the required tax reports. The General Assembly repealed the discount in 2003; then reinstated it in 2004 at its current rate of 2% of the tax due. With the recent increases in the cigarette tax rate, the 2% discount now equals 9¢ per carton.

SB 306 reduces the cigarette tax stamp to an amount equivalent to the inflation adjusted discount in place in 1994 (2.0¢ per carton adjusted by three percent annual inflation) to 3.0¢ per carton.

This act is effective July 1, 2011.

ASSUMPTIONS AND METHODOLOGY: SB 306 will generate roughly $3.0 million dollars per fiscal year. According to the North Carolina Department of Revenue, the distributor's discount equaled roughly $4.8 million in FY 09-10.

In FY 2011-12, the cigarette excise tax is expected to generate $239.2 million in tax revenue less the $4.8 million in wholesaler's discounts allowed ($239.2 million*2%). Reducing the wholesaler's discount from 0.9-cents per pack to 0.3-cents per pack, the SB 306 proposal, increases General Fund availability by roughly $ 3.0 million dollars each full fiscal year ($4.8 million*(1-0.3/0.9).

SOURCES OF DATA: North Carolina Department of Revenue, Corporate, Excise and Insurance Tax.

TECHNICAL CONSIDERATIONS: None

SENATE FINANCE COMMITTEE
Tuesday, June 14, 2011 at 1:00 PM
Room 545, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 14, 2011 in room 544 of the Legislative Office Building. Twenty-three members of the committee were present. Molly Boutwell of Louisburg, Judson MacDonald of Cary, Brantley Craft of Greensboro, Ashley Sizemore of King and Preston Pugh of Clayton served as pages. Senator Rucho presided as chair.

H.B. 845 – Annexation Reform

Representative Dollar and Representative LaRoque were recognized to explain the bill. Senator Newton moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS makes substantive changes to the involuntary annexation process for all municipalities: one annexation process for all size municipalities, water and sewer required, petition to deny annexation, additional notice to property owners, appeals modified, annexation of distressed areas, and applicability. Giles Perry, a staff attorney with the Research Division, was recognized to answer questions. Maurice B. Holland, Sr., former President of Midway, was recognized to speak in favor of the bill. Kelly Kukura, NC League of Municipalities' Director of Government Affairs, was recognized to speak in opposition. Michael Rice of Southport Township, Tony Gall of the Wilmington area, Catherine Heath of STOP NC Annexation, Tony Tetherton and Charlene Moore were all recognized to speak in favor of the bill. Senator Brock moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 168 – Farm Annexation

Representative Cleveland was recognized to explain the bill and Senator Rabon moved to adopt the PS for discussion. The motion carried. The bill clarifies the definition of "bona fide farm purposes", prohibits the involuntary municipal annexation of property used for bona fide farm purposes, exempts property used for bona fide farm purposes from municipal ETJ regulations, and exempts property used for bona fide farming purposes from municipal zoning. The PCS changes the effective date so that Sections 2 and 3 of the bill apply to annexations of property used for bona fide farm purposes that were initiated by municipalities on or after that date, or are pending on that date. Kelly Kukura was recognized to answer questions. At this time the meeting was recessed. A copy of the PCS and the summary is attached.

The meeting recessed at 1:58 PM to reconvene later in the day.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, June 14, 2011

Senator RUCHO,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **845** Annexation Reform Act of 2011.

Draft Number:	80270
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:
H845 – Sen. Brock

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 845
Committee Substitute Favorable 5/3/11
Committee Substitute #2 Favorable 5/11/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H845-PCS80270-RWx-55

Short Title: Annexation Reform Act of 2011. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REFORM THE INVOLUNTARY ANNEXATION LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4A of Chapter 160A of the General Statutes is repealed.

SECTION 2. G.S. 160A-49.1 is recodified as G.S. 160A-58.57 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 3. G.S. 160A-49.2 is recodified as G.S. 160A-58.58 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 4. G.S. 160A-49.3 is recodified as G.S. 160A-58.59 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 5. G.S. 160A-51 is recodified as G.S. 160A-58.61 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 6. G.S. 160A-52 is recodified as G.S. 160A-58.62 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 7. Part 3 of Article 4A of Chapter 160A of the General Statutes is repealed.

SECTION 8. Article 4A of Chapter 160A of the General Statutes is amended by adding a new Part 7 to be entitled "Annexations Initiated by Municipalities."

SECTION 9. Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act and as amended by Sections 2, 3, 4, 5, and 6 of this act, reads as rewritten:

"Part 7.

"Annexations Initiated by Municipalities.

"**§ 160A-58.50. Declaration of policy.**

It is hereby declared as a matter of State policy:

(1) That sound urban development is essential to the continued economic development of North Carolina.

(2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health,

safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development.

(3) That municipal boundaries should be extended in accordance with legislative standards applicable throughout the State to include such areas and to provide the high quality of governmental services needed therein for the public health, safety, and welfare.

(4) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality.

(5) That the provision of services to protect the health, safety, and welfare is a public purpose.

(6) That it is essential for citizens to have an effective voice in annexations initiated by municipalities.

"**§ 160A-58.51. Definitions.**

As used in this Part, the following definitions apply:

(1) Contiguous area. – Any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. A connecting corridor consisting solely of the length of a street or street right-of-way may not be used to establish contiguity.

(1a) Eligible property owner. – A property owner who is eligible to sign a petition to deny an annexation ordinance or a property owner who is eligible to be notified of the opportunity to have water lines and sewer lines and connections installed at no cost to the property owner. A property owner is eligible to sign a petition to deny an annexation ordinance if the property owner held a freehold interest in the property, determined as of the date of the resolution of consideration. A property owner is eligible to be notified of the opportunity to have water lines and sewer lines and connections installed at no cost to the property owner if that property owner held a freehold interest in the real property to be annexed as of the date of the combined notice of public informational meeting and public hearing.

(2) Necessary land connection. – An area that does not exceed twenty-five percent (25%) of the total area to be annexed.

(3) Property owner. – Any person having a freehold interest in real property.

(4) Used for residential purposes. – Any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. The term also includes any lot or tract that is used in common for social or recreational purposes by either owners of lots with habitable dwelling units or owners of lots intended for occupation by dwelling units and the lot owners have a real property interest in the commonly used property that attaches to or is appurtenant to the owners' lots.

"**§ 160A-58.52. Authority to annex.**

The governing board of any municipality may extend the corporate limits of such municipality under the procedure set forth in this Part.

"**§ 160A-58.53. Prerequisites to annexation.**

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in

G.S. 160A-58.55, prepare a report setting forth such plans to provide services to the area proposed to be annexed. The report shall include the following:

(1) A map or maps of the municipality and adjacent territory to show the following information:
  a. The present and proposed boundaries of the municipality.
  b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains, outfalls, and lines as required in subdivision (3) of this section. The water and sewer map shall bear the seal of a registered professional engineer.
  c. The general land use pattern in the area proposed to be annexed.

(2) A statement showing that the area proposed to be annexed meets the requirements of G.S. 160A-58.54.

(3) A statement setting forth the plans for extending to the area proposed to be annexed each major municipal service on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation and the method to finance the extension of major municipal services into the area proposed to be annexed as follows:
  a. Provision of police protection, fire protection, solid waste collection, and street maintenance services on the effective date of annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.
  b. Extension of water and sewer services to each lot or parcel, if an installation easement is provided by the affected property owner, with a proposed timetable for construction of such mains, outfalls, and lines within three and one-half years of the effective date of annexation, in accordance with G.S. 160A-58.56.

(4) A statement of the impact of the annexation on any rural fire department providing service in the area proposed to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area proposed to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the municipality not later than 30 days following a written request from the municipality all information in its possession or control, including operational, financial, and budgetary information, necessary for preparation of a statement of impact. The municipality shall, in a timely fashion, supply the rural fire department with information requested by the rural fire department to respond to the written request. The rural fire department forfeits its rights under G.S. 160A-58.57 if it fails to make a good faith response within 45 days following receipt of the written request for information from the municipality, provided that the municipality's written request so states by specific reference to this subdivision.

(5) A statement showing how the proposed annexation will affect the municipality's finances and services, including municipal revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of the public informational meeting on any annexation under this Part.

"**§ 160A-58.54. Character of area to be annexed.**

(a) A municipal governing board may extend the municipal corporate limits to include any area that meets all of the following criteria:

(1) It shall be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one-eighth of the aggregate external boundaries of the area shall coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) The total area to be annexed shall meet the requirements of any of the following:

a. Part or all of the area to be annexed must be developed for urban purposes at the time of approval of the report provided for in G.S. 160A-58.53. The area of streets and street rights-of-way shall not be used to determine total acreage under this subdivision. An area developed for urban purposes is defined as any area which meets any one of the following standards:

1. Has a total resident population equal to at least two and three-tenths persons for each acre of land included within its boundaries.

2. Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts three acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size.

3. Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional, or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental, or institutional purposes, consists of lots and tracts three acres or less in size.

4. Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), if all of the following apply:

I. The municipality has provided in a contract with that district that the area is developed for urban purposes.

II. The contract provides for the municipality to operate the sewer system of that county water and sewer district.

III. The municipality is annexing in one ordinance the entire territory of the district not already within the corporate limits of a municipality.

5. Is so developed that, at the time of the approval of the annexation report, all tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes.

b. Part or all of the area to be annexed meets either of the following:

1. Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending major municipal services, including water or sewer lines, through such sparsely developed area.

2. Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in sub-subdivision a. of this subsection.

The purpose of paragraphs 1. and 2. of this sub-subdivision is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

c. The total area to be annexed is completely surrounded by the municipality's primary corporate limits.

(b) In fixing new municipal boundaries and determining whether an area is developed for urban purposes, a municipal governing board shall comply with all the following:

(1) Use recorded property lines and streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district is not already within the corporate limits of the municipality.

(2) Use whole parcels of property in that if any portion of that parcel is included, the entire parcel of real property as recorded in the deed transferring title shall be included.

(3) Not use a connecting corridor consisting solely of the length of a street or street right-of-way to establish contiguity.

(4) Not consider property in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract.

(5) Include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities when determining acreage in use for commercial, industrial, institutional, or governmental purposes.

(6) Consider the area of an abolished water and sewer district to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b).

"**§ 160A-58.55. Procedure for annexation.**

(a) Resolution of Consideration. – Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution of consideration

identifying the area under consideration for annexation by either a metes and bounds description or a map. The resolution of consideration shall remain effective for two years after adoption and be filed with the municipal clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution. Adoption of a resolution of consideration shall not confer prior jurisdiction over the area as to any other municipality.

(b) Notice of Resolution of Consideration. – A notice of the adoption of the resolution of consideration shall be published once a week for two successive weeks, with each publication being on the same day of the week, in a newspaper having general circulation in the municipality. The second publication shall be no more than 30 days following adoption of the resolution of consideration. The resolution of consideration shall contain a map or description of the area under consideration and a summary of the annexation process and time lines. A copy of the resolution of consideration shall be mailed within 30 days after the adoption of the resolution of consideration by first class mail to the property owners of real property located within the area under consideration for annexation as shown by the tax records of the county. If a proposed annexation extends across a county border into a county other that the county where the majority of the area of the existing municipality is located, a copy of the resolution of consideration shall be mailed within 30 days after the adoption of the resolution of consideration by first class mail to the clerk of the board of county commissioners of that county.

(c) Resolution of Intent. – At least one year after adoption of the resolution of consideration, the municipal governing body may adopt a resolution of intent of the municipality to proceed with the annexation of some or all of the area described in the resolution of consideration. The resolution of intent shall describe the boundaries of the area proposed for annexation, fix a date for a public informational meeting, and fix a date for a public hearing on the question of annexation. The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution of intent. The date for the public hearing shall be not less than 130 days and not more than 150 days following passage of the resolution of intent.

(d) Notice of Public Informational Meeting, Public Hearing, and Opportunity for Water and Sewer. – A combined notice of public informational meeting and public hearing shall be issued as provided for in this subsection as follows:

(1) The notice shall be a combined notice that includes at least all of the following:
   a. The date, hour, and place of the public informational meeting.
   b. The date, hour, and place of the public hearing.
   c. A clear description of the boundaries of the area under consideration, including a legible map of the area.
   d. A statement that the report required by G.S. 160A-58.53 will be available at the office of the municipal clerk.
   e. An explanation of a property owner's rights under this section.
   f. A summary of the annexation process with time lines.
   g. A summary of available statutory remedies for denying and appealing the annexation and the failure to provide services.
   h. Information on how to request to become a customer of the water and sewer service, all forms to request that service, and the consequences of opting in or opting out, as provided in G.S. 160A-58.56.
   i. A clear description of the distinction between the public informational meeting and the public hearing.

(2) The combined notice shall be given by publication of the information required by sub-subdivisions (1)a., b., and c. of this subsection and a

statement regarding the availability of the information required by the remaining sub-subdivisions of subdivision (1) of this subsection in a newspaper having general circulation in the municipality once a week for at least two successive weeks prior to the date of the public informational meeting, with each publication being on the same day of the week. The date of the last publication shall be not more than 10 days preceding the date of the public informational meeting. In addition thereto, if the area proposed to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, the same publication shall be given in a newspaper having general circulation in the area of proposed annexation. If there is no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public informational meeting.

(3) The combined notice, together with the information about requesting water and sewer service, shall be mailed within five business days of the passage of the resolution of intent by first class mail to the property owners of real property located within the area to be annexed as shown by the tax records of the county. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the public record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If a notice is returned to the municipality by the postal service by the tenth day before the informational meeting, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the informational meeting. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

(4) If the governing board by resolution finds that the tax records are not adequate to identify the property owners within the area to be annexed after exercising reasonable efforts to locate the property owners, it may, in lieu of the mail procedure required by subdivision (3) of this subsection, post the notice at least 30 days prior to the date of the public informational meeting on all buildings, on such parcels, and in at least five other places within the area to be annexed as to those parcels where the property owner could not be so identified. In any case where notices are placed on property, the person placing the notice shall certify that fact to the governing board.

(e) Action Prior to Informational Meeting. – At least 30 days before the date of the public informational meeting, the municipal governing board shall do all of the following:

(1) Approve the report provided for in G.S. 160A-58.53.

(2) Prepare a summary of the approved report for public distribution.

(3) Post in the office of the clerk all of the following:

a. The approved report provided for in G.S. 160A-58.53.

b. The summary of the approved report.

c. A legible map of the area to be annexed.

d. The list of the property owners, and associated mailing addresses, in the area to be annexed that the municipality has identified and mailed notice.

e. Information for property owners on how to request to become a customer of the water service or sewer service and all forms to request that service.

(4) If the municipality has a Web site, post on that Web site all of the information under this section together with any forms to apply for water and sewer service.

(5) Prepare a summary of the substantive remedies for denying and appealing the annexation for public distribution.

(f) Public Informational Meeting. – At the public informational meeting, a representative of the municipality shall first make an explanation of the report required in G.S. 160A-58.53 and an explanation of the provision of major municipal services. The explanation of the provision of services shall include how to request water service or sewer service to individual lots, the average cost of a residential connection to the water and sewer system, and the opportunity for installation of a residential connection under G.S. 160A-58.56. A summary of the annexation process with time lines, a summary of available statutory remedies for denying and appealing the annexation, an explanation of the provision of services, and information for requesting water service or sewer service to individual lots and any forms to so request shall also be distributed at the public informational meeting. Following such explanation, all property owners and residents of the area proposed to be annexed as described in the notice of public informational meeting and hearing, and all residents of the municipality shall be given the opportunity to ask questions and receive answers regarding the proposed annexation.

(g) Public Hearing. – At the public hearing, a representative of the municipality shall first make an explanation of the report required in G.S. 160A-58.53. Following such explanation, all property owners and residents of the area proposed to be annexed as described in the notice of public informational meeting and hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(h) Passage of the Annexation Ordinance. – The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-58.53 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-58.53. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following the public hearing, the governing board shall have authority to adopt an ordinance, subject to subsection (i) of this section, extending the corporate limits of the municipality to include all, or part, of the area described in the notice of public hearing which the governing board has concluded should be annexed. The annexation ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-58.54.

(2) Describe the external boundaries of the area to be annexed by metes and bounds.

(3) Include a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-58.53 and a time line for the provision of those services.

(4) Contain a specific finding that on the effective date of annexation, the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines stated in the report required by G.S. 160A-58.53 to extend the water and sewer services into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds shall be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(5) Fix the effective date for annexation as June 30 next following the adoption of the ordinance or the second June 30 following adoption of the ordinance, but not before the completion of the water and sewer request and petition to deny and appeal periods are complete.

(6) Together, with the list of the property owners of parcels within the area described in the annexation ordinance to which a notice was mailed under subsection (d) of this section, be delivered within five business days to the tax assessor and the board of elections of the county in which a majority of the municipality lies.

(7) Be summarized, and sent in accordance with subsection (i) of this section, to the list of the property owners within the area described in the annexation ordinance to which a notice was mailed under subsection (d) of this section together with a blank petition form, preprinted with name and address of the property owner.

(8) If a public body has a Web site, conspicuously post a copy of the petition to deny annexation ordinance that a property owner in the real property located within the area described in the annexation ordinance may download, complete, and return to the county board of elections in accordance with subsection (i) of this section.

(i) Petition to Deny Annexation Ordinance. – The following procedures shall apply to this subsection:

(1) Upon receipt of the resolution of intent and a list of property owners of the real property located within the area, the county tax assessor shall prepare a list of the real property parcels within the area, and forward it to the board of elections in the county where a majority of the parcels proposed for annexation are located. The board of elections shall prepare petitions for property owners of the real property located within the area described in the resolution of intent to sign opposing the annexation ordinance.

(2) A petition shall include the names of the property owners of the parcel of real property listed individually, a signature line for each owner, and a statement that the person signing is petitioning to deny the annexation.

(3) The board of elections shall mail a petition to the address of record for those real property owners within five business days of receipt from the county tax assessor of the list.

(4) The board of elections shall provide two methods by which property owners of the real property located within the area described in the annexation ordinance may sign a petition form prepared by the board of elections: (i) in person or (ii) by submitting the signed petition form by mail. The board of elections shall also accept signatures signed on a petition form prepared by the board of elections, but collected by another, if that petition form is returned to the board of elections in a sealed container.

(5) If the signed petition is one that was mailed under subdivision (h)(7) of this section and the signer is not the same as the preprinted name on the form, the signed petition shall be notarized and accompanied by a copy of the legal authority for the signature of the person signing a petition.

(6) If a petition is returned as undeliverable to the board of elections, the board of elections shall send the petition return receipt requested. If the petition is returned again, the board of elections shall not include that property owner in the total number of eligible property owners.

(7) If there is a change in ownership of real property after the date of the resolution of consideration until 30 days after the date of the adoption of the

annexation ordinance, the new owner of the real property shall be considered the eligible owner of real property.

(8) The board of elections shall accept signatures on the petition until 130 days after the adoption of the annexation ordinance.

(9) The determination of the results by the board of elections of the petition period shall be observed by three property owners from the area proposed for annexation, chosen by lot by the board of elections from among those who request to serve in this role, and three persons designated by the municipality. A majority of the property owners of a single parcel of real property must sign the petition before the board of elections may count that parcel as having submitted a petition to deny annexation.

(10) Within 10 business days after the close of the signature period, the board of elections shall certify to the municipal governing body the number of petitions signed by eligible property owners of the real property located within the area described in the annexation ordinance.

(11) If the board of elections delivers to the municipal governing board petitions signed by eligible property owners of at least sixty percent (60%) of the parcels located within the area described in the annexation ordinance as provided in this subsection, the annexation shall be terminated and the municipality may not adopt a resolution of consideration for the area described in the annexation ordinance for at least 36 months.

(12) This subsection shall not apply to any property owner of real property located within the area described in the annexation ordinance that is completely surrounded by the municipality's primary corporate limits.

(13) The municipality shall reimburse the board of elections the costs of the petition process required under this subsection.

(j) Effect of Annexation Ordinance. –From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality.

(k) (reserved)

(l) (reserved)

(m) Simultaneous Annexation Proceedings. – If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(n) Remedies for Failure to Provide Services. – If, not earlier than 30 days after the effective date of annexation and not later than 15 months from the effective date of annexation, any property owner in the annexed territory shall believe that the municipality has not followed through providing services as set forth in the report adopted under G.S. 160A-58.53 and subsection (e) of this section, the property owner may apply for a writ of mandamus. Relief may be granted by the judge of superior court if the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-58.53(3)a. on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation and those services are still being provided on substantially the same basis and in the same manner within the original corporate limits of the municipality. If a writ is issued, costs in the action, including reasonable attorneys' fees for such aggrieved property owner, shall be charged to the municipality.

(o) Reports to the Local Government Commission. – The municipality shall report to the Local Government Commission as follows:

(1) As to whether police protection, fire protection, solid waste services, and street maintenance services were provided in accordance with G.S. 160A-58.53(3)a., within 30 days after the effective date of the annexation. Such report shall be filed no more than 30 days following the expiration of the 30-day period. If the Local Government Commission determines that the municipality failed to deliver police protection, fire protection, solid waste services, or street maintenance services as provided for in G.S. 160A-58.53(3)a. within 30 days after the effective date of the annexation, the Local Government Commission shall notify the municipality that the municipality may not count any of the residents as part of the population of the municipality for the purpose of receiving any State, federal, or county dollars distributed based on population until all of the services are provided.

(2) As to whether the extension of water and sewer lines was completed within the time period specified in G.S. 160A-58.53(3), within six months after the effective date of the annexation ordinance, and again within three and one-half years of the effective date of the annexation ordinance or upon the completion of the installation, whichever occurs first. If the municipality failed to deliver either water or sewer services, or both, as provided for in G.S. 160A-58.53(3)b. within three and one-half years after the effective date of the annexation, the municipality shall stop any other annexations in progress and may not begin any other annexation until the water and sewer services are provided. The municipality shall adopt a resolution of consideration to begin again any annexation that is stopped due to this subdivision.

"**§ 160A-58.56. Provision of water and sewer service.**

(a) The municipality shall provide water and sewer service to the annexed area as required by plans for extension under G.S. 160A-58.53(3) within three and one-half years of the effective date of the annexation ordinance except as provided in subdivision (b)(4) of this section. If (i) the residents in the existing city boundaries are served by a public water or sewer system, or by a combination of a public water or sewer system and one or more nonprofit entities providing service by contract with the public system, (ii) the annexing municipality does not provide that service within the existing city boundaries, (iii) the area to be annexed is in an area served by the public water or sewer system, and (iv) the municipality has no responsibility through an agreement with the public water or sewer system to pay for the extension of lines to areas annexed to the city, the city shall have no financial responsibility for the extension of water and sewer lines under this section. For purposes of this provision, "public water or sewer system" means a water or sewer authority formed under G.S. Chapter 162A, Article 1; a metropolitan water or sewerage district formed under G.S. Chapter 162A, Article 4 or Article 5; a county water or sewer district formed under G.S. Chapter 162A, Article 6; a sanitary district formed under G.S. Chapter 130A, Article 2; a county-owned water or sewer system; a municipal-owned water or sewer system; a water or sewer utility created by an act of the General Assembly; or a joint agency providing a water or sewer system by interlocal agreement under G.S. Chapter 160A, Article 20.

(b) Prior to the adoption of the annexation ordinance, the municipality shall offer to each eligible property owner of real property located within the area proposed to be annexed an opportunity to obtain water or sewer service, or both, at no cost other than periodic user fees based upon usage as follows:

(1) After passage of the resolution of intent, the property owner of real property located within the area proposed to be annexed shall be notified in writing, as provided in G.S. 160A-58.55(d), within five business days of the passage

of the resolution of intent, of the opportunity to have water and sewer lines and connections installed at no cost to the property owner. The notice shall state that a request for extending water and sewer lines does not waive the right to contest the annexation. The property owners of real property located within the area proposed to be annexed shall be allowed 65 days from the date of the passage of the resolution of intent to respond yes or no to the opportunity. Any property owner of a parcel that is an existing customer of the municipality's water or sewer, whether provided by the municipality or by a third party under contract with the municipality, shall be deemed to respond yes to the opportunity, whether or not the property owner returns the notification.

(2) At the close of the 65-day period, the municipality shall determine if the eligible property owners of a majority of the parcels to be annexed have responded favorably. A majority of the property owners of a single parcel of real property must respond favorably before the municipality may count that parcel of real property as responding favorably.

(3) If the property owners of a majority of the parcels located within the area proposed to be annexed respond favorably, the municipality shall do all of the following:

a. Provide water and sewer lines, service lines, and connections at no cost other than periodic user fees to all real property for which an owner responded favorably if the annexation ordinance is adopted. The right to receive water and sewer lines shall run with the land.

b. Notify, within five days of the close of the 65-day period under subdivision (2) of this subsection, those property owners of real property located within the area proposed to be annexed who failed to respond or responded negatively that the property owners of a majority of the parcels located within the area proposed to be annexed responded favorably and offer a second opportunity for that property owner to respond favorably within 30 days.

(4) If the property owners of a majority of the parcels located within the area proposed to be annexed fail to respond favorably to the offer to obtain water and sewer services made under this section, the municipality may nevertheless proceed with the annexation. If the municipality proceeds with the annexation when the property owners of a majority of the parcels located within the area proposed to be annexed fail to respond favorably to the offer to obtain water and sewer services, the municipality is not required to provide water and sewer services to any property owners in the area that is annexed. If the municipality does provide water and sewer services, and if a property owner requests those services, the municipality may charge the property owner for the connection to a residential lot as provided in subsection (d) of this section during the first five years following the effective date of the annexation. After five years, and only if connection is requested by a property owner in accordance with subsection (e) of this section, the municipality may charge for the connection according to the municipality's policy.

(c) The process required by subsection (b) of this section shall be completed by the municipality at least 30 days prior to the public hearing. The report required by G.S. 160A-58.53 shall include the results of the process required by subsection (b) of this section.

(d) Any property owner of the real property located within the area described in the annexation ordinance may apply to participate in the water and sewer system after the completion of the process required by subsection (b) of this section. For a property owner of real property located within the area described in the annexation ordinance applying within the first year, that property owner may be charged an amount not to exceed fifty percent (50%) of average cost of the installation of the water and sewer for a residential lot. For a property owner of real property located within the area described in the annexation ordinance applying within the second year, that property owner may be charged an amount not to exceed sixty percent (60%) of average cost of the installation of the water and sewer for a residential lot. For a property owner of real property located within the area described in the annexation ordinance applying within the third year, that property owner may be charged an amount not to exceed seventy percent (70%) of average cost of the installation of the water and sewer for a residential lot. For a property owner of real property located within the area described in the annexation ordinance applying within the fourth year, that property owner may be charged an amount not to exceed eighty percent (80%) of average cost of the installation of the water and sewer for a residential lot. For a property owner of real property located within the area described in the annexation ordinance applying within the fifth year, that property owner may be charged an amount not to exceed ninety percent (90%) of average cost of the installation of the water and sewer for a residential lot. Charges pursuant to this section shall be made when the water and sewer connection is operable.

(e) Notwithstanding Article 16 of this Chapter, the municipality may not charge, for any reason, any property owner within the area described in the annexation ordinance, for the installation or use of the water or sewer system unless that property owner is, or has requested to become, a customer of the water or sewer system.

(e1) The initial installation of water or sewer connections lines to property shall be completed without charge to the property owner. Title to water or sewer connection lines shall vest in the property owner following completion of the initial installation. The property owner shall be responsible for maintenance and repair of water and sewer connection lines on the owner's property following the initial installation.

(e2) If the municipality is unable to provide water or sewer service within three and one-half years, as required by this section, due to permitting delays that are caused through no fault of the municipality, the municipality may petition the Local Government Commission for a reasonable time extension.

(f) For purposes of this section, the following definitions apply:

(1) "At no cost other than periodic user fees." – The municipality may not charge the property owner who responded favorably under subdivision (b)(3) of this section for any costs associated with the installation of the water or sewer system. The municipality may not charge a property owner who applies to participate in the water and sewer system under subsection (d) of this section prior to the first periodic user fee charge, and on that bill the owner may be charged no more then as provided in subsection (d) of this section.

(2) "Average installation of a connection for a residential lot." – The average of the cost for residential installations from curb to residence, including connection and tap fees, in the area described in the annexation ordinance.

"§ 160A-58.57. Contract with rural fire department.

(a) If the area to be annexed described in a resolution of intent passed under ~~G.S. 160A-49(a)~~ G.S. 160A-58.55(c) includes an area in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and a rural fire department was on the date of adoption of the resolution of intent providing fire

protection in the area to be annexed, then the city (if the rural fire department makes a written request for a good faith offer, and the request is signed by the chief officer of the fire department and delivered to the city clerk no later than 15 days before the public hearing) is required to make a good faith effort to negotiate a five-year contract with the rural fire department to provide fire protection in the area to be annexed.

(b) If the area is a rural fire protection district or a fire service district, then an offer to pay annually for the term of the contract the amount of money that the tax rate in the district in effect on the date of adoption of the resolution of intent would generate based on property values on January 1 of each year in the area to be annexed which is in such a district is deemed to be a good faith offer of consideration for the contract.

(c) If the area is an insurance district but not a rural fire protection district or fire service district, then an offer to pay annually over the term of the contract the amount of money which is determined to be the equivalent of the amount which would be generated by multiplying the fraction of the city's general fund budget in that current fiscal year which is proposed to be expended for fire protection times the tax rate for the city in the current year, and multiplying that result by the property valuation in the area to be annexed which is served by the rural fire department is deemed to be a good faith offer of consideration for the contract; Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred dollars ($100.00) valuation of annexed property in the district according to county valuations for the current fiscal year.

(d) Any offer by a city to a rural fire department which would compensate the rural fire department for revenue loss directly attributable to the annexation by paying such amount annually for five years, is deemed to be a good faith offer of consideration for the contract.

(e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first responder service, an offer of one-half the calculated amount under those subsections is deemed to be a good faith offer.

(f) This section does not obligate the city or rural fire department to enter into any contract.

(g) The rural fire department may, if it feels that no good faith offer has been made, appeal to the Local Government Commission within 30 days following the passage of an annexation ordinance. The rural fire department may apply to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised, provided that no other appeal under ~~G.S. 160A-50~~ G.S. 160A-58.60 is pending.

(h) The Local Government Commission may affirm the ordinance, or if the Local Government Commission finds that no good faith offer has been made, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall then not become effective unless the Local Government Commission finds that a good faith offer has been made.

(i) Any party to the review under subsection (h) may obtain judicial review in accordance with Chapter 150B of the General Statutes.

"§ 160A-58.58. Assumption of debt.

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 16 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating

to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the assessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes effective or another date for valuation mutually agreed upon by the city and the fire department.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved.

"**§ 160A-58.59. Contract with private solid waste collection firms.**

(a) If the area to be annexed described in a resolution of intent passed under ~~G.S. 160A-49(a)~~ G.S. 160A-58.55(c) includes an area where a firm (i) meets the requirements of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of adoption of the resolution of intent or resolution of consideration was providing solid waste collection services in the area to be annexed, (iii) on the date of adoption of the resolution of intent is still providing such services, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

(1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.

(2) Pay the firm for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.

(3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have done one of the following:

(1) Subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the public hearing a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(2) Contacted the city clerk pursuant to public notice published by the city, pursuant to ~~G.S. 160A-49(b),~~ G.S. 160A- 58.55(d) at least 10 days before the hearing and provided to the city clerk a written request to contract with the city to provide solid waste collection services. The request must contain a certification signed by an officer or owner of the firm that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) At least four weeks prior to the date of the informational meeting, the city shall provide written notice of the resolution of intent to all firms serving the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

(1) A requirement that the firm post a performance bond and maintain public liability insurance coverage;
(2) A requirement that the firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;
(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the firms, or by the city as to customers not served by the firms;
(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;
(5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;
(6) Performance standards, not exceeding city standards existing at the time of notice published pursuant to G.S. 160A-49(b) with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;
(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the firm under this subsection, the matters shall be determined by the Local Government Commission.

(e), (f) Repealed by Session Laws 2006-193, s. 1, applicable to annexations for which a resolution of intent is adopted on or after January 1, 2007.

(g) The firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than 30 days following a written request of the city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential

contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. – A sum equal to 15 times the average gross monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenues shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

(2) Firm. – A private solid waste collection firm.

"**§ 160A-58.60. Appeal.**

(a) Within 60 days following the close of the signature period under G.S. 160A-58.55(i), any property owner of real property located within the area described in the annexation ordinance who believes that property owner will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure or to meet the requirements set forth in this Part as they apply to the annexation may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the municipality shall transmit to the reviewing court both of the following:

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth.

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-58.53.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c) of this section.

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs and may take evidence intended to show one or more of the following:

(1) That the statutory procedure was not followed.

(2) That the provisions of G.S. 160A-58.53 were not met.

(3) That the provisions of G.S. 160A-58.54 have not been met.

(4) That the provisions of G.S. 160A-58.50 have not been met.

(g) The court may affirm the action of the governing board without change, or it may order any of the following:

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-58.54 if it finds that the provisions of G.S. 160A-58.54 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-58.53 are satisfied or to correct errors in municipal governing board's estimates that fall below the standards in G.S. 160A-58.63.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within 90 days following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the municipality without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals, or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the first June 30th at least six months following the date of the final judgment of the superior court or appellate division, or the first June 30th at least six months from the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for rehearing or for discretionary review shall be treated as a final judgment.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-58.57(g) or G.S. 160A-58.59(g) and a stay is granted, then the time periods of three and one-half years or G.S. 160A-58.55(n) are each extended by the lesser of the length of the stay or one year for that annexation.

(k) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-58.57(i) or G.S. 160A-58.57(g).

(l) In any proceeding related to an annexation ordinance appeal under this section, a municipality shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal.

(m) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly.

(n) If a final court order is issued against the annexing municipality, costs in the action, including reasonable attorneys' fees for such aggrieved person having a freehold interest in the

real property located within the area described in the annexation ordinance, may be charged to the municipality.

"**§ 160A-58.61. Annexation recorded.**

Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census.

"**§ 160A-58.62. Authorized expenditures.**

Municipalities initiating annexations under the provisions of this Part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation.

"**§ 160A-58.63. Population and land estimates.**

In determining population and degree of land subdivision for purposes of meeting the requirements of G.S. 160A-58.54, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-58.54 have been met on appeal to the superior court under G.S. 160A-58.60, the reviewing court shall accept the estimates of the municipality unless the actual population, total area, or degree of land subdivision falls below the standards in G.S. 160A-58.54:

(1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in such area, or in the township or townships of which such area is a part, as determined by the last preceding federal decennial census; or if it is based on a new enumeration carried out under reasonable rules and regulations by the annexing municipality; provided, that the court shall not accept such estimates if the petitioners demonstrate that such estimates are in error in the amount of ten percent (10%) or more.

(2) As to total area, if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.

(3) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

SECTION 10. G.S. 160A-31, as amended by Section 3 of S.L. 2011-57, reads as rewritten:

"**§ 160A-31. Annexation by petition.**

(a) The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a petition signed by

the owners of all the real property located within such area. The petition shall be signed by each owner of real property in the area and shall contain the address of each such owner.'

(b) The petition shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned owners of real property respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of_____

2. The area to be annexed is contiguous to the (City or Town) of _____ and the boundaries of such territory are as follows:

(b1) Notwithstanding the provisions of subsections (a) and (b) of this section, if fifty-one percent (51%) of the households in an area petitioning for annexation pursuant to this section have incomes that are two hundred percent (200%) or less than the most recently published United States Census Bureau poverty thresholds, the governing board of any municipality shall annex by ordinance any area the population of which is no more than ten percent (10%) of that of the municipality and one-eighth of the aggregate external boundaries of which are contiguous to its boundaries, upon presentation to the governing board of a petition signed by the owners of at least seventy-five percent (75%) of the parcels of real property in that area. A municipality shall not be required to adopt more than one ordinance under this subsection within a 36-month period.

(b2) The petition under subsection (b1) of this section shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned owners of real property believe that the area described in paragraph 2 below meets the requirements of G.S. 160A-31(b1) and respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of _____.

2. The area to be annexed is contiguous to the (City or Town) of _____, and the boundaries of such territory are as follows:

(c) Upon receipt of the petition, the municipal governing board shall cause the clerk of the municipality to investigate the sufficiency thereof and to certify the result of ~~his~~ the investigation. For petitions received under subsection (b1) or (j) of this section, the clerk shall receive the evidence provided under subsection (k) of this section before certifying the sufficiency of the petition. Upon receipt of the certification, the municipal governing board shall fix a date for a public hearing on the question of annexation, and shall cause notice of the public hearing to be published once in a newspaper having general circulation in the municipality at least 10 days prior to the date of the public hearing; provided, if there be no such paper, the governing board shall have notices posted in three or more public places within the area to be annexed and three or more public places within the municipality.

(d) At the public hearing ~~all~~ persons resident or owning property in the area described in the petition ~~to be annexed who allege an error in the petition~~ and persons resident or owning property in the municipality shall be given an opportunity to be ~~heard, as well as residents of the municipality who question the necessity for annexation.~~ heard. The governing board shall then determine whether the petition meets the requirements of this section. Upon a finding that the petition that was not submitted under subsection (b1) or (j) of this section meets the requirements of this section, the governing board shall have authority to pass an ordinance annexing the territory described in the petition. The governing board shall have authority to make the annexing ordinance effective immediately or on ~~any specified date within~~ the June 30 after ~~six months from~~ the date of the passage of the ordinance or the June 30 of the following year after the date of passage of the ordinance.

(d1) Upon a finding that a petition submitted under subsection (j) of this section meets the requirements of this section, the governing body shall have the authority to adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance.

(d2) Upon a finding that a petition submitted under subsection (b1) of this section meets the requirements of this section, the governing body shall, within 60 days of the finding, estimate the capital cost to the municipality of extending water and sewer lines to all parcels within the area covered by the petition and estimate the annual debt service payment that would be required if those costs were financed by a 20-year revenue bond. If the estimated annual debt service payment is less than five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body shall within 30 days adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance. If the estimated annual debt service payment is greater than or equal to five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body may adopt a resolution declining to annex the area. If such a resolution is adopted, the governing body shall immediately submit a request to the Local Government Commission to certify that its estimate of the annual debt service payment is reasonable based on established governmental accounting principles.

(1) If the Local Government Commission certifies the estimate, the municipality is not required to annex the area and no petition to annex the area may be submitted under subsection (b1) of this section for 36 months following the certification. During the 36-month period, the municipality shall make ongoing, annual good faith efforts to secure Community Development Block Grants or other grant funding for extending water and sewer service to all parcels in the areas covered by the petition. If sufficient funding is secured so that the estimated capital cost to the municipality for extending water and sewer service, less the funds secured, would result in an annual debt service payment cost to the municipality of less than five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body shall within 30 days adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance.

(2) If the Local Government Commission notifies the governing board that the estimates are not reasonable based on established governmental accounting principles and that a reasonable estimate of the annual debt service payment is less than five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body shall within 30 days of the notification adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance.

(d3) Municipal services shall be provided to an area annexed under subsections (b1) and (j) of this section in accordance with the requirements of Part 7 of this Article.

(e) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed

shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(f) For purposes of this section, an area shall be deemed "contiguous" if, at the time the petition is submitted, such area either abuts directly on the municipal boundary or is separated from the municipal boundary by the width of a street or street right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. A connecting corridor consisting solely of a street or street right-of-way may not be used to establish contiguity. In describing the area to be annexed in the annexation ordinance, the municipal governing board may include within the description any territory described in this subsection which separates the municipal boundary from the area petitioning for annexation.

(g) The governing board may initiate annexation of contiguous property owned by the municipality by adopting a resolution stating its intent to annex the property, in lieu of filing a petition. The resolution shall contain an adequate description of the property, state that the property is contiguous to the municipal boundaries and fix a date for a public hearing on the question of annexation. Notice of the public hearing shall be published as provided in subsection (c) of this section. The governing board may hold the public hearing and adopt the annexation ordinance as provided in subsection (d) of this section.

(h) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested right shall be terminated.

(i) A municipality has no authority to adopt a resolution or petition itself under this Part for annexation of property it does not own or have any legal interest in. For the purpose of this subsection, a municipality has no legal interest in a State-maintained street unless it owns the underlying fee and not just an easement.

(j) Using the procedures under this section, the governing board of any municipality may annex by ordinance any distressed area contiguous to its boundaries upon presentation to the governing board of a petition signed by at least one adult resident of at least two-thirds of the resident households located within such area. For purposes of this subsection, a "distressed area" is defined as an area in which at least fifty-one percent (51%) of the households in the area petitioning to be annexed have incomes that are two hundred percent (200%) or less than the most recently published United States Census Bureau poverty thresholds. The municipality may require reasonable proof that the petitioner in fact resides at the address indicated.

(k) The petition under subsection (j) of this section shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned residents of real property believe that the area described in paragraph 2 below meets the requirements of G.S. 160A-31(j) and respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of _____.

2. The area to be annexed is contiguous to the (City or Town) of _____, and the boundaries of such territory are as follows:

(l) For purposes of determining whether the percentage of households in the area petitioning for annexation meets the poverty thresholds under subsections (b1) and (j) of this section, the petitioners shall submit to the municipal governing board any reasonable evidence that demonstrates the area in fact meets the income requirements of that subsection. The

evidence presented may include data from the most recent federal decennial census, other official census documents, signed affidavits by at least one adult resident of the household attesting to the household size and income level, or any other documentation verifying the incomes for a majority of the households within the petitioning area. Petitioners may select to submit name, address, and social security number to the clerk, who shall in turn submit the information to the Department of Revenue. Such information shall be kept confidential and is not a public record. The Department shall provide the municipality with a summary report of income for households in the petitioning area. Information for the report shall be gleaned from income tax returns, but the report submitted to the municipality shall not identify individuals or households."

SECTION 11. Article 4A of Chapter 160A of the General Statutes is amended by adding a new Part 8 to read:

"**Part 8.**

"**Recording and Reporting.**

"**§ 160A-58.90. Recording and Reporting.**

(a) Annexations made under this Article shall be recorded and reported in the same manner as under G.S. 160A-29.

(b) To be enforceable, any written agreement with a person having a freehold interest in real property regarding annexation shall be recorded in the county register of deeds office in which the real property lies."

SECTION 11.1. G.S. 143B-437.04(a) is amended by adding a new subdivision to read:

"(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants to ensure that:

...

(3) Priority consideration is given to projects located in areas annexed by a municipality under Article 4A of Chapter 160A of the General Statutes in order to provide water or sewer services to low-income residents. For purposes of this section, low-income residents are those with a family income that is eighty percent (80%) or less of median family income."

SECTION 11.2. G.S. 159G-23 is amended by adding a new subdivision to read:

"**§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking Water Reserve.**

The criteria in this section apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Division of Water Quality and the Division of Environmental Health must each establish a system of assigning points to applications based on the following criteria:

...

(9) Low-income residents. – A project that is located in an area annexed by a municipality under Article 4A of Chapter 160A of the General Statutes in order to provide water or sewer services to low-income residents has priority. For purposes of this section, low-income residents are those with a family income that is eighty percent (80%) or less of median family income.

...."

SECTION 12. Except for Sections 10, 11.1, and 11.2, this act does not apply to any municipality that in its charter requires that an annexation must be approved by (i) either the voters in a referendum or at the request of a majority of the property owners; (ii) the voters in a referendum; or (iii) the request of a majority of the property owners.

SECTION 13. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect

without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 14. This act is effective when it becomes law and applies to annexations initiated by municipalities on or after that date and to petitions for annexation under Part 1 and Part 4 of Article 4A of Chapter 160A of the General Statutes presented on or after that date. Annexations initiated prior to the effective date of this act by any action under Part 2 or Part 3 of Article 4A of Chapter 160A of the General Statutes, but for which an annexation ordinance has not been adopted, shall terminate and may be reinitiated in compliance with Part 7 of Article 4A of Chapter 160A of the General Statutes as enacted by this act.

HOUSE BILL 845:
Annexation Reform Act of 2011

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Reps. LaRoque, Dollar, Owens	**Prepared by:**	Giles S. Perry Staff Attorney
Analysis of:	PCS to Third Edition H845-CSRWx-55		

SUMMARY: ***House Bill 845 (proposed committee substitute) makes substantive changes to the involuntary annexation process for all municipalities.***

BILL ANALYSIS:

Key changes made by the bill:

- **One annexation process for all size municipalities.** The bill repeals the current involuntary annexation statutes for cities less than 5,00 in population, and for cities of 5,000 or more in population, and enacts one new process (new Part 7 of Chapter 160A, Sections 1-9).
- **Water and sewer required.** The bill provides that if a property owner requests it, extension of water and sewer service to each lot or parcel is required. There is no charge to the property owner, if requested during the specified time periods. (page 3, line 26, page 11, line 37 to page 13, line 45).
- **Petition to deny annexation.** The bill includes a new process to allow property owners to petition to deny the annexation. If the property owners of 60% of the parcels submit petition to deny annexation, the annexation is stopped and can be taken up again for 36 months. (page 9, line 30, to page 10, line 38)
- **Additional notice to property owners.** Several provisions of the bill increase notice to property owners of the pending annexation process, opportunities for water and sewer, and the opportunity to petition to deny the annexation. (examples: page 6, line 7, required resolution of consideration; page 6, line 38, required combined notice of informational meeting and public hearing; page 9, line 20, notice of passage of ordinance; page 9, line 42, mailed petition to deny form),
- **Appeals modified.** The grounds for appeal of the annexation are expanded. Attorneys' fees for petitioners are authorized. (page 19, line 20).
- **Annexation of distressed areas.** The bill modifies the current annexation by petition statutes to require annexation of contiguous distressed (high poverty) areas, if 75% of the parcel owners petition, and to permit annexation if 2/3 of resident households petition. (pages 20-23).
- **Applicability.** The bill is effective when it becomes law. It applies to pending annexations for which an annexation ordinance has not been adopted as of the effective date, and to any new annexations initiated after the effective date. (page 24)

Below is a section-by-section summary of the bill:

Involuntary Contiguous Annexation Changes

Section 1. Repeals the Part 2 of Article 4A of Chapter 160A of the General Statutes, Annexation of Cities of Less than 5,000.

Sections 2 – 6 recodify selected provisions of Part 3 of Article 4A of Chapter 160A of the General Statutes (Annexation by Cities of 5,000 or more) and places those provisions in a new Part 7 created in Section 8 of the bill.

Section 7 repeals the remaining provisions of Part 3 of Article 4A of Chapter 160A of the General Statutes , Annexation by Cities of 5,000 or more.

Section 8 creates a new Part 7 of Article 4A of Chapter 160A of the General Statutes to govern involuntary annexation by all municipalities in North Carolina, regardless of size.

Section 9 sets forth the procedures for annexation under the new Part 7 as follows:

- Prerequisites for Annexation
  - The area to be annexed must comply with the criteria set forth in the statute for urban density, etc.
  - A plan must be in place to provide the following services, within the time frames stated, on substantially the same basis and in the same manner as each service is provided within the rest of the municipal limits:
    - At the time of annexation: Police, Fire, Solid waste collection, Street maintenance
    - Within three and one-half years of annexation: Water and Sewer, with installation easement
- Character of the Area to be Annexed – the property to be annexed must meet all of the following:
  - Must be adjacent or contiguous to the municipal boundaries, with at least 1/8 of the aggregate external boundaries of the area to be annexed coinciding with the municipal boundary.
  - Cannot be part of another municipality.
  - Is one of the following:
    - Completely surrounded by the municipal limits.
    - Is either:
      - between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending major municipal services, OR
      - adjacent, on at least 60% of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes.
    - Developed for urban purposes. Developed for urban purposes is any one of the following criteria:
      - Has a total resident population equal to at least 2.3 persons for each acre.
      - Has a total resident population equal to at least 1 person per acre, and is subdivided into lots and tracts such that at least 60% of the total acreage consists of lots and tracts 3 acres or less in size and such that at least 65% of the total number of lots and tracts are 1 acre or less in size.
      - Is so developed that at least 60% of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial,

industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least 60% of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts three acres or less in size.

- Is the entire area of any county water and sewer district, only if the municipality operates the sewer system and the entire territory is annexed in one annexation proceeding
- All the tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes

In fixing municipal boundaries and determining whether an area is developed for urban purposes, the municipality shall do all of the following:

- Use recorded property lines and streets as boundaries.
- Use whole parcels of property in that if any portion of that parcel is included, the entire parcel of real property as recorded in the deed transferring title shall be included.
- Not use a connecting corridor consisting solely of a street or street right-of-way to establish contiguity.
- Not consider property in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract.
- Include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities when determining acreage in use for commercial, industrial, institutional, or governmental purposes.
- Consider the area of an abolished water and sewer district to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b).

- Procedure for Annexation
  - Resolution of Consideration. – Must be adopted at least one year, but not more than 2 years prior to the resolution of intent. Property owners must be mailed a copy of the resolution. If crossing county lines, county commissioner must be notified.
  - Resolution of Intent. – Adopted at least one year after the resolution of consideration, describing the area to be annexed, that complies with the criteria of area to be annexed.
  - Public Informational Meeting. – Held at least 45, but not more than 55, days after the adoption of the resolution of intent. An official from the municipality is to explain the annexation process and answer questions of property owners and residents of the area to be annexed and of the municipality.
  - Public Hearing. – To be held at least 130, but not more than 150, days after the public informational meeting, to accept comment from the property owners and residents of the area to be annexed and of the municipality. Prior to the public hearing, the property owners must be given an opportunity to opt into the water and sewer service at no cost.
  - Annexation Ordinance. – May be adopted at least 10, but not more than 90, days after the public hearing. Must set an effective date of June 30, either of that year or the following year.

- Petition to Deny Annexation. – If the Board of Elections delivers to the municipal governing board petitions to deny annexation signed by eligible property owners of at least 60% of the parcels within the area to be annexed, then the annexation is terminated, and the municipality cannot begin the involuntary annexation process on that area again for 36 months.
- Remedy for failure to provide services- existing Writ of Mandamus time period expanded.
- Report to the Local Government Commission on provision of services to the area annexed. – 30 days after the effective date of the annexation, the municipality must report to the LGC as to whether the fire, police, solid waste collection, street maintenance and water/sewer services have been provided. If fire, police, solid waste collection and street maintenance services have not been provided within the 30 days, then the municipality may not include the population of the annexed area for purposes of monies distributed based on population by the State, federal or county government. If the water/sewer services have not been provided, then the municipality has to report again at the completion of the installation of the services or three and one-half years, whichever is earlier. If the municipality has not provided the water/sewer services within three and one-half years, the municipality must stop, and may not begin, any other annexations until the installation is completed.

- Provision of Services – Generally, must be provided on substantially the same basis and in the same manner as within the corporate limits.
  - Fire, Police, Solid Waste Collection, Street Maintenance. – The municipality may provide the service directly, or contract for the provision of the services. Either way, each service must be in place on the date of annexation.
  - Water and Sewer –The water and sewer service to the annexed area shall be provided by the municipality within three and one-half years of the effective date of the annexation ordinance.

    If the residents in the existing city are served by a public water or sewer system or a combination of a public and a nonprofit entity, the city does not provide service within the existing boundaries, the area to be annexed is served by the public water or serwer system, and the city has no responsibility with the public water or sewer system to pay for the extension of lines to the annexed areas, then the city will have no financial responsibility for the extension of water and sewer lines.

    The municipality shall provide water and sewer lines and connections at no, or reduced, costs other than periodic fees to all property owners requesting the service within the process set out below:
    - After passage of the resolution of intent, the property owners of real property located within the area proposed to be annexed shall be notified in writing, within five business days of the passage of the resolution of intent, of the opportunity to have water and sewer or both installed at no cost to the property owner, if the property owners a majority of the parcels respond positively to the opportunity. If a property owner fails to respond or responds negatively within 65 days, the property owner will be sent a reminder notice and will have 30 additional days to request water and sewer or both at no charge,. If the property is other than residential, that property will be given a credit in the amount of the average residential installation costs.
    - If the property owners a majority of parcels do not respond positively to the opportunity the municipality may still go forward with the annexation. If it does,

the municipality is not required to provide water or sewer to the annexed area, but if it does and if a property owner requests to be provided service, the municipality may be charged as described below.

- Any residential property owner who does not initially request water and sewer may do so later, but may be charged the following percentage of the average residential installation cost:
  - In the 1st year of the annexation – up to 50%.
  - In the 2nd year of the annexation – up to 60%
  - In the 3rd year of the annexation - up to 70%
  - In the 4th year of the annexation - up to 80%
  - In the 5th year of the annexation - up to 90%

- The municipality may not charge, for any reason, any property owner within the area described in the annexation ordinance, for the installation or use of the water or sewer system unless that property owner is, or has requested to become, a customer of the water and sewer system.
- Title to water or sewer connection lines shall vest in the property owner following completion of the initial installation. The property owner shall be responsible for maintenance and repair of water and sewer connection lines on the owner's property following the initial installation.
- If the municipality is unable to provide water or sewer service within three and one-half years due to permitting delays that are caused through no fault of the municipality, the municipality may petition the Local Government Commission for a reasonable time extension.

- Appeal
  - Transfers the current process for appeal from G.S. 160A-50, and makes conforming changes:
    - Within 60 days of the close of the time to sign a petition to deny, a property owner who believes they will suffer material injury by reason of the failure of the municipality to comply with the annexation procedure may file petition seeking review.
    - The court is to review and take evidence intended to show:
      - That the statutory procedure was not followed
      - That the prerequisites for annexation were not met
      - That the area annexed did not comply with the statutory requirements
      - That the provisions of the Declaration of Policy in G.S. 160A-58.50 have not been met
    - Remedies for the court:
      - Affirm the annexation without change.
      - Remand to the municipality for further proceedings.
      - Remand to the municipality for amendment to the boundaries.
      - Remand the report to the municipality for amendment on the plan for providing services or to correct errors in the city's estimates.
      - Declare the ordinance null and void.

Voluntary Contiguous Annexation Changes

Section 10 amends ***voluntary contiguous annexation*** in the following ways:

1. Requires the annexation of contiguous "distressed areas" if the following requirements are met:
   a. 51% of the households have incomes that are 200% or less than the US Census poverty thresholds
   b. The population of the area seeking to be petitioned is no more than 10% of the municipality and 1/8th of the aggregate external boundaries are contiguous to the municipality
   c. The owners of at least 75% of the parcels submit a signed petition to the governing board.
   d. If the capital costs to the municipality of extending water and sewer to all parcels does not exceed certain thresholds, as certified by the Local Government Commission.
2. Allows the annexation of contiguous "distressed areas" upon petition of two-thirds of the resident households located in the area.
3. Prohibits the use of a street as a connecting corridor to establish contiguity.

Section 11 adds a new Part 8 to Article 4A of Chapter 160A that requires all annexations to be recorded and reported in the same manner as under G.S. 160A-29. It also requires that in order for an agreement regarding annexation must be recorded in order to be enforceable.

Sections 11.1 requires the Department of Commerce and **Section 11.2** requires the Division of Water Quality to adopt guidelines for the awarding of Community Development Block Grants and other grants to cities that annex areas under Article 4A of Chapter 160A.

Section 12 provides that the act (except Sections 10, 11.1 and 11.2) does not apply to any municipality that in its charter requires that an annexation must be approved by (i) either the voters in a referendum or the request of a majority of the property owners; (ii) the voters in a referendum; or (iii) the request of a majority of the property owners.

EFFECTIVE DATE: When the act becomes law, and applies to annexations initiated by municipalities on or after that date and to voluntary petitions for annexation presented on or after that date. Involuntary Annexations initiated prior to the effective date of this act by any action but for which an annexation ordinance has not been adopted, shall terminate and may be reinitiated in compliance with Part 7 of Article 4A of Chapter 160A of the General Statutes as enacted by this act.

CURRENT LAW: North Carolina law sets forth four basic ways in which a town or city may annex an area into its corporate limits:

- **Legislative Act.** The General Assembly has the authority to extend the boundaries of any town or city through local acts.
- **Voluntary Contiguous Annexation.** The owners of all real property in the area desiring to be annexed sign a petition requesting annexation.
- **Voluntary Satellite Annexation.** This method allows a town or city to annex a non-contiguous area into the town or city limits, with the agreement of the property owner.
- **Involuntary Annexation.** The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed through a statutorily prescribed process. The statutorily prescribed process is different for cities of less than 5,000 people than it is for larger cities. The primary differences between the current involuntary annexation law for smaller and larger cities involve: standards for urban development, inclusion of nonurban areas in some cases, report maps, major water and sewer line extensions, lines to individual property, if requested in time, time of effective date.

Erika Churchill,staff attorney, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 168
Committee Substitute Favorable 3/21/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H168-CSSB-52 [v.1]

6/13/2011 7:12:05 PM

Short Title: Farms Exempt From City Annexation/ETJ/Zoning. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF "BONA FIDE FARM PURPOSES," TO PROHIBIT THE INVOLUNTARY MUNICIPAL ANNEXATION OF PROPERTY USED FOR BONA FIDE FARM PURPOSES, TO EXEMPT PROPERTY USED FOR BONA FIDE FARM PURPOSES FROM THE EXTRATERRITORIAL PLANNING AND ZONING JURISDICTION OF MUNICIPALITIES, AND TO EXEMPT PROPERTY USED FOR BONA FIDE FARMING PURPOSES FROM MUNICIPAL ZONING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-340(b)(2) reads as rewritten:

"(b) (2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of ~~agricultural products~~ agriculture as defined in ~~G.S. 106-581.1 having a domestic or foreign market.~~ G.S. 106-581.1. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a 'Goodness Grows in North Carolina' product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose."

SECTION 2. G.S. 160A-36 is amended by adding a new subsection to read:

"(f) No land being used for 'bona fide farm purposes,' as defined in G.S. 153A-340, on the date of the resolution of intent to consider annexation, shall be annexed without the written consent of the owner or owners of the property."

SECTION 3. G.S. 160A-48 is amended by adding a new subsection to read:

"(g) No land being used for 'bona fide farm purposes,' as defined in G.S. 153A-340, on the date of the resolution of intent to consider annexation, shall be annexed without the written consent of the owner or owners of the property."

SECTION 4. G.S. 160A-360 is amended by adding a new subsection to read:

"(k) Property used for 'bona fide farm purposes,' as defined in G.S. 153A-340, is exempt from a municipality's extraterritorial jurisdiction under this Article."

SECTION 5. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393.1. Part not applicable to property used for bona fide farm purposes.**

The provisions of this Part are not applicable to property used for 'bona fide farm purposes,' as defined in G.S. 153A-340."

SECTION 6. This act is effective when it becomes law. Sections 2 and 3 of this act apply to annexations of property used for bona fide farm purposes that were initiated by municipalities on or after that date, or are pending on that date.

HOUSE BILL 168: Farms Exempt From City Annexation/ETJ/Zoning

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Reps. Sanderson, Cleveland, Hill	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to Second Edition H168-CSSB-41		

SUMMARY: ***House Bill 168 clarifies the definition of "bona fide farm purposes", prohibits the involuntary municipal annexation of property used for bona fide farm purposes, exempts property used for bona fide farm purposes from municipal ETJ regulations, and exempts property used for bona fide farming purposes from municipal zoning. The Proposed Senate Committee Substitute changes the effective date so that Sections 2 and 3 of the bill apply to annexations of property used for bona fide farm purposes that were initiated by municipalities on or after that date, or are pending on that date.***

CURRENT LAW: There are special provisions that apply to the involuntary annexation of agricultural land, horticultural land, or forestland. For the provisions to apply, the property must meet one of the following conditions:

(1) The land is being taxed at present-use value pursuant to G.S. 105-277.4.
(2) The land meets both of the following conditions:
   a. On the date of the resolution of intent for annexation, it was being used for actual production and is eligible for present-use value taxation, but the land had not been in use for actual production for the required time under G.S. 105-277.3.
   b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision.

If the property meets (1) or (2) above, then it is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city planning and regulation of development.[1]

If the property becomes ineligible for present-use value classification or otherwise doesn't meet the conditions above, then the property would become subject to property taxation by the city, and the city would be required to provide services to the property.

BILL ANALYSIS:

Section 1 clarifies the definition of "bona fide farm purposes" by deleting the phrase "agricultural products" and substituting the term "agriculture" as it is defined in G.S. 106-581.1 (*statute attached below*); and by deleting the phrase "having a domestic or foreign market." Property used for bona fide farm purposes is broader than and would include property that is eligible for present-use value.

Sections 2 and 3 prohibit the involuntary municipal annexation of property used for bona fide farm purposes by both large (5,000 or more) and small (less than 5,000) municipalities. These sections would apply not only to annexations occurring on or after the date the bill becomes law, but also to annexations *pending* on the date the bill becomes law.

Section 4 exempts property used for bona fide farm purposes from municipal extraterritorial planning and zoning jurisdiction.

[1] G.S. 160A-37, -49.

Section 5 exempts property used for bona fide farm purposes from municipal zoning.

EFFECTIVE DATE: This act is effective when it becomes law. Sections 2 and 3 of the act would apply to annexations of property used for bona fide farm purposes that were initiated by municipalities on or after that date, or are pending on that date.

CROSS-REFERENCES:

§ 106-581.1. Agriculture defined.

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

(1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.

(2) The planting and production of trees and timber.

(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.

(4) Aquaculture as defined in G.S. 106-758.

(5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.

(6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm.

§ 99E-30. Definitions.

As used in this Article, the following terms mean:

(1) Agritourism activity. – Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity. "Agritourism activity" includes an activity involving any animal exhibition at an agricultural fair licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3.

Trina Griffin of the Research Division substantially contributed to this summary.

H168-SMRB-104(CSSB-41) v1

PAGES ATTENDING

Date: 6-14

Committee: Finance **Room:** 544 - 1 PM

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Molly Boutwell	Louisburg	Stevens
2 Judson MacDonald	Cary	Stevens
3 Brantley Craft	Greensboro	Vaughn
4 Ashley Sizemore	King	East
5 Preston Pugh	Clayton	Rouzer
6		
7		
8		
9		

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the meeting or a Sgt. at Arms.

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jimmy Gentry	NC State Grange
Allison Fowler	NC Grange
Sara Burrows	Carolina Journal
Keith A. Bost	Lexington
Charlene Moore	Oak Level Community
Bob Paris	
Steve Lawrence	Oak Level Community
Carol Lawrence	Oak Level Community
Betty Thompson	Oak Level Community
Shirley Whitaker	Oak Level Community
Gloria & Bob Whitley	Oak Level Community

turn over →

Name	Firm or agency; address
Kent Dozier	Nash Co. Oak Leaf Community
Rooney Dickerson	Town of Garner
Timika Hockaday	Town of Weldon
Blaney Williams	Southport N.C.
Mark Dorosin	UNC Center for Civil Rights

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
CAREY POPE	NARAL NC
KEN WADSWORTH	GOOD NEIGHBORS UNITED
Susan T. Mintz	Goldsboro, Good Neighbors United
Faye Talton Kennedy	Goldsboro NC, Good Neighbors United
ELLIS HANKINS	NCLM
MAYOR RONNIE WILLIAMS	GARNER
MIKE MOLIN	Gates Four Hoff
A. Willett	NCACC
Lee Hasiin	OLCAFA
O. Mink	NCDACS
David Baker	NCDOR
Bill Rowe	NC Judicial Center

Turn over →

Name	Firm or agency
Will Morgan	Sierra Club
Jack Cozart	NSS
Roger Waters	Rocky Mt
Travis Wilkerson	Womble
Andy Richter	Womble
Melissa Reed	PPHS
Paige Johnson	PPCNC
Bob Pennock	No Annexation By Force
Joyce E. Pennock	No Annexation By Force
Dunn Eaton	" - " " "
Dorothy Rice	Southport
Michael Rice	Southport
Kenneth MacMillan	Southport
Judy MacMillan	Southport
Peter Varney	City of Rocky Mount
Ann E. Wall	City of Rocky Mount
Doug Aitken	Fair Annexation Coalition
Carol Aitken	Fair Annexation Coalition
Chris Heaney	ACLU
Stephanie Beach	ACLU

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Senate Finance Committee — June 14, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Avery Nelms	Oak Level Community Rocky Mount NC
Laurence Alfree	Oakland Community Nash Co.
Herbert Moore	OLCAFA - Nash Co
Lois Dixon	OLCAFA - Nash Co
Elsie Pittman	OLCAFA Nash Co.
Chandler Cobb	OLCAFA Nash Co.
E.F. Pittman	" "
Joan Hawley	" "
J.R. Williams	" "
Rose Chappell	" "
Gene Brake	SWAAT (Southwest Anti-Annexation)

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Senate Finance Committee — June 14, 2011

Name of Committee — **Date**

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Betty Edmondson	OAK Level NASH COUNTY NC
Bill Edmondson	OAK Level Nash County, NC
Elizabeth Hunter	Oak Level Nash County NC
Sylvia Gardner	Oak Level Nash Co NC
[illegible]	Oak Level, Nash County, NC
Lois Farmer	Oak Level, Nash County, N.C.
Peggy Gardner	Oak Level Nash County N.C
Nelson Hoffman	OAK LEVEL, NASH CO. N.C.
[illegible]	OAK LEVEL, NASH NC
[illegible]	OAK level, NASH Co NC
[illegible]	OAK level, NASH Co. NC

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Senate Finance Committee — June 14, 2011

Name of Committee — **Date**

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David Winstead	OLC.AFA Nash Cty
LaVerne Winstead	OLCAFA Nash Cty
WAYNE COOKE	OLCAFA NASH CTY
Wendy Kelly	Policy Group
Kim Hargrove	NCARD
Pam Killian	nelson mullins
Davis H. BRINSON	NCARD
Kathleen Patton	NCCBL
David Hauser	NCCBL
Sara Riggins	NCFPC
Elina Alterman	NARAL NC

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Senate Finance Committee — **Name of Committee**

June 14, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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JERRY JENSEN	BLCAC
LOUISE G WILLIAMS	
Ruth Hampton	
Joyce Hockaday	Brandy Creek & Wallace fork Rd
MKalah Hockaday	Concerned Citizens Assoc.
Somer Harris	
Peter Gilbert	UVC Center for Civil Liberty
Maurice B. Holland, Jr.	Midway Community Assoc. Dir.
Mai Fleming	Midway Community Assoc.
Sandi Stewart	Stewart Hardware/Southport Connection
Ken Stewart	Stewart Hardware/Southport

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Heller	1005 Newton Dr Smithville Woods
Katherine Heller	" " " "
Dianne Proctor	6004 Robert Ruark Dr. Smithville Woods
Catherine Heath	STOPNCANNEXATION
Mitch Leonard	SCANC
Brenda Porter-Rockwell	Smithfield
Kathleen Battle	Wendell/Knightdale
Danielle Mearis	APPCNC/LLPP
Andrew Blackburn	Civitas
William Began	"
Katherine Ross	PPAB

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
JONY GALLO	PNHOA - WILMINGTON
DICK ELMER	PNHOA - WILMINGTON
WILLIAM PRIOGEN	OLCAFA - OAKLEVEL
Trudy Neumann	OLCAFA
Cindy Matulich	OLCAFA
Gerrie Rammings	OLCAFA
Bob / Jean Britt	OLCAFA
Becky C Robbins	OLCAFA
John M. Miller	GNORC.
Liz Eagle	GNORC
Marie Howell	GNORC

Name	Firm/address
Meg Turlington	NCDOJ
Janie Hauser	Womble
Scott Gallisdorfer	Womble
Matt Tuggle	Womble
CHARLES ARCHER	HOLLY SPRINGS
Eddie MADDEN	TOWN of ELIZABETHTOWN
Vega Hansen	Charlotte
JASON EPLEY	China Grove
Angela Cannon	Wilkes Seller
Chris Farr	americans for Prosperity
Yolanda Guerra	NCLM
Jami Fitzgerald	Alliance of Health Care Sharing Org's
Jaime Wagner	NCLM
Dani Campbell	NCLM
W. Wilson	Raleigh
M. Lail	Raleigh
R. Reynolds	Raleigh
H. Wright	Henderson
Jimmy Broughton	Womble Carlyle
David Boaz	Womble Carlyle
Dana Fenton	City of Charlotte

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gerald + Carol Floyd	15 Canterbury Ct Southport, N.C. 28461
Penny Tysinger	14 Canterbury Court Southport, NC 28461
Ronnie Beasley	OLCAFA
Gene Baker	NASH OLCAFA
Royce May	NASH OLCAFA
Catherine Keppel	Nash olcafa
Rita Agent	Nash OLCAFA
Jimmy DOZIER	NASH OLCAFA
Jimmie HARRIS	" OLCAFA
Dicky GLENN	Elizabethtown
David E Parker	Nash OLCAFA
Libby A Parker	Nash OLCAFA

NAME	Firm/Agency
Dallas Woodhouse	AFP-NC
Jeff Morse	Wallace Town Manager
Mike Waters	NCRPA
Jerry Leppart	N.C. SubVets
Gene Rutter	" " " "
Ray Kilduff	" " " "
John Rupertus	NC Sub Vets
Bill Dixon	NC Sub Vet
Chuck Jensen	NC Sub Vet
Bill Whelan	NC SubVets
Jeff Mixon	NC Subvet/AFP-NC
David Morris	NC SubVets
Pam Wells	anti NC
Mel Sober	DCR
Lana Hygh	Town of Cary
Jake Chaikin	ACLU
Ray Starling	NCDA&CS
Keith Richards	City of Charlotte

SENATE FINANCE COMMITTEE
Tuesday, June 14, 2011 at 7:15 PM
Room 545, Legislative Office Building

MINUTES

The Senate Finance Committee reconvened at 7:45 PM on June 14, 2011 in room 544 of the Legislative Office Building. Twenty-one members of the committee were present. Senator Apodaca presided as chair.

H.B. 168 – Farm Annexation

Senator Rucho moved to bring the bill back before the committee and the motion carried. Senator Newton moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. Representative Cleveland was recognized to explain the bill. The bill clarifies the definition of "bona fide farm purposes", prohibits the involuntary municipal annexation of property used for bona fide farm purposes, exempts property used for bona fide farm purposes from municipal ETJ regulations, and exempts property used for bona fide farming purposes from municipal zoning. The PCS changes the effective date so that Sections 2 and 3 of the bill apply to annexations of property used for bona fide farm purposes that were initiated by municipalities on or after that date, or are pending on that date. Senator Newton moved for a favorable report and the motion carried. A copy of the PCS is attached.

H.B. 56 – Local Annexations Subject to 60% Petition

Senator Newton and Representative Collins were recognized to explain the bill. Senator Dannelly moved to adopt the PCS for discussion. The motion carried. The PCS is a local act that suspends various pending annexations and provides a process for real property owners to submit petitions to deny the annexation. If the owners of 60% of the parcels contained in the area to be annexed submit petitions, the annexation is terminated and may not be reinstituted for 36 months. Vance Holloman, Deputy State Treasurer, was recognized to explain Goldsboro's debt burden and answer questions. Bob Pleasant, President of the Good Neighbors of Wayne County, spoke in favor of the bill. Senator Brock moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 7:42 PM.

Senator Tom Apodaca, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, June 14, 2011

Senator RUCHO,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **56** Rocky Mount Annexations Repealed.

Draft Number:	30391
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:
H56 – Sen. Newton

e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency."

SECTION 2. G.S. 160A-36 is amended by adding a new subsection to read:

"(f) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation, may not be annexed without the written consent of the owner or owners of the property."

SECTION 3. G.S. 160A-48 is amended by adding a new subsection to read:

"(g) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation, may not be annexed without the written consent of the owner or owners of the property."

SECTION 3.1. If House Bill 845, 2011 General Assembly, is enacted, G.S. 160A-58.54, as enacted by that act, is amended by adding a new subsection to read:

"(c) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation, may not be annexed without the written consent of the owner or owners of the property."

SECTION 4. G.S. 160A-360 is amended by adding a new subsection to read:

"(k) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from exercise of the municipality's extraterritorial jurisdiction under this Article. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to exercise of the municipality's extraterritorial jurisdiction under this Article."

SECTION 5. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393.1. Part not applicable to property used for bona fide farm purposes.**

The provisions of this Part are not applicable to property used for 'bona fide farm purposes,' as defined in G.S. 153A-340."

SECTION 6. This act is effective when it becomes law. Sections 2, 3, and 3.1 of this act apply to annexations of property used for bona fide farm purposes that were initiated by municipalities on or after that date, or are pending on that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 168
Committee Substitute Favorable 3/21/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H168-CSRB-73 [v.2]

6/14/2011 4:47:54 PM

Short Title: Farms Exempt From City Annexation & ETJ. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF "BONA FIDE FARM PURPOSES," TO PROHIBIT THE INVOLUNTARY MUNICIPAL ANNEXATION OF PROPERTY USED FOR BONA FIDE FARM PURPOSES, TO PROVIDE THAT PROPERTY USED FOR BONA FIDE FARM PURPOSES IS EXEMPT FROM THE EXERCISE OF MUNICIPAL EXTRATERRITORIAL JURISDICTION, AND TO EXEMPT PROPERTY USED FOR BONA FIDE FARMING PURPOSES FROM MUNICIPAL ZONING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-340(b)(2) reads as rewritten:

"(b) (2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of ~~agricultural products~~ agriculture as defined in ~~G.S. 106-581.1 having a domestic or foreign market.~~ G.S. 106-581.1. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a 'Goodness Grows in North Carolina' product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

a. A farm sales tax exemption certificate issued by the Department of Revenue.

b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.

c. A copy of the farm owner or operator's Schedule F from the owner or operator's most recent federal income tax return.

d. A forest management plan.

e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency."

SECTION 2. G.S. 160A-36 is amended by adding a new subsection to read:

"(f) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation, may not be annexed without the written consent of the owner or owners of the property."

SECTION 3. G.S. 160A-48 is amended by adding a new subsection to read:

"(g) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation, may not be annexed without the written consent of the owner or owners of the property."

SECTION 3.1. If House Bill 845, 2011 General Assembly, is enacted, G.S. 160A-58.54, as enacted by that act, is amended by adding a new subsection to read:

"(c) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation, may not be annexed without the written consent of the owner or owners of the property."

SECTION 4. G.S. 160A-360 is amended by adding a new subsection to read:

"(k) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from exercise of the municipality's extraterritorial jurisdiction under this Article. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to exercise of the municipality's extraterritorial jurisdiction under this Article."

SECTION 5. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393.1. Part not applicable to property used for bona fide farm purposes.**

The provisions of this Part are not applicable to property used for 'bona fide farm purposes,' as defined in G.S. 153A-340."

SECTION 6. This act is effective when it becomes law. Sections 2, 3, and 3.1 of this act apply to annexations of property used for bona fide farm purposes that were initiated by municipalities on or after that date, or are pending on that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 56
PROPOSED SENATE COMMITTEE SUBSTITUTE H56-CSRWx-28 [v.13]

6/13/2011 9:31:02 PM

Short Title: Local Annexations Subject to 60% Petition. (Local)

Sponsors:

Referred to:

February 9, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SPECIFIED LOCAL PENDING OR COMPLETED INVOLUNTARY ANNEXATIONS BE SUBJECT TO A PETITION TO DENY THE ANNEXATION BY PROPERTY OWNERS OF AT LEAST SIXTY PERCENT OF THE PARCELS LOCATED IN THE AREA.

The General Assembly of North Carolina enacts:

SECTION 1. The following involuntary annexations are suspended effective June 1, 2011, and shall not become effective, until completion of a petition to disallow the annexation process, described in Section 3 of this Act.

(a) Kinston annexation area, as described in House Bill 5, First Edition, 2011 Regular Session.

(b) Lexington annexation area, as described in House Bill 37, First Edition, 2011 Regular Session.

(c) Rocky Mount annexation area, as described in House Bill 56, First Edition, 2011 Regular Session.

(d) Wilmington annexation area, as described in House Bill 180, First Edition, 2011 Regular Session.

(e) Asheville/Biltmore Lake annexation area, as described in House Bill 236, First Edition, 2011 Regular Session.

(f) Marvin annexation area, as described in RS-2008-02-02, a resolution of the Village of Marvin Council.

(g) Southport annexation area, known as "Area A" and "Area B", as described in City of Southport Annexation ordinance, adopted June 9, 2011.

(h) Ayden annexation area, as described in Ayden Ordinance No. 08-09-07 as modified by any applicable Consent Order and Memoranda of Understanding.

SECTION 2. The following involuntary annexation, already enacted and effective, shall be subject to a petition by residents to disallow and repeal the annexation, in accordance with Section 4 of this act.

(a) Goldsboro annexation, described in Senate Bill 314, First Edition, 2011 regular Session.

SECTION 3. Pending Annexation/Petition to Deny Annexation Ordinance. – The annexations described in Section 1 of this act shall be subject to the following petition to deny annexation process.

(1) Within 30 days of the effective date of this act, the county tax assessor shall prepare a list of the real property parcels within the area to be annexed and a list of the owners of the parcel, and forward the list to the board of elections in the county where a majority of the parcels proposed for annexation are located. The board of elections shall prepare petitions for property owners of the real property located within the area to sign opposing the annexation ordinance.

(2) A petition shall include the names of the property owners of the parcel of real property listed individually, a signature line for each owner, and a statement that the person signing is petitioning to deny the annexation.

(3) The board of elections shall mail a petition to the address of record for those real property owners within five business days of receipt from the county tax assessor of the list.

(4) The board of elections shall provide two methods by which property owners of the real property located within the area described in the annexation ordinance may sign a petition form prepared by the board of elections: (i) in person or (ii) by submitting the signed petition form by mail. The board of elections shall also accept signatures signed on a petition form prepared by the board of elections, but collected by another, if that petition form is returned to the board of elections in a sealed container.

(5) If the signed petition is one that was mailed and the signer is not the same as the preprinted name on the form, the signed petition shall be notarized and accompanied by a copy of the legal authority for the signature of the person signing a petition.

(6) If a petition is returned as undeliverable to the board of elections, the board of elections shall send the petition return receipt requested. If the petition is returned again, the board of elections shall not include that property owner in the total number of eligible property owners.

(7) The board of elections shall accept signatures on the petition until 130 days after mailing the petitions under subdivision (3) of this section.

(8) The determination of the results by the board of elections of the petition period shall be observed by three property owners from the area proposed for annexation, chosen by lot by the board of elections from among those who request to serve in this role, and three persons designated by the municipality. A majority of the property owners of a single parcel of real property must sign the petition before the board of elections may count that parcel as having submitted a petition to deny annexation.

(9) Within 10 business days after the close of the signature period, the board of elections shall certify to the municipal governing body the number of petitions signed by property owners of the real property located within the area to be annexed.

(10) If the board of elections delivers to the municipal governing board petitions signed by property owners of at least sixty percent (60%) of the parcels located within the area to be annexed as provided in this section, the annexation shall be terminated and the municipality may not adopt a resolution of consideration for the area described in the annexation ordinance for at least 36 months.

(11) The municipality shall reimburse the board of elections the costs of the petition process required under this section.

SECTION 4. Completed and Effective Annexation/Petition to Deny. – The annexations described in Section 2 of this act shall be subject to the following petition to deny annexation process:

(1) The same process as described in Section 3 of this act, except that if the board of elections delivers to the municipal governing board petitions signed by eligible property owners of at least sixty percent (60%) of the parcels located within the area described in the annexation ordinance, the annexation shall be repealed effective immediately, and the municipality may not adopt a resolution of consideration for the area described in the repealed annexation ordinance for at least 36 months following repeal.

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 56:
Local Annexations subject to 60% petition.

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 13, 2011
Introduced by:	Rep. Collins	**Prepared by:**	Kory Goldsmith Staff Attorney
Analysis of:	PCS to First Edition H56-CSRWx-28		

SUMMARY: ***The PCS for House Bill 56 is a local act that suspends various pending annexations and provides a process for real property owners to submit petitions to deny the annexation. If the owners of 60% of the parcels contained in the area to be annexed submit petitions, the annexation is terminated and may not be reinstituted for 36 months.***

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "*provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.*" Pursuant to this Section, the General Assembly enacted Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to involuntarily add territory to their municipal limits, if the area meets the statutory requirements.

The General Assembly may enact legislation to "deannex" an area that has been annexed. A number of bills have been filed this session that would deannex pending annexations and some would repeal annexations that have become effective.

BILL ANALYSIS: The PCS for House Bill 56 would suspend 8 pending involuntary annexations and make one annexation that is already effective all subject to a petition to deny annexation process. The process would be as follows:

- Within 30 days of the effective date of the act, the county tax assessor would prepare a list of all the property owners of the parcels contained in the area to be annexed and send the list to the county board of elections.
- The board of elections would have 5 days to send petitions to deny to each property owner.
- Property owners would have 130 days to return a signed petition.
- Once the period for submission of signed petitions closes, the board of elections shall determine the results and report the same to the municipal governing body.
- If the owners of 60% of the parcels in the area of the proposed annexation submit petitions denying annexation, the annexation is terminated (or repealed in the case of the annexation that is already effective) and the municipality may not commence another annexation of the area for 36 months.

EFFECTIVE DATE: The act is effective when it becomes law.

H56-SMRC-57(CSRWx-28) v3

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2011 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Meehan	CapStrat
Tucker Jones	Sen. Kinnaird
Pamela Jackson	8121 N Creek Run - Teacher
Julia Adams	The Arc of NC
Joni Ally	BEGINNINGS
Lisa Piercy	Pagedale Liggett
Emily Grimm	MWC
John MERRITT	MWC LLC
John Hardin	MFS
John McCullen	MFS
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2011 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kathleen Patterson	NCCGL
David Hauser	NCCGL
Whitney Christensen	Jordan Price
Sara Riggins	NCFPC
Donald Bryson	PEFNC
Erin McBrayer	JLF
Jennifer Mahan	ASNC
Laura Reinhard	ASNC
Will Hall	ASNC
Alison Kiser	PPCNC
Paula A. Wolf	NC National Org. for Women

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2011 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Preston	ACLU-NC
Annaliese Dolph	DRNC
Mike Waters	NCRPA
Jim Simon	NCDENR DLR
KENNETH TAYLOR	NCDENR DLR
Matthew Gilmore	DST
Leslie Hood	DST
Elina Alterman	NARAL NC
Melissa Reed	PPHJ
Paige Johnson	PPCNC
Kay Emanuel	Legislative Reporting Services
Mel Sales	DER
Karen Wells	Arts NC

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 14, 2011 PM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
C S Hollis	TSS
Bruce Thompson	Raleigh AOB
BJ Miller	Cone Health
David Miner	TRG, Inc
Patsy Buffkin	NCAEC
Jimmy Kelly	KI States
Kelly	NCCM
Barbara S Holt	NCRTC
Bill Seabrook	DJS
David Ficcell	NCLTA
John Politis	NCDOA

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 14, 2011 PM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jennie Renner-Veamons	NCHC
JERRY LEPPART	N.C. SUBVETS
BARBARA DIXON	N.C. SUBVETS
PAUL STOCK	NCBA
John Dorman	NCEM
Rich Adams	Victim Advocate
Janice Carmichael	Victims' Comp / CCPS
SVAAR,	DJ
Bob Kegner	NC Adult Soccer Assoc.
Kyle Hanny	NCDP
	NCPDA & NCDS

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 14, 2011 PM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Stephanie Beach	ACLU
Chris Heaney	ACLU
Jake Charles	ACLU
R.J. Weber	N.C. Chiropractic Assn.
Carley Ruff	NCHC
Will Pumphrey	NCHFA
Matthew Betts	Insider
Davis H. Brinson	NCARD
Kim Hargrove	NCARD
Leon Killian	Nelson Mullins
Dick Carlton	Law office of Richard M. Carlton

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 14, 2011 PM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bo Heath	McGuireWoods
Angell Sams	NSS
Chip Bryant	NCMS
J. King	Queen $ NC Education Lottery
Maeve Hill	Smith Anderson
Bill Dixon	Subvet
David Barnes	RS
Matt Harrell	NCSBA
Jami Fitzgerald	Alliance of Health Care Sharing
Ann McLeod	SBE
Amy Whited	NC Med Soc

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2011 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mitch Leonard	SEANC
Chuck Stone	SEANC
Steve Brewer	CTL
Barbara Conola	BBGA
John Bowdish	Astra Zeneca
[illegible]	NC Med Soc
[illegible]	Electric City
DANIEL BAUM	TROUTMAN SANDERS
JAY LEUTZE	SAAC
TOM CORI	TNC
[illegible] Miller	KLG

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2011 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Susan R. DeHaney	NCANP
Patsy A. Yancey	NCANP / APPCNC
Wallace Bradsher	Elected DA - District 9A Person/Caswell Counties
Keith Richardson	City of Charlotte
Rachel Houte	NMSS-NC
Mark DeRosier	Center for Civil Rights
Drew Moretz	Raleigh Chamber
Jake Cashion	NC Chamber
Butch Gunnells	NCRA
Beau Memory	NCDOT
David Hoffman	EBCI ABC Comm
Chris Williams	Williams Group LLC

VISITOR REGISTRATION SHEET

Senate Committee on Education/Higher Education — Wednesday, June 8, 2011
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Barrett	Williams Mullen
Ken Melton	K.M.A.
Billy Guillard	NCRC
[signature]	WM
Jim Kent	NC Beer & Wine
Kathryn Westcott	AGEC/NC
[signature]	JSW & JC
[signature]	NCACC
[signature]	SEANC

SENATE FINANCE COMMITTEE
Wednesday, June 15, 2011 at 1:00 PM
Room 545, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 15, 2011 in room 544 of the Legislative Office Building. Twenty-seven members of the committee were present. Senator Hartsell presided as chair.

H.B. 409 – Guilford Tech. May Lease Property

Representative Jeffus was recognized to explain the bill. It allows Guilford Technical Community College (GTCC) to lease a portion of its property to the NC Center for Global Logistics at less than market value, use the proceeds of the lease for current operating expenses or for capital outlay purposes, and, with the consent of GTCC trustees, use the personnel and facilities at GTCC in support of economic development through the operation of the Donald W. Cameron Campus of GTCC and its companion facilities as an event venue. Senator Tillman moved for a favorable report as amended and the motion carried. A copy of the bill and the summary is attached.

H.B. 411 – Iredell Correctional Facility/DOT Storage

Representative Howard was recognized to explain the bill which enacts an agreement between the Department of Transportation and the Iredell County Sheriff to lease the former Iredell County Correctional Facility. Senator Brock moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 93 – Sales & Use Taxes

Representative Howard explained the bill which allows a seller to apply overcollected sales tax to offset a use tax liability on a related transaction. Senator Brock moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 384 – Register of Deeds Fees

Representative Howard explained the bill which seeks to simplify the collection and remittance of fees collected by the register of deeds for registering or filing certain instruments. Senator Rabon was recognized to offer an amendment and Cindy Avrette, a staff attorney with the Research Division, was recognized to explain it. The amendment is technical in nature. Senator Rabon moved to adopt the amendment and the motion carried. Davis Brinson, Duplin County Register of Deeds, was recognized to answer questions. Senator Purcell moved for a favorable report and the motion carried. A copy of the bill, the summary and the amendment is attached.

H.B. 367 – Roanoke Rapids Deannexation

Senator Jones was recognized to explain the bill which deannexes 21 parcels from the City of Roanoke Rapids. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 486 – Tryon Deannexation

Representative Guice was recognized to explain the bill which deannexes a described area from the Town of Tryon. Senator Clodfelter moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 508 – Modify Mecklenburg County Local Taxes

Representative Samuelson was recognized to explain the bill. Senator Clodfelter moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The bill codifies the interlocal agreement between the Lake Norman Convention and Visitors Bureau (LNCVB) and the Towns of Cornelius, Davidson, and Huntersville. The PCS provides substantially the same amount of revenue to the LNCVB by requiring the towns to distribute to the LNCVB for tourism-marketing promotions from the prepared food and beverage taxes received from Charlotte an amount not less than 28% of the occupancy taxes received from Mecklenburg County plus 25% of the prepared food and beverage taxes received from Charlotte. Senator Dannelly moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 573 – Raleigh/Wake Forest Boundary

Senator Hunt was recognized to explain the bill which removes 21 acres from the City of Raleigh and adds the area to the Town of Wake Forest. Senator Stevens moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 518 – Authorize Add'l Person County Occupancy Tax

Representative Wilkins was recognized to explain the bill. It authorizes Person County to levy an additional 1% room occupancy tax, and it deletes unnecessary language relating to how the proceeds of the existing 5% tax were to be spent during the first four years of levy. Senator Kinnaird moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 24 – Expand Duties of Economic Dev. Oversight Comm.

Senator Stein was recognized to explain the bill which changes the name of the commission to the "Joint Legislative Economic Development and Global Engagement Oversight Commission" and expands the duties to include international business

activity. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill is attached.

H.B. 242 – Nat. Gas/Bond/Fee/Landowner Protect'n/Study

Representative Gillespie was recognized to explain the bill. It would 1) increase the amount of the bond required upon registration in order to drill for oil or natural gas in the State; 2) increase the amount of fees applicable to drilling and abandoning oil or gas wells; 3) direct the Department of Environment and Natural Resources (DENR) and other entities to study the issue of oil and gas exploration in the State; 4) direct DENR to conduct at least two public hearings on the issue in the area in which drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing may occur; 5) establish certain protections for owners of land on which drilling or exploration for oil or gas may occur, 6) appropriate $100,000 to DENR in order to conduct the study and the public hearings, 7) directs the Department of Commerce to study issues related to potential economic impacts if drilling for oil or natural gas were to take place in the State, including possible sources of revenue that could accrue to the benefit of the State; 8) directs the Consumer Protection Division of the Department of Justice to study consumer protection and legal issues associated with drilling for oil or natural gas; and 9) adds provisions related to landowner protection and leases for the drilling of oil or gas. Senate Jenkins moved for a favor report and the motion carried. A copy of the bill and the summary is attached.

H.B. 289 – Special License Plates

Senator Gillespie was recognized to explain the bill. Senator Tillman moved to adopt the PCS for discussion and the motion carried. The bill authorizes the issuance of a number of special license plates, and directs DMV to develop a standard format for special License plates. It also provides for the expiration of a special plate authorization if DMV does not receive the required number of applications within two ears of the time the plate is authorized. The PCS incorporates additional plates that were not included in the version that passed the House. It also changes to background on the Core Sound Waterfowl Museum plate and authorizes motorcycle plates for Civic Clubs. Senator Tillman was recognized to offer an amendment to create a sustainable fisheries plate. Senator Tillman moved for its adoption and the motion carried. Senator Rucho was recognized to offer an amendment which regulates the background and language of special license plates to include "First in Flight" and a picture of the Wright Brothers biplane. It does not recall existing specialty plates. Johanna Reese, DMV, was recognized to explain the amendment and answer questions. Trina Griffin, a staff attorney with the Research Division, was recognized to answer questions. Bob Kepner, NC Adult Soccer Association representative, was recognized to speak in favor of the bill. Thomas Caves, Crime Control and Public Safety liaison, was recognized to answer questions. Senator Rucho moved to favorably adopt the amendment and the motion carried. Senator Garrou was recognized to offer an amendment which creates the "Respect Choice" plate. The bill sponsor, Representative Gillespie, opposed the amendment. Senator Garrou to adopt the amendment and the motion failed. Senator

Daniel was recognized to offer an amendment which creates the "County Commissioner" plate. He moved for its adoption and the motion carried. Senator Daniel was recognized to offer the "NC Horse Council" plate and moved for its adoption. The motion carried. Senator Daniel moved for a favorable report for the PCS with the amendments incorporated into a new PCS. The motion carried. A copy of the PCS, the summary, the fiscal note and the amendments is attached.

H.B. 344 – Tax Credits for Children with Disabilities

Representative Stam was recognized to explain the bill. It allows an individual income tax credit for up to $3,000 per semester for tuition and special education and related services expenses for a taxpayer's eligible dependent child with a disability who is enrolled in a nonpublic school or a public school where tuition is charged for the eligible dependent child's enrollment. The bill creates a Fund for Special Education and Related Services with the monies to be used for special education and related services for children with disabilities. It also requires the Department of Revenue to report to the Revenue Laws Study Committee and the Joint Legislative Education Oversight Committee on the administration of the education expenses credit and on the number and amount of education expense credits taken. Senator Stevens moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 358 – Apex/Cary Annexation Into Chatham Restricted

Senator Atwater was recognized to explain the bill. It would require the Towns of Apex and Cary to obtain approval from the Chatham County Board of Commissioners before any involuntary annexation into Chatham County. Senator Atwater moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting recessed at 2:02 PM to reconvene later in the day.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

① Tillman amends - sustainable fisheries fe FAV
② Ruano amends - design of plates - Johnna Rees. MW
rec'd to explain Tillman rec'd to ans?'s
Bob Kepner NC Adult Soccer Assn. rec'd. Thomas Caves CCAS - FAV

12	H289	Special License Plates Tillman	Gillespie	Tillman PCS	Trina	
13 Gillespie, Stevens, Barefoot,	H344	Tax Credits for Children with Disabilities Stevens	Stam Rucho	Drupti		Stevens moves FAV
	H339	Housing Authority/ Collect Unpaid Rent Rabon	Cook		Cindy	
14	H358	Apex/Cary Annexation Into Chatham Restricted. Atwater	~~Hackney~~ (Stevens) Atwater		Greg	Atwater moves FAV
15	H384	Register of Deeds Fees Purcell or Hartsell	Howard	Rabon Amend FN	Cindy Sandra	Cindy rec'd explain amend Davis Brinson Davis Cou Register of Deeds ~~Wants to go first~~ Purcell moves FAV
	H417	Extend Time for Site of Low/Mod Inc. Housing	McGrady	FN	Greg Rodney	
	H512	Rendering Act Amendments	Torbett	PCS	Heather	
	H453	Allow Salary Protection Insurance	Dockham		Greg	
	H596	Transfer Surplus Prop. to Retirement System.	Hastings		Greg	
	H662	Electronic Monitoring Fee Rabon	Cook		Trina	
	~~S467~~	~~Naturopathic Licensing Act~~	~~Hartsell~~		~~Amy Jo~~	
	S682* No summary	Tax Deduction for Sharing Health Care Costs	Hunt	FN	Jonathan	

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 15, 2011

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.	**24**	Expand Duties of Economic Dev. Oversight Comm.
		Sequential Referral: None
		Recommended Referral: None
H.B.(CS #1)	**93**	Sales & Use Tax Collection.
		Sequential Referral: None
		Recommended Referral: None
H.B.(SCS #1)	**242**	Nat. Gas/Bond/Fee/Landowner Protect'n/Study.
		Sequential Referral: None
		Recommended Referral: None
H.B.(SCS #1)	**344**	Tax Credits for Children with Disabilities.
		Sequential Referral: None
		Recommended Referral: None
H.B.(CS #1)	**358**	Apex/Cary Annexation Into Chatham Restricted.
		Sequential Referral: None
		Recommended Referral: None
H.B.	**367**	Roanoke Rapids Deannexation.
		Sequential Referral: None
		Recommended Referral: None
H.B.(CS #1)	**409**	Guilford Tech. May Lease Property.
		Sequential Referral: None
		Recommended Referral: None
H.B.(CS #1)	**411**	Iredell Correctional Facility/DOT Storage.
		Sequential Referral: None
		Recommended Referral: None
H.B.	**486**	Tryon Deannexation.
		Sequential Referral: None
		Recommended Referral: None

H.B.(CS #1) **518** Authorize Add'l Person County Occupancy Tax.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **573** Raleigh/Wake Forest Boundary.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

H.B.(CS #1) **384** Register of Deeds/Fees.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **508** Modify Mecklenburg County Local Taxes.
Draft Number: 11251
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 13

Committee Clerk Comments:
H24 – Sen. Stein
H93 – Sen. Brock
H242 – Sen. Blake
H344 – Sen. Stevens
H358 – Sen. Atwater
H367 – Sen. Jones
H384 – Sen. Purcell or Sen. Hartsell
H409 – Sen. Tillman
H411 – Sen. Brock
H486 – Sen. Clary
H508 – Sen. Dannelly
H518 – Sen. Kinnaird
H573 – Sen. Hunt

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 15, 2011

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE, AS AMENDED

H.B.(CS #1) **122** Rev Laws Tech, Clarify., & Admin. Chngs.

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

H122 – Sen. Clodfelter

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 15, 2011

Senator RUCHO,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **751** Clarify Mill Machinery Privilege Tax.

Draft Number:	11253
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

H751 – Sen. Brock

Senate Finance Committee
Wednesday, June 15, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 24	Expand Duties of Economic Dev. Oversight Comm.	Representative Carney Representative Dollar Representative Brown Representative Wilkins, Jr.
HB 242	Nat. Gas/Bond/Fee/Landowner Protect'n/Study.	Representative Stone Representative Gillespie
HB 289	Authorize Various Special Plates.	Representative Gillespie
HB 339	Housing Authority/Collect Unpaid Rent.	Representative Cook
HB 344	Tax Credits for Children with Disabilities.	Representative Jones, Jr. Representative Jordan Representative Stam Representative Randleman
HB 358	Apex/Cary Annexation Into Chatham Restricted.	Representative Hackney Representative Stam
HB 367	Roanoke Rapids Deannexation.	Representative Bryant Representative Bradley, Jr.
HB 384	Register of Deeds/Fees.	Representative Howard Representative Rapp Representative West Representative Wilkins, Jr.
HB 409	Guilford Tech. May Lease Property.	Representative Adams Representative Faircloth, Jr. Representative Jeffus Representative Harrison
HB 411	Iredell Correctional Facility/DOT Storage.	Representative Howard
HB 417	Extend Time For Site Of Low/Mod. Inc. Housing.	Representative McGrady
HB 453	Allow Salary Protection Insurance.	Representative Dockham
HB 486	Tryon Deannexation.	Representative Guice
HB 508	Modify Mecklenburg County Local Taxes.	Representative Earle Representative Moore Representative Samuelson
HB 512	Rendering Act Amendments.	Representative Torbett

HB 518	Authorize Add'l Person County Occupancy Tax.	Representative Wilkins, Jr.
HB 573	Raleigh/Wake Forest Boundary.	Representative Avila
HB 596	Transfer Surplus Prop. to Retirement System.	Representative Crawford, Jr. Representative Hastings Representative Stam
HB 662	Electronic Monitoring Fee.	Representative Shepard Representative Cook
SB 467	Naturopathic Licensing Act.	Senator Hartsell Senator Apodaca
SB 682	Tax Deduction for Sharing Health Care Costs.	Senator Hunt

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 409
Committee Substitute Favorable 6/7/11

Short Title: Guilford Tech. May Lease Property. (Local)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW GUILFORD TECHNICAL COMMUNITY COLLEGE TO LEASE A PORTION OF ITS PROPERTY TO THE NORTH CAROLINA CENTER FOR GLOBAL LOGISTICS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 115D-15, Article 12 of Chapter 160A of the General Statutes, Chapter 66 of the General Statutes, or any other provision of law, the board of trustees of Guilford Technical Community College may lease at private sale to The North Carolina Center for Global Logistics, LLC, a portion of its land and improvements now or hereafter located on the Donald W. Cameron Campus of Guilford Technical Community College. The terms and conditions of the lease shall be set by the board of trustees of Guilford Technical Community College and may include rental at less than fair market value. The lease shall not be subject to the prior approval of the State Board of Community Colleges.

SECTION 2. Notwithstanding G.S. 115D-15 or any other provision of law, the board of trustees of Guilford Technical Community College may use the proceeds of the lease for current operating expenses or for capital outlay purposes.

SECTION 3. Notwithstanding G.S. 66-58(a), the personnel and facilities of Guilford Technical Community College may, with the consent of the trustees of the college, be used in support of economic development through the operation of the Donald W. Cameron Campus of Guilford Technical Community College and its companion facilities as an event venue. Proceeds generated shall be used either to pay the operational costs of the college's facilities, to support the event venue, or to support the mission of the college.

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 409:
Guilford Tech. May Lease Property

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Reps. Jeffus, Harrison, Adams, Faircloth	**Prepared by:**	Greg Roney Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 409 allows Guilford Technical Community College (GTCC) to lease a portion of its property to the NC Center for Global Logistics at less than market value, use the proceeds of the lease for current operating expenses or for capital outlay purposes, and, with the consent of the GTCC trustees, use the personnel and facilities at GTCC in support of economic development through the operation of the Donald W. Cameron Campus of GTCC and its companion facilities as an event venue.***

CURRENT LAW: G.S. 115D-15 governs the sale, lease, or exchange of real property owned by a community college. The Board of Trustees of a community college may sell, exchange, or lease real property owned or held by the Board with the prior approval of the NC Community Colleges System Office.

Article 12 of G.S. Chapter 160A of the General Statutes applies to the disposal or sale of any real or personal property owned or held by a community college. The proceeds of any sale or lease must be used for capital outlay purposes.

G.S. 66-58 provides that units, departments, and agencies of State government may not engage in the sale of merchandise or services in competition with private enterprise. The statute also provides a number of exceptions to the general rule.

BILL ANALYSIS: Section 1 of House Bill 409 authorizes the board of trustees of Guilford Technical Community College (GTCC) to lease at private sale a portion of its land and improvements located on the Donald W. Cameron Campus to the North Carolina Center for Global Logistics (NCCGL). The terms and conditions of the lease may include rental at less than fair market value.

The NCCGL is a nonprofit economic development organization representing a collaboration between 20 colleges, universities, and community colleges, 14 local and regional economic development agencies, and a multitude of local, regional, national, and international transportation and logistics businesses located in the Piedmont Triad Region.

Section 2 of the bill provides that the proceeds of the lease may be used by the Board for current operating expenses or for capital outlay purposes.

Section 3 of the bill exempts GTCC from the Umstead Act for purposes of allowing the use of its personnel and facilities, with the consent of the Board, in support of economic development through the operation of the Donald W. Cameron Campus and its facilities as an event venue. Proceeds generated shall be used either to pay the operations cost of GTCC's facilities, to support the event venue, or to support the mission of the college.

EFFECTIVE DATE: The act is effective when it becomes law.

BACKGROUND: This bill would allow GTCC to partner with the NCCGL to further economic development efforts in the Piedmont Triad Region around the transportation, logistics, and supply chain industry cluster.

Trina Griffin, counsel to House Finance, substantially contributed to this summary.

H409-SMTM-43(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 411
Committee Substitute Favorable 5/9/11

Short Title: Iredell Correctional Facility/DOT Storage. (Public)

Sponsors:

Referred to:

March 22, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE IREDELL COUNTY SHERIFF MAY LEASE THE FORMER IREDELL CORRECTIONAL FACILITY FROM THE DEPARTMENT OF TRANSPORTATION FOR ONE DOLLAR A YEAR FOR THIRTY YEARS UPON THE PAYMENT OF SEVENTY-FIVE THOUSAND DOLLARS BY THE IREDELL COUNTY SHERIFF TO THE DEPARTMENT OF TRANSPORTATION FOR THE RENOVATION OF THE NEWTON STORAGE FACILITY FOR THE DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

SECTION 1. The Iredell County Sheriff's Department shall pay to the Department of Transportation the sum of seventy-five thousand dollars ($75,000) to be used by the Department to renovate the Department's facility in Newton.

SECTION 2. The Department of Transportation shall lease to the Iredell County Sheriff the buildings requested by the Sheriff of Iredell County at the former Iredell Correctional Facility located on NC Highway 21 for the sum of one dollar ($1.00) a year for 30 years.

SECTION 3. The Sheriff of Iredell County shall use the facilities for housing inmates and shall be responsible for all upgrades and services at the buildings leased by the Sheriff of Iredell County at the former Iredell Correctional Facility to ensure compliance with the State and federal laws regarding inmate care and custody.

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 411:
Iredell Correctional Facility/DOT Storage

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2011
Introduced by:	Rep. Howard	**Prepared by:**	Greg Roney Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 411 would enact an agreement between the Department of Transportation and the Iredell County Sheriff to lease the former Iredell County Correctional Facility.***

BILL ANALYSIS: House Bill 411 would:

- Require the Iredell County Sheriff's Department to pay the Department of Transportation $75,000 to renovate the Department's facility in Newton.
- Require the Department of Transportation to lease to the Iredell County Sheriff the buildings requested by the Sheriff at the former Iredell Correctional Facility located on NC Highway 21 for $1 per year for 30 years.
- Require the Sheriff of Iredell County to use the facilities for housing inmates and makes the Sheriff responsible for upgrades and services at the buildings to ensure compliance with the State and federal laws regarding inmate care and custody.

EFFECTIVE DATE: The act is effective when it becomes law.

Brad Krehely with the Research Division substantially contributed to this summary.

H411-SMTM-52(e2) v1

HOUSE BILL 93
Committee Substitute Favorable 6/9/11

Short Title: Sales & Use Tax Overcollection. (Public)

Sponsors:

Referred to:

February 16, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW A SELLER TO APPLY OVERCOLLECTED SALES TAX TO OFFSET A USE TAX LIABILITY ON A RELATED TRANSACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.11(a) reads as rewritten:

"(a) Remittance of ~~Over-Collections~~ Overcollections to Secretary. – When ~~the~~ tax is collected for any period ~~is~~on a taxable sale in excess of the total amount that should have been ~~collected,~~ collected or is collected on an exempt or nontaxable sale, the total amount collected must be ~~paid over~~ remitted to the Secretary. ~~When tax is collected for any period on exempt or nontaxable sales the tax erroneously collected shall be remitted to the Secretary and no refund shall be made to a taxpayer unless the purchaser has received credit for or has been refunded the amount of tax erroneously charged.~~ If the Secretary determines that the seller overcollected the sales tax on a transaction, the Secretary shall take only one of the actions listed in this subsection. This ~~provision~~ subsection shall be construed with other provisions of this Article and given effect so as to result in the payment to the Secretary of the total amount collected as tax if it is in excess of the amount that should have been collected.

(1) If the Secretary determines that the seller overcollected tax on a transaction, the Secretary may allow a refund of the tax. The Secretary may allow the refund only if the seller gives the purchaser credit for or a refund of the overcollected tax. The Secretary shall not refund the overcollected tax to the seller if the seller has elected to offset a use tax liability on a related transaction with the overcollected sales tax under subdivision (2) of this subsection.

(2) If the Secretary determines that a seller who overcollected sales tax on a transaction is instead liable for a use tax on a related transaction, the Secretary may allow the seller to offset the use tax liability with the overcollected sales tax. The Secretary shall not allow an offset if the seller has elected to receive a refund of the overcollected tax under subdivision (1) of this subsection. The decision by a seller to receive an offset of tax liability rather than a refund of the overcollected tax does not affect the liability of the seller to the purchaser for the overcollected tax.

(3) If neither subdivision (1) nor (2) of this subsection applies, the Secretary shall retain the total amount collected on the transaction."

SECTION 2. This act becomes effective July 1, 2011, and applies to tax liabilities that accrue on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

REVISED

BILL NUMBER: House Bill 93 (Proposed Committee Substitute to Version One)

SHORT TITLE: Sales & Use Tax Over-collection

SPONSOR(S): Representative Howard

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: July 1, 2011, and applies to tax liabilities that accrue on or after that date

BILL SUMMARY: The proposed committee substitute establishes procedures concerning the Secretary of Revenue's actions when sales tax is collected in excess of the total amount that should have been collected or that is collected on an exempt or nontaxable sale. The proposal provides that the Secretary may allow a refund to the seller only if the seller gives the purchaser credit for or a refund of the over-collected tax. If the Secretary of Revenue determines that a seller who over-collected sales tax on a transaction is liable for use tax on the transaction instead of sales tax, the Secretary may allow the seller to elect to apply the over-collected sales tax to the seller's liability for use tax on the transaction. This election does not affect the liability of the seller to the purchaser for the over-collected tax.

ASSUMPTIONS AND METHODOLOGY: There is no fiscal impact because the bill has no effect on the amount of sales and use tax due.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jonathan Tart

Jonathan Tart

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: June 7, 2011

HOUSE BILL 93:
Sales & Use Tax Overcollection

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2011
Introduced by:	Reps. Howard, Brubaker, Starnes	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 93 would allow a seller to apply overcollected sales tax to offset a use tax liability on a related transaction.

CURRENT LAW: The sales tax a retailer collects is considered a debt from the purchaser to the retailer until it is remitted by the retailer to the State. The retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item. When a seller collects tax in excess of the amount that should have been collected or when a seller collects tax on an exempt or nontaxable sale, the total amount collected must be paid over to the Secretary of Revenue. A retailer is not entitled to a refund of any amount of overcollected sales tax unless the purchaser has received credit for or has been refunded the amount of tax overcollected. A cause of action against a seller for overcollected sales or use tax does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond.

BILL ANALYSIS: House Bill 93 would authorize the Secretary of Revenue to take one of the following three actions when the Secretary determines that a seller has overcollected sales tax on a transaction:

1. Allow a refund of the tax if the seller gives the purchaser credit for or a refund of the overcollected tax. However, no refund would be given if the seller has elected to offset a use tax liability on a related transaction with the overcollected sales tax.
2. If the seller is liable for use tax on a related transaction, allow the seller to offset the use tax liability with the overcollected sales tax. However, no offset would be permitted if the seller elected to receive a refund of the overcollected sales tax. The fact that a seller is allowed an offset does not affect the liability of the seller to the purchaser for the overcollected tax.
3. If neither (1) or (2) apply, retain the total amount collected on the transaction.

EFFECTIVE DATE: This act becomes effective July 1, 2011, and applies to tax liabilities that accrue on or after that date.

BACKGROUND: A situation occurred where a retailer collected and remitted sales tax on transactions that the Department later determined were not subject to sales tax because the property was *used* by the retailer. In that instance, the retailer owed use tax on the property. Specifically, this company is in the business of selling and servicing office equipment, primarily copiers. The company collected sales tax on the sale of its service agreements rather than collecting use tax on the parts and supplies used to fulfill the service agreements. The company sought a credit in the amount of sales taxes it paid against the use tax it owed. Because the retailer could not or chose not to refund the erroneously collected tax to the people who paid it, a refund of the erroneously collected sales tax was not allowed. In this situation, the State effectively collected both sales tax and use tax on the same transactions. The matter was heard by the Business Court, which issued an order in favor of the taxpayer on January 4, 2010. The State has appealed.

HOUSE BILL 384
Committee Substitute Favorable 6/2/11
Third Edition Engrossed 6/3/11

Short Title: Register of Deeds/Fees. (Public)

Sponsors:

Referred to:

March 17, 2011

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE FEES CHARGED FOR REGISTERING INSTRUMENTS WITH A REGISTER OF DEEDS IN THIS STATE AND TO MODIFY THE INSTRUMENT PAGE REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-10 reads as rewritten:

"**§ 161-10. Uniform fees of registers of deeds.**

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. – For registering or filing any instrument for which no other provision is made by this section, ~~whether written, printed, or typewritten,~~ the fee shall be ~~twelve dollars ($12.00)~~ twenty-six dollars ($26.00) for the first ~~page~~ 15 pages plus ~~three dollars ($3.00)~~four dollars ($4.00) for each additional page or fraction thereof.

When a subsequent instrument, as defined in G.S. 161-14.1(a)(3), is presented for registration with reference to more than one original instrument for which recording data are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional twenty-five dollars ($25.00) for each additional reference.

When a document is presented for registration that consists of multiple instruments, the fee shall be an additional ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. – For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be ~~twenty-eight dollars ($28.00)~~ fifty-six dollars ($56.00) for the first ~~page~~ 15 pages plus ~~three dollars ($3.00)~~four dollars ($4.00) for each additional page or fraction thereof.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or

instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee.

...

~~(16) Probate. For verification of proofs and acknowledgements as provided in G.S. 47-14 two dollars ($2.00).~~

...."

SECTION 2. G.S. 161-11.3 reads as rewritten:

"**§ 161-11.3. Automation Enhancement and Preservation Fund.**

Ten percent (10%) of the fees collected pursuant to G.S. 161-10 and retained by the county, or ~~three dollars and twenty cents ($3.20)~~ six dollars and twenty cents ($6.20) in the case of a fee collected pursuant to G.S. 161-10(a)(1a) for the first page of a deed of trust or mortgage, shall be set aside annually and placed in a nonreverting Automation Enhancement and Preservation Fund, the proceeds of which shall be expended on computer or imaging technology and needs associated with the preservation and storage of public records in the office of the register of deeds. Nothing in this section shall be construed to affect the duty of the board of county commissioners to furnish supplies and equipment to the office of the register of deeds."

SECTION 3. G.S. 161-11.5 reads as rewritten:

"**§ 161-11.5. Fees ~~for General Fund support.~~to be remitted to State Treasurer.**

~~Five dollars ($5.00)~~Six dollars and twenty cents ($6.20) of each fee collected by the register of deeds ~~for registering or filing a deed of trust or mortgage pursuant to G.S. 161-10(a)(1a)~~ under G.S. 161-10(a)(1) and (a)(1a) shall be remitted by the register of deeds to the county finance officer, who shall remit the funds to the State Treasurer ~~to be credited to the General Fund as nontax revenue. The county finance officer shall remit the funds to the State Treasurer on a monthly basis.~~on a monthly basis to be credited as follows:

(1) Fifty-five percent (55%) to the Floodplain Mapping Fund established under G.S. 143-215.56A.

(2) Twenty percent (20%) to the General Fund as nontax revenue.

(3) Twenty-five percent (25%) to the Department of Cultural Resources to be used as provided in G.S. 121-5(e)."

SECTION 4. G.S. 161-11.4 and G.S. 161-11.6 are repealed.

SECTION 5. The Revenue Laws Study Committee must review the effect of the changes enacted by this act to determine whether they have simplified the collection and remittance of fees by the Register of Deeds for the filing of various instruments and to study the effect the fees changes have had on revenue collections in the 100 counties. The Committee must report its findings to the North Carolina General Assembly and recommend whether the provisions of this act should sunset as provided in Section 6 of this act.

SECTION 6. G.S. 161-14(b) reads as rewritten:

"(b) All instruments, except instruments conforming to the provisions of G.S. 25-9-521, presented for registration on paper shall meet all of the following requirements:

(1) Be eight and one-half inches by eleven inches or eight and one-half inches by fourteen inches.

(2) Have a blank margin of three inches at the top of the first page and blank margins of ~~one-half~~ at least one-quarter inches on the remaining sides of the first page and on all sides of subsequent pages.

(3) Be typed or printed in black on white paper in a legible font. A font size no smaller than ~~10~~9 points shall be considered legible. Blanks in an instrument may be completed in pen and corrections to an instrument may be made in pen.

(4) Have text typed or printed on one side of a page only.

(5) State the type of instrument at the top of the first page.

If an instrument does not meet these requirements, the register of deeds shall register the instrument after collecting the fee for nonstandard documents as required by G.S. 161-10(a)(19) in addition to all other applicable recording fees. However, if an instrument fails to meet the requirements because it contains print in a font size smaller than ~~10~~ 9 points, the register of deeds may register the instrument without collecting the fee for nonstandard documents if, in the discretion of the register of deeds, the instrument is legible."

SECTION 7. This act becomes effective October 1, 2011, and applies to instruments registered on or after that date. Sections 1 through 5 of this act expire July 1, 2013.

HOUSE BILL 384:
Register of Deeds/Fees

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Reps. Howard, West, Rapp, Wilkins	**Prepared by:**	Cindy Avrette
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 384 seeks to simplify the collection and remittance of fees collected by the register of deeds for registering or filing certain instruments.

CURRENT LAW: The filing fees for registering and filing documents with the county register of deeds have traditionally been a local source of revenue for the county's general fund. In recent years, the General Assembly has begun increasing the filing fees for various records and using the increased fee amount for dedicated purposes:

1983	Increased the fee for issuance of a marriage license by $5 and required $5 of the fee be credited to the Children's Trust Fund
1991	Increased the fee for issuance of a marriage license by $20 and required $30 of the $40 fee to be credited to the Domestic Violence Center Fund
2001	Increased all of the filing fees and required 10% of the fees to be retained by the county and placed in a nonreverting Automation Enhancement and Preservation Fund, to be used by the county on computer or imaging technology and needs associated with the preservation and storage of public records in the office of the register of deeds
2008	Increased the fee for filing deeds of trust and mortgages by $10 and required $10 of the fee be credited to the Floodplain Mapping Fund, for the Department of Crime Control and Public Safety
2009	Increased the fee for filing deeds of trust and mortgages by $6 and required $5 of the fee be credited to the State General Fund as nontax revenue and a fixed amount of the fee, $3.20, be credited to the Automation Enhancement and Preservation Fund (instead of 10% of the fee amount as initially enacted in 2001)
2009	Increased the fee for filing a deed by $5 and required $5 of the fee be credited to the Department of Cultural Resources to offset the costs of the Archives and Records Management Program

The result of these fee changes is varying fee amounts for different instruments and confusion and complexity for the registers of deeds who must account for the different State ear-markings each month.

BILL ANALYSIS: House Bill 348 eliminates the different fee amount for deeds so that once again there are only two filing fees for instruments: one for deeds of trust and mortgages and one for all other instruments. The bill also establishes a set amount of the fee revenue from those filings that must be remitted to the State Treasurer, $6.20. It becomes the responsibility of the State to credit the appropriate percentage amount to the different accounts. The percentage distributions reflect the current fixed dollar amounts relationship to the total percent of collections distributed. The new fee range results in 1.46% increase in State collections. The bill also changes the fixed dollar amount of the fee collected to register deeds of trust and mortgages that is retained by the counties for the Automation Enhancement and Preservation Fund to the amount necessary to hold the counties' Funds harmless: $6.20. The new fee range results in a 4.25% increase in total collections for counties.

The new fee amounts are as follows:

Instrument	Current Fee Amount	Proposed Fee Amount
Instruments in General	$12 for the first page $3 for each page thereafter	$26 for the first 15 pages $4 for each page thereafter
Deeds	$17 for the first page $3 for each page thereafter	Same as Instruments in General
Indexing and filing of Subsequent Instruments	No fee	$25 for each additional reference
Deeds of Trust and Mortgages	$28 for the first page $3 for each page thereafter	$56 for the first 15 pages $4 for each page thereafter
Satisfaction of Deeds of Trusts and Mortgages	No fee	No fee; the cost of the satisfaction is included in the original filing
Probate	$2	No fee

The intent of the bill is to simplify the collection and remittance of fees by the register of deeds, and to do so in a revenue neutral manner for both the State and the counties. For this reason, the bill includes a provision directing the Revenue Laws Study Committee to review the effect of these changes and to report its findings to the General Assembly. The bill also sunsets the changes; the Revenue Laws Study Committee may recommend that the sunset be lifted or retained, based upon its findings

EFFECTIVE DATE: The bill becomes effective October 1, 2011, and expires on July 1, 2013. It applies to instruments registered on and after that date.

AMENDMENT: The Senate amendment makes technical changes to the bill: corrects a section reference and clarifies that the repealed statutes are suspended until the sunset date. If the General Assembly subsequently lifts the sunset, meaning the proposed fee structure will remain in effect, then the suspended statutes will need to be repealed.

H384-SMRB-101(e3) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 384

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H384-ARB-52 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Date June 15 ,2011

Senator Rabon

moves to amend the bill on page 2, line 39, by deleting the phrase "Section 6" and substituting the phrase "Section 7";

and on page 2, line 33, by rewriting the line to read:

"**SECTION 4.** G.S. 161-11.4 and G.S. 161-11.6 are suspended from October 1, 2011, through July 1, 2013.";

and on page 3, line 10, by deleting the phrase "Sections 1 through 5" and substituting "Sections 1 through 3".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 367*

Short Title:	Roanoke Rapids Deannexation.	(Local)
Sponsors:	Representatives Bradley and Bryant (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

March 16, 2011

A BILL TO BE ENTITLED

AN ACT TO DEANNEX CERTAIN PARCELS PREVIOUSLY ANNEXED BY A LEGISLATIVE ANNEXATION.

The General Assembly of North Carolina enacts:

SECTION 1. The following properties, which were annexed to the City of Roanoke Rapids by S.L. 2005-9, are removed from the corporate limits of the City of Roanoke Rapids, referenced below by Halifax County Tax Office Parcel ID:

1203642
1203645
1203646
1203647
1203649
1203650
1203658
1203228
1203400
1203401
1203402
1203403
1203404
1203405
1203406
1203409
1203438
1203439
1203591
1220045
1220049

SECTION 2. The City of Roanoke Rapids may exercise all the powers granted by Article 19 of Chapter 160A of the General Statutes in areas removed from the corporate limits by Section 1 of this act.

SECTION 3. This act is effective June 30, 2011.

HOUSE BILL 367:
Roanoke Rapids Deannexation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Reps. Bradley, Bryant	**Prepared by:**	Greg Roney Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 367 deannexes 21 parcels from the City of Roanoke Rapids.***

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

The General Assembly enacted Article 4A of Chapter 160A of the General Statutes, authorizing municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to remove an area from its limits – – that power remains with the General Assembly.

BILL ANALYSIS: House Bill 367 would deannex 21 parcels, listed in the bill, in the City of Roanoke Rapids. The bill provides that the City may exercise planning and zoning authority over the parcels deannexed.

BACKGROUND: The 21 parcels deannexed by House Bill 367 were annexed by S.L. 2005-9. The parcels were expected to become part of the Roanoke Rapids entertainment district.

EFFECTIVE DATE: This act is effective June 30, 2011.

Giles S. Perry, counsel to House Government, substantially contributed to this summary.

H367-SMTM-44(e1) v1

HOUSE BILL 486

Short Title:	Tryon Deannexation.	(Local)
Sponsors:	Representative Guice (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

March 29, 2011

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF TRYON.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Tryon:

Tracts 1, 2, 5, and 6 as shown and delineated upon a plat entitled "Subdivision of Property of Blandina A. Shields, Tryon Township, Polk County, North Carolina," made by H.B. Frankenfield, Jr., Forest Engineer and Surveyor, dated November 19, 1963, and reference is hereby had to said plat in aid of the foregoing description, said plat being a matter of public record in the Office of the Register of Deeds for Polk County on Map Slide A-51, Page 191, referenced in Book 235, Page 1453, for full and complete metes and bounds descriptions of said tracts, pursuant to North Carolina General Statutes Section 47-30(g).

SECTION 2. This act shall not affect the duty to pay taxes for any prior year and shall not eliminate any liens for taxes for prior years.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 486:
Tryon Deannexation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2011
Introduced by:	Rep. Guice	**Prepared by:**	Greg Roney
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 486 deannexes a described area from the Town of Tryon.

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

Pursuant to this Section, the General Assembly enacted Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to *deannex* property – that power remains with the General Assembly.

BILL ANALYSIS: House Bill 486 deannexes four described tracts, listed in the bill, from the Town of Tryon. The property is owned by a single owner who has requested the deannexation. This request has been approved by the Town in a resolution. The bill would also provide that the deannexation does not affect the duty to pay taxes for any prior year and does not eliminate any liens for taxes for any prior year.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: In 2006, the Town of Tryon explored the possibility of creating a tax incentive financing (TIF) district and encouraged certain property owners in the area to petition the Town for voluntary annexation of their properties to the Town so that they could benefit from the installation of sidewalks and street lighting within and funded by tax revenue from the TIF district. One property owner petitioned the Town for voluntary contiguous annexation of his property, which consists of the tracts described in this legislation.

After the property was annexed, the Town determined that it would not try to form the TIF district. Consequently, the property owner requested his property be deannexed because the TIF district was never formed and the improvements have never been made. The Town Board of Commissioners adopted a resolution on December 16, 2010 approving the request.

Giles S. Perry and Trina Griffin, both with the Research Division, substantially contributed to this summary.

H486-SMTM-51(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 508
Committee Substitute Favorable 6/9/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H508-CSMC-17 [v.1]

6/13/2011 6:04:08 PM

Short Title: Modify Mecklenburg County Local Taxes. (Local)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY CERTAIN MECKLENBURG COUNTY LOCAL TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 9(a) of Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and Section 2 of S.L. 2001-402, is amended by adding the following new sub-subdivision to read:

"Sec. 9. (a) Distribution and Use of Proceeds. – The local administrative authority, acting on its own behalf or as agent for each taxing entity, shall distribute the proceeds of the taxes levied in this Part as provided in this subsection. The distribution shall be made by the 20th day of each month following the month in which the tax is collected.

...

(4) Distribution to Charlotte for Convention and Visitor Promotion and Other Tourism-Related Purposes. –

...

d. The Towns of Cornelius, Davidson, and Huntersville shall distribute to the Lake Norman Convention and Visitors Bureau from the portion of prepared food and beverage taxes received from the City of Charlotte for the purpose of tourism-marketing promotions an amount not less than the sum of the following:

1. Twenty-eight percent (28%) of the portion of occupancy tax net proceeds received from the local administrative authority.

2. Twenty-five percent (25%) of the portion of prepared food and beverage taxes received from the City of Charlotte."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 508:
Modify Mecklenburg County Local Taxes

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2011
Introduced by:	Reps. Earle, R. Moore, Samuelson	**Prepared by:**	Dan Ettefagh
Analysis of:	PCS (H508-CSMC-17)		Committee Counsel

SUMMARY: House Bill 508, as originally introduced, would codify the interlocal agreement between the Lake Norman Convention and Visitors Bureau ("LNCVB") and the Towns of Cornelius, Davidson, and Huntersville ("the Towns"). The PCS for House Bill 508 provides substantially the same amount of revenue to the LNCVB by requiring the towns to distribute to the LNCVB for tourism-marketing promotions from the prepared food and beverage taxes (PFT) received from Charlotte an amount not less than 28% of the occupancy taxes received from Mecklenburg County plus 25% of the PFT received from Charlotte.

CURRENT LAW: Under current law, there has been authorized and put into place an occupancy tax (at a collective rate of 8%) and a prepared food and beverage tax (at a rate of 1%)[1] for Mecklenburg County, which collects and administers these taxes. By an enactment of the General Assembly, the county, the City of Charlotte, and the Towns of Cornelius, Davidson, Huntersville, Mint Hill, Pineville, and Matthews have provided for the distribution of the proceeds of these county taxes. With respect to the LNCVB, the interlocal agreement with the Towns requires the Towns to remit 28% of the occupancy taxes received from Mecklenburg County and 25% of the prepared food and beverage tax received from the City of Charlotte to the LNCVB.

BILL ANALYSIS: This bill would not affect the distributions between Mecklenburg County, Charlotte, and the Towns. In addition, the bill would require substantially the same amount of money to be distributed by the Towns to the LNCVB; however, it would modify the source of those funds by replacing the interlocal agreement requirement of 28% of the occupancy tax and 25% of the prepared food and beverage tax remitted by the Towns to the LNCVB with a requirement that the Towns distribute to the LNCVB at least that same amount from the PFT for tourism-marketing promotions.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: The interlocal agreements distributing the county taxes have been modified multiple times as the proceeds have increased, new local taxes with dedicated revenue streams have been authorized, and as the towns located in Mecklenburg County have desired to work on projects and necessary promotions that were regionally or municipality-specific. The Towns entered into an interlocal agreement with the LNCVB, a State-chartered board with representatives appointed by and from the Towns.

H508-SMMC-7(e2) v1

[1] These taxes were authorized at three separate times: a 3% occupancy tax for Mecklenburg County was authorized in 1983 for promoting travel and tourism in Mecklenburg County; a 3% occupancy tax and a 1% prepared food and beverage tax was authorized in 1989 for the Charlotte Convention Center; and a 2% occupancy tax was authorized in 2005 for the NASCAR Hall of Fame.

HOUSE BILL 573
Committee Substitute Favorable 5/12/11

Short Title: Raleigh/Wake Forest Boundary. (Local)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO REMOVE FROM THE CORPORATE LIMITS OF THE CITY OF RALEIGH AND ANNEX TO THE CORPORATE LIMITS OF THE TOWN OF WAKE FOREST PART OF THE RIGHT-OF-WAY OF THE HIGHWAY 98 BYPASS IN WAKE FOREST TOWNSHIP, AS REQUESTED BY THOSE MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Raleigh are reduced by removing the following described area:

BEGINNING at a corner in the southeastern right-of-way of Old NC 98 (State Road (SR) 1967), said point identified on Sheet 8 of NCDOT Project R-2809A as -Y2- 21+20/20 (65.62') (Right) and common with the northern corner of the "50' Average Width Natural Protective Yard" of Cedar Grove Phase 2 at Wakefield Plantation as described in Book of Maps 2005 Page 858, Wake County Registry (WCR), thence at a right angle from said corner N 33° 58' 18" W 100.62 Feet to a point in the old southeastern right-of-way of the Old NC 98 Highway, said point being on the Annexation Ordinance (1995)-700 line, thence following said right-of-way along said line, N 68° 47' 19" E 110.08 Feet more or less, thence leaving said right-of-way and following a line common with Book of Maps 1997 Page 124 WCR; S 61° 36' 37" E 1384.65 Feet to a point, thence following a line common with the Town of Wake Forest Line (Annexation Ordinance # 88-32) and Book of Maps 1989 Page 1633 WCR and Book of Maps 1990 Page 1192 WCR; S 61° 38' 39" E 481.00 Feet, thence S 54° 25' 06" E 420.20 Feet, thence S 54° 24' 58" E 1554.66 Feet to a point inside the right-of-way of NC 98 (Dr. Calvin Jones Highway), thence leaving the aforementioned ordinance lines and following Sheet 11 of NCDOT project R-2809A; West by North 85 Feet more or less to a point identified as -L-(R-2809B) 31+80/23.000 (75.46') (Right), said point being in the southwestern right-of-way of NC 98 (Dr. Calvin Jones Highway) thence following Book of Maps 2000 Page 2220 along said right-of-way N 81° 16' 23" W 131.18 Feet, thence along a curve to the right with a Radius of 1369.98 Feet, a Length of 486.87 Feet, and a chord of N 72° 05' 08" W 484.32 Feet, thence N 58° 50'33" W 129.00 Feet to a corner with the southeastern right-of-way of Wakefield Plantation Drive, thence crossing said drive and following Book of Maps 2000 Page 871-872; N 58° 50' 33" W 87.03 Feet, thence N 57° 16' 24" W 1.12 Feet to a corner with the northwestern right-of-way of Wakefield Plantation Drive, said corner being a "Control Corner" in the northeastern corner of Cedar Grove Phase 1 Wakefield Plantation as described in Book of Maps 2004 Page 1249, thence following said reference, N 57° 14' 57" W 1639.82 Feet, thence following Book of Maps 2005 Page 858; N 57 ° 14' 57" W 596.53 Feet, thence N 54° 53' 45" W 323.91 Feet, thence along a curve the right with a Radius of 1371.39 Feet, a Length of 276.32 Feet and a Chord of N 44° 30' 52" W 275.85 Feet, thence N 72° 21' 29" W 90.25 Feet to

the Point of BEGINNING, containing 21 Acres more or less and located in Wake Forest Township, Wake County.

SECTION 2. The corporate limits of the Town of Wake Forest are increased by adding the territory described in Section 1 of this act.

SECTION 3. This act becomes effective June 30, 2011.

HOUSE BILL 573:
Raleigh/Wake Forest Boundary

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Rep. Avila	**Prepared by:**	Greg Roney Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 573 removes 21 acres from the City of Raleigh and adds the area to the Town of Wake Forest.***

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

The General Assembly enacted Article 4A of Chapter 160A of the General Statutes, authorizing municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to remove an area from its limits – that power remains with the General Assembly.

BILL ANALYSIS: House Bill 573 would deannex a described 21-acre area from the City of Raleigh, and add the same area to the Town of Wake Forest.

BACKGROUND: House Bill 573 would place a 21-acre corridor of Highway 98 Bypass into Wake Forest, giving Wake Forest jurisdiction over the entire Highway 98 Bypass for police and rescue services.

EFFECTIVE DATE: This act is effective June 30, 2011.

Giles S. Perry, counsel to House Government, substantially contributed to this summary.

H573-SMTM-45(e2) v1

HOUSE BILL 518
Committee Substitute Favorable 6/1/11

Short Title: Authorize Add'l Person County Occupancy Tax. (Local)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN ADDITIONAL ONE PERCENT OCCUPANCY TAX FOR PERSON COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 14 of S.L. 1997-364 reads as rewritten:

"Section 14. Person County occupancy tax. (a) Authorization and scope. – The Person County Board of Commissioners may levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).

This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Person County Board of Commissioners may levy an additional room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Person County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. – Person County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Person Tourism Development Authority. ~~Of the net proceeds that accrue during the first four years that a tax is levied under this section, the Authority may use up to two-thirds only for the following tourism-related expenditures: (i) constructing or operating the Person County Historical Museum, (ii) developing Lake Mayo for fishing tournaments, skiing tournaments, and other activities designed to attract tourists to the lake from outside the county, and (iii) supporting the May Festival and other festivals designed to attract tourists from outside the county. The Authority shall use the remaining net proceeds that accrue during the first four years that a tax is levied under this section only to promote travel and tourism in Person County.~~

~~Of the net proceeds that accrue after this four year period, the~~ The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Person County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred by the Authority in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 518:
Authorize Add'l Person County Occupancy Tax

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Rep. Wilkins	**Prepared by:**	Trina Griffin
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 518 would authorize Person County to levy an additional 1% room occupancy tax, and it deletes unnecessary language relating to how the proceeds of the existing 5% tax were to be spent during the first four years of levy. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.***

CURRENT LAW: In 1997, the General Assembly authorized Person County to levy a room occupancy tax of up to 5%. The net proceeds are required to be distributed to the Person County Tourism Development Authority. The legislation provided that during the first four years of levy, the net proceeds were to be used as follows:

- Up to 2/3 may be used only for the following tourism-related expenditures:
  - Constructing or operating the Person County Museum of History.
  - Developing Lake Mayo for fishing tournaments, skiing tournaments, and other activities designed to attract tourists to the lake from outside the county.
  - Supporting the May Festival and other festivals designed to attract tourists from outside the county.
- The remainder must be used to promote travel and tourism in Person County.

After the first four years, at least two-thirds of the funds must be used for tourism promotion and the remainder for tourism-related expenditures.

BILL ANALYSIS: The PCS would authorize Person County to levy an additional 1% room occupancy tax. It also deletes language referring to the use of the proceeds during the first four years of the levy of the existing 5% tax since that time period has expired. The net proceeds of the additional 1% would be used in the same manner as the existing 5%, which is in accordance with the House Finance guidelines for occupancy tax: at least two-thirds for tourism promotion and the remainder for tourism-related expenditures.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,[1] which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements

[1] G.S. 153A-155 and G.S. 160A-215.

adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

**This summary originally compiled by Trina Griffin, Staff Attorney*

HOUSE BILL 24*

Short Title:	Expand Duties of Economic Dev. Oversight Comm.	(Public)
Sponsors:	Representatives Carney, Dollar, L. Brown, and Wilkins (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY AND EXPAND THE DUTIES OF THE JOINT LEGISLATIVE ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12O of Chapter 120 of the General Statutes reads as rewritten:

"Article 12O.

"Joint Legislative Economic Development and Global Engagement Oversight Committee.

"**§ 120-70.130. Creation and membership of Joint Legislative Economic Development and Global Engagement Oversight Committee.**

The Joint Legislative Economic Development and Global Engagement Oversight Committee is established. The Committee consists of 12 members as follows:

(1) Six members of the Senate appointed by the President Pro Tempore of the Senate; and

(2) Six members of the House of Representatives appointed by the Speaker of the House of Representatives.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 2007 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled by the officer who made the original appointment.

"**§ 120-70.131. Purpose and powers of Committee.**

(a) The Joint Legislative Economic Development and Global Engagement Oversight Committee shall examine, on a continuing basis, economic ~~growth and~~ development and global engagement issues and strategies in North Carolina in order to make ongoing recommendations to the General Assembly on ways to promote cost-effective economic development ~~initiatives.~~initiatives, economic growth, and stimulating job creation in the global economy. In this examination, the Committee may:

(1) Study the budgets, programs, and policies of the Department of Commerce, the North Carolina Partnership for Economic Development, and other State, regional, and local entities involved in economic development.

(2) Analyze legislation from other states regarding economic development.

(3) Analyze proposals produced by the Economic Development Board.
(4) Analyze North Carolina's current international activity in the business, State government, and education sectors.
(5) Analyze barriers to international trade that may be addressed by legislation.
(6) Explore ways to increase coordination, synchronization, and intercommunication between State and local governmental entities.
(7) Collect and analyze data on global business trends.
(8) Study foreign representation opportunities for North Carolina that could solicit, target, educate, and recruit international businesses to North Carolina.
(9) Analyze incentives designed to encourage small businesses to export goods and service solutions.
(10) Study methods for positioning North Carolina as a portal to North America for international trade.
(11) Explore opportunities to increase foreign direct investment in North Carolina.
(12) Study any other matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

"**§ 120-70.132. Organization of Committee.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Economic Development and Global Engagement Oversight Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is seven members. Only recommendations, including proposed legislation, receiving at least six affirmative votes may be included in a Committee report to the General Assembly. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The cochairs of the Committee may call upon other knowledgeable persons or experts to assist the Committee in its work.

(d) Members of the Committee shall receive subsistence and travel expenses as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 242

Committee Substitute Favorable 4/19/11
Committee Substitute #2 Favorable 5/26/11
Fourth Edition Engrossed 5/31/11
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/13/11

Short Title: Nat. Gas/Bond/Fee/Landowner Protect'n/Study. (Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) INCREASE THE AMOUNT OF THE BOND REQUIRED UPON REGISTRATION IN ORDER TO DRILL FOR OIL OR NATURAL GAS IN THE STATE; (2) INCREASE THE AMOUNT OF FEES APPLICABLE TO DRILLING AND ABANDONING OIL OR GAS WELLS; (3) ESTABLISH PROVISIONS FOR THE PROTECTION OF LANDOWNERS RELATIVE TO LEASES FOR OIL AND GAS EXPLORATION; (4) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE ISSUE OF OIL AND GAS EXPLORATION IN THE STATE, AND SPECIFICALLY THE USE OF DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE; (5) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO CONDUCT AT LEAST TWO PUBLIC HEARINGS ON THE ISSUE IN THE AREA IN WHICH EXPLORATION FOR NATURAL GAS BY MEANS OF DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC FRACTURING MAY OCCUR; AND (6) APPROPRIATE THE SUM OF ONE HUNDRED THOUSAND DOLLARS TO THE DEPARTMENT FOR THE CONDUCT OF THE STUDY AND THE HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-378 reads as rewritten:

"**§ 113-378. Persons drilling for oil or gas to register and furnish bond.**

Any person, firm or corporation before making any drilling exploration in this State for oil or natural gas shall register with the Department of Environment and Natural ~~Resources or such other State agency as may hereafter be established to control the conservation of oil or gas in this State.~~Resources. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the ~~aforesaid~~ Department a bond in ~~the~~ an amount totaling the sum of~~f~~ (i) five thousand dollars ($5,000) plus (ii) one dollar ($1.00) per linear foot proposed to be drilled for the well. ~~($5,000) running to the State of North Carolina, conditioned that any~~ Any well opened by the drilling operator ~~upon abandonment~~ shall be plugged upon abandonment in accordance with the rules of ~~said~~ the Department."

SECTION 2. G.S. 113-395 reads as rewritten:

"**§ 113-395. Notice and payment of fee to Department before drilling or abandoning well; plugging abandoned well.**

Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall notify the Department upon such form as it may prescribe and shall pay a fee of ~~fifty~~ three thousand dollars ~~($50.00)~~($3,000) for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.

Each abandoned well and each dry hole ~~promptly~~ shall be plugged promptly in the manner and within the time required by rules ~~to be~~ prescribed by the Department, and the owner of such well shall give notice, upon such form as the Department may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of ~~fifteen~~ four hundred fifty dollars ~~($15.00)~~($450.00). No well shall be abandoned until such notice has been given and such fee has been paid."

SECTION 3.(a) G.S. 113-389 reads as rewritten:

"**§ 113-389. Definitions.**

Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this law:

...

(7a) "Oil and gas developer or operator" or "developer or operator" shall mean a person who acquires a lease for the purpose of conducting exploration for or extracting oil or gas.

(7b) "Oil and gas operations" or "activities" shall mean the exploration for or drilling of an oil and gas well that requires entry upon surface estate and the production operations directly related to the exploration or drilling.

...

(15) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of real property.

...."

SECTION 3.(b) Article 27 of Chapter 113 of the General Statutes is amended by adding a new Part to read:

"Part 3. Landowner Protection.

"**§ 113-420. Notice and entry to property.**

(a) If an oil and gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil and gas operations that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil and gas drilling operations, the developer or operator shall give written notice to the surface owner at least seven days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The requirements of this subsection may not be waived by agreement of the parties. The notice, at a minimum, shall include all of the following:

(1) The identity of person(s) requesting entry upon the property.

(2) The purpose for entry on the property.

(3) The dates, times, and location on which entry to the property will occur, including the estimated number of entries.

(b) If an oil and gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil and gas operations that disturb the surface, the developer or operator shall give written notice to the surface owner at least 14 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The notice, at a minimum, shall include all of the following:

(1) A description of the exploration or development plan, including, but not limited to (i) the proposed locations of any roads, drill pads, pipeline routes, and other alterations to the surface estate and (ii) the proposed date on or after which the proposed alterations will begin.

(2) An offer of the oil and gas developer or operator to consult with the surface owner to review and discuss the location of the proposed alterations.

(3) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the surface owner may contact following the receipt of notice concerning the location of the proposed alterations.

(c) If the oil and gas developer or operator fails to give notice as provided in this section, the surface owner may seek appropriate relief in the superior court for the county in which the oil or gas well is located and may receive actual damages.

"**§ 113-421. Compensation for damages.**

(a) The oil and gas developer or operator shall be obligated to pay the surface owner compensation for all of the following:

(1) Any damage to a water supply in use prior to the commencement of the activities of the developer or operator which is due to those activities.

(2) The cost of repair of personal property of the surface owner, which personal property is damaged due to activities of the developer or operator, up to the value of replacement by personal property of like age, wear, and quality.

(b) When compensation is required, the surface owner shall have the option of accepting a one-time payment or annual payments for a period of time not less than 10 years.

(c) The surface owner has the right to seek damages pursuant to this section in the superior court for the county in which the oil or gas well is located. The superior court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. If the surface owner or the surface owner's assignee is the prevailing party in an action to recover unpaid royalties, the court shall award any court costs and reasonable attorneys' fees to the surface owner or the surface owner's assignee.

(d) Conditions precedent, notice provisions, or arbitration clauses included in lease documents that have the effect of limiting access to the superior court in the county in which the oil or gas well is located are void and unenforceable.

"**§ 113-422. Indemnification.**

An oil or gas developer or operator shall indemnify a surface owner for damage to property that is adjacent to property on which drilling occurs, as well as adjacent infrastructure, and wells.

"**§ 113-423. Maximum lease terms.**

Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall expire at the end of 10 years from the date the lease is executed, unless, at the end of the 10-year period, oil or gas is being produced for commercial purposes from the land to which the lease applies. If, at any time after the 10-year period, commercial production of oil or gas is terminated for a period of six months or more, all rights to the oil or gas shall revert to the surface owner of the property to which the lease pertains. No assignment or agreement to waive the provisions of this subsection shall be valid or enforceable. As used in this subsection, the term "production" includes the actual production of oil or gas by a lessee, or when activities are being conducted by the lessee for injection, withdrawal, storage, or disposal of water, gas, or other fluids, or when rentals or royalties are being paid by the lessee.

"**§ 113-424. Applicability; effect.**

This Part applies to leases or contracts, and amendments to leases or contracts, entered into on or after June 15, 2011."

SECTION 4. The Department of Environment and Natural Resources, the Department of Commerce as specifically directed by subdivision (5) of this section, and the Consumer Protection Division of the Department of Justice as specifically directed by subdivision (8) of this section shall study the issue of oil and gas exploration in the State and

the use of directional and horizontal drilling and hydraulic fracturing for that purpose. The Department of Environment and Natural Resources, in conjunction with the Department of Commerce and the Consumer Protection Division of the Department of Justice, shall report their findings and recommendations, including specific legislative proposals, to the Environmental Review Commission no later than May 1, 2012. At a minimum, the study shall include information on the following:

(1) Oil and gas resources present in the Triassic Basins and in any other areas of the State.

(2) Methods of exploration and extraction of oil and gas, including directional and horizontal drilling and hydraulic fracturing.

(3) Potential impacts on infrastructure, including roads, pipelines, and water and wastewater services. In analyzing potential impacts, the Department shall specifically examine the expected water usage from hydraulic fracturing, water resources in the area in which drilling may occur, as well as existing water users in the area that may be impacted by increased consumption of water for use in hydraulic fracturing.

(4) Potential environmental impacts, including constituents or contaminants that may be present in the fluid used in the hydraulic fracturing process; the potential for the contamination of nearby wells and groundwater, as well as the options for disposal and reuse of the wastewater produced; stormwater management; the potential for emission of toxic air pollutants; impacts on wildlife; management and reclamation of drilling sites, including orphaned sites; management of naturally occurring radioactive materials (NORM) generated by the drilling and production of natural gas; and the potential for seismic activity in the area in which drilling may occur. In examining this issue, the Department shall formulate regulatory requirements advisable to address potential environmental impacts and in doing so shall gather information on regulatory programs in other states where oil and gas exploration or extraction is occurring, particularly with regard to the use of hydraulic fracturing for that purpose.

(5) Potential economic impacts, including possible sources of revenue that could accrue to the benefit of the State in the event that drilling for oil or natural gas were to take place in the State. In examining this issue, the Department of Commerce, in consultation with the Department of Environment and Natural Resources, shall gather information on (i) the number of jobs that may be expected as a result from drilling activities in the State and (ii) what severance taxes, fees, royalties, bonds, or assessments may be appropriate in connection with the activity. For any sources of revenue that may be anticipated, the Department of Commerce, in consultation with the Department of Environment and Natural Resources, shall evaluate use of the revenue for the following purposes: funds necessary to implement an oil and gas regulatory program; funds dedicated to the conservation and preservation of land and water resources; funds dedicated to remediation of environmental contamination such as the Inactive Hazardous Sites Cleanup Fund; and funds dedicated to improving water and wastewater infrastructure across the State.

(6) Potential social impacts, including impacts of drilling operations on nearby communities and quality of life within those communities, recreational activities, and commercial and residential development.

(7) Potential oversight and administrative issues associated with an oil and gas regulatory program, including statutory authority necessary for

implementation of such a program; funding requirements necessary to implement a stable and effective program; criteria for permit issuance or denial; frequency and scope of inspections; compliance and enforcement procedures; coordination of agency involvement to ensure efficient permitting and clear delineation of compliance responsibilities; opportunities for public participation; and data management.

(8) Consumer protection and legal issues relevant to oil and gas exploration in the State, including matters of contract and property law, mineral leases, and landowner rights. In examining these issues, the Consumer Protection Division of the Department of Justice, in consultation with the Department of Environment and Natural Resources, shall specifically examine appropriate provisions on recommended disclosures to landowners, compensation for damages, payment of royalties, and remedies for breach, and any other matters the Division deems relevant. The Division shall also study such issues in consultation with the Rural Advancement Foundation International (RAFI).

(9) Any other pertinent issues that the Department deems relevant to oil and gas exploration in the State and the use of hydraulic fracturing for that purpose.

SECTION 5. By February 1, 2012, the Department of Environment and Natural Resources shall hold at least two public hearings at separate locations within the Triassic Basin on the issue of drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing. The public hearings shall be conducted in order to promote awareness of the issue generally and inform and consult with the public and user groups on potential environmental impacts, potential regulatory controls, potential economic impacts, and consumer protection issues, including landowner rights and mineral leases. In developing the consumer protection portion of the public hearings, the Department shall consult with the Consumer Protection Division of the North Carolina Department of Justice and the Rural Advancement Foundation International (RAFI).

SECTION 6. There is appropriated from the General Fund to the Department of Environment and Natural Resources the sum of one hundred thousand dollars ($100,000) for the 2011-2012 fiscal year to complete the study and conduct the public hearings required by this act.

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 242:
Nat. Gas/Bond/Fee/Landowner Protect'n/Study

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2011
Introduced by:	Reps. Stone, Gillespie	**Prepared by:**	Jennifer McGinnis
Analysis of:	Fifth Edition		Committee Counsel

SUMMARY: ***House Bill 242 would: (1) increase the amount of the bond required upon registration in order to drill for oil or natural gas in the State; (2) increase the amount of fees applicable to drilling and abandoning oil or gas wells; (3) direct the Department of Environment and Natural Resources (DENR) and other entities to study the issue of oil and gas exploration in the State; (4) direct DENR to conduct at least two public hearings on the issue in the area in which drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing may occur; (5) establish certain protections for owners of land on which drilling or exploration for oil or gas may occur, (6) appropriate $100,000 to DENR in order to conduct the study and the public hearings, (7) directs the Department of Commerce to study issues related to potential economic impacts if drilling for oil or natural gas were to take place in the State, including possible sources of revenue that could accrue to the benefit of the State; (8) Directs the Consumer Protection Division of the Department of Justice to study consumer protection and legal issues associated with drilling for oil or natural gas; and (9) adds provisions related to landowner protection and leases for the drilling of oil or gas.***

BACKGROUND: Several years ago the North Carolina Geological Survey recognized thick sections of organic shale located in the State (Triassic Strata of the Deep River Basin – Lee and Chatham, Counties) as a potential gas resource. Modern exploration and gas production technology, such as horizontal drilling and hydraulic-fracturing, has enabled the extraction of shale gas in similar formations in other states. The use of hydraulic fracturing involves drilling a well and injecting drilling fluids under pressure to fracture the shale rock and release the gas. Drilling fluids are mostly made up of water, but also include other chemicals; the exact makeup of the drilling fluids varies from company to company.

CURRENT LAW: Article 27 of Chapter 113 of the General Statutes governs drilling and exploration for oil and gas in the State. This Article, which was originally enacted in 1945, among other things, requires posting of a bond and payment of a permit fee prior to drilling.

The General Statutes currently prohibit horizontal drilling[1] and injection of any wastes to the subsurface or groundwaters of the State by means of wells[2]. State rules also specifically prohibit use or operation of a storage related injection well and injection of fluids for oil and gas production. These restrictions have been in place for a number of years and were not developed with hydraulic fracturing in mind.

BILL ANALYSIS: The bill would –

- Increase the amount of the bond required upon registration in order to drill for oil or natural gas in the State from a flat amount of $5,000 to $5,000 **plus** $1.00 per linear foot proposed to be drilled for the well.
- Increase the amount of fees applicable to drilling (from $50 to $3,000) and abandoning (from $15 to $450) oil or gas wells.

[1] G.S. 113-393
[2] G.S. 143-214.2(b)

- Direct DENR to study a number of issues pertaining to oil and gas exploration in the State, and specifically the use of directional and horizontal drilling and hydraulic fracturing for that purpose. At a minimum, the issues would include: oil and gas reserves present in the State; methods of exploration for oil and gas, including directional and horizontal drilling and hydraulic fracturing; and potential environmental and social impacts, as well as impacts on infrastructure, which may arise from drilling by means of hydraulic fracturing. The Consumer Protection Division of the Department of Justice would be tasked with studying relevant consumer protection and legal issues. The Department of Commerce would be directed to study potential economic impacts that may arise from drilling by means of hydraulic fracturing. These entities would be required to report their findings and recommendations, including specific legislative proposals, to the Environmental Review Commission no later than May 1, 2012.
- Direct DENR to conduct at least two public hearings by February 1, 2012, on the issue in the area in which drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing may occur in order to promote awareness of the issue generally and inform and consult with the public and user groups on: potential environmental impacts, potential regulatory controls, potential economic impacts, and consumer protection issues, including landowner rights and mineral leases.
- Appropriate $100,000 to DENR in order to conduct the study and the public hearings.
- Creates a new Part in the Article governing drilling and exploration for oil and gas that would establish certain protections for owners of land on which drilling or exploration for oil or gas may occur (surface owners), including: notice requirements for entry to such property; required compensation that an oil and gas developer must pay a surface owner for damages resulting from drilling activities on the property; indemnification of the surface owner for damages caused by drilling activities to adjacent properties; and establishment of maximum lease terms. These provisions would apply to leases or contracts, and amendments to leases or contracts, entered into on or after June 15, 2011.

EFFECTIVE DATE: The bill would become effective when it becomes law.

H242-SMRI-47(e5) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 289
Committee Substitute Favorable 5/18/11
Committee Substitute #2 Favorable 6/7/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H289-CSSVf-37 [v.3]

6/14/2011 11:46:01 AM

Short Title: Authorize Various Special Plates. (Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE VARIOUS SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate must display the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted," unless the plate is a special registration plate authorized in G.S. 20-79.4.

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.

(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Ducks Unlimited.
(16) Lung Cancer Research.
(17) NC State Parks.
(18) Support Our Troops.
(19) US Equine Rescue League.
(20) Fox Hunting.
(21) Back Country Horsemen of North Carolina.
(22) Hospice Care.
(23) Home Care and Hospice.
(24) NC Tennis Foundation.
(25) AIDS Awareness.
(26) Donate Life.
(27) Farmland Preservation.
(28) Travel and Tourism.
(29) Battle of Kings Mountain.
(30) NC Civil War.
(31) North Carolina Zoological Society.
(32) United States Service Academy.
(33) Carolina Raptor Center.
(34) Carolinas Credit Union Foundation.
(35) North Carolina State Flag.
(36) NC Mining.
(37) Coastal Land Trust.
(38) ARTS NC.
(39) Choose Life.
(40) Green Industry Council.
(41) Core Sound Waterfowl Museum and Heritage Center."

SECTION 2. G.S. 20-79.4 is amended by adding a new subsection to read:

"(a3) The Division shall develop, in consultation with the State Highway Patrol and the Department of Correction, a standardized format for special license plates. The format shall allow for the license plate number to be easily read by the human eye and by cameras installed along roadways as part of tolling and speed enforcement. A designated segment of the plate shall be set aside for unique design representing various groups and interests. Nothing in this subsection shall be construed to require the recall of existing special license plates."

SECTION 3. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

() American Red Cross. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "American Red Cross Saving Lives" and a red cross.

...

() Arthritis Foundation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Let's Move Together" and a logo selected by The Arthritis Foundation, Inc.

...

() ARTS NC. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "The Creative State" with a logo designed by ARTS North Carolina, Inc.

...

() Armed Forces Expeditionary Medal Recipient. – Issuable to a recipient of the Armed Forces Expeditionary Medal. The plate shall bear the phrase "Armed Forces Expeditionary Medal" and a representation of the Armed Forces Expeditionary Medal. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(14) Autism Society of North Carolina. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Autism Society of North Carolina", ~~the phrase "Providing Support, Promoting Opportunities",~~ and the logo of the Autism Society.

...

() Battle of Kings Mountain. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Battle of Kings Mountain" with a representation of Kings Mountain on it.

...

() Blue Knights. – Issuable to a member of the Blue Knights International Law Enforcement Officers Motorcycle Club, Inc. The plate shall bear the emblem of the Blue Knights International Law Enforcement Officers Motorcycle Club, Inc. The Division must receive 300 or more applications for the plate before this plate may be developed. A person may obtain a special registration plate under this subdivision for a motor vehicle or motorcycle registered in that person's name. The registration fees and the restrictions on the issuance of a specialized registration plate for a motorcycle are the same as for any motor vehicle.

...

() Boy Scouts of America. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Boy Scouts of America" and an emblem representing the Boy Scouts of America.

...

() Brenner Children's Hospital. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the emblem of Wake Forest University Baptist Medical Center's Brenner Children's Hospital.

...

(24) Buffalo Soldiers. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "The Buffalo Soldiers" and the logo of the 9th & 10th (Horse) Cavalry Association of the Buffalo Soldiers ~~Greater~~ North Carolina Chapter ~~(BSGNCC).~~(BSNCC).

...

() Carolina Raptor Center. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Imagination in Flight" and the emblem of the Carolina Raptor Center.

...

() Carolina Regional Volleyball Association. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a phrase and logo selected by the Association.

...

() Carolinas Credit Union Foundation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Carolinas Credit Union Foundation" with an emblem of the Carolinas Credit Union Foundation, Inc.

...

() Carolinas Golf Association. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Carolinas Golf Association" and an emblem of the Carolinas Golf Association.

...

() Childhood Cancer Awareness. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Childhood Cancer Hurts" beside the logo of a gold ribbon on the left side of the plate. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Choose Life. – Issuable to a registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Choose Life."

...

() City/County Clerk. – Issuable to a clerk of a city or town governing board or a clerk of a county board of commissioners of a city or county in this State. For a city clerk, the plate shall bear the words "City Clerk" followed by a number representing the city clerk's city or town. The number of a city shall be the order of the city in an alphabetical list of cities that assigns number one to the first city in the list. For a county clerk, the plate shall bear the words "County Clerk" followed by a number representing the county clerk's county. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(27) Civic Club. – Issuable to a member of a nationally recognized civic organization whose member clubs in the State are exempt from State corporate income tax under G.S. 105-130.11(a)(5). Examples of these clubs include Jaycees, Kiwanis, Optimist, Rotary, Ruritan, and Shrine. The plate shall bear a word or phrase identifying the civic club and the emblem of the civic club. A person may obtain from the Division a special registration plate under this subdivision for the registered owner of a motor vehicle or a motorcycle. The registration fees and the restrictions on the issuance of a specialized registration plate for a motorcycle are the same as for any motor vehicle. The Division may not issue a civic club plate authorized by this subdivision unless it receives at least 300 applications for that civic club plate.

...

() Coastal Land Trust. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Coastal Land Trust" with a logo designed by the North Carolina Coastal Land Trust.

...

() Concerned Bikers Association/ABATE of North Carolina. – Issuable to the registered owner of a motor vehicle or a motorcycle in accordance with G.S. 20-81.12. The plate shall bear the Concerned Bikers Association logo with the phrase "Concerned Bikers Association." The Division must receive 300 or more applications for the plate before this plate may be developed. A person may obtain a special registration plate under this subdivision for a motor vehicle or motorcycle registered in that person's name. The registration fees and the restrictions on the issuance of a specialized registration plate for a motorcycle are the same as for any motor vehicle.

...

() Daniel Stowe Botanical Garden. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Daniel Stowe Botanical Garden" with a logo designed by the Daniel Stowe Botanical Garden Foundation, Inc.

...

() Donate Life. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Donate Life" with a logo designed by Donate Life North Carolina.

...

() Don't Tread on Me. – Issuable to a registered owner of a motor vehicle. The plate shall bear the phrase "Don't Tread on Me" under the representation of the Gadsden Flag. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Farmland Preservation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a phrase and picture provided by the Department of Agriculture and Consumer Services appropriate to the subject of farmland preservation.

...

() First in Turf. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "First in Turf."

...

() Girl Scouts. – Issuable to the owner of a registered vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Girl Scouts" with an emblem representing the Girl Scouts of the U.S.A.

...

() Green Industry Council. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the letters "GIC" with a logo designed by the Green Industry Council.

...

() Greensboro Symphony Guild. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of the Greensboro Symphony Guild and the phrase "Music Matters".

...

() High Point Furniture Market 100th Anniversary. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "High Point Furniture Market 100th Anniversary" and the emblem of the High Point Market. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Hollerin'. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Hollerin'" under a representation of a person hollering on the left side of the plate. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Home of American Golf. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Home of American Golf" and include the Pinehurst logo and a representation relating to golf.

...

() Jaycees. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Jaycees" and a logo designed by the North Carolina Jaycees.

...

() Kappa Alpha Order. – Issuable to the registered owner of a motor vehicle. The plate shall bear the fraternity's symbol and name. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Legion of Merit. – Issuable to a recipient of the Legion of Merit award. The plate shall bear the emblem and name of the Legion of Merit decoration.

...

() Lifetime Sportsman. – Issuable to the registered owner of a motor vehicle. The plate shall bear a picture representing North Carolina Wildlife Resources Commission emblem for a "Lifetime Sportsman." The Division must receive 300 or more applications for a Lifetime Sportsman plate before the plate may be developed.

...

(83) Marine Corps League. – Issuable to a member of the Marine Corps League. The plate shall bear the words "Marine Corps League" or the letters "MCL" and the emblem of the Marine Corps League. The Division may not issue the plate authorized by this subdivision unless it receives at least ~~300~~ 150 applications for the plate.

...

() Mayor. – Issuable to the mayor of a municipality in this State. The plate shall bear the phrase "Mayor" and the letter "M" followed by a number that indicates the municipality the mayor serves. The number of a municipality shall be the order of the municipality in an alphabetical list of municipalities that assigns number one to the first municipality in the list, except that municipalities incorporated with an effective date after July 1, 2009, shall be placed at the end of the list in order of date of incorporation. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Morgan Horse Club. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture of a Morgan horse and bear the phrase "Morgan Horse".

...

() Mountains-to-Sea Trail. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Mountains-to-Sea Trail" with a background designed by the Friends of the Mountains-to-Sea Trail, Inc.

...

() Municipal Council. – Issuable to a municipal council member, commissioner, or alderman of a municipality in this State. The plate shall bear the words "Council Member," "Commissioner," or "Alderman," followed first by a number representing the council member's municipality and then by a letter or number that distinguishes plates issued to council members of the same municipality. The number of a municipality shall be the order of the municipality in an alphabetical list of municipalities that assigns number one to the first municipality in the list, except that municipalities incorporated with an effective date after July 1, 2009, shall be placed at the end of the list in order of date of incorporation. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() National Defense Service Medal. – Issuable to a recipient of the National Defense Service Medal. The plate shall bear a replica of the National Defense Service Medal and the phrase "National Defense Service Medal." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(95) Native American. – Issuable to the registered owner of a motor ~~vehicle.~~ vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing Native Americans. The Division must receive 300 or more applications for the plate before it may be developed.

...

() NC Beekeepers. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "NC Beekeepers" with a logo designed by the North Carolina Beekeepers Association, Inc.

...

() NC Civil War. – This plate is issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Freedom-Sacrifice-Memory" and a logo provided by the North Carolina Department of Cultural Resources.

...

() NC Fisheries Association. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Our Oldest Industry" and the logo of the North Carolina Fisheries Association.

...

() NC Horse Council. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "NC Horse Council" and a logo designed by the North Carolina Horse Council, Inc.

...

() NC Mining. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "NC Mining" with a logo designed by the North Carolina Gold Foundation, Inc.

...

() NC Veterinary Medical Association. – Issuable to a member of the NC Veterinary Medical Association in accordance with G.S. 20-81.12. The plate shall bear the phrase "NC Veterinary Medical Association" with an emblem of the North Carolina Veterinary Medical Association.

...

() NC Victim Assistance Network. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the emblem of the North Carolina Victim Assistance Network.

...

() NC Wildlife Federation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a logo designed by the North Carolina Wildlife Federation, Inc.

...

() NC Youth Soccer Association. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a logo designed by the NC Youth Soccer Association.

...

() North Carolina Emergency Management Association. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "North Carolina Emergency Management" and "www.readync.org.

...

() North Carolina Master Gardener. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the letters "MG" with a logo representing the North Carolina Master Gardeners.

...

() North Carolina State Flag. – Issuable to the registered owner of a motor vehicle. The plate shall bear the image of the flag of the Great State of North Carolina. The letters and numbers shall be black. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(103) North Carolina Wildlife Habitat Foundation. – Issuable to the owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of the North Carolina Wildlife Habitat Foundation on the left side.~~side and the background of the entire plate shall be beige or tan color.~~ The numbers or other writing on the plate shall be black and the border shall be black. The plate shall be developed by the Division in consultation with and approved by the North Carolina Wildlife Habitat Foundation. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Outer Banks Preservation Association. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a logo designed by the Outer Banks Preservation Association, Inc.

...

() P.E.O. Sisterhood. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "P.E.O." and a logo designed by P.E.O. International.

...

() Pamlico-Tar River Foundation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the name of the Pamlico-Tar River Foundation.

...

() Phi Beta Sigma Fraternity. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Phi Beta Sigma Fraternity" and the logo of the Phi Beta Sigma Fraternity, Inc.

...

() Piedmont Airlines. – This plate is issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate authorized by this subdivision shall bear the phrase "PA" and the Piedmont Speed Bird logo.

...

(116) Purple Heart Recipient. – Issuable to a recipient of the Purple Heart award. The plate shall bear the phrase "Purple Heart Veteran, Combat Wounded" and the letters "PH". A person may obtain from the Division a special registration plate under this subdivision for the registered owner of a motor vehicle or a motorcycle. A motorcycle plate issued under this subdivision shall bear a depiction of the Purple Heart Medal and the phrase "Purple Heart Veteran, Combat Wounded.

...

() Relay for Life. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Relay for Life" with a logo designed by the American Cancer Society. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Retired Legislator. – Issuable to a retired member of the North Carolina General Assembly in accordance with G.S. 20-81.12. The plate shall bear "The Great Seal of the State of North Carolina" and, as appropriate, the phrase "Retired Senate Member" or "Retired House Member" followed by a number representing the retired member's district with the letters RM. If more than one retired member is from the same district, then the number shall be followed by a letter from A through Z.

...

() Ronald McDonald House. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "House and Hands" with the words "Ronald McDonald House Charities" below the emblem and the letters "RH".

...

() School Board. – Issuable to a school board member in this State. The plate shall bear the words "School Board" followed first by a number representing the school board and then by a letter or number that distinguishes plates

issued to members of the same board. The number of a school board shall be the order of the school board in an alphabetical list of school boards that assigns number one to the first school board in the list. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Sigma Gamma Rho Sorority. – Issuable to the registered owner of a motor vehicle. The plate shall bear the sorority's symbol and name. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Silver Star Recipient/Disabled Veteran. – Issuable to a recipient of the Silver Star who is also a veteran of the Armed Forces of the United States who suffered a one hundred percent (100%) service-connected disability. The plate shall bear the emblem of the Silver Star laid over the universal symbol for the handicapped and the words "Silver Star." For the purposes of a fee for this plate, it shall be treated as a one hundred percent (100%) Disabled Veteran plate.

...

() S.T.A.R. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "For the Love of Horses" and a logo depicting a horse rearing up on its hind legs.

...

() Support NC Education. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Support NC Education" with a picture of a mortar board hat and a diploma.

...

() Support Soccer. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Support Soccer" and a logo designed by the North Carolina Soccer Hall of Fame, Inc.

...

() Sustainable Fisheries. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of sustainable fisheries in North Carolina. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Toastmasters Club. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Toastmasters" and a logo designed by Toastmasters International.

...

() Topsail Island Shoreline Protection. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a phrase and graphic selected by the Topsail Island Shoreline Protection Committee.

...

() Town of Oak Island. – Issuable to the registered owner of a motor vehicle. The plate shall bear the seal of the Town of Oak Island and the letters "OKI." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

() Travel and Tourism. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "www.visitnc.com."

...

() USA Triathlon. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear the USA Triathlon logo. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(146) U.S. Navy ~~Specialty.~~Submarine Veteran. – Issuable to a veteran of the United States Navy ~~Submariner~~ Submarine Service. The plate shall bear the phrase ~~"Silent Service~~"United States Navy Submarine Veteran" and shall bear a representation of the Submarine Service Qualification ~~pin.~~insignia overlaid upon a representation of the State of North Carolina. The Division may not issue the plate authorized by this subdivision unless it receives at least ~~300~~ 150 applications for the plate.

...

() United States Service Academy. – Issuable to a graduate of one of the service academies, upon furnishing to the Division proof of graduation. The plate shall bear the name of the specific service academy with an emblem that designates the specific service academy being represented. The Division, with the cooperation of each service academy, shall develop a special plate for each of the service academies. The Division must receive a combined total of 300 or more applications for all the plates authorized by this subdivision before a specific service academy plate may be developed.

...

() USO of NC. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the emblem of the USO of NC.

...

() Victory Junction Gang Camp. – Issuable to the registered owner of a motor vehicle. The plate may bear the phrase "Victory Junction Gang Camp." The Division must receive 300 or more applications for the plate before it may be developed.

...

() Vietnam Veterans of America. – Issuable to a member of the Vietnam Veterans of America. The plate shall bear the words "Vietnam Veterans of America" or "VVA" and the emblem of the VVA. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...."

SECTION 4. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge a single Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war each year. The preceding special registration plates are subject to the regular motor vehicle registration fees in G.S. 20-88, if the registered weight of the vehicle is greater than 6,000 pounds. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
American Red Cross	$30.00
Animal Lovers	$30.00
Arthritis Foundation	$30.00
ARTS NC	$30.00
Back Country Horsemen of NC	$30.00
Boy Scouts of America	$30.00
Brenner Children's Hospital	$30.00
Carolina Raptor Center	$30.00
Carolinas Credit Union Foundation	$30.00
Carolinas Golf Association	$30.00
Coastal Conservation Association	$30.00
Coastal Land Trust	$30.00
Crystal Coast	$30.00
Daniel Stowe Botanical Garden	$30.00
El Pueblo	$30.00
Farmland Preservation	$30.00
First in Forestry	$30.00
Girl Scouts	$30.00
Green Industry Council	$30.00
Greensboro Symphony Guild	$30.00
Historical Attraction	$30.00
Home Care and Hospice	$30.00
Home of American Golf	$30.00
HOMES4NC	$30.00
Hospice Care	$30.00
In God We Trust	$30.00
Maggie Valley Trout Festival	$30.00
Mountains-to-Sea Trail	$30.00
NC Civil War	$30.00
NC Coastal Federation	$30.00
NC Veterinary Medical Association	$30.00
National Kidney Foundation	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Emergency Management Association	$30.00
North Carolina Libraries	$30.00
Outer Banks Preservation Association	$30.00
P.E.O. Sisterhood	$30.00
Pamlico-Tar River Foundation	$30.00
Personalized	$30.00
Retired Legislator	$30.00
Ronald McDonald House	$30.00
Share the Road	$30.00
S.T.A.R.	$30.00
State Attraction	$30.00
Stock Car Racing Theme	$30.00
Support NC Education	$30.00
Support Our Troops	$30.00
Toastmasters Club	$30.00
Topsail Island Shoreline Protection	$30.00

Travel and Tourism	$30.00
AIDS Awareness	$25.00
Buffalo Soldiers	$25.00
Choose Life	$25.00
Collegiate Insignia	$25.00
First in Turf	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
~~Olympic Games~~	~~$25.00~~
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Children's Promise	$25.00
~~NC Coastal Federation~~	~~$30.00~~
Nurses	$25.00
Olympic Games	$25.00
Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Support Soccer	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
ALS Association, Jim "Catfish" Hunter Chapter	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Battle of Kings Mountain	$20.00
Be Active NC	$20.00
Brain Injury Awareness	$20.00
Breast Cancer Earlier Detection	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Concerned Bikers Association/ABATE of North Carolina	$20.00
Daughters of the American Revolution	$20.00
Donate Life	$20.00
Ducks Unlimited	$20.00
Greyhound Friends of North Carolina	$20.00
Guilford Battleground Company	$20.00
Harley Owners' Group	$20.00
Jaycees	$20.00
Juvenile Diabetes Research Foundation	$20.00
Kappa Alpha Order	$20.00
~~Harley Owners' Group~~	~~$20.00~~
Litter Prevention	$20.00
March of Dimes	$20.00
Morgan Horse Club	$20.00
Native American	$20.00
NC Fisheries Association	$20.00
NC Horse Council	$20.00

NC Mining	$20.00
NC Tennis Foundation	$20.00
NC Trout Unlimited	$20.00
NC Victim Assistance	$20.00
NC Wildlife Federation	$20.00
NC Wildlife Habitat Foundation	$20.00
NC Youth Soccer Association	$20.00
North Carolina Master Gardener	$20.00
Omega Psi Phi Fraternity	$20.00
Phi Beta Sigma Fraternity	$20.00
Piedmont Airlines	$20.00
Prince Hall Mason	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
US Equine Rescue League	$20.00
USO of NC	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Carolina Regional Volleyball Association	$15.00
Carolina's Aviation Museum	$15.00
Leukemia & Lymphoma Society	$15.00
Lung Cancer Research	$15.00
NC Beekeepers	$15.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Gold Star Lapel Button	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 5. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) of this section among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
AIDS Awareness	$10	$15	0	0
Alpha Phi Alpha Fraternity	$10	$10	0	0
ALS Association, Jim "Catfish" Hunter Chapter	$10	$10	0	0

American Red Cross	$10	$20	0	0
Animal Lovers	$10	$20	0	0
ARC of North Carolina	$10	$10	0	0
Arthritis Foundation	$10	$20	0	0
ARTS NC	$10	$20	0	0
Audubon North Carolina	$10	$10	0	0
Autism Society of North Carolina	$10	$10	0	0
Back Country Horsemen of NC	$10	$20	0	0
Battle of Kings Mountain	$10	$10	0	0
Be Active NC	$10	$10	0	0
Boy Scouts of America	$10	$20	0	0
Brain Injury Awareness	$10	$10	0	0
Breast Cancer Earlier Detection	$10	$10	0	0
Brenner Children's Hospital	$10	$20	0	0
Buddy Pelletier Surfing Foundation	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Carolina Raptor Center	$10	$20	0	0
Carolina Regional Volleyball Association	$10	$5	0	0
Carolina's Aviation Museum	$10	$5	0	0
Carolinas Credit Union Foundation	$10	$20	0	0
Carolinas Golf Association	$10	$20	0	0
Choose Life	$10	$15	0	0
Coastal Conservation Association	$10	$20	0	0
Coastal Land Trust	$10	$20	0	0
Concerned Bikers Association/ABATE of North Carolina	$10	$10	0	0
Crystal Coast	$10	$20	0	0
Daniel Stowe Botanical Gardens	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Donate Life	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
Farmland Preservation	$10	$20	0	0
First in Forestry	$10	$10	$10	0
First in Turf	$10	$15	0	0
Girl Scouts	$10	$20	0	0
Goodness Grows	$10	$15	0	0
Green Industry Council	$10	$20	0	0
Greensboro Symphony Guild	$10	$20	0	0
Greyhound Friends of North Carolina	$10	$10	0	0
Guilford Battleground Company	$10	$10	0	0
Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0

Historical Attraction	$10	$20	0	0
Home Care and Hospice	$10	$20	0	0
Home of American Golf	$10	$20	0	0
HOMES4NC	$10	$20	0	0
Hospice Care	$10	$20	0	0
In God We Trust	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0
Jaycees	$10	$10	0	0
Juvenile Diabetes Research Foundation	$10	$10	0	0
Kappa Alpha Order	$10	$10	0	0
Kids First	$10	$15	0	0
Leukemia & Lymphoma Society	$10	$5	0	0
Litter Prevention	$10	$10	0	0
Lung Cancer Research	$10	$5	0	0
Maggie Valley Trout Festival	$10	$20	0	0
March of Dimes	$10	$10	0	0
Morgan Horse Club	$10	$20	0	0
Mountains-to-Sea Trail	$10	$20	0	0
National Kidney Foundation	$10	$20	0	0
National Multiple Sclerosis Society	$10	$15	0	0
National Wild Turkey Federation	$10	$15	0	0
Native American	$10	$10	0	0
NC Agribusiness	$10	$15	0	0
NC Beekeepers	$10	$5	0	0
NC Children's Promise	$10	$15	0	0
NC Civil War	$10	$20	0	0
NC Coastal Federation	$10	$20	0	0
NC 4-H Development Fund	$10	$20	0	0
NC Fisheries Association	$10	$10	0	0
NC Horse Council	$10	$10	0	0
NC Mining	$10	$10	0	0
NC Tennis Foundation	$10	$10	0	0
NC Trout Unlimited	$10	$10	0	0
NC Veterinary Medical Association	$10	$20	0	0
NC Victim Assistance	$10	$20	0	0
NC Wildlife Federation	$10	$10	0	0
~~North Carolina Libraries~~	~~$10~~	~~$20~~	~~0~~	~~0~~
NC Wildlife Habitat Foundation	$10	$10	0	0
NC Youth Soccer Association	$10	$10	0	0
North Carolina Emergency Management Association	$10	$20	0	0
North Carolina Libraries	$10	$20	0	0
North Carolina Master Gardener	$10	$10	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0

Out-of-state Collegiate Insignia	$10	0	$15	0
Outer Banks Preservation Association	$10	$20	0	0
P.E.O. Sisterhood	$10	$20	0	0
Pamlico-Tar River Foundation	$10	$20	0	0
Personalized	$10	0	$15	$5
Phi Beta Sigma Fraternity	$10	$10	0	0
Piedmont Airlines	$10	$10	0	0
Prince Hall Mason	$10	$10	0	0
Retired Legislator	$10	$20	0	0
Rocky Mountain Elk Foundation	$10	$15	0	0
Ronald McDonald House	$10	$20	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0
SCUBA	$10	$10	0	0
Shag Dancing	$10	$5	0	0
Share the Road	$10	$20	0	0
Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
S.T.A.R.	$10	$20	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support NC Education	$10	$20	0	0
Support Our Troops	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Support Soccer	$10	$15	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
Toastmasters Club	$10	$20	0	0
Topsail Island Shoreline Protection	$10	$20	0	0
Travel and Tourism	$10	$20	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
US Equine Rescue League	$10	$10	0	0
USO of NC	$10	$10	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 6. G.S. 20-81.12(b2) reads as rewritten:

"(b2) State Attraction Plates. – The Division must receive 300 or more applications for a State attraction plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of State attraction plates to the organizations named below in proportion to the number of State attraction plates sold representing that organization:

(1) Aurora Fossil Museum. – The revenue derived from the special plate shall be transferred quarterly to the Aurora Fossil Museum Foundation, Inc., to be

used for educational programs, for enhancing collections, and for operating expenses of the Aurora Fossil Museum.

~~(1)~~(2) Blue Ridge Parkway Foundation. – The revenue derived from the special plate shall be transferred quarterly to Blue Ridge Parkway Foundation for use in promoting and preserving the Blue Ridge Parkway as a scenic attraction in North Carolina. A person may obtain from the Division a special registration plate under this subdivision for the registered owner of a motor vehicle or a motorcycle. The registration fees and the restrictions on the issuance of a specialized registration plate for a motorcycle are the same as for any motor vehicle. The Division must receive a minimum of 300 applications to develop a special registration plate for a motorcycle.

~~(1e)~~(3) Friends of the Great Smoky Mountains National Park. – The revenue derived from the special plate shall be transferred quarterly to the Friends of the Great Smoky Mountains National Park, Inc., to be used for educational materials, preservation programs, capital improvements for the portion of the Great Smoky Mountains National Park that is located in North Carolina, and operating expenses of the Great Smoky Mountains National Park.

~~(1g)~~(4) Friends of the Appalachian Trail. – The revenue derived from the special plate shall be transferred quarterly to The Appalachian Trail Conference to be used for educational materials, preservation programs, trail maintenance, trailway and viewshed acquisitions, trailway and viewshed easement acquisitions, capital improvements for the portions of the Appalachian Trail and connecting trails that are located in North Carolina, and related administrative and operating expenses.

~~(1i)~~(5) North Carolina State Parks. – One-half of the revenue derived from the special plate shall be transferred quarterly to Natural Heritage Trust Fund established under G.S. 113-77.7, and the remaining revenue shall be transferred quarterly to the Parks and Recreation Trust Fund established under G.S. 113-44.15.

(6) "Old Baldy," Bald Head Island Lighthouse. – The revenue derived from the special plate shall be transferred quarterly to the Old Baldy Foundation, Inc., for its programs in support of the Bald Head Island Lighthouse.

~~(1j)~~(7) The North Carolina Aquariums. – The revenue derived from the special plate shall be transferred quarterly to the North Carolina Aquarium Society, Inc., for its programs in support of the North Carolina Aquariums.

~~(1m)~~(8) The North Carolina Arboretum. – The revenue derived from the special plate shall be transferred quarterly to The North Carolina Arboretum Society and used to help the Society obtain grants for the North Carolina Arboretum and for capital improvements to the North Carolina Arboretum.

~~(1p)~~(9) The North Carolina Maritime Museum. – The revenue derived from the special plate shall be transferred quarterly to Friends of the Museum, North Carolina Maritime Museum, Inc., to be used for educational programs and conservation programs and for operating expenses of the North Carolina Maritime Museum.

~~(1t)~~(10) The North Carolina Museum of Natural Sciences. – The revenue derived from the special plate shall be transferred quarterly to the Friends of the North Carolina State Museum of Natural Sciences for its programs in support of the museum.

~~(2)~~(11) The North Carolina Zoological Society. – The revenue derived from the special plate shall be transferred quarterly to The North Carolina Zoological

Society, Incorporated, to be used for educational programs and conservation programs at the North Carolina Zoo at Asheboro and for operating expenses of the North Carolina Zoo at Asheboro.

(12) U.S.S. North Carolina Battleship Commission. – The revenue derived from the special plate shall be transferred quarterly to the U.S.S. North Carolina Battleship Commission to be used for educational programs and preservation programs on the U.S.S. North Carolina (BB-55) and for operating expenses of the U.S.S. North Carolina Battleship Commission."

SECTION 7. G.S. 20-81.12 is amended by adding the following new subsections to read:

"(b73) American Red Cross. – The Division must receive 300 or more applications for an "American Red Cross" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "American Red Cross" plates to the Triangle Area Chapter of the American Red Cross to be used to fund disaster relief, health and safety services, blood services, services to military families, capital improvements on facilities located within the State, and related administrative and operating costs.

(b74) ARTS NC. – The Division must receive 300 or more applications for the ARTS NC plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of ARTS NC plates to ARTS North Carolina, Inc., to provide funding to promote the arts in North Carolina.

(b75) Arthritis Foundation. – The Division must receive 300 or more applications for an Arthritis Foundation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Arthritis Foundation plates to The Arthritis Foundation, Inc., to fund arthritis research grants.

(b76) Battle of Kings Mountain. – The Division must receive 300 or more applications for the "Battle of Kings Mountain" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Battle of Kings Mountain" plates by transferring fifty percent (50%) to the Kings Mountain Tourism Development Authority and fifty percent (50%) to Kings Mountain Gateway Trails, Inc., to be used to develop tourism to the area and provide safe and adequate trails for visitors to the park.

(b77) Battleship North Carolina. – The Division must receive 300 or more applications for the "Battleship North Carolina" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Battleship North Carolina" plates to the U.S.S. North Carolina Battleship Commission to provide funding for information and education about the role of the Battleship U.S.S. North Carolina in history and for administrative and operating costs of the U.S.S. North Carolina Battleship Commission.

(b78) Boy Scouts of America. – The Division must receive 300 or more applications for the "Boy Scouts of America" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Boy Scouts of America" plates to the Old Hickory Council of the Boy Scouts of America, where the proceeds will be divided equally among the Boy Scouts of America Councils in this State to be used for educational programs, preservation programs, capital improvements on facilities located in this State, and related administrative and operating expenses.

(b79) Brenner Children's Hospital. – The Division must receive 300 or more applications for the "Brenner Children's Hospital" plate before the plate may be developed. The Division

shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Brenner Children's Hospital" plates to the NCBH Special Purpose-Pediatric Unit Fund to provide funding for Brenner Children's Hospital.

(b80) Carolina Raptor Center. – The Division must receive 300 or more applications for a "Carolina Raptor Center" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Carolina Raptor Center" plates to the Carolina Raptor Center to be used for educational materials, preservation programs, capital improvements for the Carolina Raptor Center, and operating expenses of the Carolina Raptor Center.

(b81) Carolina Regional Volleyball Association. – The Division must receive 300 or more applications for the "Carolina Regional Volleyball Association" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the "Carolina Regional Volleyball Association" plates to the Carolina Regional Volleyball Association to promote and develop the sport of volleyball throughout North Carolina.

(b82) Carolinas Credit Union Foundation. – The Division must receive 300 or more applications for the "Carolinas Credit Union Foundation" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Carolinas Credit Union Foundation" plates to the Carolinas Credit Union Foundation, Inc., for youth-focused programs.

(b83) Carolinas Golf Association. – The Division must receive 300 or more applications for the "Carolinas Golf Association" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Carolinas Golf Association" plates to the Carolinas Golf Association to be used to promote amateur golf in North Carolina.

(b84) Choose Life. – The Division must receive 300 or more applications for a "Choose Life" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Choose Life" plates to the Carolina Pregnancy Care Fellowship, which shall distribute the money annually to nongovernmental, not-for-profit agencies that provide pregnancy services that are limited to counseling and/or meeting the physical needs of pregnant women. Funds received pursuant to this section shall not be distributed to any agency, organization, business, or other entity that provides, promotes, counsels, or refers for abortion and shall not be distributed to any entity that charges women for services received.

(b85) Coastal Land Trust. – The Division must receive 300 or more applications for the "Coastal Land Trust" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the "Coastal Land Trust" plates to the North Carolina Coastal Land Trust to be used to acquire open space and natural areas, to ensure conservation education, to promote good land stewardship, to set aside lands for conservation, and for other administrative and operating costs.

(b86) Concerned Bikers Association/ABATE of North Carolina. – The Division must receive 300 or more applications for the "Concerned Bikers Association/ABATE of North Carolina" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the "Concerned Bikers Association/ABATE of North Carolina" plates to the Department of Public Instruction to support the driver training and safety education program established pursuant to G.S. 115C-215 and to support motorcycle safety and awareness training as part of the driver training program.

(b87) Daniel Stowe Botanical Garden. – The Division must receive 300 or more applications for the "Daniel Stowe Botanical Garden" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Daniel Stowe Botanical Garden" plates to the Daniel Stowe Botanical Garden Foundation, Inc., to provide funding for the Daniel Stowe Botanical Garden outreach program.

(b88) Donate Life. – The Division must receive 300 or more applications for the "Donate Life" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Donate Life" plates to Donate Life North Carolina to be divided equally among Donate Life North Carolina and each of the transplant centers in North Carolina to include Bowman Gray Medical Center, Carolinas Medical Center, Duke University, East Carolina University, and the University of North Carolina at Chapel Hill. The transplant centers shall use all of the proceeds received from this plate to provide funding for expenses incurred by needy families, recipients, and expenses related to organ donation.

(b89) Farmland Preservation. – The Division must receive 300 or more applications for the "Farmland Preservation" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Farmland Preservation" plates to the North Carolina Agricultural Development and Farmland Preservation Trust Fund established pursuant to G.S. 106-744.

(b90) First in Turf. – The Division must receive 300 or more applications for the "First in Turf" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "First in Turf" plates to the Center for Environmental Turfgrass Research at North Carolina State University for its programs.

(b91) Girl Scouts. – The Division must receive 300 or more applications for the "Girl Scouts" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Girl Scouts" plates to the Girl Scouts North Carolina Coastal Pines, where the proceeds will be divided equally among the officially chartered Girl Scout Councils in this State to be used for educational programs, preservation programs, capital improvements on facilities located in this State, and related administrative and operating expenses.

(b92) Green Industry Council. – The Division must receive 300 or more applications for the Green Industry Council plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Green Industry Council plates to the Green Industry Council to be used to provide an umbrella of advocacy for green industry issues, the promotion of the green industry, and educational activities.

(b93) Greensboro Symphony Guild. – The Division must receive 300 or more applications for the Greensboro Symphony Guild plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Greensboro Symphony Guild plates to the Greensboro Symphony Guild, Inc., to be used to support educational programs offered by the Greensboro Symphony Orchestra.

(b94) Home of American Golf. – The Division must receive 300 or more applications for the "Home of American Golf" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Home of American Golf" plates to the Given Memorial Library, Inc., to provide funding for the Given Memorial Library – The Tufts Archives.

(b95) Jaycees. – The Division must receive 300 or more applications for the "Jaycees" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Jaycees" plates to the North Carolina JCI Senate, Inc., to be used to support and underwrite Jaycee activities in North Carolina.

(b96) Kappa Alpha Order. – The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Kappa Alpha Order plates to the Kappa Alpha Order Educational Foundation to provide educational and leadership opportunities for students attending North Carolina colleges and universities.

(b97) Morgan Horse Club. – The Division must receive 300 or more applications for a Morgan Horse Club plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Morgan Horse Club plates to the Morgan Horse Club to support the mission of the Virginia-Carolinas Morgan Horse Club, Inc., to promote Morgan horses in North Carolina.

(b98) Mountains-to-Sea Trail. – The Division must receive 300 or more applications for the "Mountains-to-Sea Trail" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Mountains-to-Sea Trail" plates to the Friends of the Mountains-to-Sea Trail, Inc., to be used to fund trail projects and related administrative and operating expenses.

(b99) Native American. – The Division must receive 300 or more applications for the "Native American" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Native American" plates to the Native American College Fund for scholarships to be awarded to Native American students from North Carolina.

(b100) NC Beekeepers. – The Division must receive 300 or more applications for the "NC Beekeepers" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC Beekeepers" plates to North Carolina State University for research on the importance of bees to agriculture and the State's agricultural economy.

(b101) NC Civil War. – The Division must receive 300 or more applications for the "NC Civil War" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC Civil War" plates to the North Carolina Department of Cultural Resources, Division of Archives and History, to provide funding to acquire, interpret, and preserve North Carolina's Civil War history.

(b102) NC Fisheries Association. – The Division must receive 300 or more applications for a "NC Fisheries Association" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC Fisheries Association" plates to the NC Fisheries Association to facilitate the promotion of North Carolina families, heritage, and seafood through accessible data about the ever-changing commercial fishing industry.

(b103) NC Horse Council. – The Division must receive 300 or more applications for the "NC Horse Council" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC Horse Council" plates to the North Carolina Horse Council, Inc., to promote and enhance the equine industry in North Carolina.

(b104) NC Mining. – The Division must receive 300 or more applications for the "NC Mining" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC

Mining" plates to the North Carolina Gold Foundation, Inc., to provide funding for information and education about mining in North Carolina.

(b105) NC Veterinary Medical Association. – The Division must receive 300 or more applications for the "NC Veterinary Medical Association" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC Veterinary Medical Association" plates to the Friends of NCVMA Foundation, Inc., to be used to provide compassionate, quality health care for all animals, to protect the health of the public, to strengthen the human-animal bond, and to provide advanced continuing education for the public.

(b106) NC Victim Assistance Network. – The Division must receive 300 or more applications for a "NC Victim Assistance Network" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC Victim Assistance Network" plates to the NC Victim Assistance Network to support the mission of the NC Victim Assistance Network to provide support and information for crime victims across the State and to advocate for their fair treatment.

(b107) NC Wildlife Federation. – The Division must receive 300 or more applications for the "NC Wildlife Federation" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC Wildlife Federation" plates to the North Carolina Wildlife Federation, Inc., to provide funding for a grassroots program to involve anglers, hunters, and wildlife enthusiasts in conservation issues affecting North Carolina.

(b108) NC Youth Soccer Association. – The Division must receive 300 or more applications for the "NC Youth Soccer Association" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC Youth Soccer Association" plates to the North Carolina Youth Soccer Association to be used to promote the sport of soccer in North Carolina.

(b109) North Carolina Emergency Management Association. – The Division must receive 300 or more applications for the "North Carolina Emergency Management Association" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "North Carolina Emergency Management Association" plates to the North Carolina Emergency Management Association to be used for training and education purposes.

(b110) North Carolina Master Gardener. – The Division must receive 300 or more applications for the "North Carolina Master Gardener" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "North Carolina Master Gardener" plates to the Master Gardener's Endowment Fund maintained by the Agricultural Foundation of North Carolina State University to be used for educational programs by trained volunteers who work in partnership with their county Cooperative Extension offices to extend information in consumer horticulture.

(b111) Outer Banks Preservation Association. – The Division must receive 300 or more applications for an "Outer Banks Preservation Association" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Outer Banks Preservation Association" plates to the Outer Banks Preservation Association to facilitate the protection of the public's right to access beaches in North Carolina.

(b112) Pamlico-Tar River Foundation. – The Division must receive 300 or more applications for the "Pamlico-Tar River Foundation" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate

Account derived from the sale of "Pamlico-Tar River Foundation" plates to the Pamlico-Tar River Foundation, Inc., to provide funding for the cleanup, preservation, and oversight of the Pamlico and Tar Rivers, and their watersheds and basins.

(b113) P.E.O. Sisterhood. – The Division must receive 300 or more applications for the "P.E.O. Sisterhood" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "P.E.O. Sisterhood" plates to P.E.O. International to be used for scholarships for young women.

(b114) Phi Beta Sigma Fraternity. – The Division must receive 300 or more applications for the "Phi Beta Sigma Fraternity" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Phi Beta Sigma Fraternity" plates to the Phi Beta Sigma Fraternity, Inc., to provide funding for scholarships, education and professional development, or similar programs. None of the proceeds from this special plate may be distributed to any board member as compensation or as an honorarium.

(b115) Piedmont Airlines. – The Division must receive 300 or more applications for a "Piedmont Airlines" plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Piedmont Airlines" plates to Piedmont Silver Eagles Charitable Funds, Inc., to be used for scholarships and family assistance for Piedmont Airlines employees and their families, including surviving spouses and dependents, suffering economic hardship.

(b116) Retired Legislator. – The Division must receive 300 or more applications for a Retired Legislator plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Retired Legislator plates to the State Capitol Foundation, Inc., to be used to provide support for the mission and goals of the foundation.

(b117) Ronald McDonald House. – The Division must receive 300 or more applications for the "Ronald McDonald House" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Ronald McDonald House" plates to Ronald McDonald House Charities of North Carolina, Inc., to be used for Ronald McDonald Houses located within North Carolina and related administrative and operating expenses.

(b118) S.T.A.R. – The Division must receive 300 or more applications for the "S.T.A.R." plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "S.T.A.R." plates to Save the Animals Rescue, Inc., to provide funding to rescue distressed horses.

(b119) Support NC Education. – The Division must receive 300 or more applications for the "Support NC Education" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Support NC Education" plates to the Board of Governors of The University of North Carolina to be used to provide scholarship funding at the 16 constituent universities of The University of North Carolina.

(b120) Support Soccer. – The Division must receive 300 or more applications for the "Support Soccer" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Support Soccer" plates to the North Carolina Soccer Hall of Fame, Inc., to provide funding to promote the sport of soccer in North Carolina.

(b121) Toastmasters Club. – The Division must receive 300 or more applications for the "Toastmasters Club" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the

sale of the "Toastmasters Club" plates to Toastmasters International to be used to help North Carolinians communicate more effectively, improve presentation skills, and develop leadership potential.

(b122) Topsail Island Shoreline Protection. – The Division must receive 300 or more applications for the "Topsail Island Shoreline Protection" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Topsail Island Shoreline Protection" plates proportionately to the Town of North Topsail Beach, the Town of Surf City, and the Town of Topsail Beach to be used for support of the Topsail Island Shoreline Protection Committee and beach nourishment programs or projects for the three towns on Topsail Island.

(b123) Travel and Tourism. – The Division must receive 300 or more applications for the "Travel and Tourism" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Travel and Tourism" plates to the Division of Tourism, Film, and Sports Development to be used for programs in support of travel and tourism in North Carolina.

(b124) USO of NC. – The Division must receive 300 or more applications for a USO of NC plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of USO of NC plates to the United Services Organization of North Carolina to support the mission of the United Services Organization in North Carolina to lead the way to enriching the lives of America's military in North Carolina."

SECTION 8. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-79.8. Expiration of special registration plate authorization.**

(a) Expiration. – A special registration plate authorized pursuant to G.S. 20-79.4 shall expire, as a matter of law, on July 1 of the second calendar year following the year in which the special plate was authorized if the number of required applications for the authorized special plate has not been received by the Division. The Division shall not accept applications for nor advertise any special registration plate that has expired pursuant to this section.

(b) Notification. – The Division shall notify the Revisor of Statutes in writing, not later than July 15 of each year, which special registration plate authorizations have expired as a matter of law pursuant to subsection (a) of this section. The Division shall publish a copy of the written notification sent to the Revisor of Statutes pursuant to this subsection on a Web site maintained by the Division or the Department of Transportation.

(c) Revisor of Statutes Responsibilities. – Upon notification of expiration of the authorization for any special registration plate by the Division pursuant to this section, the Revisor of Statutes shall verify that the authorization for each special registration plate listed has expired and shall notate such expiration in the applicable statutes. If an authorization for a special registration plate listed in G.S. 20-79.4 expires, the Revisor of Statutes shall revise the subdivision referring to the special registration plate to leave the name of the special registration plate authorized and the date the special registration plate's authorization expired. If an authorization for a special registration plate listed in G.S. 20-79.4 expires, the Revisor of Statutes shall also make corresponding changes to reflect the expiration of the special registration plate's authorization, if applicable, in G.S. 20-63(b), 20-79.7, and 20-81.12."

SECTION 9. Notwithstanding Section 8 of this act, any special registration plate authorized in G.S. 20-79.7, prior to July 1, 2011, shall expire, as a matter of law, on July 1, 2013, if the number of applications required for the production of the special registration plate has not been received by the Division of Motor Vehicles on or before that date. Upon notification of expiration of the authorization for any special plate by the Division pursuant to this section, the Revisor of Statutes shall verify that the authorization for each special

registration plate listed has expired and shall notate such expiration in the applicable statutes. If an authorization for a special registration plate listed in G.S. 20-79.4 expires, the Revisor of Statutes shall revise the subdivision referring to the special registration plate to leave the name of the special plate authorized and the date the special registration plate's authorization expired. If an authorization for a special registration plate listed in G.S. 20-79.4 expires, the Revisor of Statutes shall also make corresponding changes to reflect the expiration of the special registration plate's authorization, if applicable, in G.S. 20-63(b), 20-79.7, and 20-81.12.

SECTION 10. The Revisor of Statutes is authorized to alphabetize, number, and renumber the special registration plates listed in G.S. 20-79.4 to ensure that all the special registration plates are listed in alphabetical order and numbered accordingly.

SECTION 11. Section 8 of this act becomes effective July 1, 2011. The remainder of this act is effective when it becomes law. Any special plate issued by the Division of Motor Vehicles prior to the effective date of this act shall not be required to be replaced but may be replaced by the Division for an applicant upon the payment of the appropriate fees.

HOUSE BILL 289:
Authorize Various Special Plates

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Rep. Gillespie	**Prepared by:**	Trina Griffin
Analysis of:	PCS to Third Edition H289-CSSVf-37		Committee Counsel

SUMMARY: ***House Bill 289 would authorize the issuance of a number of special license plates, and direct DMV to develop a standard format for special license plates. It would also provide for the expiration of a special plate authorization if DMV does not receive the required number of applications within two years of the time the plate is authorized.***

The PCS incorporates the following additional plates that were not included in the version that passed the House:

- ***Kappa Alpha Order (SB 54; Sen. Stein)***
- ***Sustainable Fisheries Plate (SB 89; Sen. Preston)***
- ***NC Morgan Horse Club (SB 122; Sen. Atwater)***
- ***USO of North Carolina (SB 136; Sen. Hunt)***
- ***Greensboro Symphony (SB 138; Sen. Vaughan)***
- ***Green Industry Council (SB 372; Sen. Apodaca)***
- ***Retired Legislators (SB 392; Sen. Jenkins)***
- ***Don't Tread on Me (SB 605; Sen. Rucho)***
- ***USA Triathlon (Sen. Stevens)***

The PCS also makes the following changes to existing plates:

- ***Would allow the Core Sound Waterfowl Museum plate to be on different background (SB 649; Sen. Preston).***
- ***Would authorize motorcycle plates for Civic Clubs (SB 355; Sen. East).***

CURRENT LAW: G.S. 29-79.4 provides that upon application and payment of the required registration fees, a person may obtain from the Department of Motor Vehicles (DMV) a special registration plate for a motor vehicle registered in that person's name if the person qualifies for the registration plate. Currently, more than 165 special plates have been authorized. The issuance of most authorized plates is contingent upon the receipt by DMV of at least 300 applications for the particular plate.

As a general rule, the fee for a special registration plate is the regular vehicle registration fee plus a $10 special registration plate fee. The Division may issue one free registration plate to a recipient of the Legion of Valor[1] award, a 100% disabled veteran, or an ex-prisoner of war. All other special registration plates, including additional Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are

[1] The Legion of Valor plate is issuable to a recipient of one of the following: Congressional Medal of Honor, Distinguished Service Cross, Navy Cross, or Air Force Cross.

subject to the regular motor vehicle registration fee of $28[2] and the additional special registration plate fee of $10.

The $10 special registration plate fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this account, $1,000,000 is annually appropriated to provide operating assistance for ten Visitor Centers.[3] The Centers are located in Brunswick, Camden, Carteret, Caswell, Columbus, Macon, McDowell, Transylvania, Tyrell, and Watauga Counties.[4] The remaining revenue in the account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%), and the Department of Human Resources to promote travel accessibility for disabled persons (17%).

The cost of some special plates includes a fee in addition to the $10 special registration plate fee. In those instances, the first $10 goes to the special registration plate fund and the remainder is transferred quarterly to designated beneficiaries of the additional fee amount.

BILL ANALYSIS:

Section 1 of the bill expands by 16 the number of special license plates that are not required to be a "First in Flight" plate with the standard background.

Section 2 directs DMV to develop a standard format for special license plates that will allow for the plate to be easily read by the human eye and by traffic enforcement cameras.

Section 3 expands the list of special license plates that may be issued by DMV, adding more than 70 new plates as enumerated in the bill. The plates would generally be subject to the standard requirement of at least 300 applications, so that the cost of producing the plates could be recouped.

The bill amends existing provisions involving the issuance of the following plates: Autism Society of North Carolina, Buffalo Soldiers, Marine Corps League, Native American, and North Carolina Wildlife Habitat Foundation.

The bill would authorize motorcycle plates for the following organizations that already have authorization for special plates: Civic Clubs and Purple Heart.

The bill would also lower from 300 to 150 the number of minimum applications required for the U.S. Navy Submarine Veteran plate.

Section 4 establishes the additional fee that will be charged for each of the plates authorized in Section 3 of the bill. The fee is over and above the regular motor vehicle registration fee, which is currently $28 for private passenger vehicles of not more than 15 passengers.

Section 5 specifies the distribution of the fees imposed in Section 4 of the bill.

Section 6 expands the list of State Attraction Plates by adding the Aurora Fossil Museum and the Baldhead Island Lighthouse ("Old Baldy"), and designates the use of revenue derived from the sale of those plates.

Section 7 provides for the quarterly transfer of revenue in the Collegiate and Cultural Attraction Plate Account derived from the sale of specific plates; the funds are generally used to support programs and services offered by non-profit organizations that reflect the interests of persons purchasing the special plate.

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[2] G.S. 20-87.
[3] There are 12 Visitors' Centers. The two centers that do not receive State funding are located in Dare County.
[4] Each Visitor's Center receives $100,000.

Section 8 provides for the expiration of a special plate authorization if DMV does not receive the required number of applications within two years of the time the plate is authorized.

Section 9 provides that a plate issued before the July 1, 2011 effective date of the bill would expire on July 1, 2013 if the required number of applications has not been received by DMV on or before that date. To date, there are 69 authorized plates that have not met the 300 application requirement.

Section 10 authorizes the Revisor of Statutes to alphabetize, number, and renumber the listing of special registration plates in G.S. 20-79.4 to ensure that all the special plates are listed in alphabetical order and numbered accordingly.

EFFECTIVE DATE: Section 8 of the bill, providing for the expiration of a special plate authorization, would become effective July 1, 2011. The remainder of the bill would be effective when it becomes law.

Brenda Carter, counsel to House Transportation, substantially contributed to this summary.

H289-SMSV-73(CSSVf-37) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 289 (Second Edition)

SHORT TITLE: Authorize Various Special Plates.

SPONSOR(S): Representative Gillespie

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	*See Assumptions and Methodology*				
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles

EFFECTIVE DATE: July 1, 2011

BILL SUMMARY:

House Bill 289 amends GS 20-79.4(b) to direct the Division of Motor Vehicles to issue various special registration license plates, contingent on receiving at least 300 applications per plate, categorized as follows:

- American Red Cross
- Armed Forces Expeditionary Medal Recipient
- Arthritis Foundation
- ARTS NC
- Battle of Kings Mountain
- Blue Knights
- Boy Scouts of America
- Brenner Children's Hospital
- Carolina Raptor Center
- Carolina Regional Volleyball Association
- Carolinas Credit Union Foundation
- Carolinas Golf Association
- Childhood Cancer Awareness
- Choose Life
- City/County Clerk
- Coastal Land Trust

- Concerned Bikers Association/ABATE of North Carolina
- Daniel Stowe Botanical Garden
- Donate Life
- First in Turf
- Farmland Preservation
- Girl Scouts
- High Point Furniture Market 100th Anniversary
- Hollerin'
- Home of American Golf
- Jaycees
- Legion of Merit
- Lifetime Sportsman
- Mayor
- Mountains-to-Sea Trail
- Municipal Council
- National Defense Service Medal
- NC Beekeepers
- NC Civil War
- NC Fisheries Association
- NC Horse Council
- NC Mining
- NC Wildlife Federation
- NC Veterinary Medical Association
- NC Victim Assistance Network
- North Carolina Emergency Management Association
- North Carolina Master Gardener
- North Carolina State Flag
- Outer Banks Preservation Association
- P.E.O. Sisterhood
- Pamlico-Tar River Foundation
- Phi Beta Sigma Fraternity
- Piedmont Airlines
- Relay for Life
- Ronald McDonald House
- School Board
- Sigma Gamma Rho Sorority
- Silver Star Recipient/ Disabled Veteran
- S.T.A.R.
- Support NC Education
- Support Soccer
- Toastmasters Club
- Topsail Island Shoreline Protection
- Town of Oak Island
- Travel and Tourism

- United States Service Academy
- Victory Junction Gang Camp
- Vietnam Veterans of America

Adds the following State Attraction Plates contingent on receiving at least 300 applications per plate:

- Aurora Fossil Museum
- "Old Baldy," Bald Head Island Lighthouse
- U.S.S. North Carolina Battleship Commission

Adds special registration license plates to the list of those identified in GS 20-63(b) that do not have to bear the phrase "First in Flight":

- ARTS NC
- Battle of Kings Mountain
- Carolina Raptor Center
- Carolinas Credit Union Foundation
- Choose Life
- Coastal Land Trust
- Donate Life
- Farmland Preservation
- NC Civil War
- NC Mining
- North Carolina State Flag
- North Carolina Zoological Society
- Travel and Tourism
- United States Service Academy.

Deletes the following special registration plate:

- Olympic Games

House Bill 289 changes the name of the US Navy Specialty plate to the US Navy Submarine Veteran plate.

The bill directs that the Division shall develop, in consultation with the State Highway Patrol and the Department of Correction, a standardized format for special license plates. Effective July 1, 2011, the bill enacts new GS 20-79.8 providing for the expiration of special registration plates authorized under GS 20-79.4 on July 1 of the second calendar year in which the plate was authorized if the required number of applications for the special plate has not been received by the DMV. The bill provides that a special plate authorization under GS 20-79.7 prior to July 1, 2011, expires as a matter of law on July 1, 2013, if the required number of applications has not been received.

Of the additional fees charged for each plate, the first ten dollars will go to the Special Registration Plate account. In cases where the fee is in excess of ten dollars, the remainder will go to the Collegiate and Cultural Attraction Plate account to be transferred quarterly to the entity nominated within the bill.

ASSUMPTIONS AND METHODOLOGY:

House Bill 289 authorizes certain special plates provided the Division receives 300 or more applications for a particular plate. The additional fees for the following plates are not specified: Armed Forces Expeditionary Medal Recipient, Blue Knights, Childhood Cancer Awareness, City/County Clerk, High Point Furniture Market 100th Anniversary, Hollerin', Legion of Merit, Lifetime Sportsman, Mayor, Municipal Council, National Defense Service Medal, North Carolina State Flag, Relay for Life, School Board, Sigma Gamma Rho Sorority, Silver Star Recipient/ Disabled Veteran, Town of Oak Island, United States Service Academy, Victory Junction Gang Camp, and Vietnam Veterans of America. According to G.S. 20-79.7, the additional fee for these plates would be $10 per plate.

The Aurora Fossil Museum, "Old Baldy," Bald Head Island Lighthouse, and U.S.S. North Carolina Battleship Commission plates qualify as State Attraction plates. According to G.S. 20-79.7, the additional fee for these plates will be $30 per plate. The remainder of the special plate fees is specified in the bill. The chart below summarizes these fees.

Special Registration Plates: Fees Specified in HB 289

American Red Cross	$30	NC Civil War	$30
Arthritis Foundation	$30	NC Fisheries Association	$20
ARTS NC	$30	NC Horse Council	$20
Battle of Kings Mountain	$20	NC Mining	$20
Boy Scouts of America	$30	NC Veterinary Medical Association	$30
Brenner Children's Hospital	$30	NC Victim Assistance Network	$20
Carolina Raptor Center	$30	NC Wildlife Federation	$20
Carolina Regional Volleyball Association	$15	North Carolina Emergency Management Association	$30
Carolinas Credit Union Foundation	$30	North Carolina Master Gardener	$20
Carolinas Golf Association	$30	Outer Banks Preservation Association	$30
Choose Life	$25	P.E.O. Sisterhood	$30
Coastal Land Trust	$30	Pamlico-Tar River Foundation	$30
Concerned Bikers Association/ABATE of North Carolina	$20	Phi Beta Sigma Fraternity	$20
Daniel Stowe Botanical Garden	$30	Piedmont Airlines	$20
Donate Life	$20	Ronald McDonald House	$30
Farmland Preservation	$30	S.T.A.R.	$30
First in Turf	$25	Support NC Education	$30
Girl Scouts	$30	Support Soccer	$25
Home of American Golf	$30	Toastmasters Club	$30
Jaycees	$20	Topsail Island Shoreline Protection	$30
Mountains-to-Sea Trail	$30	Travel and Tourism	$30
NC Beekeepers	$15		

Of the additional fees charged for each plate, the first ten dollars will go to the Special Registration Plate account. In cases where the fee is in excess of ten dollars, the remainder will go to the Collegiate and Cultural Attraction Plate account to be transferred quarterly to the entity nominated within the bill. Fiscal Research cannot estimate how many applications for each of the authorized plates will be received. Assuming there are at least 300 applications for each of these plates, they will each result in a $3,000 revenue increase to the Special Registration Plate account for the period during which the applications are received. Each of these plates would also result in an increase in revenues to the Collegiate and Cultural Attraction Plate account for distribution to the respective entity equal to the fee in excess of ten dollars multiplied by the 300 applications. If the plates do not reach the 300 application threshold, the plates will not be created and there will be no fiscal impact.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 1, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 289

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H289-ASV-39 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
Third Edition

Date June 15 ,2011

Senator Tillman

moves to amend the bill on page 10, beginning on line 34, by deleting the sentence that begins with the word "The";

And on page 14, lines 19-20, by inserting the following between the lines:
"Sustainable Fisheries" $20.00";

And on page 17, lines 29-30 by inserting the following between the lines:
"Sustainable Fisheries $10 $20 0 0";

And on page 24, lines 47-48, by inserting the following between the lines:
"(b120) Sustainable Fisheries. – The Division must receive 300 or more applications for the "Sustainable Fisheries" plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Sustainable Fisheries" plates to the Center for Marine Sciences and Technology to support research, undergraduate and graduate student training, and education outreach in support of sustainable fisheries in North Carolina.";

And by renumbering the remaining subsection designations accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

H289-ASV-39-V-1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 289

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H289-ASV-36 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Date June 15 ,2011

Senator Rucho

moves to amend the bill on page 1, line 14, through page 2, line 31, by rewriting the lines to read:

~~Except as otherwise provided in this subsection, a~~ A registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. ~~The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.~~

~~(1) Friends of the Great Smoky Mountains National Park.~~
~~(2) Rocky Mountain Elk Foundation.~~
~~(3) Blue Ridge Parkway Foundation.~~
~~(4) Friends of the Appalachian Trail.~~
~~(5) NC Coastal Federation.~~
~~(6) In God We Trust.~~
~~(7) Stock Car Racing Theme.~~
~~(8) Buddy Pelletier Surfing Foundation.~~
~~(9) Guilford Battleground Company.~~
~~(10) National Wild Turkey Federation.~~
~~(11) North Carolina Aquarium Society.~~
~~(12) First in Forestry.~~
~~(13) North Carolina Wildlife Habitat Foundation.~~
~~(14) NC Trout Unlimited.~~
~~(15) Ducks Unlimited.~~
~~(16) Lung Cancer Research.~~
~~(17) NC State Parks.~~
~~(18) Support Our Troops.~~
~~(19) US Equine Rescue League.~~
~~(20) Fox Hunting.~~
~~(21) Back Country Horsemen of North Carolina.~~
~~(22) Hospice Care.~~

~~(23) Home Care and Hospice.~~
~~(24) NC Tennis Foundation.~~
~~(25) AIDS Awareness.~~;

And on page 26, lines 12-14, by rewriting the lines to read:
"of this act is effective when it becomes law. The changes made by Section 1 of this act shall not be construed to require the recall of an existing full-color special license plate issued to a registered owner of a motor vehicle, but no additional or replacement full-color special license plates may be issued on or after the effective date of this act.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 289

AMENDMENT NO. 3
(to be filled in by Principal Clerk)

H289-ASVf-35 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date June 15 ,2011

Senator Garrou

moves to amend the bill on page 9, lines 34-35, by inserting the following between the lines:

"() Respect Choice. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Respect Choice". The Division must receive 300 or more applications for the "Respect Choice" plate before the plate may be developed."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 289

AMENDMENT NO. 4
(to be filled in by Principal Clerk)

H289-ASV-31 [v.2]

Comm. Sub. [NO]
Amends Title [NO]
Third Edition

Date June 15 ,2011

Senator Daniel

moves to amend the bill on page 5, lines 14-15, by inserting the following between the lines:

"(39) County Commissioner. – Issuable to a county commissioner of a county in this State. The plate shall bear the words "County Commissioner" followed first by a number representing the commissioner's county and then by a letter or number that distinguishes plates issued to county commissioners of the same county. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list and a letter or number to distinguish different cars owned by the county commissioners in that county. The Division may not issue the plate authorized by this subdivision unless it receives at least ~~300~~100 applications for the plate.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 289 DATE June 15, 2011

S. B. No. _____ Amendment No. 5
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
(Sen.) Daniel

1 moves to amend the bill on page 2, line 30-31

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 "(41) NC Horse Council." ;

5 _____

6 and renumbering remaining subdivision.

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 4

HOUSE BILL 344

Committee Substitute Favorable 6/3/11
Committee Substitute #2 Favorable 6/7/11
Fourth Edition Engrossed 6/7/11

Short Title: Tax Credits for Children with Disabilities. (Public)

Sponsors:

Referred to:

March 15, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN INDIVIDUAL INCOME TAX CREDIT FOR CHILDREN WITH DISABILITIES WHO REQUIRE SPECIAL EDUCATION AND TO CREATE A FUND FOR SPECIAL EDUCATION AND RELATED SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.33. Education expenses credit.**

(a) Credit. – A taxpayer is allowed a credit against the tax imposed by this Part for each of the taxpayer's eligible dependent children who is a resident of this State and who for one or two semesters during the taxable year is enrolled in grades kindergarten through 12 in a nonpublic school or in a public school at which tuition is charged in accordance with G.S. 115C-366.1. As used in this section, the term 'eligible dependent child' means a child who meets all of the following criteria:

(1) Is a child with a disability as defined by G.S. 115C-106.3(1).

(2) Was determined to require an individualized education program as defined by G.S. 115C-106.3(8).

(3) Receives special education or related services on a daily basis.

(4) Is a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the taxable year.

For the initial eligibility for the tax credit, for at least the preceding two semesters, the eligible dependent child shall have been either (i) enrolled in a public school or (ii) receiving special education or related services through the public schools as a preschool child with a disability as defined by G.S. 115C-106.3(17). An eligible dependent child shall be reevaluated every three years by the local educational agency in order to verify that the child continues to be a child with a disability as defined by G.S. 115C-106.3(1).

(b) Amount. – The credit is equal to the amount the taxpayer paid for tuition and special education and related services expenses, not to exceed three thousand dollars ($3,000) per semester. For home schools, as defined in G.S. 115C-563(a), the credit is equal to the amount the taxpayer paid for special education and related services expenses, not to exceed three thousand dollars ($3,000) per semester.

(c) Semesters. – For the purposes of this section, there are two semesters during each taxable year. The spring semester is the first six months of the taxable year, and the fall semester is the second six months of the taxable year. An eligible dependent child is enrolled in

a school for a semester if the eligible dependent child is enrolled in that school for more than 70 days during that semester.

(d) Disqualification. – A taxpayer may not qualify for a credit for any semester during which the taxpayer's eligible dependent child for whom the credit would otherwise be claimed met any of the following conditions:

(1) Was placed in a nonpublic school or facility by a public agency at public expense.

(2) Spent any time enrolled as a full-time student taking at least 12 hours of academic credit in a postsecondary educational institution.

(3) Was 22 years or older during the entire semester.

(4) Graduated from high school prior to the end of the semester.

(e) Reduction of Credit. – The amount of the credit is reduced for any semester in which the eligible dependent child spent any time enrolled in a public school. The amount of the reduction is a percentage equal to the percentage of the semester that the eligible dependent child spent enrolled in a public school.

(f) Information. – In order to claim the credit allowed by this section, the taxpayer shall provide, when requested, the following to the Secretary:

(1) The name, address, and social security number of each eligible dependent child for whom the credit is claimed and the name and address of the school or schools in which the eligible dependent child was enrolled for more than 70 days each semester.

(2) The taxpayer's certification that the eligible dependent child did not meet any of the disqualifying conditions set out in this section.

(3) The name of the local school administrative unit in which the eligible dependent child resides.

(4) The amount of tuition paid to a public school at which tuition is charged in accordance with G.S. 115C-366.1 for each semester the eligible dependent child for whom the credit is claimed was enrolled in the school.

(5) The eligibility determination that the eligible dependent child is a child with a disability who requires special education and related services.

(6) A listing of the tuition and special education and related services expenses on which the amount of the credit is based.

(7) For home schools as defined in G.S. 115C-563(a), a listing of the special education and related services expenses on which the amount of the credit is based.

(g) Carryforward. – The credit allowed under this section may not exceed the amount of tax imposed by this Part reduced by the sum of all credits allowed against the tax, except payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding three years.

(h) Transfer. – At the end of each fiscal year, the Secretary shall transfer to the Fund for Special Education and Related Services established under G.S. 115C-472.15 from the net individual income tax collections under G.S. 105-134.2 .an amount equal to two thousand dollars ($2,000) multiplied by the number of credits taken under this section during the fiscal year.

(i) Definitions. – The following definitions apply in this section:

(1) "Special education" means specially designed instruction to meet the unique needs of a child with a disability. The term includes instruction in physical education and instruction conducted in a classroom, the home, a hospital, or institution, and other settings.

(2) "Related services" is as defined in The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and federal regulations adopted under this act."

SECTION 2. G.S. 105-151.33(a), as enacted by Section 1 of this act, reads as rewritten:

"(a) Credit. – A taxpayer is allowed a credit against the tax imposed by this Part for each of the taxpayer's eligible dependent children who is a resident of this State and who for one or two semesters during the taxable year, is enrolled in grades kindergarten through 12 in a nonpublic school or in a public school at which tuition is charged in accordance with G.S. 115C-366.1. As used in this section, the term 'eligible dependent child' means a child who meets all of the following criteria:

(1) Is a child with a disability as defined by G.S. 115C-106.3(1).
(2) Was determined to require an individualized education program as defined by G.S. 115C-106.3(8).
(3) Receives special education or related services on a daily basis.
(4) Is a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the taxable year.

For the initial eligibility for the tax credit, for at least the preceding ~~two semesters,~~ semester, the eligible dependent child shall have been either: (i) enrolled in a public school, or (ii) receiving special education or related services through the public schools as a preschool child with a disability as defined by G.S. 115C-106.3(17). An eligible dependent child shall be reevaluated every three years by the local educational agency in order to verify that the child continues to be a child with a disability as defined by G.S. 115C-106.3(1)."

SECTION 3. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 32D.
"Fund for Special Education and Related Services.

"**§ 115C-472.15. Fund for Special Education and Related Services.**

(a) The Fund for Special Education and Related Services is established as a special revenue fund under the control and direction of the State Board of Education. Interest and other investment income earned by the Fund accrue to it, and revenue in the Fund does not revert. The Fund consists of money credited to it under G.S. 105-151.33.

(b) The State Board of Education shall use the revenue in the Fund only for special educational and related services for children with disabilities. In addition, the State Board of Education shall use revenues in the Fund to reimburse local educational agencies for conducting reevaluations for continued eligibility and developing revised individualized education programs pursuant to G.S. 105-151.33(a)(1)."

SECTION 4. The Department of Revenue shall report to the Revenue Laws Study Committee and the Joint Legislative Education Oversight Committee on the administration of G.S. 105-151.33, as enacted by Section 1 of this act. The report is due by October 1, 2013, and shall include the following:

(1) The number and amount of credits taken under G.S. 105-151.33.
(2) Any concerns relating to the administration of G.S. 105-151.33 or taxpayer compliance with the requirements of that section.
(3) Any other matter with respect to G.S. 105-151.33 the Department wishes to address.

SECTION 4A. If House Bill 200, 2011 Regular Session, becomes law, then Section 2.1 of that act reads as rewritten:

"**SECTION 2.1.** Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the fiscal biennium ending June 30, 2013, according to the following schedule:

Current Operations – General Fund	2011-2012	2012-2013
EDUCATION		
Community Colleges System Office	$ 985,000,000	$ 985,000,000
Department of Public Instruction	7,464,492,057	~~7,450,000,000~~ 7,425,064,000
University of North Carolina – Board of Governors		
Appalachian State University	145,563,319	145,680,676
East Carolina University		
Academic Affairs	247,397,807	247,397,807
Health Affairs	65,196,439	65,196,439
Elizabeth City State University	38,226,042	38,398,361
Fayetteville State University	56,925,951	56,925,951
NC A&T State University	105,355,805	105,794,754
NC Central University	94,342,683	94,342,683
NC State University		
Academic Affairs	434,563,241	434,677,423
Agricultural Research	59,239,461	59,239,461
Agricultural Extension	43,539,609	43,539,609
UNC-Asheville	42,004,444	42,004,444
UNC-Chapel Hill		
Academic Affairs	309,481,584	312,843,120
Health Affairs	219,507,009	222,570,732
AHEC	49,747,851	49,747,851
UNC-Charlotte	216,455,073	217,471,216
UNC-Greensboro	173,180,926	173,180,926
UNC-Pembroke	61,534,005	62,277,254
UNC-School of the Arts	27,796,473	27,796,473
UNC-Wilmington	105,943,181	107,138,757
Western Carolina University	90,591,556	91,070,460
Winston-Salem State University	76,496,951	76,496,950
General Administration	38,186,863	27,628,722
University Institution Programs	(375,153,400)	(383,808,914)
Related Educational Programs	85,679,060	115,272,420
UNC Financial Aid Private Colleges	91,635,664	86,534,065
NC School of Science & Math	18,937,535	18,937,535
UNC Hospitals	18,000,000	18,000,000
Total University of North Carolina – Board of Governors	$ 2,540,375,132	$ 2,551,672,698
HEALTH AND HUMAN SERVICES		
Department of Health and Human Services		
Division of Central Management and Support	$ 50,177,377	$ 44,577,987
Division of Aging and Adult Services	37,019,667	37,019,667
Division of Services for Blind/Deaf/Hard of Hearing	8,389,110	8,372,886
Division of Child Development	266,102,933	266,102,933

Division of Health Service Regulation	16,133,031	16,133,031
Division of Medical Assistance	2,958,388,184	2,907,276,302
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	665,712,232	710,712,232
NC Health Choice	79,452,317	83,717,865
Division of Public Health	190,443,245	157,538,834
Division of Social Services	186,183,068	186,183,068
Division of Vocational Rehabilitation	37,125,788	37,528,128
Total Health and Human Services	$ 4,495,126,952	$ 4,455,162,933
NATURAL AND ECONOMIC RESOURCES		
Department of Agriculture and Consumer Services	$ 65,460,864	$ 62,198,634
Department of Commerce		
Commerce	50,852,340	33,250,463
Commerce State-Aid	32,851,025	30,151,984
NC Biotechnology Center	17,551,710	17,551,710
Rural Economic Development Center	25,376,729	25,376,729
Department of Environment and Natural Resources	165,784,887	148,148,105
DENR Clean Water Management Trust Fund	11,250,000	11,250,000
Department of Labor	15,836,887	15,836,887
Wildlife Resources Commission	18,000,000	17,221,179
JUSTICE AND PUBLIC SAFETY		
Department of Correction	$ 1,337,816,346	$ 1,348,410,793
Department of Crime Control and Public Safety	225,258,795	215,164,518
Judicial Department	438,920,048	435,141,107
Judicial Department – Indigent Defense	110,091,526	112,748,733
Department of Justice	80,704,013	80,864,138
Department of Juvenile Justice and Delinquency Prevention	135,593,692	131,140,565
GENERAL GOVERNMENT		
Department of Administration	$ 63,607,330	$ 65,511,460
Department of State Auditor	11,857,574	10,676,035
Office of State Controller	28,368,957	28,368,957
Department of Cultural Resources		

Cultural Resources	63,524,857	61,697,001
Roanoke Island Commission	1,805,236	1,203,491
State Board of Elections	5,186,603	5,126,603
General Assembly	53,259,495	50,104,208
Office of the Governor		
Office of the Governor	4,741,157	4,741,157
Office of State Budget and Management	5,848,663	5,848,663
OSBM – Reserve for Special Appropriations	1,940,612	440,612
Housing Finance Agency	9,673,051	9,673,051
Department of Insurance		
Insurance	36,393,921	36,393,921
Insurance – Volunteer Safety Workers' Compensation	2,294,000	2,623,654
Office of Lieutenant Governor	695,324	695,324
Office of Administrative Hearings	4,983,871	4,983,871
Department of Revenue	78,199,538	78,199,538
Department of Secretary of State	10,654,563	10,654,563
Department of State Treasurer		
State Treasurer	6,657,031	6,621,750
State Treasurer – Retirement for Fire and Rescue Squad Workers	17,812,114	17,812,114
RESERVES, ADJUSTMENTS, AND DEBT SERVICE		
Contingency and Emergency Fund	$ 5,000,000	$ 5,000,000
State Retirement System Contribution	248,100,000	336,000,000
Judicial Retirement System Contribution	6,800,000	7,800,000
Firemen's & Rescue Squad Workers' Pension Fund	4,318,042	5,366,928
State Health Plan	7,119,541	102,151,104
Information Technology Fund	4,458,142	6,158,142
Reserve for Job Development Investment Grants (JDIG)	15,400,000	27,400,000
Continuation Review Reserve	0	35,576,758
Comprehensive Review of Compensation Plans	2,000,000	0
Compensation Adjustment and Performance Pay Reserve	0	121,105,840

Severance Expenditure Reserve	69,000,000	0
Automated Fraud Detection Development	1,000,000	7,000,000
Controller – Fraud Detection Development	500,000	500,000
Debt Service		
General Debt Service	688,957,188	759,984,974
Federal Reimbursement	1,616,380	1,616,380
TOTAL CURRENT OPERATIONS – GENERAL FUND	**$ 19,678,116,193**	~~**$ 19,943,327,275**~~ **$ 19,918,391,275**"

SECTION 5.(a) If House Bill 200, 2011 Regular Session, becomes law, then Section 2.2(a) of that act reads as rewritten:

"**SECTION 2.2(a)** The General Fund availability used in developing the 2011-2013 biennial budget is shown below.

	FY 2011-2012	FY 2012-2013
Unappropriated Balance Remaining	$ 0	$ 13,980,015
Ending Unreserved Fund Balance for FY 2009-2010	236,902,394	0
Anticipated Reversions for FY 2010-2011	537,740,799	0
Anticipated Over-collections from FY 2010-2011	180,800,000	0
Repayment of Medicaid Receipts in FY 2010-2011	(125,000,000)	0
Statutory Earmarks:		
Savings Reserve Account	~~(185,000,000)~~(172,700,000)	0
Repairs and Renovations Reserve Account	(125,000,000)	0
Beginning Unreserved Fund Balance	**$** ~~**520,443,193**~~**532,743,193**	**$ 13,980,015**
Revenues Based on Existing Tax Structure	**$ 18,129,800,000**	**$ 19,181,900,000**
Nontax Revenues		
Investment Income	$ 59,400,000	$ 76,700,000
Judicial Fees	217,800,000	217,800,000
Disproportionate Share	100,000,000	100,000,000
Insurance	71,400,000	73,500,000
Other Nontax Revenues	182,500,000	182,500,000
Highway Trust Fund/Use Tax Reimbursement Transfer	41,500,000	27,600,000
Highway Fund Transfer	20,230,000	24,080,000
Subtotal Nontax Revenues	**$ 692,830,000**	**$ 702,180,000**
Total General Fund Availability	~~**$ 19,343,073,193**~~	**$ 19,898,060,015** **$ 19,355,373,193**
Adjustments to Availability: 2011 Session		
Loss of Estate Tax	$ (57,100,000)	$ (72,200,000)
Small Business Tax Relief Package	(131,600,000)	(335,600,000)
Repeal Wildlife Resources Commission Sales Tax		

Earmark	22,970,000	23,920,000
Suspend Corporate Income Tax Earmark (Public School Construction)	72,110,000	74,750,000
Increase in Judicial Fees	61,765,715	61,765,715
Increase Investment Company Notice Filing Fee	1,600,000	1,600,000
Increase Parking Fees for Visitors	550,000	550,000
Loss of Revenue from the Town of Butner	(1,213,235)	(1,213,235)
Transfer from E-Commerce Reserve Fund	4,483,526	0
Divert Funds from Parks & Recreation Trust Fund	8,435,000	0
Divert Funds from Recreational/Natural Heritage Trust Fund	8,000,000	0
Transfer from Highway Fund for State Highway Patrol	196,849,542	188,209,049
Transfer Additional Funds from Highway Trust Fund	35,223,642	0
Transfer from Mercury Prevention Pollution Fund	250,000	0
Transfer from Commerce – Enterprise Fund	500,000	0
Divert Funds from Scrap Tire Disposal Account	2,268,989	0
Divert Funds from White Goods Management Account	1,951,465	0
Diversion of Golden LEAF Funds	17,563,760	17,563,760
Master Settlement Agreement Funds	24,668,720	25,580,772
Transfer Health and Wellness Trust Funds to Public Health	32,904,411	0
Department of Revenue – Accounts Receivable Program	25,000,000	25,000,000
Medicaid Disproportionate Share Receipts	15,000,000	15,000,000
Adjust Transfer from Insurance Regulatory Fund	(742,348)	(742,348)
Adjust Transfer from Treasurer's Office	(3,881,172)	(3,916,453)
Transfer from NC Flex FICA Funds	1,000,000	0
Proceeds from the Sale of State Assets	15,000,000	25,000,000
Children with Disabilities Tax Credit	(12,300,000)	(24,936,000)
Subtotal Adjustments to Availability:		
2011 Session	**$ ~~353,558,015~~341,258,015**	**~~$45,267,260~~ 20,331,260**
Revised General Fund Availability	**$ 19,696,631,208**	**~~$ 19,943,327,275~~ $ 19,918,391,275**
Less General Fund Appropriations	**$ (19,682,651,193)**	**~~$ (19,943,327,275)~~ $ (19,918,391,275)**
Unappropriated Balance Remaining	**$ 13,980,015**	**$ 0"**

SECTION 5.(b) If House Bill 200, 2011 Regular Session, becomes law, then Section 2.2(m) of that act reads as rewritten:

"**SECTION 2.2.(m)** Notwithstanding G.S. 143C-4-2, the State Controller shall transfer only one hundred ~~eighty-five million dollars ($185,000,000)~~ seventy-two million seven hundred thousand dollars ($172,700,000) from the unreserved fund balance to the Savings Reserve Account on June 30, 2011. This is not an 'appropriation made by law,' as that phrase is used in Section 7(1) of Article V of the North Carolina Constitution. This subsection becomes effective June 30, 2011."

SECTION 5A. If House Bill 200, 2011 Regular Session, becomes law, then that act is amended by adding the following new section to read:

"**ADM ADJUSTMENT**

SECTION 7.31. Notwithstanding any other provision of this act, the funds appropriated for the average daily membership (ADM) adjustment for public schools shall be adjusted to provide fifty-five million eight hundred eighty-two thousand six hundred fifty-one dollars ($55,882,651) in the 2011-2012 fiscal year and one hundred eighteen million one hundred fifty-one thousand four hundred fourteen dollars ($118,151,414) in the 2012-2013 fiscal year. The funds appropriated for the ADM adjustment shall be distributed to modify allotments to charter schools and local school administrative units, reflecting changes in ADM due to population growth and other changes in State law."

SECTION 6. Sections 1, 3, 4, and 4A of this act are effective for taxable years beginning on or after January 1, 2011, and apply to semesters for which the credit is claimed beginning on or after July 1, 2011, except that transfers under G.S. 105-151.33(h) shall not be made before the 2012-2013 fiscal year. Section 2 of this act is effective for taxable years beginning on or after January 1, 2016, and applies to semesters for which the credit is claimed beginning on or after July 1, 2016. The remainder of this act is effective when it becomes law.

HOUSE BILL 344:
Tax Credits for Children with Disabilities

2011-2012 General Assembly

Committee:	Senate Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget	**Date:**	June 13, 2011
Introduced by:	Reps. Stam, Randleman, Jordan, Jones	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	Fourth Edition		

SUMMARY: ***House Bill 344 would allow an individual income tax credit for up to $3,000 per semester for tuition and special education and related services expenses for a taxpayer's eligible dependent child with a disability who is enrolled in a nonpublic school or a public school where tuition is charged for the eligible dependent child's enrollment. The bill would create a Fund for Special Education and Related Services with the monies to be used for special education and related services for children with disabilities. The bill would also require the Department of Revenue to report to the Revenue Laws Study Committee and the Joint Legislative Education Oversight Committee on the administration of the education expenses credit and on the number and amount of education expenses credits taken.***

BILL ANALYSIS:

Sections 1 and 2 would create the education expenses tax credit.

Qualifications for the Tax Credit

- A taxpayer would be entitled to an education expenses tax credit of up to $3,000 per semester for tuition and special education and related services expenses for each "eligible dependent child" who is a resident of this State and who enrolled for one or two semesters during the taxable year in grades Kindergarten-12 at either:
  - A non-public school or
  - A public school where tuition is charged for the child's enrollment.
- For home schools, the credit is equal to the amount the taxpayer paid for special education and related services expenses not to exceed $3,000.
- An eligible dependent child must meet all of the following criteria:
  - Is a child with a disability who requires an individualized education program (IEP) under Article 9 of Chapter 115C of the General Statutes (Education of Students with Disabilities and the federal Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq.(2004), as amended. The child must be reevaluated every 3 years by a local educational agency to verify that the child continues to be a child with a disability.
  - Receives special education or related services on a daily basis.
  - Is a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the taxable year.

For the initial eligibility for the tax credit during the first five years that the credit is available, the eligible dependent child must have been enrolled for at least the preceding **two** semesters in a public school or receiving special education or related services through the public schools as a preschool child with a disability. This initial eligibility requirement is reduced to one semester beginning for taxable years on or after January 1, 2016.

The bill would provide that there are two semesters during each taxable year with the spring semester being the first 6 months of the taxable year and the fall semester being the second six months of the taxable year. An eligible dependent child is considered to have been enrolled in a school for a semester if the eligible dependent child is enrolled in that school for more than 70 days during that semester.

Disqualifications for the Tax Credit

A taxpayer would not qualify for the education expenses tax credit for any semester when the taxpayer's otherwise eligible dependent child was:

- Placed in a nonpublic school or facility by a public agency at public expense;
- Enrolled for any time as a full-time student taking at least 12 hours of academic credit at a postsecondary educational institution;
- 22 years of age or older during the entire semester; or
- Graduated from high school prior to the end of the semester.

Reduction of the Tax Credit

The amount of the education expenses tax credit would be reduced for any semester in which the eligible dependent child spent any time enrolled in a public school. The amount of the reduction would be equal to the percentage of the semester that the eligible dependent child was enrolled in a public school.

Information Required to be Submitted to the Department of Revenue to Claim Education Expenses Tax Credit

To substantiate the credit, a taxpayer would have to provide all of the following information, if requested by the Secretary of Revenue:

- The name, address and social security number of each eligible dependent child for whom the credit is claimed and the name and address of the school or schools in which the eligible dependent child was enrolled in and attended for more than 70 days of each semester.
- A certification that there were no disqualifying factors.
- The name of the local school administrative unit in which the eligible dependent child resides.
- The amount of the tuition paid to a public school for each semester the eligible dependent child was enrolled in and attended that public school.
- The eligibility determination that the eligible dependent child is a child with a disability who requires special education and related services.
- A listing of the tuition and special education and related services expenses on which the education expenses tax credit is based.
- For home schools, a listing of the special education and related services expenses on which the education expenses tax credit is based.

Carryforward

The tax credit allowed could not exceed the amount of tax imposed reduced by the sum of all credits allowed against the tax except for payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit could be carried forward for 3 succeeding years.

Transfer into Fund for Special Education and Related Services

At the end of each fiscal year, the Secretary of Revenue must transfer an amount equal to $2,000 multiplied by the number of education expenses tax credits taken during the fiscal year to the Fund for Special Education and Related Services (created in Section 3 of the bill) from the net individual income tax collections under G.S. 105-134.2 (Individual Income Tax Imposed).

Section 3 of the bill would create the Fund for Special Education and Related Services (Fund) with the money credited to the Fund through the transfer required in Section 1 of the bill from the Secretary of Revenue. The Fund would be established as a special revenue fund under the control and direction of the State Board of Education. Interest and other investment income earned by the Fund accrue to it and monies in the Fund do not

revert. The revenue in the Fund may only be used for special education and related services for children with disabilities. In addition, the monies in the fund must be used to reimburse local educational agencies for conducting reevaluations for continued eligibility and developing revised individualized education programs for children with disabilities.

Section 4 of the bill would require that the Department of Revenue report to the Revenue Laws Study Committee and the Joint Legislative Education Oversight Committee on the administration of the education expenses tax credit provided by this bill by October 1, 2013. The report must include the following:

- The number and amount of education expenses tax credits taken;
- Concerns relating to the administration of the education expenses tax credits or taxpayer compliance; and
- Any other matter the Department wishes to address with respect to the education expenses tax credit.

Sections 4A, 5, and 5A of the bill would provide that if the 2011 Appropriations Act (House Bill 200) becomes law, then certain provisions of that act (House Bill 200) would be amended to allow for necessary budget adjustments needed for the implementation of this bill.

EFFECTIVE DATE: Sections 1, 3, 4 and 4A of the act would become effective for taxable years beginning on or after January 1, 2011, and would apply to semesters for which the credit is claimed beginning on or after July 1, 2011. Section 2 of this act would be effective for taxable years beginning on or after January 1, 2016, and would apply to semesters beginning on or after July 1, 2016. The initial eligibility requirement may be met during semesters prior to July 1, 2011 and July 1, 2016, respectively. Transfers to the Fund would not be made before the 2012-2013 fiscal year. The remainder of the act is effective when it becomes law.

BACKGROUND: Approximately five states provide programs for students with disabilities to attend private schools: Florida, Utah, Ohio, Oklahoma and Georgia.

The John M. McKay Scholarships Program for Students with Disabilities in Florida gives parents a voucher to send their child to a private school or another public school of their choice.

The Carson Smith Special Needs Scholarship Program in Utah awards scholarships to students with disabilities who attend a private school, both secular and non-secular.

The Special Education Pilot Project (also known as the Autism Scholarship Program) in Ohio is a scholarship awarded to parents of autistic children for services at a public or nonpublic special education program, which includes tuition at a private school.

Oklahoma enacted the Lindsey Nicole Henry Scholarship for Children with Disabilities in 2010. The amount of the scholarship would be either the private school's tuition or the amount of state and local money that would be given to the school system where the student is enrolled, whichever is less.

Georgia enacted the Special Needs Scholarship Act in 2007, creating a program which allows children with special needs to attend the public or private school that best meets their educational needs.

H344-SMRQ-46(e4) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 344 (Fourth Edition)

SHORT TITLE: Tax Credits for Children with Disabilities.

SPONSOR(S): Representatives Stam, Randleman, Jordan, and Jones

FISCAL IMPACT ($ in millions)

	Yes (X)	No ( )	No Estimate Available (.)		
	FY 2011-12	**FY 2012-13**	**FY 2013-14**	**FY 2014-15**	**FY 2015-16**
STATE IMPACT					
Revenue (tax credits):	($1.4)	($5.9)	($6.5)	($6.6)	($6.7)
Operational Savings:	$0	$8.2	$16.5	$16.8	$17.0
Trnsf. Out Gen Fund:	N/A	($4.1)	($4.1)	($4.2)	($4.2)
Trsnf. In Spec. Ed. Fund:	N/A	$4.1	$4.1	$4.2	$4.2
Trsnf. To LEAs:	$0	$0	($0.9)	($1.1)	($0.3)
Net State Impact:	**($1.4)**	**$2.3**	**$9.2**	**$9.0**	**$10.0**
LEA IMPACT					
Revenue:	N/A	N/A	N/A	N/A	N/A
Operational Savings:	N/A	$1.9	$3.9	$4.0	$4.0
Net LEA Impact:	**N/A**	**$1.9**	**$3.9**	**$4.0**	**$4.0**
POSITIONS (cumulative):	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

NOTE: This fiscal note relies on numerous assumptions that could result in the actual fiscal impact differing significantly from the numbers in the table above. Please see Assumptions & Methodology for likely ranges of fiscal impact.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, North Carolina Department of Public Instruction (DPI), Local Public Schools

EFFECTIVE DATE: This bill is effective for taxable years beginning January 1, 2011, and applies to semesters beginning on or after July 1, 2011. Certain changes to tax credit eligibility become effective January 1, 2016, and apply to semesters beginning on or after July 1, 2016.

BILL SUMMARY: The legislation creates a new tax credit for parents of children with special needs who choose to educate those children in a nonpublic school or in a public school at which tuition is charged per G.S. 155C-366.1. The credit amount is set at $3,000 per semester, up to two semesters a year (a maximum of $6,000 for a full academic or taxable year). The credit is non-refundable, but any unused portion of the credit may be carried forward for the succeeding three years.

To qualify for the tax credit, the taxpayer must be able to deduct a personal exemption for an "eligible dependent child." An "eligible dependent child" is one who:

1. Is a child with a disability as defined by G.S. 115C-06.3(1);
2. Was determined to require an individualized education program (IEP) as defined by G.S. 115C-06.3(8);
3. Receives special education or related services on a daily basis;
4. Is a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the taxable year; and
5. Was enrolled in and attended a public school or receiving special education or related services through the public schools as a preschool child with a disability for at least the two preceding academic semesters prior to first receiving the tax credit.

In order to maintain eligibility, the bill would require all eligible dependent children to be reevaluated every three years by the local education agency (LEA) in order to verify that the child continues to be a child with a disability as defined by G.S. 115C-106.3(1). LEAs would be reimbursed for these evaluations from the Fund for Special Education and Related Services.

A student would no longer be eligible if he or she:

1. Was placed in a nonpublic school or facility by a public agency at public expense;
2. Spent time enrolled as a full-time student in a postsecondary educational institution;
3. Was 22 years or older during the entire semester; or
4. Graduated from high school prior to the end of the semester.

It is important to note that the initial eligibility requirement ("was enrolled in and attended a public school for at least the two preceding academic semesters prior to first receiving the tax credit") is changed from two academic semesters to one academic semester beginning with semesters beginning on or after July 1, 2016.

The legislation also amends G.S. 115-C to create the Fund for Special Education and Related Services ("the Fund"). The Fund will be a special revenue fund under the control of the State Board of Education. Revenue of the Fund will be used only for special educational and related services for children with disabilities. Revenue for the Fund will come from a transfer at the end of each fiscal year, beginning in fiscal year 2012-13, from income tax revenue, equal to the number of credits taken under this act multiplied by $2,000.

ASSUMPTIONS AND METHODOLOGY:

Overview

The impact of the bill is dependent entirely on choices made by parents of children who have special educational needs meeting the criteria specified in the bill. As there is no data available regarding elasticity of demand for the specific educational circumstances for which the tax credit is granted, this analysis must make an effort to estimate, using available data, potential public behavior in the presence of the new law.

Data and Assumptions

Size of the Tax Credit

This analysis assumes an average tax credit of $2,700 per year. Because the tax credit proposed by H344 is not refundable, most tax filers will not receive the full $6,000 tax credit. On tax returns with at least one dependent child and with adjusted gross income between $30,000 and $500,000, the median State tax liability was $2,700.[1] That means approximately half of the people qualifying for the tax credit proposed by this bill would receive a credit of $2,700 or less instead of $6,000. The allowance for carry-forward of the tax credit means that the median filer would receive tax credits of $2,700 and $600 in the two years after the eligible child is no longer receiving the credit.

Percent of Eligible Students Moving Out of Public School

This analysis assumes that 1% to 2% of eligible children will take advantage of the tax credit proposed by this bill. A program similar in design to the program proposed by this bill, Florida's McKay Scholarship Program for Students with Disabilities, has a participation rate of approximately 5%. There are several reasons why one would anticipate a significantly lower participation in the tax credits proposed by H344:

1. The McKay Program is marketed to students and their families. There are no funds available to market the tax credit proposed by this bill.
2. The McKay Program provides scholarships to any special needs student ranging from $4,746 to $19,133. The tax credits proposed by this bill are capped based on the parent or guardian's tax liability.
3. The McKay Program provides families with an up-front scholarship, while the tax credit proposed by H344 only reduces a parent or guardian's taxes after the parent or guardian has already paid the student's tuition.
4. Approximately half of the students receiving the McKay Scholarship are eligible for free or reduced-price lunch (family income of 185% of the poverty level, or less). Families qualifying for free or reduced-price lunch are unlikely to utilize a non-refundable tax credit to offset the costs of private school tuition.

Eligible Population of Students

DPI estimates that somewhere between 120,000 and 140,000 students could potentially meet the definition of "eligible dependent child" under this bill. DPI does not track which students receive special education or related services on a daily basis. Therefore, this analysis presents a range of possibly eligible students, rather than a point estimate. For future years, the number of eligible students is anticipated to grow by 1.37% per year, reflecting the 10-year average growth in average daily membership (ADM).

[1] Derived using the Fiscal Research Division's North Carolina Individual Income Tax Model.

Turnover Rate

This analysis assumes an annual turnover rate of eligible dependent children of 15%. That is, from one year to the next 15% of the children generating a tax credit in year 1 will not be generating a tax credit in year 2. There are many reasons for turnover, including loss of eligibility, moving out of State, or decision to place student back in a public school.

State and Local Expenditures per Student

The estimated reduction in State expenditure per child using the tax credit is $8,160, and the estimated reduction in local expenditures per child using the tax credit is $1,931. The FY 2010-11 State average transfer of appropriation to charter schools of $4,562 per child serves as a reasonable proxy for the total avoided annual State operational expenditure for a student who transfers out of a typical public school. The per child supplemental appropriation of $3,599 for each child with special needs (for up to 12.5% of a school system's population) serves as a reasonable proxy for the additional State average expenditure for a child with special needs. A total of $8,160 is therefore used as a proxy for the average operational savings to the State that results from a student with an IEP transferring (i.e., withdrawing) from the public schools to a nonpublic school. The average local expenditure per child for operational expenses is $1,931.

Estimated Fiscal Impact of Tax Credits

The fiscal impact of H344 primarily stems from two factors: number of tax credits issued, and students who transfer from public schools to nonpublic schools. The tax credits decrease State revenue. But each transferring student also reduces State and local expenditures on public schools, as State and local school systems would no longer be financially responsible for educating the child for which the credit was granted. The net impact is essentially the difference between the tax credit, and the expenditures per child.

Note that timing issues affect the first-year fiscal impact in three ways:

1. The analysis assumes the average tax credit granted in April 2012 is $1,350, reflecting those students moving out of public schools during the Fall 2011 semester.[2] In future years, a tax credit of $2,700 per year is assumed.
2. The percent of eligible students transferring out of public schools is discounted by 50% in the first year to account for limited public awareness of a new program. It is assumed that the program will not reach its full capacity of 1% to 2% of eligible students until the 2012-13 school year.
3. State and local governments do not realize savings from reduced expenditures until the 2012-13 fiscal year. This delay is because allotted ADM is based off of the higher of projected ADM or prior year actual ADM. Therefore, the reduced enrollment experienced in the 2011-12 school year will impact allotted ADM – and therefore State and local budgeting decisions – in the 2012-13 school year.

[2] For simplicity's sake, this analysis assumes that all taxes are filed, and credits granted, in April.

Fund for Special Education and Related Services
There is no net fiscal impact associated with the *creation of* the Fund, as this bill simply transfers monies into the Fund that would have otherwise ended up in the General Fund.

However, monies from the Fund are used to reimburse LEAs for reevaluations. The reimbursement of LEAs for reevaluation services represents a fiscal cost to the State, as reevaluations deplete the Fund and reduce amounts that would have otherwise been made available for services for children with disabilities

This analysis assumes an annual turnover rate of eligible dependent children of 15%. That is, given an initial cohort of 1,000 "eligible dependent children," one would anticipate needing 614 reevaluations three years later (1,000*0.85^3). Future cohorts of required evaluations are smaller than the initial cohort. New entrants in any given year are assumed to be the amount required to replace the 15% turnover, plus enough to account for overall program growth of 1.37% per year.

Estimated Fiscal Impact on State and LEAs

	2011-12*****		2012-13		2013-14		2014-15		2015-16	
Eligible Student Pool*	120,000	140,000	121,644	141,918	123,311	143,862	125,000	145,833	126,713	147,831
Usage Percent	**1%**	**2%**	**1%**	**2%**	**1%**	**2%**	**1%**	**2%**	**1%**	**2%**
Tax Credits Granted**	600	1,400	1,216	2,838	1,233	2,877	1,250	2,917	1,267	2,957
Cost of Tax Credits (lost State Rev.)	($810,000)	($1,890,000)	($3,283,200)	($7,662,600)	($3,329,100)	($7,767,900)	($3,375,000)	($7,875,900)	($3,420,900)	($7,983,900)
Tax Credits Carried Forward***	$0	$0	($243,000)	($567,000)	($546,480)	($1,275,390)	($608,805)	($1,420,605)	($617,220)	($1,440,315)
State Exp. Per Eligible Student	$8,160	$8,160	$8,160	$8,160	$8,160	$8,160	$8,160	$8,160	$8,160	$8,160
Reduced Public School Expenditures****	N/A	N/A	$4,896,000	$11,424,000	$9,922,560	$23,158,080	$10,061,280	$23,476,320	$10,200,000	$23,802,720
Transfer OUT of General Fund	N/A	N/A	($2,432,000)	($5,676,000)	($2,466,000)	($5,754,000)	($2,500,000)	($5,834,000)	($2,534,000)	($5,914,000)
Transfer IN to Special Education Fund	N/A	N/A	$2,432,000	$5,676,000	$2,466,000	$5,754,000	$2,500,000	$5,834,000	$2,534,000	$5,914,000
Transfer out to LEAs for Reevaluations	$0	$0	$0	$0	($553,500)	($1,290,000)	($651,000)	($1,518,000)	($183,000)	($429,000)
Net Fiscal Impact on State	**($810,000)**	**($1,890,000)**	**$1,369,800**	**$3,194,400**	**$5,493,480**	**$12,824,790**	**$5,426,475**	**$12,661,815**	**$5,978,880**	**$13,949,505**
LEA Exp. Per Eligible Student	$1,931	$1,931	$1,931	$1,931	$1,931	$1,931	$1,931	$1,931	$1,931	$1,931
Reduced LEA Expenditures****	N/A	N/A	$1,158,600	$2,703,400	$2,348,096	$5,480,178	$2,380,923	$5,555,487	$2,413,750	$5,632,727
Cost of Reevaluations	$0	$0	$0	$0	($553,500)	($1,290,000)	($651,000)	($1,518,000)	($183,000)	($429,000)
Reimbursement from Special Ed Fund	$0	$0	$0	$0	$553,500	$1,290,000	$651,000	$1,518,000	$183,000	$429,000
Net Fiscal Impact on LEAs	**$0**	**$0**	**$1,158,600**	**$2,703,400**	**$2,348,096**	**$5,480,178**	**$2,380,923**	**$5,555,487**	**$2,413,750**	**$5,632,727**

*Grows by 1.37% per year to reflect the 10-year average growth in allotted ADM

**For FY11-12, number of tax credits granted is discounted by 50% to account for limited public awareness of program.

***Assumes turnover rate of 15%.

****Because allotted ADM is based off of the higher of projected ADM or prior year actual ADM, savings from reduced expenditures are not realized until the 2012-13 school year.

*****Assumes average tax credit in FY11-12 is $1,350. Assumes tax credit in all future years of $2,700.

Estimated Fiscal Impact on State and LEAs -- MIDPOINT ESTIMATE

	2011-12*****	2012-13	2013-14	2014-15	2015-16
Eligible Student Pool*	130,000	131,781	133,587	135,417	137,272
Usage Percent	**1.5%**	**1.5%**	**1.5%**	**1.5%**	**1.5%**
Tax Credits Granted**	1,000	2,027	2,055	2,084	2,112
Cost of Tax Credits (lost State Rev.)	($1,350,000)	($5,472,900)	($5,548,500)	($5,625,450)	($5,702,400)
Tax Credits Carried Forward***	$0	($405,000)	($910,935)	($1,014,705)	($1,028,768)
State Exp. Per Eligible Student	$8,160	$8,160	$8,160	$8,160	$8,160
Reduced Public School Expenditures****	N/A	$8,160,000	$16,540,320	$16,768,800	$17,001,360
Transfer OUT of General Fund	N/A	($4,054,000)	($4,110,000)	($4,167,000)	($4,224,000)
Transfer IN to Special Education Fund	N/A	$4,054,000	$4,110,000	$4,167,000	$4,224,000
Transfer out to LEAs for Reevaluations	$0	$0	($921,750)	($1,084,500)	($306,000)
Net Fiscal Impact on State	**($1,350,000)**	**$2,282,100**	**$9,159,135**	**$9,044,145**	**$9,964,193**
LEA Exp. Per Eligible Student	$1,931	$1,931	$1,931	$1,931	$1,931
Reduced LEA Expenditures****	N/A	$1,931,000	$3,914,137	$3,968,205	$4,023,239
Cost of Reevaluations	$0	$0	($921,750)	($1,084,500)	($306,000)
Reimbursement from Special Ed Fund	$0	$0	$921,750	$1,084,500	$306,000
Net Fiscal Impact on LEAs	**$0**	**$1,931,000**	**$3,914,137**	**$3,968,205**	**$4,023,239**

*Grows by 1.37% per year to reflect the 10-year average growth in allotted ADM

**For FY11-12, number of tax credits granted is discounted by 50% to account for limited public awareness of program.

***Assumes turnover rate of 15%.

****Because allotted ADM is based off of the higher of projected ADM or prior year actual ADM, savings from reduced expenditures are not realized until the 2012-13 school year.

*****Assumes average tax credit in FY11-12 is $1,350. Assumes tax credit in all future years of $2,700.

TECHNICAL CONSIDERATIONS:
There are many technical considerations that should be considered as this fiscal note is based on a number of assumptions. The fiscal impact presented here is an estimate, and any number of factors could move the fiscal impact up or down in a significant way.

Gaming the System
It is possible, but unlikely, that some parents of potentially eligible children who have never attended public schools would enroll their children in public schools for the required two semesters in order to then be able to avail themselves of the credit in a subsequent year. It seems unlikely, however, that a significant number of parents who have already made a decision not to send their children to public schools would make this choice, even in the face of potential financial gain. The analysis therefore assumes that any costs associated with this group of children will be negligible. To the extent that this assumption is incorrect, the analysis will understate total cost and overstate total savings created by the bill.

SOURCES OF DATA: North Carolina Department of Public Instruction (DPI), Fiscal Research Division's North Carolina Individual Income Tax Model, Florida's McKay Scholarship Program.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristopher Nordstrom

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 13, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 358
Committee Substitute Favorable 3/24/11

Short Title: Apex/Cary Annexation Into Chatham Restricted. (Local)

Sponsors:

Referred to:

March 16, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE APPROVAL OF THE BOARD OF COMMISSIONERS OF CHATHAM COUNTY BEFORE THE TOWNS OF APEX OR CARY MAY MAKE AN INVOLUNTARY ANNEXATION INTO CHATHAM COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Neither the Towns of Apex nor Cary may adopt an annexation ordinance under Part 3 of Article 4A of Chapter 160A of the General Statutes that applies to any territory located within Chatham County unless the Board of Commissioners of Chatham County has, prior to the adoption of the annexation ordinance, approved a resolution or ordinance consenting to that annexation.

SECTION 2. This act is effective when it becomes law and applies with respect to any annexation ordinance adopted after the date this act becomes law.

HOUSE BILL 358:
Apex/Cary Annexation Into Chatham Restricted

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2011
Introduced by:	Reps. Hackney, Stam	**Prepared by:**	Greg Roney Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 358 would require the Towns of Apex and Cary to obtain approval from the Chatham County Board of Commissioners before any involuntary annexation into Chatham County.

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

Pursuant to this Section, the General Assembly enacted Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to involuntarily add territory to their municipal limits, if the area meets the statutory requirements for involuntary annexation. Generally, a municipality may involuntarily annex property if: (1) it is adjacent or contiguous to the city; (2) 1/8 of the external boundary area coincides with the city boundary; (3) it is not part of another city; and (4) it is developed for urban purposes.

BILL ANALYSIS: House Bill 358 would require the Towns of Apex and Cary to obtain approval from the Chatham County Board of Commissioners before adoption of any annexation ordinance under Part 3 of Article 4A of the Chapter 160A of the General Statutes, which governs involuntary annexation by cities of 5,000 or more, that applies to any territory in Chatham County.

EFFECTIVE DATE: This act is effective when it becomes law and applies to any annexation ordinance adopted after the date this act becomes law.

Giles S. Perry with the Research Division substantially contributed to this summary.

H358-SMTM-53(e2) v1

SENATE FINANCE COMMITTEE
Wednesday, June 15, 2011 at 6:10 PM
Room 643, Legislative Office Building

MINUTES

The Senate Finance Committee reconvened at 6:10 PM on June 15, 2011 in room 643 of the Legislative Office Building. Twenty-seven members of the committee attended the meeting. Senator Hartsell and Senator Rucho presided as chairs.

H.B. 339 – Housing Authority/Collect Unpaid Rent

Senator Rabon was recognized to explain the bill which would add a housing authority created by a city under Chapter 157 of the General Statutes to the list of local agencies authorized under the Setoff Debt Collection Act to collect unpaid rent from a tenant by obtaining a setup against a debtor's North Carolina tax refund. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 453 – Allow Salary Protection Insurance

Representative Dockham was recognized to explain the bill. It authorizes surplus lines insurers to offer "salary protection insurance" that insures against the loss of earned income because of disability from sickness, ailment, or bodily injury. The maximum benefit payable to an individual (or an individual's beneficiary) from salary protection insurance and any in-force disability income insurance is 75% of the individual's annual earned income. Senator Brock moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 417- Extend Time for Site of Low/Mod. Inc. Housing

Representative McGrady was recognized to explain the bill. It extends from 5 years to 10 years the maximum time period that real property owned by a nonprofit organization as a future site for low or moderate income housing may be exempted from taxation. Senator Kinnaird moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 512 – Rendering Act Amendments

Senator Brock was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS adds a licensing requirement for collectors of waste kitchen grease to the statutes governing the licensing and regulation of rendering plants. It also changes the House Bill to be identical to the Senate companion. Senator Kinnaird moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 662 – Electronic Monitoring Fee

Senator Rabon was recognized to explain the bill. It authorizes counties that provide electronic monitoring imposed as a condition of a defendant's bond or pretrial release to collect a fee from the defendant for the actual costs of providing the monitoring or the jail fee authorized in G.S. 7A-313, whichever is less. The fee may not be collected from a defendant who is determined to be indigent and entitled to court-appointed counsel. Senator Atwater moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 467 – Naturopathic Licensing Act

Senator Hartsell was recognized to explain the bill. It would establish the North Carolina Naturopathic Doctors Licensure Act and adds performing acts of prenatal, intrapartum, postpartum, newborn, and interconceptual care to the list of acts prohibited by naturopathic doctors. It also changes the penalty for practicing without licensure from a Class I misdemeanor to a Class I felony. Dr. Susan Delay was recognized to answer questions. Sandy Sands, representing the NC Chiropractic Association was recognized to say that the chiropractors had no opposition to this version of the bill. Chip Baggett, NC Medical Society's lobbyist, was recognized to object to the bill. Senator Hartsell requested that the bill be displaced so that differences could be mediated. A copy of the bill, the summary and the fiscal memo is attached.

S.B. 682 – Tax Deduction for Sharing Health Care Costs

Senator Hunt was recognized to explain the bill which would grant an income tax deduction to individual who pay the medical expenses of other individuals through a health care sharing organization. Senator Atwater moved for a favorable report and the motion carried. A copy of the bill and the fiscal memo is attached.

H.B. 113 – Motorcycle Safety Act

Senator Soucek was recognized to explain the bill. It creates an enhanced penalty for violation of an existing motor vehicle law, which requires drivers to check for safety and then signal before making certain movements, if the violation causes a motorcycle to leave its travel lane or results in a crash causing property damage or injury to a motorcycle operator. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 596 – Transfer Surplus Prop. To Retirement System

Representative Stam was recognized to explain the bill. It modifies the allocation of the proceeds from the disposition of surplus real property with an appraised value below $6,000,000 as follows: 25% to the State agency allocated the property, 25% to the General Fund, and 50% to the Teachers' and State Employees' Retirement System.

Senator Stevens moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 751 – Clarify Mill Machinery Privilege Tax

Senator Brock was recognized to explain the bill. Senator Newton moved to adopt the PCS for discussion and the motion carried. The bill substitutes the 1%, $80 cap excise tax for the State and local sales and use tax on the following: 1) specialized equipment purchased by a business for use at a port facility to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities, and 2) mill machinery, distribution machinery, or parts or accessories for mill machinery purchased by a large manufacturing and distribution facility for storage, use or consumption in this State. The PCS adjusts the investment and employment levels, and provides a sales tax refund for purchases made on or after July 1, 2012, and before July 1, 2013; the refund is payable on or after July 1, 2013, so that the bill does not impact budget availability for this biennium. Senator Goolsby was recognized to offer an amendment which would add two provisions to the bill. The first authorizes the Secretary of Commerce to designate certain areas as Port Enhancement Zones and makes certain businesses located within these zones eligible to tier one tax treatment. The second part requires a reduction of the tax credit for substantial investment in other property if the requisite number of people employed at the location falls below the statutory requirement of 200 employees. Senator Goolsby moved for the adoption of the amendment and the motion carried. Senator Daniel was recognized to offer an amendment which amends the authorization to issue special indebtedness for an educational building at Appalachian State University. He moved for the adoption of the amendment and the motion carried. Canaan Huie, Department of Revenue counsel, was recognized to further explain the bill and answer questions. Senator Brock moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the amendments is attached.

The meeting adjourned at 7:58 PM.

Senator Fletcher Hartsell, Chair

Senator Bob Rucho, Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 15, 2011

Senator RUCHO,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **682** Tax Deduction for Sharing Health Care Costs.
Sequential Referral: None
Recommended Referral: None

H.B. **113** Motorcycle Safety Act.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **339** Housing Authority/Collect Unpaid Rent.
Sequential Referral: None
Recommended Referral: None

H.B. **417** Extend Time For Site Of Low/Mod. Inc. Housing.
Sequential Referral: None
Recommended Referral: None

H.B. **453** Allow Salary Protection Insurance.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **596** Transfer Surplus Prop. to Retirement System.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **662** Electronic Monitoring Fee.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **289** Authorize Various Special Plates.
Draft Number: 80272
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 8

Committee Clerk Comments:

Senate Finance Committee
Wednesday, June 15, 2011, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 24	Expand Duties of Economic Dev. Oversight Comm.	Representative Carney Representative Dollar Representative Brown Representative Wilkins, Jr.
HB 242	Nat. Gas/Bond/Fee/Landowner Protect'n/Study.	Representative Stone Representative Gillespie
HB 289	Authorize Various Special Plates.	Representative Gillespie
HB 339	Housing Authority/Collect Unpaid Rent.	Representative Cook
HB 344	Tax Credits for Children with Disabilities.	Representative Jones, Jr. Representative Jordan Representative Stam Representative Randleman
HB 358	Apex/Cary Annexation Into Chatham Restricted.	Representative Hackney Representative Stam
HB 367	Roanoke Rapids Deannexation.	Representative Bryant Representative Bradley, Jr.
HB 384	Register of Deeds/Fees.	Representative Howard Representative Rapp Representative West Representative Wilkins, Jr.
HB 409	Guilford Tech. May Lease Property.	Representative Adams Representative Faircloth, Jr. Representative Jeffus Representative Harrison
HB 411	Iredell Correctional Facility/DOT Storage.	Representative Howard
HB 417	Extend Time For Site Of Low/Mod. Inc. Housing.	Representative McGrady
HB 453	Allow Salary Protection Insurance.	Representative Dockham
HB 486	Tryon Deannexation.	Representative Guice
HB 508	Modify Mecklenburg County Local Taxes.	Representative Earle Representative Moore Representative Samuelson
HB 512	Rendering Act Amendments.	Representative Torbett

HB 518	Authorize Add'l Person County Occupancy Tax.	Representative Wilkins, Jr.
HB 573	Raleigh/Wake Forest Boundary.	Representative Avila
HB 596	Transfer Surplus Prop. to Retirement System.	Representative Crawford, Jr. Representative Hastings Representative Stam
HB 662	Electronic Monitoring Fee.	Representative Shepard Representative Cook
SB 467	Naturopathic Licensing Act.	Senator Hartsell Senator Apodaca
SB 682	Tax Deduction for Sharing Health Care Costs.	Senator Hunt

Adjournment

HOUSE BILL 339
Committee Substitute Favorable 4/13/11

Short Title: Housing Authority/Collect Unpaid Rent. (Public)

Sponsors:

Referred to:

March 15, 2011

A BILL TO BE ENTITLED

AN ACT AUTHORIZING A HOUSING AUTHORITY TO COLLECT UNPAID DELINQUENT DEBT BY SETTING OFF THE DEBT AGAINST A STATE INCOME TAX REFUND DUE A TENANT OR FORMER TENANT OF THE HOUSING AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105A-2(6) reads as rewritten:

"(6) Local agency. – Any of the following:

a. A county, to the extent it is not considered a State agency.

b. A municipality.

c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.

e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes or other authorizing legislation.

f. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.

g. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

h. A housing authority created under Chapter 157 of the General Statutes, provided that the debt owed to a housing authority has been reduced to a final judgment in favor of the housing authority."

SECTION 2. This act becomes effective October 1, 2011.

HOUSE BILL 339:
Housing Authority/Collect Unpaid Rent

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Rep. Cook	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 339 would add a housing authority created by a city under Chapter 157 of the General Statutes to the list of local agencies authorized under the Setoff Debt Collection Act to collect unpaid rent from a tenant by obtaining a setoff against a debtor's North Carolina tax refund.***

CURRENT LAW: The Setoff Debt Collection Act authorizes State and local agencies to collect debts by diverting part or all of a debtor's North Carolina tax refund to pay a debt that an individual or a business owes to a particular agency.[1] Before January 1, 2001, the setoff program was open only to State agencies. Now, counties and municipalities participate through a clearinghouse. Because there are so many local agencies, funneling their claims through a clearinghouse avoids an undue administrative burden on the Department of Revenue. A $15.00 collection assistance fee is added to each local agency debt submitted for setoff, which is remitted to the clearinghouse that submitted the debt. The fee does not, however, apply to child support debts. While the use of debt setoff for State agencies is mandatory, usage by local agencies is optional. The Act also only applies to debts that are at least $50 and to a refund that is at least this same amount. Local agencies are required to give written notice to the debtor of the intent to submit the debt for setoff, explaining the basis for the agency's claim, that the agency intends to apply the debtor's refund against the debt, and that an administrative fee of $15 will be charged.

Currently, local agencies include:

- A county
- A municipality
- A water and sewer authority
- A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both
- A public health authority
- A metropolitan sewerage district
- A sanitary district

BILL ANALYSIS: This bill would allow a housing authority created under Chapter 157 of the General Statutes to participate under the Setoff Debt Collection Act in the same manner as counties and cities. Like counties and cities, these agencies would be authorized to submit their debts for collection by setoff through a local clearinghouse only after providing the debtor with notice, an opportunity to be heard before the authority, and an appeal process pursuant to the Administrative Procedure Act.

EFFECTIVE DATE: This act is effective October 1, 2011.

H339-SMRB-102(e2) v1

[1] Prior to 2010, the Setoff Debt Collection Act applied only to income tax refunds. S.L. 2010-31, Section 31.8, expanded the Act to apply to any type of tax refund.

HOUSE BILL 453

Short Title:	Allow Salary Protection Insurance.	(Public)
Sponsors:	Representative Dockham (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Insurance.	

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PLACEMENT AND ISSUANCE OF SALARY PROTECTION INSURANCE UNDER THE SURPLUS LINES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-21-10 reads as rewritten:

"**§ 58-21-10. Definitions.**

As used in this Article:

(1) "Admitted insurer" means an insurer licensed to do an insurance business in this State.

(2) "Capital", as used in the financial requirements of G.S. 58-21-20, means funds paid in for stock or other evidence of ownership.

(3) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under G.S. 58-21-20.

(4) "Export" means to place surplus lines insurance with a nonadmitted insurer.

(5) "Nonadmitted insurer" means an insurer not licensed to do an insurance business in this State. This definition includes insurance exchanges authorized under the laws of various states.

(6) "Producing broker" means an agent or broker licensed under Article 33 of this Chapter who deals directly with the party seeking insurance and who may also be a surplus lines licensee.

(6a) "Salary protection insurance" means insurance against financial loss caused by the cessation of earned income because of disability from sickness, ailment, or bodily injury.

(7) "Surplus", as used in the financial requirements of G.S. 58-21-20, means funds over and above liabilities and capital of the company for the protection of policyholders.

(8) "Surplus lines insurance" means any insurance in this State of risks resident, located, or to be performed in this State, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, ~~other than~~ including salary protection insurance. The term does not include reinsurance, commercial aircraft insurance, wet marine and transportation insurance, insurance independently procured pursuant to G.S. 58-28-5, life and accident or health insurance, and annuities.

(9) "Surplus lines licensee" means a person licensed under G.S. 58-21-65 to place insurance on risks resident, located, or to be performed in this State with nonadmitted insurers eligible to accept such insurance.

(10) "Wet marine and transportation insurance" means:

a. Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

b. Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;

c. Insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and

d. Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters including transportation by land, water, or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment, or reshipment incident thereto."

SECTION 2. Article 21 of Chapter 58 is amended by adding a new section to read:

"**§ 58-21-22. Limitation on amount of salary protection insurance.**

When salary protection insurance benefits are payable to an individual or an individual's beneficiary, the amount of salary protection insurance plus the amount of any in-force disability income insurance, if the individual can obtain disability insurance from an admitted insurer, shall not exceed seventy-five percent (75%) of the individual's annual earned income. As used in this section, "disability income insurance" has the same meaning as "accident and health insurance" in G.S. 58-7-15(3)."

SECTION 3. This act becomes effective October 1, 2011.

HOUSE BILL 453:
Allow Salary Protection Insurance

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Rep. Dockham	**Prepared by:**	Greg Roney Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 453 authorizes surplus lines insurers to offer "salary protection insurance" that insures against the loss of earned income because of disability from sickness, ailment, or bodily injury. The maximum benefit payable to an individual (or an individual's beneficiary) from salary protection insurance and any in-force disability income insurance is 75% of the individual's annual earned income.***

Because the bill would create a new type of insurance subject to the premium receipts tax (G.S. 58-21-85), the bill must be re-referred to Senate Finance.

CURRENT LAW: Surplus lines insurers are allowed to offer coverage that is not available from insurers licensed in the State, referred to as admitted insurers. G.S. 58-21-85 imposes a 5% tax on the gross premiums charged for surplus lines insurance. State law does not currently allow surplus lines insurers to offer salary protection insurance through normal channels such as agents for surplus lines insurers.

G.S. 58-28-5 allows individuals to independently procure (i.e., without the involvement of an agent, broker, or surplus lines licensee) salary protection insurance. Individuals who independently procure insurance must file a report and pay a 5% tax on the gross premiums.

G.S. 58-51-130 gives the standards for disability income insurance offered by admitted insurers.

BILL ANALYSIS: Section 1 of House Bill 453 would amend G.S. 58-21-10 to define "Salary protection insurance" as "insurance against financial loss caused by cessation of earned income because of disability from sickness, ailment, or bodily injury." The definition of "Surplus lines insurance" is expanded to specifically include salary protection insurance.

Section 2 of House Bill 453 would add a new section to Chapter 58 (G.S. 58-21-22) setting the maximum benefit payable to an individual (or an individual's beneficiary) from salary protection insurance and any in-force disability income insurance at 75% of the individual's annual earned income. For the 75% limit on annual earned income, disability income insurance from an admitted insurer is defined as "insurance against death or personal injury by accident or by any specified kinds of accident and insurance against sickness, ailment or bodily injury."

BACKGROUND: As an industry practice, admitted insurers offer disability insurance limited to 60% of an individual's earned income with a monthly maximum benefit of $15,000. Extremely high earning individuals such as athletes and performers cannot purchase disability insurance sufficient to replace their monthly income due to the $15,000 monthly maximum benefit. House Bill 453 would allow surplus lines insurers to offer salary protection insurance capped at a statutory maximum of 75% of the individual's annual earned income.

EFFECTIVE DATE: House Bill 453 would become effective October 1, 2011.

HOUSE BILL 417

Short Title:	Extend Time For Site Of Low/Mod. Inc. Housing.	(Public)
Sponsors:	Representative McGrady (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Commerce and Job Development.	

March 22, 2011

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE TIME PERIOD FOR HOLDING REAL PROPERTY AS A FUTURE SITE FOR HOUSING FOR LOW- OR MODERATE-INCOME INDIVIDUALS AND FAMILIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-278.6 reads as rewritten:

"**§ 105-278.6. Real and personal property used for charitable purposes.**

(a) Real and personal property owned by:

...

(8) A nonprofit organization providing housing for individuals or families with low or moderate incomes

shall be exempted from taxation if: (i) As to real property, it is actually and exclusively occupied and used, and as to personal property, it is entirely and completely used, by the owner for charitable purposes; and (ii) the owner is not organized or operated for profit.

...

(e) Real property held by an organization described in subdivision (a)(8) for a charitable purpose under this section as a future site for housing for individuals or families with low or moderate incomes may be classified under this section for no more than ~~five~~ 10 years. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property was not used for low- or moderate-income housing within ~~five~~ 10 years from the first day of the fiscal year the property was classified under this subsection. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished when the property is used for low- or moderate-income housing within the time period allowed under this subsection."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.

HOUSE BILL 417:
Extend Time For Site Of Low/Mod. Inc. Housing

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Rep. McGrady	**Prepared by:**	Greg Roney
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 417 would extend from 5 years to 10 years the maximum time period that real property owned by a nonprofit organization as a future site for low or moderate income housing may be exempted from taxation.***

CURRENT LAW: Real and personal property owned by a nonprofit organization providing housing for individuals or families with low or moderate incomes is exempt from property taxation if the owner is not organized or operated for profit and (1) as to real property, it is actually and exclusively occupied and used and (2) as to personal property, it is entirely and completely used by the owner for charitable purposes.

Real property held by a nonprofit organization as a future site for housing for individuals or families with low or moderate incomes may be exempted from taxation for a maximum of 5 years. The taxes otherwise due are a lien on the property. The taxes are carried forward to the next year as deferred taxes and are due if the property loses eligibility because of a disqualifying event. A disqualifying event occurs when the property is not used for low or moderate income housing within 5 years from the first day of the fiscal year the property was classified as exempt.

BILL ANALYSIS: House Bill 417 would provide that real property held by a nonprofit organization as a future site for low or moderate income housing may be exempted from taxation for a maximum of 10 years.

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.

Brad Krehely, counsel to House Commerce, substantially contributed to this summary.

H417-SMTM-46(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 512
Committee Substitute Favorable 5/19/11
Committee Substitute #2 Favorable 6/9/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H512-CSTD-56 [v.1]

6/14/2011 2:12:23 PM

Short Title: Rendering Act Amendments. (Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING RENDERING PLANTS AND OPERATIONS AND TO BRING THE COLLECTION OF WASTE KITCHEN GREASE WITHIN THE PURVIEW OF THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14A of Chapter 106 of the General Statutes reads as rewritten:

"Article 14A.

"Licensing and Regulation of Rendering ~~Plants and~~ Plants, Rendering ~~Operations.~~Operations, and Waste Kitchen Grease Collection.

"§ 106-168.1. Definitions.

For the purposes of this Article, unless the context or subject matter otherwise clearly ~~requires,~~ requires:

(1) "Collector" means any person, as defined in this section, who collects raw material or waste kitchen grease for the purpose of selling the same to any renderer or other person for further processing. "Collector" does not include restaurants or other food establishments that generate kitchen grease.

(1a) "Farmer" means any person actively engaged in agriculture as defined in G.S. 106-581.1. "Farmer" does not include a person who cultivates a garden solely for personal use.

...

(6) "Waste kitchen grease" means animal fats or vegetable oils that have been used, and will not be reused, for cooking in a food establishment. "Waste kitchen grease" does not include grease septage as defined in G.S. 130A-290.

"§ 106-168.2. License required.

No person shall engage in rendering operations or act as a collector of waste kitchen grease unless such person shall hold a valid license to do so issued as hereinafter provided.

"§ 106-168.3. Exemptions.

Nothing in this Article shall apply to the premises or the rendering operations on the premises of any establishment operating under a numbered permit from the North Carolina

Department of Agriculture and Consumer Services as provided by the North Carolina Meat Inspection Act, or under United States government ~~inspection.~~inspection; provided, however, no person shall be exempt from the requirements of this Article when acting as a collector of waste kitchen grease.

"§ 106-168.4. Application for rendering license.

Application for license shall be made to the Commissioner of Agriculture, hereinafter called the "Commissioner," on forms provided by ~~him.~~the Commissioner. The application shall set forth the name and residence of the applicant, ~~his~~ the applicant's present or proposed place of business, the particular method which ~~he~~ the applicant intends to employ or employs in the processing of raw material, and such other information as the Commissioner may ~~require, except that the Commissioner shall not require the submission of blueprints, plans, or specifications of the existing plant or equipment of any person owning and operating a rendering plant in North Carolina on January 1, 1953.~~ require. The applicant shall pay a fee of ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) with each ~~application, which said fee shall be the only charge made in connection with licensure.~~application and a renewal fee of one hundred dollars ($100.00) annually after meeting the renewal requirements of this Article.

"§ 106-168.5. Duties of Commissioner upon receipt of ~~application;~~ the application for a rendering license; inspection committee.

Upon receipt of the ~~application,~~ application for a rendering license, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee," which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture and Consumer Services, one member who shall be designated by the Secretary of Health and Human Services and who shall be an employee of the Department of Health and Human Services, and one member who shall be designated by the ~~director~~ board of directors of the North Carolina ~~Division of the Southeastern~~ Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member.

"§ 106-168.6. Inspection by committee; certificate of specific findings.

...

"§ 106-168.7. Issuance of rendering license.

Upon receipt of the certificate of compliance from the committee, the Commissioner shall issue a rendering license to the applicant to conduct rendering operations as specified in the application. A license shall be valid ~~until revoked for cause as hereinafter provided.~~for one year and shall be renewed upon submission of a certification under oath of compliance with the requirements of this Article for licensure and payment of the annual renewal fee.

"§ 106-168.8. Minimum standards for conducting rendering operations.

The following minimum standards shall be required for all rendering operations subject to the provisions of this Article:

...

(8) Proof of general liability insurance of one million dollars ($1,000,000) shall be made in a manner satisfactory to the Commissioner.

"§ 106-168.9. Transportation by licensee.

Any person holding a rendering license under the provisions of this Article, or acting as a collector as herein defined, may haul and transport raw ~~material,~~ material or waste kitchen grease, except such material or waste kitchen grease as may be specifically prohibited by law or

by the rules and regulations promulgated by the Commissioner, when such transporting and hauling is done in accordance with the provisions of this Article.

"§ 106-168.10. Disposal of diseased animals.

Any person holding a rendering license under the provisions of this Article is authorized to kill diseased, sick, old or crippled animals on the premises of the owner upon his request; provided that no animal known to have tuberculosis, Bang's disease, anthrax, or any other disease for which quarantine may be imposed, shall be removed from any premises placed under quarantine without permission of the State Veterinarian, or his authorized agent. The licensee shall keep and make available to the Commissioner, upon request, such records as the Commissioner may require with respect to the collection and disposal of dead animals.

"§ 106-168.11. Authority of agents of rendering licensee.

Authority granted to any person holding a valid rendering license under the provisions of this Article shall extend also to the agents and employees of such person while acting within the scope of their authority. All such agents and employees shall comply with the provisions of this Article and rules and regulations not inconsistent therewith, and shall display evidence of such employment or agency upon proper request at any time while so acting.

"§ 106-168.12. Commissioner authorized to adopt rules and regulations.

...

"§ 106-168.13. Effect of failure to comply.

...

"§ 106-168.14. Collectors of raw material subject to certain provisions.

Any ~~collector,~~ collector of raw material, as defined in ~~this Article,~~G.S. 106-168.1, shall be subject to the provisions of subdivision (5) and subdivision (6) of G.S. ~~106-168.8~~106-168.8 and the provisions of G.S. 106-168.9, and any rules and regulations adopted by the Commissioner pursuant thereto.

"§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

(a) Any collector of waste kitchen grease shall submit an application for licensure to the Commissioner not less than 30 days before conducting any such collection or transportation. Licensure shall be for one year. The application shall be submitted in accordance with a procedure established by the Commissioner for this purpose. The application shall include all of the following:

(1) The applicant's name and address.

(2) A description of the operations to be performed by the applicant.

(3) The make, model, license number, and vehicle identification number of any vehicle to be used for the transportation of waste kitchen grease.

(4) A nonrefundable application fee of one hundred dollars ($100.00).

(b) The Commissioner shall issue each licensee a unique license number and a certificate. The license shall be renewable annually January 1, when accompanied by a one hundred dollar ($100.00) licensing renewal fee and certification of compliance with the provisions of this Article.

(c) Every licensee shall record, maintain for two years, and make available for inspection by the Department all of the following information:

(1) The name and address of each location or person from which the registrant obtained the waste kitchen grease for transportation.

(2) The quantity of material received from each location or person.

(3) The date on which the waste kitchen grease was obtained from each location or person.

(4) The waste kitchen grease operation or other processor to whom the waste kitchen grease was delivered.

(d) No person required to be licensed under this Article shall collect or transport waste kitchen grease without all of the following:

(1) Having in his or her possession a copy of the license required by this Article or other proof that the person is in compliance with the licensure requirement of this Article.

(2) Conspicuously displaying the licensee's name and the license number in letters not less than three inches high on any vehicle used for the transportation of waste kitchen grease.

(e) It shall be a violation of this Article for a collector to do any of the following:

(1) Sell or offer for sale to any person unlicensed under this Article any waste kitchen grease, knowing such unlicensed person would transport such waste kitchen grease in violation of this Article.

(2) Steal, misappropriate, contaminate, or damage any waste kitchen grease container or grease therein.

(3) Take or possess waste kitchen grease from a collector that is not licensed under this section unless otherwise allowed under this Article, or knowingly take possession of waste kitchen grease that has been stolen.

(4) Place a label on a waste kitchen grease container owned by another person in order to assert ownership over the container.

(f) This section does not apply to a farmer who collects waste kitchen grease for a use that is related to his or her farm.

"**§ 106-168.14B. Presumption of ownership.**

A container in which waste kitchen grease is deposited that bears a name on the container shall be presumed to be owned by that person named on the container.

"**§ 106-168.15. Violation a misdemeanor.**

Any person conducting rendering operations or collecting raw material or waste kitchen grease in violation of the provisions of this Article shall be guilty of a Class 1 misdemeanor.

"**§ 106-168.16. Civil penalties.**

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-79.2. Larceny of waste kitchen grease.**

If any person shall take and carry away, or shall aid in taking or carrying away, any waste kitchen grease container or the waste kitchen grease contained therein, which container bears a notice that unauthorized removal is prohibited without written consent of the owner of the container, that person shall be guilty of:

(1) A Class 1 misdemeanor if the value of the waste kitchen grease container, or the container and the waste kitchen grease contained therein, is one thousand dollars ($1,000) or less.

(2) A Class H felony if the value of the waste kitchen grease container, or the container and the waste kitchen grease contained therein, is more than one thousand dollars ($1,000)."

SECTION 3. This act becomes effective January 1, 2012, and applies to offenses committed on or after that date.

HOUSE BILL 512:
Rendering Act Amendments

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Rep. Torbett	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Third Edition H512-CSTD-56		

SUMMARY: The PCS to House Bill 512 would add a licensing requirement for collectors of waste kitchen grease to the statutes governing the licensing and regulation of rendering plants.

The PCS changes the House Bill to be identical to the Senate companion, which was given a favorable report by Senate Finance on June 9, 2011.

[As introduced, this bill was identical to S599, as introduced by Sens. Bingham, Brock, Rouzer, which is currently in House Finance.]

CURRENT LAW: The collection of waste kitchen grease currently is not regulated. Persons engaged in rendering operations are required to obtain a rendering license for $50. The license is valid until revoked for cause. Rendering operations is defined as the processing of inedible whole or portion of animal or poultry carcasses and includes collection of such raw material for the purpose of processing.

BILL ANALYSIS: The PCS to House Bill 512 would amend the laws governing the licensing and regulation of rendering plants to include the collection of waste kitchen grease. The bill would add a definition of "waste kitchen grease" to mean animal fats or vegetable oils that have been used and will not be reused for cooking in a food establishment. It does not include grease septage.

Section 1 would do the following:

- Require persons engaged in collecting waste kitchen grease to obtain an annual license for $100, similar to a rendering operations license. Collectors of waste kitchen grease would be required to apply for a license not less than 30 days before beginning collection or transportation of the waste. Applications are to include (1) name and address, (2) description of operations, (3) make, model, license number and vehicle id number of vehicles used to transport waste kitchen grease, and (4) $100 application fee.
- Require waste kitchen grease licensees to have a copy of their license in their possession at all times or other proof of compliance when collecting or transporting waste, waste kitchen grease. The licensee's name and license number must be conspicuously displayed (3" or greater letters) on any vehicle used to transport waste kitchen grease.
- Require waste kitchen grease licensees to keep records for two years and these records must be made open to the Department for inspection. Records must contain (1) name and address of each location or person from whom waste kitchen grease was obtained, (2) quantity of material from each location, (3) date on which material was obtained, and (4) the waste kitchen grease operation or other processor to whom the waste was delivered.
- Make it unlawful for collectors to (1) sell or offer to sell waste kitchen grease to a person not licensed to transport the waste, (2) steal, contaminate, or damage any waste kitchen grease container or grease, (3) take grease from an unlicensed collector or knowingly take possession of grease that has been stolen, or (4) place a label on a waste kitchen grease container owned by another in order to assert ownership of the container.

- Increase the application fee for a rendering license from $50 to $100 and add an annual renewal fee of $100.
- Add a requirement for proof of general liability insurance in the amount of $1 million dollars for a rendering operation.
- Clarify that a person holding a rendering license or acting as a collector may haul and transport raw materials or waste kitchen grease.
- Clarify that a person holding a rendering license (and not a collector of waste kitchen grease) may kill diseased, old, or crippled animals on the premises of the owner if asked.

Any person collecting waste kitchen grease in violation of these provisions would be subject to a Class 1 misdemeanor[1] and up to a $5,000 civil penalty assessed by the Commissioner of Agriculture. (Under current law, violations of rendering operations are already subject to a Class 1 misdemeanor and up to $5,000 in civil penalties assessed by the Commissioner.)

These provisions do not apply to a farmer who collects waste kitchen grease for use related to his or her farm. There is a presumption that a waste kitchen grease container belongs to the person whose name is on the container.

Section 2 would make it a Class H felony[2] to take or aid in the taking of a waste kitchen grease container or the waste kitchen grease contained therein, if the container bears a notice that unauthorized removal is prohibited without the written consent of the owner, and the value of the container or the container with the grease, is more than $1,000. If the value is $1,000 or less, then the offense is a Class 1 misdemeanor.

EFFECTIVE DATE: The act would become effective January 1, 2012 and apply to offenses occurring on or after that date.

Barbara Riley, committee counsel to House Agriculture, substantially contributed to this summary.

H512-SMTD-103(CSTD-56) v1

[1] Assuming no prior convictions, a Class 1 misdemeanor would be subject to 1 to 45 days community punishment.
[2] Assuming no prior points, a Class H felony would be subject to 3 to 8 months of community punishment, intermediate punishment, or active punishment.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 662
Committee Substitute Favorable 6/1/11
Third Edition Engrossed 6/2/11

Short Title: Electronic Monitoring Fee. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTIES THAT PROVIDE ELECTRONIC MONITORING FOR OFFENDERS TO COLLECT A FEE TO RECOVER THE ACTUAL COSTS OF PROVIDING THAT MONITORING.

The General Assembly of North Carolina enacts:

SECTION 1. Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-313.1. Fee for costs of electronic monitoring.**

A county that provides the personnel, equipment, and other costs of providing electronic monitoring as a condition of an offender's bond or pretrial release may collect a fee from the offender that is the lesser of the amount of the jail fee authorized in G.S. 7A-313 or the actual cost of providing the electronic monitoring. A county may not collect a fee from an offender who is determined to be indigent and entitled to court-appointed counsel."

SECTION 2. This act becomes effective July 1, 2011.

HOUSE BILL 662:
Electronic Monitoring Fee

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 14, 2011
Introduced by:	Reps. Cook, Shepard	**Prepared by:**	Trina Griffin
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 662 would authorize counties that provide electronic monitoring imposed as a condition of a defendant's bond or pretrial release to collect a fee from the defendant for the actual costs of providing the monitoring or the jail fee authorized in G.S. 7A-313, whichever is less. The fee may not be collected from a defendant who is determined to be indigent and entitled to court-appointed counsel. This bill would become effective July 1, 2011.***

CURRENT LAW: In 2009, the General Assembly made changes concerning the process for determining the conditions of pretrial release. House arrest with electronic monitoring ("Electronic house arrest" or "EHA") was established as a fifth type of pretrial release and, if imposed, requires the defendant to execute a secured bond. House arrest with electronic monitoring requires a defendant to remain at his or her residence unless the court has authorized the defendant to leave for the purpose of employment, counseling, a course of study, or vocational training. The defendant is also required to wear a device that permits the supervising agency to electronically monitor the defendant's compliance with the condition. The legislation did not provide any funds to implement EHA for pretrial release purposes. Upon conviction, a defendant who was placed on EHA within the scope of pretrial release services administered by a county agency is assessed a one-time $15 fee,[1] which is remitted to the county providing the service.[2] However, there is no statutory authority to assess a fee for defendants who are not convicted or for an amount greater than $15 for those who are convicted. Therefore, other than the $15 fee as described, counties currently bear the cost of EHA.[3]

The cost of administering an EHA progam varies. As a reference, it costs the Department of Correction $11.07 per defendant per day for GPS monitoring; Pitt County indicates that it costs $16.00 per defendant per day to implement its program. Also, a defendant who is subject to house arrest as a special condition of probation or who is subject to satellite-based monitoring due to conviction of certain sex offenses must pay a one-time $90 electronic monitoring device fee, which is paid to the clerk of court. The fee may be waived for good cause and upon motion of the defendant.

BILL ANALYSIS: House Bill 662 would authorize counties that provide the personnel, equipment, and other costs of providing electronic monitoring as a condition of an offender's bond or pretrial release to collect a fee directly from the defendant representing the lesser of the following:

- The actual cost of providing the electronic monitoring. "Actual costs" could cover rental of the equipment as well as administrative costs for personnel and other aspects of the program. The fee may vary from county to county depending on how a county calculates its actual cost.

[1] G.S. 7A-304(a)(5).

[2] The cost may only be assessed if the defendant was accepted and released to the supervision of the agency providing the pretrial release service.

[3] S.L. 2008-20, which is a local act that applies only to Randolph County, authorizes the clerk of superior court in that county to accept payment of the fee charged by the county sheriff for offenders ordered to participate in pretrial electronic monitoring.

- The jail fee authorized in G.S. 7A-313. That statute authorizes a fee in the amount of five dollars ($5.00) for each 24 hours' confinement, or fraction thereof.

The bill provides that the fee may not be collected from a defendant who is determined to be indigent and entitled to court-appointed counsel.

EFFECTIVE DATE: This act becomes effective July 1, 2011.

H662-SMRB-103(e3) v1

SENATE BILL 467
Health Care Committee Substitute Adopted 6/14/11

Short Title: Naturopathic Licensing Act. (Public)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA NATUROPATHIC DOCTORS LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 43.

"Naturopathic Doctors.

"**§ 90-730. Short title.**

This Article may be cited as the 'North Carolina Naturopathic Doctors Licensure Act.'

"**§ 90-731. Intent; purpose.**

(a) Intent. – The General Assembly finds that a significant number of residents of the State of North Carolina choose complementary and alternative health care and declares that naturopathic treatment is a distinct health care profession that affects the public health, safety, and welfare and provides for choices in health care. The General Assembly concludes that licensure is in the current interest of North Carolina citizens to aid in protecting citizens from deception, fraud, and damage to their health status. Licensure can provide a process in which citizens may more confidently rely on the level of skill, education, and competency possessed by licensed persons.

(b) Purpose. – The purpose of this Article is to provide standards for the licensure of naturopathic doctors desiring to practice naturopathic medicine in this State and to ensure the maintenance of professional competence and acceptable standards of practice.

"**§ 90-732. Definitions.**

The following definitions apply in this Article:

(1) Approved program of naturopathic medicine. – A program that meets all of the following conditions:

a. A program that provides graduate level full-time didactic and supervised clinical training that is accredited, or has achieved candidacy status for accreditation, by the Council on Naturopathic Medical Education Program or its federally recognized successor agency.

b. A program that is offered by an institution of higher education that is accredited by a regional or national institutional accrediting agency recognized by the United States Secretary of Education.

c. If the program is offered in the United States, a program that awards the degree of Doctor of Naturopathy or Doctor of Naturopathic

Medicine. If the program is offered in Canada, a program that awards the degree or diploma of Doctor of Naturopathy or Doctor of Naturopathic Medicine, and is offered by an institution of higher education that has provincial approval for participation in government-funded student aid programs.

(2) Board. – The North Carolina Naturopathic Doctors Licensing Board.

(3) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony.

(4) Integrative medicine. – As defined in G.S. 90-1.1(3).

(5) Natural medicines. – Any herbal, nutritional, supplemental, homeopathic, or other nonprescription remedies.

(6) Naturopathic medicine. – A system of natural health care that employs diagnosis and treatment using natural therapies and diagnostic techniques for the promotion, maintenance, and restoration of health and the prevention of disease, including the following:

a. Administering or providing any of the following for preventive and therapeutic purposes: natural medicines, natural therapies, natural topical medicines, hydrotherapy, dietary therapy, and naturopathic physical medicine.

b. Using diagnostic procedures, including physical and orificial examination, but excluding endoscopy, sigmoidoscopy, and colonoscopy.

c. Ordering and interpreting laboratory tests and diagnostic imaging, but excluding electrocardiograms, echocardiograms, electroencephalograms, nuclear imagings, MRIs, CT scans, and other tests that should be conducted and interpreted by a physician licensed under Article 1 of this Chapter.

(7) Naturopathic physical medicine. – The manual use of massage, stretching, or resistance.

(8) Naturopathic doctor. – A person licensed to practice naturopathic medicine under this Article.

"**§ 90-733. Practice of naturopathic medicine; scope of practice.**

(a) Practice of Naturopathic Medicine. – A naturopathic doctor is a licensed health care provider having the same responsibilities as other licensed doctors regarding public health laws, reportable diseases and conditions, communicable disease control and prevention, and the recording of vital statistics. In diagnosing and treating an individual, a naturopathic doctor may employ the following therapies, modalities, procedures, or remedies consistent with naturopathic education and training:

(1) Dispense, administer, and advise the use of natural remedies derived from or substantially similar in molecular structure or function to natural sources for preventive and therapeutic purposes, including food, extracts of food, nutraceuticals, vitamins, minerals, enzymes, botanicals and their extracts, homeopathic remedies prepared according to the Homeopathic Pharmacopoeia of the United States, and all dietary supplements and nonprescription drugs as defined by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.A. § 301, et seq.

(2) Order and perform physical examinations.

(3) Order, perform, and interpret laboratory examinations and diagnostic imaging studies.

(4) Perform hot or cold hydrotherapy, naturopathic physical treatment, electromagnetic energy, and therapeutic exercise.

(5) Perform health education and health counseling.
(6) Perform utilization routes of administration, including oral, nasal, auricular, ocular, rectal, vaginal, and transdermal.
(7) Perform, repair, and care incidental to superficial lacerations and abrasions and apply topical and local anesthetics and antimicrobials.
(8) Remove foreign bodies located in the superficial tissues.

(b) Prohibitions. – A naturopathic doctor may not perform any of the following functions unless otherwise licensed by this State to do so:
(1) Prescribe, dispense, or administer any legend drug, except as authorized by this Article.
(2) Practice or attempt to practice as a medical physician, osteopath, acupuncturist, dentist, podiatrist, optometrist, chiropractor, dietitian or nutritionist, psychologist, advanced practice registered nurse, physician assistant, physical therapist, or any other health care professional not authorized by this Article.
(3) Use general or spinal anesthetics.
(4) Perform procedures using a laser device.
(5) Perform surgical procedures.
(6) Administer ionizing radioactive substances for therapeutic purposes.
(7) Perform chiropractic adjustments.
(8) Perform acupuncture.

"**§ 90-734. License required; exemptions.**

(a) License Required. – On or after January 1, 2012, no person shall practice or offer to practice as a naturopathic doctor, perform naturopathic medicine, or use any card, title, or abbreviation to indicate that the person is a naturopathic doctor unless the person has been licensed under the provisions of this Article. Persons licensed under this Article have the exclusive right to use the titles 'Naturopathic Doctor,' 'Doctor of Naturopathic Medicine,' 'Doctor of Naturopathy,' 'Naturopathic Medicine,' 'Naturopath,' or the abbreviations 'D.N.,' 'N.D.,' 'ND,' and 'D.N.M.'.

(b) Exemptions. – Nothing in this Article shall be construed to prohibit or affect any of the following:
(1) The practice of a profession by an individual who is licensed, certified, or registered under other laws of this State and is performing services within the authorized scope of practice.
(2) The practice of naturopathic medicine by a person employed by the federal government while the person is engaged in the performance of duties prescribed by laws and regulations of the United States.
(3) A person rendering aid in an emergency situation when no fee or other compensation for the service is received.
(4) The practice of naturopathic medicine by a naturopathic doctor duly licensed in another state, territory, or the District of Columbia when called into this State to consult with a licensed physician for a period not to exceed six months.
(5) The practice of naturopathic medicine by students completing a clinical requirement for graduation from a naturopathic training program approved by the Board, so long as the practice is performed under the supervision of a physician licensed under Article 1 of this Chapter and the clinical requirement does not exceed one year.
(6) A person who does not hold himself or herself out to be a naturopathic doctor when that person furnishes information to customers or sells, administers, or utilizes nutritional supplements, herbs, food, homeopathic

preparations, and such physical forces as heat, cold, water, touch, and light at the person's retail, health spa, or health consulting establishment.

(c) Unlawful Act. – A person who violates this section is guilty of a Class 1 misdemeanor. The Board may make application to superior court for an order enjoining a violation of this section. Upon a showing by the Board that a person has violated or is about to violate this section, the court may grant an injunction, restraining order, or take other appropriate action.

"**§ 90-735. North Carolina Naturopathic Doctors Licensing Board.**

(a) Board. – The North Carolina Naturopathic Doctors Licensing Board is created. The Board consists of seven members serving for staggered terms. The initial Board members shall be appointed on or before January 1, 2012, as follows:

(1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two naturopathic doctors who are licensed under this Article. One member shall serve a term of one year, and one member shall serve a term of three years.

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two naturopathic doctors who are licensed under this Article. One member shall serve a term of one year, and one member shall serve a term of two years.

(3) The Governor shall appoint two physicians licensed under Article 1 of Chapter 90 of the General Statutes, at least one of whom shall be involved in the practice of integrative medicine or who teaches integrative medicine at a medical school. Both of these members shall serve a term of three years.

(4) The Governor shall appoint for a two-year term a public member who is not a licensed health care professional and is not employed in a health care profession.

Upon the expiration of the terms of the initial Board members, each member is appointed for a term of three years, beginning on January 1 of each year. A member serves until the member's successor is appointed. No member shall serve on the Board for more than two consecutive terms.

(b) Vacancies. – A member of the Board serves at the pleasure of the authority that appointed the member. A vacancy shall be filled in the same manner as the original appointment. An appointee to fill a vacancy shall serve the remainder of the unexpired term and until the appointee's successor has been duly appointed.

(c) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(d) General Administration. – A Board member may not receive compensation but may receive reimbursement as provided in G.S. 93B-5. The officers of the Board include a chair, a secretary, and any other officer deemed necessary by the Board to carry out the purposes of this Article. All officers shall be elected annually by the Board at its first meeting held after appointments to the Board are made. The Board shall hold a meeting within 45 days of the appointment of new Board members. All officers shall serve one-year terms and shall serve until their successors are elected and qualified. No person shall chair the Board for more than five consecutive years. The Board may adopt rules governing the calling, holding, and conducting of regular and special meetings. A majority of Board members constitutes a quorum.

"**§ 90-736. Powers of the Board.**

The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this Article.

(2) Adopt rules as may be necessary to carry out the provisions of this Article.
(3) Establish, examine, and determine the qualifications and fitness of applicants for licensure and renewal of licensure.
(4) Issue, renew, deny, suspend, or revoke licenses and conduct any disciplinary actions authorized by this Article.
(5) Collect fees for licensure, licensure renewal, and other services deemed necessary to carry out the provisions of this Article.
(6) Establish and approve continuing education requirements for persons licensed under this Article.
(7) Employ and fix the compensation of personnel that the Board determines is necessary to carry out the provisions of this Article and incur other expenses necessary to perform the duties of the Board.
(8) Adopt a seal containing the name of the Board for use on all licenses and official reports issued by the Board.
(9) Institute corrective measures, as necessary, to rehabilitate naturopathic doctors or limit their practice.
(10) Investigate persons engaging in practices which violate the provisions of this Article.

"**§ 90-737. Qualifications for licensure; renewal; reinstatement.**

(a) Licensure. – Upon application to the Board and payment of the required fees, an applicant may be licensed under this Article as a naturopathic doctor if the applicant meets all of the following qualifications and conditions:

(1) Is of good moral and ethical character.
(2) Is a graduate of an approved program of naturopathic medicine.
(3) Meets one of the following two conditions:
a. Has successfully passed a competency-based national naturopathic licensing examination administered by the North American Board of Naturopathic Examiners, or equivalent agency as recognized by the Board.
b. Has successfully passed a competency-based examination approved by the Board and by the North American Board of Naturopathic Medical Education or its successor agency.
(4) Provides the Board with a list of physicians licensed to practice medicine in this State who have agreed to work with the applicant and accept referrals from the applicant. The applicant shall also provide the Board with letters of verification from the listed physicians. The list shall include physicians with specialties in at least four of the following areas: allergy and immunology, cancer and oncology, cardiology, endocrinology and metabolism, family medicine, gastroenterology, internal medicine, obstetrics and gynecology, pediatrics, psychiatry, and urology.
(5) Submits any other documentation the Board deems necessary to determine the applicant's fitness for licensure under this Article. This documentation may include successful completion of a Board-approved examination on State laws and rules related to naturopathic medicine.

(b) Renewal. – A license expires two years after the date it is issued unless it is renewed. Failure to renew a license within six months of the date the license expires shall result in automatic forfeiture of the right to practice naturopathic medicine in this State until such time that the license has been reinstated. To renew a license, a licensee shall meet all of the following conditions:

(1) Submit an application for license renewal.
(2) Pay the required fees.

(3) Complete at least 40 hours of continuing education approved by the Board within a two-year period.

(c) Reinstatement. – A licensed naturopathic doctor who has allowed the license to lapse by failure to renew within the time allowed under subsection (b) of this section may apply for reinstatement. The Board may reinstate the applicant's license if the applicant pays the required fees, furnishes a statement of the reason for failure to apply for renewal before the deadline, and complies with any other requirements established in rules adopted by the Board. If the license has lapsed for five years or longer, the Board may require the applicant to satisfactorily complete a refresher course approved by the Board or to provide proof of active licensure within the past five years in another jurisdiction.

"**§ 90-738. Reciprocity.**

The Board may grant, upon application and payment of fees, a license to a person who resides in this State and has been licensed to practice as a naturopathic doctor in another state or a Canadian province if both of the following conditions are met:

(1) The standards for licensure in the state or province in which the naturopathic doctor is licensed are substantially equivalent to those provided in this Article.

(2) The applicant provides proof of licensure in good standing in all states and provinces in which the applicant has been licensed.

"**§ 90-739. Fees.**

The Board may impose the following fees:

(1)	Application and examination	$200.00
(2)	License	$600.00
(3)	License renewal	$400.00
(4)	Late renewal	$200.00
(5)	Reinstatement	$1,000.00
(6)	Reasonable charges for duplication services and material.	
(7)	Criminal history record check fee equal to the amount imposed by the Department of Justice to conduct the criminal history record check requested by the Board.	

"**§ 90-740. Disciplinary authority.**

(a) Authority. – The Board may impose probationary conditions upon a licensee, or it may deny, suspend, revoke, or refuse to issue or renew a license, if the licensee or applicant does any of the following:

(1) Engages in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board or aids, abets, or assists any other person in the violation of the provisions of this Article or rules adopted by the Board.

(2) Gives false information to or withholds information from the Board in procuring or attempting to procure a license.

(3) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a naturopathic doctor or that indicates the person has deceived or defrauded the public. A felony conviction shall result in the automatic revocation of a license issued by the Board unless the Board determines otherwise pursuant to rules adopted by the Board.

(4) Has been declared mentally incompetent by a court of competent jurisdiction.

(5) Habitually uses or is addicted to drugs or intoxicating liquors to the extent that it affects the licensee's professional competency. If a licensee violates

this subdivision, the Board may require the licensee to undergo a mental or physical examination by physicians designated by the Board before or after the licensee has been charged. The results of the examination shall be admissible as evidence in a hearing before the Board.

(6) Has demonstrated gross negligence, incompetency, or misconduct in the performance of naturopathic medical treatment.

(7) Has had a health care provider license denied, restricted, revoked, or suspended by another state or jurisdiction.

(8) Fails to consent to a criminal history record check.

(9) Fails to respond, within a reasonable time, to inquiries from the Board concerning any matter affecting the individual's license to practice naturopathic medicine.

(10) Fails to complete continuing education requirements within the time prescribed.

(b) Hearing. – Denial, refusal to renew, suspension, or revocation of a license or imposition of probationary conditions upon a licensee may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted pursuant to this Article. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for not less than two years.

(c) Records. – The Board shall keep a record of its proceedings. The Board may, in a closed session, receive evidence regarding the treatment of a patient who has not expressly or impliedly consented to the public disclosure of the treatment when necessary for the protection of the rights of the patient or of the accused naturopathic doctor and the full presentation of relevant evidence. All records, papers, investigative files, investigative reports, and other documents containing information gathered or received by the Board as a result of investigations, inquiries, or interviews conducted in connection with an application for licensure, a complaint, or a disciplinary matter are not considered public documents within the meaning of Chapter 132 of the General Statutes. If a record, paper, or other document containing information collected and compiled by the Board is admitted into evidence in a hearing held by the Board, it shall then be a public record within the meaning of Chapter 132 of the General Statutes.

(d) Confidential Information. – The Board may release confidential or nonpublic information about a licensee to any health care licensure board in this State or another state relating to the issuance, denial, suspension, revocation, or voluntary surrender of the license, including the reasons for the action or any investigative report prepared by the Board. The Board shall notify the naturopathic doctor within 60 days after the information is released. The Board shall furnish to the naturopathic doctor a summary of the information being released. However, if the naturopathic doctor requests, in writing, within 30 days from the date of notice, a copy of the information being released, the Board shall give to the naturopathic doctor a copy of all the information being released. Notice or copies shall not be provided by the Board if the information relates to an ongoing criminal investigation by a law enforcement agency or any Department of Health and Human Services personnel with enforcement or investigative responsibilities.

"**§ 90-741. Criminal history record check of applicants and licensees.**

(a) Criminal History Record Check. – The Board shall require a criminal history record check for a person who is either licensed under this Article or applying for licensure under this Article. The Board is responsible for providing to the North Carolina Department of Justice the fingerprints of the person to be checked, a form signed by the person consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) Conviction. – If a criminal history record check reveals one or more convictions, the conviction does not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission of a crime by the person.

(c) Denial of Licensure. – If the Board denies, revokes, or suspends a license based on information obtained in a criminal history record check, the Board shall disclose to the person the information contained in the criminal history record check that is relevant to the Board's actions. The Board may not provide a copy of the criminal history record check to the person. A person has the right to appear before the Board to appeal the Board's decision. An appearance before the Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for its actions based on information provided in a person's criminal history record check.

"**§ 90-742. Reports; immunity from suit.**

(a) Report. – A person who has reasonable cause to suspect misconduct or incapacity of a licensee, or who has reasonable cause to suspect that a person is in violation of this Article, may report the relevant facts to the Board. Upon receipt of a charge, or upon its own initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. A person who, in good faith, makes a report pursuant to this section is immune from any criminal prosecution or civil liability resulting from making the report.

(b) Immunity. – The Board and its staff are immune from any criminal prosecution or civil liability for exercising, in good faith, the powers and duties given to the Board under this Article.

"**§ 90-743. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article.

"**§ 90-744. Advisory Council.**

(a) Created. – An Advisory Council is created to advise the Board and to develop recommendations to foster coordination and collaboration between naturopathic doctors, medical doctors, and other health professionals for the purpose of providing appropriate care for patients. The Council shall meet periodically and report its recommendations to the Board and to the boards of directors for the North Carolina Medical Society and the North Carolina Association of Naturopathic Physicians.

(b) Membership. – The Advisory Council shall consist of the following six members:

(1) Two licensed physicians appointed by the North Carolina Medical Society.
(2) Two licensed naturopathic doctors appointed by the North Carolina Association of Naturopathic Physicians.
(3) One licensed pharmacist or pharmacologist appointed by the North Carolina Association of Pharmacists.
(4) One licensed advanced practice registered nurse appointed by the North Carolina Nursing Association.

(c) General Administration. – Each member is appointed for a term of two years beginning July 1, 2012. A member serves until a successor is appointed. The members of the Advisory Council may elect a chairperson by a majority vote. Advisory Council members may not receive compensation for their services but may receive reimbursement as provided in G.S. 93B-5."

SECTION 2. G.S. 90-18(c) is amended by adding a new subdivision to read:

"(c) The following shall not constitute practicing medicine or surgery as defined in this Article:

...

(21) The practice of naturopathic medicine by a licensed naturopathic doctor under the provisions of Article 43 of this Chapter."

SECTION 3. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.31. Criminal history record checks for naturopathic doctors.**

(a) The Department of Justice shall provide to the North Carolina Naturopathic Doctors Licensing Board from the State and National Repositories of Criminal Histories the criminal history of an applicant for licensure by the Board or a licensee of the Board. The Judicial Department shall provide to the Department of Justice, along with the request, the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal history record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the applicant or licensee shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Judicial Department shall keep all information obtained pursuant to this section confidential.

(b) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 4. Notwithstanding the provisions of G.S. 90-735, as enacted by Section 1 of this act, the initial naturopathic doctors appointed to the North Carolina Naturopathic Doctors Licensing Board must be North Carolina residents, must be licensed as a naturopathic doctor in a state that licenses this profession, and must be eligible for licensure under G.S. 90-737, as enacted by Section 1 of this act. Upon appointment, the appointee must immediately seek to become licensed under this act.

SECTION 5. This act is effective when it becomes law.

SENATE BILL 467:
Naturopathic Licensing Act

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2011
Introduced by:	Sens. Hartsell, Apodaca	**Prepared by:**	Amy Jo Johnson
Analysis of:	PCS to Second Edition S467-CSSQ-62		Staff Attorney

SUMMARY: ***The PCS to Senate Bill 467 would establish the North Carolina Naturopathic Doctors Licensure Act.***

The PCS adds performing acts of prenatal, intrapartum, postpartum, newborn, and interconceptual care to the list of acts prohibited by naturopathic doctors. It also changes the penalty for practicing without licensure from a Class I misdemeanor to a Class I felony. The PCS removes the provision establishing an Advisory Council to the licensing board.

BILL ANALYSIS:

Senate Bill 467 defines "naturopathic medicine" as a system of natural health care that employs diagnosis and treatment using natural therapies and diagnostic techniques for the promotion, maintenance, and restoration of health and the prevention of disease, including the following:

- Administering or providing any of the following or preventative and therapeutic purposes: natural medicines, natural therapies, natural topical medicines, hydrotherapy, dietary therapy, and naturopathic physical medicine.
- Using diagnostic procedures, including physical and orificial examination, but excluding endoscopy, sigmoidoscopy, and colonoscopy.
- Ordering and interpreting laboratory tests and diagnostic imaging, but excluding electrocardiograms, echocardiograms, electroencephalograms, nuclear imaging, MRIs, CT scans, and other tests that should be conducted and interpreted by a licensed physician.

Senate Bill 467 defines the scope of practice of naturopathic medicine and creates a licensure requirement for anyone practicing naturopathic medicine on or after January 1, 2012. Licenses will be granted by the North Carolina Naturopathic Doctors Licensing Board (Board) as established in the bill. The Board is authorized to impose the following fees:

- Application and examination $200.00
- License $600.00
- License renewal $400.00
- Late renewal $200.00
- Reinstatement $1,000.00
- Reasonable charges for duplication services and material.
- Criminal history record check fee equal to the amount imposed by the Department of Justice to conduct the criminal history record check requested by the Board.

Licenses will expire every year on the date issued unless it is renewed. Any person practicing as a naturopathic doctor, performing naturopathic medicine, or using any card, title, or abbreviation to indicate that the person is a naturopathic doctor without a license is guilty of a Class 1 Felony.

BACKGROUND: Sixteen states, the District of Columbia, and 4 Canadian provinces have enacted a licensure law for naturopathic doctors.

EFFECTIVE DATE: This act is effective when it becomes law.

SENATE BILL 467
Health Care Committee Substitute Adopted 6/14/11

Short Title: Naturopathic Licensing Act. (Public)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA NATUROPATHIC DOCTORS LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 43.

"Naturopathic Doctors.

"**§ 90-730. Short title.**

This Article may be cited as the 'North Carolina Naturopathic Doctors Licensure Act.'

"**§ 90-731. Intent; purpose.**

(a) Intent. – The General Assembly finds that a significant number of residents of the State of North Carolina choose complementary and alternative health care and declares that naturopathic treatment is a distinct health care profession that affects the public health, safety, and welfare and provides for choices in health care. The General Assembly concludes that licensure is in the current interest of North Carolina citizens to aid in protecting citizens from deception, fraud, and damage to their health status. Licensure can provide a process in which citizens may more confidently rely on the level of skill, education, and competency possessed by licensed persons.

(b) Purpose. – The purpose of this Article is to provide standards for the licensure of naturopathic doctors desiring to practice naturopathic medicine in this State and to ensure the maintenance of professional competence and acceptable standards of practice.

"**§ 90-732. Definitions.**

The following definitions apply in this Article:

(1) Approved program of naturopathic medicine. – A program that meets all of the following conditions:

a. A program that provides graduate level full-time didactic and supervised clinical training that is accredited, or has achieved candidacy status for accreditation, by the Council on Naturopathic Medical Education Program or its federally recognized successor agency.

b. A program that is offered by an institution of higher education that is accredited by a regional or national institutional accrediting agency recognized by the United States Secretary of Education.

c. If the program is offered in the United States, a program that awards the degree of Doctor of Naturopathy or Doctor of Naturopathic

Medicine. If the program is offered in Canada, a program that awards the degree or diploma of Doctor of Naturopathy or Doctor of Naturopathic Medicine, and is offered by an institution of higher education that has provincial approval for participation in government-funded student aid programs.

(2) Board. – The North Carolina Naturopathic Doctors Licensing Board.

(3) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony.

(4) Integrative medicine. – As defined in G.S. 90-1.1(3).

(5) Natural medicines. – Any herbal, nutritional, supplemental, homeopathic, or other nonprescription remedies.

(6) Naturopathic medicine. – A system of natural health care that employs diagnosis and treatment using natural therapies and diagnostic techniques for the promotion, maintenance, and restoration of health and the prevention of disease, including the following:

a. Administering or providing any of the following for preventive and therapeutic purposes: natural medicines, natural therapies, natural topical medicines, hydrotherapy, dietary therapy, and naturopathic physical medicine.

b. Using diagnostic procedures, including physical and orificial examination, but excluding endoscopy, sigmoidoscopy, and colonoscopy.

c. Ordering and interpreting laboratory tests and diagnostic imaging, but excluding electrocardiograms, echocardiograms, electroencephalograms, nuclear imagings, MRIs, CT scans, and other tests that should be conducted and interpreted by a physician licensed under Article 1 of this Chapter.

(7) Naturopathic physical medicine. – The manual use of massage, stretching, or resistance.

(8) Naturopathic doctor. – A person licensed to practice naturopathic medicine under this Article.

"**§ 90-733. Practice of naturopathic medicine; scope of practice.**

(a) Practice of Naturopathic Medicine. – A naturopathic doctor is a licensed health care provider having the same responsibilities as other licensed doctors regarding public health laws, reportable diseases and conditions, communicable disease control and prevention, and the recording of vital statistics. In diagnosing and treating an individual, a naturopathic doctor may employ the following therapies, modalities, procedures, or remedies consistent with naturopathic education and training:

(1) Dispense, administer, and advise the use of natural remedies derived from or substantially similar in molecular structure or function to natural sources for preventive and therapeutic purposes, including food, extracts of food, nutraceuticals, vitamins, minerals, enzymes, botanicals and their extracts, homeopathic remedies prepared according to the Homeopathic Pharmacopoeia of the United States, and all dietary supplements and nonprescription drugs as defined by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.A. § 301, et seq.

(2) Order and perform physical examinations.

(3) Order, perform, and interpret laboratory examinations and diagnostic imaging studies.

(4) Perform hot or cold hydrotherapy, naturopathic physical treatment, electromagnetic energy, and therapeutic exercise.

(5) Perform health education and health counseling.
(6) Perform utilization routes of administration, including oral, nasal, auricular, ocular, rectal, vaginal, and transdermal.
(7) Perform, repair, and care incidental to superficial lacerations and abrasions and apply topical and local anesthetics and antimicrobials.
(8) Remove foreign bodies located in the superficial tissues.

(b) Prohibitions. – A naturopathic doctor may not perform any of the following functions unless otherwise licensed by this State to do so:

(1) Prescribe, dispense, or administer any legend drug, except as authorized by this Article.
(2) Practice or attempt to practice as a medical physician, osteopath, acupuncturist, dentist, podiatrist, optometrist, chiropractor, dietitian or nutritionist, psychologist, advanced practice registered nurse, physician assistant, physical therapist, or any other health care professional not authorized by this Article.
(3) Use general or spinal anesthetics.
(4) Perform procedures using a laser device.
(5) Perform surgical procedures.
(6) Administer ionizing radioactive substances for therapeutic purposes.
(7) Perform chiropractic adjustments.
(8) Perform acupuncture.

"**§ 90-734. License required; exemptions.**

(a) License Required. – On or after January 1, 2012, no person shall practice or offer to practice as a naturopathic doctor, perform naturopathic medicine, or use any card, title, or abbreviation to indicate that the person is a naturopathic doctor unless the person has been licensed under the provisions of this Article. Persons licensed under this Article have the exclusive right to use the titles 'Naturopathic Doctor,' 'Doctor of Naturopathic Medicine,' 'Doctor of Naturopathy,' 'Naturopathic Medicine,' 'Naturopath,' or the abbreviations 'D.N.,' 'N.D.,' 'ND,' and 'D.N.M.'.

(b) Exemptions. – Nothing in this Article shall be construed to prohibit or affect any of the following:

(1) The practice of a profession by an individual who is licensed, certified, or registered under other laws of this State and is performing services within the authorized scope of practice.
(2) The practice of naturopathic medicine by a person employed by the federal government while the person is engaged in the performance of duties prescribed by laws and regulations of the United States.
(3) A person rendering aid in an emergency situation when no fee or other compensation for the service is received.
(4) The practice of naturopathic medicine by a naturopathic doctor duly licensed in another state, territory, or the District of Columbia when called into this State to consult with a licensed physician for a period not to exceed six months.
(5) The practice of naturopathic medicine by students completing a clinical requirement for graduation from a naturopathic training program approved by the Board, so long as the practice is performed under the supervision of a physician licensed under Article 1 of this Chapter and the clinical requirement does not exceed one year.
(6) A person who does not hold himself or herself out to be a naturopathic doctor when that person furnishes information to customers or sells, administers, or utilizes nutritional supplements, herbs, food, homeopathic

preparations, and such physical forces as heat, cold, water, touch, and light at the person's retail, health spa, or health consulting establishment.

(c) Unlawful Act. – A person who violates this section is guilty of a Class 1 misdemeanor. The Board may make application to superior court for an order enjoining a violation of this section. Upon a showing by the Board that a person has violated or is about to violate this section, the court may grant an injunction, restraining order, or take other appropriate action.

"**§ 90-735. North Carolina Naturopathic Doctors Licensing Board.**

(a) Board. – The North Carolina Naturopathic Doctors Licensing Board is created. The Board consists of seven members serving for staggered terms. The initial Board members shall be appointed on or before January 1, 2012, as follows:

(1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two naturopathic doctors who are licensed under this Article. One member shall serve a term of one year, and one member shall serve a term of three years.

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two naturopathic doctors who are licensed under this Article. One member shall serve a term of one year, and one member shall serve a term of two years.

(3) The Governor shall appoint two physicians licensed under Article 1 of Chapter 90 of the General Statutes, at least one of whom shall be involved in the practice of integrative medicine or who teaches integrative medicine at a medical school. Both of these members shall serve a term of three years.

(4) The Governor shall appoint for a two-year term a public member who is not a licensed health care professional and is not employed in a health care profession.

Upon the expiration of the terms of the initial Board members, each member is appointed for a term of three years, beginning on January 1 of each year. A member serves until the member's successor is appointed. No member shall serve on the Board for more than two consecutive terms.

(b) Vacancies. – A member of the Board serves at the pleasure of the authority that appointed the member. A vacancy shall be filled in the same manner as the original appointment. An appointee to fill a vacancy shall serve the remainder of the unexpired term and until the appointee's successor has been duly appointed.

(c) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(d) General Administration. – A Board member may not receive compensation but may receive reimbursement as provided in G.S. 93B-5. The officers of the Board include a chair, a secretary, and any other officer deemed necessary by the Board to carry out the purposes of this Article. All officers shall be elected annually by the Board at its first meeting held after appointments to the Board are made. The Board shall hold a meeting within 45 days of the appointment of new Board members. All officers shall serve one-year terms and shall serve until their successors are elected and qualified. No person shall chair the Board for more than five consecutive years. The Board may adopt rules governing the calling, holding, and conducting of regular and special meetings. A majority of Board members constitutes a quorum.

"**§ 90-736. Powers of the Board.**

The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this Article.

(2) Adopt rules as may be necessary to carry out the provisions of this Article.
(3) Establish, examine, and determine the qualifications and fitness of applicants for licensure and renewal of licensure.
(4) Issue, renew, deny, suspend, or revoke licenses and conduct any disciplinary actions authorized by this Article.
(5) Collect fees for licensure, licensure renewal, and other services deemed necessary to carry out the provisions of this Article.
(6) Establish and approve continuing education requirements for persons licensed under this Article.
(7) Employ and fix the compensation of personnel that the Board determines is necessary to carry out the provisions of this Article and incur other expenses necessary to perform the duties of the Board.
(8) Adopt a seal containing the name of the Board for use on all licenses and official reports issued by the Board.
(9) Institute corrective measures, as necessary, to rehabilitate naturopathic doctors or limit their practice.
(10) Investigate persons engaging in practices which violate the provisions of this Article.

"**§ 90-737. Qualifications for licensure; renewal; reinstatement.**

(a) Licensure. – Upon application to the Board and payment of the required fees, an applicant may be licensed under this Article as a naturopathic doctor if the applicant meets all of the following qualifications and conditions:

(1) Is of good moral and ethical character.
(2) Is a graduate of an approved program of naturopathic medicine.
(3) Meets one of the following two conditions:
a. Has successfully passed a competency-based national naturopathic licensing examination administered by the North American Board of Naturopathic Examiners, or equivalent agency as recognized by the Board.
b. Has successfully passed a competency-based examination approved by the Board and by the North American Board of Naturopathic Medical Education or its successor agency.
(4) Provides the Board with a list of physicians licensed to practice medicine in this State who have agreed to work with the applicant and accept referrals from the applicant. The applicant shall also provide the Board with letters of verification from the listed physicians. The list shall include physicians with specialties in at least four of the following areas: allergy and immunology, cancer and oncology, cardiology, endocrinology and metabolism, family medicine, gastroenterology, internal medicine, obstetrics and gynecology, pediatrics, psychiatry, and urology.
(5) Submits any other documentation the Board deems necessary to determine the applicant's fitness for licensure under this Article. This documentation may include successful completion of a Board-approved examination on State laws and rules related to naturopathic medicine.

(b) Renewal. – A license expires two years after the date it is issued unless it is renewed. Failure to renew a license within six months of the date the license expires shall result in automatic forfeiture of the right to practice naturopathic medicine in this State until such time that the license has been reinstated. To renew a license, a licensee shall meet all of the following conditions:

(1) Submit an application for license renewal.
(2) Pay the required fees.

(3) Complete at least 40 hours of continuing education approved by the Board within a two-year period.

(c) Reinstatement. – A licensed naturopathic doctor who has allowed the license to lapse by failure to renew within the time allowed under subsection (b) of this section may apply for reinstatement. The Board may reinstate the applicant's license if the applicant pays the required fees, furnishes a statement of the reason for failure to apply for renewal before the deadline, and complies with any other requirements established in rules adopted by the Board. If the license has lapsed for five years or longer, the Board may require the applicant to satisfactorily complete a refresher course approved by the Board or to provide proof of active licensure within the past five years in another jurisdiction.

"**§ 90-738. Reciprocity.**

The Board may grant, upon application and payment of fees, a license to a person who resides in this State and has been licensed to practice as a naturopathic doctor in another state or a Canadian province if both of the following conditions are met:

(1) The standards for licensure in the state or province in which the naturopathic doctor is licensed are substantially equivalent to those provided in this Article.

(2) The applicant provides proof of licensure in good standing in all states and provinces in which the applicant has been licensed.

"**§ 90-739. Fees.**

The Board may impose the following fees:

(1)	Application and examination	$200.00
(2)	License	$600.00
(3)	License renewal	$400.00
(4)	Late renewal	$200.00
(5)	Reinstatement	$1,000.00
(6)	Reasonable charges for duplication services and material.	
(7)	Criminal history record check fee equal to the amount imposed by the Department of Justice to conduct the criminal history record check requested by the Board.	

"**§ 90-740. Disciplinary authority.**

(a) Authority. – The Board may impose probationary conditions upon a licensee, or it may deny, suspend, revoke, or refuse to issue or renew a license, if the licensee or applicant does any of the following:

(1) Engages in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board or aids, abets, or assists any other person in the violation of the provisions of this Article or rules adopted by the Board.

(2) Gives false information to or withholds information from the Board in procuring or attempting to procure a license.

(3) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a naturopathic doctor or that indicates the person has deceived or defrauded the public. A felony conviction shall result in the automatic revocation of a license issued by the Board unless the Board determines otherwise pursuant to rules adopted by the Board.

(4) Has been declared mentally incompetent by a court of competent jurisdiction.

(5) Habitually uses or is addicted to drugs or intoxicating liquors to the extent that it affects the licensee's professional competency. If a licensee violates

this subdivision, the Board may require the licensee to undergo a mental or physical examination by physicians designated by the Board before or after the licensee has been charged. The results of the examination shall be admissible as evidence in a hearing before the Board.

(6) Has demonstrated gross negligence, incompetency, or misconduct in the performance of naturopathic medical treatment.

(7) Has had a health care provider license denied, restricted, revoked, or suspended by another state or jurisdiction.

(8) Fails to consent to a criminal history record check.

(9) Fails to respond, within a reasonable time, to inquiries from the Board concerning any matter affecting the individual's license to practice naturopathic medicine.

(10) Fails to complete continuing education requirements within the time prescribed.

(b) Hearing. – Denial, refusal to renew, suspension, or revocation of a license or imposition of probationary conditions upon a licensee may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted pursuant to this Article. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for not less than two years.

(c) Records. – The Board shall keep a record of its proceedings. The Board may, in a closed session, receive evidence regarding the treatment of a patient who has not expressly or impliedly consented to the public disclosure of the treatment when necessary for the protection of the rights of the patient or of the accused naturopathic doctor and the full presentation of relevant evidence. All records, papers, investigative files, investigative reports, and other documents containing information gathered or received by the Board as a result of investigations, inquiries, or interviews conducted in connection with an application for licensure, a complaint, or a disciplinary matter are not considered public documents within the meaning of Chapter 132 of the General Statutes. If a record, paper, or other document containing information collected and compiled by the Board is admitted into evidence in a hearing held by the Board, it shall then be a public record within the meaning of Chapter 132 of the General Statutes.

(d) Confidential Information. – The Board may release confidential or nonpublic information about a licensee to any health care licensure board in this State or another state relating to the issuance, denial, suspension, revocation, or voluntary surrender of the license, including the reasons for the action or any investigative report prepared by the Board. The Board shall notify the naturopathic doctor within 60 days after the information is released. The Board shall furnish to the naturopathic doctor a summary of the information being released. However, if the naturopathic doctor requests, in writing, within 30 days from the date of notice, a copy of the information being released, the Board shall give to the naturopathic doctor a copy of all the information being released. Notice or copies shall not be provided by the Board if the information relates to an ongoing criminal investigation by a law enforcement agency or any Department of Health and Human Services personnel with enforcement or investigative responsibilities.

"**§ 90-741. Criminal history record check of applicants and licensees.**

(a) Criminal History Record Check. – The Board shall require a criminal history record check for a person who is either licensed under this Article or applying for licensure under this Article. The Board is responsible for providing to the North Carolina Department of Justice the fingerprints of the person to be checked, a form signed by the person consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) Conviction. – If a criminal history record check reveals one or more convictions, the conviction does not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission of a crime by the person.

(c) Denial of Licensure. – If the Board denies, revokes, or suspends a license based on information obtained in a criminal history record check, the Board shall disclose to the person the information contained in the criminal history record check that is relevant to the Board's actions. The Board may not provide a copy of the criminal history record check to the person. A person has the right to appear before the Board to appeal the Board's decision. An appearance before the Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for its actions based on information provided in a person's criminal history record check.

"**§ 90-742. Reports; immunity from suit.**

(a) Report. – A person who has reasonable cause to suspect misconduct or incapacity of a licensee, or who has reasonable cause to suspect that a person is in violation of this Article, may report the relevant facts to the Board. Upon receipt of a charge, or upon its own initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. A person who, in good faith, makes a report pursuant to this section is immune from any criminal prosecution or civil liability resulting from making the report.

(b) Immunity. – The Board and its staff are immune from any criminal prosecution or civil liability for exercising, in good faith, the powers and duties given to the Board under this Article.

"**§ 90-743. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article.

"**§ 90-744. Advisory Council.**

(a) Created. – An Advisory Council is created to advise the Board and to develop recommendations to foster coordination and collaboration between naturopathic doctors, medical doctors, and other health professionals for the purpose of providing appropriate care for patients. The Council shall meet periodically and report its recommendations to the Board and to the boards of directors for the North Carolina Medical Society and the North Carolina Association of Naturopathic Physicians.

(b) Membership. – The Advisory Council shall consist of the following six members:

(1) Two licensed physicians appointed by the North Carolina Medical Society.
(2) Two licensed naturopathic doctors appointed by the North Carolina Association of Naturopathic Physicians.
(3) One licensed pharmacist or pharmacologist appointed by the North Carolina Association of Pharmacists.
(4) One licensed advanced practice registered nurse appointed by the North Carolina Nursing Association.

(c) General Administration. – Each member is appointed for a term of two years beginning July 1, 2012. A member serves until a successor is appointed. The members of the Advisory Council may elect a chairperson by a majority vote. Advisory Council members may not receive compensation for their services but may receive reimbursement as provided in G.S. 93B-5."

SECTION 2. G.S. 90-18(c) is amended by adding a new subdivision to read:

"(c) The following shall not constitute practicing medicine or surgery as defined in this Article:

...

(21) The practice of naturopathic medicine by a licensed naturopathic doctor under the provisions of Article 43 of this Chapter."

SECTION 3. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.31. Criminal history record checks for naturopathic doctors.**

(a) The Department of Justice shall provide to the North Carolina Naturopathic Doctors Licensing Board from the State and National Repositories of Criminal Histories the criminal history of an applicant for licensure by the Board or a licensee of the Board. The Judicial Department shall provide to the Department of Justice, along with the request, the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal history record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the applicant or licensee shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Judicial Department shall keep all information obtained pursuant to this section confidential.

(b) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 4. Notwithstanding the provisions of G.S. 90-735, as enacted by Section 1 of this act, the initial naturopathic doctors appointed to the North Carolina Naturopathic Doctors Licensing Board must be North Carolina residents, must be licensed as a naturopathic doctor in a state that licenses this profession, and must be eligible for licensure under G.S. 90-737, as enacted by Section 1 of this act. Upon appointment, the appointee must immediately seek to become licensed under this act.

SECTION 5. This act is effective when it becomes law.

SENATE BILL 467:
Naturopathic Licensing Act

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2011
Introduced by:	Sens. Hartsell, Apodaca	**Prepared by:**	Amy Jo Johnson Staff Attorney
Analysis of:	PCS to Second Edition S467-CSSQ-62		

SUMMARY: ***The PCS to Senate Bill 467 would establish the North Carolina Naturopathic Doctors Licensure Act.***

The PCS adds performing acts of prenatal, intrapartum, postpartum, newborn, and interconceptual care to the list of acts prohibited by naturopathic doctors. It also changes the penalty for practicing without licensure from a Class I misdemeanor to a Class I felony. The PCS removes the provision establishing an Advisory Council to the licensing board.

BILL ANALYSIS:

Senate Bill 467 defines "naturopathic medicine" as a system of natural health care that employs diagnosis and treatment using natural therapies and diagnostic techniques for the promotion, maintenance, and restoration of health and the prevention of disease, including the following:

- Administering or providing any of the following or preventative and therapeutic purposes: natural medicines, natural therapies, natural topical medicines, hydrotherapy, dietary therapy, and naturopathic physical medicine.
- Using diagnostic procedures, including physical and orificial examination, but excluding endoscopy, sigmoidoscopy, and colonoscopy.
- Ordering and interpreting laboratory tests and diagnostic imaging, but excluding electrocardiograms, echocardiograms, electroencephalograms, nuclear imaging, MRIs, CT scans, and other tests that should be conducted and interpreted by a licensed physician.

Senate Bill 467 defines the scope of practice of naturopathic medicine and creates a licensure requirement for anyone practicing naturopathic medicine on or after January 1, 2012. Licenses will be granted by the North Carolina Naturopathic Doctors Licensing Board (Board) as established in the bill. The Board is authorized to impose the following fees:

- Application and examination $200.00
- License $600.00
- License renewal $400.00
- Late renewal $200.00
- Reinstatement $1,000.00
- Reasonable charges for duplication services and material.
- Criminal history record check fee equal to the amount imposed by the Department of Justice to conduct the criminal history record check requested by the Board.

Licenses will expire every year on the date issued unless it is renewed. Any person practicing as a naturopathic doctor, performing naturopathic medicine, or using any card, title, or abbreviation to indicate that the person is a naturopathic doctor without a license is guilty of a Class 1 Felony.

BACKGROUND: Sixteen states, the District of Columbia, and 4 Canadian provinces have enacted a licensure law for naturopathic doctors.

EFFECTIVE DATE: This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 15, 2011

TO: Senate Finance Committee

FROM: Chloe Gossage
Fiscal Research Division

RE: Senate Bill 467 (PCS to 2nd Edition S467-CSSQ-62) Naturopathic Licensure Act

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
NC Naturopathic Doctors Licensing Bd	**$24,000**	**$16,000**	**$18,000**	**$20,000**	**$22,000**
Dept. of Justice	**$1,140**	**$190**	**$190**	**$190**	**$190**
EXPENDITURES:					
NC Naturopathic Doctors Licensing Bd		**** See Assumptions & Methodology ****			
Dept. of Justice	**$1,140**	**$190**	**$190**	**$190**	**$190**
Judicial Branch		**** See Assumptions & Methodology ****			
Dept. of Correction		**** See Assumptions & Methodology ****			
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Naturopathic Doctors Licensing Board (new), Department of Justice, Judicial Branch, Dept. of Correction

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY:
Senate Bill 467 defines "naturopathic medicine" as a system of natural health care that employs diagnosis and treatment using natural therapies and diagnostic techniques for the promotion, maintenance, and restoration of health and the prevention of disease, including the following: Administering or providing any of the following or preventative and therapeutic purposes: natural medicines, natural therapies, natural topical medicines, hydrotherapy, dietary therapy, and naturopathic physical medicine. Using diagnostic procedures, including physical and orificial examination, but excluding endoscopy, sigmoidoscopy, and colonoscopy. Ordering and interpreting laboratory tests and diagnostic imaging, but excluding electrocardiograms, echocardiograms, electroencephalograms, nuclear imaging, MRIs, CT scans, and other tests that should be conducted and interpreted by a licensed physician.

Senate Bill 467 defines the scope of practice of naturopathic medicine and creates a licensure requirement for anyone practicing naturopathic medicine on or after January 1, 2012. Licenses will be granted by the North Carolina Naturopathic Doctors Licensing Board (Board) as established in the bill. The Board is authorized to impose the following fees: Application and examination $200.00 License $600.00 License renewal $400.00 Late renewal $200.00 Reinstatement $1,000.00 Reasonable charges for duplication services and material. Criminal history record check fee equal to the amount imposed by the Department of Justice to conduct the criminal history record check requested by the Board.

Licenses will expire every year on the date issued unless it is renewed. Any person practicing as a naturopathic doctor, performing naturopathic medicine, or using any card, title, or abbreviation to indicate that the person is a naturopathic doctor without a license is guilty of a Class I Felony.

Source: Research Division

ASSUMPTIONS AND METHODOLOGY:

North Carolina Naturopathic Doctors Licensure Board

Revenue
Materials presented to the Legislative Committee on New Licensing Boards indicate that the North Carolina Association of Naturopathic Physicians (NCANP) currently has 30 members who are naturopathic physicians who meet national licensure standards. It is anticipated that all 30 members will apply for licensure in North Carolina under this Act. In addition, data used in preparation of a 2005 fiscal note on this same subject estimated that five to seven additional applicants would apply each year. Using an estimate of 30 applicants in the first year and 5 applicants in each of the next four years, revenue would be as follows:

	Fee	FY2012	FY2013	FY2014	FY2015	FY2016
Application & Examination	$200	$6,000	$1,000	$1,000	$1,000	$1,000
License	$600	$18,000	$3,000	$3,000	$3,000	$3,000
License Renewal	$400		$12,000	$14,000	$16,000	$18,000
Total		**$24,000**	**$16,000**	**$18,000**	**$20,000**	**$22,000**

The above analysis assumes that all applicants are issued licenses and renew those licenses annually in a timely manner. Potential fees due to late renewals ore reinstatements are unknown.

Expenditures
Although the legislation permits the Board to hire personnel and incur operating expenses, no funds are appropriated to the Board. Therefore, it is assumed that the Board's operating expenses will be constrained by the revenue generated from the aforementioned fees.

Department of Justice

Revenue

The Department of Justice (DOJ) reports that a fee of $38 is charged to perform each criminal background check. Of this fee, $22 is forward to the Federal Bureau of Investigation (FBI) for a check of federal databases, and the remaining $16 is retained by DOJ. Of this $16, $14 goes to a check of North Carolina databases and $2 is used for the processing cost associated with the request.

Expenditures

The proposed changes in the bill may increase the workload and number of background checks the SBI may have to review and process. However, the bill makes no changes to 114-19.2 (c) which allows DOJ to charge a reasonable fee to recover their costs. Because this fee mechanism remains intact, the Department does not project that the proposed legislation will have a material fiscal impact on the SBI or DOJ.

Judicial Branch & Department of Correction

The proposed legislation would create a new Class I felony offense. New charges would impact court resources, and new convictions would impact the Department of Correction, Division of Prisons or Division of Community Corrections. At this time, the projected impact has not been determined.

SOURCES OF DATA: Legislative Commission on New Licensing Boards, Department of Justice.

TECHNICAL CONSIDERATIONS: None

SENATE BILL 682

Short Title:	Tax Deduction for Sharing Health Care Costs.	(Public)
Sponsors:	Senators Hunt; Blake, Brock, Forrester, Hise, and Tillman.	
Referred to:	Finance.	

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO GRANT AN INCOME TAX DEDUCTION TO INDIVIDUALS WHO PAY THE MEDICAL EXPENSES OF OTHER INDIVIDUALS THROUGH A HEALTH CARE SHARING ORGANIZATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-134.6 reads as rewritten:

"**§ 105-134.6. Adjustments to taxable income.**

...

(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(21) Twenty percent (20%) of the amount paid by the taxpayer to another individual for the other individual's medical expenses, provided that the taxpayer made the payments as part of the taxpayer's and recipient's participation in a health care sharing organization. For purposes of this subdivision, a "health care sharing organization" means a nonprofit organization exempt from taxation under section 501(c) of the Code that acts as a clearinghouse by providing a health care cost-sharing arrangement for those members who have medical expenses and those members who share the burden of such expenses through their monetary contributions.

...."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 682 (First Edition)

SHORT TITLE: Tax Deduction for Sharing Health Care Costs.

SPONSOR(S): Senator Hunt

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Revenues ($Millions)	Cost estimated to be less than $50,000 per year				

PRINCIPAL DEPARTMENT AFFECTED: NC Department of Revenue

EFFECTIVE DATE: Taxable years beginning on or after January 1, 2012

BILL SUMMARY: Senate Bill 682 creates a tax deduction from individual income tax for 20% of the amount paid by a taxpayer to another individual for the other individual's medical expenses, provided that the taxpayer made the payments as part of the taxpayer's and recipient's participation in a health care sharing organization. A "health care sharing organization" means a nonprofit organization exempt from taxation under section 501(c) of the Internal Revenue Code that acts as a clearinghouse by providing a health care cost-sharing arrangement for those members who have medical expenses and those members who share the burden of such expenses through their monetary contributions.

ASSUMPTIONS AND METHODOLOGY: The estimated cost for the tax deduction taken for payments for another individual's medical expenses through a health care sharing organization is estimated to be less than $50,000 per fiscal year. To calculate this amount, Fiscal Research reviewed data provided by the Alliance of Health Care Sharing Ministries regarding the three health care share organizations with members in North Carolina. This data included identifying the total number of members, and an estimate of the total payments made by the members in 2009 and 2010. From this data, Fiscal Research was able to estimate the fiscal impact by multiplying the average total payment amounts for 2009 and 2010 by the 20% deduction rate, and then applying the applicable tax rate. It is unknown what impact the tax deduction might have on the future growth of health care sharing organizations. Increases in membership would increase the amount of tax deductions taken, which would increase the cost of the tax expenditure.

SOURCES OF DATA: Alliance of Health Care Sharing Ministries

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jonathan Tart

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 10, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 113

Short Title:	Motorcycle Safety Act.	(Public)
Sponsors:	Representative Killian (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Transportation.	

February 17, 2011

A BILL TO BE ENTITLED

AN ACT TO CREATE ADDITIONAL PROTECTIONS FOR MOTORCYCLISTS FROM UNSAFE MOVEMENTS BY OTHER VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-154 is amended by adding a new subsection to read:

"(a1) A violation of subsection (a) of this section that causes a motorcycle operator to change travel lanes or leave that portion of any public street or highway designated as travel lanes shall be a Class 2 misdemeanor and shall require payment of a fine of not less than two hundred dollars ($200.00). A violation of subsection (a) of this section that results in a crash causing property damage or personal injury to a motorcycle operator or passenger shall be a Class 1 misdemeanor and shall require payment of a fine of not less than five hundred dollars ($500.00)."

SECTION 2. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

HOUSE BILL 113:
Motorcycle Safety Act

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2011
Introduced by:	Rep. Killian	**Prepared by:**	Brenda Carter Wendy Graf Ray Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 113 would create an enhanced penalty for violation of an existing motor vehicle law, which requires drivers to check for safety and then signal before making certain movements, if the violation causes a motorcycle to leave its travel lane or results in a crash causing property damage or injury to a motorcycle operator.***

CURRENT LAW: G.S. 20-154(a) (see complete text of statute below) requires the driver of a vehicle to do the following before starting, stopping, or turning, from a direct line, which includes changing lanes:

- First see that the movement can be made in safety; and
- If a pedestrian or another vehicle may be affected by the movement, give an appropriate signal

Violation is an infraction, punishable by a fine of not more than $100.

BILL ANALYSIS: House Bill 113 would add a new subsection (a1) to G.S. 20-154, which would provide for an enhanced penalty when a driver violates G.S. 20-154(a), and the violation causes a motorcycle operator to change lanes or leave a travel lane, or if the violation results in a crash that causes property damage or personal injury to a motorcycle operator or passenger.

A violation that causes a motorcycle operator to change or leave a travel lane would be a Class 2 misdemeanor and would require payment of a fine not less than $200. Assuming no prior convictions, the maximum penalty would be 30 days of community punishment and a fine up to $1,000 but not less than $200.

A violation that results in a crash that causes property damage or personal injury to a motorcycle operator or passenger would be a Class 1 misdemeanor and would require payment of a fine not less than $500. Assuming no prior convictions, the maximum penalty would be 45 days of community punishment and a fine in the discretion of the court but not less than $500.

EFFECTIVE DATE: The bill would become effective December 1, 2011, and would apply to offenses committed on or after that date.

H113-SMRB-107(e1) v1

HOUSE BILL 596
Committee Substitute Favorable 5/19/11
Third Edition Engrossed 5/23/11

Short Title: Transfer Surplus Prop. to Retirement System. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THE PROCEEDS OF CERTAIN DISPOSITIONS OF STATE-OWNED REAL PROPERTY BE USED IN PART TO SUPPORT THE GENERAL FUND, IN PART TO SUPPORT THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM OF NORTH CAROLINA, AND IN PART TO SUPPORT THE AGENCIES TO WHICH THE PROPERTY WAS ALLOCATED; AND TO APPROPRIATE FUNDS FOR THESE PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-30(a) reads as rewritten:

"**§ 146-30. Application of net proceeds.**

(a) The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, ~~the net proceeds shall be deposited with the State Treasurer. Provided, however, nothing herein shall be construed as prohibiting the disposition of any State lands by exchange for other lands, but if the appraised value in fee simple of any property involved in the exchange is at least twenty-five thousand dollars ($25,000), then such exchange may not be made without consultation with the Joint Legislative Commission on Governmental Operations.~~as follows:

(1) If the appraised value of the land exceeds six million dollars ($6,000,000), the net proceeds shall be deposited with the State Treasurer to support the General Fund.

(2) If the appraised value of the land does not exceed six million dollars ($6,000,000), the net proceeds shall be deposited as follows:

a. Twenty-five percent (25%) to the State agency to which the property was allocated. These funds may be used for any purpose authorized by law and are hereby appropriated.

b. Twenty-five percent (25%) to the State Treasurer to support the General Fund.

c. Fifty (50%) to the State Treasurer to be deposited in the Teachers' and State Employees' Retirement System of North Carolina. These funds are hereby appropriated.

However, no State lands or contract shall be divided for the purpose of evading the appraised value of the provisions of this Subchapter."

SECTION 2. G.S. 146-30 is amended by adding a new subsection to read:

"(a1) Nothing in this section shall be construed to prohibit the disposition of any State lands by exchange for other lands, but if the appraised value in fee simple of any property involved in the exchange is at least twenty-five thousand dollars ($25,000), then such exchange may not be made without consultation with the Joint Legislative Commission on Governmental Operations."

SECTION 3. This act becomes effective July 1, 2011, and expires January 1, 2016.

HOUSE BILL 596:
Transfer Surplus Prop. to Retirement System

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2011
Introduced by:	Reps. Hastings, Stam, Crawford	**Prepared by:**	Greg Roney
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 596 would modify the allocation of the proceeds from the disposition of surplus real property with an appraised value below $6,000,000 as follows: 25% to the State agency allocated the property, 25% to the General Fund, and 50% to the Teachers' and State Employees' Retirement System.***

CURRENT LAW: G.S. 146-27 authorizes the Department of Administration to initiate proceedings to dispose of surplus land. G.S. 146-28 provides that State agencies may voluntarily file an application with the Department of Administration to initiate the disposition of surplus land. The Department of Administration completes the disposition with the approval the Governor and the Council of State. For proposed dispositions of surplus land with an appraised value of $25,000 or more, consultation with the Joint Legislative Commission on Governmental Operations is required. The net proceeds from the disposition of surplus land is paid into the General Fund.

BILL ANALYSIS: House Bill 596 would direct that 25% of the net proceeds from the sale of surplus land with an appraised value below $6,000,000 be paid to the General Fund and would redirect the remaining 75% of the net proceeds to the State agency currently allocated the land (25%) and to the Teachers' and State Employees' Retirement System (50%). House Bill 596 would provide that 100% of the net proceeds from the sale of surplus land with an appraised value exceeding $6,000,000 be paid to the General Fund.

BACKGROUND: House Bill 596 creates an incentive for State agencies to voluntarily identify surplus land. The benefit of any increase in the disposition of surplus land is paid to the Teachers' and State Employees' Retirement System which will receive 50% of the net proceeds.

EFFECTIVE DATE: House Bill 596 is effective July 1, 2011 and sunsets January 1, 2016.

H596-SMTM-50(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 751
Committee Substitute Favorable 6/14/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H751-CSRB-75 [v.2]

6/15/2011 4:37:29 PM

Short Title: Expand Excise Tax on Mill Machinery. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE APPLICATION OF THE ONE PERCENT, EIGHTY DOLLAR EXCISE TAX ON CERTAIN MACHINERY AND EQUIPMENT TO SPECIALIZED EQUIPMENT USED AT A PORT FACILITY AND TO MACHINERY USED AT A LARGE MANUFACTURING AND DISTRIBUTION FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-187.51B reads as rewritten:

"**§ 105-187.51B. Tax imposed on certain recyclers, research and development companies, ~~and~~ industrial machinery refurbishing ~~companies.~~companies, and companies located at ports facilities.**

(a) Tax. – A privilege tax is imposed on the following:

(1) A major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.

b. Port and dock facilities.

c. Rail equipment.

d. Material handling equipment.

(2) A research and development company in the physical, engineering, and life sciences that is included in industry 54171 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:

a. Is capitalized by the company for tax purposes under the Code.

b. Is used by the company in the research and development of tangible personal property.

c. Would be considered mill machinery or mill machinery parts or accessories under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.

(3) A software publishing company that is included in the industry group 5112 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:
a. Is capitalized by the company for tax purposes under the Code.
b. Is used by the company in the research and development of tangible personal property.
c. Would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.

(4) An industrial machinery refurbishing company that is included in industry group 811310 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:
a. Is capitalized by the company for tax purposes under the Code.
b. Is used by the company in repairing or refurbishing tangible personal property.
c. Would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used by the industry or plant to manufacture tangible personal property.

(5) A company located at a ports facility for waterborne commerce that purchases specialized equipment to be used at the facility to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities.

(b) Rate. – The tax is one percent (1%) of the sales price of the equipment or other tangible personal property. The maximum tax is eighty dollars ($80.00) per article."

SECTION 2. Article 5F of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-187.51D. Tax imposed on machinery at large manufacturing and distribution facility.**

(a) Definition. – For the purposes of this section, a 'large manufacturing and distribution facility' is a facility used primarily for manufacturing or assembling products and distributing finished products for which the Secretary of Commerce makes a certification that an investment of private funds of at least one hundred million dollars ($100,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 1,000 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation.

(b) Tax. – A privilege tax is imposed on a large manufacturing and distribution facility that purchases mill machinery, distribution machinery, or parts or accessories for mill machinery or distribution machinery for storage, use, or consumption in this State. The tax is one percent (1%) of the sales price of the machinery, part, or accessory purchased. The maximum tax is eighty dollars ($80.00) per article. As used in this section, the term 'accessories' does not include electricity.

(c) Forfeiture. – If the required level of investment or employment to qualify as large manufacturing and distribution facility is not timely made, achieved, or maintained, then the rate provided under this section is forfeited. If the rate is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the rate provided under this section is forfeited on all purchases. If the rate is forfeited due to a failure to maintain the minimum required employment level once that level has been

achieved, then the rate provided under this section is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level.

A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(d) Sunset. – This section expires for sales occurring on or after July 1, 2018."

SECTION 3.(a) Definitions. – The following definitions apply in this section:

(1) Eligible property. – Distribution machinery, or parts or accessories for distribution machinery, for storage, use, or consumption in this State.

(2) Large manufacturing and distribution facility. – A facility used primarily for manufacturing or assembling products and distributing finished products for which the Secretary of Commerce makes a certification that an investment of private funds of at least one hundred million dollars ($100,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 1,000 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation.

SECTION 3.(b) Refund. – For purchases of eligible property made on or after July 1, 2012, but before July 1, 2013, a large manufacturing and distribution facility is allowed a refund of all local sales and use taxes paid and a portion of State sales and use taxes paid on the purchases as provided in this section. The portion of the State sales and use taxes that may be refunded is equal to the excess of the State sales and use taxes paid over the amount that would have been due had the taxpayer been subject to tax on the eligible property if it were mill machinery under Article 5F of Chapter 105 of the General Statutes. A request for a refund under this section must be in writing and must include any information and documentation required by the Secretary. A request for a refund under this section must be made on or after July 1, 2013, and is due before January 1, 2014. Refunds applied for after the due date are barred Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21.

SECTION 3.(c) Forfeiture. – If the required investment or minimum employment level to qualify as a large manufacturing and distribution facility is not timely made or achieved, then the refund provided under this section is forfeited. A taxpayer that forfeits a refund under this section is liable for all sales and use taxes refunded under this section, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the refund was made. The forfeited refund and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the forfeited refund and interest by the due date is subject to the provisions of G.S. 105-236.

SECTION 4. Sections 1 and 2 of this act become effective July 1, 2013, and apply to purchases made on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 751:
Expand Excise Tax on Mill Machinery

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2011
Introduced by:	Rep. McComas	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to Second Edition H751-CSRB-75		Committee Counsel

SUMMARY: House Bill 751 would substitute the 1%, $80 cap excise tax for the State and local sales and use tax on the following:

- ***Specialized equipment purchased by a business for use at a port facility to unload or process bulk cargo to make it suitable for deliver to and use by manufacturing facilities.***
- ***Mill machinery, distribution machinery, or parts or accessories for mill machinery purchased by a large manufacturing and distribution facility for storage, use, or consumption in this State.***

The bill DOES NOT HAVE A FISCAL IMPACT IN THIS BIENNIUM. The Senate PCS adjusts the investment and employment levels and it provides a sales tax refund for purchases made on or after July 1, 2012, and before July 1, 2013; the refund is payable on or after July 1, 2013, so that the bill does not impact budget availability for this biennium.

CURRENT LAW: The 2001 General Assembly enacted Article 5F in response to the requirement of the Streamlined Sales and Use Tax Agreement that states must simplify their sales tax rates. The 2001 legislation, which became effective January 1, 2006, repealed the 1% sales tax rate, with an $80 cap, imposed on mill machinery purchased by a manufacturing industry or plant and replaced it with a privilege tax having the same rate. Items that are subject to the 1%, $80 excise tax under Article 5F are exempt from sales and use tax. The current State sales tax rate is 5.75%; the local rates vary from 2% to 2.5% in Mecklenburg County.

Article 5F has been expanded since its enactment to apply to purchases of fuel and equipment and machinery by a number of different industries, including:

- Fuel, other than electricity or piped natural gas, purchased by a manufacturing industry or plant to operate the industry or plant.
- Certain personal property purchased by a major recycling facility.
- Equipment purchased by a research and development company in the physical, engineering, and life sciences and used by that company in the research and development of tangible personal property.
- Equipment purchased by a software publishing company that is used in the research and development of tangible personal property.
- Equipment purchased by an eligible datacenter.

BILL ANALYSIS: House Bill 751 would expand Article 5F to include specialized machinery used at a port facility to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities.

The bill would also expand the 1%, $80 tax to include mill machinery and distribution machinery purchased by a large manufacturing and distribution facility. A large manufacturing and distribution facility is defined as one that meets both investment and employment thresholds:

- Must invest at least $100 million in real and tangible personal property at the facility within five years after the date on which the first property investment is made.
- Must employ at least 1,000 within five years after the date the facility is placed into service.

A facility that fails to meet or maintain its investment and employment levels, it must forfeit the preferential tax allowed under this section.

The PCS provides a sales tax refund to a large manufacturing and distribution facility that purchases distribution equipment on or after July 1, 2012, and before July 1, 2013. The facility would receive a full refund of local taxes and a portion of State taxes. The portion of State taxes refunded is equal to the amount of tax paid less the amount of tax the facility would have paid had it been subject to tax under Article 5F.

EFFECTIVE DATE: The bill would become effective July 1, 2013, and apply to purchases made on or after that date.

H751-SMRB-108(CSRB-75).v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 751

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H751-ATD-131 [v.1]

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Date June 15 ,2011

Senator Goolsby

moves to amend the bill on page 1, line 5, by rewriting the line to read:
"LARGE MANUFACTURING AND DISTRIBUTING FACILITY; TO PROVIDE TIER ONE TREATMENT FOR PORT ENHANCEMENT ZONES; AND TO RETAIN AND ENCOURAGE INVESTMENT IN ECONOMICALLY DISTRESSED TIMES TO REMAIN ELIGIBLE TO TAKE AN INSTALLMENT OF A CREDIT EARNED UNDER THE BILL LEE ACT.";

and on page 1, lines 6 and 7, by inserting between the lines:
"**PART 1. EXPAND EXCISE TAX ON MILL MACHINERY.**";

and on page 3, lines 48 through 49, by rewriting the lines to read:
"to purchases made on or after that date. Sections 2 and 4 of this act become effective when it becomes law.

PART 2. PORT ENHANCEMENT ZONES.

SECTION 5. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:
"**§ 143B-437.012. Port enhancement zone designation.**

(a) Port Enhancement Zone Defined. – A port enhancement zone is an area that meets all of the following conditions:

(1) It is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.

(2) All of the area is located within 25 miles of a State port and is capable of being used to enhance port operations.

(3) Every census tract and census block group that comprises the area has at least eleven percent (11%) of households with incomes of fifteen thousand dollars ($15,000) or less.

(b) Limitations and Designation. – The area of a county that is included in one or more port enhancement zones shall not exceed five percent (5%) of the total area of the county. Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is a port enhancement zone that satisfies the conditions of subsection (a) of this section. The application shall include all of the information listed in this subsection. A determination

under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all port enhancement zones with a description of their boundaries.

(1) A map showing the census tracts and block groups that would comprise the zone.

(2) A detailed description of the boundaries of the area that would comprise the zone.

(3) A certification regarding the size of the proposed zone.

(4) Detailed census information on the county and the proposed zone.

(5) A resolution of the board of county commissioners requesting the designation of the area as a port enhancement zone.

(6) Any other material required by the Secretary of Commerce."

SECTION 6. G.S. 105-129.81 is amended by adding a new subdivision to read:

"**§ 105-129.81. (See notes) Definitions.**

The following definitions apply in this Article:

...

(20a) Port enhancement zone. – Defined in G.S. 143B-437.012.

...."

SECTION 7. G.S. 105-129.83 reads as rewritten:

"**§ 105-129.83. Eligibility; forfeiture.**

...

(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone but not in a development tier one area satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer shall use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

...

(l) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific

activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress ~~zone~~ zone, port enhancement zone, or agrarian growth zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress ~~zone~~ zone, port enhancement zone, or agrarian growth zone designations in effect at that time.

...."

SECTION 8. G.S. 105-129.87 reads as rewritten:

"**§ 105-129.87. Credit for creating jobs.**

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone, the amount of the credit is increased by one thousand dollars ($1,000) per job. In addition, if a job located in an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone is filled by a resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional two thousand dollars ($2,000) per job.

Area Development Tier	Amount of Credit
Tier One	$12,500
Tier Two	5,000
Tier Three	750

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone, the applicable threshold is the one for a development tier one area. New jobs created in an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone are not aggregated with jobs created at any other eligible establishments regardless of county.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	15

(c) Calculation. – A job is located in a county, an urban progress zone, a port enhancement zone, or an agrarian growth zone if more than fifty percent (50%) of the

employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

...

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

...."

SECTION 9. G.S. 105-129.88 reads as rewritten:

"**§ 105-129.88. (See notes) Credit for investing in business property.**

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	Applicable Percentage
Tier One	7%
Tier Two	5%
Tier Three	3.5%

...

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone, the applicable threshold is the one for a development tier one area. Business property placed in service in an

urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone is not aggregated with business property placed in service at any other eligible establishments regardless of county. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible business property in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Development Tier	Threshold
Tier One	$ -0-
Tier Two	1,000,000
Tier Three	2,000,000

...

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or out of an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

...."

SECTION 10. Sections 5 through 10 of this act are effective for taxes imposed for taxable years beginning on or after July 1, 2013.

PART 3. ENCOURAGE INVESTMENT TO RETAIN ARTICLE 3A INSTALLMENT.

SECTION 11. G.S. 105-129.12A(c) reads as rewritten:

"(c) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. ~~If, in~~In one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, if (i) the total number of employees the taxpayer employs at the property with respect

to which the credit is claimed is less than ~~200,~~200 and (ii) the taxpayer has failed, within two years of the date the employment fell below 200, to invest at the property at least twice the value of the remaining installments of the credit, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

SECTION 12. Section 11 of this act is effective for taxable years beginning on or after January 1, 2009.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 596

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

751
H~~596~~-AMD-71 [v.2]

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Date June 15 ,2011

Senator Daniel

moves to amend the bill on Page 1, Lines ~~6 and 7~~ 5, by ~~deleting those lines and substituting the following:~~ adding the following at the end of that line to read: "~~SUPPORT THE AGENCIES TO WHICH THE PROPERTY WAS ALLOCATED; TO APPROPRIATE FUNDS FOR THESE PURPOSES,~~ AND TO AMEND THE AUTHORIZATION TO ISSUE SPECIAL INDEBTEDNESS FOR AN EDUCATIONAL BUILDING AT APPALACHIAN STATE UNIVERSITY."; and

and by adding the following new section at the end of the bill to read:

~~on Page 2, Line 6, by inserting immediately after that line a new section to read:~~

"**SECTION ~~X~~.** Subdivision (a)(1) of Section 29.13 of S.L. 2007-323, as amended by Section 27.12A of S.L. 2009-451, reads as rewritten:

'**SECTION 29.13.(a)** The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the projects described in this subsection. In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness:

(1) In the maximum aggregate principal amount of thirty-four million dollars ($34,000,000) to finance the capital facility costs of completing a new educational building at Appalachian State University and acquiring and improving adjacent real property related to the project. No more than a maximum aggregate amount of three million dollars ($3,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.'"; and

and by amending the effective date to provide that this section

on Page 2, Line 7, by deleting that line and substituting the following: becomes effective

"~~**SECTION 4.** Section ~~X~~ of this act is effective when it becomes law. The remainder of this act becomes effective July 1, 2011, and expires January 1, 2016.~~" when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 596

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H596-AMD-71 [v.2]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

pm

VISITOR REGISTRATION SHEET

Senate Appropriations/Base Budget — June 6th, 2011
Name of Committee — **Date**

FINANCE

VISITORS: PLEASE SIGN IN ~~BELOW AND RETURN~~ TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan R. DeJarnette	NCANP
R.J. Weber	NC Chiropractic Assn.
Angie Harris	WM
Heather Barnett	Williams Mullen
Sandy Sando	WM
Katie Stanley	Dept of Commerce
SOLARI	DST
Canaan Huie	DOR
Thom Mee	Fidelity W Mee
Jon Carr	JPWGC
Jamie Fitzgerald	Alliance of HCSMs
Keith Overcash	Dept of Commerce

FINANCE 6/15/11

NAME	AGENT
Reta Harris	NC Commerce
Rebecca Troutman	NCACC
Tom Stern	EOP
Keith Richardson	City of Charlotte
J Goodman	NC CHAMBER
Henry Jones	Attorney Raleigh
Greg Thornton	Fisher Watts
Nick Tosco	NCLM
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Sammy Robertson	TWC
Bill Phillips	TWC
John Merritt	MWCLLC
Bo Hatton	MWC
Kay Leonard	NCACC
Rebecca Troutman	
Dale A. Yancey	NCANP

SENATE FINANCE COMMITTEE
Wednesday, June 15, 2011 at 9:45 PM
Senate Chamber

MINUTES

The Senate Finance Committee met at 9:45 PM on June 15, 2011 in the Senate Chamber. Senator Hartsell presided as chair.

H.B. 122 – Rev Laws Tech, Clarify., & Admin. Chngs.

The bill which makes technical, clarifying, and administrative changes to the revenue laws and related statutes. Senator Brock was recognized to offer technical amendment and moved for its adoption. The motion carried. Senator Meredith moved for a favorable report as amended and the motion carried. A copy of the bill and the amendment is attached.

The meeting adjourned at 9:50 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 15, 2011

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE, AS AMENDED

H.B.(CS #1) **122** Rev Laws Tech, Clarify., & Admin. Chngs.

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

HOUSE BILL 122*
Committee Substitute Favorable 6/9/11
Third Edition Engrossed 6/14/11

Short Title: Rev Laws Tech, Clarify., & Admin. Chngs. (Public)

Sponsors:

Referred to:

February 17, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

BUSINESS AND EXCISE TAXES

SECTION 1. Section 31.7(e) of S.L. 2010-31 reads as rewritten:

"**SECTION 31.7.(e)** G.S. 105-37.1(a)(1), as amended by subsection (a) of this section, becomes effective ~~August 1, 2010,~~February 1, 2009, and applies retroactively to charges for admission received before that date or on or after that date. G.S. 105-37.1(a)(2), as amended by subsection (a) of this section, becomes effective January 1, 2011, and applies to admission tickets sold on or after that date. The remainder of this section is effective when it becomes law."

SECTION 2.(a) G.S. 105-113.4 reads as rewritten:

"**§ 105-113.4. Definitions.**

The following definitions apply in this Article:

(1) Affiliate. – A person who directly or indirectly controls, is controlled by, or is under common control with another person.

(1a) Affiliated manufacturer. – A manufacturer licensed under G.S. 105-113.12 who is an affiliate of a manufacturer licensed under G.S. 105-113.12.

~~(1)~~(1b) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

~~(1a)~~(1c) Cigarette. – Any of the following:

a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.

b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.

...

(4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, and is not a retail dealer. ~~An "affiliate" is a person who directly or indirectly controls, is controlled by, or is under common control with another person.~~

...."

SECTION 2.(b) G.S. 105-113.10 reads as rewritten:

"**§ 105-113.10. Manufacturers ~~shipping to distributors exempt.~~exempt from paying tax.**

(a) Shipping to Other Distributors. – Any manufacturer shipping cigarettes to other distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part. No manufacturer may be relieved of the requirement to be licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate user.

(b) Shipping for Affiliated Manufacturer. – A manufacturer may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part on cigarettes that are manufactured by an affiliated manufacturer and temporarily stored at and shipped from its facilities."

SECTION 2.(c) G.S. 105-113.21(b) reads as rewritten:

"(b) Refund. – A distributor in possession of packages of stale or otherwise unsalable cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer as provided in this subsection and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigarettes. The distributor must return the cigarettes to the manufacturer of the cigarettes or to the affiliated manufacturer who is contracted by the manufacturer of the cigarettes to serve as the manufacturer's agent for the purposes of validating quantities and disposing of unsalable cigarettes."

SECTION 3. G.S. 105-120.2(f) is repealed.

SECTION 4. G.S. 105-129.50 is amended by adding a new subdivision to read:

"**§ 105-129.50. Definitions.**

The definitions in section 41 of the Code apply in this Article. In addition, the following definitions apply in this Article:

(1) Development tier one area. – Defined in G.S. 143B-437.08.

...."

SECTION 5. G.S. 105-130.4(t2) and G.S. 105-122(c1)(3) are repealed.

SECTION 6. G.S. 105-41(a)(8) and (a)(9) read as rewritten:

"(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ($50.00).

...

(8) A real estate ~~broker or a real estate salesman,~~broker as defined in G.S. 93A-2. A real estate broker ~~or a real estate salesman~~ who is also a real estate appraiser is required to obtain only one license under this section to cover both activities.

(9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser who is also a real estate broker ~~or a real estate salesman~~ is required to obtain only one license under this section to cover both activities."

SECTION 7. G.S. 105-113.82(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute annually a percentage of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31 to the counties or cities in which the retail sale of these beverages is authorized in the entire county or city. ~~For purposes of this subsection, the term "net amount"~~

~~means gross collections less refunds and amounts credited to the Department of Commerce under G.S. 105-113.81A.~~ The percentages to be distributed are as follows:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty and forty-seven hundredths percent (20.47%).

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), forty-nine and forty-four hundredths percent (49.44%).

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), eighteen percent (18%)."

SECTION 8. G.S. 105-125(b) reads as rewritten:

"(b) Certain Investment Companies. – A corporation doing business in North Carolina that meets one or more of the following conditions may, in determining its ~~basis~~ capital stock, surplus, and undivided profits base for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or governments:

(1) A regulated investment company. – A regulated investment company is an entity that qualifies as a regulated investment company under section 851 of the Code.

(2) A REIT, unless the REIT is a captive REIT. – The terms "REIT" and "captive REIT" have the same meanings as defined in G.S. 105-130.12."

SECTION 9. G.S. 105-127(f) reads as rewritten:

"(f) After the end of the income year in which a domestic corporation is dissolved pursuant to Part 1 of Article 14 of Chapter 55 of the General Statutes, the corporation is no longer subject to the tax levied in this Article unless the Secretary of Revenue finds that the corporation has engaged in business activities in this State not appropriate to winding up and liquidating its business and affairs."

SECTION 10. G.S. 105-228.8(e) reads as rewritten:

"(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums. ~~For purposes of this section, seventy-five percent (75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall not be a special purpose obligation or assessment or a dedicated special purpose tax within the meaning of this subsection.~~"

PERSONAL TAXES

SECTION 11. Section 4 of S.L. 2011-5 reads as rewritten:

"**SECTION 4.** This act is effective when it becomes ~~law.~~ law and applies to the estates of decedents dying on or after January 1, 2011. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North Carolina taxable income for the 2010 taxable year become effective for taxable years beginning on or after January 1, 2011."

SECTION 12.(a) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.1(19), as repealed in that act, is reenacted.

SECTION 12.(b) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(a1) and (a2), as enacted in that act, read as rewritten:

"(a1) Personal Exemption. – In calculating North Carolina taxable income, a taxpayer may deduct an exemption amount equal to the amount listed in the table below based on the taxpayer's filing status and adjusted gross income. The taxpayer is allowed the same ~~number of~~personal exemptions ~~claimed~~ allowed under section 151 of the Code for the taxable year.

Filing Status	Adjusted Gross Income	Personal Exemption

Married, filing jointly	Up to $100,000	$2,500
	Over $100,000	$2,000
Head of Household	Up to $80,000	$2,500
	Over $80,000	$2,000
Single	Up to $60,000	$2,500
	Over $60,000	$2,000
Married, filing separately	Up to $50,000	$2,500
	Over $50,000	$2,000

(a2) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct either the standard deduction amount listed in the table below for that taxpayer's filing status or the itemized deductions amount ~~elected~~ claimed under ~~section 63 of~~ the Code. ~~A taxpayer may not deduct both the standard deduction amount and the itemized deductions amount.~~ In the case of a married couple filing separate returns, a taxpayer may not deduct the standard deduction amount if the taxpayer's spouse claims itemized deductions for State purposes.

A taxpayer that deducts the standard deduction amount under this subsection and is entitled to an additional deduction amount under section 63(f) of the Code for the aged or blind may deduct an additional amount under this subsection. The additional amount the taxpayer may deduct is six hundred dollars ($600.00) in the case of an individual who is married and seven hundred fifty dollars ($750.00) in the case of an individual who is not married and is not a surviving spouse. The taxpayer is allowed the same number of additional amounts that the taxpayer claimed under the Code for the taxable year.

Filing Status	**Standard Deduction**
Married, filing jointly	$6,000
Head of Household	4,400
Single	3,000
Married, filing separately	3,000."

SECTION 12.(c) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(b)(22), as enacted in that act, reads as rewritten:

"(22) ~~The first~~An amount not to exceed fifty thousand dollars ($50,000) of net business income the taxpayer receives during the taxable year. In the case of a married couple filing a joint return where both spouses receive or incur net business income, the maximum dollar amounts apply separately to each spouse's net business income, not to exceed a total of one hundred thousand dollars ($100,000). For purposes of this subdivision, the term "business income" does not include income that is considered passive income under the Code."

SECTION 12.(d) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(c)(3) reads as rewritten:

"(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income ~~tax or~~ tax, as state or local general sales ~~tax~~ tax, or as qualified motor vehicle tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under ~~the Code reduced by the amount the taxpayer is required to add to taxable income under subdivision (4) of this subsection.~~subsection (a2) of this section."

SECTION 12.(e) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(c)(12) is repealed.

SECTION 12.(f) This section is effective for taxable years beginning on or after January 1, 2012.

SECTIONS 13-14. Reserved.

SECTION 14. Reserved.

SALES AND USE TAX AND ARTICLE 5F TAXES

SECTION 15.(a) G.S. 105-164.3(25), (27), (27b), and (30a) reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(25a) Over-the-counter drug. – A drug that can be dispensed under federal law without a prescription and is required by 21 C.F.R. § ~~210.66~~ 201.66 to have a label containing a "Drug Facts" panel and a statement of its active ingredients.

...

(27) Prepaid telephone calling service. – Prepaid ~~wireline~~ calling service or prepaid wireless calling service.

...

(27b) Prepaid ~~wireline~~ calling service. – A right that meets all of the following requirements:

a. Authorizes the exclusive purchase of ~~wireline~~ telecommunications service.

b. Must be paid for in advance.

c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.

d. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

...

(30a) Professional motorsports racing team. – A racing team that satisfies all of the following conditions:

a. The team is operated for profit.

b. ~~A majority of the revenues of the team is derived from sponsorship of the racing team and prize money.~~The team does not claim a deduction under section 183 of the Code.

c. The team competes in at least sixty-six percent (66%) of the races sponsored in a race series in a single season by a motorsports sanctioning body."

SECTION 15.(b) G.S. 105-164.3 is amended by adding a new subdivision to read:

"(33b) Related member. – Defined in G.S. 105-130.7A."

SECTION 15.(c) G.S. 105-164.14A(a)(4) and (a)(5) read as rewritten:

"**§ 105-164.14A. Economic incentive refunds.**

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

...

(4) Motorsports team or sanctioning body. – A professional motorsports racing ~~team or a~~team, a motorsports sanctioning ~~body~~ body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event"

includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after January 1, 2011.

(5) Professional motorsports team. – A professional motorsports racing team or a related member of a team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle. For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2014."

SECTION 15.(d) Subsection (b) this section and G.S. 105-164.14A(a)(4), as amended by subsection (c) of this section, apply retroactively to purchases made on or after January 1, 2005. G.S. 105-164.14A(a)(5), as amended by subsection (c) of this section, applies retroactively to purchases made on or after July 1, 2007.

SECTION 16. G.S. 105-164.4(a)(3) reads as rewritten:

"(3) A tax at the general rate applies to the gross receipts derived from the rental of an accommodation. The tax does not apply to (i) a private residence or cottage that is rented for fewer than 15 days in a calendar ~~year or to~~ year; (ii) an accommodation rented to the same person for a period of 90 or more continuous ~~days.~~days; or (iii) an accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity.

Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental.

A person who provides an accommodation that is offered for rent is considered a retailer under this Article. A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed and, within three business days of receiving the notice, the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales price. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this subdivision. The liability of a rental agent for the tax imposed by this subdivision relieves the provider of the accommodation from liability. A rental agent includes a real estate broker, as defined in G.S. 93A-2.

The following definitions apply in this subdivision:

a. Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.

b. Facilitator. – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation."

SECTION 17. G.S. 105-164.4C(h)(5) reads as rewritten:

"(h) Definitions. – The following definitions apply in this section:

...

(5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid ~~wireline~~ telephone calling service, except the exclusive use requirement.

...."

SECTION 18. G.S. 105-164.13(12), (26a), (33), (38), and (49) read as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(12) Sales of any of the following items:

a. Prosthetic ~~devices.~~devices for human use.

b. Mobility enhancing equipment sold on a prescription.

c. Durable medical equipment sold on prescription.

d. Durable medical supplies sold on prescription.

...

(26a) Food sold not for profit by a public school cafeteria to a child care center that participates in the Child and Adult Care Food Program of the Department of ~~Public Instruction.~~Health and Human Services.

...

(33a) Tangible personal property sold by a retailer to a purchaser within or without this State, when the property is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State and the purchaser does not subsequently use the property in this State.

...

(38) Food and other items lawfully purchased under the Food Stamp Program, 7 U.S.C. § 2011, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental ~~Food~~ Nutrition Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental ~~Food~~ Nutrition Program.

...

(49) Installation charges when the charges are separately ~~stated.~~stated on the invoice at the time of sale."

SECTION 19. G.S. 105-164.13D(a) reads as rewritten:

"(a) The taxes imposed by this Article do not apply to the Energy Star qualified products listed in this section if sold between 12:01 A.M. on the first Friday of November and 11:59 P.M. the following Sunday. The qualified products are:

(1) Clothes washers.
(2) Freezers and refrigerators.
(3) Central air conditioners and room air conditioners.
(4) Air-source heat ~~pumps and geothermal heat~~ pumps.
(5) Ceiling fans.
(6) Dehumidifiers.
(7) Programmable thermostats."

SECTION 20.(a) G.S. 105-164.14A(a)(1) and (a)(4), as amended by this act, read as rewritten:

"**§ 105-164.14A. Economic incentive refunds.**

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars ($2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after ~~January 1, 2011.~~January 1, 2013.

...

(4) Motorsports team or sanctioning body. – A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after ~~January 1, 2011.~~January 1, 2013.

...."

SECTION 20.(b) This section applies retroactively to purchases made on or after January 1, 2011.

SECTION 21. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases the items listed in this subsection ~~tangible personal property other than a boat or an aircraft, digital property, or a service~~ outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14. The items are:

(1) Tangible personal property other than a boat or an aircraft.
(2) Digital property.
(3) A service."

SECTION 22. G.S. 105-187.51C(c) reads as rewritten:

"(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at

an eligible datacenter, then the rate provided for that machinery and equipment under this section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the ~~combined general rate~~ applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed ~~at the combined general rate~~ from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 23. A facilitator is not liable for an overcollection or undercollection of sales tax or local occupancy tax if the facilitator has made a good faith effort to comply with the law and collect the proper amount of tax as the result of the change under Section 31.6 of S.L. 2010-31 regarding a facilitator's collection and remittance obligations imposed under G.S. 105-164.4(a)(3), 153A-155(c), and 160A-215(c). This applies only to the period beginning January 1, 2011, and ending April 1, 2011.

SECTION 24. Section 9 of S.L. 2010-91 reads as rewritten:

"**SECTION 9.** Section 6 of this act becomes effective January 1, 2010. Section 7 of this act is effective when it becomes law and applies retroactively to sales made on or after October 1, 2007. Section 8 of this act is effective when it becomes law, applies to all agreements in effect on or entered into after that date, and expires January 1, 2013. The remainder of this act becomes effective July 1, 2010, and applies to sales made on or after that date."

SECTION 25.(a) G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax due and paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

SECTION 25.(b) G.S. 105-187.52 reads as rewritten:

"**§ 105-187.52. Administration.**

(a) Administration. – The privilege taxes imposed by this Article are in ~~addition to~~ lieu of the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax due and paid to another state. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina.

(c) Exemption. – State agencies are exempted from the privilege taxes imposed by this Article."

SECTION 26.(a) G.S. 105-164.14 is amended by adding a new subsection to read:

"(p) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

SECTION 26.(b) G.S. 105-164.14A is amended by adding a new subsection to read:

"(d) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

SECTION 26.(c) G.S. 105-164.14B is amended by adding a new subsection to read:

"(g) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

SECTION 27. G.S. 105-164.15A(a)(1) reads as rewritten:

"(a) Services. – The effective date of a tax change for a service taxable under this Article is administered as follows:

(1) For a service that is provided and billed on a monthly or other periodic basis:

a. A new tax or a tax rate increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date. ~~For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.~~

b. A tax repeal or a tax rate decrease applies to bills rendered on or after the effective date."

SECTION 28. G.S. 105-164.28 reads as rewritten:

"**§ 105-164.28. Certificate of ~~resale.~~exemption.**

(a) Seller's Responsibility. – A seller who accepts a certificate of ~~resale~~ exemption from a purchaser has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

(1) For a sale made in person, the certificate is signed by the purchaser and states the purchaser's name, address, registration number, and type of business.

(2) For a sale made in person, the item sold is the type of item typically sold by the type of business stated on the certificate.

(3) For a sale made over the Internet or by other remote means, the seller obtains the purchaser's name, address, registration number, and type of business and maintains this information in a retrievable format in its records.

(b) Purchaser's Liability. – A purchaser who does not resell an item purchased under a certificate of ~~resale~~ exemption is liable for any tax subsequently determined to be due on the sale."

SECTION 29. G.S. 105-164.4B is amended by adding a new subsection to read:

"(f) Digital Property. – A purchaser receives digital property when the purchaser takes possession of the property or makes first use of the property, whenever comes first."

EXCISE TAX ON CONVEYANCES

SECTION 30.(a) G.S. 105-228.37 reads as rewritten:

"**§ 105-228.37. Refund of overpayment of tax.**

(a) Refund Request. – A taxpayer who pays more tax than is due under this Article may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due.

(b) Hearing by County. – A board of county commissioners must conduct a hearing on a request for ~~refund in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property. If~~ refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the date set for the hearing, the board must notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing must be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the board. The board must make a decision on the requested refund within 90 days after conducting a hearing under this subsection. ~~the board decides that a refund is due, it must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission.~~

(c) ~~Review by Commission.~~ Process if Refund Granted. – If the board of commissioners decides that a refund is due, it must refund the overpayment, together with any applicable interest, to the taxpayer and inform the Department of the refund. The Department may assess the taxpayer for the amount of the refund in accordance with G.S. 105-241.9 if the Department disagrees with the board's decision. ~~The procedure in G.S. 105-290 for the appeal to the Property Tax Commission of a decision of a board of equalization and review concerning the listing or appraisal of property applies to the appeal of a denial by a board of county commissioners of a request for a refund of tax paid under this Article. If the Commission determines that a refund is due, the board of county commissioners must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. A decision of the Commission is binding on the Secretary and on a board of county commissioners.~~

(d) ~~Judicial Review.~~ Process if Refund Denied. – ~~A decision of the Property Tax Commission is subject to judicial review in accordance with G.S. 7A-29.~~ If the board of commissioners finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may request a departmental review of the denial of the refund in accordance with the procedures set out in G.S. 105-241.11.

(e) Recording Correct Deed. – Before a tax is refunded, the taxpayer must record a new instrument reflecting the correct amount of tax due. If no tax is due because an instrument was recorded in the wrong county, then the taxpayer must record a document stating that no tax was owed because the instrument being corrected was recorded in the wrong county. The taxpayer must include in the document the names of the grantors and grantees and the deed book and page number of the instrument being corrected.

When a taxpayer records a corrected instrument, the taxpayer must inform the register of deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the register of deeds a copy of the decision granting the refund that shows the correct amount of tax due. The correcting instrument must include the deed book and page number of the instrument being corrected. The register of deeds must notify the county finance officer and the Secretary when the correcting instrument has been recorded.

(f) Interest. – An overpayment of tax bears interest at the rate established in G.S. 105-241.21 from the date that interest begins to accrue. Interest begins to accrue on an overpayment 30 days after the request for a refund is filed by the taxpayer with the board of county commissioners."

SECTION 30.(b) G.S. 105-228.30(b) reads as rewritten:

"(b) The register of deeds of each county must remit the proceeds of the tax levied by this section to the county finance officer. The finance officer of each county must credit one-half of the proceeds to the county's general fund and remit the remaining one-half of the proceeds, less taxes refunded and the county's allowance for administrative expenses, to the Department of Revenue on a monthly basis. A county may retain two percent (2%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation

for the county's cost in collecting and remitting the State's share of the tax. Of the funds remitted to it pursuant to this section, the Department of Revenue must credit seventy-five percent (75%) to the Parks and Recreation Trust Fund established under G.S. 113-44.15 and twenty-five percent (25%) to the Natural Heritage Trust Fund established under G.S. 113-77.7."

GENERAL ADMINISTRATION

SECTION 31.(a) G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(b) Definitions. – The following definitions apply in this Article:

...

(4b) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007.

...."

SECTION 31.(b) G.S. 105-129.81(13) and (18) read as rewritten:

"**§ 105-129.81. Definitions.**

The following definitions apply in this Article:

...

(13) Information technology and services. – An industry in one of the ~~following:~~following, as defined by NAICS:

a. ~~Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.~~Data processing industry group 518.

b. Software publishers industry group ~~5112 as defined by NAICS.~~5112.

c. Computer systems design and related services industry group ~~5415 as defined by NAICS.~~5415.

d. An Internet activity included in industry group 519130.

...

(18) NAICS. – ~~The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.~~Defined in G.S. 105-228.90.

...."

SECTION 31.(c) G.S. 105-164.3(23a) reads as rewritten:

"(23a) NAICS. – ~~The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007.~~Defined in G.S. 105-228.90."

SECTION 32. G.S. 105-236(a)(2) reads as rewritten:

"(a) Penalties. – The following civil penalties and criminal offenses apply:

...

(2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00). In cases in which the ~~taxpayer~~ taxpayer, after written notification by the Department, fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars ($1,000).

...."

SECTION 33.(a) G.S. 105-256(a)(9) reads as rewritten:

"(a) Publications. – The Secretary shall prepare and publish the following:

...

(9) A final decision of the Secretary in a contested tax case. ~~The Secretary must redact identifying taxpayer information from a final decision prior to publication.~~"

SECTION 33.(b) G.S. 105-259(b)(27) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

(27) To provide a ~~report~~ publication required under this Chapter."

SECTION 33.(c) G.S. 150B-21.17(a)(5) is repealed.

SECTION 34. G.S. 105-241.9(b) reads as rewritten:

"(b) Time Limit. – The Secretary must propose an assessment within the statute of limitations for proposed assessments unless the taxpayer waives the limitations period ~~in writing.~~ before it expires by agreeing in writing to extend the period. A taxpayer may waive the limitations period for either a definite or an indefinite time. If the taxpayer waives the limitations period, the Secretary may propose an assessment at any time within the time extended by the waiver."

SECTION 35. G.S. 105-256(a)(7) is repealed.

SECTION 36. Section 24.18(g) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.18.(g)** This section is effective for taxable years beginning on or after January 1, 2006, and expires for taxable years beginning on or after ~~January 1, 2011.~~ January 1, 2013."

SECTION 37. G.S. 105-228.90(a) reads as rewritten:

"(a) Scope. – This Article applies to all of the following:

(1) Subchapters I, V, and VIII of this ~~Chapter, to the~~ Chapter.

(2) The annual report filing requirements of ~~G.S. 55-16-22, to the~~ G.S. 55-16-22.

(3) The primary forest product assessment levied under Article 12 of Chapter 113A of the General ~~Statutes, and to~~ Statutes.

(4) The inspection taxes levied under Article 3 of Chapter 119 of the General Statutes.

(5) Chapter 105A of the General Statutes."

SECTION 38. G.S. 105-164.41 is repealed.

SECTION 39. Reserved.

PROPERTY TAX

SECTION 40. G.S. 105-330.4 is amended by adding a new subsection to read:

"(d) Tax payments submitted by mail are deemed to be received as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark or if the postmark is not affixed by the United States Postal Service, the tax payment is deemed to be received when the payment is received in the office of the tax collector. In any dispute arising under this subsection, the burden of proof is on the taxpayer to show that the payment was timely made."

SECTION 41. G.S. 105-333(14) reads as rewritten:

"**§ 105-333. Definitions.**

The following definitions apply in this Article unless the context requires a different meaning:

...

(14) Public service company. – A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, or a motor freight carrier company. The term also includes any company performing a public service that is regulated by the United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, providers of mobile telecommunications service as defined in G.S. 105-164.3, a cable television company, or a radio or television broadcasting company."

SECTION 42.(a) The prefatory language for Section 65 of S.L. 2008-134 reads as rewritten:

"Section 13 of S.L. 2005-294, as amended by Section 31.5 of S.L. 2006-259 and ~~Section 22(c)~~Section 22(b) of S.L. 2007-527, reads as rewritten:"

SECTION 42.(b) Section 22(a) of S.L. 2010-95 is repealed.

SECTION 42.(c) Section 22(e) of S.L. 2010-95 reads as rewritten:

"**SECTION 22.(e)** Section 79 of S.L. 2008-134, as amended by Section 25(b) of S.L. 2009-445, reads as rewritten:

"**SECTION 79.** Sections 16 through 60 of this act become effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law. ~~Section 63 of this act is repealed July 1, 2011.~~ Section 63 of this act is repealed July 1, 2013."

SECTIONS 43-44. Reserved.

LOCAL GOVERNMENT SALES AND USE TAX

SECTION 45. G.S. 105-467(a) reads as rewritten:

"(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the ~~transactions listed in this subsection. The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this subsection.~~following:

(1) A retailer's net taxable sales and gross receipts that are ~~The sales price of tangible personal property~~ subject to the general rate of sales tax imposed by the State under ~~G.S. 105-164.4(a)(1) and (a)(4b).~~G.S. 105-164.4.

~~(2) The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(2).~~

~~(3) The gross receipts derived from the rental of any room or other accommodations subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(3).~~

~~(4) The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).~~

(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to G.S. 105-164.13B.

(5a) The sales price of a bundled transaction that includes food subject to tax under subdivision (5) of this subsection, if the price of the food exceeds ten percent (10%) of the price of the bundle. A retailer must determine the price of food in a bundled transaction in accordance with G.S. 105-164.4D.

(5b) The sales price of bread, rolls, and buns that are sold at a bakery thrift store and are exempt from State tax under G.S.105-164.13(27a).

~~(6) The sales price of prepaid telephone calling service taxed as tangible personal property under G.S. 105-164.4(a)(4d).~~

~~(7) The gross receipts derived from providing satellite digital audio radio service subject to the general rate of tax under G.S. 105-164.4(a)(6a).~~"

MISCELLANEOUS

SECTION 46. Section 8 of S.L. 2006-209 reads as rewritten:

"**SECTION 8.** As applied to G.S. 20-79.4, the authority in G.S. 164-10 for the ~~Division of Legislative Drafting and Codification~~ Legislative Services Office to reletter or renumber section subdivisions includes the authority to renumber all the subdivisions in G.S. 20-79.4(b) in sequential and alphabetical order and to eliminate mixed number-letter subdivision designations. ~~This section expires July 1, 2011.~~"

SECTION 47.(a) G.S. 58-70-35(a) reads as rewritten:

"(a) Upon the filing of the application and information required by this Article, the applicant shall pay a nonrefundable fee of one thousand dollars ($1,000), and no permit may be issued until this fee is paid. Fees collected under this subsection shall be ~~used in paying the expenses incurred in connection with the consideration of such applications and the issuance of such permits.~~credited to the Insurance Regulatory Fund created under G.S. 58-6-25."

SECTION 47.(b) G.S. 143-143.10(a) reads as rewritten:

"(a) There is created the North Carolina Manufactured Housing Board within the Department. The Board shall be composed of 11 members as follows:

(1) The Commissioner of Insurance or the Commissioner's designee.
(2) A manufactured home manufacturer.
(3) A manufactured home dealer.
(4) A representative of the banking and finance industry.
(5) A representative of the insurance industry.
(6) A manufactured home supplier.
(7) A set-up contractor.
(8) Two representatives of the general public.
(9) A person who is employed with a HUD-approved housing counseling agency in the State.
(10) An accountant.

The Commissioner or the Commissioner's designee shall chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint to the Board the representative of the banking and finance industry, the employee of a HUD-approved housing counseling agency, and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint to the Board the manufactured home supplier, the accountant, and the set-up contractor. The Commissioner shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years. In the event of any vacancy of a position appointed by the Governor or Commissioner, the appropriate appointing authority

shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The members of the Board designated in subdivisions (8), (9), and (10) of this subsection shall have no current or previous financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. ~~All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Part. In no case shall any salary, expense, or other obligation of the Board be charged against the General Fund of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Part. At the end of the fiscal year, the Board shall retain fifteen percent (15%) of the unexpended funds collected and received during that year. The remaining eighty-five percent (85%) of these funds shall be credited to the General Fund.~~Fees collected by the Board under this Article shall be credited to the Insurance Regulatory Fund created under G.S. 58-6-25."

SECTIONS 48-49. Reserved.

EFFECTIVE DATE

SECTION 50. Except as otherwise provided, this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 122*

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H122-ASV-43 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
Third Edition

Date June 15 ,2011

Senator ~~Hodgetter~~ Brock

JA - initial

moves to amend the bill on page 5, line ~~28~~ 2 by deleting the line;

And on page 10, line 41, by deleting the word "whenever" and substituting the word "whichever".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

2012

SENATE
FINANCE

MINUTES

MEMBERSHIP LIST
SENATE FINANCE COMMITTEE
2011-2012

Senator, Fletcher Hartsell, Chair **Room 300-C, LOB 733-7223** **Fletcher.Hartsell@ncleg.net** **LA: Gerry Johnson**	**Senator Bob Rucho, Chair** **Room 300-A, LOB 733-5655** **Bob.Rucho@ncleg.net** **LA: Helen Long**
Senator Thomas M. Apodaca, Vice Chair **Room 2010, LB 733-5745** **Tom.Apodaca@ncleg.net** **LA: Carolyn Gooden**	**Senator Harris Blake, Vice Chair** **Room 408, LOB 733-4809** **Harris.Blake@ncleg.net** **LA: Anna Kidd**
Senator Kathy Harrington, Vice Chair **Room 2113 LB 733-5734** **Kathy.Harrington@ncleg.net** **LA: Christopher Dean**	**Senator Bill Rabon, Vice Chair** **Room 2108, LB 733-5963** **Bill.Rabon@ncleg.net** **LA: Melissa Dombolis**
Sen. Austin Allran **Room 625, LOB 733-5876** **Austin.Allran@ncleg.net** **LA: Carole Walker**	**Sen. Bob Atwater** **Room 519, LOB 715-3036** **Bob.Atwater@ncleg.net** **LA: Carol Resar**
Senator Andrew C. Brock **Room 623, LOB 715-0690** **Andrew.Brock@ncleg.net** **LA: Janet Black**	**Senator Harry Brown** **Room 300-B, LOB 715-3034** **Harry.Brown@ncleg.net** **LA: Suzanne Gunter**
Senator Peter Brunstetter **Room 2022, LB 733-7850** **Peter.Brunstetter@ncleg.net** **LA: Genie Clark**	**Senator Chris Carney** **Room 1028, LB 715-3050** **Chris.Carney@ncleg.net** **LA: Mona Fitzgerald**
Senator Daniel G. Clodfelter **Room 526, LOB 715-8331** **Daniel.Clodfelter@ncleg.net** **LA: Ted Harrison**	**Senator Warren Daniel** **Room 411, LOB 715-7823** **Warren.Daniel@ncleg.net** **LA: Andy Perrigo**
Senator Charlie S. Dannelly **Room 1127, LB 733-5955** **Charlie.Dannelly@ncleg.net** **LA: Dee Hodge**	**Senator Linda D. Garrou** **Room 620, LOB 733-5620** **Linda.Garrou@ncleg.net** **LA: Gail Bishop**
Senator Thom Goolsby **Room 2115, LB 715-2525** **Thom.Goolsby@ncleg.net** **LA: Joseph Kyzer**	**Senator Neal Hunt** **Room 308, LOB 733-5850** **Neal.Hunt@ncleg.net** **LA: Kathy Davis**

Senator Clark Jenkins **Room 621, LOB 715-3040** **Clark.Jenkins@ncleg.net** **LA: Megan McCarthy**	**Senator Eleanor G. Kinnaird** **Room 628, LOB 733-5804** **Ellie.Kinnard@ncleg.net** **LA: Kathie Young**
Senator Floyd McKissick. Jr **Room 520, LOB 733-4599** **Floyd.McKissick@ncleg.net** **LA: Rosita Littlejohn**	**Senator Wesley Meredith** **Room 2106, LB 733-5776** **Wesley.Meredith@ncleg.net** **LA: Debbie Lown**
Senator Martin L. Nesbitt, Jr. **Room 1129, LB 715-3001** **Martin.Nesbitt@ncleg.net** **LA: Evelyn Costello**	**Senator Buck Newton** **Room 410, LOB 715-3030** **Buck.Newton@ncleg.net** **LA: Blythe Elliott**
Senator William R. Purcell **Room 517, LOB 733-5953** **William.Purcell@ncleg.net** **LA: Becky Hedspeth**	**Senator Gladys Robinson** **Room 1120B 715-3042** **gladysr@ncleg.net** **LA: Phyllis Cameron**
Senator David Rouzer **Room 523, LOB 733-5748** **David.Rouzer@ncleg.net** **LA: Judy Edwards**	**Senator Josh Stein** **Room 1113, LB 715-6400** **Josh.Stein@ncleg.net** **LA: Candace Finley**
Senator Richard Y. Stevens **Room 309, LOB 733-5653** **Richard.Stevens@ncleg.net** **LA: Mary Marchman**	**Senator Jerry W. Tillman** **Room 627, LOB 733-5870** **Jerry.Tillman@ncleg.net** **LA: Yvonne Hall**
Senator Michael P. Walters **Room 1118, LB 733-5651** **Michael.Walters@ncleg.net** **LA: Vickie Spears**	**Senator Wes Westmoreland** **Room 314, LOB 715-3038** **Wes.Westmoreland@ncleg.net** **LA: Lynn Tennant**
Senator Stan White **Room 1121, LB 715-8293** **Stan.White@ncleg.net** **LA: Brenda Lee**	
Staff: **Cindy Avrette** **Research Division 733-2578** **Cindy.Avrette@ncleg.net**	 **Rodney Bizzell** **Fiscal Research 733-4910** **Rodney.Bizzell@ncleg.net**
DeAnne Mangum (Finance CA) **Room 300-B, LOB 733-2405** **DeAnne.Mangum@ncleg.net**	**Paul Rucho (Finance CA)** **Room 300-A, LOB 733-2405** **Paul.Rucho@ncleg.net**

SENATE FINANCE COMMITTEE
Wednesday, May 16, 2012 at 3:30 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 3:30 PM on May 16, 2012 in room 544 of the Legislative Office Building. Twenty-six members of the committee were present. Senator Hartsell presided as chair.

H.B. 5 – Kinston Annexation Repealed

Senator Newton was recognized to explain the bill. The bill deannexes specified local involuntary annexations, suspends enforcement of specified pending local involuntary annexations, repeals the local ordinances that made those involuntary annexations, and prohibits involuntary annexation of those areas for twelve years. Kelli Kukura, representing the League of Municipalities, was recognized to speak in opposition to the bill. She stated that it was punitive and costly to municipalities. Tony Solari, representing the State's Treasurer's office, was recognized to answer questions, but questioned who will be on the hook for repaying towns' bonds that had been issued based on annexations? Dallas Woodhouse, representing Americans for Prosperity, and Doug Akins, representing the Fair Annexation Coalition, were recognized to speak in favor of both bills on the agenda. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 925 – LRC Study Metropolitan Sewerage/Water System

Senator Gunn explained the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would require a vote of the residents of the area to be involuntary annexed prior to the adoption of an annexation ordinance. If less than a majority of the voters vote for the annexation, the municipality may not proceed with annexing that area for 36 months. Senator Newton then offered a clarifying amendment and moved for its adoption. The motion carried. Gerry Cohen, the Bill Drafting Division director, was recognized to answer questions. Kelli Kukura was recognized to speak in opposition to the bill, stating that a small population will be allowed to kill growth which is "patently" unfair. She stated that the bill kills balanced growth and will have long term consequences. Tony Tetterton, Vice Preside of the Fair Annexation Coalition, was recognized. He commented that the PCS will not prevent growth or voluntary annexations. Senator Tillman moved for a favorable report of the PCS as amended and the motion carried. A copy of the PCS, the summary and the amendment is attached.

The meeting adjourned at 4:21 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Finance** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	May 16, 2012	3:30 PM	544 LOB

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Senate Finance Committee
Wednesday, May 16, 2012, 3:30 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 5	Kinston Annexation Repealed.	Rep. LaRoque
HB 925	LRC Study Metropolitan Sewerage/Water System.	Rep. Moffitt

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 5
Committee Substitute Favorable 2/10/11
PROPOSED COMMITTEE SUBSTITUTE H5-CSRWx-73 [v.2]

5/15/2012 5:55:11 PM

Short Title: Local Deannexations. (Local)

Sponsors:

Referred to:

January 27, 2011

A BILL TO BE ENTITLED

AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY DEANNEXING SPECIFIED LOCAL INVOLUNTARY ANNEXATION AREAS, BY REPEALING SPECIFIED INVOLUNTARY ANNEXATION ORDINANCES, AND BY PROHIBITING MUNICIPAL INITIATION OF ANY PROCEDURE TO INVOLUNTARILY ANNEX THOSE AREAS FOR TWELVE YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Deannexation. – Any area affected by an annexation ordinance described in Section 4 of this act that is part of the corporate limits of a municipality on the effective date of this act is hereby removed from that municipality's corporate limits on the effective date of this act. The operation and enforcement of any annexation ordinance described in Section 4 of this act that is pending on the effective date of this act is suspended on and after the effective date of this act.

SECTION 2. Repeal Annexation Ordinances. – All annexation ordinances described in Section 4 of this act are repealed as of the effective date of this act.

SECTION 3. Twelve-Year Prohibition on Involuntary Annexation. – All areas affected by the annexation ordinances described in Section 4 of this act shall not be subject to any annexation proceeding, other than a voluntary annexation under Part 1 or Part 4 of Article 4A of Chapter 160A of the General Statutes, or local act of the General Assembly, for a period of 12 years from and after the effective date of this act. After the 12-year period, the area may be subject to annexation in accordance with State law effective at that time.

SECTION 4. Repealed Involuntary Annexation Ordinances:

(1) Kinston annexation ordinance, as described in House Bill 5, First Edition, 2011 Regular Session.

(2) Lexington annexation ordinance, as described in House Bill 37, First Edition, 2011 Regular Session.

(3) Rocky Mount annexation ordinance, as described in House Bill 56, First Edition, 2011 Regular Session.

(4) Wilmington annexation ordinance, described in House Bill 180, First Edition, 2011 Regular Session.

(5) Asheville/Biltmore Lake annexation ordinance, as described in House Bill 236, First Edition, 2011 Regular Session.

(6) Marvin annexation ordinance, affecting the area described in RS 2008-02-02, a resolution of the Village of Marvin Council.

(7) Southport annexation ordinance, affecting "Area A" and "Area B," as described in City of Southport annexation ordinance, adopted June 9, 2011.

(8) Goldsboro annexation ordinance, affecting the area described in Senate Bill 314, First Edition, 2011 Regular Session.

(9) Fayetteville Gates Four annexation ordinance, as described in House Bill 231, First Edition, 2011 Regular Session.

SECTION 5. Repeal of 2011 Session Laws. – S.L. 2011-173 and S.L. 2011-177 are repealed.

SECTION 6. Severability. – If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 7. This act is effective from and after July 1, 2012.

HOUSE BILL 5:
Local Deannexations

2011-2012 General Assembly

Committee:	Rules and Operations of the Senate	**Date:**	May 15, 2012
Introduced by:	Rep. LaRoque	**Prepared by:**	Giles S. Perry
Analysis of:	PCS to Second Edition H5-CSRWx-73		Committee Counsel

SUMMARY: ***House Bill 5 (Proposed Committee Substitute) deannexes specified local involuntary annexations, suspends enforcement of specified pending local involuntary annexations, repeals the local ordinances that made those involuntary annexations, and prohibits involuntary annexation of those areas for twelve years.***

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

BILL ANALYSIS:

Section 1 of the bill deannexes any areas affected by any annexation ordinance listed in Section 4 of the bill that is part of a municipality on the effective date of the bill, and suspends operation and enforcement of any annexation ordinance listed in Section 4 of the bill that is pending on the effective date of the bill.

Section 2 repeals the local involuntary annexation ordinances listed in Section 4 of the bill.

Section 3 provides that the nine local annexation areas covered by the bill shall not be subject to any involuntary annexation proceeding for a period of 12 years from and after the effective date.

Section 4 lists the nine local involuntary annexation ordinances covered by the bill.

Section 5 repeals S.L. 2011-173 and S.L. 2011-17, the local involuntary annexations bills enacted during the 2011 Session, which subjected nine local pending or completed involuntary annexations to a petition to deny annexation process.

Section 6 is a severability clause, providing that if any provision of the bill is held invalid, that provision is severable, and the remainder of the bill can be enforced.

EFFECTIVE DATE: This act is effective from and after July 1, 2012.

BACKGROUND: The 2011 General Assembly enacted the Statewide Annexation Reform Act of 2011 (S.L. 2011-396) and two local acts, S.L. 2011-173 and S.L. 2011-177, affecting nine local annexations, subject to a petition to deny annexation process by affected property owners.

The Statewide Annexation Reform Act of 2011 and the local acts were subject to a lawsuit filed in late 2011. On March 27, 2012, a Wake County Superior Court Judge ruled in favor of the plaintiffs, finding the Statewide and local acts violated Art I, Secs. 11, 19, and 32; and Art. VII, Sec. 1 of the Constitution of North Carolina. The Judge's ruling is under appeal.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 925
Committee Substitute Favorable 5/26/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H925-PCS30553-STx-90

Short Title: Annexation Reform 2. (Public)

Sponsors:

Referred to:

May 5, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A VOTE OF THE RESIDENTS PRIOR TO THE ADOPTION OF AN ANNEXATION ORDINANCE INITIATED BY A MUNICIPALITY.

The General Assembly of North Carolina enacts:

SECTION 1. Part 7 of Article 4A of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-58.64. Referendum prior to involuntary annexation ordinance.**

(a) After the adoption of the resolution of intent under this Part, the municipality shall place the question of annexation on the ballot. The municipal governing board shall notify the appropriate county board or boards of elections of the adoption of the resolution of intent and provide a legible map and clear written description of the proposed annexation area.

(b) In accordance with G.S. 163-58.55, the municipal governing board shall adopt a resolution setting the date for the referendum and so notify the appropriate county board or boards of elections.

(c) The county board or boards of elections shall cause legal notice of the election to be published. That notice shall include the general statement of the referendum. The referendum shall be conducted, returned, and the results declared as in other municipal elections in the municipality. Registered voters of the proposed annexation area shall be allowed to vote on the referendum.

(d) The referendum of any number of proposed involuntary annexations may be submitted at the same election; but as to each proposed involuntary annexation, there shall be an entirely separate ballot question.

(e) The ballots used in a referendum shall submit the following proposition:

"[ ] FOR [ ] AGAINST

The annexation of (clear description of the proposed annexation area)."

(f) If less than a majority of the votes cast on the referendum are for annexation, the municipal governing body may not proceed with the adoption of the annexation ordinance or begin a separate involuntary annexation process with respect to that proposed annexation area for at least 36 months from the date of the referendum. If a majority of the votes cast on the referendum are for annexation, the municipal governing body may proceed with the adoption of the annexation ordinance under G.S. 160A-58.55."

SECTION 2. G.S. 160A-58.55 reads as rewritten:

"**§ 160A-58.55. Procedure for annexation.**

(a) Resolution of Consideration. – Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution of consideration identifying the area under consideration for annexation by either a metes and bounds description or a map. The resolution of consideration shall remain effective for two years after adoption and be filed with the municipal clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution. Adoption of a resolution of consideration shall not confer prior jurisdiction over the area as to any other municipality.

(b) Notice of Resolution of Consideration. – A notice of the adoption of the resolution of consideration shall be published once a week for two successive weeks, with each publication being on the same day of the week, in a newspaper having general circulation in the municipality. The second publication shall be no more than 30 days following adoption of the resolution of consideration. The resolution of consideration shall contain a map or description of the area under consideration and a summary of the annexation process and time lines. A copy of the resolution of consideration shall be mailed within 30 days after the adoption of the resolution of consideration by first class mail to the property owners of real property located within the area under consideration for annexation as shown by the tax records of the county. If a proposed annexation extends across a county border into a county other that the county where the majority of the area of the existing municipality is located, a copy of the resolution of consideration shall be mailed within 30 days after the adoption of the resolution of consideration by first class mail to the clerk of the board of county commissioners of that county.

(c) Resolution of Intent. – At least one year after adoption of the resolution of consideration, the municipal governing body may adopt a resolution of intent of the municipality to proceed with the annexation of some or all of the area described in the resolution of consideration. The resolution of intent shall describe the boundaries of the area proposed for annexation, fix a date for a public informational meeting, ~~and~~ fix a date for a public hearing on the question of annexation, and fix a date for the referendum on annexation. The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution of intent. The date for the public hearing shall be not less than 130 days and not more than 150 days following passage of the resolution of intent. The date of the referendum on annexation shall be set for the next municipal general election that is more than 45 days from the date of the resolution of intent.

(d) Notice of Public Informational Meeting, Public Hearing, and Opportunity for Water and Sewer. – A combined notice of public informational meeting and public hearing shall be issued as provided for in this subsection as follows:

(1) The notice shall be a combined notice that includes at least all of the following:
   a. The date, hour, and place of the public informational meeting.
   b. The date, hour, and place of the public hearing.
   c. A clear description of the boundaries of the area under consideration, including a legible map of the area.
   d. A statement that the report required by G.S. 160A-58.53 will be available at the office of the municipal clerk.
   e. An explanation of a property owner's rights under this section.
   f. A summary of the annexation process with time lines.
   g. A summary of the opportunity to vote in the referendum and available statutory remedies ~~for denying and~~ appealing the annexation and the failure to provide services.

h. Information on how to request to become a customer of the water and sewer service, all forms to request that service, and the consequences of opting in or opting out, as provided in G.S. 160A-58.56.

i. A clear description of the distinction between the public informational meeting and the public hearing.

(2) The combined notice shall be given by publication of the information required by sub-subdivisions (1)a., b., and c. of this subsection and a statement regarding the availability of the information required by the remaining sub-subdivisions of subdivision (1) of this subsection in a newspaper having general circulation in the municipality once a week for at least two successive weeks prior to the date of the public informational meeting, with each publication being on the same day of the week. The date of the last publication shall be not more than 10 days preceding the date of the public informational meeting. In addition thereto, if the area proposed to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, the same publication shall be given in a newspaper having general circulation in the area of proposed annexation. If there is no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public informational meeting.

(3) The combined notice, together with the information about requesting water and sewer service, shall be mailed within five business days of the passage of the resolution of intent by first class mail to the property owners of real property located within the area to be annexed as shown by the tax records of the county. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the public record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If a notice is returned to the municipality by the postal service by the tenth day before the informational meeting, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the informational meeting. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

(4) If the governing board by resolution finds that the tax records are not adequate to identify the property owners within the area to be annexed after exercising reasonable efforts to locate the property owners, it may, in lieu of the mail procedure required by subdivision (3) of this subsection, post the notice at least 30 days prior to the date of the public informational meeting on all buildings, on such parcels, and in at least five other places within the area to be annexed as to those parcels where the property owner could not be so identified. In any case where notices are placed on property, the person placing the notice shall certify that fact to the governing board.

(e) Action Prior to Informational Meeting. – At least 30 days before the date of the public informational meeting, the municipal governing board shall do all of the following:

(1) Approve the report provided for in G.S. 160A-58.53.

(2) Prepare a summary of the approved report for public distribution.

(3) Post in the office of the clerk all of the following:

a. The approved report provided for in G.S. 160A-58.53.

b. The summary of the approved report.

c. A legible map of the area to be annexed.
d. The list of the property owners, and associated mailing addresses, in the area to be annexed that the municipality has identified and mailed notice.
e. Information for property owners on how to request to become a customer of the water service or sewer service and all forms to request that service.

(4) If the municipality has a Web site, post on that Web site all of the information under this section together with any forms to apply for water and sewer service.

(5) Prepare a summary of the opportunity to vote in the referendum and available ~~substantive~~statutory remedies for ~~denying and~~ appealing the annexation for public distribution.

(f) Public Informational Meeting. – At the public informational meeting, a representative of the municipality shall first make an explanation of the report required in G.S. 160A-58.53 and an explanation of the provision of major municipal services. The explanation of the provision of services shall include how to request water service or sewer service to individual lots, the average cost of a residential connection to the water and sewer system, and the opportunity for installation of a residential connection under G.S. 160A-58.56. A summary of the annexation process with time lines, a summary of opportunity to vote in the referendum and available statutory remedies for ~~denying and~~ appealing the annexation, an explanation of the provision of services, and information for requesting water service or sewer service to individual lots and any forms to so request shall also be distributed at the public informational meeting. Following such explanation, all property owners and residents of the area proposed to be annexed as described in the notice of public informational meeting and hearing, and all residents of the municipality shall be given the opportunity to ask questions and receive answers regarding the proposed annexation.

(g) Public Hearing. – At the public hearing, a representative of the municipality shall first make an explanation of the report required in G.S. 160A-58.53. Following such explanation, all property owners and residents of the area proposed to be annexed as described in the notice of public informational meeting and hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(h) The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-58.53 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-58.53. At any regular or special meeting held no sooner than the tenth day following the ~~public hearing and not later than 90 days following the public hearing,~~certification of the election held under G.S. 160A-58.64, the governing board shall have authority to adopt an ordinance, subject to subsection (i) of this section, extending the corporate limits of the municipality to include all, or part, of the area described in the notice of public hearing which the governing board has concluded should be annexed. The annexation ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-58.54.

(2) Describe the external boundaries of the area to be annexed by metes and bounds.

(3) Include a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-58.53 and a time line for the provision of those services.

(4) Contain a specific finding that on the effective date of annexation, the municipality will have funds appropriated in sufficient amount to finance

construction of any water and sewer lines stated in the report required by G.S. 160A-58.53 to extend the water and sewer services into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds shall be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(5) Fix the effective date for annexation as June 30 next following the adoption of the ordinance or the second June 30 following adoption of the ordinance, but not before the completion of the water and sewer request ~~and petition to deny and~~ appeal periods are complete.

(6) Together, with the list of the property owners of parcels within the area described in the annexation ordinance to which a notice was mailed under subsection (d) of this section, be delivered within five business days to the tax assessor and the board of elections of the county in which a majority of the municipality lies.

~~(7) Be summarized, and sent in accordance with subsection (i) of this section, to the list of the property owners within the area described in the annexation ordinance to which a notice was mailed under subsection (d) of this section together with a blank petition form, preprinted with name and address of the property owner.~~

(8) If a public body has a Web site, conspicuously post ~~a copy of the petition to deny annexation ordinance that a property owner in the real property located within the area described in the annexation ordinance may download, complete, and return to the county board of elections in accordance with subsection (i) of this section.~~notice of the referendum until after the certification of the election.

(i) ~~Petition~~ Referendum Vote ~~to Deny~~on Annexation Ordinance. – The ~~following~~ procedures in G.S. 160A-58.64 shall apply to ~~this subsection:~~

~~(1) Upon receipt of the resolution of intent and a list of property owners of the real property located within the area, the county tax assessor shall prepare a list of the real property parcels within the area, and forward it to the board of elections in the county where a majority of the parcels proposed for annexation are located. The board of elections shall prepare petitions for property owners of the real property located within the area described in the resolution of intent to sign opposing the annexation ordinance.~~

~~(2) A petition shall include the names of the property owners of the parcel of real property listed individually, a signature line for each owner, and a statement that the person signing is petitioning to deny the annexation.~~

~~(3) The board of elections shall mail a petition to the address of record for those real property owners within five business days of receipt from the county tax assessor of the list.~~

~~(4) The board of elections shall provide two methods by which property owners of the real property located within the area described in the annexation ordinance may sign a petition form prepared by the board of elections: (i) in person or (ii) by submitting the signed petition form by mail. The board of elections shall also accept signatures signed on a petition form prepared by the board of elections, but collected by another, if that petition form is returned to the board of elections in a sealed container.~~

~~(5) If the signed petition is one that was mailed under subdivision (h)(7) of this section and the signer is not the same as the preprinted name on the form, the signed petition shall be notarized and accompanied by a copy of the legal authority for the signature of the person signing a petition.~~

~~(6) If a petition is returned as undeliverable to the board of elections, the board of elections shall send the petition return receipt requested. If the petition is returned again, the board of elections shall not include that property owner in the total number of eligible property owners.~~

~~(7) If there is a change in ownership of real property after the date of the resolution of consideration until 30 days after the date of the adoption of the annexation ordinance, the new owner of the real property shall be considered the eligible owner of real property.~~

~~(8) The board of elections shall accept signatures on the petition until 130 days after the adoption of the annexation ordinance.~~

~~(9) The determination of the results by the board of elections of the petition period shall be observed by three property owners from the area proposed for annexation, chosen by lot by the board of elections from among those who request to serve in this role, and three persons designated by the municipality. A majority of the property owners of a single parcel of real property must sign the petition before the board of elections may count that parcel as having submitted a petition to deny annexation.~~

~~(10) Within 10 business days after the close of the signature period, the board of elections shall certify to the municipal governing body the number of petitions signed by eligible property owners of the real property located within the area described in the annexation ordinance.~~

~~(11) If the board of elections delivers to the municipal governing board petitions signed by eligible property owners of at least sixty percent (60%) of the parcels located within the area described in the annexation ordinance as provided in this subsection, the annexation shall be terminated and the municipality may not adopt a resolution of consideration for the area described in the annexation ordinance for at least 36 months.~~

~~(12) This subsection shall not apply to any property owner of real property located within the area described in the annexation ordinance that is completely surrounded by the municipality's primary corporate limits.~~

~~(13)~~ any annexation under this Part. The municipality shall reimburse the board or boards of elections the costs of the ~~petition process~~ referendum required under ~~this subsection.~~G.S. 160A-58.64.

(j) Effect of Annexation Ordinance. – From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality.

(k) Reserved.

(l) Reserved.

(m) Simultaneous Annexation Proceedings. – If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(n) Remedies for Failure to Provide Services. – If, not earlier than 30 days after the effective date of annexation and not later than 15 months from the effective date of annexation, any property owner in the annexed territory shall believe that the municipality has not followed through providing services as set forth in the report adopted under G.S. 160A-58.53 and

subsection (e) of this section, the property owner may apply for a writ of mandamus. Relief may be granted by the judge of superior court if the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-58.53(3)a. on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation and those services are still being provided on substantially the same basis and in the same manner within the original corporate limits of the municipality. If a writ is issued, costs in the action, including reasonable attorneys' fees for such aggrieved property owner, shall be charged to the municipality.

(o) Reports to the Local Government Commission. – The municipality shall report to the Local Government Commission as follows:

(1) As to whether police protection, fire protection, solid waste services, and street maintenance services were provided in accordance with G.S. 160A-58.53(3)a., within 30 days after the effective date of the annexation. Such report shall be filed no more than 30 days following the expiration of the 30-day period. If the Local Government Commission determines that the municipality failed to deliver police protection, fire protection, solid waste services, or street maintenance services as provided for in G.S. 160A-58.53(3)a. within 30 days after the effective date of the annexation, the Local Government Commission shall notify the municipality that the municipality may not count any of the residents as part of the population of the municipality for the purpose of receiving any State, federal, or county dollars distributed based on population until all of the services are provided.

(2) As to whether the extension of water and sewer lines was completed within the time period specified in G.S. 160A-58.53(3), within six months after the effective date of the annexation ordinance, and again within three and one-half years of the effective date of the annexation ordinance or upon the completion of the installation, whichever occurs first. If the municipality failed to deliver either water or sewer services, or both, as provided for in G.S. 160A-58.53(3)b. within three and one-half years after the effective date of the annexation, the municipality shall stop any other annexations in progress and may not begin any other annexation until the water and sewer services are provided. The municipality shall adopt a resolution of consideration to begin again any annexation that is stopped due to this subdivision."

SECTION 4. G.S. 160A-58.51(2) reads as rewritten:

"(2) Eligible property owner. – A property owner who is eligible ~~to sign a petition to deny an annexation ordinance or a property owner who is eligible~~ to be notified of the opportunity to have water lines and sewer lines and connections installed at no cost to the property owner. ~~A property owner is eligible to sign a petition to deny an annexation ordinance if the property owner held a freehold interest in the property, determined as of the date of the resolution of consideration.~~ A property owner is eligible to be notified of the opportunity to have water lines and sewer lines and connections installed at no cost to the property owner if that property owner held a freehold interest in the real property to be annexed as of the date of the combined notice of public informational meeting and public hearing."

SECTION 5. G.S. 160A-60(a) reads as rewritten:

"(a) Within 60 days following the ~~close of the signature period under G.S. 160A-58.55(i),~~adoption of the annexation ordinance, any property owner of real property located within the area described in the annexation ordinance who believes that property owner

will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure or to meet the requirements set forth in this Part as they apply to the annexation may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board."

SECTION 6. This act becomes effective July 1, 2012, and applies to any annexation ordinance adopted under Part 7 of Article 4A of Chapter 160A of the General Statutes on or after that date.

HOUSE BILL 925:
Annexation Reform 2

2011-2012 General Assembly

Committee:	Rules and Operations of the Senate	**Date:**	May 16, 2012
Introduced by:	Rep. Moffitt	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to Second Edition H925-CSSTx-90		Staff Attorney

SUMMARY: ***The proposed committee substitute for House Bill 925 would require a vote of the residents of the area to be involuntarily annexed prior to the adoption of an annexation ordinance. If less than a majority of the voters vote for the annexation, the municipality may not proceed with annexing that area for 36 months.***

CURRENT LAW: As enacted in 2011, G.S. 160A-58.55 sets forth the procedure for annexations initiated by municipalities. The basics of the process timeline of an involuntary annexation are as follows:

- First – adoption of a resolution of consideration.
- Second – adoption of a resolution of intent, which must be done no earlier than one year, or more than two years, after the resolution of consideration.
- Third – Public Informational Meeting.
- Fourth – Public Hearing.
- Fifth – Adoption of the annexation ordinance.
- Sixth – Petition to deny annexation.

The petition to deny annexation is initiated by the municipality, and only the real property owners may participate in the process. A petition is mailed to each property owner in the area described in the annexation ordinance, and that owner is given the opportunity to sign and return it, if the owner wants to deny the annexation of the area described in the annexation ordinance. If at least 60% of the property owners deny the annexation, the municipality's annexation ordinance is terminated.

BILL ANALYSIS: The proposed committee substitute would amend G.S. 160A-55.58 to eliminate the petition to deny annexation and substitute a requirement of a referendum. The referendum would be a vote of the residents of the area to be annexed prior to the adoption of the annexation ordinance by the annexing municipality. If less than a majority of the voters approve the annexation, the municipality is prohibited from proceeding with the annexation and from initiating another annexation of that area for 36 months.

The referendum vote would occur between the public hearing and the adoption of the annexation ordinance, and would coincide with the next municipal general election.

EFFECTIVE DATE: July 1, 2012 and applies to all ordinances of annexations initiated by municipalities adopted on or after that date.

BACKGROUND: The 2011 General Assembly enacted the Statewide Annexation Reform Act of 2011 (S.L. 2011-396) and two local acts, S.L. 2011 173 and S.L. 2011-177, affecting nine local annexations, subject to a petition to deny annexation process by affected property owners.

The Statewide Annexation Reform Act of 2011 and the local acts were subject to a lawsuit filed in late 2011. On March 27, 2012, a Wake County Superior Court Judge ruled in favor of the plaintiffs, finding the Statewide and local acts violated Art I, Secs. 11, 19, and 32; and Art. VII, Sec. 1 of the Constitution of North Carolina. The State has entered notice of appeal of the trial court's order.

H925-SMST-71(CSSTx-90) v3

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 925

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H925-AST-77 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date 5/16/12 ,2012

Senator Newton

moves to amend the bill on page 1, line 18 by deleting "Registered" and substituting "Only registered".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED V FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Senate Redistricting – 2011-2012

May 16, 2012
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK (Helen Long)

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	UCLC
Lisa Kennedy	Rep. LaRoque
Whitney Christensen	NCRLA
Weldon Jones	Jordan, Price
Matt Meinig	NCLM

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 16, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Betty Williams	OLCAFA
J R Williams	OLCAFA
Les Mullins	OLCAFA
Lawrence Elegud	OLCAFA
Helen & Daniel	OLCAFA
Libby May	OLCAFA
Royce May	OLCAFA
Shirley Whitaker	OLCAFA
Ron + Rita Ayers	OLCAFA
Lois Dixon	OLcafA
Brenda Baker	OLcafa

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 16, 2012 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Carolyn Smith	DST
Faith Symons	OLCAFA
Wayne Conklin	OLCAFA
C.S. Pete Whitley	OLCAFA
Gloria Whitley	OLCAFA
Grover L Nelson	OLCAFA
Bob & Jean Britt	OLCAFA
Jimmy Broughton	Womble Carlyle
Don Bryant	TGANR
Cameron Henley	Electric Cities
David E Parker	Oak Level
Libby A Parker	Oak Level

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 16, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michael Davis	OLCAFA
Leah Elliott	CISNC
N BALT	WM
Clay Pittman	NCDP
Charlene Moore	OLCAFA
Tony Tetterton	Fair Annexation Coalition
Doug Aitken	Fair Annexation Coalition
Mary Howell	Rowan County
Roy Christensen	BRIDGESTONE : Wilson NC
Cathy Hedrick	Wilson Medical Center
Rebecca Tew	Wilson Chamber of Commerce

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 16, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
GARY WILLIAMSON	BRIDGESTONE
Bruce Boesley	Wilson Pulbo & Conner
Buzz Wilkinson	First Citizens Bank
Walt Pittman	Bridgestone

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 16, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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Laverne Winstead	OLCAFA
David Winstead	OLCAFA
Linda Willson	OLCAFA
David Elmore	Moore + Van Allen
Amy McConkey	NC Beverage Assn
Maeve Gardner	GSK
Susanna Hailey	K&L Gates
Clare FitzGerald	DERR
Susanna Davis	Gov Office
Leanne Winner	NCSBA
John Poulos	NCAOA

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 16, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
DAVID RICE	MFS
Julie White	NCMMC
Allison Walk	Nelson Mullins
Esthrine Davis	ED&A, Inc.
Elizabeth Gunther	Olcafa Nash Co
JIMMY DOZIER	OLCAFA NASH CO.
Rose Chappell	Rocky mount, N.C
Charles Chappell	OLCAFA Nash Co
DANIEL BAUM	TROUTMAN SANDERS
Bill Marr	DOR
John Tucker	NVA

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 16, 2012 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ashleigh Thornton	MWC
Elise Quick	Troutman Sanders
Karen Bertmar	Troutman Sanders
Ellis Powell	CAPA
Lawrence Bean	City of Wilmington
Dallas Woodhouse	Americans for Prosperity
Kyle Hall	Americans for Prosperity
Crystal Collins	NCTA
Elizabeth Robinson	NCRMA
Daniel Amburn	NCRMA
Will Pennington	NCHFA

VISITOR REGISTRATION SHEET

Senate Redistricting – 2011-2012

May 16, 2012
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK (Helen Long)

NAME	FIRM OR AGENCY AND ADDRESS
Laurie Orenco	Jason Deans Assoc.
David Miner	TRG
Doug Miskew	PSG
Steve Ainsworth	A&A
Jay Stein	NCAA
Jackie Cashion	NC Chamber
Lee Hoke	Van al Smith
Stuart Brooks	Ward and Smith
DAVID T BARNES	PS
Robert Montcrief, MD	NCMS
Amy Whited	NCMS

2012

SENATE
FINANCE

MINUTES

SENATE FINANCE COMMITTEE
Wednesday, May 30, 2012 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 30, 2012 in room 544 of the Legislative Office Building. Thirty-two members of the committee were present. Lauren Strickland of Ellenboro, Elaine Kennedy of Pinehurst, Tyler Coe of Denton, Jonathan and Jeremy Glover of Bailey, Travis Gillespie of Aberdeen, Autumn Fulton of Pleasant Garden, Mallory Lowe of Trinity and Jaclyn Harvey of Fayetteville served as pages. Senator Rucho presided as chair.

Senator Rucho introduced Doreen Tan to the Committee. Ms. Tan has an economics degree and was the Director of Tax Policy for Singapore's Finance Ministry. She is currently an intern with the Department of Revenue while seeking her Master's degree in International Taxation at Duke University. She will assist the Tax Modernization Working Group with reviewing and analyzing the tax structures in various other states with a view toward selecting the best ideas from those states for the working group to consider in seeking tax modernization and fiscal stability for North Carolina.

H.B. 391 – RTP District Amends

Senator Stevens was recognized to explain the bill. Senator Hartsell moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would amend the authorizing statutes for county research and production districts to allow for additional permitted uses in the districts, including mixed-use development that combines residential, retail, and business use. Senator Jenkins moved for a favorable report of the PCS and the motion carried. A copy of the PCS and the summary is attached.

S.B. 444 – UNC Nonappropriated Capital Projects

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would authorize the construction of numerous projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds, not appropriations from the General Fund. Senator Apodaca asked the bill be temporarily displaced on the agenda to give staff time to prepare his requested amendment. The Chair displaced the bill.

S.B. 806 – Modify Mortgage Regulation Funding

Senator Brown was recognized to explain the bill. It would amend the law relating to regulation of the mortgage industry to change the way regulation is funded from a fee based to an assessment based system. The bill was recommended by the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws. Senator Garrou moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 826 – Revenue Laws Tech, Clarifying and Admin Chngs

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS, which is a recommendation of the Revenue Laws Study Commission, makes a number of technical, administrative, and clarifying changes to the revenue laws and related statutes, many of which were requested by the Department of Revenue. The technical changes appear in Part I of the attached summary, the clarifying and administrative changes appear in Part II, and changes related to the combined motor vehicle registration and property tax collection system appear in Part III. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

Senator Hartsell chaired the meeting at this point to allow Senator Rucho to explain Senate Bill 824.

S.B. 824 – Expedited Rule Making for Forced Combinations

Senator Rucho was recognized and asked that Cindy Avrette, a staff attorney with the Research Division, be permitted to explain the bill. It would require the Department of Revenue to adopt rules regarding this interpretation of G.S. 105-130.5A, the Secretary's authority to redetermine the State net income of a corporation properly attributable to its business carried on in the State by adjusting its new income or requiring it to file a combined return. The bill provides an expedited rule-making process for these rules. Senator Stevens moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 444 – UNC Nonappropriated Capital Projects

Discussion on the bill resumed with Charlie Perusse, UNC System, being recognized to answer questions. Senator Apodaca was recognized to explain his amendment which would change the bill's title, eliminate capital funds for improvements to UNC's phase 2 of infrastructure improvements and improvements to the chilled water infrastructure; and not permit reimbursement to out-of-state members of the UNC Board of Governors for out-of-state travel expenses. It would preserve the Horace Williams airport. Erin Schuettpelz, representing UNC Chapel Hill Finance, was recognized to speak in opposition to the amendment and answer questions. The bill was tabled. A copy of the PCS, the summary, the fiscal memo and the amendment is attached.

S.B. 795 – Excellent Public Schools Act

Senator Apodaca was recognized to explain the finance portion of the bill – Section 13. Section 13 would ensure that the $250 deduction for educator expenses would continue for State individual income tax purposes, regardless of whether or not the federal deduction is reinstated for taxable years beginning on or after January 1, 2012. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal memo is attached.

S.B. 467 – Naturopathic Licensing Act

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would establish the North Carolina Naturopathic Doctors Licensure Act. It adds performing acts of prenatal, intrapartum, postpartum, newborn, and interconceptual care to the list of acts prohibited by naturopathic doctors. It also staggers the initial Board appointments and changes the penalty for practicing without licensure from a Class I misdemeanor to a Class I felony and moves the effective date of licensure from January 1, 2012 to January 1, 2013. Dr. Michael Smith, a naturopathic physician at the Carolinas Natural Health Center, was recognized to speak in favor of the bill and answer questions. Dr. Remy Coeytaux, an associate professor at Duke University's School of Medicine, was recognized. He pointed out that the State did not have enough primary care physicians. Dr. Charlie Mantero, president of the NC Medical Society, was recognized to express concerns about the bill. The bill was not put to a vote. A copy of the bill, the summary and the fiscal note is attached.

The meeting adjourned at 2:00 PM.

Bob Rucho

Senator Bob Rucho, Presiding Chair

DeAnne Mangum

DeAnne Mangum, Committee Clerk

Doreen Tan

1. It is my pleasure to introduce Ms. Doreen Tan, from Singapore to the Senate Finance Committee.

2. Doreen has a degree in economics and has worked for the Finance Ministry of the government of Singapore as Director of Tax Policy.

3. She is currently serving as an intern with the North Carolina Department of Revenue while seeking her Master's Degree in International Taxation at Duke University.

4. She has significant experience with public sector reform and the formulation of policies for public finance and taxation.

5. She is applying that knowledge and experience by ~~also~~ assisting the Tax Modernization Working Group with reviewing and analyzing the tax structures in various other states with a view toward selecting the best ideas from those states for the ~~Working group~~ to consider in seeking tax modernization and fiscal stability for North Carolina.

Senate Finance Committee
Wednesday, May 30, 2012, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 391	Dept. of Admin/Procurement Modernization.-AB	Rep. Torbett Rep. Avila
SB 444	UNC Nonappropriated Capital Projects.	Sen. Hartsell
SB 467	Naturopathic Licensing Act.	Sen. Hartsell Sen. Apodaca
SB 795	Excellent Public Schools Act.	Sen. Tillman Sen. Berger Sen. Apodaca
SB 806	Modify Mortgage Regulation Funding.	Sen. Brown
SB 824	Expedited Rule Making for Forced Combination.	Sen. Hartsell Sen. Rucho
SB 826	Revenue Laws Tech., Clarifying, & Admin Chngs.	Sen. Hartsell Sen. Rucho

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, May 30, 2012

Senator RUCHO,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **806** Modify Mortgage Regulation Funding.
Sequential Referral: None
Recommended Referral: None

S.B. **824** Expedited Rule Making for Forced Combination.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

S806 – Sen. Brown
S824 – Sen. Rucho

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Thursday, May 31, 2012

Senator RUCHO,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **826** Revenue Laws Tech., Clarifying, & Admin Chngs.

Draft Number:	85286
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, May 30, 2012

Senator RUCHO,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **391** Dept. of Admin/Procurement Modernization.-AB

Draft Number:	80364
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

H391 – Sen. Stevens

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 391
PROPOSED SENATE COMMITTEE SUBSTITUTE H391-CSTDx-60 [v.9]

5/29/2012 7:19:34 PM

Short Title: RTP District Amendments. (Public)

Sponsors:

Referred to:

March 17, 2011

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAWS RELATING TO COUNTY RESEARCH AND PRODUCTION SERVICE DISTRICTS TO REFLECT CHANGED CIRCUMSTANCES AND TO ALLOW FLEXIBILITY IN PROVISION OF SERVICES IN URBAN AREAS OF SUCH DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 16 of Chapter 153A of the General Statutes reads as rewritten:

"Part 2. County Research and Production Service ~~Districts.~~Districts and Urban Research Service Districts.

"§ 153A-311. Purposes for which districts may be established.

The board of commissioners of any county may define a county research and production service district in order to finance, provide, and maintain for the district any service, facility, or function that a county or a city is authorized by general law to provide, finance, or maintain. Such a service, facility, or function shall be financed, provided, or maintained in the district either in addition to or to a greater extent than services, facilities, or functions are financed, provided, or maintained for the entire county.

"§ 153A-312. Definition of research and production service district.

(a) Standards. – The board of commissioners may by resolution establish a research and production service district for any area of the county that, at the time the resolution is adopted, meets the following standards:

(1) All (i) real property in the district is being used for or is subject to covenants that limit its use to ~~research~~ research; or scientifically-oriented ~~production or for~~ production, technology, education; or associated ~~commercial~~ commercial, residential, or institutional ~~purposes~~ purposes; or for other purposes specifically authorized pursuant to the terms and conditions of the covenants, or (ii) if all the real property in the district is part of a multijurisdictional industrial park that satisfies the criteria of G.S. 143B-437.08(h), all such real property in the district is subject to covenants that limit its use to research or scientifically oriented production, associated commercial or institutional purposes, or other industrial and associated commercial and institutional uses.

(2) The district (i) contains at least 4,000 acres or (ii) satisfies the criteria of G.S. 143B-437.08(h).

(3) The district (i) includes research and production facilities that in combination employ at least 5,000 persons or (ii) satisfies the criteria of G.S. 143B-437.08(h).

~~(4) All real property located in the district was at one time or is currently owned by a nonprofit corporation, which developed or is developing the property as a research and production park.~~

(5) A petition requesting creation of the district signed by at least fifty percent (50%) of the owners of real property in the district who own at least fifty percent (50%) of total area of the real property in the district has been presented to the board of commissioners. In determining the total area of real property in the district and the number of owners of real property, there shall be excluded (1) real property exempted from taxation and real property classified and excluded from taxation and (2) the owners of such exempted or classified and excluded property.

~~(6) The district has no more than 25 permanent residents.~~

(7) There exists in the district an association of owners and tenants, to which at least seventy-five percent (75%) of the owners of nonresidential real property belong, which association can make the recommendations provided for in G.S. 153A-313. This subdivision shall not apply to a research and production service district that satisfies the criteria of G.S. 143B-437.08(h).

(8) There ~~exists, or will exist when conveyed by the nonprofit corporation described in subdivision (4) of this subsection,~~ exist deed-imposed conditions, covenants, restrictions, and reservations that apply to all real property in the ~~district other than property owned by the federal government.~~district, provided that the covenants, restrictions, and reservations shall not be effective against the United States as long as it owns or leases property in the district, but shall apply to any subsequent owner or lessee of such property.

(9) No part of the district lies within the boundaries of any incorporated city or town.

The Board of Commissioners may establish a research and production service district if, upon the information and evidence it receives, the Board finds that:

(1) The proposed district meets the standards set forth in this subsection; and

(2) It is impossible or impracticable to provide on a countywide basis the additional or higher levels of services, facilities, or functions proposed for the district; and

(3) It is economically feasible to provide the proposed services, facilities, or functions to the district without unreasonable or burdensome tax levies.

(a1) Additional Uses. – A developer of a research and production service district established prior to June 1, 2012, may amend the covenants that limit the use of real property in the district to include any of the following uses: research, or scientifically-oriented production, technology, education; or associated commercial, residential, or institutional purposes; or for other purposes specifically authorized pursuant to the terms and conditions of the covenants. A research and production service district is presumed to be in compliance with the standards in subsection (a) of this section if the district met the standards in subsection (a) of this section, as that subsection was enacted at the time of the establishment of the district.

(b) Multi-County Districts. – If an area that meets the standards for creation of a research and production service district lies in more than one county, the boards of commissioners of those counties may adopt concurrent resolutions establishing a ~~service~~ district, even if that portion of the district lying in any one of the counties does not by itself

meet the standards. Each of the county boards of commissioners shall follow the procedure set out in this section for creation of a ~~service~~ district.

If a multi-county ~~service~~ district is established, as provided in this subsection, the boards of commissioners of the counties involved shall jointly determine whether the same appraisal and assessment standards apply uniformly throughout the district. This determination shall be set out in concurrent resolutions of the boards. If the same appraisal and assessment standards apply uniformly throughout the district, the boards of commissioners of all the counties shall levy the same rate of tax for the district, so that a uniform rate of tax is levied for district purposes throughout the district. If the boards determine that the same standards do not apply uniformly throughout the district, the boards shall agree on the extent of divergence between the counties and on the resulting adjustments of tax rates that will be necessary in order that an effectively uniform rate of tax is levied for district purposes throughout the district.

The boards of commissioners of the counties establishing a multi-county ~~service~~ district pursuant to this subsection may, by concurrent resolution, provide for the administration of services within the district by one or more counties on behalf of all the establishing counties.

(c) Report. – Before the public hearing required by subsection (d), the board of commissioners shall cause to be prepared a report containing:

(1) A map of the proposed district, showing its proposed boundaries;

(2) A statement showing that the proposed district meets the standards set out in subsection (a); and

(3) A plan for providing one or more services, facilities, or functions to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(d) Hearing and Notice. – The board of commissioners shall hold a public hearing before adopting any resolution defining a ~~service~~ district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (c) is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(e) Effective Date. – The resolution defining a ~~service~~ district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners.

"**§ 153A-313. ~~Advisory~~ Research and production service district advisory committee.**

(a) The board or boards of commissioners, in the resolution establishing a research and production service district, shall also provide for an advisory committee for the district. Such a committee shall have at least 10 members, serving terms as set forth in the resolution; one member shall be the representative of the developer of the research and production ~~park.~~park established as a research and production service district. The resolution shall provide for the appointment or designation of a ~~chairman.~~ chair. The board of commissioners or, in the case of a multi-county ~~service~~ district, the boards of commissioners shall appoint the members of the advisory committee. If a multi-county ~~service~~ district is established, the concurrent resolutions establishing the district shall provide how many members of the advisory committee are to be appointed by each board of commissioners. Before making the appointments, the appropriate board shall request the association of owners and tenants, required by G.S. 153A-312(a), to submit a list of persons to be considered for appointment to the committee; the association shall

submit at least two names for each appointment to be made. Except as provided in the next two sentences, the board of commissioners shall make the appointments to the committee from the list of persons submitted. In addition, the developer of the research and production park shall appoint one person to the advisory committee as the developer's representative on the committee. In addition, in a single county ~~service~~ district, the board of commissioners may make two additional appointments of such other persons as the board of commissioners deems appropriate, and in a multi-county ~~service~~ district, each board of county commissioners may make one additional appointment of such other person as that board of commissioners deems appropriate. Whenever a vacancy occurs on the committee in a position filled by appointment by ~~a~~ the board of commissioners, the appropriate board, before filling the vacancy, shall request the association to submit the names of at least two persons to be considered for the vacancy; and the board shall fill the vacancy by appointing one of the persons so submitted, except that if the vacancy is in a position appointed by the board of commissioners under the preceding sentence of this section, the board of commissioners making that appointment shall fill the vacancy with such person as that board of commissioners deems appropriate.

Each year, before adopting the budget for the ~~service~~ district and levying the tax for the district, the board or boards of commissioners shall request recommendations from the advisory committee as to the level of services, facilities, or functions to be provided for the district for the ensuing year. The board or boards of commissioners shall, to the extent permitted by law, expend the proceeds of any tax levied for the district in the manner recommended by the advisory ~~board.~~committee.

(b) In the event that the research and production service district satisfies the criteria of G.S. 143B-437.08(h), the board of directors for the nonprofit corporation which owns the industrial park shall serve as the advisory committee described in subsection (a) of this section.

"**§ 153A-314. Extension of service districts.**

(a) Standards. – A board of commissioners may by resolution annex territory to a research and production service district upon finding that:

(1) The conditions, covenants, restrictions, and reservations required by G.S. 153A-312(a)(8) that apply to all real property in the ~~research district, other than property owned by the federal government,~~ district also apply or will apply to the ~~property, other than property owned by the federal government, to be annexed.~~property to be annexed, provided that the covenants, restrictions, and reservations shall not be effective against the United States as long as it owns or leases property in the district, but shall apply to any subsequent owner or lessee of such property.

(2) One hundred percent (100%) of the owners of real property in the area to be annexed have petitioned for annexation.

(3) The district, following the annexation, will continue to meet the standards set out in G.S. 153A-312(a).

(4) The area to be annexed requires the services, facilities, or functions financed, provided, or maintained for the district.

(5) The area to be annexed is contiguous to the district.

(b) Report. – Before the public hearing required by subsection (c), the board shall cause to be prepared a report containing:

(1) A map of the district and the adjacent territory proposed to be annexed, showing the present and proposed boundaries of the district; and

(2) A statement showing that the area to be annexed meets the standards and requirements of subsection (a) of this section.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. – The board shall hold a public hearing before adopting any resolution extending the boundaries of a ~~service~~ district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than four weeks before the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the area to be annexed. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and the certificate shall be conclusive in the absence of fraud.

(d) Effective Date. – The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board.

"§ 153A-314.1. Removal of territory from ~~service~~ districts.

(a) Standards. – A board of commissioners may by resolution remove territory from a research and production service district upon finding that:

(1) The ~~owners of the territory to be removed contemplate placing residential uses on some of the territory to be removed.~~ removal has been recommended by a vote of two-thirds of the eligible votes of the owners and tenants association.

(2) One hundred percent (100%) of the owners of real property in the territory to be removed have petitioned for removal.

(3) The territory to be removed no longer requires the services, facilities, or functions financed, provided, or maintained for the district.

(b) Report. – Before the public hearing required by subsection (c) of this section, the board shall cause to be prepared a report containing:

(1) A map of the district highlighting the territory proposed to be removed, showing the present and proposed boundaries of the district; and

(2) A statement showing that the territory to be removed meets the standards and requirements of subsection (a) of this section.

The report shall be available for public inspection in the office of the clerk to the board for at least 10 days before the date of the public hearing.

(c) Hearing and Notice. – The board shall hold a public hearing before adopting any resolution reducing the boundaries of a ~~service~~ district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than seven days before the hearing. In addition, the notice shall be mailed at least two weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the territory to be removed. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and the certificate shall be conclusive in the absence of fraud.

(d) Municipal Annexation Allowed Under General Law. – The general law concerning annexation, Article 4A of Chapter 160A of the General Statutes, shall apply to any territory removed from the district under this section, notwithstanding any local act to the contrary.

(e) Effective Date. – The resolution reducing the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board.

"§ 153A-315. Required provision or maintenance of services.

(a) New District. – When a county or counties define a research and production service district, it or they shall provide, maintain, or let contracts for the services for which the district is being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) Extended District. – When a territory is annexed to a research and production service district, the county or counties shall provide, maintain, or let contracts for the services provided or maintained throughout the district to property in the area annexed to the district within a reasonable time, not to exceed one year, after the effective date of the annexation.

"**§ 153A-316. Abolition of ~~service~~ districts.**

A board or boards of county commissioners may by resolution abolish a research and production service district upon finding that (i) a petition requesting abolition, signed by at least fifty percent (50%) of the owners of nonresidential real property in the district who own at least fifty percent (50%) of the total area of nonresidential real property in the district, has been submitted to the board or boards; and (ii) there is no longer a need for such ~~service~~ district. In determining the total area of nonresidential real property in the district and the number of owners of nonresidential real property, there shall be excluded (1) real property exempted from taxation and real property classified and excluded from taxation and (2) the owners of such exempted or classified and excluded property. The board or boards shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any ~~service~~ district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board or boards. If a multi-county ~~service~~ district is established, it may be abolished only by concurrent resolution of the board of commissioners of each county in which the district is located.

"**§ 153A-316.1. Urban research service district (URSD).**

(a) Standards. – The board of commissioners of a county may establish one or more urban research service districts ("URSD" as used in this Part) that meets the following standards:

(1) The URSD is within a county research and production service district located partly within that county.

(2) The URSD is located wholly within that county.

(3) The URSD is not contained within another URSD.

(b) Report. – Before the public hearing required by subsection (c) of this section, the board of commissioners shall cause to be prepared and adopted by it a report. The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing. The report shall contain the following:

(1) A map of the proposed URSD, showing its proposed boundaries.

(2) A statement showing that the proposed URSD is for the purpose of providing urban services, facilities, or functions to a greater extent than (i) in the entire county and (ii) in the county research and production service district.

(3) A plan for providing one or more services, facilities, or functions to the URSD.

(c) Hearing and Notice. – The board of commissioners shall hold a public hearing before adopting any resolution defining a URSD under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed URSD and a statement that the report required by subsection (b) of this section is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail that is fully prepaid to the owners, as shown by the county tax records as of the preceding January 1

of all property located within the proposed URSD. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and the designated person's certificate is conclusive in the absence of fraud.

(d) Effective Date. – The resolution defining a URSD shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners.

"**§ 153A-316.2. URSD advisory committee.**

(a) Members. – The board of commissioners, in the resolution establishing a URSD, shall also provide for an advisory committee for the URSD. The committee shall have at least 10 members, serving terms as set forth in the resolution. The resolution shall provide for the appointment or designation of a chairperson. The board of commissioners shall appoint the members of the USRD advisory committee. Before making the appointments, the board shall request the association of owners and tenants, required by G.S. 153A-312(a), to submit a list of persons to be considered for appointment to the committee. The association shall submit at least two names for each appointment to be made. Except as provided in subsection (b) of this section, the board of commissioners shall make the appointments to the committee from the list of persons submitted.

(b) Additional Members. – In addition to the members provided in subsection (a) of this section, the developer of the research and production park pestablished as a research and production service district. shall appoint one person to the URSD advisory committee as the developer's representative on the committee. The board of commissioners may make two additional appointments of such other persons as the board of commissioners deems appropriate.

(c) Vacancy. – Whenever a vacancy occurs on the committee in a position filled by appointment by the board of commissioners, the board, before filling the vacancy, shall request the association to submit the names of at least two persons to be considered for the vacancy, and the board shall fill the vacancy by appointing one of the persons so submitted, except that if the vacancy is in a position appointed by the board of commissioners under subsection (b) of this section, the board of commissioners making that appointment shall fill the vacancy with such person as the board of commissioners deems appropriate.

(d) Advisory Role. – Each year, before adopting the budget for the URSD and levying the tax for the URSD, the board of commissioners shall request recommendations from the URSD advisory committee as to the level of services, facilities, or functions to be provided for the URSD for the ensuing year. The board of commissioners shall, to the extent permitted by law, expend the proceeds of any tax levied for the URSD in the manner recommended by the URSD advisory committee.

"**§ 153A-316.3. Extension of URSD.**

(a) Standards. – A board of commissioners may by resolution annex territory to a URSD upon finding that:

(1) The conditions, covenants, restrictions, and reservations required by G.S. 153A-312(a)(8) that apply to all real property in the URSD also apply or will apply to the property to be annexed, provided that such covenants, restrictions, and reservations shall not be effective against the United States, as long as it owns or leases property in the URSD but shall apply to any subsequent owner or lessee of such property.

(2) One hundred percent (100%) of the owners of real property in the area to be annexed have petitioned for annexation.

(3) The URSD, following the annexation, will continue to meet the standards set out in G.S. 153A-316.1(a).

(4) The area to be annexed requires the services, facilities, or functions financed, provided, or maintained for the URSD.

(5) The area to be annexed is contiguous to the URSD.

(b) Report. – Before the public hearing required by subsection (c) of this section, the board shall cause to be prepared a report. The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing. The report shall contain the following:

(1) A map of the URSD and the adjacent territory proposed to be annexed, showing the present and proposed boundaries of the URSD.

(2) A statement showing that the area to be annexed meets the standards and requirements of subsection (a) of this section.

(c) Hearing and Notice. – The board shall hold a public hearing before adopting any resolution extending the boundaries of a URSD. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than four weeks before the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail that is fully prepaid to the owners, as shown by the county tax records as of the preceding January 1 of all property located within the area to be annexed. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and the certificate shall be conclusive in the absence of fraud.

(d) Effective Date. – The resolution extending the boundaries of the URSD shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board.

"**§ 153A-316.4. Removal of territory from URSD.**

(a) Standards. – A board of commissioners may by resolution remove territory from a URSD upon finding that:

(1) The removal has been recommended by a vote of two-thirds of the eligible voters of the owners and tenants association.

(2) One hundred percent (100%) of the owners of real property in the territory to be removed have petitioned for removal.

(3) The territory to be removed no longer requires the services, facilities, or functions financed, provided, or maintained for the URSD.

(4) The county has not financed any project for which taxes levied on the URSD provide debt service pursuant to G.S. 153A-317.1(c).

(b) Report. – Before the public hearing required by subsection (c) of this section, the board shall cause to be prepared a report, The report shall be available for public inspection in the office of the clerk to the board for at least 10 days before the date of the public hearing. The report shall contain the following:

(1) A map of the URSD highlighting the territory proposed to be removed, showing the present and proposed boundaries of the URSD.

(2) A statement showing that the territory to be removed meets the standards and requirements of subsection (a) of this section.

(c) Hearing and Notice. – The board shall hold a public hearing before adopting any resolution reducing the boundaries of URSD. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than seven days before the hearing. In addition, the notice shall be mailed at least two weeks before the date of the hearing by any class of U.S. mail that is fully prepaid to the owners, as shown by the county tax records as of the preceding January 1, of all property located within the territory to be removed. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and the certificate shall be conclusive in the absence of fraud.

(d) Effective Date. – The resolution reducing the boundaries of the URSD shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board.

"**§ 153A-316.5. Required provision or maintenance of services in URSD.**

(a) New URSD. – When a county defines a URSD, it shall provide, maintain, or let contracts for the services for which the URSD is being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the URSD. When a county defines a URSD, it may designate the developer of the research and development park established as a research and production service district in which the URSD is located as an agent that may contract with any local government for the provision of services within the URSD.

(b) Extended URSD. – When a territory is annexed to a URSD, the county shall provide, maintain, or let contracts for the services provided or maintained throughout the URSD to property in the area annexed to the URSD within a reasonable time, not to exceed one year, after the effective date of the annexation.

"**§ 153A-316.6. Abolition of URSD.**

A county board of commissioners may by resolution abolish a URSD upon finding that (i) a petition requesting abolition, signed by at least fifty percent (50%) of the owners of nonresidential real property in the URSD who own at least fifty percent (50%) of the total area of nonresidential real property in the URSD, has been submitted to the board or boards; (ii) there is no longer a need for such URSD; and (iii) the county has not financed any project for which there is outstanding debt serviced by tax revenues levied within the URSD. In determining the total area of nonresidential real property in the URSD and the number of owners of nonresidential real property, there shall be excluded (i) real property exempted from taxation and real property classified and excluded from taxation and (ii) the owners of such exempted or classified and excluded property. The board or boards shall hold a public hearing before adopting a resolution abolishing a URSD. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any URSD shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board.

"**§ 153A-317. Research and production service district taxes~~Taxes~~ authorized; rate limitation.**

(a) Tax authorized. – A county, upon recommendation of the advisory committee established pursuant to G.S. 153A-313, may levy property taxes within a research and production service district in addition to those levied throughout the county, in order to finance, provide, or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided, or maintained for the entire county. In addition, a county may allocate to a ~~service~~ district any other revenues whose use is not otherwise restricted by law. The proceeds of taxes only within a ~~service~~ district may be expended only for services provided for the district.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the county as of the preceding January 1.

(b) Limit. – Such additional property taxes may not be levied within any district established pursuant to this Article in excess of a rate of ten cents (10¢) on each one hundred dollars ($100.00) value of property subject to taxation or, in the event that the research and production service district satisfies the criteria of G.S. 143B-437.08(h), such additional property taxes may not be levied within said district in excess of a rate of fifteen cents (15¢) on each one hundred dollars ($100.00) value of property subject to taxation.

(c) Public transportation. – For the purpose of constructing, maintaining, or operating public transportation as defined by G.S. 153A-149(c)(27), in addition to the additional property taxes levied under subsections (a) and (b) of this section, a county, upon recommendation of the advisory committee established pursuant to G.S. 153A-313, may levy additional property

taxes within any ~~service~~ district established pursuant to this Article not in excess of a rate of ten cents (10¢) on each one hundred dollars ($100.00) value of property subject to taxation. Such property taxes for public transportation may only be used within the ~~service~~ district, or to provide for public transportation from the ~~service~~ district to other public transportation systems or to other places outside the ~~service~~ district including airports."

"**§ 153A-317.1 Urban research service district taxes authorized; rate.**

(a) Tax authorized. – A county, upon recommendation of the advisory committee established pursuant to G.S. 153A-316.2, may levy property taxes within a URSD in addition to those levied throughout the county, and in addition to those levied throughout the county research and production service district, in order to finance, provide, or maintain for the URSD services provided therein in addition to or to a greater extent than those financed, provided, or maintained both for the entire county and for the county research and production service district. Only those services that cities are authorized by law to provide may be provided. In addition, a county may allocate to a URSD any other revenue not otherwise restricted by law.

(b) Rate. – Property subject to taxation in a newly established URSD or in an area annexed to an existing URSD is that subject to taxation by the county as of the preceding January. The maximum tax rate set forth in G.S. 153A-317 shall not apply to the URSD. The additional property taxes within any URSD may not be levied in excess of the rate levied in the prior year by a city that:

(1) Is the largest city in population that is contiguous to the county research and production service district where the URSD is located.

(2) Is located primarily within the same county the URSD is located in.

(c) Use. – The proceeds of taxes levied within a URSD may be expended only for the benefit of the URSD. The taxes levied for the URSD may be used for debt service on any debt issued by the county that is used wholly or partly for capital projects located within the URSD, but not in greater proportion than expense of projects located within the URSD bear to the entire expense of capital projects financed by that borrowing of the county. For the purpose of this subsection, "debt" includes (i) general obligation bonds and notes issued under Chapter 159 of the General Statutes, (ii) revenue bonds issued under Chapter 159 of the General Statutes, (iii) financing agreements under Article 8 of Chapter 159 of the General Statutes, and (iv) special obligation bonds issued by the county.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 391:
RTP District Amendments

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 30, 2012
Introduced by:	Reps. Avila, Torbett	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition H391-CSTDx-60		Committee Counsel

SUMMARY: The PCS to House Bill 391 would amend the authorizing statutes for county research and production districts to allow for additional permitted uses in the districts, including mixed-use development that combines residential, retail, and business use.

CURRENT LAW: In 1985, the General Assembly authorized counties to establish research and production districts. A board of commissioners may, by resolution, establish a research and production district for any area of the county if it meets the statutory standards. A county may levy property taxes within the district in addition to those levied throughout the county with a cap of 10¢ on each $100 value of taxable property.

The original standards for a research and production service district limited real property in the district to use for research or scientifically oriented production or for associated commercial or institutional purposes. The original standards also included acreage requirements, employment requirements, and a restriction on the number of permanent residents in the district. The standards also provided that no part of a district could be within the boundaries of any incorporated city or town.

A board of county commissioners may create a district by resolution after publication of a report outlining the district, and holding a public hearing on the formation of the district. Multi-county districts are also authorized. For multi-county districts, the boards of county commissioners may pass concurrent resolutions.

At the time the county research and production service district legislation was enacted it was assumed that the Research Triangle Park would be the only district created under the act due to the acreage and employment level standards need to qualify for the creation of a district. In 2009, the General Assembly amended these standards to allow for the creation of a district when all of the real property in the district is part of a multijurisdictional industrial park. The maximum property tax rate for a district in a multijurisdictional industrial park is 15¢ on each $100 value of taxable property.

BILL ANALYSIS: The PCS to House Bill 391 amends the authorizing statutes for county research and production districts to allow for additional permitted uses in the districts, including mixed-use development that combines residential, retail, and business use, and authorizes the creation of new sub-districts, urban service research districts.

County Research and Production Service Districts:

New districts: The standards for a creation of a county research and production service district are amended to provide that real property in a district may be used for the following additional purposes:

- Scientifically-oriented technology and education.
- Residential purposes associated with scientifically-oriented production, technology, or education.
- Any other purpose specifically authorized in the covenants adopted to restrict the use of the real property.

Existing districts: Districts established prior to June 1, 2012 may amend the covenants that restrict the use of real property in those districts to include the additional purposes listed above.

Conforming changes: The statutes governing county research and production service districts are amended to reflect the expansion in the permitted uses of real property in the districts.

Urban Research Service Districts

The board of commissioners of a county (Board) may establish urban research districts (URSD) within existing county research and production districts.

Standards for USRD: The URSD must be located wholly within the county and may not be contained in any other URSD. The method of formation and governance of URSDs are substantially similar to provisions for county research and production service districts.

URSD Advisory Committee: The Board must provide an advisory committee for the URSD. The advisory committee will consist of owners and tenants of the URSD, an appointee of the developer of the district in which the URSD is located, and appointees of the Board. The committee will advise the Board on the services, facilities, and functions of the URSD.

Hearing and notice: Prior to establishing, extending, removing territory from, or abolishing a URSD, the Board must hold a public hearing regarding the action.

Standards for extension of USRD: To extend an URSD, the Board must find that the covenants restricting the use of real property will apply, 100% of the owners of real property in the area to be added petition to be added, the area to be added is contiguous, and the area requires the additional services, facilities, or functions served by the USRD.

Standards for removing area from USRD: To remove area from an USRD, the Board must find the removal is recommended by a vote of 2/3rds of the owners and tenants association and 100% of the owners of property in the area to be removed request removal, the area to be removed no longer requires the additional services, facilities, or functions served by the USRD, and the county has not financed any project for which taxes are levied on the area.

Services in the URSD: The Board must provide services for which the URSD is being taxed in a reasonable time. The Board may also designate the developer of the county research and production service district in which the URSD is located to contract with any local government for services within the URSD.

Taxes: The Board may levy taxes in the URSD that are in addition to the county taxes, and the taxes in the research and development district in order to finance and maintain services within the URSD.

The rate of the tax may not exceed the rate levied in the city with the largest population that is 1) contiguous to the county research and production service district in which the URSD is located, and 2) located primarily with in the same county as the URSD.[1]

The taxes levied may be used for services in the URSD, and debt service for debt incurred by the county for capital projects in the URSD.

EFFECTIVE DATE: This act is effective when it becomes law.

H391-SMTD-113(CSTDx-60) v5

[1] There are three cities contiguous to RTP that could potentially meet this definition. Cary (tax rate of 33¢ per $100 value of taxable property), Durham (tax rate 55¢ per $100 value of taxable property), and Morrisville (tax rate 36¢ per $100 value of taxable property).

S 1

SENATE BILL 806*

Short Title:	Modify Mortgage Regulation Funding.	(Public)
Sponsors:	Senator Brown.	
Referred to:	Commerce.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAW DEALING WITH THE ANNUAL ASSESSMENTS OF MORTGAGE BANKERS, MORTGAGE BROKERS, AND MORTGAGE SERVICERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19B of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-244.100A. Assessments.**

(a) For the purpose of meeting the cost of regulation under this Article, each mortgage lender, mortgage broker, and mortgage servicer licensed under this Article shall pay into the OCOB an assessment as provided in this subsection. The annual assessment shall consist of a base amount of two thousand dollars ($2,000) for volumes of no more than one million five hundred thousand dollars ($1,500,000) plus an additional sum, calculated on the loan and servicing dollar volume reported by the licensee to the OCOB for the previous calendar year. If a licensee has both loan and servicing volume, those amounts shall be added together and the assessment shall be calculated from the table below as follows:

Loan and/or Servicing Dollar Volume		Per Thousand
$1,500,001 to	$2,500,000	$0.07
$2,500,001 to	$5,000,000	$0.06
$5,000,001 to	$10,000,000	$0.05
$10,000,001 to	$30,000,000	$0.04
$30,000,001 to	$100,000,000	$0.03
$100,000,001 to	$1,300,000,000	$0.02
More Than $1,300,000,001		$0.01

(b) The Commissioner may collect the assessment provided for in subsection (a) of this section annually or in periodic installments as approved by the Commission."

SECTION 2. G.S. 53-244.101 reads as rewritten:

"**§ 53-244.101. License renewal.**

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 31st day of December following issuance or on any other date that the Commissioner may determine. The license is invalid after that date and shall remain invalid unless renewed under subsection (b) of this section.

(b) A license may be renewed on or after November 1 of each year by complying with the requirements of subsection (c) of this ~~section~~ section. A mortgage loan originator shall pay a nonrefundable renewal fee of one hundred twenty-five dollars ($125.00) ~~and by paying to the Commissioner, in addition to~~plus the actual cost of obtaining credit reports and State and national criminal history record checks and ~~of~~ processing fees ~~of~~ for the ~~nationwide system~~ Nationwide Mortgage Licensing System and Registry as the Commissioner shall ~~require, nonrefundable renewal fees as follows:~~ require.

~~(1) Licensed mortgage lenders, licensed mortgage brokers, and licensed mortgage servicers shall pay an annual renewal fee of six hundred twenty-five dollars ($625.00), licensed exclusive mortgage brokers shall pay an annual renewal fee of three hundred dollars ($300.00), and licensed mortgage lenders and mortgage brokers shall pay three hundred dollars ($300.00) for each licensed branch office.~~

~~(2) Licensed mortgage loan originators shall pay an annual renewal fee of one hundred twenty-five dollars ($125.00).~~

(c) Licensees may apply to renew a mortgage loan originator, mortgage lender, mortgage broker, and mortgage servicer license. The application for renewal shall demonstrate that:

(1) The licensee continues to meet the initial minimum standards for licensure under G.S. 53-244.060;

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in G.S. 53-244.102; and

(3) The licensee has paid all required fees ~~for renewal of the license.~~and assessments.

(d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed prior to the expiration date, then the licensee shall pay two hundred fifty dollars ($250.00) as a nonrefundable late ~~fee in addition to the renewal fee set forth in subsection (b) of this section.~~ fee. If a mortgage loan originator's license is not renewed prior to the expiration date, then the licensee shall pay a nonrefundable late fee of one hundred dollars ($100.00) in addition to the renewal fee set forth in subsection (b) of this section. In the event a licensee fails to obtain a reinstatement of the license prior to March 1, the Commissioner shall require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(e) When required by the Commissioner, each person shall furnish to the Commissioner the person's consent to a criminal history record check and a set of the person's fingerprints in a form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and Registry. Refusal to consent to a criminal history record check shall constitute grounds for the Commissioner to deny renewal of the license of the person as well as the license of any other person by whom the person is employed, over which the person has control, or as to which the person is the current or proposed qualifying individual or current or proposed branch manager."

SECTION 3. G.S. 53-244.115 reads as rewritten:

"**§ 53-244.115. Investigation and examination authority.**

(a) For purposes of initial licensing, license renewal, suspension, conditioning, revocation, or termination, or general or specific inquiry, investigation, or examination to determine compliance with this Article, the Commissioner ~~may, at the expense of the applicant or licensee,~~may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:

(1) Criminal, civil, and administrative history information, including nonconviction data;

(2) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(3) Any other documents, information, or evidence the Commissioner deems relevant to the inquiry, investigation, or examination regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For purposes of investigating violations or complaints arising under this Article, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual, or person subject to this Article as often as necessary in order to carry out the purposes of this Article. The Commissioner may interview the officer, principals, person with control, qualified individual, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry. ~~The reasonable cost of the investigation or examination shall be charged against the licensee, individual, or person subject to this Article.~~ The assessment set forth in G.S. 53-244.100A is for the purpose of meeting the cost of regulation under this Article. Any investigation or examination that, in the opinion of the Commissioner of Banks, requires extraordinary review, investigation, or special examination shall be subject to the actual costs of additional expenses and the hourly rate for the staff's time, to be determined annually by the Banking Commission.

(c) Each licensee, individual, or person subject to this Article shall make available to the Commissioner upon request the books and records relating to the operations of the licensee, individual, or person. No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information. Each licensee, individual, or person subject to this Article shall also make available for interview by the Commissioner the officers, principals, persons with control, qualified individuals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business.

(d) Each licensee, individual, or person subject to this Article shall make or compile such reports or prepare other information as may be directed or requested by the Commissioner in order to carry out the purposes of this section, including:

(1) Accounting compilations;

(2) Information lists and data concerning loan transactions in a format prescribed by the Commissioner;

(3) Periodic reports, including:

a. Annual Report Questionnaire,

b. Servicer Activity Report,

c. Servicer Schedule of the Ranges of Costs and Fees,

d. Lender/Servicer Audited Statements of Financial Condition,

e. Broker Certified Statements of Financial Condition, and

f. Quarterly Loan Origination Reports.

(4) Any other information deemed necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this Article, the Commissioner may control access to any documents and records of the licensee or person under examination or investigation. The Commissioner may take possession of the documents

and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this Article, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business.

(f) In order to carry out the purposes of this section, the Commissioner may:

(1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, documents, records, information, or evidence obtained under this section;

(3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this Article;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this State; or

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the Commissioner.

(g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115, the Commissioner is authorized to take action, including summary suspension of the license, if the licensee fails, within 20 days or a lesser time if specifically requested for good cause, to:

(1) Respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee that allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending business;

(2) Respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this Article; or

(3) Consent to a criminal history record check. The refusal shall constitute grounds for the Commissioner to deny licensure to the applicant as well as to any entity:

a. By whom or by which the applicant is employed,

b. Over which the applicant has control, or

c. As to which the applicant is the current or proposed qualifying individual or a current or proposed branch manager.

(h) The authority of this section shall remain in effect, whether a licensee, individual, or person subject to this Article acts or claims to act under any licensing law of the State, or claims to act without such authority."

SECTION 4. G.S. 53-244.119(e) is repealed.

SECTION 5. This act becomes effective October 1, 2012.

SENATE BILL 806:
Modify Mortgage Regulation Funding

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 29, 2012
Introduced by:	Sen. Brown	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 806 would amend the law relating to regulation of the mortgage industry to change the way regulation is funded from a fee based to an assessment based system. This bill was recommended by the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws.[1]

CURRENT LAW: Under the S.A.F.E Mortgage Licensing Act, mortgage lenders, mortgage brokers, mortgage servicers, and loan originators are required to be licensed by the Commissioner of Banks before engaging in the businesses of mortgage lending, mortgage brokering, or mortgage servicing, unless exempt.

Mortgage brokers, mortgage lenders, and mortgage servicers, must pay a license application fee of $1,250.00. Mortgage loan originators must pay a fee of $125.00. The licensee must also pay a filing fee for each additional branch office of $300.00. In addition, applicants must pay any processing fees required by the Nationwide Mortgage Licensing System and Registry.

Licenses must be renewed annually. The renewal fee for licensed mortgage brokers, mortgage lenders, and mortgage servicers is $625.00, together with a $300.00 fee for each branch office. The renewal fee for mortgage loan originators is $125.00. The late fee for mortgage brokers, mortgage lenders, and mortgage servicers is $250.00 and for mortgage loan originators is $100.00.

BILL ANALYSIS: *Senate Bill 806* would create a new funding mechanism for mortgage regulation by replacing the licensing fees for mortgage companies with an assessment. The assessment would include a minimum level of $2,000 plus an additional amount based on loan and servicing volume. The bill includes a table setting out the amount per thousand dollars to be applied to various brackets of loan and servicing volume. The bill also repeals the renewal fees currently paid by lenders, brokers, and servicers.

EFFECTIVE DATE: This act would become effective October 1, 2012.

BACKGROUND: The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws made the following finding: "The fees generated by the S.A.F.E. Mortgage Licensing Act are insufficient to support the cost of regulating the mortgage lending industry. Since 2002, bank assessments have subsidized mortgage regulation. The funding mechanism for mortgage regulation should be changed to replace the current licensing renewal fees with an assessment structure similar to that currently applicable to banks."

Karen Cochrane-Brown, counsel to the Senate Commerce Committee, substantially contributed to this summary.

S806-SMRB-123(e1) v1

[1] Rep. Brubaker introduced an identical bill, House Bill 949; the bill is in the House Banking Committee.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 826*
PROPOSED COMMITTEE SUBSTITUTE S826-CSSVx-45 [v.3]

5/29/2012 9:35:14 PM

Short Title: Revenue Laws Tech., Clarifying, & Admin Chngs. (Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CHANGES

SECTION 1.1. G.S. 105-130.5(b) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax ~~liability.~~ liability or because of a grant allowed under section 1603 of the American Recovery and Reinvestment Tax Act of 2009, P.L. 111-3. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.

...."

SECTION 1.2. G.S. 105-134.5 reads as rewritten:

"**§ 105-134.5. (Effective for taxable years beginning on or after January 1, 2012) North Carolina taxable income defined.**

...

(b) Nonresidents. – For a nonresident individual, the term "North Carolina taxable income" means the taxpayer's adjusted gross income as modified in G.S. 105-134.6, multiplied by a fraction the denominator of which is the taxpayer's ~~adjusted~~ gross income as modified in G.S. 105-134.6, and the numerator of which is the amount of that ~~adjusted~~ gross income, as modified, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade, profession, or occupation carried on in this State, or is derived from gambling activities in this State.

(c) Part-year Residents. – If an individual was a resident of this State for only part of the taxable year, having moved into or removed from the State during the year, the term "North Carolina taxable income" has the same meaning as in subsection (b) of this section except that

the numerator includes ~~adjusted~~ gross income, as modified under G.S. 105-134.6, derived from all sources during the period the individual was a resident.

..."

SECTION 1.3. G.S. 105-134.6 reads as rewritten:

"**§ 105-134.6. (Effective for taxable years beginning on or after January 1, 2012) Modifications to adjusted gross income.**

...

(a2) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct either the North Carolina standard deduction amount ~~listed in the table below~~ for that taxpayer's filing status or the itemized deductions amount claimed under the Code. The North Carolina standard deduction amount is the lesser of the amount shown in the table below or the amount allowed under the Code. In the case of a married couple filing separate returns, a taxpayer may not deduct the standard deduction amount if the taxpayer or the taxpayer's spouse claims itemized deductions for State purposes.

A taxpayer that deducts the standard deduction amount under this subsection and is entitled to an additional deduction amount under section 63(f) of the Code for the aged or blind may deduct an additional amount under this subsection. The additional amount the taxpayer may deduct is six hundred dollars ($600.00) in the case of an individual who is married and seven hundred fifty dollars ($750.00) in the case of an individual who is not married and is not a surviving spouse. The taxpayer is allowed the same number of additional amounts that the taxpayer claimed under the Code for the taxable year.

Filing Status	Standard Deduction
Married, filing jointly	$6,000
Head of Household	4,400
Single	3,000
Married, filing separately	3,000.

..."

SECTION 1.4. G.S. 105-164.13 reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(11) Any of the following fuel:

a. Motor fuel, as ~~defined in G.S. 105-449.60,~~ taxed in Article 36C of this Chapter, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105 449.105A or G.S. 105 449.107.

b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105 449.107.

...

(49) Installation charges when the charges are separately stated on ~~the~~ an invoice or similar billing document given to the purchaser at the time of sale.

(49a) Delivery charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the ~~purchaser.~~purchaser at the time of sale.

...."

SECTION 1.5. The title of Article 5F of Chapter 105 of the General Statutes reads as rewritten:

"Article 5F.

~~Manufacturing Fuel and~~ Certain Machinery and Equipment."

SECTION 1.6. The catchline of G.S. 105-187.70, as enacted by Section 6 of S.L. 2011-122, reads as rewritten:

"**§ 105-187.70. Department comply with Article 43 of Chapter 62A of the General Statutes.**

SECTION 1.7.(a) G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2011,~~ January 1, 2012, including any provisions enacted as of that date that become effective either before or after that date."

SECTION 1.7.(b) This section is effective when it becomes law. Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after January 1, 2011, that increase North Carolina taxable income for the 2011 taxable year become effective for taxable years beginning on or after January 1, 2012.

SECTION 1.8. G.S. 105-263(a) reads as rewritten:

"(a) Mailed Document. ~~Section~~ Sections 7502 and 7503 of the Code ~~governs~~ govern when a return, report, payment, or any other document that is mailed to the Department is timely filed."

SECTION 1.9. G.S. 105-277.1F(a)(1) reads as rewritten:

"(a) Scope. – This section applies to the following deferred tax programs:

(1) ~~G.S. 105-275(12)f., real property held for future transfer to government unit for conservation purposes.~~G.S. 105-275(12), real property owned by a nonprofit corporation held as a protected natural area."

SECTION 1.10. G.S. 105-468 reads as rewritten:

"**§ 105-468. Scope of use tax.**

The use tax authorized by this Article is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold in the taxing county but is used, consumed, or stored for use or consumption in the taxing county. The tax applies to the same items that are subject to tax under G.S. 105-467.

Every retailer who is engaged in business in this State and in the taxing county and is required to collect the use tax levied by G.S. 105-164.6 shall collect the one percent (1%) use tax when the property is to be used, consumed, or stored in the taxing county. The use tax contemplated by this section shall be levied against the purchaser, and the purchaser's liability for the use tax shall be extinguished only upon payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Secretary, where the retailer is not required to collect the tax.

Where a local sales or use tax was due and has been paid with respect to tangible personal property by the ~~purchaser, either~~ purchaser in another taxing county within the State, or where a local sales or use tax was due and has been paid in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county. The Secretary may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article."

SECTION 1.11. G.S. 160A-536(e)(2) reads as rewritten:

"(2) The city must receive a petition signed by at least sixty percent (60%) of the lot owners of the owners' association requesting the city to establish a

municipal service district for the purpose of paying the costs related to converting private residential streets to public streets. The executive board of an owners' association for which the city has received a petition under this subsection may transfer street-related common elements to the city, notwithstanding the provisions of either the North Carolina Planned Community Act in Chapter 47F of the General ~~Statutes,~~ Statutes or the North Carolina Condominium Act in Chapter 47C of the General Statutes, or related articles of declaration, deed covenants, or any other similar document recorded with the Register of Deeds."

SECTION 1.12.(a) G.S. 20-63 reads as rewritten:

"(b1) **(Effective until July 1, 2016)** The following special registration plates do not have to be a "First in Flight" plate as provided in subsection (b) of this section. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification. When the Division registers a vehicle or renews the registration of a vehicle on or after July 1, 2015, the Division must send the owner a replacement special license plate in a standardized format in accordance with subsection (b) of this section and G.S. 20-79.4(a3).

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Ducks Unlimited.
(16) Lung Cancer Research.
(17) NC State Parks.
(18) Support Our Troops.
(19) US Equine Rescue League.
(20) Fox Hunting.
(21) Back Country Horsemen of North Carolina.
(22) Hospice Care.
(23) Home Care and Hospice.
(24) NC Tennis Foundation.
(25) AIDS Awareness.
(26) Donate Life.
(27) Farmland Preservation.
(28) Travel and Tourism.
(29) Battle of Kings Mountain.
(30) NC Civil War.
(31) North Carolina Zoological Society.
(32) United States Service Academy.
(33) Carolina Raptor Center.
(34) Carolinas Credit Union Foundation.

(35) North Carolina State Flag.
(36) NC Mining.
(37) Coastal Land Trust.
(38) ARTS NC.
(39) Choose Life.
(40) North Carolina Green Industry Council.
(41) NC Horse Council.
(42) Core Sound Waterfowl Museum and Heritage Center.
(43) Mountains-to-Sea Trail, Inc."

SECTION 1.12.(b) G.S. 20-79.7(a) reads as rewritten:

"**§ 20-79.7. Fees for special registration plates and distribution of the fees.**

(a) Fees. – Upon request, the Division shall provide and issue free of charge a single Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war each year. The preceding special registration plates are subject to the regular motor vehicle registration fees in G.S. 20-88, if the registered weight of the vehicle is greater than 6,000 pounds. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
American Red Cross	$30.00
Animal Lovers	$30.00
Arthritis Foundation	$30.00
ARTS NC	$30.00
Back Country Horsemen of NC	$30.00
Boy Scouts of America	$30.00
Brenner Children's Hospital	$30.00
Carolina Raptor Center	$30.00
Carolinas Credit Union Foundation	$30.00
Carolinas Golf Association	$30.00
Coastal Conservation Association	$30.00
Coastal Land Trust	$30.00
Crystal Coast	$30.00
Daniel Stowe Botanical Garden	$30.00
El Pueblo	$30.00
Farmland Preservation	$30.00
First in Forestry	$30.00
Girl Scouts	$30.00
Greensboro Symphony Guild	$30.00
Historical Attraction	$30.00
Home Care and Hospice	$30.00
Home of American Golf	$30.00
HOMES4NC	$30.00
Hospice Care	$30.00
In God We Trust	$30.00
Maggie Valley Trout Festival	$30.00
Morgan Horse Club	$30.00
Mountains-to-Sea Trail	$30.00
NC Civil War	$30.00
NC Coastal Federation	$30.00
NC Veterinary Medical Association	$30.00
National Kidney Foundation	$30.00

North Carolina 4-H Development Fund	$30.00
North Carolina Emergency Management Association	$30.00
North Carolina Green Industry Council	$30.00
North Carolina Libraries	$30.00
Outer Banks Preservation Association	$30.00
Pamlico-Tar River Foundation	$30.00
P.E.O. Sisterhood	$30.00
Personalized	$30.00
Retired Legislator	$30.00
Ronald McDonald House	$30.00
Share the Road	$30.00
S.T.A.R.	$30.00
State Attraction	$30.00
Stock Car Racing Theme	$30.00
Support NC Education	$30.00
Support Our Troops	$30.00
Sustainable Fisheries	$30.00
Toastmasters Club	$30.00
Topsail Island Shoreline Protection	$30.00
Travel and Tourism	$30.00
AIDS Awareness	$25.00
Buffalo Soldiers	$25.00
Choose Life	$25.00
Collegiate Insignia	$25.00
First in Turf	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Children's Promise	$25.00
Nurses	$25.00
Olympic Games	$25.00
Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Support Soccer	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
ALS Association, Jim "Catfish" Hunter Chapter	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Battle of Kings Mountain	$20.00
Be Active NC	$20.00
Brain Injury Awareness	$20.00
Breast Cancer Earlier Detection	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Concerned Bikers Association/ABATE of North Carolina	$20.00

1	Daughters of the American Revolution	$20.00
2	Donate Life	$20.00
3	Ducks Unlimited	$20.00
4	Greyhound Friends of North Carolina	$20.00
5	Guilford Battleground Company	$20.00
6	Harley Owners' Group	$20.00
7	Jaycees	$20.00
8	Juvenile Diabetes Research Foundation	$20.00
9	Kappa Alpha Order	$20.00
10	Litter Prevention	$20.00
11	March of Dimes	$20.00
12	~~Morgan Horse Club~~	~~$20.00~~
13	Native American	$20.00
14	NC Fisheries Association	$20.00
15	NC Horse Council	$20.00
16	NC Mining	$20.00
17	NC Tennis Foundation	$20.00
18	NC Trout Unlimited	$20.00
19	NC Victim Assistance	$20.00
20	NC Wildlife Federation	$20.00
21	NC Wildlife Habitat Foundation	$20.00
22	NC Youth Soccer Association	$20.00
23	North Carolina Master Gardener	$20.00
24	Omega Psi Phi Fraternity	$20.00
25	Phi Beta Sigma Fraternity	$20.00
26	Piedmont Airlines	$20.00
27	Prince Hall Mason	$20.00
28	Save the Sea Turtles	$20.00
29	Scenic Rivers	$20.00
30	School Technology	$20.00
31	SCUBA	$20.00
32	Soil and Water Conservation	$20.00
33	Special Forces Association	$20.00
34	Support Public Schools	$20.00
35	~~Sustainable Fisheries~~	~~$20.00~~
36	US Equine Rescue League	$20.00
37	USO of NC	$20.00
38	Wildlife Resources	$20.00
39	Zeta Phi Beta Sorority	$20.00
40	Carolina Regional Volleyball Association	$15.00
41	Carolina's Aviation Museum	$15.00
42	Leukemia & Lymphoma Society	$15.00
43	Lung Cancer Research	$15.00
44	NC Beekeepers	$15.00
45	Shag Dancing	$15.00
46	Active Member of the National Guard	None
47	100% Disabled Veteran	None
48	Ex-Prisoner of War	None
49	Gold Star Lapel Button	None
50	Legion of Valor	None
51	Purple Heart Recipient	None

All Other Special Plates $10.00."

SECTION 1.13.(a) The General Assembly makes the following findings:

(1) Section 1.3 of S.L. 2010-147 was intended to address concerns about the stringency of the environmental impact test used in determining eligibility for credits under Article 3J of Chapter 105 of the General Statutes.

(2) The General Assembly purposefully decided to adjust that standard retroactively to January 1, 2007, the effective date of Article 3J of Chapter 105 of the General Statutes.

(3) By retroactively changing this standard, the General Assembly intended to address instances where the application of this standard had resulted in a finding that a taxpayer was ineligible for credits contrary to the intent of the General Assembly in enacting the original legislation.

(4) The General Assembly intended for taxpayers to receive the benefits of this retroactive change.

(5) The provisions of G.S. 105-129.84(d) that require a taxpayer to claim a credit under Article 3J of Chapter 105 of the General Statutes within six months after the date set by statutes for the filing of return had the effect of limiting the benefits of this retroactive change.

SECTION 1.13.(b) Notwithstanding the provisions of G.S. 105-129.84(d), for the 2007 through 2010 taxable years, a taxpayer that satisfies all of the following conditions may claim a credit under Article 3J of Chapter 105 of the General Statutes on an amended return that is filed before January 1, 2013.

(1) The taxpayer did not timely claim a credit under Article 3J of Chapter 105 of the General Statutes.

(2) The taxpayer would have been ineligible to claim a credit under Article 3J of Chapter 105 of the General Statutes because it failed to meet the environmental impact standard under G.S. 105-129.83(e) prior to the enactment of S.L. 2010-147.

(3) The taxpayer satisfies the environmental impact standard under G.S. 105-129.83(e) after the enactment of S.L. 2010-147.

SECTION 1.13.(c) This section is effective when it becomes law.

PART II. CLARIFYING AND ADMINISTRATIVE CHANGES

SECTION 2.1. G.S. 105-113.38 reads as rewritten:

"**§ 105-113.38. ~~Bond.~~Bond or irrevocable letter of credit.**

The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an amount that adequately protects the State from loss if the dealer fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall proportion a bond amount to the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary shall periodically review the sufficiency of bonds required of dealers, and shall increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary shall decrease the amount of a required bond when the Secretary determines that a smaller bond amount will adequately protect the State from loss. For purposes of this section, a bond may also include an irrevocable letter of credit."

SECTION 2.2.(a) G.S. 105-113.107(1a) reads as rewritten:

"(1a) At the rate of three dollars and fifty cents ($3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this ~~section.~~section, or synthetic cannabinoids."

SECTION 2.2.(b) This section becomes effective June 1, 2011.

SECTION 2.3. G.S. 105-120.2(c) reads as rewritten:

"(c) For purposes of this section, a "holding company" is a corporation that ~~receives~~ satisfies at least one of the following conditions:

(1) It has no assets other than ownership interests in corporations in which it owns, directly or indirectly, more than fifty percent (50%) of the outstanding voting stock or voting capital interests.

(2) It receives during its taxable year more than eighty percent (80%) of its gross income from corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting stock or voting capital interests."

SECTION 2.4. G.S. 105-129.81(4) reads as rewritten:

"(4) Business property. – Tangible personal property that is used in a business and capitalized by the taxpayer for tax purposes under the Code."

SECTION 2.5. G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. – A husband and wife whose federal taxable income is determined on a joint federal return shall file a single income tax return jointly if each spouse either is a resident of this State or has North Carolina taxable income and may file a single income tax return jointly if one spouse is not a resident and has no North Carolina taxable income. Except as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse ~~has been relieved of~~ qualifies for relief of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

SECTION 2.6. G.S. 105-160.3(b) reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

(1) G.S. 105-151. Tax credits for income taxes paid to other states by individuals.

(2) G.S. 105-151.11. Credit for child care and certain employment-related expenses.

(3) G.S. 105-151.18. Credit for the disabled.

(4) G.S. 105-151.24. Credit for children.

(5) G.S. 105-151.26. Credit for charitable contributions by nonitemizers.

(6) Repealed by Session Laws 2004-170, s. 17, effective August 2, 2004.

(7) G.S. 105-151.28. Credit for long-term care insurance.

(8) (Expires for taxable years beginning on or after January 1, 2013) G.S. 105-151.30. Credit for recycling oyster shells.

(9) G.S. 105-151.31. Earned income tax credit.

(10) G.S. 105-151.32. Credit for adoption expenses.

(11) G.S. 105-151.33. Education expenses credit."

SECTION 2.7. G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(25a) Over-the-counter drug. – A drug that ~~can be dispensed under federal law without a prescription and is~~ contains a label that identifies the product as a drug as required by 21 C.F.R. ~~§ 201.66~~ § 201.66. The label includes either of the following:

a. ~~to have a label containing a~~ A "Drug Facts" ~~panel~~ panel.

b. ~~and a~~ A statement of its active ~~ingredients.~~ingredients with a list of those ingredients contained in the compound, substance, or preparation.

...

(36) Sale or selling. – The transfer for consideration of ~~title~~ title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term includes the following:

a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.

b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.

c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.

d. A lease or rental.

e. Transfer of a digital code.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~May 12, 2009.~~December 19, 2011.

...."

SECTION 2.8. G.S. 105-164.4B(a) reads as rewritten:

"(a) General Principles. – The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the ~~product.~~product, except as otherwise noted in this section:

(1) Over-the-counter. – When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.

(2) Delivery to specified address. – When a purchaser or purchaser's donee receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser's donee receives the product.

~~(3) Delivery address unknown. When a seller of a product does not know the address where a product is received, the sale is sourced to the first address or location listed in this subdivision that is known to the seller:~~

~~a. The business or home address of the purchaser.~~

~~b. The billing address of the purchaser or, if the product is prepaid wireless calling service, the location associated with the mobile telephone number.~~

~~c. The address from which tangible personal property was shipped or from which a service was provided.~~

(3) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the

ordinary course of the seller's business when use of this address does not constitute bad faith.

(4) When subdivisions (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(5) When subdivisions (1), (2), (3), and (4) of this subsection do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on the following:

a. Address from which tangible personal property was shipped,

b. Address from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or

c. Address from which the service was provided."

SECTION 2.9. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Retailer to collect sales tax from purchaser as trustee for State.**

The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when the item is sold at retail. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale except for either of the following:

(1) Vending machine sales.

(2) Where a retailer displays a statement indicating the sales price includes the tax."

SECTION 2.10.(a) Part 2 of Article 5 of Chapter 105 of the General Statutes is amended by adding the following new section:

"**§ 105-164.12C. Items given away by merchants.**

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purpose of this Article, the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property."

SECTION 2.10.(b) This section becomes effective August 7, 2009.

SECTION 2.11. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, and accessories for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period. Airplane miles are not in this State if the airplane does not depart or land in this State.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ~~ratio of~~ mileage ratio. The numerator of the mileage ratio is the number of miles the applicant operated ~~its~~ all motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund ~~period to~~ period. The denominator of the mileage ratio is the number of miles ~~it~~ the applicant operated ~~them~~ all motor vehicles, railroad cars, locomotives, and airplanes both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

SECTION 2.12. G.S. 105-164.27A reads as rewritten:

"**§ 105-164.27A. Direct pay permit.**

(a) General. – A general direct pay permit authorizes its holder to purchase any tangible personal property, digital property, or service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases an item under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in use or the service is received. A direct pay permit issued under this subsection does not apply to taxes imposed under G.S. 105-164.4 on electricity.

A person who purchases an item for storage, use, or consumption in this State whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a general direct pay permit:

(1) The place of business where the item will be ~~used~~ stored, used, or consumed is not known at the time of the purchase and a different tax consequence applies depending on where the item is used.

(2) The manner in which the item will be ~~used~~ stored, used, or consumed is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

...

(b) Telecommunications Service. – A direct pay permit for telecommunications service authorizes its holder to purchase telecommunications service and ancillary service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases these services under a direct pay permit must file a return and pay the tax due monthly or quarterly to the Secretary. A direct pay permit issued under this subsection does not apply to any tax other than the tax on telecommunications service and ancillary service.

A call center that purchases telecommunications service that originates outside this State and terminates in this State may apply to the Secretary for a direct pay permit for telecommunications service and ancillary service. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.

...."

SECTION 2.13. G.S. 105-187.43(b) reads a rewritten:

"(b) Prepayment. – A taxpayer who is consistently liable for at least ~~ten~~ twenty thousand dollars ~~($10,000)~~($20,000) of tax a month must make a monthly prepayment of the next month's tax liability. This requirement applies when the taxpayer meets the threshold and the Secretary notifies the taxpayer to make prepayments. A prepayment is due on the date a monthly payment is due. The prepayment must equal at least sixty five percent (65%) of any of the following:

(1) The amount of tax due for the current month.

(2) The amount of tax due for the same month in the preceding year.

(3) The average monthly amount of tax due in the preceding calendar year."

SECTION 2.14. G.S. 143-59.1(a) reads as rewritten:

"(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

(1) A vendor if the vendor or an affiliate of the vendor if the Secretary of Revenue has determined that the vendor or affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies.

(2) A vendor if the vendor or an affiliate of the vendor incorporates or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country."

SECTION 2.15. G.S. 105-241(b)(2a) reads as rewritten:

"(2a) Motor fuel taxes. – A taxpayer that ~~is required to file~~ files an electronic return under Subchapter V of this Chapter or Article 3 of Chapter 119 of the General Statutes must pay the tax by electronic funds transfer."

SECTION 2.16. Effective when it becomes law, but expiring at the same time as Section 1 of S.L. 2011-296 expires (currently July 1, 2013), G.S. 161-10(a), as rewritten by S.L. 2011-296, reads as rewritten:

"**§ 161-10. Uniform fees of registers of deeds.**

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. – For registering or filing any instrument for which no other provision is made by this section, the fee shall be twenty-six dollars ($26.00) for the first 15 pages plus four dollars ($4.00) for each additional page or fraction thereof.

~~When a subsequent instrument, as defined in G.S. 161-14.1(a)(3), is presented for registration with reference to more than one original instrument for which recording data are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional twenty-five dollars ($25.00) for each additional reference.~~ For any instrument that assigns more than one

security instrument as defined in G.S. 45-36.4(18) by reference to previously recorded instrument recording data that are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional ten dollars ($10.00) for each additional reference.

When a document is presented for registration that consists of multiple instruments, the fee shall be an additional ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

...."

SECTION 2.17.(a) G.S. 45-102(6) reads as rewritten:

"(6) The address, telephone number, and other contact information for the ~~consumer complaint section~~ State Home Foreclosure Prevention Project of the Housing Finance Agency. ~~Office of Commissioner of Banks, or, alternatively, if the loan is serviced by a credit union, the address, telephone number, and other contact information for the consumer complaint section of the Credit Union Division.~~"

SECTION 2.17.(b) G.S. 45-103(a) reads as rewritten:

"(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower. The Administrative Office of the Courts shall establish an internal database to track information required by this section. The ~~Commissioner of Banks~~ Housing Finance Agency shall design and develop the State Home Foreclosure Prevention Project database, in consultation with the Administrative Office of the Courts. Only the Administrative Office of the Courts, ~~the Office of Commissioner of Banks,~~ the Housing Finance Agency, and the clerk of court as provided by G.S. 45-107 shall have access to the database."

SECTION 2.17.(c) G.S. 45-104 reads as rewritten:

"**§ 45-104. State Home Foreclosure Prevention Project and Fund.**

(a) ~~The Commissioner of Banks is authorized to establish the State Home Foreclosure Prevention Project.~~ The purpose of the State Home Foreclosure Prevention Project is to seek solutions to avoid foreclosures for home loans. ~~In developing the Project, the Commissioner~~ The Project may include input from HUD-approved housing counselors, community organizations, the Credit Union Division and other State agencies, mortgage lenders, mortgage servicers, and other partners. The Housing Finance Agency shall administer the Project.

(b) There is established a State Home Foreclosure Prevention Trust Fund to be managed and maintained by the Housing Finance Agency. The funds shall be held separate from any other funds received by ~~either the Office of the Commissioner of Banks or~~ the Housing Finance Agency in trust for the operation of the State Home Foreclosure Prevention Project.

(c) Upon the filing of the information required under G.S. 45-103, the mortgage servicer shall pay a fee of seventy-five dollars ($75.00) to the State Home Foreclosure Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered by this act. The ~~Office of the Commissioner of Banks~~ Housing Finance Agency shall collect the fee. Upon receipt of the fee the Housing Finance Agency~~Commissioner~~ shall deposit the funds ~~into a separate account. The funds shall be transferred no less than monthly~~ into the State Home Foreclosure Prevention Trust Fund. The Housing Finance Agency shall manage the State Home Foreclosure Prevention Trust Fund.

(d) The Housing Finance Agency shall use funds from the State Home Foreclosure Prevention Trust Fund to compensate performance-based service contracts or other contracts and grants necessary to implement the purposes of this act in the following manner:

(1) An amount, not to exceed the greater of two million two hundred thousand dollars ($2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by ~~the Office of the Commissioner of Banks and~~ the Housing Finance Agency, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers.

(2) An amount, not to exceed the greater of three million four hundred thousand dollars ($3,400,000) or forty percent (40%) per year, to make grants to or reimburse nonprofit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project.

(3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse nonprofit legal service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loans.

(4) Any funds remaining in the State Home Foreclosure Prevention Trust Fund as of June 30, 2011, and any funds remaining in the State Home Foreclosure Prevention Trust Fund upon the expiration of each subsequent fiscal year shall be directed to the North Carolina Housing Trust Fund.

(e) The Housing Finance Agency shall have the discretion to enter into an agreement to administer funds under subdivisions (2) and (3) of subsection (d) of this section in a manner that complements or supplements other State and federal programs directed to prevent foreclosures for homeowners participating in the State Home Foreclosure Prevention Project."

SECTION 2.17.(d) G.S. 45-105 reads as rewritten:

"**§ 45-105. Extension of foreclosure process.**

The ~~Commissioner of Banks upon referral from the~~ Housing Finance Agency shall review information provided in the database created by G.S. 45-103 to determine which home loans are appropriate for efforts to avoid foreclosure. If the ~~Commissioner~~ Housing Finance Agency reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the ~~Commissioner~~ Executive Director of the Housing Finance Agency shall have the authority to extend one time under this Article the allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the ~~Commissioner~~ Executive Director of the Housing Finance Agency makes the determination that a loan is subject to this section, the ~~Commissioner~~ Housing Finance Agency shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts. ~~If the mortgage servicer is a state or federally chartered credit union, the Commissioner shall also notify the Administrator of the Credit Union Division of the determination.~~"

SECTION 2.17.(e) G.S. 45-106 reads as rewritten:

"**§ 45-106. Use and privacy of records.**

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks and administered by the Housing Finance Agency in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. ~~Any notice provided by the Commissioner to the Administrator of the Credit Union Division under G.S. 45-105 is not a public record.~~ Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article."

SECTION 2.17.(f) Section 5 of S.L. 2008-226 reads as rewritten:

"**SECTION 5.** The ~~Office of the Commissioner of Banks~~ Housing Finance Agency shall report to the General Assembly describing the operation of the program established by this act not later than May 1 of each year until the funds are completely disbursed from the ~~reserve.~~ State Home Foreclosure Prevention Trust Fund. Information in the report shall be presented in aggregate form and may include the number of clients helped, the effectiveness of the funds in preventing home foreclosure, recommendations for further efforts needed to reduce foreclosures, and provide any other aggregated information the ~~Commissioner~~ Housing Finance Agency determines is pertinent or that the General Assembly requests."

SECTION 2.17.(g) Section 6 of S.L. 2008-226, as amended by Section 9 of S.L. 2010-168, reads as rewritten:

"**SECTION 6.** Section 4 of this act becomes effective July 1, 2008. Sections 1, 2, 3, and 5 become effective November 1, ~~2008, and expire May 31, 2013.~~ 2008. The remainder of this act is effective when it becomes law."

SECTION 2.17.(h) This section becomes effective December 1, 2012. The North Carolina Housing Finance Agency shall assume the responsibilities designated in this section for operation of the State Home Foreclosure Prevention Project no later than December 31, 2012.

PART III. MOTOR VEHICLE/PROPERTY TAX CHANGES

SECTION 3.1. G.S. 105-321(f) reads as rewritten:

"(f) Minimal Taxes. – Notwithstanding the provisions of G.S. 105-380, the governing body of a taxing unit that collects its own taxes may, by resolution, direct its assessor and tax collector not to collect minimal taxes charged on the tax records and receipts. Minimal taxes are the combined taxes and fees of the taxing unit and any other units for which it collects taxes, due on a tax receipt prepared pursuant to G.S. 105-320 ~~or on a tax notice prepared pursuant to G.S. 105-330.5,~~ in a total original principal amount that does not exceed an amount, up to five dollars ($5.00), set by the governing body. The amount set by the governing body should be the estimated cost to the taxing unit of billing the taxpayer for the amounts due on a tax receipt or tax notice. Upon adoption of a resolution pursuant to this subsection, the tax collector shall not bill the taxpayer for, or otherwise collect, minimal taxes but shall keep a record of all minimal taxes by receipt number and amount and shall make a report of the amount of these taxes to the governing body at the time of the settlement. These minimal taxes shall not be a lien on the taxpayer's real property and shall not be collectible under Article 26 of this Subchapter. A resolution adopted pursuant to this subsection must be adopted on or before June 15 preceding the first taxable year to which it applies and remains in effect until amended or repealed by resolution of the taxing unit. A resolution adopted pursuant to this subsection shall not apply to taxes on registered motor vehicles."

SECTION 3.2. G.S. 105-330.2 reads as rewritten:

"§ 105-330.2. (Effective July 1, 2013 – See Editor's note) Appraisal, ownership, and situs.

...

(b1) Valuation Appeal. – The owner of a classified motor vehicle may appeal the appraised value ~~or taxability~~ of the vehicle by filing a request for appeal with the assessor within 30 days of the date taxes are due on the vehicle under G.S. 105-330.4. An owner who appeals the appraised value ~~or taxability~~ of a classified motor vehicle must pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

The combined tax and registration notice or tax receipt for a classified motor vehicle must explain the right to appeal the appraised value ~~and taxability~~ of the vehicle. A lessee of a vehicle that is required by the terms of the lease to pay the tax on the vehicle is considered the owner of the vehicle for purposes of filing an appeal under this subsection. Appeals filed under this subsection shall proceed in the manner provided by G.S. 105-312(d).

(b2) Exemption or Exclusion Appeal. – The owner of a classified motor vehicle may appeal the vehicle's eligibility for an exemption or exclusion by filing a request for appeal with the assessor within 30 days of the assessor's initial decision on the exemption or exclusion application filed by the owner pursuant to G.S. 105-330.3(b). Appeals filed under this subsection shall proceed in the manner provided by G.S. 105-312(d).

...."

SECTION 3.3. G.S. 105-330.3 reads as rewritten:

"§ 105-330.3. (Effective July 1, 2013 – See Editor's note) Listing requirements for classified motor vehicles; application for exempt status.

...

(a1) Unregistered Vehicles. – The owner of an unregistered classified motor vehicle must list the vehicle for taxes by filing an abstract with the assessor of the county in which the vehicle is located on or before January 31 following the date the owner acquired the unregistered vehicle or, in the case of a registration that is not renewed, January 31 following the date the registration expires, and on or before January 31 of each succeeding year that the vehicle is unregistered. If a classified motor vehicle required to be listed pursuant to this subsection is registered ~~during the calendar~~ before the end of the fiscal year ~~in~~ for which it was ~~listed, the vehicle is taxed for the fiscal year that opens in the calendar year of listing as an unregistered vehicle.~~ required to be listed, the following applies:

(1) The vehicle is taxed as a registered vehicle, and the tax assessed pursuant to this subsection for the fiscal year in which the vehicle was required to be listed shall be released and/or refunded.

(2) For any months for which the vehicle was not taxed between the date the registration expired and the start of the current registered vehicle tax year, the vehicle is taxed as an unregistered vehicle as follows:

a. The value of the motor vehicle is determined as of January 1 of the year in which the registration of the motor vehicle expires.

b. In computing the taxes, the assessor must use the tax rates and any additional motor vehicle taxes of the various taxing units in effect on the date the taxes are computed.

c. The tax on the motor vehicle is the product of a fraction and the number of months for which the vehicle was not taxed between the date the registration expires and the start of the current registered vehicle tax year. The numerator of the fraction is the product of the appraised value of the motor vehicle and the tax rate of the various taxing units. The denominator of the fraction is 12.

d. The taxes are due on the first day of the second month following the month the notice was prepared.

(3) A vehicle required to be listed pursuant to this subsection that is not listed by January 31 and is not registered before the end of the fiscal year for which it was required to be listed is subject to discovery pursuant to G.S. 105-312.~~G.S. 105-312, unless the vehicle has been taxed as a registered vehicle for the current year.~~

(b) Exemption or Exclusion. – The owner of a classified motor vehicle who claims an exemption or exclusion from tax under this Subchapter has the burden of establishing that the vehicle is entitled to the exemption or exclusion. The owner may establish prima facie entitlement to exemption or exclusion of the classified motor vehicle by filing an application for exempt status with the ~~assessor.~~assessor within 30 days of the date taxes on the vehicle are due. When an approved application is on file, the assessor must omit from the tax records the classified motor vehicles described in the application. An application is not required for vehicles qualifying for the exemptions or exclusions listed in G.S. 105 282.1(a)(1). The remaining provisions of G.S. 105 282.1 do not apply to classified motor vehicles.

...."

SECTION 3.4. G.S. 105-330.4 reads as rewritten:

"**§ 105-330.4. (Effective July 1, 2013 – See Editor's note) Due date, interest, and enforcement remedies.**

...

(c) Remedies. – The enforcement remedies in this Subchapter apply to unpaid taxes on an unregistered classified motor vehicle. The enforcement remedies in this Subchapter do not apply to unpaid taxes on a registered classified motor ~~vehicle.~~vehicle for which the tax year begins on or after August 1, 2013.

(d) Tax payments submitted by mail are deemed to be received as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark or if the postmark is not affixed by the United States Postal Service, the tax payment is deemed to be received when the payment is received ~~in the office of the tax collector.~~ by the collecting authority. In any dispute arising under this subsection, the burden of proof is on the taxpayer to show that the payment was timely made."

SECTION 3.5. G.S. 105-330.5(e) is repealed.

SECTION 3.6. Effective July 1, 2011, Section 13 of S.L. 2005-294, as amended by Section 31.5 of S.L. 2006-259, Section 22(b) of S.L. 2007-527, and Section 65 of S.L. 2008-134, reads as rewritten:

"**SECTION 13.** Sections 4 and 8 of this act become effective January 1, 2006. Sections 1, 2, 3, 5, 6, 7, 10 and 11 of this act become effective July 1, ~~2011,~~2013, or when the Division of Motor Vehicles of the Department of Transportation and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. Sections 12 and 13 of this act are effective when they become law. Nothing in this act shall require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2007."

PART IV. EFFECTIVE DATE

SECTION 4.1. Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 826: Revenue Laws Tech., Clarifying, & Admin Chngs

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 30, 2012
Introduced by:	Sens. Rucho, Hartsell	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	PCS to First Edition S826-CSSVx-45		

SUMMARY: ***Senate Bill 826, which is a recommendation of the Revenue Laws Study Committee, makes a number of technical, administrative, and clarifying changes to the revenue laws and related statutes, many of which were requested by the Department of Revenue. The technical changes appear in Part I, the clarifying and administrative changes appear in Part II, and changes related to the combined motor vehicle registration and property tax collection system appear in Part III.***

The PCS makes additional changes, which are shaded in gray, that were requested by the Department of Revenue after the last Revenue Laws Study Committee meeting.

[As introduced, this bill was identical to H1026, as introduced by Reps. Howard, Starnes, which is currently in House Finance.]

EFFECTIVE DATE: Except as otherwise provided, this bill would become effective when it becomes law.

CURRENT LAW & BILL ANALYSIS:

Section	Explanation
	PART I: TECHNICAL CHANGES
1.1	A taxpayer is allowed a deduction for the amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a *tax credit* allowed against the corporation's federal taxable income. Section 1603 of ARRTA directs the Treasury to provide cash payments, or grants, to eligible persons who place in service specified energy property and apply for the payments. The purpose of section 1603 is to reimburse eligible applicants for a portion of the expense of such property. A section 1603 grant recipient is required to reduce the basis of the asset. This change would allow a taxpayer to reduce his or her State taxable income if the taxpayer receives a section 1603 *grant payment* rather than a credit under sections 45 or 48 of the Code.

1.2	Deletes the word "adjusted" as used in the definition of North Carolina taxable income for nonresidents and part-year residents. In 2011, the General Assembly changed the starting point for calculating NC taxable income from federal taxable income to federal adjusted gross income (Section 31A.1 of S.L. 2011-145). This change simplified the calculation of NC taxable income because taxpayers no longer have to make adjustments to reduce the federal standard deduction and exemption amounts to determine the State deduction and exemption amounts. However, for purposes of prorating NC taxable income for nonresidents and part-year residents, the relevant fraction should only refer to "gross income." By including the word "adjusted" as part of the fraction, a taxpayer could be taxed on more than 100% of their income.
1.3	Clarifies that the standard deduction amount for individual income tax purposes is the *lesser* of the amount set out in the statute or the amount allowed under the Code. The current law refers only to the "standard deduction amount listed in the table below." However, there are instances where the North Carolina standard deduction is zero[1] or less than is shown in the table. This is another technical change identified by the Department as the result of the passage of Section 31A.1 of S.L. 2011-145.
1.4	This section makes changes to the sales and use tax exemption statute with regard to motor fuels and installation and delivery charges. Motor fuels are subject either to the motor fuels tax or to the sales tax, but not both. Dyed diesel and dyed kerosene are examples of motor fuels that are subject to the sales tax, but are nevertheless defined as motor fuels. This change in the sales tax exemption statute makes it clear that, to the extent a motor fuel is taxed under Article 36C (Gasoline, Diesel, and Blends), it is exempt from sales and use tax. This section also amends the sales tax exemptions for delivery and installation charges so that the language is parallel. It adds the phrase "similar billing document," which currently appears in the exemption for delivery charges, to the exemption for installation charges. It adds the phrase "at the time of sale," which currently appears in the exemption for installation charges, to the exemption for delivery charges.
1.5	This is a technical change because the tax on manufacturing fuel was repealed, effective July 1, 2010.
1.6	This is a technical change because the existing statutory catchline refers to an Article that does not exist.

[1] If a taxpayer is (1) married filing a separate return for federal income tax purposes and the taxpayer's spouse itemizes deductions; (2) a nonresident alien; or (3) filing a short-year return because of a change in the taxpayer's accounting period, the taxpayer is not entitled to the standard deduction.

1.7	This section updates from January 1, 2011, to January 1, 2012 the reference to the Internal Revenue Code. This change keeps the statute up to date, but does not result in any substantive changes because there have not been any federal tax law changes since January 1, 2011 that impact the calculation of North Carolina taxable income.
1.8	This section adds an additional Code reference to the statute that governs when a return, report, payment, or any other document that is mailed to the Department is timely filed. Code section 7503 addresses when the due date falls on a Saturday, Sunday, or a holiday.
1.9	This is a technical change to correct a statutory reference.
1.10	This section conforms the statute on the scope of the local use tax so that it is consistent with the parallel statute for the State use tax, which was amended during the 2011 session. The 2011 change[2] was a clarifying change.
1.11	S.L. 2011-72 authorized certain cities to establish a municipal service district for the purpose of converting private residential streets to public streets. The act was designed to address 14 residential developments in the Town of Morrisville that were seeking to convert private streets to public streets. After the bill passed, it was discovered that some of the developments were created under the Condominium Act rather than the Planned Development Act, which the bill amended. This section makes the necessary conforming changes.
1.12	This section corrects several errors in the 2011 special license plate act.[3] It adds the "Mountains-to-Sea Trail" plate to the list of plates that may be on a background other than the First in Flight background, which was the original intent. Under current law, the authorization for the plate states that it "shall bear the phrase 'Mountains-to-Sea Trail' with a background designed by the Friends of the Mountains-to-Sea Trail," suggesting that the organization may design its own background. However, in order for an organization to have a background other than First in Flight, it must be authorized in G.S. 20-63. This section also corrects errors with regard to the fees for the Sustainable Fisheries and the Morgan Horse Club plates.

[2] S.L. 2011-330, s. 25(a).
[3] S.L. 2011-392.

1.13	This section would allow a taxpayer to claim an Article 3J credit that the taxpayer would have been ineligible for prior to 2010 because it failed to meet the environmental impact standard, which was loosened retroactively that year. In 2010, the General Assembly changed the environmental standard for Article 3J retroactively to 2007.[4] By loosening the standard and making the change retroactive to 2007, the General Assembly intended to allow certain taxpayers to file for an Article 3J credit. However, the 2010 change failed to make a corresponding change to the statute of limitations, which requires claims to be filed within six months of the due date of the return. Therefore, a taxpayer who did not claim the credit when the original standard was in effect would be unable to take advantage of the retroactive change which loosened the standard. This change does not have a fiscal impact.
PART II: CLARIFYING AND ADMINISTRATIVE CHANGES	
2.1	This change would allow a wholesale or retail dealer of other tobacco products to provide security to the Secretary in the form of an irrevocable letter of credit as an alternative to a bond. An irrevocable letter of credit would typically be used by a foreign company that would be unable to obtain a bond because it does not have assets in this country. This form of security is consistent with what is currently allowed under the motor fuels tax statutes.
2.2	S.L. 2011-12 added synthetic cannabinoids to the list of controlled substances. No corresponding changes were made to the unauthorized substance tax laws. Therefore, under current law, they would be grouped with "other controlled substances" and subject to tax at a rate of $200 per gram. Marijuana is taxed at

[4] Sec. 1.3 of S.L. 2010-147 (*Various Economic Incentives).* Prior to the 2010 change, a taxpayer was eligible for certain economic incentives if the taxpayer had no pending administrative, civil, or criminal enforcement actions based on alleged *significant* violations of any DENR-implemented programs and had no final determination of responsibility for any *significant* administrative, civil, or criminal violation of any DENR-implemented program within the prior five years. Article 3J had a definition of what constituted a "significant violation" but there was some confusion as to whether certain violations met the definition. At the time, the Department made no distinction between civil and criminal violations or on the basis of whether the violation was knowing and willful. The 2010 clarification was designed to ensure that minor violations do not disqualify a taxpayer that would otherwise be eligible for a tax incentive. The current definition of an "environmental disqualifying event," as enacted by S.L. 2010-147, is as follows:

(9a) Environmental disqualifying event. – Any of the following occurrences:

a. During the tax year in which the activity occurred for which a credit is being claimed, a civil penalty was assessed against the taxpayer by the Department of Environment and Natural Resources for failure to comply with an order issued by an agency of the Department to abate or remediate a violation of any program administered by the agency.

b. During the tax year in which the activity occurred for which a credit is being claimed or in the prior two tax years, any of the following:

1. A finding was made by the Department of Environment and Natural Resources that the taxpayer knowingly and willfully, as defined in G.S. 143-215.6B, including all limitations thereto, committed a violation of any program implemented by an agency of the Department.

2. An assessment for damages to fish or wildlife pursuant to G.S. 143-215.3(a)(7) was made against the taxpayer.

3. A judicial order for injunctive relief was issued against the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environment and Natural Resources.

c. During the tax year in which the activity occurred for which the credit is being claimed or in the prior four tax years, a criminal penalty was imposed on the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environment and Natural Resources.

	$3.50 per gram. This section would tax synthetic cannabinoids at the same rate as marijuana, effective when the S.L. 2011-12 became law.
2.3	Holding companies are subject to an annual franchise tax, which is capped at $75,000. A holding company is currently defined as one that receives more than 80% of its gross income from corporations in which it owns, directly or indirectly, more than 50% of the outstanding voting stock or capital interests. However, a corporation whose only asset is an investment in subsidiaries and has no income cannot meet the 80% test because the denominator would be zero. This section expands the definition of a holding company to address this situation. The Department has indicated that this is a clarifying change, not a substantive one. A question has arisen about this specific fact pattern where a taxpayer is clearly a holding company in that all of its assets are investments in subsidiaries. For the year in question, the holding company had no income. Therefore, there would be $0 in income from subsidiaries and $0 in total income. Under a strict application of G.S. 105-120.2, $0 divided by $0 would result in an undefined mathematical value. Because it is undefined, it cannot be determined if it exceeds 80%. Alternatively, if one of the subsidiaries of the holding company had issued a dividend of as little as one cent, then 100% of the income would be coming from investments in subsidiaries. The Department believes that this interpretation is not what the General Assembly intended. The Department's interpretation is that it was a holding company and subject to the cap of $75,000 on franchise tax.
2.4	Makes the definition in Article 3J consistent with the definition of business property in Article 3B[5] and the old provisions for eligible machinery and equipment in Article 3A.[6]
2.5	Provides that a taxpayer may qualify for innocent spouse relief at the State level if the taxpayer would have qualified for relief at the federal level even if the taxpayer does not have a federal tax liability. North Carolina follows federal law with regard to a taxpayer's eligibility for innocent spouse relief. The way the statute currently reads, a taxpayer would have to have had a federal tax liability that he or she was relieved of in order to qualify for relief at the State level. With this change, if the taxpayer would have qualified for innocent spouse relief had the taxpayer had a federal tax liability, then the taxpayer is eligible for relief at the State level.
2.6	Adds the Education expenses credit to the list of credits that are not allowed to be claimed by an estate or trust. In 2011, the General Assembly enacted the Tax Credit for Children with Disabilities.[7] This is a conforming change that should have been made at the time and is consistent with the other credits that are not eligible to be claimed by an estate.

[5] G.S. 105-129.15(1).
[6] G.S. 105-129.9(a).
[7] S.L. 2011-395. The credit allows an individual income tax credit for up to $3,000 per semester for tuition and special education and related services expenses for a taxpayer's eligible dependent child with a disability who is enrolled in a nonpublic school or a public school where tuition is charged for the eligible dependent child's enrollment.

2.7	This section makes two changes to sales tax definitions in order to conform to the Streamlined definitions, and it updates the reference to the most current version of the Streamlined Agreement dated December 19, 2011.
2.8	This section clarifies the general sourcing provisions to conform to the Streamlined requirements. It was noted during the 2011 Annual Compliance Review that the existing statute was not consistent with the Streamlined requirements.
2.9	Restores language stating that sales tax must be stated and charged separately that was inadvertently stricken from the statute.
2.10	This section restores language relating to the application of use tax to items given away by merchants, which was inadvertently deleted in a 2009 budget provision. The language was originally added to the definition of "sale or selling" in 1996 as the result of a court case.[8] The language was intended to restrict the application of that case, a broad application of which could be interpreted in such a way so as to eliminate the use tax. In 1996, the Revenue Laws Study Committee recommended limiting the application of the decision to the facts of that case, which involved food given away by restaurants. In 2009, a number of sales tax statutes were amended to address digital property. While amending those statutes, a number of stylistic and technical changes were also made. The language dealing with items given away by merchants was removed with the intent that it be located elsewhere in the sales and use tax statutes as a technical change. However, it was never relocated. This section restores the language by placing it in a new statutory section, effective the date that the 2009 deletion became effective since there was no intent to remove it.

[8]The use tax, first enacted in 1939, is the complement to the sales tax and applies to the storage, use, or consumption in this State of tangible personal property. Use tax accounts for approximately 5% of total sales and use tax collections. A merchant is liable for use tax on property it ***uses*** in its business, such as furniture, equipment, décor, or promotional giveaways. Items ***sold*** by the merchant, however, are not subject to use tax because sales tax will apply when the items are sold at retail. With regard to items given away free of charge, the general rule in this State, and virtually all states, is that a retailer is liable for sales and use tax on those items. Until 1993, the following items were considered used, not sold, and thus subject to use tax: meals provided free to a merchant's employees, food given away to the merchant's patrons, and matches given away to patrons, other than matches given away along with the sale of cigarettes. A group of restaurants appealed the assessment of the tax, claiming that the items should be considered sold. In *Matter of Rock-Ola Café*, 111 N.C.App. 683 (1993), the North Carolina Court of Appeals agreed with the restaurants that these items should be considered sold along with the food the restaurant sold as part of its business. However, the Revenue Laws Study Committee, in its report to the 1996 Regular Session, concluded that the Court's opinion was overly broad in its rationale. The rationale, that the cost of these items is recovered by the sales of other items, taken literally and if applied broadly, could be interpreted to eliminate the use tax altogether in that the cost of all of a merchant's purchases are ultimately covered by the price of sold items. The Committee recommended, and the General Assembly enacted, the language in this section to limit the application of the court's opinion to the facts of that case, which dealt specifically with restaurants. Under this language, property given away by a merchant is exempt from use tax only in the case of restaurants that provide free meals to employees or free bar food to patrons. The bill that was ultimately enacted added language to exempt items of inventory given away to a customer free of charge on the condition that the customer buy similar property ("buy one, get one free").

2.11	This section makes two changes related to sales tax refunds for interstate carriers. First, it modifies the reference to "them" to make it clear that, for purposes of calculating a refund on certain cars, parts, fuel, and repair parts, an interstate carrier must include all motor vehicles, railroad cars, locomotives, and airplanes that the applicant owns or leases and that are operated both inside and outside the State in the denominator. Second, it clarifies that airplane miles are not in this State if the airplane only flies over North Carolina but does not take off or land in the State.
2.12	A direct pay permit authorizes the holder to purchase property that is subject to sales and use tax without paying the tax to the seller. A person who purchases an item under a direct pay permit is liable for use tax, which is payable when the property is placed in use or the service is received. A person can apply for a direct pay permit if the person purchases an item whose tax status cannot be determined at the time of purchase, and either: • The place of business where the item will be used is not known at the time of purchase and a different tax consequence applies depending on where the item is used, or • The manner in which the item will be used is not known at the time of purchase and one or more of the potential uses is taxable but others are not taxable. Generally speaking, a direct pay permit is not intended to allow purchasers to "shop" for a lower tax rate. It was originally designed to address situations where a purchaser of machinery, for example, did not know at the time of purchase how the machinery was going to be used and, therefore, whether it would be subject to sales tax at the general rate, exempt from tax, or subject to the 1%/$80 rate. In those cases, however, the property was always going to be used in North Carolina. The Department is aware of a situation where a retailer that has purchased items from NC vendors and has taken delivery of those items in NC wants to use a direct pay permit arguing that the items may be shipped out of state at some later date for use in another state. This section adds the words "for storage, use, or consumption in this State" to make it clear that a direct pay permit may not be used to avoid paying NC sales tax in this way. A person who purchases telecommunications service under a direct pay permit must file a return and pay the tax due monthly to the Secretary. This section adds the word "quarterly" so that the filing frequency is consistent with the filing frequency for general State and local sales tax remitters.[9] By providing for quarterly filing, this change would conform the statute to current practice at the Department.

[9]A taxpayer who is consistently liable for less than $100 a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A taxpayer who is consistently liable for at least $100 a month but less than $20,000 a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. (G.S. 105-164.16.)

2.13	There is an excise tax imposed on piped natural gas received for consumption in this State, which is in lieu of the sales and use tax. The tax is payable on a monthly basis. Under current law, a taxpayer who is consistently liable for at least $10,000 of tax a month must make a monthly prepayment of the next month's liability. This section would change from $10,000 to $20,000 the prepayment threshold for the tax on piped natural gas, the purpose of which is to be consistent with the prepayment threshold for retailers required to remit sales and use tax.[10] This change does not change the amount of excise tax revenue remitted to the General Fund, but it does change by one month the timing of the payment for the year of the transition to the higher threshold. The Department indicates that it knows of only one company that would be affected by increasing the threshold to $20,000.
2.14	Generally speaking, the State may not contract with foreign vendors that refuse to collect use tax, where applicable, on sales delivered to North Carolina. G.S. 143-59.1 requires the Department to periodically provide to the Secretary of Administration a list of ineligible vendors based on this requirement. This section provides that the Department of Administration may not enter into a contract with a vendor if the Department of Revenue has determined that the vendor or an affiliate of the vendor refuses to collect use tax. This language has been agreed to by both the Department of Revenue and the Department of Administration.
2.15	This section conforms the statute to current practice at the Department. If a taxpayer files a return electronically, then the taxpayer must pay the tax due before the taxpayer may submit the return.
2.16	This section removes the confusion caused by the new fee applicable to the recording of subsequent instruments by eliminating the fee and imposing a $10 fee for an instrument that assigns more than one security instrument by reference to a previously recorded instrument. S.L. 2011-296 changed the fees collected by register of deeds for the purpose of simplifying their collection and remittance. As part of the legislation, a new fee became applicable to the indexing and filing of "subsequent instruments." Several registers of deeds have questioned how to apply the new fee applicable to subsequent instruments that contain references to multiple recorded documents, such as cancellations of multiple deeds of trust or substitution of trustee in multiple documents.

[10]For sales and use tax, the threshold limit of $10,000 was enacted in 2001 as a means to accelerate the payment of sales and use tax dollars into the General Fund for fiscal year 2001-02. Prior to this change, the threshold amount for making bimonthly payments was $20,000. In the years following 2001, the sales and use tax rate, at its highest, reached 7.75%. The lowering of the threshold amount along with the increase in the tax rate subjected more retailers to the most extensive sales tax remittance requirements. Consequently, many small retailers expressed a cash flow hardship with the pre-payment requirement. In 2010, the General Assembly phased in a restoration of the $20,000 prepayment threshold. The change decreased the number of retailers required to submit a prepayment of 65% of the amount of sales tax revenue to be remitted for the following month.

2.17	This section makes conforming changes to the statutes dealing with the State Home Foreclosure Prevention Project (SHFPP). The SHFPP was created by the General Assembly in 2008[11] as an emergency program and was expanded and extended in 2010[12] to cover all homeowners. The program is an effort to reduce unnecessary foreclosures providing homeowners with free resources, such as counseling, as they work with servicers to create alternatives to foreclosure. In 2011, the administration and staffing of SHFPP homeowner and counseling activities was transferred to the NC Housing Finance Agency, effective July 1, 2011.[13] Under that legislation, the Office of the Commissioner of Banks retained administration of the pre-foreclosure filings database, servicing invoicing, and the granting of 30-day extensions. This section would complete the transfer of all program activities to the NC Housing Finance Agency and would remove the program sunset.

PART III: COMBINED MOTOR VEHICLE REGISTRATION/PROPERTY TAX CHANGES

In 2005, the General Assembly created a framework establishing a combined system for motor vehicle registration renewal and property tax collection. Originally, the act was to become effective the earlier of January 1, 2009, or the date that the Department of Revenue and the Division of Motor Vehicles certified that an integrated computer system is in operation. The effective date has since been extended and is currently set to go into effect July 1, 2013. Under the new system, the taxpayer/motor vehicle owner will receive one bill for property taxes and the DMV license renewal, and DMV will be the collecting authority. Counties will still determine the value and the taxability situs of motor vehicles. A number of conforming changes are needed to fully implement the combined system, which goes into effect July 1, 2013. Part III of this bill consists of those changes.

3.1	Current law permits the governing body of a taxing unit to pass a resolution directing its tax collector not to collect minimal taxes, defined as up to $5.00, charged on tax records and receipts. This section would exempt taxes on registered motor vehicles for two reasons: (1) a minimum of $28 is collected for motor vehicle registration; and (2) DMV, not the counties, will be the collecting authority. Therefore, the minimal tax provision is not applicable with regard to combined motor vehicle and property tax collection.

[11] S.L. 2008-226.
[12] S.L. 2010-168.
[13] S.L. 2011-288.

3.2	A taxpayer may appeal motor vehicle taxes on a number of grounds: the valuation by the county, the denial of an application for exemption or exclusion, and on the grounds that the county does not have authority to tax the vehicle because the situs of the vehicle is in another taxing district. The term "taxability" in the appeal statutes has been used to refer to both exemption status and situs, but because there are different time periods that apply depending on the basis of a taxpayer's appeal, the Department recommends separating the statutory provisions.[14] Therefore, this section strikes the term "taxability" from G.S. 105-330.2(b1) so that, as amended, this subsection would apply only to appeals based on valuation. It also creates a new subsection (b2) to address appeals based on an application for exemption or exclusion. Appeals based on a county's authority to tax are covered under current law in G.S. 105-381.
3.3	This section establishes a process for the collection of property tax on an unregistered vehicle. The objective of the process is to ensure that the taxpayer is not double-taxed and that property taxes are paid on motor vehicles that a person owns even if it is not registered. If a person does not register or renew registration, then the person would be required to list the vehicle with the county assessor. The listing will generate a tax bill. However, if the person subsequently registers or renews the tag for the vehicle, then DMV will charge the person for the registration plus the property tax. This provision allows a county to ignore the listing to the extent the person registered or renewed within the same year.
3.4	This section clarifies that counties would have authority to use collection remedies for unpaid motor vehicle taxes that were billed prior to the effective date of the combined motor vehicle/property tax system. The August 1 date is used because the tax year for July renewals begins August 1. This section also changes the term "tax collector" to "collecting authority" because under the new system, DMV and not the county tax assessor or tax collector will be the collecting authority.
3.5	This section repeals an unnecessary statute that relates to small underpayments and overpayments of motor vehicle taxes. Specifically, if a taxpayer fails to remit the additional $1.00 charged for payments that are mailed rather than paid in-person, the collecting authority is not permitted to bill or attempt to collect the additional $1.00. However, there is no longer a $1.00 charge for mailed in payments so the provision is unnecessary.
3.6	This section is a conforming change to the effective date. When the effective date for the implementation of the combined system was changed, this particular session law was missed.

[14] A taxpayer has 30 days to appeal a determination of value or eligibility for an exemption or exclusion. However, there is a five-year period to appeal an "illegal" tax under G.S. 105-381.

SENATE BILL 824

Short Title:	Expedited Rule Making for Forced Combination.	(Public)
Sponsors:	Senators Rucho, Hartsell; Blue, Brunstetter, Clodfelter, Harrington, McKissick, Rabon, Rouzer, and Stevens.	
Referred to:	Finance.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SECRETARY OF REVENUE'S INTERPRETATION OF THE LAW CONCERNING THE SECRETARY'S AUTHORITY TO ADJUST NET INCOME OR REQUIRE A COMBINED RETURN BE MADE THROUGH RULE MAKING AND TO PROVIDE AN EXPEDITED PROCESS FOR RULE MAKING ON THIS ISSUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-262(b) is repealed.

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-262A. Rules to exercise authority under G.S. 105-130.5A.**

(a) Purpose and Scope. – It is the policy of the State to provide necessary guidance on a timely basis to corporate taxpayers subject under G.S. 105-130.5A to have their net income adjusted or to be required to file a combined return. Except for a voluntary redetermination as allowed under G.S. 105-130.5A(c), the Secretary may not redetermine the State net income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A until a rule adopted by the Secretary in accordance with this section becomes effective. This section provides an expedited procedure for the adoption of rules needed to administer G.S. 105-130.5A. The Secretary may not interpret G.S. 105-130.5A in the form of a bulletin or directive under G.S. 105-264.

The Secretary is exempt from G.S. 150B-21.1 through G.S. 150B-21.4 of Part 2 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited procedure for the adoption of rules as established by this section. The Secretary is exempt from Part 3 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited review procedure as established by this section.

(b) Definition. – The definitions in G.S. 150B-2 apply in this section.

(c) Fiscal Note. – The Secretary must prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact. The fiscal note must be submitted with the proposed rule when the rule is submitted to the Codifier of Rules, and the Codifier of Rules must publish the fiscal note with the proposed rule on the Internet. The Secretary must accept a written comment on the fiscal note in the same manner the Secretary accepts written comments on the proposed rule. The Secretary is not subject to the fiscal note requirement under G.S. 105-262(c). For purposes of this section, a "substantial economic impact" has the same meaning as defined in G.S. 150B-21.4(b1).

(d) Adoption. – The Secretary may adopt a rule under this section by using the procedure for adoption of a temporary rule set forth in G.S. 150B-21.1(a3). The Secretary must

provide electronic notification of the adoption of a rule to persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties, including those originally given notice of the rule making and those who provided comment on the rule. If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the rule must be reviewed in accordance with subsections (e) through (i) of this section. A person may object to the rule and request review by the Commission at any point prior to the adoption of the rule and by 5:00 P.M. on the third business day following electronic notification from the Secretary of the adoption of a rule. If the Secretary receives no written comment objecting to the rule and requesting review by the Commission, the Secretary must deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt of the rule.

(e) Review. – If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the Secretary must submit the rule to the Commission for review. The Commission may not consider questions relating to the quality or efficacy of the rule but must restrict its review to a determination of whether the rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission must consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.

(4) It was adopted in accordance with this section.

(f) Manner of Review. – When the Commission reviews a rule under this section, the time limits in subsections (b) and (b1) of G.S. 150B-21.1 apply. The Commission must review the rule to determine whether the rule meets the standards in subsection (e) of this section. The Commission must direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the rule. The staff member must make a recommendation to the Commission or its designee. The Commission's designee must be a panel of at least three members of the Commission. The staff member, Commission's designee, or the Commission may also request technical changes as allowed in G.S. 150B-21.10. In reviewing the rule, the Commission may consider any information submitted by the Secretary or another person.

(g) Objection. – If the Commission or its designee finds that the rule does not meet the standards in subsection (e) of this section and objects to the rule, the Commission or its designee must send the Secretary a written statement of the objection and the reason for the objection within one business day. The Secretary must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the Secretary has decided not to change the rule.

(h) Changes. – When the Secretary changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the Secretary a written statement of the Commission's continued objection and the reason for the continued objection.

(i) Approval. – If the Commission or its designee finds that the rule meets the standards in subsection (e) of this section, the Commission or its designee must approve the rule and deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt from the Commission or its designee.

(j) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the Secretary decides not to satisfy the Commission's objection

and makes a written request to the Commission to return the rule to the Secretary. When the Commission returns a rule to the Secretary in accordance with this section, the Secretary may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(k) Effective Date. – G.S. 150B-21.3 does not apply to a rule adopted under this section. A rule adopted under this section becomes effective on the last day of the month the Codifier of Rules enters the rule in the North Carolina Administrative Code."

SECTION 3. G.S. 150B-1(d)(4) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A. With respect to the Secretary of Revenue's authority to redetermine the State net taxable income of a corporation under G.S. 105-130.5A, the Department is subject to the rule-making requirements of G.S. 105-262A.

...."

SECTION 4. On June 30, 2011, the Governor signed into law S.L. 2011-390, House Bill 619, as passed by the General Assembly. The law repealed the Secretary of Revenue's authority to adjust a corporation's net income or require a combined return under G.S. 105-130.6, 105-130.15, and 105-130.16 and replaced it with a new authority under G.S. 105-130.5A. The Fiscal Research Division of the North Carolina General Assembly prepared a fiscal memo on House Bill 619. Therefore, notwithstanding G.S. 105-262A(c), as enacted by Section 2 of this act, G.S. 105-262(c), and Section 7 of the Budget Manual prepared by the Office of State Budget and Management, the Secretary of Revenue shall not be required to prepare a fiscal note for a proposed new rule submitted to the Codifier of Rules under G.S. 105-262A, as enacted by this act, prior to December 31, 2012.

SECTION 5. On April 17, 2012, the Department of Revenue published a directive pursuant to G.S. 105-264, CD-12-02, that explains the Secretary's authority under G.S. 105-130.5A to redetermine a corporation's net income by adjusting the corporation's intercompany transactions or requiring a corporation to file a combined income tax return for tax years beginning on or after January 1, 2012. This act supersedes the Directive; however, a taxpayer who relied upon the interpretation in the Directive and whose North Carolina taxable income for the 2012 taxable year is less under the Directive's interpretation than under an interpretation of G.S. 105-130.5A by a rule adopted pursuant to G.S. 105-262A, as enacted by this act, is entitled to rely on the interpretation under the Directive for the 2012 taxable year.

SECTION 6. S.L. 2011-390, as amended by S.L. 2011-411, enacted G.S. 105-130.5A, effective for taxable years beginning on or after January 1, 2012. The Secretary of Revenue's authority under G.S. 105-130.5A exists continuously for taxable years beginning on or after January 1, 2012. G.S. 105-262A, as enacted by Section 2 of this act, prevents the Secretary from exercising the authority granted under G.S. 105-130.5A until a rule adopted in accordance with G.S. 105-262A becomes effective. After the rule becomes effective, the Secretary may issue a proposed denial of a refund or a proposed assessment under the authority of G.S. 105-130.5A for any taxable year beginning on or after January 1, 2012, subject to the applicable statute of limitations.

SECTION 7. This act is effective when it becomes law.

SENATE BILL 824:
Expedited Rule Making for Forced Combination

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 29, 2012
Introduced by:	Sens. Rucho, Hartsell	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 824 would require the Department of Revenue to adopt rules regarding its interpretation of G.S. 105-130.5A, the Secretary's authority to redetermine the State net income of a corporation properly attributable to its business carried on in the State by adjusting its net income or requiring it to file a combined return. The bill provides an expedited rule-making process for these rules. The proposed legislation is a recommendation of the Revenue Laws Study Committee.***[1]

CURRENT LAW: The tax laws in Chapter 105 of the General Statutes contain two statutes that appear to give the Department of Revenue two different pathways of interpreting the law:

- G.S. 105-264 – It provides the Secretary may interpret a law by adopting a rule *or by publishing a bulletin or directive* on the law. The Department has interpreted tax law through the issuance of bulletins[2] or directives[3] since at least 1955. This process does not involve public notice and comment or approval by any outside authority. Bulletins and directives may be issued immediately. A directive or bulletin is not considered a binding interpretation on the courts.
- G.S. 105-262 – It provides the Secretary may adopt rules under Chapter 150B. The Department is exempt from the notice and hearing provisions of Part 2 of Article 2A of Chapter 150B. Although the rule-making process does not provide an opportunity for public notice and hearing for rules adopted by the Department, it does provide a review of the rules by the Rules Review Commission (RCC). The RCC reviews rules to ensure they do not exceed an agency's statutory authority. A rule is considered a binding interpretation on the courts. The definition of a rule in G.S. 150B-1 specifically states that a rule does not include nonbinding interpretative statements that merely define, interpret, or explain the meaning of a statute or rule and that a rule does not include statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections.

BILL ANALYSIS: *Senate Bill 824* would require the Department of Revenue to adopt rules before it could exercise the authority under G.S. 105-130.5A[4] to redetermine the State net income of a

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[1] Rep. Howard and Starnes introduced an identical bill, House Bill 1027. The house bill is in House Finance.

[2] Bulletins present the Department of Revenue's administrative interpretation and application of tax laws. The Department has 'Corporate, Excise, and Insurance Tax Bulletins', 'Individual Income Tax Bulletins', and 'Sales and Use Tax Bulletins'. The Department typically updates the bulletins annually to reflect changes in the law or administrative interpretation. However, the Department has not updated the bulletins in the last three or four years.

[3] Directives are issued by the Department of Revenue on an as-needed basis to interpret a tax law, explain the application of law to stated facts, or to clarify an issue on which the Department has received numerous questions. Directives are not updated to reflect changes in the law or administrative interpretation. The contents of a directive may be included in an updated bulletin.

[4] S.L. 2011-390, as amended by S.L. 2011-411, repealed the statutes that allowed the Secretary to redetermine the net income of a corporation if the Secretary found that a report by the corporation did not reflect its true earnings from its business carried on in this State. In their place, the General Assembly enacted a more restrictive interpretation in G.S. 105-130.5A. Effective for taxable years beginning on or after January 1, 2012, the Secretary must find that the corporation fails to accurately report its State net income through the use of transactions that lack economic substance or are not at fair market value.

orporation properly attributable to its business carried on in the State by adjusting its net income or equiring it to file a combined return.[5] The bill seeks to balance the following three goals:

- The need for taxpayer certainty about the tax laws.
- The need for an outside determination as to whether the Department of Revenue has exceeded its statutory authority in its interpretation of the law.
- The opportunity for public notice and comment on the Department's interpretation of the law.

The bill provides the rulemaking procedure will be the quicker timetable allowed for temporary rulemaking. This process may be completed in less than two months. This process allows 15 days for notice and comment from outside parties. Anyone may object to a proposed rule during the notice and comment period or within three business days of the adoption of the rule by requesting review by the RRC. To ensure that all parties have knowledge of the adoption of a rule, the bill requires the Department to provide electronic notification of its adoption of a rule to persons on the mailing list, those originally given notice of the rulemaking, and those who provided comment on the rule. If no one requests review by the RRC, the adopted rule may be delivered to the Codifier of Rules and entered into the Code. If the Department receives written objections to the rule and requests that the rule be reviewed, then the RRC must review the rule within 15 days. The RRC may not extend the period of time for review. As provided in G.S. 150B-21.9, the RRC does not consider questions relating to the quality or efficacy of the rule, but limits its review to the following:

- Is the rule within the authority delegated to the agency?
- Is it clear and unambiguous?
- Is it reasonably necessary to implement or interpret an act of the General Assembly or of Congress or of a regulation of a federal agency?
- Was it adopted in accordance with G.S. 105-262A?

The bill changes the fiscal note requirement to allow Revenue to prepare its own fiscal note.[6] It will not need to submit the fiscal note to the Office of State Budget and Management. The fiscal note must be submitted with the proposed rule to the Codifier of Rules and posted on the Internet. A person may comment on the fiscal note in the same manner a person may comment on a proposed rule. Section 4 of the bill provides that the Department does not need to prepare a fiscal note for a proposed rule submitted to the Codifier of Rules prior to December 31, 2012. The reason for this waiver is that any rules submitted before the end of this calendar year under the statute created by this act is limited to the Department's application of G.S. 105-130.5A. The subject of the rule has been debated in the General Assembly during the 2011 session, where the Fiscal Research Division prepared a fiscal memo, and it has been the subject of four Revenue Laws Study Committee meetings in 2011 and 2012. The fiscal issues surrounding this particular rule appear to be well known and understood by all the parties.

The bill exempts the Department from the delayed effective date provisions that apply whenever the Commission receives 10 or more objections to a rule requesting review by the legislature.

A rule becomes effective on the last day of the month the Codifier of Rules enters the rule in the Code. This effective date provision differs from the general effective date provision in Chapter 150B[7] and enables the rule to become effective a month earlier. Section 6 of the draft clarifies that the Secretary's

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[5] The bill does not extend the rulemaking requirement to all interpretations of the tax laws by the Department of Revenue because the Revenue Laws Study Committee did not have time to resolve the issues a larger proposal would entail.

[6] A fiscal note must be prepared if the rule has a substantial economic impact. Prior to 2011, the term 'substantial economic impact' meant a cumulative impact of $3,000,000. In 2011, this amount was reduced to $500,000.

[7] G.S. 150B-21.3 provides that a rule becomes effective on the first day of the month following the month the rule is approved.

authority under G.S. 105-130.5A exists continuously for taxable years beginning on or after January 1, 2012. After a rule becomes effective, the Secretary may issue a proposed denial of a refund or a proposed assessment under the authority of G.S. 105-130.5A for any taxable year that beginning on or after January 1, 2012.

The bill only applies to G.S. 105-130.5A. It does not apply to the Secretary's interpretations of the repealed statutes that continue to be applicable for taxable years beginning before January 1, 2012: G.S. 105-130.6, 105-130.15, and 105-130.16. The Department has issued a directive offering guidance on its interpretation of those laws, CD-12-01, and the directive appears to set forth the Department's application of the law as upheld by the North Carolina Courts.[8] The Department has also issued a directive offering guidance on its interpretation of the newly enacted law, G.S. 105-130.5A, in CD-12-02. Section 5 of the bill provides that a taxpayer who relied upon the interpretation in that Directive and whose North Carolina taxable income for the 2012 taxable year is less under the Directive's interpretation than under an interpretation adopted through the rulemaking process may rely on the interpretation under the Directive for the 2012 taxable year.

EFFECTIVE DATE: The bill would become effective when it becomes law.

S824-SMRB-122(e1) v1

[8] *Wal-Mart Stores East v. Hinton*, 197 N.C. App. 30 (2009); *Delhaize America, Inc., Plaintiff, v. Kenneth R. Lay*, 2011 NCBC 2: 2011 NCBC LEXIS 9 (2011).

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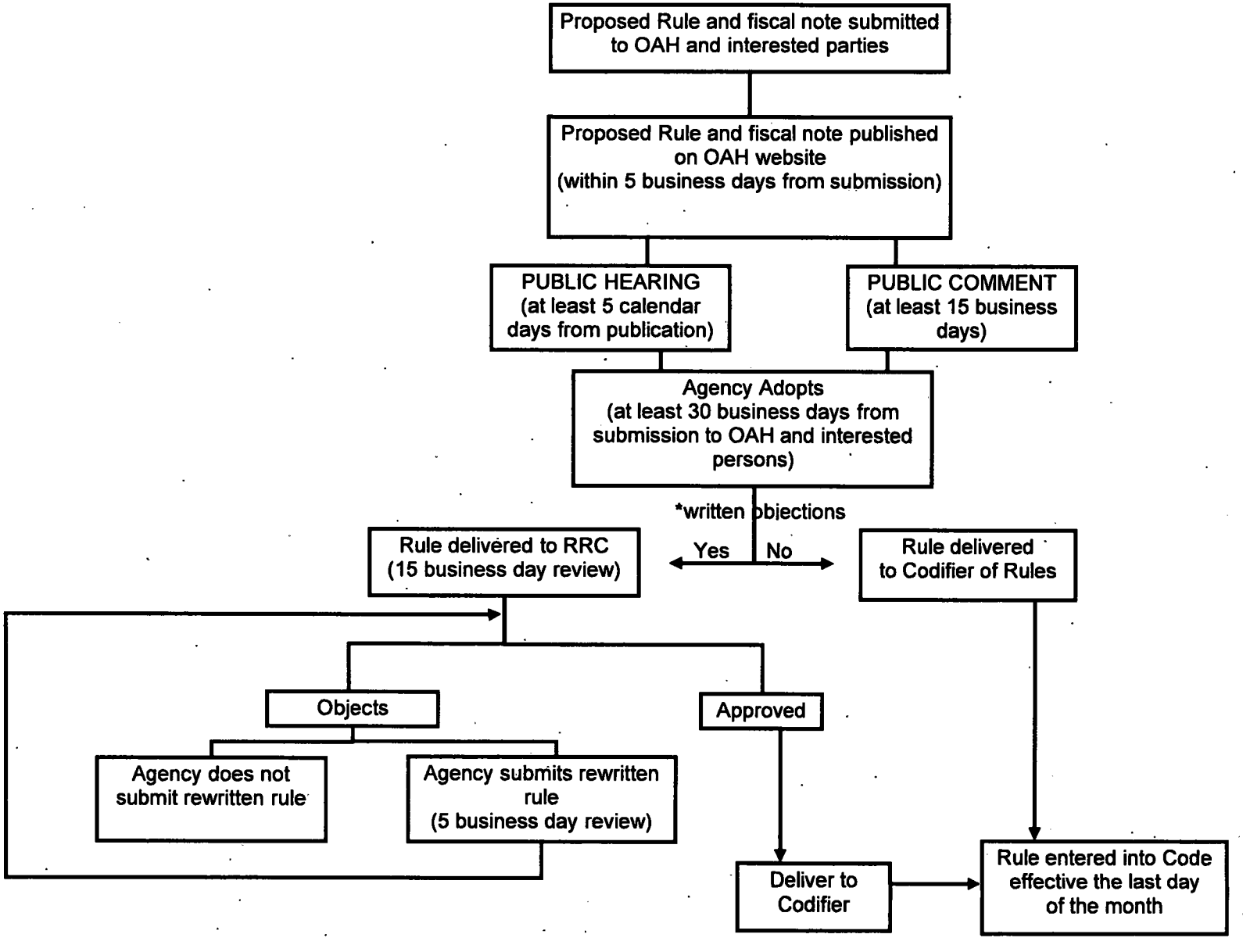

*Written objections requesting RRC review received by DOR by 5 pm the third business day following notification from the Secretary of the rule adoption

(05/01/12)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 444
PROPOSED COMMITTEE SUBSTITUTE S444-CSMC-19 [v.1]

5/25/2012 11:44:19 AM

Short Title: UNC Nonappropriated Capital Projects. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

STATEMENT OF PURPOSE

SECTION 1. The purpose of this act is to authorize (i) the planning or construction by certain constituent institutions of The University of North Carolina of the capital improvements projects listed in the act for the respective institutions and (ii) the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, hospital receipts from patient care, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State unless previously authorized by General Statute.

UNC CAPITAL IMPROVEMENT PROJECTS

SECTION 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 5 of this act, or by both, are as follows:

Appalachian State University	
Winkler Residence Hall – Supplement	$ 3,000,000
Belk Residence Hall	9,765,000
East Carolina University	
Belk Residence Hall Demolition and Reconstruction	40,000,000
North Carolina State University	
Phytotron Energy Savings Performance Contract	6,200,000
The University of North Carolina at Asheville	

Mountain Area Health Education Center (MAHEC) Facility Acquisition	4,750,000
The University of North Carolina at Chapel Hill	
Collaborative Science Building	95,680,000
Infrastructure Improvements – Phase 2	12,450,000
Chilled Water Infrastructure Improvements	11,700,000
Steam and Hot Water Infrastructure Improvements	12,000,000
Craige Parking Deck – Supplement	8,000,000
The University of North Carolina at Charlotte	
Campus Infrastructure Development	49,500,000
Residence Hall Phase XII	38,407,410
Cedar/Hickory/Sycamore (Phase IV-A) Renovation	10,000,000
The University of North Carolina at Greensboro	
1600 W. Lee Street Parking Lot Improvements	3,432,000
Reynolds and Grogan Residence Hall Renovation	16,640,000
Winston-Salem State University	
Restore the Core – Phase I (Hill Hall)	13,500,000
New Student Housing Building 1 Acquisition	14,500,000
South Campus Acquisitions and Improvements	7,500,000
North Campus Acquisitions and Improvements	7,000,000

SECTION 3. The capital improvements projects, and their respective costs, authorized by this act to be planned and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 5 of this act, or by both, are as follows:

North Carolina A&T State University	
New Student Center	$ 5,000,000
Williams Dining Hall Kitchen Replacement	500,000
North Carolina Central University	
New – Student Health Services Center – Phase 1	700,000
The University of North Carolina at Chapel Hill	
Athletic Facilities Master Plan and Phase 1 Improvements	5,000,000
Odum Village Replacement	5,000,000
Winston-Salem State University	
Restore the Core – Phase II (Hauser, Pegram, Physical Plant)	1,500,000

SECTION 4. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 5. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special

obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Section 2 and Section 3 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Section 2 and Section 3 of this act plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 4 of this act.

SECTION 6. With respect to UNC- Chapel Hill's Chilled Water Infrastructure Improvements capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and may accomplish the project either through (i) direct ownership of the project or (ii) an arrangement with Orange Water and Sewer Authority.

SECTION 7. With respect to Winston-Salem State University's New Student Housing Building 1 Acquisition project, the institution may accomplish construction, acquisition, and financing through arrangements to, from, and with Winston-Salem State University Foundation, Inc. and Winston-Salem State University Housing Foundation, LLC.

SECTION 8. With respect to Winston-Salem State University's South Campus Acquisitions and Improvements project, the institution may accomplish construction, acquisition, and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and either through (i) direct ownership of the project, or (ii) by participation in a long-term agreement with the City of Winston-Salem.

SECTION 9. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at (i) performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 ~~seats, or to~~seats; (ii) any golf courses owned or leased by the institutions and open to the public for ~~use.~~use; or (iii) any stadiums that support a NASCAR-sanctioned one-fourth-mile asphalt flat oval short track, are owned or leased by the institutions, and limit the sale of malt beverages, unfortified wine, or fortified wine to events that are not sponsored or funded by the institutions."

SECTION 10. This act is effective when it becomes law.

SENATE BILL 444:
UNC Nonappropriated Capital Projects

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 29, 2012
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S444-CSMC-19		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 444 would authorize the construction of numerous projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds, not appropriations from the General Fund.***

CURRENT LAW: There are two types of self-liquidating bonds that may be issued by the Board of Governors of the University of North Carolina. Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds for the types of projects enumerated in the article. The types of projects for which revenue bonds may be issued include educational buildings, dormitories, recreational facilities, dining facilities, student centers, health care buildings, parking decks, etc. for the educational institutions, the University of North Carolina Health Care System, the University of North Carolina General Administration, and the University of North Carolina Hospitals at Chapel Hill. The revenue bonds are payable from rentals, charges, fees, and other revenues generated by the facility. The bonds are not payable from tax revenues.

Article 3 of Chapter 116D of the General Statutes authorizes the Board of Governors to issue special obligation bonds payable with any sources of income or receipts of the Board of Governors or a constituent or affiliated institution, but not including tuition payments or appropriations from the General Fund from State revenues. The bond proceeds could be used for construction, improvement, and acquisition of any capital facilities located at UNC constituent and affiliated institutions. The bonds are not payable from tax revenues.

BILL ANALYSIS: The *proposed committee substitute for Senate Bill 444* would authorize the construction and financing of the capital improvements projects at various constituent institutions of The University of North Carolina. The projects authorized by the bill would not be financed with funds appropriated from the State's General Fund; but may be financed with gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, other funds available to the constituent institutions, or a combination of any of those financing methods. The projects include academic, research, clinical and administrative space and improvements to student services, residential living, dining, recreation, and athletics facilities. Once approved, a detailed financial plan will be developed in consultation with financial advisors and bond counsel for each project. The plans must be approved by the Chancellor, the Boards of Trustees, the President, and the Board of Governors before construction contracts may be awarded and bonds issued.

The self-liquidating projects the Board of Governors plans to finance with revenue and/or special obligation bonds are listed in Sections 2 and 3 of the bill. The UNC revenue bond act in Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds to finance the cost of a variety of capital projects. The UNC special obligation bond act in Article 3 of Chapter 116D of the General Statutes requires that the specific projects and their costs be set forth in legislation approved by the General Assembly and that the maximum amount of special obligation bonds to be issued to finance the specific projects listed be stated. Section 5 of the bill expressly states that the maximum principal amount of special obligation bonds to be issued shall not exceed the amounts listed in Sections 2 and 3 of the act plus 5%. The additional 5% may be used for related additional costs for which bond proceeds are routinely used, such as issuance expenses, funding of reserve funds, and capitalized interest.

This year's bill includes 19 capital projects on eight campuses in Section 2 of the bill. The Chancellors and Boards of Trustees for the listed campuses, as well as the President and the Board, have approved these projects. Support from General Fund sources for operating costs will be required only for facilities used for academic programs.

Sections 6 through 8 authorize three institutions to construct and finance projects through lease arrangements to, from, and with named entities. Once constructed and approved by state reviewing agencies, the improvements would transfer to the respective institutions. The three projects are:

- Chilled Water Infrastructure Improvements capital project at UNC-Chapel Hill. The school will partner with the Orange Water and Sewer Authority.
- New Student Housing Building capital project at Winston-Salem State University. The school will partner with Winston-Salem State University Foundation, Inc. and Winston-Salem State University Housing Foundation, LLC.
- Bowman Gray Stadium, Fieldhouse, parking lots, and recreation area capital project at Winston-Salem State University. The school will partner with the City of Winston-Salem.

Section 3 authorizes the Board of Governors to expend non-General Fund money to plan six capital projects on four campuses.

Section 9 provides that the prohibition in the ABC laws for the sale of beer and wine on the property of a public school or college would not apply to the Bowman Gray Stadium. This exception would be limited to events that are not sponsored or funded by the institution, Winston-Salem State. NASCAR is a sponsored event at this stadium.

S444-SMRB-124(CSMC-19) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 29, 2012

TO: Senators Rucho and Hartsell

FROM: Mark Bondo
Fiscal Research Division

RE: Senate Bill 444 (Unknown Edition)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES:					
General Fund	$0	$0	$0	$0	$0
Receipts	See Chart on Page Two and Assumptions and Methodology				
EXPENDITURES:	Total Amounts: See Chart on Page 2 for Additional Information				
General Fund*	$367,742	$312,911	$1,276,338	$3,479,472	$3,556,168
Receipt Supported	$65,352,226	$32,723,144	$35,313,628	$35,522,173	$35,606,832
POSITIONS (FTE)	14	40	84	84	84

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: University of North Carolina System

EFFECTIVE DATE: When the bill becomes law

Additional Fiscal Impact Detail from Page 1

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES:					
General Fund	$0	$0	$0	$0	$0
Receipts					
Debt Service Fee	$5,434,536	$5,791,315	$6,175,553	$6,589,587	$7,035,964
Other Receipts		See Assumptions and Methodology			
EXPENDITURES:					
General Fund (Total)	**$367,742**	**$312,911**	**$1,276,338**	**$3,479,472**	**$3,556,168**
Utility Savings*	$0	($450,000)	($463,500)	($477,405)	($491,727)
GESC*		$428,000	$440,825	$454,035	$467,641
Building Reserves	$367,742	$334,911	$1,299,013	$3,502,842	$3,580,254
Receipt Supported (Total)	**$65,352,226**	**$32,723,144**	**$35,313,628**	**$35,522,173**	**$35,606,832**
Building Reserves	$977,226	$1,010,703	$3,601,187	$3,809,732	$3,894,391
Planning	$17,700,000				
New Projects	$40,700,000				
Debt Service	$5,975,000	$31,712,441	$31,712,441	$31,712,441	$31,712,44
POSITIONS (FTE):					
General Fund FTE			35	35	35
Receipt Supported FTE	14	40	49	49	49

* This reflects the Phytotron Energy Savings Performance Project at North Carolina State University (Guaranteed Energy Savings Contract). The associated utility savings are supported entirely by the General Fund. Under State Law, these are allowed to be considered "obligated resources" by the campuses.

BILL SUMMARY: **Section 1:** Authorizes the construction or acquisition of capital improvement projects defined in subsequent sections by certain constituent institutions of the University of North Carolina (UNC) System and authorizes their financing with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds or a combination of these funds, but not including funds received from tuition or appropriations from the General Fund, unless previously authorized by General Statute.

Section 2: New Projects:

Projects By Campus	Amount
1. Appalachian State University	
Winkler Residence Hall – Supplement	$3,000,000
Belk Residence Hall	$9,765,000
2. East Carolina University	
Belk Residence Hall Demolition and Reconstruction	$40,000,000
3. North Carolina State University	
Phytotron Energy Savings Performance Contract[1]	$6,200,000
4. University of North Carolina – Asheville	
Mountain Area Health Education Center (MAHEC) Facility Acquisition	$4,750,000
5. University of North Carolina-Chapel Hill	
Collaborative Science Building[2]	$95,680,000
Infrastructure Improvements – Phase 2	$12,450,000
Chilled Water Infrastructure Improvements	$11,700,000
Steam and Hot Water Infrastructure Improvements	$12,000,000
Craige Parking Deck – Supplement	$8,000,000
6. University of North Carolina – Charlotte	
Campus Infrastructure Development	$49,500,000
Residence Hall Phase XII	$38,407,410
Cedar/Hickory/Sycamore (Phase IV-A) Renovation[3]	$10,000,000
7. University of North Carolina – Greensboro	
1600 W. Lee Street Parking Lot Improvements	$3,432,000
Reynolds and Grogan Residence Hall Renovation	$16,640,000

[1] Implements energy conservation measures in the Phytron Building.
[2] New building to increase space and allow for consolidation of various research and learning labs and centers.
[3] The facility is a residence hall

Projects By Campus	Amount
8. Winston Salem State University	
Restore the Core – Phase I (Hill Hall)[4]	$13,500,000
New Student Housing Building 1 Acquisition	$14,500,000
South Campus Acquisitions and Improvements[5]	$7,500,000
North Campus Acquisitions and Improvements[6]	$7,000,000
Total	**$364,024,410**

Section 3: Authorizes projects for planning pursuant to Section 1 of this bill. The projects are as follows:

Planning Projects By Campus	Amount
1. North Carolina A&T University	
New Student Center	$5,000,000
Williams Dining Hall Kitchen Replacement	$500,000
2. North Carolina Central University	
New Student Health Services Center – Phase 1	$700,000
3. University of North Carolina – Chapel Hill	
Athletic Facilities Master Plan and Phase 1 Improvements	$5,000,000
Odum Village Replacement	$5,000,000
4. Winston Salem State University	
Restore the Core – Phase II (Hauser, Pegram, Physical Plant)	$1,500,000
Total	**$17,700,000**

Section 4: At the request of the Board of Governors of the University of North Carolina, the Director of the Budget may authorize changes in project cost and financing. The Director is allowed to consult with the Joint Commission on Government Operations as necessary.

Section 5: Pursuant to G.S. 116D-26, the Board of Governors may, subject to the approval of the Director of the Budget, issue special obligation bonds of the Board of Governors specified in the previous sections. The total amount to be issued cannot exceed five percent of the costs specified in the previous sections, or altered subject to Section 4.

Section 6: Notwithstands G.S. 116D-22(5) to allow UNC-Chapel Hill to locate the project outside of UNC-Chapel Hill's property boundaries and allows the University to accomplish this project

[4] Renovates and expands Hill Hall. The new building will provide student service (advisors, retention specialists, etc).
[5] Acquires and renovates Bowman-Gray Stadium, Fieldhouse, surrounding parking lots, Civitan Park, and construct a pedestrian bridge.
[6] Constructs a parking deck

through either a direct ownership of the project or an arrangement with the Orange County Water and Sewer Authority.

Section 7: Allows Winston-Salem State University to enter into an arrangement with the Winston-Salem State University Foundation, Inc. and Winston Salem State University Housing Foundation, LLC to undertake the New Student Housing Building 1 Acquisition Project.

Section 8: Notwithstands G.S. 116D-22(5) and allows Winston Salem State University (WSSU) to locate the South Campus Acquisitions and Improvements Project outside of campus boundaries. This provision also allows the University to construct, acquire, and finance the project through direct ownership or through a long-term agreement with the City of Winston Salem.

Section 9: Amends G.S. 18B-1006(a) (Regulation of Alcoholic Beverages at Schools and College Campuses) to allow for the sale of alcohol at the Bowman Gray Stadium in association with a NASCAR sanctioned ¼ mile flat oval short track. Bowman Gray Stadium is currently owned by the City of Winston-Salem which leases the facility, in part, to Winston Salem Speedway Inc. for NASCAR related events.

ASSUMPTIONS AND METHODOLOGY: The following table uses information supplied by the University of North Carolina to estimate various impacts of the University of North Carolina Capital Projects. When a campus seeks to issue Special Indebtedness, they are required under G.S. 116D-26(b) to submit information to the General Assembly regarding these projects. The following table consolidates this information.

Table 1: Projects by Source of Funds and Operating Costs

Campus	Project	Amount	Source of Capital Funds	Effect of Debt on Students	Increase in Annual Operating Costs (1st Year)	General Fund Support of Operating Costs (1st Year)
ASU	Winkler Residence Hall – Suppliment	$3,000,000	Housing Receipts		$152,368	$0
ASU	Belk Residence Hall	$9,765,000	Housing Receipts		$26,000	$0
ECU	Belk Residence Hall Demolition and Reconstruction	$40,000,000	Housing Receipts		$662,540	$0
NCSU	Phytotron Energy Savings Performance Contract	$6,200,000	Energy Savings*		$93,389	$0*
UNCA	MAHEC Facility Acquisition	$4,750,000	Debt service fee and other obligated resources	$90	$289,043	$0

Campus	Project	Amount	Source of Capital Funds	Effect of Debt on Students	Increase in Annual Operating Costs (1st Year)	General Fund Support of Operating Costs (1st Year)
UNCCH	Infrastructure Improvements-Phase 2	$12,450,000	Utility Receipts		$0	$0
UNCCH	Chilled Water Infrastructure Improvements	$11,700,000	Utility Receipts		$0	$0
UNCCH	Steam and Hot Water Infrastructure Improvements	$12,000,000	Utility Receipts		$0	$0
UNCCH	Craige Parking Deck	$8,000,000	Parking Receipts		$0	$0
UNCC	Campus Infrastructure Development	$49,500,000	Debt Service Fee	$100	$0	$0
UNCC	Residence Hall Phase XII	$38,407,410	Housing Receipts		$1,863,457	$0
UNCC	Cedar/Hickory/Sycamore (Phase IV-A) Renovation	$10,000,000	Housing Receipts		$98,031	$0
NCG	Reynolds and Grogan Residence Hall Renovation	$16,640,000	Housing Receipts		$0	$0
WSSU**	Restore the Core Phase 1	$13,500,000	Debt service fee, grants, gifts	$115	$179,664	$179,664
WSSU	New Student Building Acquisition	$14,500,000	Housing Receipts		$654,365	$0
WSSU**	South Campus Acquisitions and Improvements	$7,500,000	Debt Service Fee	$110	$181,523	$181,523
WSSU**	North Campus Acquisitions	$7,000,000	Debt Service Fee	$115	$168,844	$0
WSSU**	Restore the Core Phase 1	$13,500,000	Debt service fee, grants, gifts	$115	$179,664	$179,664
WSSU	New Student Building Acquisition	$14,500,000	Housing Receipts		$654,365	$0
WSSU**	South Campus Acquisitions and Improvements	$7,500,000	Debt Service Fee	$110	$181,523	$181,523
WSSU**	North Campus Acquisitions	$7,000,000	Debt Service Fee	$115	$168,844	$0

* S.L. 2011-145, Sec 9.6D(h) allowed UNC to utilize General Fund appropriated utility savings as an obligated resource.
** There will be a reduction of $115 per student debt service fee at WSSU due to the retirement of debt. There is an additional $55 per student debt service fee to support the Student Union. The total debt service fee for FY 2012-13 is $270.

Several of the projects listed above have existing cash on hand from the various sources provided above that will be used to support the specific projects. The table below presents how this will impact new debt issuances. In total, this will Bill will authorize $323,324,410 in new debt at the campuses.

Table 2: Projects with Partial Cash Financing

Campus	Project	Total Project	Cash on Hand	New Debt
UNCCH	Infrastructure Improvements-Phase 2	$12,450,000	$10,000,000	$2,450,000
UNCCH	Chilled Water Infrastructure Improvements	$11,700,000	$4,700,000	$7,000,000
UNCCH	Steam and Hot Water Infrastructure Improvements	$12,000,000	$3,500,000	$8,500,000
UNCC	Campus Infrastructure Development	$49,500,000	$14,500,000	$35,000,000
UNCC	Cedar/Hickory/Sycamore (Phase IV-A) Renovation	$10,000,000	$2,500,000	$7,500,000
WSSU	Restore the Core Phase 1	$13,500,000	$5,500,000	$8,000,000
Total			**$40,700,000**	**$68,450,000**

Operating Expenditures: At each of the following campuses with projects authorized by this Bill, it is expected that there will be an increase in operating requirements and associated positions. These operating impacts are commonly referred to as building reserves. The University of North Carolina estimates that a number of projects will require General Fund support, as they are academic in nature. The table below reflects the estimated General Fund operating impact by campus where a request for General Fund support will be made, new positions are also included:

Table 4: General Fund Supported Building Reserves

Campus	2012-13	2013-14	2014-15	2015-16	2016-17
UNCCH	$0	$0	$954,222	$3,149,362	$3,218,963
WSSU	$367,742	$334,911	$344,791	$353,480	$361,292
Total	**$367,742**	**$334,911**	**$1,299,013**	**$3,502,842**	**$3,580,254**
FTE	0	0	35	35	35

The following table reflects building reserves which will be paid from receipts at the campus:

Table 5: Receipt Supported Building Reserves

Campus	2012-13	2013-14	2014-15	2015-16	2016-17
ASU	$0	$49,079	$177,139	$182,208	$186,234
ECU	$0	$0	$345,527	$662,540	$677,182
UNCA	$248,367	$273,806	$281,883	$288,987	$295,373
UNCC	$0	$0	$2,047,153	$1,907,316	$1,949,468
UNCG	$0	$1,688	$43,114	$44,510	$45,958
WSSU	$728,859	$686,130	$706,371	$724,171	$740,176
Total	**$977,226**	**$1,010,703**	**$3,601,187**	**$3,809,732**	**$3,894,391**
FTE	14	40	49	49	49

Debt Service Expenditures: In addition to operating expenditures, the campuses will also be required to pay debt service on the various debt financed projects. The table below reflects the estimated amount of additional debt service by campus:

Table 6: Estimated New Debt Service By Project

Campus	2012-13	2013-14	2014-15	2015-16	2016-17
ASU	$0	$1,276,500	$1,276,500	$1,276,500	$1,276,500
ECU	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000
UNCA	$475,000	$475,000	$475,000	$475,000	$475,000
UNCCH	$0	$12,163,000	$12,163,000	$12,163,000	$12,163,000
UNCC	$0	$8,090,741	$8,090,741	$8,090,741	$8,090,741
UNCG	$0	$2,007,200	$2,007,200	$2,007,200	$2,007,200
WSSU	$1,500,000	$3,700,000	$3,700,000	$3,700,000	$3,700,000
Total	**$5,975,000**	**$31,712,441**	**$31,712,441**	**$31,712,441**	**$31,712,441**

One project is listed separately: the Phytotron Energy Savings Performance Contract at North Carolina State University (NCSU). S.L. 2011-145, Sec 9.6D(h) allowed UNC to utilize General Fund appropriated utility savings as an obligated resource for the purposes of Special Indebtedness. According to NCSU, the project will be financed solely from the General Fund appropriated utility account, which is $28,691,627 for the current Fiscal Year. The project will be financed by savings associated with replacement and upgrade of systems at the Phytotron Building. Per the existing Statute, NCSU is responsible for any unrealized savings associated with this project. The table below presents the estimated energy savings, maintenance and verification costs (M&V Costs), debt service payments, and net savings. At the front of the Memo, M&V Costs and debt service are combined into the GESC line item.

Table 7: Phytotron Energy Savings Performance Contract

Costs	2012-13	2013-14	2014-15	2015-16	2016-17
Utility Savings	$0	$450,000	$463,500	$477,405	$491,727
Debt Service	$0	($418,000)	($430,825)	($444,035)	($457,641)
M&V Costs	$0	($10,000)	($10,000)	($10,000)	($10,000)
Net Savings	**$0**	**$22,000**	**$22,675**	**$23,370**	**$24,086**

Revenues: Three Campuses have elected to institute a new debt service fee in order to finance the various projects. Utilizing historic enrollment data from UNC for 2001-2010, Fiscal Research staff has projected the average annual revenue increase at the Campuses.

Table 8: Estimated Debt Service Fee Revenue

Campus	Average Growth	2012-13	2013-14	2014-15	2015-16	2016-17
UNCA	2.52%	$345,417	$354,122	$363,046	$372,195	$381,574
UNCC	4.22%	$2,522,801	$2,629,258	$2,740,208	$2,855,840	$2,976,351
WSSU*	9.41%	$2,566,318	$2,807,934	$3,072,298	$3,361,552	$3,678,039
Total		**$5,434,536**	**$5,791,315**	**$6,175,553**	**$6,589,587**	**$7,035,964**

* Assumes the $270 net fee increase at WSSU.

Other projects will be supported by other obligated resources at the campuses, such as housing receipts. As these reflect existing sources of revenue, an incremental increase in fees was not available. UNC currently does not anticipate increasing receipts specifically for these projects. However, should the existing revenue stream not be sufficient to cover related debt service, some increase may be necessary.

SOURCES OF DATA: The financial data for these charts was provided by the Division of Finance at the University of North Carolina System and North Carolina State University.

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 444

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S444-AMC-38 [v.5]

Comm. Sub. [YES]
Amends Title [YES]
S444-PCS65122-MC-19

Date 5/30 ,2012

Senator Apodaca

moves to amend the bill on page 1, line 5, by deleting that line and substituting the following:

"UNIVERSITY OF NORTH CAROLINA AND TO PROHIBIT CERTAIN REIMBURSEMENT FOR OUT-OF-STATE TRAVEL EXPENSES.";

and on page 2, line 4-5, by deleting those lines;

and on page 3, line 40, by rewriting that line to read:

"**SECTION 10.** No State funds shall be used to reimburse out-of-state members of the Board of Governors of The University of North Carolina for out-of-state travel expenses. For travel expenses covering both in-state and out-of-state travel, the Board of Governors shall apportion the reimbursement so it covers only in-state travel expenses.

SECTION 11. This act is effective when it becomes law.";

And by adjusting the appropriate totals accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 795
Education/Higher Education Committee Substitute Adopted 5/29/12
PROPOSED COMMITTEE SUBSTITUTE S795-PCS35358-TC-39

Short Title: Excellent Public Schools Act. (Public)

Sponsors:

Referred to:

April 25, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO IMPROVE K-3 LITERACY; PROVIDE LITERACY VOLUNTEER LEAVE TIME; ASSIGN SCHOOL PERFORMANCE GRADES; MAXIMIZE INSTRUCTIONAL TIME; ADJUST SCHOOL CALENDAR; FUND FIVE ADDITIONAL INSTRUCTIONAL DAYS WITHIN THE EXISTING SCHOOL CALENDAR; ESTABLISH AN NC TEACHER CORPS; STRENGTHEN TEACHER LICENSURE REQUIREMENTS; PROVIDE PROOF OF STATE-FUNDED LIABILITY INSURANCE; ESTABLISH PLANS FOR PAY FOR EXCELLENCE; CLARIFY NC PRE-K PROGRAM ELIGIBILITY AND ADD SLOTS; REPEAL PROHIBITION ON TEACHER PREPAYMENT; PROVIDE A TAX DEDUCTION FOR EDUCATIONAL SUPPLIES; ESTABLISH TEACHER CONTRACTS; AND ELIMINATE PUBLIC FINANCING FOR THE OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION.

The General Assembly of North Carolina enacts:

PART I. IMPROVE K-3 LITERACY

SECTION 1.(a) G.S. 115C-81.2 is repealed.

SECTION 1.(b) Article 8 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 1A. North Carolina Read to Achieve Program.

"**§ 115C-83.1A. State goal.**

The goal of the State is to ensure that every student read at or above grade level by the end of third grade and continue to progress in reading proficiency so that he or she can read, comprehend, integrate, and apply complex texts needed for secondary education and career success.

"**§ 115C-83.1B. Purposes.**

(a) The purposes of this Part are to ensure that (i) difficulty with reading development is identified as early as possible; (ii) students receive appropriate instructional and support services to address difficulty with reading development and to remediate reading deficiencies; and (iii) each student and his or her parent or guardian be continuously informed of the student's academic needs and progress.

(b) In addition to the purposes listed in subsection (a) of this section, the purpose of this Part is to determine that progression from one grade to another be based, in part, upon proficiency in reading.

"**§ 115C-83.1C. Definitions.**

The following definitions apply in this Part:

(1) "Accelerated reading class" means a class where focused instructional supports and services are provided to increase a student's reading level at least two grades in one school year.

(2) "Alternative assessment" means a valid and reliable standardized assessment of reading comprehension, approved by the State Board of Education, that is not the same test as the State approved standardized test of reading comprehension administered to third grade students.

(3) "Instructional supports and services" mean intentional strategies used with a majority of students to facilitate reading development and remediate emerging difficulty with reading development. Instructional supports and services include, but are not limited to, small group instruction, reduced teacher-student ratios, frequent progress monitoring, and extended learning time.

(4) "Difficulty with reading development" means not demonstrating appropriate developmental abilities in any of the major reading areas, including, but not limited to, oral language, phonological or phonemic awareness, vocabulary, fluency, or comprehension, according to observation-based, diagnostic, or formative assessments.

(5) "Reading interventions" mean evidence-based strategies frequently used to remediate reading deficiencies and include, but are not limited to, individual instruction, tutoring, or mentoring that target specific reading skills and abilities.

(6) "Reading proficiency" means reading at or above the third grade level by the end of a student's third grade year, demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students.

(7) "Reading deficiency" means not reading at the third grade level by the end of the student's third grade year, demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students.

(8) "Student reading portfolio" means a compilation of independently produced student work selected by the student's teacher, and signed by the teacher and principal, as an accurate picture of the student's reading ability. The student reading portfolio shall include an organized collection of evidence of the student's mastery of the State's reading standards that are assessed by the State-approved standardized test of reading comprehension administered to third grade students. For each benchmark, there shall be three examples of student work demonstrating mastery by a grade of seventy percent (70%) or above.

(9) "Summer reading camp" means an additional educational program outside of the instructional calendar provided by the local school administrative unit to any student who does not demonstrate reading proficiency. Parents or guardians of the student not demonstrating reading proficiency shall make the final decision regarding the student's summer camp attendance. Summer camps shall (i) be six to eight weeks long, four or five days per week; (ii) include at least three hours of instructional time per day; (iii) be taught by

compensated, licensed teachers selected based on demonstrated student outcomes in reading proficiency; and (iv) allow volunteer mentors to read with students.

(10) "Transitional third and fourth class combination" means a classroom specifically designed to produce learning gains sufficient to meet fourth grade performance standards while continuing to remediate areas of reading deficiency.

"**§ 115C-83.1D. Comprehensive plan for reading achievement.**

(a) The State Board of Education shall develop, implement, and continuously evaluate a comprehensive plan to improve reading achievement in the public schools. The plan shall be based on reading instructional practices with strong evidence of effectiveness in current empirical research in reading development. The plan shall be developed with the active involvement of teachers, college and university educators, parents and guardians of students, and other interested parties. The plan shall, when appropriate to reflect research, include revision of the standard course of study or other curricular standards, revision of teacher licensure and renewal standards, and revision of teacher education program standards.

(b) The State Board of Education shall report biennially to the Joint Legislative Education Oversight Committee by October 1 of each even-numbered year on the implementation, evaluation, and revisions to the comprehensive plan for reading achievement and shall include recommendations for legislative changes to enable implementation of current empirical research in reading development.

"**§ 115C-83.1E. Developmental screening and kindergarten entry assessment.**

(a) The State Board of Education shall ensure that every student entering kindergarten shall be administered a developmental screening of early language, literacy, and math skills within 30 days of enrollment.

(b) The State Board of Education shall ensure that every student entering kindergarten shall complete a kindergarten entry assessment within 60 days of enrollment.

(c) The developmental screening instrument may be composed of subsections of the kindergarten entry assessment.

(d) The kindergarten entry assessment shall address the five essential domains of school readiness: language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development.

(e) The kindergarten entry assessment shall be (i) administered at the classroom level in all local school administrative units; (ii) aligned to North Carolina's early learning and development standards and to the standard course of study; and (iii) reliable, valid, and appropriate for use with all children, including those with disabilities and those who are English language learners.

(f) The results of the developmental screening and the kindergarten entry assessment shall be used to inform the following:

(1) The status of children's learning at kindergarten entry.

(2) Instruction of each child.

(3) Efforts to reduce the achievement gap at kindergarten entry.

(4) Continuous improvement of the early childhood system.

"**§ 115C-83.1F. Facilitating early grade reading proficiency.**

(a) Kindergarten, first, second, and third grade students shall be assessed with valid, reliable, formative, and diagnostic reading assessments made available to local school administrative units by the State Board of Education pursuant to G.S. 115C-174.11(a). Difficulty with reading development identified through administration of formative and diagnostic assessments shall be addressed with instructional supports and services. To the greatest extent possible, kindergarten through third grade reading assessments shall yield data

that can be used with the Education Value Added Assessment System (EVAAS), or a compatible and comparable system approved by the State Board of Education, to analyze student data to identify root causes for difficulty with reading development and to determine actions to address them.

(b) Formative and diagnostic assessments and resultant instructional supports and services shall address oral language, phonological and phonemic awareness, phonics, vocabulary, fluency, and comprehension using developmentally appropriate practices.

(c) Local school administrative units are encouraged to partner with community organizations, businesses, and other groups to provide volunteers, mentors, or tutors to assist with the provision of instructional supports and services that enhance reading development and proficiency.

"**§ 115C-83.1G. Elimination of social promotion.**

(a) The State Board of Education shall require that a student be retained in the third grade if the student fails to demonstrate reading proficiency appropriate for a third grade student, as demonstrated on a State-approved standardized test of reading comprehension administered to third grade students. The test may be re-administered once prior to the end of the school year.

(b) Students may be exempt from mandatory retention in third grade for good cause but shall continue to receive instructional supports and services and reading interventions appropriate for their age and reading level. Good cause exemptions shall be limited to the following:

(1) Limited English Proficient students with less than two years of instruction in an English as a Second Language program.

(2) Students with disabilities, as defined in G.S. 115C-106.3(1), whose individualized education program indicates the use of alternative assessments and reading interventions.

(3) Students who demonstrate reading proficiency appropriate for third grade students on an alternative assessment approved by the State Board of Education. Teachers may administer the alternative assessment following the administration of the State-approved standardized test of reading comprehension typically given to third grade students at the end of the school year, or after a student's participation in the local school administrative unit's summer reading camp.

(4) Students who demonstrate, through a student reading portfolio, reading proficiency appropriate for third grade students. Teachers may submit the student reading portfolio at the end of the school year, or after a student's participation in the local school administrative unit's summer reading camp. The student reading portfolio and review process shall be established by the State Board of Education.

(5) Students who have (i) received reading intervention and (ii) previously been retained more than once in kindergarten, first, second, or third grades.

(c) The superintendent shall determine whether a student may be exempt from mandatory retention on the basis of a good cause exemption. The following steps shall be taken in making the determination:

(1) The teacher of a student eligible for a good cause exemption shall submit documentation of the relevant exemption and evidence that promotion of the student is appropriate based on the student's academic record to the principal. Such evidence shall be limited to the student's personal education plan, individual education program, if applicable, alternative assessment, or student reading portfolio.

(2) The principal shall review the documentation and make an initial determination whether the student should be promoted. If the principal determines the student should be promoted, the principal shall make a written recommendation of promotion to the superintendent for final determination. The superintendent's acceptance or rejection of the recommendation shall be in writing.

"**§ 115C-83.1H. Successful reading development for retained students.**

(a) Students not demonstrating reading proficiency shall be enrolled in a summer reading camp provided by the local school administrative unit prior to being retained. Students who demonstrate reading proficiency on an alternative assessment of reading comprehension or student reading portfolio after completing a summer reading camp shall be promoted to the fourth grade. Students who do not demonstrate reading proficiency on these measures after completing a summer reading camp shall be retained under G.S. 115C-83.1G(a) and provided with the instruction listed in subsection (b) of this section during the retained year.

(b) Students retained under G.S. 115C-83.1G(a) shall be provided with a teacher selected based on demonstrated student outcomes in reading proficiency and placed in an accelerated reading class or a transitional third and fourth grade class combination, as appropriate. Classroom instruction shall include at least 90 minutes of daily, uninterrupted, evidence-based reading instruction, not to include independent reading time, and other appropriate instructional supports and services and reading interventions.

(c) The State Board of Education shall establish a midyear promotion policy for any student retained under G.S. 115C-83.1G(a) who, by November 1, demonstrates reading proficiency through administration of the alternative assessment of reading comprehension, or student reading portfolio review.

(d) Parents or guardians of students who have been retained once under the provisions of G.S. 115C-83.1G(a) shall be provided with a plan for reading at home, including participation in shared and guided reading workshops for the parent or guardian, and outlined in a parental or guardian contract.

(e) Parents or guardians of students who have been retained twice under the provisions of G.S. 115C-83.1G(a) shall be offered supplemental tutoring for the retained student in evidence-based reading services outside the instructional day.

"**§ 115C-83.1I. Notification requirements to parents and guardians.**

(a) Parents or guardians shall be notified in writing, and in a timely manner, that the student shall be retained, unless he or she is exempt from mandatory retention for good cause, if the student is not demonstrating reading proficiency by the end of third grade. Parents or guardians shall receive this notice when a kindergarten, first, second or third grade student (i) is demonstrating difficulty with reading development; (ii) is not reading at grade level; or (iii) has a personal education plan under G.S. 115C-105.41.

(b) Parents or guardians of any student who is to be retained under the provisions of G.S. 115C-83.1G(a) shall be notified in writing of the reason the student is not eligible for a good cause exemption as provided in G.S. 115C-83.1G(b). Written notification shall also include a description of proposed reading interventions that will be provided to the student to remediate identified areas of reading deficiency.

(c) Parents or guardians of students retained under G.S. 115C-83.1G(a) shall receive at least monthly written reports on student progress towards reading proficiency. The evaluation of the student's progress shall be based upon the student's classroom work, observations, tests, assessments, and other relevant information.

(d) Teachers and principals shall provide opportunities to discuss with parents and guardians the notifications listed in this section.

"**§ 115C-83.1J. Accountability measures.**

(a) Each local board of education shall publish annually on a Web site maintained by that local school administrative unit and report in writing to the State Board of Education by September 1 of each year the following information on the prior school year:

(1) The number and percentage of third grade students demonstrating and not demonstrating reading proficiency on the State-approved standardized test of reading comprehension administered to third grade students.

(2) The number and percentage of third grade students who take and pass the alternative assessment of reading comprehension.

(3) The number and percentage of third grade students retained for not demonstrating reading proficiency.

(4) The number and percentage of third grade students exempt from mandatory third grade retention by category of exemption as listed in G.S. 115C-83.1G(b).

(b) Each local board of education shall report annually in writing to the State Board of Education by September 1 of each year a description of all reading interventions provided to students who have been retained under G.S. 115C-83.1G(a).

(c) The State Board of Education shall establish a uniform format for local boards of education to report the required information listed in subsections (a) and (b) of this section and shall provide the format to local boards of education no later than 90 days prior to the annual due date. The State Board of Education shall compile annually this information and submit a State-level summary to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Education Oversight Committee by October 1 of each year, beginning with the 2014-2015 school year.

(d) The State Board of Education and the Department of Public Instruction shall provide technical assistance as needed to aid local school administrative units to implement all provisions of this Part."

SECTION 1.(c) G.S. 115C-105.27(b)(1a) is repealed.

SECTION 1.(d) G.S. 115C-105.41 reads as rewritten:

"**§ 115C-105.41. Students who have been placed at risk of academic failure; personal education plans.**

In order to implement Part 1A of Article 8 of this Chapter, ~~Local~~ local school administrative units shall identify students who are at risk for academic failure and who are not successfully progressing toward grade promotion and graduation, beginning ~~no later than the fourth grade~~ in kindergarten. Identification shall occur as early as can reasonably be done and can be based on grades, observations, diagnostic and formative assessments, State assessments, and other factors, including reading on grade level, that impact student performance that teachers and administrators consider appropriate, without having to await the results of end-of-grade or end-of-course tests. No later than the end of the first quarter, or after a teacher has had up to nine weeks of instructional time with a student, a personal education plan for academic improvement with focused intervention and performance benchmarks shall be developed or updated for any student at risk of academic failure who is not performing at least at grade level, as identified by the State end-of-grade test and other factors noted above. Focused instructional supports and services, reading ~~intervention~~ interventions and accelerated activities should include ~~research-based best~~ evidence-based practices that meet the needs of students and may include coaching, mentoring, tutoring, summer school, Saturday school, and extended days. Local school administrative units shall provide these activities free of charge to students. Local school administrative units shall also provide transportation free of charge to all students for whom transportation is necessary for participation in these activities.

Local school administrative units shall give notice of the personal education plan and a copy of the personal education plan to the student's parent or guardian. Parents should be included in the implementation and ongoing review of personal education plans.

Local school administrative units shall certify that they have complied with this section annually to the State Board of Education. The State Board of Education shall periodically review data on the progress of identified students and report to the Joint Legislative Education Oversight Committee.

No cause of action for monetary damages shall arise from the failure to provide or implement a personal education plan under this section."

SECTION 1.(e) G.S. 115C-174.11(a) reads as rewritten:

"(a) Assessment Instruments for ~~First and Second Grades.~~Kindergarten, First, Second, and Third Grades. – The State Board of Education shall ~~adopt~~develop, adopt, and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program and Part 1A of Article 8 of this Chapter for the ~~first and second grades, rather than standardized tests.~~ kindergarten, first, second, and third grades. Local school administrative units ~~may~~ shall use these assessment instruments provided to them by the State Board for ~~first and second grade students,~~ kindergarten, first, second, and third grade students to assess progress, diagnose difficulties, and to inform instruction and remediation needs. ~~and~~ Local school administrative units shall not use standardized tests for summative assessment of kindergarten, first, and second grade students except as required as a condition of receiving federal grants."

SECTION 1.(f) G.S. 115C-238.29F is amended by adding a new subsection to read:

"(d1) Reading Proficiency and Student Promotion. –

(1) Students in the third grade shall be retained if the student fails to demonstrate reading proficiency by reading at or above the third grade level as demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students. The charter school shall provide reading interventions to retained students to remediate reading deficiency, which may include 90 minutes of daily, uninterrupted, evidence-based reading instruction, accelerated reading classes, transition classes containing third and fourth grade students, and summer reading camps.

(2) Students may be exempt from mandatory retention in third grade for good cause but shall continue to receive instructional supports and services and reading interventions appropriate for their age and reading level. Good cause exemptions shall be limited to the following:

a. Limited English Proficient students with less than two years of instruction in an English as a Second Language program.

b. Students with disabilities, as defined in G.S. 115C-106.3(1), whose individualized education program indicates the use of alternative assessments and reading interventions.

c. Students who demonstrate reading proficiency appropriate for third grade students on an alternative assessment of reading comprehension. The charter school shall notify the State Board of Education of the alternative assessment used to demonstrate reading proficiency.

d. Students who demonstrate, through a student reading portfolio, reading proficiency appropriate for third grade students.

e. Students who have (i) received reading intervention and (ii) previously been retained more than once in kindergarten, first, second, or third grades.

(3) The charter school shall provide notice to parents and guardians when a student is not reading at grade level. The notice shall state that if the

student's reading deficiency is not remediated by the end of third grade, the student shall be retained unless he or she is exempt from mandatory retention for good cause. Notice shall also be provided to parents and guardians of any student who is to be retained under this subsection of the reason the student is not eligible for a good cause exemption, as well as a description of proposed reading interventions that will be provided to the student to remediate identified areas of reading deficiency.

(4) The charter school shall annually publish on the charter school's Web site and report in writing to the State Board of Education by September 1 of each year the following information on the prior school year:

a. The number and percentage of third grade students demonstrating and not demonstrating reading proficiency on the State-approved standardized test of reading comprehension administered to third grade students.

b. The number and percentage of third grade students not demonstrating reading proficiency and who do not return to the charter school for the following school year.

c. The number and percentage of third grade students who take and pass the alternative assessment of reading comprehension.

d. The number and percentage of third grade students retained for not demonstrating reading proficiency.

e. The number and percentage of third grade students exempt from mandatory third grade retention by category of exemption as listed in subdivision (2) of this subsection."

SECTION 1.(g) G.S. 115C-288(a) reads as rewritten:

"(a) To Grade and Classify Pupils. – The principal shall have authority to grade and classify ~~pupils~~pupils, except as provided in G.S. 115C-83.1G(a). In determining the appropriate grade for a pupil who is already attending a public school, the principal shall consider the pupil's classroom work and grades, the pupil's scores on standardized tests, and the best educational interests of the pupil. The principal shall not make the decision solely on the basis of standardized test scores. If a principal's decision to retain a child in the same grade is partially based on the pupil's scores on standardized tests, those test scores shall be verified as accurate.

A principal shall not require additional testing of a student entering a public school from a school governed under Article 39 of this Chapter if test scores from a nationally standardized test or nationally standardized equivalent measure that are adequate to determine the appropriate placement of the child are available."

SECTION 1.(h) G.S. 130A-440(b) reads as rewritten:

"(b) A health assessment shall include a medical history and physical examination with screening for vision and hearing and, if appropriate, testing for anemia and tuberculosis. Vision screening shall be conducted in accordance with G.S. 130A-440.1. The health assessment may also include dental screening and developmental screening for cognition, language, and motor function. The developmental screening of cognition and language abilities may be conducted in accordance with G.S. 115C-83.1E(a)."

SECTION 1.(i) There is appropriated from the General Fund to the Department of Public Instruction the sum of thirty-three million nine hundred fourteen thousand five hundred three dollars ($33,914,503) for the 2012-2013 fiscal year to implement the requirements of this section. It is the intent of the General Assembly to increase this appropriation for the 2013-2014 fiscal year to implement additional requirements in that fiscal year.

SECTION 1.(j) This section is effective when it becomes law and applies beginning with the 2013-2014 school year. The developmental screening and kindergarten

entry assessment required by this section shall be administered beginning with the 2014-2015 school year

PART II. STATE EMPLOYEE LITERACY VOLUNTEER LEAVE TIME

SECTION 2.(a) G.S. 126-4 reads as rewritten:

"**§ 126-4. Powers and duties of State Personnel Commission.**

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

...

(5b) A leave program that allows employees to volunteer in a literacy program in a public school for up to five hours each month.

...."

SECTION 2.(b) This section is effective when it becomes law.

PART III. SCHOOL PERFORMANCE GRADES

SECTION 3.(a) G.S. 115C-12(9)c1. reads as rewritten:

"c1. To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance. As a part of the annual "report card" for each local school administrative unit, the State Board shall award an overall numerical school performance score on a scale of zero to 100 and a corresponding letter grade of A, B, C, D, or F earned by each school within the local school administrative unit. The school performance score and grade shall reflect student performance on annual subject-specific assessments, college and workplace readiness measures, and graduation rates. For schools serving students in any grade from kindergarten to eighth grade, separate performance scores and grades shall also be awarded based on the school performance in reading and mathematics respectively. The annual "report card" for schools serving students in third grade also shall include the number and percentage of third grade students who (i) take and pass the alternative assessment of reading comprehension; (ii) were retained in third grade for not demonstrating reading proficiency as indicated in G.S. 115C-83.1G(a); and (iii) were exempt from mandatory third grade retention by category of exemption as listed in G.S. 115C-83.1G(b)."

SECTION 3.(b) G.S. 115C-47(58) reads as rewritten:

"(58) To Inform the Public About the North Carolina School Report Cards Issued by the State Board of Education. – Each local board of education shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or ~~otherwise.~~is otherwise provided to the public. Each local board of education shall ensure that the overall school performance score and grade earned by each school in the local school administrative unit for the current and previous four school years is prominently displayed on the Web site of the local school

administrative unit. If any school in the local school administrative unit is awarded a grade of D or F, the local board of education shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 3.(c) G.S. 115C-238.29F is amended by adding a new subsection to read:

"(l) North Carolina School Report Cards. – A charter school shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or is otherwise provided to the public. A charter school shall ensure that the overall school performance score and grade earned by the charter school for the current and previous four school years is prominently displayed on the school Web site. If a charter school is awarded a grade of D or F, the charter school shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 3.(d) G.S. 115C-238.66 is amended by adding a new subdivision to read:

"(11) North Carolina School Report Cards. – A regional school shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or is otherwise provided to the public. A regional school shall ensure that the overall school performance score and grade earned by the regional school for the current and previous four school years is prominently displayed on the school Web site. If a regional school is awarded a grade of D or F, the regional school shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 3.(e) The State Board of Education shall award school performance scores and grades as required by G.S. 115C-12(9)c1. as follows:

(1) The State Board of Education shall calculate school performance scores by totaling the sum of points earned by the school and converting the sum of points to a 100-point scale. Subsections (2) and (3) of this section provide the school performance elements for schools serving students in kindergarten through eighth grade. Subsection (4) of this section provides the school performance elements for schools serving grades nine through twelve. The school performance score shall be used to determine the school performance grade based on the following scale:
   a. At least 90 performance grade points for an overall school performance grade of A.
   b. At least 80 performance grade points for an overall school performance grade of B.
   c. At least 70 performance grade points for an overall school performance grade of C.
   d. At least 60 performance grade points for an overall school performance grade of D.
   e. A school that accumulates less than 60 points shall be assigned an overall school performance grade of F.

(2) For schools serving students in kindergarten through eighth grade the overall school performance score shall be calculated based on the sum of three school performance elements.
   a. The score shall be calculated as follows:
      1. One point for each percent of students who score at or above proficient on annual assessments for mathematics in grades three through eight.

2. One point for each percent of students who score at or above proficient on annual assessments for reading in grades three through eight.
3. One point for each percent of students who score at or above proficient on annual assessments for science in grades five and eight.

(3) For schools serving students in kindergarten through eighth grade, the school performance scores in reading and mathematics, respectively, shall be earned as follows:
a. The literacy school performance score shall be based on the percent of students who score at or above proficient on annual assessments for reading assessments in grades three through eight.
b. The mathematics school performance score shall be based on the percent of students who score at or above proficient on annual assessments for mathematics in grades three through eight.

(4) The school performance score earned by schools serving students in ninth through twelfth grades shall be calculated based on the sum of seven school performance elements.
a. The score shall be calculated as follows:
1. One point for each percent of students who score at or above proficient on annual assessments for mathematics.
2. One point for each percent of students who score at or above proficient on annual assessments for English.
3. One point for each percent of students who score at or above proficient on annual assessments for biology.
4. One point for each percent of students who complete a higher-level mathematics class with a passing grade.
5. One point for each percent of students who score at or above a level demonstrating college readiness on a nationally normed test of college readiness.
6. One point for each percent of students who graduate within four years of entering high school.
7. One point for each percent of students who demonstrate workplace readiness on a nationally normed test of workplace readiness.

(5) In calculating the overall school performance score earned by schools, the State Board of Education shall proportionally adjust the scale to account for the absence of a school performance element for award of scores to a school that does not have a measure of one of the school performance elements annually assessed for the grades taught at that school.

(6) The State Board of Education shall report to the Joint Legislative Education Oversight Committee annually by January 15 on recommended adjustments to the school performance grade elements and scales for award of scores and grades.

SECTION 3.(f) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

PART IV. MAXIMIZE INSTRUCTIONAL TIME

SECTION 4.(a) G.S. 115C-174.12(a) reads as rewritten:

"(a) The State Board of Education shall establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing

programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. These policies and guidelines shall include the following:

(1) Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning;

(2) Students in a school shall not be subject to field tests or national tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams; and

(3) No school shall participate in more than two field tests at any one grade level during a school ~~year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.~~year.

(4) All annual assessments of student achievement adopted by the State Board of Education pursuant to G.S. 115C-174.11(c)(1) and (3) and all final exams for courses shall be administered within the final 10 instructional days of the school year for year-long courses and within the final five instructional days of the semester for semester courses. Exceptions shall be permitted to accommodate a student's individualized education program and section 504 (29 U.S.C. § 794) plans, and for the administration of final exams for courses with national or international curriculums required to be held at designated times.

These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of ~~children~~ students with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a ~~child's~~ student's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit the use of statewide tests as the sole determinant of decisions about a ~~child's~~student's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article."

SECTION 4.(b) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

PART V. ADJUSTMENTS TO SCHOOL CALENDAR

SECTION 5.(a) G.S. 115C-84.2 reads as rewritten:

"**§ 115C-84.2. School calendar.**

(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of 185 days ~~and~~ or 1,025 hours of instruction covering at least nine calendar months. The local board shall designate when the ~~185~~ instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count

towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

...

(4a) Three days, as designated by the local board, for use as teacher workdays. These days shall be protected to allow teachers to complete instructional and classroom administrative duties. The local school administrative unit shall not impose any additional tasks on these days. The local board shall schedule at least one of these days at the beginning of the school year and at least one at the end of the school year.

(5) The remaining days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes. Before consulting with the local board, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled. Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. In order to make up days for school closing because of inclement weather, the local board may designate any of the days in this subdivision as additional make-up days to be scheduled after the last day of student attendance.

~~If the State Board of Education finds that it will enhance student performance to do so, the State Board may grant a local board of education a waiver to use up to five of the instructional days required by subdivision (1) of this subsection as teacher workdays. For each instructional day waived, the State Board shall waive an equivalent number of instructional hours.~~

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards shall designate at least two days scheduled under subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave. Local boards may designate the remaining days scheduled in subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave, but local boards shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on any of these days. A teacher may elect to waive this notice requirement for one or more of these days.

...

(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall ~~not be before August 25,~~be no earlier than the Monday closest to August 26, and the closing date for students shall ~~not be after June 10.~~be no later than the Friday closest to June 11. On a showing of good cause, the State Board of Education may waive ~~this requirement~~ the requirement that the opening date for students be no earlier than the Monday closest to August 26 and may allow the local board of education to set an opening date no earlier than the Monday closest to August 19, to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means ~~either that:~~that schools in any local school administrative unit in a county have been closed eight days per year during any four of

the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

~~(1) Schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations; or~~

~~(2) Schools in any local school administrative unit in a county have been closed for all or part of eight days per year during any four of the last 10 years because of severe weather conditions. For purposes of this subdivision, a school shall be deemed to be closed for part of a day if it is closed for two or more hours.~~

~~The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.~~

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar.

...."

SECTION 5.(b) G.S. 115C-238.29F(d)(1) reads as rewritten:

"(1) The school shall provide instruction each year for at least 185 ~~days.~~days or 1,025 hours over nine calendar months. ~~If the State Board of Education finds that it will enhance student performance to do so, the State Board may grant a charter school a waiver to use up to five of these instructional days as teacher workdays.~~"

SECTION 5.(c) G.S. 115C-238.53 is amended by adding a new subsection to read:

"(g) The requirements of G.S. 115C-84.2 shall not apply to a program approved under this Part, however, the program shall provide instruction each year for at least 185 days or 1,025 hours over nine calendar months."

SECTION 5.(d) G.S. 115C-238.66(1)d. reads as rewritten:

"d. The board of directors shall adopt a school calendar consisting of a minimum of 185 days or 1,025 hours of instruction covering at least nine calendar months."

SECTION 5.(e) This section is effective when it becomes law and applies beginning with the 2013-2014 school year.

PART VI. FUNDING FOR THE ADDITION OF FIVE INSTRUCTIONAL DAYS WITHIN THE EXISTING SCHOOL CALENDAR

SECTION 6.(a) To fully provide for the expansion of five additional instructional days in accordance with S.L. 2011-145, Section 7.29 for those days for which a local school administrative unit has not requested and received a waiver from the State Board of Education for the 2012-2013 school year:

(1) There is appropriated from the General Fund to the Department of Public Instruction the sum of forty thousand one hundred sixty-eight dollars ($40,168) for the 2012-2013 fiscal year to increase the amount appropriated for the noninstructional support personnel allotment.

(2) There is appropriated from the General Fund to the Department of Public Instruction the sum of three hundred fifty-one thousand four hundred sixty-nine dollars ($351,469) for the 2012-2013 fiscal year to increase the amount appropriated for the transportation allotment.

SECTION 6.(b) This section becomes effective July 1, 2012.

PART VII. ESTABLISH NC TEACHER CORPS

SECTION 7.(a) Article 20 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-296.7. North Carolina Teacher Corps.**

(a) There is established the North Carolina Teacher Corps (NC Teacher Corps) to recruit and place recent graduates of colleges and universities and mid-career professionals as teachers in high needs public schools.

(b) The State Board of Education, in consultation with the Board of Governors of The University of North Carolina and the North Carolina Independent Colleges and Universities, shall develop and administer the NC Teacher Corps. In the development of the NC Teacher Corps, the State Board of Education shall consider examples of other successful teacher recruitment models used nationally and in other states.

(c) Applications shall be received annually for admission to the NC Teacher Corps. The State Board of Education shall establish application criteria, including, at a minimum, an award of a bachelor's degree from an accredited college or university. The State Board of Education may establish a committee to annually evaluate and select candidates for admission to the NC Teacher Corps.

(d) The State Board of Education shall identify local school administrative units with unmet recruitment needs and high needs schools and shall coordinate placement of NC Teacher Corps members in those schools.

(e) The State Board of Education, in coordination with the Board of Governors, shall develop an intensive summer training institute for NC Teacher Corps members to provide coursework and training on essential teaching frameworks, curricula, and lesson planning skills, as well as identification and education of students with disabilities, positive management of student behavior, effective communication for defusing and deescalating disruptive and dangerous behavior, and safe and appropriate use of seclusion and restraint. The intensive summer training institute also shall address identification of difficulty with reading development and of reading deficiencies, and the provision of reading instruction, intervention, and remediation strategies.

(f) The State Board of Education, in coordination with the Board of Governors, shall provide ongoing support to NC Teaching Corps members through coaching, mentoring, and continued professional development.

(g) NC Teaching Corps members shall be granted lateral entry teaching licenses pursuant to G.S. 115C-296(c)."

SECTION 7.(b) This section is effective when it becomes law. The State Board of Education shall recruit and place an initial cohort of NC Teacher Corps members no later than the 2012-2013 school year.

PART VIII. STRENGTHEN TEACHER LICENSURE

SECTION 8.(a) G.S. 115C-296 reads as rewritten:

"§ 115C-296. Board sets licensure requirements; reports; lateral entry and mentor programs.

(a) The State Board of Education shall have entire control of licensing all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all licenses and shall determine and fix the salary for each grade and type of license which it authorizes.

The State Board of Education may require an applicant for an initial bachelors degree certificate or graduate degree certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose. Elementary Education (K-6) teachers shall also achieve a prescribed minimum score on subtests or standard examinations specific to teaching reading and mathematics. The State Board of Education shall permit an applicant to fulfill any such testing requirement before or during the applicant's second year of teaching provided the applicant took the examination at least once during the first year of teaching. The State Board of Education shall make any required standard initial licensure exam ~~sufficiently~~ rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has ~~adequate~~ received high quality academic and professional preparation to ~~teach.~~teach effectively.

...

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel licensed in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several licensure requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The licensure program shall provide for initial licensure after completion of preservice training, continuing licensure after three years of teaching experience, and license renewal every five years thereafter, until the retirement of the teacher. The last license renewal received prior to retirement shall remain in effect for five years after retirement. The licensure program shall also provide for lifetime licensure after 50 years of teaching.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall evaluate and modify, as necessary, the academic requirements for students preparing to teach science in middle and high schools to ensure that there is adequate preparation in issues related to science laboratory safety.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing licensure. The new requirements shall reflect more rigorous standards for continuing licensure and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement. Standards for continuing licensure shall include at least three continuing education credits related to literacy for elementary and middle school teachers. Literacy renewal credits shall include assessment, diagnosis, and intervention strategies for students not demonstrating reading proficiency. Oral language, phonemic and phonological awareness, phonics, vocabulary, fluency, and comprehension shall be addressed in literacy-related activities leading to certification renewal for elementary school teachers.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher licenses. The State Board shall consider modifications in the license renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. ~~The State Board shall adopt new standards for the renewal of teacher licenses by May 15, 1998.~~

The standards for approval of institutions of teacher education shall require that teacher education programs for all students include demonstrated competencies in (i) the identification and education of children with disabilities and (ii) positive management of student behavior and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. The standards for approval of institutions of teacher education shall require that elementary teacher education programs include demonstrated competencies in (i) teaching of reading, including a substantive understanding of reading as a process involving oral language, phonological and phonemic awareness, phonics, fluency, vocabulary, and comprehension; (ii) evidence-based assessment and diagnosis of specific areas of difficulty with reading development and of reading deficiencies; and (iii) appropriate application of instructional supports and services and reading interventions to ensure reading proficiency for all students. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

...

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Beginning with the 2006-2007 school year, the criteria and procedures shall include preservice training in (i) the identification and education of children with disabilities and (ii) positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. Skilled individuals who choose to enter the profession of teaching laterally may be granted a ~~provisional~~lateral entry teaching license for no more than three years and shall be required to obtain licensure before contracting for a fourth year of service with any local administrative unit in this State.

...."

SECTION 8.(b) This section is effective when it becomes law and applies beginning with the 2013-2014 school year.

PART IX. PROOF OF STATE-FUNDED LIABILITY INSURANCE

SECTION 9.(a) G.S. 115C-12 reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(9) Miscellaneous Powers and Duties. – All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution

and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

...

f. To annually notify public school employees of the availability and coverage of professional liability insurance.

...."

SECTION 9.(b) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

PART X. PAY FOR EXCELLENCE

SECTION 10.(a) Each local board of education shall develop a plan of performance pay for all licensed personnel employed by the local board. Under the performance pay plan, licensed employees should be eligible to receive bonuses or adjustments to base salary for meeting certain performance criteria. Criteria for award of bonuses or adjustments to base salary should include, but are not limited to, the following factors:

(1) Annual growth in student achievement of students assigned to a teacher's classroom, when applicable.

(2) Annual growth in student achievement of students assigned to a specific school.

(3) Assignment of additional academic responsibilities.

(4) Assignment to a hard-to-staff school.

(5) Assignment to a hard-to-staff subject area.

Local boards of education shall submit plans to the State Board of Education no later than March 1, 2013. The State Board of Education shall report on these plans and the achievement-based compensation models developed as part of the federal Race to the Top grant and shall submit the report and all plans to the Fiscal Research Division, the Joint Legislative Commission on Governmental Operations, and the respective Subcommittees on Education Appropriations of the Senate and House of Representatives no later than April 15, 2013. Members of the public may also submit plans for performance pay no later than April 15, 2013, to the Fiscal Research Division, the Joint Legislative Commission on Governmental Operations, and the respective Subcommittees on Education Appropriations of the Senate and House of Representatives.

SECTION 10.(b) This section is effective when it becomes law.

PART XI. CLARIFY NC PRE-K PROGRAM ELIGIBILITY

SECTION 11.(a) Section 10.7(f) of S.L. 2011-145 reads as rewritten:

"**SECTION 10.7.(f)** ~~The prekindergarten program may continue to serve at-risk children identified through the existing "child find" methods in which at-risk children are currently served within the Division of Child Development. The Division of Child Development shall serve at-risk children regardless of income. However, the total number of at-risk children served shall constitute no more than twenty percent (20%) of the four-year-olds served within the prekindergarten program. Any~~ The Division of Child Development and Early Education shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors. Furthermore, any age-eligible child who is a child of either of the following shall be eligible for the program: (i) an active duty member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was ordered to active duty by the proper authority within the last 18 months or is expected to be ordered within the next 18 months or (ii) a member of the Armed Forces of the United States, including the North Carolina National

Guard, State military forces, or a reserve component of the Armed Forces, who was injured or killed while serving on active duty. Eligibility determinations for prekindergarten participants may continue through local education agencies and local North Carolina Partnership for Children, Inc., partnerships."

SECTION 11.(b) Section 10.7(h) of S.L. 2011-145 is repealed.

SECTION 11.(c) There is appropriated from the General Fund to the Department of Health and Human Services, Division of Child Development and Early Education, the sum of eleven million three hundred eight thousand three hundred sixty-three dollars ($11,308,363) for the 2012-2013 fiscal year to add 2,261 slots to be used in the NC Pre-K program.

SECTION 11.(d) This section is effective when it becomes law.

PART XII. REPEAL PROHIBITION ON TEACHER PREPAYMENT

SECTION 12.(a) Section 5 of S.L. 2011-379 is repealed.

SECTION 12.(b) This section becomes effective July 1, 2012.

PART XIII. TAX DEDUCTION FOR EDUCATIONAL SUPPLIES

SECTION 13.(a) G.S. 105-134.6(d) is amended by adding a new subdivision to read:

"(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

...

(9) To the extent a deduction has not been claimed for educator expenses in determining federal adjusted gross income, an eligible educator may deduct an amount not to exceed two hundred fifty dollars ($250.00) paid or incurred in connection with items listed in this subdivision. For purposes of this subdivision, the term "eligible educator" has the same meaning as defined in section 62 of the Code, as it existed on December 31, 2011. In the case of a married couple filing a joint return where both spouses are eligible educators, the maximum dollar amount is five hundred dollars ($500.00).

a. Books.

b. Supplies, other than nonathletic supplies for courses of instruction in health or physical education.

c. Computer equipment, including related software and services.

d. Supplementary materials used by the eligible educator in the classroom."

SECTION 13.(b) This section becomes effective for taxable years beginning on or after January 1, 2012.

PART XIV. TEACHER CONTRACTS

SECTION 14.(a) G.S. 115C-325 is repealed.

SECTION 14.(b) Part 3 of Article 22 of Chapter 115C of the General Statutes is amended by adding new sections to read:

"**§ 115C-325.1. Definitions.**

As used in this Part, the following definitions apply:

(1) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.

(2) "Demote" means to reduce the salary of a person who is classified or paid by the State Board of Education as a classroom teacher or as a school administrator. The word "demote" does not include (i) a suspension without pay pursuant to G.S. 115C-325.5(a); (ii) the elimination or reduction of bonus payments, including merit-based supplements, or a systemwide

modification in the amount of any applicable local supplement; or (iii) any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.

(3) "Disciplinary suspension" means a final decision to suspend a teacher or school administrator without pay for no more than 60 days under G.S. 115C-325.5(b).

(4) "School administrator" means a principal, assistant principal, supervisor, or director whose major function includes the direct or indirect supervision of teaching or any other part of the instructional program as provided in G.S. 115C-287.1(a)(3).

(5) "Teacher" means a person meeting each of the following requirements:

a. Who holds at least one of the following licenses issued by the State Board of Education:

1. A current standard professional educator's license.

2. A current lateral entry teaching license.

3. A regular, not expired, vocational license.

b. Whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid either as a classroom teacher or instructional support personnel.

c. Who is employed to fill a full-time, permanent position.

"**§ 115C-325.2. Personnel files.**

(a) Maintenance of Personnel File. – The superintendent shall maintain in his or her office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from the teacher's personnel file that the teacher deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

(b) Inspection of Personnel Files. – The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before the teacher's employment by the board may be kept in a file separate from the teacher's personnel file and need not be made available to the teacher. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher, except the data may be used to substantiate G.S. 115C-325.4(a)(7) or G.S. 115C-325.4(a)(14) as grounds for dismissal or demotion.

"**§ 115C-325.3. Teacher contracts.**

(a) Length of Contract. – A contract between the local board of education and a teacher who has been employed by the local board of education for less than three years shall be for a term of one school year. A contract or renewal of contract between the local board of education and a teacher who has been employed by the local board of education for three years or more shall be for a term of one, two, three, or four school years.

(b) Superintendent Recommendation to Local Board. – Local boards of education shall employ teachers upon the recommendation of the superintendent. If a superintendent intends to recommend to the local board of education that a teacher be offered a new or renewed contract,

the superintendent shall submit the recommendation to the local board for action and shall include in the recommendation the length of the term of contract. A superintendent shall only recommend a teacher for a contract of a term longer than one school year if the teacher has shown effectiveness as demonstrated on the teacher evaluation instrument. The local board may approve the superintendent's recommendation, may decide not to offer the teacher a new or renewed contract, or may decide to offer the teacher a renewed contract for a different term than recommended by the superintendent.

(c) Dismissal During Term of Contract. – A teacher shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure set forth in G.S. 115C-325.4.

(d) Recommendation on Nonrenewal. – If a superintendent decides not to recommend that the local board of education offer a renewed contract to a teacher, the superintendent shall give the teacher written notice of the decision no later than May 15.

(e) Right to Petition for Hearing. – A teacher shall have the right to petition the local board of education for a hearing no later than June 1. The local board may, in its discretion, grant a hearing regarding the superintendent's recommendation for nonrenewal. The local board of education shall notify the teacher making the petition of its decision whether to grant a hearing. If the request for a hearing is granted, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the teacher a renewed contract. The board shall notify a teacher whose contract will not be renewed for the next school year of its decision by June 15; provided, however, if a teacher submits a request for a hearing, the board shall provide the nonrenewal notification by July 1 or such later date upon the written consent of the superintendent and teacher. A decision not to offer a teacher a renewed contract shall not be on any basis prohibited by State or federal law.

(f) Local boards of education and teachers employed by the local board may mutually modify the terms of the contract to permit part-time employment.

"**§ 115C-325.4. Dismissal or demotion for cause.**

(a) Grounds. – No teacher shall be dismissed or demoted or reduced to employment on a part-time basis for disciplinary reasons during the term of the contract except for one or more of the following:

(1) Inadequate performance. In determining whether the professional performance of a teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Inadequate performance for a teacher shall mean (i) the failure to perform at a proficient level on any standard of the evaluation instrument or (ii) otherwise performing in a manner that is below standard.

(2) Immorality.

(3) Insubordination.

(4) Neglect of duty.

(5) Physical or mental incapacity.

(6) Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.

(7) Conviction of a felony or a crime involving moral turpitude.

(8) Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.

(9) Failure to fulfill the duties and responsibilities imposed upon teachers or school administrators by the General Statutes of this State.

(10) Failure to comply with such reasonable requirements as the board may prescribe.

(11) Any cause which constitutes grounds for the revocation of the teacher's teaching license or the school administrator's administrator license.

(12) Failure to maintain his or her license in a current status.

(13) Failure to repay money owed to the State in accordance with the provisions of Article 60 of Chapter 143 of the General Statutes.

(14) Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.

(b) Dismissal Procedure. – The procedures provided in G.S. 115C-325.6 shall be followed for dismissals, demotions, or reductions to part-time employment for disciplinary reasons for any reason specified in subsection (a) of this section.

"**§ 115C-325.5. Teacher suspension.**

(a) Immediate Suspension Without Pay. – If a superintendent believes that cause exists for dismissing a teacher for any reason specified in G.S. 115C-325.4 and that immediate suspension of the teacher is necessary, the superintendent may suspend the teacher without pay. Before suspending a teacher without pay, the superintendent shall meet with the teacher and give him or her written notice of the charges against the teacher, an explanation of the basis for the charges, and an opportunity to respond. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal, demotion, or disciplinary suspension without pay as provided in this section. If it is finally determined that no grounds for dismissal, demotion, or disciplinary suspension without pay exist, the teacher shall be reinstated immediately, shall be paid for the period of suspension, and all records of the suspension shall be removed from the teacher's personnel file.

(b) Disciplinary Suspension Without Pay. – A teacher recommended for disciplinary suspension without pay may request a hearing before the board. If no request is made within 15 days, the superintendent may file his or her recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension.

(1) Board hearing for disciplinary suspensions for more than 10 days or for certain types of intentional misconduct. – The procedures for a board hearing under G.S. 115C-325.8 shall apply if any of the following circumstances exist:

a. The recommended disciplinary suspension without pay is for more than 10 days; or

b. The disciplinary suspension is for intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the teacher's or school administrator's license, or providing false information.

(2) Board hearing for disciplinary suspensions of no more than 10 days. – The procedures for a board hearing under G.S. 115C-325.7 shall apply to all disciplinary suspensions of no more than 10 days that are not for intentional misconduct as specified in G.S. 115C-325.5(b)(1).

(c) Suspension with Pay. – If a superintendent believes that cause may exist for dismissing or demoting a teacher for any reasons specified in G.S. 115C-325.4 but that additional investigation of the facts is necessary and circumstances are such that the teacher should be removed immediately from the teacher's duties, the superintendent may suspend the teacher with pay for a reasonable period of time, not to exceed 90 days. The superintendent

shall notify the board of education within two days of the superintendent's action and shall notify the teacher within two days of the action and the reasons for it. If the superintendent has not initiated dismissal or demotion proceedings against the teacher within the 90-day period, the teacher shall be reinstated to the teacher's duties immediately and all records of the suspension with pay shall be removed from the teacher's personnel file at the teacher's request. However, if the superintendent and the teacher agree to extend the 90-day period, the superintendent may initiate dismissal or demotion proceedings against the teacher at any time during the period of the extension.

"**§ 115C-325.6. Procedure for dismissal or demotion of a teacher for cause.**

(a) Recommendation of Dismissal or Demotion. – A teacher may not be dismissed, demoted, or reduced to part-time employment for disciplinary reasons during the term of the contract except upon the superintendent's recommendation based on one or more of the grounds in G.S. 115C-325.4.

(b) Notice of Recommendation. – Before recommending to a board the dismissal or demotion of a teacher, the superintendent shall give written notice to the teacher by certified mail or personal delivery of the superintendent's intention to make such recommendation and shall set forth as part of the superintendent's recommendation the grounds upon which he or she believes such dismissal or demotion is justified. The superintendent also shall meet with the teacher and provide written notice of the charges against the teacher, an explanation of the basis for the charges, and an opportunity to respond if the teacher has not done so under G.S. 115C-325.5(a). The notice shall include a statement to the effect that the teacher, within 14 days after the date of receipt of the notice, may request a hearing before the board on the superintendent's recommendation. A copy of Part 3 of Article 22 of Chapter 115C shall also be sent to the teacher.

(c) Request for Hearing. – Within 14 days after receipt of the notice of recommendation, the teacher may file with the superintendent a written request for a hearing before the board on the superintendent's recommendation. The superintendent shall submit his or her recommendation to the board. Within five days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and shall notify the teacher by certified mail or personal delivery of the date, time, and place of the hearing. The time specified shall not be less than 10 nor more than 30 days after the board has notified the teacher, unless both parties agree to an extension. The hearing shall be conducted as provided in G.S. 115C-325.7.

(d) No Request for Hearing. – If the teacher does not request a hearing before the board within the 14 days provided, the superintendent may submit his or her recommendation to the board. The board, if it sees fit, may by resolution (i) reject the superintendent's recommendation or (ii) accept or modify the superintendent's recommendation and dismiss, demote, reinstate, or suspend the teacher without pay.

"**§ 115C-325.7. Hearing before board.**

(a) Board Hearing. – The following procedures shall apply to a hearing conducted by the board:

(1) The hearing shall be private.

(2) The board shall receive the following:

a. Any documentary evidence the superintendent intends to use to support the recommendation. The superintendent shall provide the documentary evidence to the teacher seven days before the hearing.

b. Any documentary evidence the teacher intends to use to rebut the superintendent's recommendation. The teacher shall provide the superintendent with the documentary evidence three days before the hearing.

c. The superintendent's recommendation and the grounds for the recommendation.

(3) The superintendent and teacher may submit a written statement not less than three days before the hearing.

(4) The superintendent and teacher shall be permitted to make oral arguments to the board based on the record before the board.

(5) The board shall make findings of fact based upon a preponderance of the evidence.

(6) Within two days following the hearing, the board shall send a written copy of its findings and determination to the teacher and the superintendent.

(7) If the board elects to make a transcript, the teacher may request and shall receive at no charge a transcript of the proceedings. A teacher may have the hearing transcribed by a court reporter at the teacher's expense.

(b) The procedures of this section shall not apply to board hearings for disciplinary suspensions without pay. Board hearings for G.S. 115C-325.5(b), disciplinary suspensions without pay, shall be conducted as provided in G.S. 115C-325.8.

"**§ 115C-325.8. Board hearing for certain disciplinary suspensions.**

(a) The following procedures shall apply for a board hearing under G.S. 115C-325.5(b), disciplinary suspensions without pay:

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with reasonable rules adopted by the State Board of Education to govern such hearings.

(3) At the hearing, the teacher and the superintendent shall have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any competent testimony relevant to the issue of whether grounds exist for a disciplinary suspension without pay.

(4) Rules of evidence shall not apply to a hearing under this subsection and the board may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least eight days before the hearing, the superintendent shall provide to the teacher a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the superintendent intends to present.

(6) At least six days before the hearing, the teacher shall provide the superintendent a list of witnesses the teacher intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the teacher intends to present.

(7) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this section.

(8) The board may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for suspension without pay.

(9) The board shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.

(10) The superintendent shall provide for making a transcript of the hearing. The teacher may request and shall receive at no charge a transcript of the proceedings.

"**§ 115C-325.9. Teacher resignation.**

(a) Teacher Resignation Following Recommendation for Dismissal. – If a teacher has been recommended for dismissal under G.S. 115C-325.4 and the teacher chooses to resign without the written agreement of the superintendent, then:

(1) The superintendent shall report the matter to the State Board of Education.

(2) The teacher shall be deemed to have consented to (i) the placement in the teacher's personnel file of the written notice of the superintendent's intention to recommend dismissal and (ii) the release of the fact that the superintendent has reported this teacher to the State Board of Education to prospective employers, upon request. The provisions of G.S. 115C-321 shall not apply to the release of this particular information.

(3) The teacher shall be deemed to have voluntarily surrendered his or her license pending an investigation by the State Board of Education in a determination whether or not to seek action against the teacher's license. This license surrender shall not exceed 45 days from the date of resignation. Provided further that the cessation of the license surrender shall not prevent the State Board of Education from taking any further action it deems appropriate. The State Board of Education shall initiate investigation within five working days of the written notice from the superintendent and shall make a final decision as to whether to revoke or suspend the teacher's license within 45 days from the date of resignation.

(b) 30 Days' Notice Resignation Requirement. – A teacher who is not recommended for dismissal should not resign during the term of the contract without the consent of the superintendent unless he or she has given at least 30 days' notice. If a teacher who is not recommended for dismissal does resign during the term of the contract without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's license for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

"**§ 115C-325.10. Application to certain institutions.**

Notwithstanding any law or regulation to the contrary, this Part shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services, Public Instruction, Correction, or the Division of Juvenile Justice of the Department of Public Safety, regardless of the age of the students.

"**§ 115C-325.11. Dismissal of school administrators and teachers employed in low-performing residential schools.**

(a) Notwithstanding any other provision of this section or any other law, this section shall govern the dismissal by the State Board of Education of teachers, principals, assistant principals, directors, supervisors, and other licensed personnel assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team. The State Board shall dismiss a teacher, principal, assistant principal, director, supervisor, or other licensed personnel when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

(b) The State Board may dismiss a teacher, principal, assistant principal, director, supervisor, or other licensed personnel when:

(1) The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school.

(2) That assistance team makes the recommendation to dismiss the teacher, principal, assistant principal, director, supervisor, or other licensed personnel

for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion of a teacher.

Within 30 days of any dismissal under this subsection, a teacher, principal, assistant principal, director, supervisor, or other licensed personnel may request a hearing before a panel of three members designated by the State Board. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subsection. Decisions of the panel may be appealed on the record to the State Board.

(c) Notwithstanding any other provision of this section or any other law, this subsection shall govern the dismissal by the State Board of licensed staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed staff member.

Within 30 days of any dismissal under this subsection, a licensed staff member may request a hearing before a panel of three members designated by the State Board. The State Board shall adopt procedures to ensure that due process rights are afforded to licensed staff members recommended for dismissal under this subsection. Decisions of the panel may be appealed on the record to the State Board.

(d) The State Board or the superintendent of a residential school may terminate the contract of a school administrator dismissed under this section. Nothing in this section shall prevent the State Board from refusing to renew the contract of any person employed in a school identified as low-performing.

(e) Neither party to a school administrator or teacher contract is entitled to damages under this section.

(f) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section.

"**§ 115C-325.12. Procedure for dismissal of Principals employed in low-performing schools.**

(a) Dismissal of Principals Assigned to Low-Performing Schools With Assistance Teams. – Notwithstanding any other provision of this Part or any other law, this section governs the State Board's dismissal of principals assigned to low-performing schools to which the State Board has assigned an assistance team.

(b) Authority of State Board to Dismiss Principal. – The State Board through its designee may, at any time, recommend the dismissal of any principal who is assigned to a low-performing school to which an assistance team has been assigned. The State Board through its designee shall recommend the dismissal of any principal when the State Board receives from the assistance team assigned to that principal's school two consecutive evaluations that include written findings and recommendations regarding the principal's inadequate performance.

(c) Procedures for Dismissal of Principal. –

(1) If the State Board through its designee recommends the dismissal of a principal under this section, the principal shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed.

(2) The panel shall order the dismissal of the principal if it determines from available information, including the findings of the assistance team, that the low performance of the school is due to the principal's inadequate performance.

(3) The panel may order the dismissal of the principal if (i) it determines that the school has not made satisfactory improvement after the State Board assigned

an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the principal for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion of a teacher.

(4) If the State Board or its designee recommends the dismissal of a principal before the assistance team assigned to the principal's school has evaluated that principal, the panel may order the dismissal of the principal if the panel determines from other available information that the low performance of the school is due to the principal's inadequate performance.

(5) In all hearings under this section, the burden of proof is on the principal to establish that the factors leading to the school's low performance were not due to the principal's inadequate performance. In all hearings under this section, the burden of proof is on the State Board to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school and to establish one or more of the grounds established for dismissal or demotion of a teacher under G.S. 115C-325.4.

(6) In all hearings under this section, two consecutive evaluations that include written findings and recommendations regarding that principal's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the principal.

(7) The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this section. Decisions of the panel may be appealed on the record to the State Board.

(d) The State Board of Education or a local board may terminate the contract of a principal dismissed under this section.

(e) Neither party to a school administrator contract is entitled to damages under this section.

(f) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section.

"**§ 115C-325.13. Procedure for dismissal of teachers employed in low-performing schools.**

(a) Notwithstanding any other provision of this Part or any other law, this section shall govern the State Board's dismissal of teachers, assistant principals, directors, and supervisors assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a teacher, assistant principal, director, or supervisor when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher, assistant principal, director, or supervisor.

(b) The State Board may dismiss a teacher, assistant principal, director, or supervisor when:

(1) The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and

(2) That assistance team makes the recommendation to dismiss the teacher, assistant principal, director, or supervisor for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion for cause.

A teacher, assistant principal, director, or supervisor may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this section. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this section. Decisions of the panel may be appealed on the record to the State Board.

(c) Notwithstanding any other provision of this Part or any other law, this section shall govern the State Board's dismissal of licensed staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed staff member.

(d) A licensed staff member may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this section. The State Board shall adopt procedures to ensure that due process rights are afforded to licensed staff members recommended for dismissal under this section. Decisions of the panel may be appealed on the record to the State Board.

(e) The State Board of Education or a local board may terminate the contract of a teacher, assistant principal, director, or supervisor dismissed under this section.

(f) Neither party to a school administrator or teacher contract is entitled to damages under this section.

(g) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section."

SECTION 14.(c) G.S. 115C-45(c) reads as rewritten:

"(c) Appeals to Board of Education and to Superior Court. – An appeal shall lie to the local board of education from any final administrative decision in the following matters:

(1) The discipline of a student under G.S. 115C-390.7, 115C-390.10, or 115C-390.11;

(2) An alleged violation of a specified federal law, State law, State Board of Education policy, State rule, or local board policy, including policies regarding grade retention of students;

(3) The terms or conditions of employment or employment status of a school employee; and

(4) Any other decision that by statute specifically provides for a right of appeal to the local board of education and for which there is no other statutory appeal procedure.

As used in this subsection, the term "final administrative decision" means a decision of a school employee from which no further appeal to a school administrator is available.

Any person aggrieved by a decision not covered under subdivisions (1) through (4) of this subsection shall have the right to appeal to the superintendent and thereafter shall have the right to petition the local board of education for a hearing, and the local board may grant a hearing regarding any final decision of school personnel within the local school administrative unit. The local board of education shall notify the person making the petition of its decision whether to grant a hearing.

In all appeals to the board it is the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

The board of education may designate hearing panels composed of not less than two members of the board to hear and act upon such appeals in the name and on behalf of the board of education.

An appeal of right brought before a local board of education under subdivision (1), (2), ~~(3),~~ or (4) of this subsection may be further appealed to the superior court of the State on the grounds that the local board's decision is in violation of constitutional provisions, is in excess of the statutory authority or jurisdiction of the board, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence in view of the entire record as submitted, or is arbitrary or capricious. ~~However, the right of a noncertified employee to appeal decisions of a local board under subdivision (3) of this subsection shall only apply to decisions~~

~~concerning the dismissal, demotion, or suspension without pay of the noncertified employee. A noncertified employee may request and shall be entitled to receive written notice as to the reasons for the employee's dismissal, demotion, or suspension without pay. The notice shall be provided to the employee prior to any local board of education hearing on the issue. This subsection shall not alter the employment status of a noncertified employee.~~"

SECTION 14.(d) G.S. 115C-105.26(b)(2) reads as rewritten:

"(2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and ~~G.S. 115C-325,~~in Part 3 of Article 22 of this Chapter, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System."

SECTION 14.(e) G.S. 115C-105.37B(a)(2) reads as rewritten:

"(2) Restart model, in which the State Board of Education would authorize the local board of education to operate the school with the same exemptions from statutes and rules as a charter school authorized under Part 6A of Article 16 of this Chapter, or under the management of an educational management organization that has been selected through a rigorous review process. A school operated under this subdivision remains under the control of the local board of education, and employees assigned to the school are employees of the local school administrative unit with the protections provided by ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter."

SECTION 14.(f) G.S. 115C-105.38A(d) reads as rewritten:

"(d) Retesting; Dismissal. – Upon completion of the remediation plan required under subsection (c) of this section, the certified staff member shall take the general knowledge test a second time. If the certified staff member fails to acquire a passing score on the second test, the State Board shall begin a dismissal proceeding under ~~G.S. 115C-325(q)(2a).~~G.S. 115C-325.13."

SECTION 14.(g) G.S. 115C-105.38A(f) reads as rewritten:

"(f) Other Actions Not Precluded. – Nothing in this section shall be construed to restrict or postpone the following actions:

(1) The dismissal of a principal under ~~G.S. 115C-325(q)(1);~~G.S. 115C-325.12.

(2) The dismissal of a teacher, assistant principal, director, or supervisor under ~~G.S. 115C-325(q)(2);~~G.S. 115C-325.13.

(3) The dismissal or demotion of ~~a career~~ an employee for any of the grounds listed under ~~G.S. 115C-325(e);~~G.S. 115C-325.4.

(4) The nonrenewal of a school administrator's or ~~probationary~~ teacher's contract of ~~employment; or~~employment.

~~(5) The decision to grant career status.~~"

SECTION 14.(h) G.S. 115C-105.39 reads as rewritten:

"**§ 115C-105.39. Dismissal or removal of personnel; appointment of interim superintendent.**

(a) Within 30 days of the initial identification of a school as low-performing, whether by the local school administrative unit under G.S. 115C-105.37(a1) or by the State Board under G.S. 115C-105.37(a), the superintendent shall take one of the following actions concerning the school's principal: (i) recommend to the local board that the principal be retained in the same position, (ii) recommend to the local board that the principal be retained in the same position and a plan of remediation should be developed, (iii) recommend to the local board that the principal be transferred, or (iv) proceed under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal. The principal may be retained in the same position without a plan for

remediation only if the principal was in that position for no more than two years before the school is identified as low-performing. The principal shall not be transferred to another principal position unless (i) it is in a school classification in which the principal previously demonstrated at least 2 years of success, (ii) there is a plan to evaluate and provide remediation to the principal for at least one year following the transfer to assure the principal does not impede student performance at the school to which the principal is being transferred; and (iii) the parents of the students at the school to which the principal is being transferred are notified. The principal shall not be transferred to another low-performing school in the local school administrative unit. If the superintendent intends to recommend demotion or dismissal, the superintendent shall notify the local board. Within 15 days of (i) receiving notification that the superintendent intends to proceed under ~~G.S. 115C-325~~,G.S. 115C-325.4 or (ii) its decision concerning the superintendent's recommendation, but no later than September 30, the local board shall submit to the State Board a written notice of the action taken and the basis for that action. If the State Board does not assign an assistance team to that school or if the State Board assigns an assistance team to that school and the superintendent proceeds under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal, then the State Board shall take no further action. If the State Board assigns an assistance team to the school and the superintendent is not proceeding under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal, then the State Board shall vote to accept, reject, or modify the local board's recommendations. The State Board shall notify the local board of its action within five days. If the State Board rejects or modifies the local board's recommendations and does not recommend dismissal of the principal, the State Board's notification shall include recommended action concerning the principal's assignment or terms of employment. Upon receipt of the State Board's notification, the local board shall implement the State Board's recommended action concerning the principal's assignment or terms of employment unless the local board asks the State Board to reconsider that recommendation. The State Board shall provide an opportunity for the local board to be heard before the State Board acts on the local board's request for a reconsideration. The State Board shall vote to affirm or modify its original recommended action and shall notify the local board of its action within five days. Upon receipt of the State Board's notification, the local board shall implement the State Board's final recommended action concerning the principal's assignment or terms of employment. If the State Board rejects or modifies the local board's action and recommends dismissal of the principal, the State Board shall proceed under ~~G.S. 115C-325(q)(1).~~G.S. 115C-325.12.

(b) The State Board shall proceed under ~~G.S. 115C-325(q)(2)~~G.S. 115C-325.13 for the dismissal of teachers, assistant principals, directors, and supervisors assigned to a school identified as low-performing in accordance with ~~G.S. 115C-325(q)(2).~~G.S. 115C-325.13.

...."

SECTION 14.(i) G.S. 115C-238.29F(e)(3) reads as rewritten:

"(3) If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at a charter school, the local school administrative unit shall grant the leave for one year. For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has ~~career status under G.S. 115C-325 prior to receiving~~received a

leave of absence to teach at a charter school may return to a public school in the local school administrative unit ~~with career status~~ at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. ~~If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).~~"

SECTION 14.(j) G.S. 115C-238.68(3) reads as rewritten:

"(3) ~~Career status.~~Leave of absence from local school administrative unit. – ~~Employees of the board of directors shall not be eligible for career status.~~ If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at the regional school, the local school administrative unit shall grant the leave for one year. For the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has ~~career status under G.S. 115C-325 prior to receiving~~received a leave of absence to teach at the regional school may return to a public school in the local school administrative unit ~~with career status~~ at the end of the leave of absence or upon the end of employment at the regional school if an appropriate position is available. ~~If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers in accordance with G.S. 115C-325(e)(2).~~"

SECTION 14.(k) G.S. 115C-276(l) reads as rewritten:

"(l) To Maintain Personnel Files and to Participate in Firing and Demoting of Staff. – The superintendent shall maintain in his or her office a personnel file for each teacher that contains complaints, commendations, or suggestions for correction or improvement about the teacher and shall participate in the firing and demoting of staff, as provided in ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter."

SECTION 14.(l) G.S. 115C-285(7) reads as rewritten:

"(7) All persons employed as principals in the schools and institutions listed in ~~subsection (p) of G.S. 115C-325~~ G.S. 115C-325.10 shall be compensated at the same rate as are teachers in the public schools in accordance with the salary schedule adopted by the State Board of Education."

SECTION 14.(m) G.S. 115C-287.1 reads as rewritten:

"**§ 115C-287.1. Method of employment of principals, assistant principals, supervisors, and directors.**

(a) (1) ~~Beginning July 1, 1995, all~~All persons employed as school administrators shall be employed pursuant to this section.

~~(2) Notwithstanding G.S. 115C-287.1(a)(1), the following school administrators shall be employed pursuant to G.S. 115C-325:~~

~~a. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position with career status in that position; and~~

~~b. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position and who are eligible to achieve career status on or before June 30, 1997.~~

~~A school administrator shall cease to be employed pursuant to G.S. 115C-325 if the school administrator: (i) voluntarily relinquishes career status or the opportunity to achieve career status through promotion, resignation, or otherwise; or (ii) is dismissed or demoted or whose contract is not renewed pursuant to G.S. 115C-325.~~

(3) For purposes of this section, school administrator means a:

a. Principal;

b. Assistant principal;

c. Supervisor; or

d. Director,

whose major function includes the direct or indirect supervision of teaching or of any other part of the instructional program.

~~(4) Nothing in this section shall be construed to confer career status on any assistant principal or director, or to make an assistant principal eligible for career status as an assistant principal or a director eligible for career status as a director.~~

(b) Local boards of education shall employ school administrators ~~who are ineligible for career status as provided in G.S. 115C-325(c)(3),~~ upon the recommendation of the superintendent. The initial contract between a school administrator and a local board of education shall be for two to four years, ending on June 30 of the final 12 months of the contract. In the case of a subsequent contract between a principal or assistant principal and a local board of education, the contract shall be for a term of four years. In the case of an initial contract between a school administrator and a local board of education, the first year of the contract may be for a period of less than 12 months provided the contract becomes effective on or before September 1. A local board of education may, with the written consent of the school administrator, extend, renew, or offer a new school administrator's contract at any time after the first 12 months of the contract so long as the term of the new, renewed, or extended contract does not exceed four years. Rolling annual contract renewals are not allowed. Nothing in this section shall be construed to prohibit the filling of an administrative position on an interim or temporary basis.

(c) The term of employment shall be stated in a written contract that shall be entered into between the local board of education and the school administrator. The school administrator shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure by which a ~~career~~ teacher may be dismissed or demoted for cause as set forth in ~~G.S. 115C-325.~~G.S. 115C-325.4.

(d) If a superintendent intends to recommend to the local board of education that the school administrator be offered a new, renewed, or extended contract, the superintendent shall submit the recommendation to the local board for action. The local board may approve the superintendent's recommendation or decide not to offer the school administrator a new, renewed, or extended school administrator's contract.

If a superintendent decides not to recommend that the local board of education offer a new, renewed, or extended school administrator's contract to the school administrator, the superintendent shall give the school administrator written notice of his or her decision ~~and the reasons for his or her decision~~ no later than May 1 of the final year of the contract. ~~The superintendent's reasons may not be arbitrary, capricious, discriminatory, personal, or political.~~ No action by the local board or further notice to the school administrator shall be necessary unless the school administrator files with the superintendent a written request, within 10 days of receipt of the superintendent's decision, for a hearing before the local board. ~~Failure to file a~~

~~timely request for a hearing shall result in a waiver of the right to appeal the superintendent's decision.~~ If a school administrator files a timely request for a hearing, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the school administrator a new, renewed, or extended school administrator's contract.

If the local board decides not to offer the school administrator a new, renewed, or extended school administrator's contract, the local board shall notify the school administrator of its decision by June 1 of the final year of the contract. A decision not to offer the school administrator a new, renewed, or extended contract may not be for any cause ~~that is not arbitrary, capricious, discriminatory, personal, or political.~~ prohibited by State or federal law. ~~The local board's decision not to offer the school administrator a new, renewed, or extended school administrator's contract is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.~~

(e) Repealed by Session Laws 1995, c. 369, s. 1.

(f) If the superintendent or the local board of education fails to notify a school administrator by June 1 of the final year of the contract that the school administrator will not be offered a new school administrator's contract, the school administrator shall be entitled to 30 days of additional employment or severance pay beyond the date the school administrator receives written notice that a new contract will not be offered.

~~(g) If, prior to appointment as a school administrator, the school administrator held career status as a teacher in the local school administrative unit in which he or she is employed as a school administrator, a school administrator shall retain career status as a teacher if the school administrator is not offered a new, renewed, or extended contract by the local board of education, unless the school administrator voluntarily relinquished that right or is dismissed or demoted pursuant to G.S. 115C-325.~~

(h) An individual who holds a provisional assistant principal's certificate and who is employed as an assistant principal under G.S. 115C-284(c) shall be considered a school administrator for purposes of this section. Notwithstanding subsection (b) of this section, a local board may enter into one-year contracts with a school administrator who holds a provisional assistant principal's certificate. ~~If the school administrator held career status as a teacher in the local school administrative unit prior to being employed as an assistant principal and the State Board for any reason does not extend the school administrator's provisional assistant principal's certificate, the school administrator shall retain career status as a teacher unless the school administrator voluntarily relinquished that right or is dismissed or demoted under G.S. 115C-325.~~ Nothing in this subsection or G.S. 115C-284(c) shall be construed to require a local board to extend or renew the contract of a school administrator who holds a provisional assistant principal's certificate."

SECTION 14.(n) G.S. 115C-288(g) reads as rewritten:

"(g) To Report Certain Acts to Law Enforcement and the Superintendent. – When the principal has personal knowledge, a reasonable belief, or actual notice from school personnel that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency.

A principal who willfully fails to make a report to law enforcement required by this subsection may be subject to demotion or dismissal pursuant to ~~G.S. 115C-325.~~G.S. 115C-325.4.

Notwithstanding any other provision of law, the State Board of Education shall not require the principal to report to law enforcement acts in addition to those required to be reported by this subsection.

For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

The principal or the principal's designee shall notify the superintendent or the superintendent's designee in writing or by electronic mail regarding any report made to law enforcement under this subsection. This notification shall occur by the end of the workday in which the incident occurred when reasonably possible but not later than the end of the following workday. The superintendent shall provide the information to the local board of education.

Nothing in this subsection shall be interpreted to interfere with the due process rights of school employees or the privacy rights of students."

SECTION 14.(o) G.S. 115C-304 is repealed.

SECTION 14.(p) G.S. 115C-333 reads as rewritten:

"**§ 115C-333. Evaluation of licensed employees including certain superintendents; mandatory improvement plans; State board notification upon dismissal of employees.**

(a) Annual Evaluations; Low-Performing Schools. – Local school administrative units shall evaluate at least once each year all licensed employees assigned to a school that has been identified as low-performing. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of a mandatory improvement plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under ~~G.S. 115C-325(a)(6),~~G.S. 115C-325.1(5), either the principal, the assistant principal who supervises the teacher, or an assistance team assigned under G.S. 115C-105.38 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), either the superintendent or the superintendent's designee shall conduct the evaluation.

All teachers in low-performing schools who have ~~not attained career status~~been employed for less than three consecutive years shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school under G.S. 115C-105.38.

A local board shall use the performance standards and criteria adopted by the State Board and may adopt additional evaluation criteria and standards. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Mandatory Improvement Plans. –

(1) Repealed by Session Laws 2011-348, s. 2, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.

(1a) A mandatory improvement plan is an instrument designed to improve a teacher's performance or the performance of any licensed employee in a low-performing school by providing the individual with notice of specific performance areas that have substantial deficiencies and a set of strategies, including the specific support to be provided to the individual, so that the individual, within a reasonable period of time, should satisfactorily resolve such deficiencies.

(2) Repealed by Session Laws 2011-348, s. 2, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.

(2a) If a licensed employee in a low-performing school receives a rating on any standard on an evaluation that is below proficient or otherwise represents

unsatisfactory or below standard performance in an area that the licensed employee was expected to demonstrate, the individual or team that conducted the evaluation shall recommend to the superintendent that (i) the employee receive a mandatory improvement plan designed to improve the employee's ~~performance or~~ performance, (ii) the superintendent recommend to the local board that the ~~employee be dismissed or demoted.~~employee's contract not be recommended for renewal, or (iii) if the employee engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment that a proceeding for immediate dismissal or demotion be instituted. If the individual or team that conducted the evaluation elects not to make ~~either~~ any of the above recommendations, the said individual or team shall notify the superintendent of this decision. The superintendent shall determine whether to develop a mandatory improvement ~~plan~~plan, to not recommend renewal of the employee's contract, or to recommend a dismissal proceeding.

(3) If at any time a licensed employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, and immediate dismissal or demotion is not appropriate, then the principal may immediately institute a mandatory improvement plan regardless of any ratings on previous evaluations. The principal shall document the exigent reason for immediately instituting such a plan.

(4) Mandatory improvement plans shall be developed by the person who evaluated the licensed employee or the employee's supervisor unless the evaluation was conducted by an assistance team. If the evaluation was conducted by an assistance team, that team shall develop the mandatory improvement plan in collaboration with the employee's supervisor. Mandatory improvement plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board shall develop guidelines that include strategies to assist local boards in evaluating licensed employees and developing effective mandatory improvement plans within the time allotted under this section. Local boards may adopt policies for the development and implementation of mandatory improvement plans and policies for the implementation of monitored and directed growth plans.

(c) Reassessment of Employee in a Low-Performing School. – After the expiration of the time period for the mandatory improvement plan under subdivision (2a) of subsection (b) of this section, the superintendent, the superintendent's designee, or the assistance team shall assess the performance of the employee of the low-performing school a second time. If the superintendent, superintendent's designee, or assistance team determines that the employee has failed to become proficient in any of the performance standards articulated in the mandatory improvement plan or demonstrate sufficient improvement toward such standards, the superintendent shall recommend that the ~~employee~~ employee's contract not be renewed, or that the employee be immediately dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second assessment shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. – If a local board dismisses an employee of a low-performing school ~~for any reason~~for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (b) or (c) of this section, ~~except a reduction in force under G.S. 115C-325(e)(1)l.,~~ it shall notify the State Board of the action,

and the State Board annually shall provide to all local boards the names of those individuals. If a local board hires one of these individuals, within 60 days the superintendent or the superintendent's designee shall observe the employee, develop a mandatory improvement plan to assist the employee, and submit the plan to the State Board. The State Board shall review the mandatory improvement plan and may provide comments and suggestions to the superintendent. If on the next evaluation the employee receives a rating on any standard that was identified as an area of concern on the mandatory improvement plan that is again below proficient or otherwise represents unsatisfactory or below standard performance, the local board shall notify the State Board and the State Board shall initiate a proceeding to revoke the employee's license under G.S. 115C-296(d). If on this next evaluation the employee receives at least a proficient rating on all of the performance standards that were identified as areas of concern on the mandatory improvement plan, the local board shall notify the State Board that the employee is in good standing and the State Board shall not continue to provide the individual's name to local boards under this subsection unless the employee is subsequently dismissed under ~~G.S. 115C-325 except for a reduction in force.~~ G.S. 115C-325.4.

...."

SECTION 14.(q) G.S. 115C-333.1 reads as rewritten:

"**§ 115C-333.1. Evaluation of teachers in schools not identified as low-performing; mandatory improvement plans; State Board notification upon dismissal of teachers.**

(a) Annual Evaluations. – All teachers who are assigned to schools that are not designated as low-performing and who have not ~~attained career status~~been employed for at least three consecutive years shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. All teachers ~~with career status~~who have been employed for three or more years who are assigned to schools that are not designated as low-performing shall be evaluated annually unless a local board adopts rules that allow teachers ~~with career status~~employed for three or more years to be evaluated more or less frequently, provided that such rules are not inconsistent with State or federal requirements. Local boards also may adopt rules requiring the annual evaluation of nonlicensed employees. A local board shall use the performance standards and criteria adopted by the State Board and may adopt additional evaluation criteria and standards. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Mandatory Improvement Plans for Teachers. – If, in an observation report or year-end evaluation, a teacher receives a rating that is below proficient or otherwise represents unsatisfactory or below standard performance on any standard that the teacher was expected to demonstrate, the principal may place the teacher on a mandatory improvement plan as defined in G.S. 115C-333(b)(1a). The mandatory improvement plan shall be utilized only if the superintendent or superintendent's designee determines that an individual, monitored, or directed growth plan will not satisfactorily address the deficiencies.

If at any time a teacher engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, and immediate dismissal or demotion is not appropriate, then the principal may immediately institute a mandatory improvement plan regardless of any ratings on previous evaluations. The principal shall document the exigent reason for immediately instituting such a plan. The mandatory improvement plan shall be developed by the principal in consultation with the teacher. The teacher shall have five instructional days from receipt of the proposed mandatory improvement plan to request a modification of such plan before it is implemented, and the principal shall consider such suggested modifications before finalizing the plan. The teacher shall have at least 60 instructional days to complete the mandatory improvement plan. The State Board shall develop guidelines that include strategies to assist local boards in

evaluating teachers and developing effective mandatory improvement plans. Local boards may adopt policies for the implementation of mandatory improvement plans under this section.

(c) Observation by a Qualified Observer. –

(1) The term "qualified observer" as used in this section is any administrator or teacher who is licensed by the State Board of Education and working in North Carolina; any employee of the North Carolina Department of Public Instruction who is trained in evaluating licensed employees; or any instructor or professor who teaches in an accredited North Carolina school of education and holds an educator's license.

(2) The local board of education shall create a list of qualified observers who are employed by that board and available to do observations of employees on mandatory improvement plans. This list shall be limited to names of administrators and teachers selected by the local board of education. The local board of education shall strive to select administrators and teachers with excellent reputations for competence and fairness.

(3) Any teacher, other than a teacher assigned to a school designated as low-performing, who has been placed on a mandatory improvement plan shall have a right to be observed by a qualified observer in the area or areas of concern identified in the mandatory improvement plan. The affected teacher and the principal shall jointly choose the qualified observer within 20 instructional days after the commencement of the mandatory improvement plan. If the teacher and the principal cannot agree on a qualified observer within this time period, they each shall designate a person from the list of qualified observers created pursuant to subdivision (2) of this subsection, and these two designated persons shall choose a qualified observer within five instructional days of their designation. The qualified observer shall draft a written report assessing the teacher in the areas of concern identified in the mandatory improvement plan. The report shall be submitted to the principal before the end of the mandatory improvement plan period. If a teacher or administrator from the same local school administrative unit is selected to serve as the qualified observer, the administration of the local school administrative unit shall provide such qualified observer with the time necessary to conduct the observation and prepare a report. If someone who is not employed by the same local school administrative unit is selected to serve as the qualified observer, the teacher who is the subject of the mandatory improvement plan will be responsible for any expenses related to the observations and reports prepared by the qualified observer. The qualified observer shall not unduly disrupt the classroom when conducting an observation.

(4) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because of the employee's service or completion of a report as an objective observer pursuant to this subsection, unless the employee's report contained material information that the employee knew was false.

(d) Reassessment of the Teacher. – Upon completion of a mandatory improvement plan under subsection (b) of this section, the principal shall assess the performance of the teacher a second time. The principal shall also review and consider any report provided by the qualified observer under subsection (c) of this section if one has been submitted before the end of the mandatory improvement plan period. If, after the second assessment of the teacher and

consideration of any report from the qualified observer, the superintendent or superintendent's designee determines that the teacher has failed to become proficient in any of the performance standards identified as deficient in the mandatory improvement plan or demonstrate sufficient improvement toward such standards, the superintendent may recommend that the teacher's contract not be renewed, or if the teacher has engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, that the teacher be immediately dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second assessment produced pursuant to the terms of this subsection shall constitute substantial evidence of the teacher's inadequate performance.

(e) Dismissal Proceedings Without a Mandatory Improvement Plan. – The absence of a mandatory improvement plan as described in this section shall not prohibit a superintendent from initiating a dismissal proceeding against a teacher under the provisions of ~~G.S. 115C-325.~~G.S. 115C-325.4. However, the superintendent shall not be entitled to the substantial evidence provision in subsection (d) of this section if such mandatory improvement plan is not utilized.

(f) State Board Notification. – If a local board dismisses a teacher for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (d) of this section, ~~for any reason except a reduction in force under G.S. 115C-325(e)(1)l.,~~ it shall notify the State Board of the action, and the State Board annually shall provide to all local boards the names of those teachers. If a local board hires one of these teachers, within 60 days the superintendent or the superintendent's designee shall observe the teacher, develop a mandatory improvement plan to assist the teacher, and submit the plan to the State Board. The State Board shall review the mandatory improvement plan and may provide comments and suggestions to the superintendent. If on the next evaluation the teacher receives a rating on any standard that was an area of concern on the mandatory improvement plan that is again below proficient or a rating that otherwise represents unsatisfactory or below standard performance, the local board shall notify the State Board, and the State Board shall initiate a proceeding to revoke the teacher's license under G.S. 115C-296(d). If on the next evaluation the teacher receives at least a proficient rating on all of the overall performance standards that were areas of concern on the mandatory improvement plan, the local board shall notify the State Board that the teacher is in good standing, and the State Board shall not continue to provide the teacher's name to local boards under this subsection unless the teacher is subsequently dismissed under ~~G.S. 115C-325~~G.S. 115C-325.4. ~~except for a reduction in force.~~ If, however, on this next evaluation the teacher receives a developing rating on any standards that were areas of concern on the mandatory improvement plan, if the local board elects to renew the teacher's contract and ~~the teacher shall have one more year to bring the rating to proficient. If,~~ by the end of this second year, the teacher is not proficient in all standards that were areas of concern on the mandatory improvement plan, the local board shall notify the State Board, and the State Board shall initiate a proceeding to revoke the teacher's license under G.S. 115C-296(d).

...."

SECTION 14.(r) G.S. 115C-335(b) reads as rewritten:

"(b) Training. – The State Board, in collaboration with the Board of Governors of The University of North Carolina, shall develop programs designed to train principals and superintendents in the proper administration of the employee evaluations developed by the State Board. The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available to all principals and superintendents at locations that are geographically convenient to local school administrative units. The programs shall include methods to determine whether an employee's performance has improved student learning, the development and implementation of

appropriate professional growth and mandatory improvement plans, the process for contract nonrenewal, and the dismissal process under ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter. The Board of Governors shall ensure that the subject matter of the training programs is incorporated into the masters in school administration programs offered by the constituent institutions. The State Board, in collaboration with the Board of Governors, also shall develop in-service programs for licensed public school employees that may be included in a mandatory improvement plan created under G.S. 115C-333(b) or G.S. 115C-333.1(b). The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available at locations that are geographically convenient to local school administrative units."

SECTION 14.(s) Article 23 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-344. Employment benefits for exchange teachers.**

An exchange teacher is a nonimmigrant alien teacher participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62 or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q). For purposes of determining eligibility to receive employment benefits under this Chapter, including personal leave, annual vacation leave, and sick leave, an exchange teacher shall be considered a permanent teacher if employed with the expectation of at least six full consecutive monthly pay periods of employment and if employed at least 20 hours per week. An exchange teacher is not a teacher for purposes of the Teachers' and State Employees' Retirement System of North Carolina as provided in G.S. 135-1(25)."

SECTION 14.(t) G.S. 115C-404(b) reads as rewritten:

"(b) Documents received under this section shall be used only to protect the safety of or to improve the education opportunities for the student or others. Information gained in accordance with G.S. 7B-3100 shall not be the sole basis for a decision to suspend or expel a student. Upon receipt of each document, the principal shall share the document with those individuals who have (i) direct guidance, teaching, or supervisory responsibility for the student, and (ii) a specific need to know in order to protect the safety of the student or others. Those individuals shall indicate in writing that they have read the document and that they agree to maintain its confidentiality. Failure to maintain the confidentiality of these documents as required by this section is grounds for the dismissal ~~of an employee who is not a career employee and is grounds for dismissal of an employee who is a career employee,~~ in accordance with ~~G.S. 115C-325(e)(1)i.~~G.S. 115C-325.4(a)(9)."

SECTION 14.(u) G.S. 143B-146.7(b) reads as rewritten:

"(b) At any time after the State Board identifies a school as low-performing under this Part, the ~~Secretary~~ State Board shall proceed under ~~G.S. 115C-325(p1)~~G.S. 115C-325.11 for the dismissal of certificated instructional personnel assigned to that school."

SECTION 14.(v) G.S. 143B-146.8 reads as rewritten:

"**§ 143B-146.8. Evaluation of ~~certificated~~ licensed personnel and principals; action plans; State Board notification.**

(a) Annual Evaluations; Low-Performing Schools. – The principal shall evaluate at least once each year all ~~certificated~~ licensed personnel assigned to a participating school that has been identified as low-performing but has not received an assistance team. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of an action plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under ~~G.S. 115C-325(a)(6),~~G.S. 115C-325.1(5), either the principal or an assessment team assigned under G.S. 143B-146.9 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), the Superintendent shall conduct the evaluation.

Notwithstanding this subsection or any other law, the principal shall observe at least three times annually, a teacher shall observe at least once annually, and the principal shall evaluate at least once annually, all teachers who have ~~not attained career status.~~been employed for less than three consecutive years. All other employees who have been employed for three or more years and are defined as teachers under ~~G.S. 115C-325(a)(6)~~G.S. 115C-325.1(5) who are assigned to participating schools that are not designated as low-performing shall be evaluated annually unless the Secretary adopts rules that allow specified categories of teachers with ~~career status~~three or more years of employment to be evaluated more or less frequently. The Secretary also may adopt rules requiring the annual evaluation of ~~noncertificated~~ nonlicensed personnel. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school.

The Secretary shall use the State Board's performance standards and criteria unless the Secretary develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if an evaluation is used other than one adopted by the State Board.

(b) Action Plans. – If a ~~certificated~~ licensed employee in a participating school that has been identified as low-performing receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the principal that: (i) the employee receive an action plan designed to improve the employee's performance; (ii) the employee's contract not be recommended for renewal, or (iii) if the employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment that a proceeding for immediate dismissal or demotion be instituted. ~~or (ii) the principal recommend to the Secretary that the employee be dismissed or demoted.~~ The principal shall determine whether to develop an action ~~plan~~plan, to not recommend renewal of the employee's contract, or to recommend a dismissal proceeding. The person who evaluated the employee or the employee's supervisor shall develop the action plan unless an assistance team or assessment team conducted the evaluation. If an assistance team or assessment team conducted the evaluation, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board, in consultation with the Secretary, shall develop guidelines that include strategies to assist in evaluating ~~certificated~~ licensed personnel and developing effective action plans within the time allotted under this section. The Secretary may adopt policies for the development and implementation of action plans or professional development plans for personnel who do not require action plans under this section.

(c) Reevaluation. – Upon completion of an action plan under subsection (b) of this section, the principal or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the principal shall recommend that the employee's contract not be renewed, or if the employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, that the employee be dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. – If the Secretary dismisses an employee for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (b) or (c) of this section, ~~any reason except a reduction in force under G.S. 115C-325(e)(1)l.,~~ the Secretary shall notify the State Board of the action, and the State Board annually shall provide to all local boards of education the names of those individuals. If

a local board hires one of these individuals, that local board shall proceed under G.S. 115C-333(d).

...."

SECTION 14.(w) Notwithstanding the requirements for terms of contracts in G.S. 115C-325.3, for the 2012-2013 school year all teachers shall be employed on a contract for a term of one year. This section becomes effective July 1, 2012, and applies to all school employees employed on or after that date.

PART XV. ELIMINATION OF PUBLIC FINANCING FOR SUPERINTENDENT OF PUBLIC INSTRUCTION

SECTION 15.(a) G.S. 163-278.95 reads as rewritten:

"**§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.**

The purpose of this Article is to ensure the vitality and fairness of democratic elections in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of ~~Auditor, Superintendent of Public Instruction,~~Auditor and Commissioner of Insurance in elections to be held in 2008 and thereafter."

SECTION 15.(b) G.S. 163-278.96(12) reads as rewritten:

"(12) Office. – The Council of State offices of ~~Auditor, Superintendent of Public Instruction,~~ Auditor and Commissioner of Insurance."

SECTION 15.(c) Within five business days of the effective day of this act, the State Board of Elections shall notify any individual who is a candidate for Superintendent of Public Instruction and who has filed a declaration of intent to participate in the program for public financing through the North Carolina Voter-Owned Elections Fund that the candidate is no longer eligible to participate in the program.

SECTION 15.(d) This section is effective when it becomes law and applies to elections held on or after that date.

PART XVI. EFFECTIVE DATE

SECTION 16. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 30, 2012

TO: Sens. Apodaca, P. Berger, and Tillman

FROM: Kristopher Nordstrom
Fiscal Research Division

RE: Senate Bill 795v2 PCS for Senate Finance

FISCAL IMPACT

(dollars in millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
STATE GENERAL FUND					
Revenues:	($1.8)	($1.8)	($1.8)	($1.8)	($1.8)
Expenditures:	$45.6	$59.3	$79.8	$75.2	$82.3
STATE POSITIONS (cumulative):	11	11	14	14	14
LOCAL FUNDS					
Expenditures:	$1.1	$1.1	$1.1	$1.1	$1.1

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The Department of Public Instruction, local education agencies, the University of North Carolina, and the North Carolina Independent Colleges and Universities.

EFFECTIVE DATE: See Bill Summary section

BILL SUMMARY:

This bill would enact many changes related to the operation of North Carolina's public schools. The bill has fifteen substantive Parts, including:

- **Part I:** Enacts the "North Carolina Read to Achieve Program," which makes numerous changes regarding K-3 literacy policy.
- **Part II:** Provides volunteer leave time for State employees to help with literacy programs in public schools.
- **Part III:** Assigns "A-F" grades to schools based on performance.
- **Part IV:** Requires annual assessments and final exams to be given within a certain time frame at the end of the course or school year.
- **Part V:** Provides flexibility with regards to required school instructional time, reinstates three required teacher workdays, and adjusts the school calendar start and end and dates.
- **Part VI:** Provides funding for additional instructional days which have not been waived by the State Board of Education.
- **Part VII:** Establishes the NC Teacher Corps.
- **Part VIII:** Sets additional standards for teacher licensure.
- **Part IX:** Requires notice of the availability and coverage of State-funded liability insurance.
- **Part X:** Requires local boards of education to develop a plan for a system of performance pay.
- **Part XI:** Clarifies NC Pre-K program eligibility criteria, and expands funded slots in FY 2012-13.
- **Part XII:** Repeals prohibition on teacher prepayment.
- **Part XIII:** Creates a tax deduction for teachers for expenses incurred for educational supplies.
- **Part XIV:** Makes several changes the allowable terms for teacher contracts.
- **Part XV:** Eliminates public financing for elections of the Office of Superintendent of Public Instruction.

Part I: Improve K-3 Literacy

Section 1.(a): Under current law, the State Board of Education (SBE) is charged with developing a comprehensive plan to improve reading achievement in the public schools. The plan must be based on research-based practices and the reading programs that are developed must include systematic phonics instruction. As part of the comprehensive plan, the SBE can require modifications to the standard course of study, teacher licensure standards, and teacher education program standards. Section1.(a) repeals this existing language.

Section 1.(b): Establishes the North Carolina Read to Achieve Program ("the Program"). The Program is established by adding nine sections to the General Statutes:

- **G.S. 115C-83.1A** states the Program's goal of ensuring that every student read at or above grade level by the end of third grade, with continued improvement necessary for secondary education and career success.
- **G.S. 115C-83.1B** states the Program's purposes, ensuring that (i) difficulty with reading development is identified early; (ii) students receive instructional and support services to address difficulty with reading development and remediation

for reading deficiencies; (iii) students and parents are continuously informed of the students' academic needs and progress; and (iv) progression from one grade to another be based in part upon proficiency in reading.

- **G.S. 115C-83.1C** defines numerous terms in the Program including "difficulty with reading development", "reading proficiency", and "reading deficiency".
- **G.S. 115C-83.1D** requires the SBE to develop, implement, and continuously evaluate a comprehensive plan to improve reading based on practices that have strong evidence of effectiveness in current empirical research in reading development. When appropriate, the plan should modify the standard course of study, teacher licensure standards, and teacher education program standards. The SBE must report biennially to the Joint Legislative Education Oversight Committee on the implementation, evaluation, and revisions to the plan including recommendations for legislative changes.
- **G.S. 115C-83.1E** requires the SBE to ensure that each kindergarten student be given a developmental screening of early language, literacy, and math skills within 30 days of enrollment and given a kindergarten entry assessment within 60 days of enrollment. The results of both must be used to inform: (i) the status of children's learning at kindergarten entry; (ii) instruction for each child; (iii) efforts to reduce the achievement gap at kindergarten entry; and (iv) continuous improvement of the early childhood system.
- **G.S. 115C-83.1F** mandates that K-3 students must be given diagnostic assessments and difficulty with reading development must be addressed with instructional supports and services. Local school administrative units (LEAs) are encouraged to partner with community organizations and businesses for volunteers, mentors, and tutors to help enhance reading development and proficiency.
- **G.S. 115C-83.1G** requires that the SBE mandate that a student be retained in grade 3 if the student fails to demonstrate 3rd grade reading proficiency on a State-approved standardized test of reading comprehension. The test can be re-administered once prior to the school year. A student can be exempt from mandatory retention for good cause but must receive instructional supports and services and reading interventions. Good cause exemptions are limited to the following:
    - Limited English proficient students with less than two years of instruction in an English as a Second Language Program.
    - Students with disabilities whose individualized education program indicates the use of alternative assessments and reading interventions.
    - Students who demonstrate 3rd grade reading proficiency on an alternative test provided by the SBE.
    - Students who demonstrate 3rd grade reading proficiency through a student reading portfolio.
    - Students who have received reading intervention and previously have been retained more than once in grades K-3.

  The superintendent of the LEA must determine whether a student may be exempt from mandatory retention on the basis of a good cause exemption. The teacher must submit documentation to the principal of the relevant exemption as

well as evidence that promotion is appropriate based on the student's academic record. The principal must review the documentation and make an initial determination on promotion. If the principal determines the student should be promoted, the principal then must make a written recommendation of promotion to the superintendent for a final determination which must be in writing.

- **G.S. 115C-83.1H** requires enrollment in a summer camp and allowing promotion to 4th grade if the student shows reading proficiency on an alternative test of reading comprehension or reading portfolio after completion of the camp. If the student does not show proficiency then the student must be retained and:
    - Provided with a teacher with demonstrated student outcomes in reading proficiency;
    - Placed in an accelerated reading class or transitional 3rd and 4th grade class combination;
    - Provided at least 90 minutes of daily, uninterrupted, evidence based reading instruction; and
    - Given other appropriate instructional supports and services and reading interventions.

  The SBE must establish a mid-year promotion policy for retained students who demonstrate reading proficiency by November 1 of the school year. Parents of students retained once must be provided with a home reading plan and participation in shared and guided reading workshops. Parents of students retained twice must be offered supplemental tutoring for the retained student outside of the instructional day.
- **G.S. 115C-83.1I** requires that parents be notified in writing that a student will be retained if the student is not demonstrating reading proficiency by the end of the 3rd grade unless there is a good cause exemption. The notice must be given when a kindergarten, 1st, 2nd, or 3rd grade student is demonstrating difficulty with reading development, is not reading at grade level, or has a personal education plan. Parents must also be given notice in writing if the student is not eligible for a good cause exemption as well as proposed reading interventions. For retained students, the parents must be given monthly written reports on the student's progress toward reading proficiency.
- **G.S. 115C-83.1J** directs local boards of education to annually publish on its LEA's website and submit in writing to the SBE each year the following information:
    - The number and percentage of 3rd graders showing and not showing reading proficiency on the State-approved test of 3rd grade reading comprehension;
    - The number and percentage of 3rd graders who take and pass the alternative test of reading comprehension;
    - The number and percentage of 3rd graders retained for not demonstrating reading proficiency; and
    - The number and percentage of 3rd graders exempt from mandatory retention due to a good cause exemption.

  LEAs must also report annually to the SBE describing all reading interventions provided to the 3rd grade students retained for lack of reading proficiency. The

SBE must annually compile the information provided by the LEAs and provide a State-level summary to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Education Oversight Committee beginning with the 2014-2015 school year. The SBE and the Department of Public Instruction (DPI) must provide technical assistance as needed to assist LEAs to implement the Program.

Section 1.(c): Repeals existing language requiring school improvement plans for schools that serve kindergarten and 1st grade students to include a reading plan to prepare the students to read at grade level by 2nd grade.

Section 1.(d): Amends G.S. 115C-105.41, requiring LEAs to identify students at risk of academic failure and who are not progressing toward grade promotion and graduation beginning no later than kindergarten, as opposed to by 4th grade under existing law. Identification could be based on diagnostic and formative assessments required under Section 1.(b).

Section 1.(e): Under current law, the SBE has to provide developmentally appropriate assessments to LEAs for 1st and 2nd grades consistent with the Basic Education Program instead of standardized tests. LEAs have the option of using these assessments for 1st and 2nd grades but cannot use standardized tests except as required as a condition of receiving a federal grant. This Act would expand the requirements to grades K-3, and would require LEAs to use the assessments for K-3 students to assess progress, diagnose difficulties, and inform instruction and remediation needs.

Section 1.(f): Adds a new section to G.S. 115C-238.29F that would create the following additional requirements for charter schools:

- Requires charter schools to retain a student in the 3rd grade if the student fails to demonstrate 3rd grade reading proficiency on a State-approved standardized test of reading comprehension, consistent with traditional public school requirements in Section 1.(b).
- Requires charter schools to provide reading interventions to retained students which may include 90 minutes of daily evidence based reading instruction, accelerated reading classes, transition classes with 3rd and 4th grade students and summer reading camps, consistent with traditional public school requirements in Section 1.(b).
- Allows charter school to exempt students from mandatory 3rd grade retention for good cause, but they must continue to provide instructional supports and services, consistent with traditional public school requirements in Section 1.(b).
- Requires charter schools to provide notice to parents when a student is not reading at grade level and that if the deficiency is not remediated by the end of the 3rd grade, the student will be retained unless a good cause exemption applies. If the student is not eligible for an exemption, then the parents must be given information on the reading interventions that will be provided.
- Requires charter schools to publish annually on their websites and report to the SBE the following information on the prior school year:
    - The number and percentage of 3rd graders showing and not showing reading proficiency on the State-approved test of 3rd grade reading comprehension;

- The number and percentage of 3rd grade students not demonstrating reading proficiency who do not return to the charter school for the following school year;
- The number and percentage of 3rd graders who take and pass the alternative test of reading comprehension;
- The number and percentage of 3rd graders retained for not demonstrating reading proficiency; and
- The number and percentage of 3rd graders exempt from mandatory retention due to a good cause exemption.

Section 1.(g): Under current law, principals have the authority to grade and classify students. Under this Act, principals would maintain that authority, except when a student must be mandatorily retained in the 3rd grade for failing to demonstrate 3rd grade reading proficiency.

Section 1.(h): Makes conforming changes to G.S. 130A-440(b) regarding kindergarten developmental screenings.

Section 1.(i): Appropriates $33,914,503 for FY 2012-13, and states the General Assembly's intent to increase this appropriation for FY 2013-14 to implement requirements that go into effect that year.

Section 1.(j): This Part is effective when it becomes law and applies beginning with the 2013-14 school year. The developmental screening and kindergarten entry assessments shall be administered beginning with the 2014-15 school year.

Part II: State Employee Literacy Volunteer Leave Time

Amends G.S. 126-4 to create an additional leave program allowing State employees to volunteer in literacy programs in public schools for up to five hours each month. This section is effective when it becomes law.

Part III: School Performance Grades

Under current law, the SBE must issue an annual report card for the State and each LEA assessing efforts to improve student performance.

Under this Act, the SBE would be required to award an overall school performance numerical score on a scale of 0 to 100, and a corresponding letter grade of A, B, C, D, or F to each school as a part of the annual report card process. The school performance grade must reflect student performance on annual subject-specific assessments, college and workplace readiness measures, and graduation rates. For schools serving K-8 students, separate performance grades must be awarded on the performance on literacy and mathematics. The report card for schools with 3rd grade students must include the number of students who take and pass the alternative reading assessment; were retained in 3rd grade for lack of reading proficiency, and were exempt from mandatory retention in 3rd grade because of a good cause exemption.

Under this Act, local boards of education or the charter school would be required to place the overall school performance grades for each school in its LEA on the website for the LEA or charter school for the current and previous four years. Notice would be provided in writing to parents of students enrolled in schools that obtain a grade of D or F.

This section would become effective when it becomes law and applies beginning with the 2012-13 school year.

Part IV: Maximize Instructional Time

Under current law, there are limitations on how much time that schools can devote to practice tests as well as limitations on when field tests and national tests can be administered.

Under this Act, annual tests adopted by the SBE and all final exams for courses would have to be administered within the final ten instructional days of the school year for year-long courses and within the final five instructional days of the semester for semester courses. Exceptions would be allowed for individualized education plans, Section 504 plans, and courses with national or international curriculums required to be held at designated times.

This section would become effective when it becomes law and applies beginning with the 2012-13 school year.

Part V: Adjustments to School Calendar Start and End Dates

Under current law, schools are required to provide a minimum of 185 days and 1,025 hours of instruction. The SBE has the authority to waive up to five instructional days if the SBE finds that it will enhance student performance to do so.

Under this Act, LEAs and charter schools would have the option of providing a minimum of 185 days or 1,025 hours of instruction. Additionally, school calendars would be required to include three protected teacher workdays. Given the flexibility provided, the SBE would no longer have the authority to waive instructional days.

Under current law, the opening date for students cannot be before August 25 and the closing date cannot be after June 10, except for certain limited exceptions.

Under this Act, schools could not open for students before the Monday closest to August 26 and the closing date could not be after the Friday closest to June 11.

Additionally, this Part limits the ability of LEAs to receive waivers to the required closing date for "good cause" and eliminates the SBE's authority to provide closing date waivers for "educational purposes".

This section would become effective when it becomes law and applies beginning with the 2013-14 school year.

Part VI: Funding for the Addition of Five Instructional Days Within the Existing School Calendar

This Part appropriates $40,168 for FY 2012-13 for costs related to additional substitute teachers, and $351,469 for FY 2012-13 for additional student transportation requirements on a nonrecurring basis to account for the higher cost of additional instructional days which have not been waived by the SBE. This section would become effective July 1, 2012.

Part VII: Establish NC Teacher Corps

Establishes the NC Teacher Corps (Corps) in General Statute to recruit and place recent college graduates and mid-career professionals as teachers in high-needs public schools. Collaboration would be required between the SBE, the Board of Governors of The University of North Carolina and the North Carolina Independent Colleges and Universities. The SBE would be directed to develop and administer the Corps including establishing the application criteria and identifying the LEAs with unmet recruitment needs and high-needs schools as well as coordinating placement of Corp members in those schools. An intensive summer training institution must be developed and ongoing support through coaching, mentoring, and professional development must be provided. Corps members would be given lateral entry teaching licenses.

This section would become effective when it becomes law and the SBE must recruit and place an initial cohort of Corps members no later than the 2012-13 school year.

Part VIII: Strengthen Teacher Licensure

Under current law, the SBE sets the licensure requirements for applicants for teaching positions and may require a minimum score on a standard exam. The SBE, in consultation with the Board of Governors of The University of North Carolina, must develop requirements for continuing licensure and align them with quality professional development programs. For teacher preparation programs, the SBE, in coordination with the Board of Governors of The University of North Carolina and the State Board of Community Colleges, sets the standards for approval and must include competencies in the education of children with disabilities and positive behavior management.

Under this Act, elementary education (K-6) teachers would be required to achieve a prescribed minimum score on subtests or standard exams specific to reading and language arts and mathematics. For continuing licensure, at least three continuing education credits related to literacy must be taken by elementary and middle school teachers. The standards for approval of teacher preparation programs must also require elementary education programs to show competencies in the teaching of reading, assessment and diagnosis of areas of difficulty, and appropriate application of instructional supports and services.

This section would become effective when it becomes law and applies beginning with the 2013-14 school year.

Part IX: Proof of State-Funded Liability Insurance

Amends G.S. 115C-12 to require that the SBE annually notify public school employees of the availability and coverage of professional liability insurance.

This section would become effective when it becomes law and applies beginning with the 2012-13 school year.

Part X: Pay for Excellence

Directs local boards of education to develop plans for systems of performance pay for all licensed personnel. Under the plans, the licensed employees would be eligible to receive bonuses or

adjustments to base salary for meeting certain performance criteria. These criteria must include, but are not limited to, the following:

- annual growth in student achievement assigned to a teacher's classroom, when applicable;
- annual growth in student achievement of students assigned to a specific school;
- assignment of additional academic responsibilities;
- assignment to a hard-to-staff school; and
- assignment to a hard-to-staff subject area.

The plans must be submitted to the SBE no later than March 1, 2013. The SBE must report on these plans by April 15, 2013.

This section would become effective when it becomes law.

Part XI: Clarify NC Pre-K eligibility

Section 11.(a) clarifies that the NC Pre-K program eligibility is for those children of families with incomes at or below 75% of the State Median Income. In addition, 20% of those served may have higher incomes as long as they have another demonstrated risk factor. This is current practice by the Department of Health and Human Services, Division of Child Development and Early Education.

Section 11.(b) repeals the requirement of a co-payment by families for individuals served within the NC Pre-K program. The Department of Health and Human Services, Division of Child Development and Early Education did not implement a co-payment for NC Pre-K in FY 2011-12.

Section 11.(c) appropriates funding to the NC Pre-K program of $11,308,363 for FY 2012-13 to serve an additional 2,261 children within the program.

Part XII: Repeal Prohibition on Teacher Prepayment

During the 2011 Session, the General Assembly enacted S.L. 2011-379, The School and Teacher Paperwork Reduction Act, which, effective FY 2012-13, prohibited local school administrative units from prepaying teachers on the monthly pay date for days not yet worked. This Part would repeal of the prohibition on prepayment before it goes into effect.

Part XIII: Tax Deduction for Educational Supplies

The Act provides an income tax deduction for K-12 teachers of up to $250 in expenses incurred for classroom supplies. The provision mirrors the federal deduction for teachers. In previous years, teachers received the benefit of the federal deduction in calculating state tax liability because the starting point for calculating state taxable income was federal taxable income. However, the federal deduction expired at the end of the 2011 tax year and it is uncertain whether it will be extended by federal legislation. This proposal allows teachers in North Carolina to take advantage of this deduction in calculating state tax liability even if the federal deduction is not reinstated.

Part XIV: Teacher Contracts

Teachers

Under current law, teachers in North Carolina are eligible for career status when they have been employed by a local board of education for four consecutive years. Obtaining career status provides that the career employee may not be dismissed or demoted except if one or more statutory grounds are found. Certain procedures must be followed to dismiss or demote a career status teacher, including a right to a hearing in front of the local board of education with a further right of appeal to superior court. The procedure for the dismissal of career status teachers in schools that have been identified as low-performing by the SBE and that have been assigned assistance teams varies in that the SBE has the authority to dismiss career status teachers due to inadequate performance. Hearings must still be granted by the SBE in these cases and there are further rights to judicial review under Chapter 150B of the General Statutes.

This Part eliminates career status in North Carolina. Teachers employed by a local board of education for less than three years would be employed by one-year contracts. Contracts or renewal of contracts between a local board of education and teachers who have been employed by that board for three years or more would be terms of one, two, three, or four school years. For the 2012-2013 school year, all teachers would be employed on a one-year contract. All teachers would be employed by their local boards of education upon recommendation of the superintendent. Superintendents must also recommend contract length (for those with three or more years of employment) but can only recommend contracts of more than one year for teachers who have shown effectiveness as documented by the teacher evaluation instrument. Local boards of education would be able to approve the recommendation, not approve it or decide on a different term of length for the contract. Teachers could not be dismissed or demoted during the term of the contract except for one of the statutorily listed grounds. If the superintendent decides against recommending a renewal of a contract, the teacher would have the right to petition the local board of education for a hearing but whether to grant the hearing would be in the local board's discretion.

This Part would establish the following procedure for dismissal or demotion for cause during the contract term:

- Notice: The superintendent must give written notice to the teacher of his or her intention to recommend to the local board of education that teacher be dismissed or demoted and provide the grounds upon which the recommendation is being made. The superintendent must also meet with the teacher and (i) give written notice of the charges against the teacher; (ii) an explanation of the basis for the charges; and (iii) an opportunity to respond. The notice must also inform the teacher that he or she may request a hearing before the local board of education within 14 days of the receipt of the notice.
- Request for a Hearing: The teacher may file a written request for a hearing before the local board of education within 14 days after receipt of the notice of recommendation of the superintendent. The board shall set a time and place for the hearing which is not less than 10 days nor more than 30 days after notification is given to the teacher unless the parties agree to an extension.
- No Request for Hearing: If the teacher does not request a hearing before the board within 14 days of receipt of the recommendation, the superintendent may submit his or her

recommendation to the board. The board may (i) reject the recommendation or (ii) accept or modify the recommendation.

Hearings before the local board of education must be private and the board must receive documentary evidence that will be used to support the recommendation from both the superintendent and teacher, who must provide the evidence to each other within certain time frames. Written statements may be provided to the board and both the superintendent and the teacher may make oral arguments before the board based on the record before the board. The board must make findings of fact based upon the preponderance of the evidence and must send a written copy of its findings and determinations within two days of the hearing to the teacher and the superintendent.

Hearings for disciplinary suspension without pay must be private and conducted according to reasonable rules adopted by the SBE governing such a hearing. Both the teacher and superintendent have the right to be present and represented by counsel and to present witnesses. The rules of evidence to not apply. The superintendent must give the teacher 8 days before the hearing, a list of witnesses who will be presented and a statement of the nature of each witness' testimony and copy of any documentary evidence that will be presented. The teacher must provide this same information to the superintendent 6 days before the hearing. New evidence may not be presented at the hearing unless the board finds that it is critical and could not have been found earlier.

This Part would eliminate the right to appeal to superior court decisions of a local board of education regarding the terms or conditions of employment or employment status of a school employee.

If a teacher has been recommended for dismissal and chooses to resign without the written consent of the superintendent: (i) the superintendent must report the matter to the SBE; (ii) the teacher is deemed to have consented to the placement in his or her personnel file of the written notice of the superintendent's intention to recommend dismissal and the release of this fact that the teacher has been reported to the SBE to prospective employers upon request; and (iii) the teacher is deemed to have voluntarily surrendered his or her license pending an investigation by the SBE in determination of whether to seek action against the teacher's license.

If a teacher who has not been recommended for dismissal decides to resign during the term of the contract without the consent of the superintendent, then he or she should give at least 30 days' notice. If the teacher does resign without giving this notice, then the board may request that the SBE revoke the teacher's license for the remainder of the school year.

The procedure for dismissal of school administrators and teachers employed in low-performing residential schools would remain substantially the same as it is under current law.

Dismissal of School Administrators and Teachers Employed in Low-Performing Schools: The procedure for dismissal of school administrators and teachers employed in low-performing schools would remain substantially the same as it is under current law but would eliminate the provision

that allowed the teacher or school administrator to seek judicial review under Chapter 150B of the General Statutes of a final decision of the SBE.

School Administrators

Under current law, most school administrators are employed through contracts with their local boards of education. Some school administrators who had or were eligible to receive career status in 1995 are employed pursuant to the teacher career status law. For those employed by contract, school administrators cannot be dismissed or demoted during the term of the contract except for cause for one of the statutorily listed grounds. Superintendents recommend new, renewed, or extended contracts for school administrators to their local boards of education which may approve the recommendations or not. If a superintendent decides against recommending that the local board of education offer a new, renewed, or extended contract to a school administrator, then written notice of this decision and the reasons for it must be given to the school administrator. The reasons may not be arbitrary, capricious, discriminatory, personal, or political. The school administrator may file a written request for a hearing before the local board and failure to file a timely request results in a waiver of the right of appeal of the superintendent's decision. If a timely request is filed, the local board of education must conduct a hearing on the matter and its decision is subject to judicial review under Chapter 150B of the General Statutes.

This Part eliminates career status for all school administrators, and eliminates the current requirement that the superintendent's and local board of education's decisions to not offer a new, renewed, or extended contract to a school administrator may not be arbitrary, capricious, discriminatory, personal or political. This Part also eliminates the right to judicial review under Chapter 150B of the General Statutes of the decision of the local board of education.

Non-Licensed Employees

Under current law, non-licensed employees may appeal a decision of the local board of education to superior court regarding decisions concerning dismissal, demotion or suspension without pay. The non-licensed employee may request and be entitled to receive written notice as to the reasons for the employee's dismissal, demotion or suspension without pay, and it must be provided to the employee prior to any local board of education hearing on the issue.

This Part eliminates this right of appeal to superior court and would eliminate the right to written notice for the reasons for the non-licensed employee's dismissal, demotion or suspension without pay.

Part XV: Eliminate Public Financing for Superintendent of Public Instruction

Under current law, the North Carolina Voter-Owned Elections Fund is authorized to provide a source of campaign financing for candidates for Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance. This Part would remove the Superintendent of Public Instruction from the list of offices eligible to receive campaign financing from the North Carolina Voter-Owned Elections Fund.

ASSUMPTIONS AND METHODOLOGY:

Part I: Improve K-3 Literacy

Part I of this Act creates 15 new requirements which might potentially have a fiscal impact. Each of these new requirements will be addressed individually below, with a summary table to follow.

Each requirement in this Part is assumed to be a State responsibility. Section 1.(i) appropriates $34,087,650 to implement the requirements of this Part in FY 2012-13, and states the General Assembly's intent to increase the appropriation in future fiscal years to implement the additional requirements of this Part.

Requirement 1: Continuously Evaluate the Comprehensive Plan to Improve Reading Achievement

A high-quality evaluation of a program of this size would likely require a contract with an independent research organization of at least $500,000 per year, beginning with the 2013-14 fiscal year. This would be a conservative estimate compared with similarly-sized program evaluation contracts for the Connectivity Initiative (initially $650,000 per year), DSSF ($500,000), and More at Four (over $1 million per year).

Requirement 2: Solicit Impact from Stakeholders in Developing Statewide Plan

This analysis assumes a nonrecurring cost of $80,000 in FY 2012-13 in order to facilitate regional meetings to solicit impact from the public regarding the State's literacy plan. In particular, this analysis assumes a cost of $10,000 per meeting to cover rental space, as well as travel expenses for DPI staff, and that there would be at least one meeting in each of the State's eight educational regions.

Requirement 3: Formative Diagnostic Reading Assessments for All Students in Grades K-3

Annual costs for formative and diagnostic reading assessments for all students in grades K-3 will vary throughout the five-year time horizon of this analysis. Data from North Carolina's Student Diagnostic and Intervention Initiative indicate the following cost requirements:

- Software subscriptions: $20.50 per student. Over the next five years, average daily membership (ADM) in grades K-3 is anticipated to grow from 469,000 students to approximately 503,000 students.
- Student materials ("kits") for each teacher: $400 per teacher. 6,360 kits have already been purchased in prior years. Assuming a total of 21,485 teachers in grades K-3, North Carolina would still need to purchase 15,125 kits.
- Handheld devices (hardware): $400 per teacher. According to DPI's analysis, 18,501 teachers in grades K-3 do not currently have devices. This analysis assumes that devices would need to be refreshed after four years.
- Substitute teachers to cover required training: This one-time cost would cover the cost of substitutes while teachers attend training sessions. This analysis assumes two teachers per school at 870 schools would receive the training over a three-day period.

Requirement 4: Retain Students Who Score at Level I or Level II on Third Grade Reading EOG

Additional retention of students in grade 3 is anticipated to cost approximately $20.5 million in FY 2014-15, decreasing to $14.2 million by FY 2016-17.

Students in grade 3 have a greater fiscal cost than students in grade 4 due to:

1. Classroom teachers: classroom teachers are allotted on the basis of one teacher for every 17 students in grade 3; one for every 22 students in grade 4; and
2. Teacher assistants: allotment of teacher assistants based on K-3 ADM. Fourth graders do not generate teacher assistant allotments.

The cost differential is that, on average, a grade 3 student costs $1,152 more than a grade 4 student, on a per student basis. This analysis assumes there would be 17,824 additional students in grade 3 in FY 2014-15 as a result of this bill, decreasing to 14,906 by FY 2016-17.

An additional fiscal impact will be experienced outside of the scope of this fiscal analysis. Under this bill, the majority of retained students will require an additional year of public schooling that they otherwise would not have had. However, the fiscal impact would not affect the State until FY 2023-24, when the first cohort of third graders would have been expected to have graduated from high school.

Requirement 5: Develop Uniform Reporting Requirement for LEA Reports on Programmatic Information, Compile Information, and Report to the General Assembly
There would be no additional cost to implement this requirement, as data collection and reporting costs would be included as part of the program evaluation costs discussed in Requirement 1 of this section.

Requirement 6: Provide Technical Assistance to LEAs to Implement the Program Locally
Total costs for providing technical assistance to LEAs ranges from $1.0 million in FY 2012-13 to $1.3 million in FY 2016-17.

This analysis assumes that providing technical assistance to LEAs will require approximately 11 additional positions at DPI:

- Nine field-based consultants: $70,000 base salary, $3,600 for "medium" level of travel[1], plus benefits
- One section chief: $90,000 base salary, $3,600 for "medium" level of travel, plus benefits
- One administrative assistant: $30,000 base salary, plus benefits

The Department indicates that the most appropriate comparison is the federal Reading First program, which had 14 consultants, 1 section chief, and 2 administrative assistance. However, implementation of Reading First required additional budgeting and program auditing responsibilities that would be above and beyond the staff responsibilities that would be required under this bill.

Requirement 7: Kindergarten Entry Assessment for all Entering Kindergarten Students Beginning FY 2014-15
This analysis assumes it will take a total of approximately $18.5 million to ensure statewide implementation of a new kindergarten entry assessment by 2014-15. Costs include professional

[1] This travel number was developed during DPI's budgeting process for Race to the Top, and assumes 10 overnights per month, subsistence for those 10 days, and approximately 600 average miles per month.

development, and substitute teacher costs. This analysis assumes that professional development would occur over two years, or $9.25 million per year in FY 12-13 and 13-14, followed by a recurring $750k to ensure continuing capacity (i.e., training of new teachers). Professional development services would be contracted.

North Carolina's Race to the Top Early Learning Challenge grant budgets $8.8 million to develop a new kindergarten entry assessment. This new assessment will be implemented in 65 North Carolina elementary schools defined as "lowest-performing" schools under the federal Race to the Top program. As there are approximately 1,300 elementary schools, the Early Learning Challenge funding only provides the kindergarten entry assessment and appropriate professional development to a small portion of the State's elementary schools.

Requirement 8: Kindergarten Developmental Screening of Early Language, Literacy, and Math Skills

Providing developmental screening of all kindergarten students for early language, literacy, and math skills would cost $754,588 in FY 2014-15, and approximately $210,000 per year in subsequent years.

This pricing estimate is based off of the cost of the DIAL-3 (Developmental Indicators for the Assessment of Learning) screening tool from Pearson.[2] The DIAL-3 costs $295.90 for every 50 students in FY 2014-15 (includes cost of all administration forms, instruction manuals and DVDs), and $80.00 for every 50 students in subsequent fiscal years (administration forms, record forms, cutting cards, and parent questionnaires).

Requirement 9: Summer Reading Camp for Students not Demonstrating Reading Proficiency

Summer reading camps administered by LEAs for all students not demonstrating reading proficiency are estimated to cost approximately $15.5 million per year beginning in FY 2013-14.

The best available data for estimating the cost of summer academic programs is the Wallace Foundation's Out of School Time Cost Calculator.[3] This database aggregates data from 111 programs in six cities (Boston, Charlotte, Chicago, Denver, New York and Seattle) to provide estimates of programs with given characteristics, adjusted for local cost-of-living.

For the purposes of this estimate, the assumption is that one camp would need to be funded for every two elementary schools, or approximately 650 camps.[4] This works out to an estimated 50 reading-deficient students per camp (assuming a 90% uptake rate of students not demonstrating reading proficiency). The following assumptions are used in generating an estimate:

- Program focus: academic
- Nearest metro area: Burlington, NC

[2] Additional information about the DIAL-3 can be found here: http://www.pearsonassessments.com/HAIWEB/Cultures/en-us/Productdetail.htm?Pid=PAa13700.

[3] The Wallace Foundation Out of School Time Cost Calculator can be found here: http://www.wallacefoundation.org/cost-of-quality/cost-calculator/Pages/cost-calculator.aspx.

[4] In practice, the number of "feeder schools" for each summer camp would vary across the State, with low-performing rural districts likely to have fewer feeder schools for each summer camp, while higher-performing urban districts might be able to operate a single summer camp serving multiple elementary schools.

- Program location: in a school
- Slots: 50
- Hours per week: 14
- Weeks: 7

Based on these assumptions, the Wallace instrument provides a median cost estimate of approximately $22,660 per site. Because the Wallace instrument focused on large, urban programs, it likely underestimates the transportation costs that would be faced by the average program in North Carolina. As a result, the estimate provided by the Wallace instrument is increased by 5% to account for the additional transportation costs faced by North Carolina's less-urban districts.

Requirement 10: LEAs Provide Alternative Reading Assessment for Third Graders Who Have a Reading Deficiency

Provision of alternative reading assessments for third graders who have a reading deficiency is estimated to cost approximately $250,000 per year over the five-year horizon of this analysis, beginning in FY 2013-14

The bill defines "reading deficiency" as not reading at the third grade level by the end of the student's third grade year. Approximately 36,000 third grade students fail to achieve grade-level proficiency on State-administered end-of-grade tests (EOGs).

The Pearson TORC-4 alternative reading assessment provides the best estimate of potential costs.[5] The TORC-4 costs $347 for every 50 students. Based on the number of students anticipated to have reading deficiencies, this equates to a total cost of approximately $250,000 per year.

Requirement 11: Parents of Retained Students Shall be Provided with a Plan for Reading at Home, Including Participation in Reading Workshops for the Parent

Providing reading workshops for parents of retained students is estimated to cost approximately $23.0 million in FY 2013-14, decreasing to $16.3 million in FY 2016-17.

The existing State program that provides the best comparison is the Motheread program provided through Smart Start. Motheread offers classes to teach parents how to be reading role models for their children. Classes are held in many different community settings, including community colleges, schools, community centers, and churches. Classes are appropriate for all adults, but are specifically designed for low-literacy, low-income parents. According to data provided by the North Carolina Partnership for Children, Inc., this program is estimated to cost approximately $1,080 per parent.

The number of retained students (and, therefore, the number of parents that would need to be targeted for workshops) is anticipated to be approximately 21,304 in FY 2013-14, decreasing to approximately 15,130 by FY 2016-17. Multiplying the number of retained students by the per-parent program cost of $1,080 provides an estimated total cost of $23.0 million in FY 2013-14, decreasing to $16.3 million in FY 2016-17.

[5] Additional information about the TORC-4 can be found here: http://www.pearsonassessments.com/HAIWEB/Cultures/en-us/Productdetail.htm?Pid=PAtorc4&Mode=summary.

Requirement 12: Supplemental Tutoring for Students Who Have Been Retained Twice
Provision of tutoring services to students who have been retained twice is estimated to cost approximately $9 million per year, beginning in FY 2014-15.

According to data from Florida,[6] approximately 0.7% of students are retained twice under their similar third grade literacy program. In North Carolina, that would equate to approximately 850 students being retained twice, beginning in FY 2014-15. This analysis assumes that each student would receive 2 hours of tutoring services per day, with the tutor being paid $30 per hour, consistent with certified teacher salaries in North Carolina.

Requirement 13: Providing Parental Notification That a K-3 Student Is Not Reading at Grade Level, or That a Third Grade Student is Being Retained
This analysis assumes these requirements for written notification can be handled within existing funds at the LEA level. LEAs routinely provide students with report cards. Indication that a student is not reading at grade level, or that a student is being retained could be included with existing report cards at no additional fiscal cost.

Requirement 14: Providing Monthly Progress Reports to Parents of Retained Students
This analysis estimates that provision of monthly progress reports to parents of retained students would cost approximately $160,000 in FY 2014-15, decreasing to approximately $133,000 in FY 2016-17.

As explained above (Requirement 12), the number of retained students is anticipated to be approximately 21,304 in FY 2013-14, decreasing to approximately 15,130 by FY 2016-17. Printing and postage are estimated to be $0.75 per report, per student, times 10 times per year.

It is important to note that, depending on the thoroughness of the monthly progress report, this requirement could create a significant new paperwork burden on third grade teachers, particularly those teaching low-performing students.

Requirement 15: Annually Collect and Publish Read to Achieve Data on LEA Website
The bill requires certain data related to the Read to Achieve program to be published annually on LEA websites. As each LEA in North Carolina has a functioning website, this additional data should be able to be added to LEA websites at no cost.

Part I: Summary Tables
The tables below summarize the cost elements related to Part I of this bill, the Read to Achieve Program.

Estimates of the various requirements of this Part rely largely on estimated student data over the next five fiscal years. In particular, the analysis requires estimating the total number of students in grades K-3, the number of third graders below grade level, the number of students expected to be retained (both under current and proposed policies), and the number of third graders anticipated to be retained twice as a result of this bill.

[6] All Florida data provided by the Foundation for Excellence in Education: http://www.excelined.org/.

Estimated Student Data

	2012-13	2013-14	2014-15	2015-16	2016-17
K-3 ADM	468,502	476,935	485,520	494,259	503,156
Grade K ADM	123,038	125,253	127,507	129,802	132,139
Grade 3 ADM	110,446	116,000	118,088	120,214	122,377
Students Scoring at Level I or Level II	33.00%	32.00%	31.00%	30.00%	29.00%
K-3 Reading Deficiency	154,606	152,619	150,511	148,278	145,915
Grade 3 Reading Deficiency	36,447	37,120	36,607	36,064	35,489
Actual % of Reading Deficient Students Retained in Florida*	N/A	57.39%	46.36%	49.00%	42.63%
% of all 3rd Graders Retained	3.00%	18.37%	14.37%	14.70%	12.36%
Number of 3rd Graders Retained	3,313	21,304	16,972	17,671	15,130
Number of *Additional* 3rd Graders Retained Because of S795	N/A	17,824	13,430	14,065	11,458
# of 3rd Graders Retained Twice Under Read to Achieve	N/A	N/A	827	841	857
Additional third graders			17,824	14,256	14,906

*These are the actual percentages of reading deficient students from Florida who were retained in the first four years of the Florida program.

The estimated student data informed the fiscal estimates for the various new State or LEA responsibilities found within this Part. The fiscal impact of the additional responsibilities is summarized in the following table:

Estimated Program Costs - Read to Achieve
(Part I of the Excellent Public Schools Act)

Requirement Number	Requirement Description	2012-13	2013-14	2014-15	2015-16	2016-17
1	Continously evaluate the comprehensive plan to improve reading achievement	$0	$500,000	$500,000	$500,000	$500,000
2	Solicit input from stakeholders in developing statewide plan	$80,000	$0	$0	$0	$0
3	Formative diagnostic reading assessments for all students in grades k-3	$23,576,691	$9,777,168	$11,146,757	$10,132,314	$18,954,696
4	Retain students who score at Level I or Level II on third grade Reading EOG	$0	$0	$20,536,590	$16,426,415	$17,175,400
5	Develop uniform reporting requirement for LEA reports on programmatic information, compile information, and report to the General Assembly	$0	$0	$0	$0	$0
6	Provide technical assistance to LEAs to implement the program locally	$1,007,812	$1,078,610	$1,143,456	$1,206,266	$1,261,399
7	Kindergarten Entry Assessment for all entering kindergarten students beginning FY 14-15	$9,250,000	$9,250,000	$750,000	$750,000	$750,000
8	Kindergarten developmental screening of early language, literacy, and math skills	$0	$0	$754,588	$207,684	$211,422
9	Summer reading camp for students not demonstrating reading proficiency	$0	$15,465,450	$15,465,450	$15,465,450	$15,465,450
10	LEAs provide alternative reading assessment for third graders who have a reading deficiency	$0	$257,613	$254,055	$250,285	$246,297
11	Parents of retained students shall be provided with a plan for reading at home, including participation in reading workshops for the parent	$0	$23,007,944	$18,330,263	$19,085,109	$16,340,092
12	Supplemental tutoring for students who have been retained twice	$0	$0	$8,927,453	$9,088,147	$9,251,734
13	Providing parental notification that a K-3 student is not reading at grade level or that a third grade student is being retained	$0	$0	$0	$0	$0
14	Providing monthly progress reports to parents of retained students	$0	$0	$159,777	$127,293	$132,535
15	Annually collect and publish Read to Achieve data on LEA website	$0	$0	$0	$0	$0
TOTAL COSTS		**$33,914,503**	**$59,336,785**	**$77,968,389**	**$73,238,963**	**$80,289,025**

Part II: State Employee Literacy Volunteer Leave Time

There is no estimate for the fiscal impact of creating an additional leave program allowing State employees to volunteer in literacy programs in public schools for up to five hours each month. The fiscal impact would be the foregone work product of employees utilizing the additional availability of leave time. Unfortunately, no data exists regarding potential usage rates that would provide a useful indication of the fiscal impact of this requirement.

Part III: School Performance Grades

There is no fiscal impact related to this Part of the Act. The SBE is already required under G.S. 115C-12(9)c1 to issue an annual "report card" for the State and for each LEA. In addition to issuing annual State- and LEA-level report cards, the SBE issues school-level report cards.[7]

This Part changes how school performance will be designated. Currently, schools receive designations such as School of Excellence, School of Distinction, School of Progress, or Priority School. This Part requires instead that each school receive a numerical score and a corresponding letter grade of A, B, C, D, or F.

This Part also changes how school performance is measured, defining which school-level data elements contribute to a school's letter grade. These data points are already collected by DPI, and can be compiled to calculate school grades within existing funds.

Part IV: Maximize Instructional Time

There is no fiscal impact related to this Part of the Act. This Part requires that annual tests adopted by the SBE and all final exams for courses would have to be administered within the final ten instructional days of the school year for year-long courses and within the final five instructional days of the semester for semester courses. This Part does not create any additional requirements for LEAs, and there is no fiscal impact related to which day of the school year a test is administered.

Part V: Adjustments to School Calendar Start and End Dates

This fiscal impact of this part is indeterminate, but likely to reduce required General Fund expenditures and local expenditures in future years.

Changing the requirement to 185 days or 1,025 hours is likely to result in LEAs operating a calendar with 180 instructional days, or less. Each additional instructional day requires additional transportation, additional opportunity for substitute teacher costs, and additional utility costs.[8] LEAs might also reduce the pay of teacher assistants, and child nutrition employees as instructional days decrease. As a result, LEAs are likely to provide the minimum number of instructional days required to meet the requirement of 1,025 instructional hours. For example, an LEA could meet the 1,025-hour requirement by operating 185 instructional days averaging five hours and 32 minutes per day, or the LEA could meet the 1,025-hour requirement by operating 170 instructional days averaging six hours and two minutes per day. Wilkes County Schools increased instructional days by 45 minutes per day to operate a 162-instructional day calendar as part of the school calendar pilot program initiated in the 2009 Appropriations Bill (S.L. 2009-451).

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[7] North Carolina school report cards can be found at: http://www.ncreportcards.org/src/.

[8] The State is responsible for transportation and utility costs. LEAs are responsible for the cost of utilities.

On the other hand, additional instructional time might be viewed as a means of increasing student achievement. LEAs or charters accepting this view might choose to provide at least 180 instructional days.

Without additional data, it is difficult to determine the likely fiscal impact of this Part.

The sections of this Part providing LEAs with additional flexibility with regards to school calendar start and end dates would not have a fiscal impact. LEAs complying with the existing law could leave their school calendar start and end dates unchanged if this Act were to become law. It does not create any additional requirements for LEAs.

Part VI: Funding for the Addition of Five Instructional Days Within the Existing School Calendar

The fiscal impact of this Part is equal to the amounts appropriated in this Part.

Had all LEAs and charters increased their calendars by five instructional days, costs related to transportation would have likely increased by approximately $10,150,000, and costs related to increased usage of substitute teachers would likely have increased by approximately $1,200,000 for FY 2012-13.[9] However, most LEAs and charters have received waivers for the upcoming 2012-13 school year. The appropriations in this part equate to the estimated increased costs for transportation and substitute teachers, taking into account the waivers which have been granted.

Because of the waivers, LEAs and charters are, on average, expected to add 0.17 instructional days (out of a maximum of five instructional days) to their school calendar in FY 2012-13. In other words, 96.7% of the possible additional instructional days in FY 2012-13 were waived.

To determine the additional cost of instructional days in FY 2012-13, the original five-day estimated costs are multiplied by 3.3% (1 minus 96.7%). The additional appropriated amounts of $351,469 for transportation and $40,168 for substitute teachers would be nonrecurring, as Part V would likely decrease the number of instructional days going forward.

Part VII: Establish NC Teacher Corps

The establishment of the NC Teacher Corps is anticipated to cost the State approximately $1.9 million in FY 2014-15, increasing to approximately $2.1 million in FY 2016-17.

Funding for the NC Teacher Corps is currently provided through the federal Race to the Top grant. This funding expires at the end of FY 2013-14. The establishment of this program in General Statute indicates that the State intends to continue the program after the expiration of the federal Race to the Top funding. As such, there will be a fiscal impact to the State beginning in FY 2014-15.

Based on current implementation, the NC Teacher Corps requires program staff, recruitment activities, reimbursement payments for licensure and certain coursework, summer enrichment programs, and professional development for Corps members. The analysis below assumes that

[9] These figures represent the average daily expenditure for substitute teachers and transportation in FY 2011-12, multiplied by five days.

100 Corps members will be first-year teachers in FY 2013-14. Subsequent cohorts are expected to have 150 Corps members.

The table below summarizes expected program costs:

North Carolina Teacher Corps - Estimated Fiscal Impact

	Race to the Top		State General Fund		
	2012-13	2013-14	2014-15	2015-16	2016-17
Program Staff: 1 Director, 1 Consultant, 1 Admin (salary, benefits, travel, supplies)	$261,700	$279,635	$296,063	$311,975	$325,716
Recruitment: Costs related to visits to job fairs and colleges and printing of materials	$20,000	$20,000	$20,000	$20,000	$20,000
Tuition and Licensure Reimbursement: Corps members reimbursed for PRAXIS fees and courses for full licensure	$570,000	$896,250	$939,563	$985,041	$1,032,793
Summer Enrichment Programs: Corps members will be matched with a highly-qualified teacher (who will receive a stipend), as well as attend a 19-day summer program	$128,895	$203,010	$213,160	$223,818	$235,009
Professional Development: Funding for PD activities and participation stipend for 1st and 2nd year Corps members	$80,000	$215,000	$349,500	$395,100	$403,605
TOTAL	**$1,060,595**	**$1,613,895**	**$1,818,286**	**$1,935,934**	**$2,017,123**

Part VIII: Strengthen Teacher Licensure

There is no fiscal impact related to this Part of the Act. The SBE already requires that teachers achieve a prescribed minimum score on a standard examination in order to receive a license. This Part simply requires the SBE to establish minimum subset scores for reading and language arts and mathematics for teachers in grades K-6.

This Part does not require any additional teachers to take any additional continuing education credits, it only mandates that at least three of the credits are related to literacy for elementary and middle school teachers. Continuing education credits related to literacy do not have a materially differing cost from other types of continuing education credits.

Finally, this Part requires that the standards for approval of teacher preparation programs must also require elementary education programs to show competencies in the teaching of reading, assessment and diagnosis of areas of difficulty, and appropriate application of instructional supports and services. The SBE already has authority to establish standards for approval of

institutions of teacher education. The institutions of higher education providing these teacher education programs have the option of whether or not to meet such standards.

Part IX: Proof of State-Funded Liability Insurance

There is no fiscal impact related to this Part of the Act. The SBE has already notified public school employees of the availability and coverage of professional liability insurance in FY 2011-12 via employee email lists, and the establishment of a website at: http://www.professionalliabilitync.com/. The SBE can continue to notify public school employees via similar means in future fiscal years within existing funds.

Part X: Pay for Excellence

There is no State fiscal impact related to this Part of the Act. This Part of the Act does not obligate the State to change the system of pay for licensed school personnel.

There is an indeterminate local fiscal impact for LEAs in developing performance pay plans. The time and resources spent in developing performance pay plans could vary significantly between LEAs. While the requirements of this Part could certainly be met within existing resources in all LEAs, certain LEAs might re-deploy existing resources in order to develop more extensive plans, or to seek stakeholder participation.

Part XI: Clarify NC Pre-K Program Eligibility

The fiscal impact related to this Part is simply the $11.3 million appropriated in Section 11.(c) to provide 2,261 additional slots in the NC Pre-K program in FY 2012-13. The other sections of this Part do not have a fiscal impact.

Section 11.(a) clarifies the current eligibility requirements that are already in place within the Department of Health and Human Services, Division of Child Development; therefore, there is no fiscal impact to this change.

Section 11.(b) repeals the requirement for a co-payment by families. The current law was not followed by the Division; therefore, there is no fiscal impact to this change. Had the co-payments been collected that would have resulted in an approximately $15 million that would be available within the program (based upon 24,000 co-payments for 10 months of $64).

Part XII: Repeal Prohibition on Teacher Prepayment

There is no State fiscal impact with regards to repealing the prohibition on teacher prepayment. A potential impact could occur if a teacher who has been paid for days not yet worked were to leave his or her position. However, S.L. 2003-263 requires that overpayments of State funds to any person must be recouped by the entity that made the overpayment – in this case, the LEA.

LEAs will likely experience increased expenditures of approximately $1.1 million as a result of this Part. In an April 2012 survey of North Carolina LEA finance officers, 40 of 106 responding LEAs[10] indicated that their LEA had been negatively impacted financially by prepaying. Respondents reported a total statewide impact of $1,471,298 for FY 2010-11.

[10] Alamance, Bertie, Thomasville City, Duplin, Edgecombe, Gaston, Guilford, Roanoke Rapids City, and Nash failed to respond to this survey.

While LEAs would be expected to continue to incur such costs if this Part becomes law, expenditures would be offset by reduced administrative costs. Todd Lowe, Finance Officer, Randolph County Schools, indicated that implementing the prohibition on teacher payment would require significant additional work, including the payment of overtime to certain staff, and reprogramming of local payroll software. As a result, this analysis assumes that the additional local costs created by this Part would be offset 25% by foregone administrative costs.

Part XIII: Tax Deduction for Educational Supplies

Based on data provided by the Department of Public Instruction and the Division of Non-Public Education, approximately 102,000 teachers will be able to take advantage of the deduction. This is multiplied by $250 because it is assumed that each teacher taking the deduction will take the maximum amount allowed. This number is then multiplied by an average tax rate of 7% to arrive at the fiscal impact of $1.8 million in reduced revenue collections per fiscal year.

Part XIV: Teacher Contracts

There is an indeterminate fiscal impact related to this Part of the Act. From the State perspective, it is unclear what impact, if any, the changes in this Part will have on the composition of North Carolina's population of teachers (or other certified personnel). It is possible that this Part will – on average – result in dismissal of more experienced (higher-paid) teachers who would then be replaced with less experienced (lower-paid) teachers. It is also possible that this Part will result in teachers with lower experience or credentials suffering a higher rate of dismissal (due to lower average performance compared to more experienced teachers), shifting North Carolina's teacher population towards teachers with greater experience and credentials.

From a local perspective, the changes in this Part could increase or decrease LEA costs related to hearings. While certified personnel might have additional rights to hearings upon dismissal under existing law, it is possible that the changes proposed in this Part could result in additional dismissals compared to current practice.

Part XV: Eliminate Public Financing for Superintendent of Public Instruction

G.S. 163-278.99(b)(4) establishes that the minimum amount of funds to be distributed from the North Carolina Voter-Owned Elections (VOE) Fund to a candidate in a general election is $300,000. Currently, the balance of the VOE Fund is approximately $428,000, which is insufficient to meet this requirement if more than one candidate qualifies for funding. Thus, per G.S. 163-278.99(c), the available balance would be apportioned among all eligible candidates.

For the 2012 General Election, two candidates have qualified for funding from the Voter-Owned Elections (VOE) Fund: one candidate for State Auditor and one candidate for Superintendent of Public Instruction. Removing the Superintendent of Public Instruction from the list of candidates eligible to receive funding from the VOE Fund would result in only one candidate (for State Auditor) eligible for VOE funding in 2012. With one eligible candidate, the current balance of approximately $428,000 would be sufficient to provide the statutory minimum of at least $300,000 to the candidate for State Auditor.

State General Fund Fiscal Impact Summary - Excellent Public Schools Act

	Type	2012-13	2013-14	2014-15	2015-16	2016-17
Part I: Improve K-3 Literacy	Expenditures	$33,914,503	$59,336,785	$77,968,389	$73,238,963	$80,289,025
Part II: State Employee Literacy Volunteer Leave Time	Expenditures	No Estimate Available				
Part V: Adjustments to School Calendar Start and End Dates	Expenditures	No Estimate Available				
Part VI: Funding for the Addition of Five Instructional Days	Expenditures	$391,637	$0	$0	$0	$0
Part VII: Establish NC Teacher Corps	Expenditures	$0	$0	$1,818,286	$1,935,934	$2,017,123
Part XI: Clarify NC Pre-K Program Eligibility	Expenditures	$11,308,363	$0	$0	$0	$0
Part XIII: Tax Deduction for Educational Supplies	**Revenues**	($1,800,000)	($1,800,000)	($1,800,000)	($1,800,000)	($1,800,000)
Part XIV: Teacher Contracts	Expenditures	No Estimate Available				
Part XV: Eliminate Public Financing for Superintendent of Public Instruction	Expenditures	See Assumptions & Methodology				
TOTAL COST		**$47,414,503**	**$61,136,785**	**$81,586,675**	**$76,974,897**	**$84,106,147**

Note: Parts not displayed have no State fiscal impact.

Local Fiscal Impact Summary - Excellent Public Schools Act

	Type	2012-13	2013-14	2014-15	2015-16	2016-17
Part V: Adjustments to School Calendar Start and End Dates	Expenditures	No Estimate Available				
Part X: Pay for Excellence	Expenditures	No Estimate Available				
Part XII: Repeal Prohibition on Teacher Prepayment	Expenditures	$1,100,000	$1,100,000	$1,100,000	$1,100,000	$1,100,000
Part XIV: Teacher Contracts	Expenditures	No Estimate Available				
TOTAL COST		**$1,100,000**	**$1,100,000**	**$1,100,000**	**$1,100,000**	**$1,100,000**

Note: Parts not displayed have no local fiscal impact.

SOURCES OF DATA:

DPI, the Foundation for Excellence, the North Carolina Partnership for Children, Inc., the Wallace Foundation, Department of Revenue, Division of Non-Public Education

TECHNICAL CONSIDERATIONS:

Part I: Sponsors might clarify which portion of the FY 2012-13 appropriation in Section 1.(i) of this Act is going to DPI to expand department capacity, and which funds are to be distributed by DPI to the LEAs.

Part X: This Part does not state the General Assembly's intent with regards to providing additional funding, or with regards to changing the method for funding classroom positions. LEAs might have better clarity in developing systems of performance pay if the language is amended to clarify General Assembly intent on these issues.

SENATE BILL 795:
Excellent Public Schools Act

2011-2012 General Assembly

Committee:	Senate Re-ref to Appropriations/Base Budget. If fav, re-ref to Finance	**Date:**	May 30, 2012
Introduced by:	Sens. Apodaca, P. Berger, Tillman	**Prepared by:**	Drupti Chauhan, Kara McCraw, Patsy Pierce, Research Division
Analysis of:	PCS-35358-TC39		

SUMMARY: ***Senate Bill 795 includes one finance related provision in Section 13. Section 13 would ensure that the $250 deduction for educator expenses would continue for State individual income tax purposes, regardless of whether or not the federal deduction is reinstated for taxable years beginning on or after January 1, 2012.***

SB 795 would: (i) enact the "North Carolina Read to Achieve Program" which makes numerous changes regarding K-3 literacy; (ii) provide volunteer leave time for State employees to help with literacy; (iii) assign "A-F" grades to schools based on performance; (iv) require annual assessments and final exams to be given within a certain time frame at the end of the course or school year; (v) change the school calendar to be a minimum of 185 days or 1025 hours; provide for 3 days to be designated as protected teacher workdays; eliminate the waiver option to use 5 instructional days for teacher workdays; change the school start and stop dates; modify "good cause" weather waivers; and eliminate educational purpose waivers; (vi) provide funding for five additional instructional days within the existing school calendar; (vii) establish the NC Teacher Corps; (viii) set additional standards for teacher licensure; (ix) require notice of proof of State funded liability insurance; (x) require local boards of education to develop a plan for performance pay; (xi) clarify eligibility for NC Pre-K program and add slots to NC Pre-K; (xii) repeal prohibition on teacher prepayment; (xiii) provide a tax deduction for educators for the purchase of educational supplies; (xiv) eliminate career status and establish teacher contracts that may be for up to 4 years; and (xv) eliminate public financing for candidates for the Office of Superintendent of Public Instruction.

BILL ANALYSIS FOR SB 795:

Part I: K-3 Literacy

Section 1.(a)

Current Law: The State Board of Education (SBE) is charged with developing a comprehensive reading achievement plan. The SBE can require modifications to the standard course of study, teacher licensure and teacher education program standards.

Analysis: Repeals the current statute requiring the SBE to develop a comprehensive reading achievement plan.

Section 1.(b) North Carolina Read to Achieve Program

Analysis:

- Goal, Purposes, and Definitions: Creates "NC Read to Achieve Program" to ensure every child reads at or above grade level by 3rd grade through early identification and services for reading difficulties, increased parental notification of academic need and progress, and grade promotion based partly on reading proficiency.
- Comprehensive Plan for Reading Achievement: Requires the SBE to develop, implement and evaluate a comprehensive reading achievement plan including research-based practices, appropriate modification of the standard course of study, and teacher licensure and education program standards. Requires SBE to report biennially on plan and recommended legislative changes to the Joint Legislative Education Oversight Committee (JLEOC) by October 1.
- Developmental Screening and Kindergarten Entry Assessment: Requires the SBE to ensure that each kindergarten student's language, literacy, and math skills be screened within 30 days of enrollment and

kindergarten entry assessment be completed within 60 days of enrollment. Results must be used to inform children's instruction, reduction of the achievement gap, and improvement of the early childhood system.

- Facilitating Early Grade Reading Proficiency: Mandates that K-3 students be assessed to determine difficulty with reading development, and requires difficulties be addressed with instructional supports and services. Local school administrative units (LEAs) are encouraged to partner with community organizations and businesses for volunteers to help enhance reading development and proficiency.
- Elimination of Social Promotion: Requires the SBE to mandate students be retained in 3rd grade if the student fails to demonstrate 3rd grade reading proficiency on a State-approved standardized test of reading comprehension. The local superintendent may determine that a student meets one of the good cause exemptions to the retention requirement (limited English proficiency, disability, demonstrated proficiency on alternative measures, or multiple retentions).
- Successful Reading Development For Retained Students: Requires enrollment of retained students in summer reading camps. Students showing reading proficiency on an alternative assessment after completing the camp would be promoted to 4th grade. Students not demonstrating proficiency must be retained and provided with a successful reading teacher in an accelerated or transitional classroom where specific reading instruction takes place. The SBE must establish a mid-year promotion policy for students demonstrating reading proficiency by November 1. Parents of retained students will be provided with reading training and supplemental tutoring for the student.
- Notification Requirements To Parents: Requires that K-3 parents receive written notification that a student will be retained if the student is not demonstrating reading proficiency by the end of the 3rd grade, absent a good cause exemption. For retained students, parents must be given monthly written reports regarding student progress.
- Accountability Measures: Directs local boards of education to annually report to the SBE and publish on their websites information about numbers and percentages of 3rd graders demonstrating reading proficiency, retained, or exempt from retention for good cause.

  The SBE shall submit a summary of this information to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the JLEOC by October 1, beginning with the 2014-2015 school year. The SBE and the Department of Public Instruction must provide technical assistance as needed to assist LEAs to implement the provisions of this Part.

Section 1.(c): School Improvement Plans

Current Law and Analysis: Repeals current requirement that school improvement plans for schools serving kindergarten and 1st grade must include a reading plan to prepare students to read at grade level by 2nd grade.

Section 1.(d): Risk of Academic Failure

Current Law and Analysis: Requires identification of students who are at risk of academic failure and not progressing toward grade promotion beginning in kindergarten. Current law requires identification by 4th grade.

Section 1.(e): K-3 Assessments

Current Law: Optional developmentally appropriate assessments must be provided to LEAs for 1st and 2nd grades. Standardized tests cannot be used except as required as a condition of a federal grant.

Analysis: Requires LEAs to use SBE provided reading assessments for K-3 students to assess progress, diagnose difficulties, and inform instruction and remediation needs. LEAs would be prohibited from using standardized tests for summative assessments in grades K-3, except as required as a condition of a federal grant.

Section 1.(f): New K-3 Literacy Requirements for Charter Schools

Analysis:

- Requires charter schools to retain students in 3rd grade if the student fails to demonstrate 3rd grade reading proficiency on a State approved test of reading comprehension unless the student meets a good cause exemption.

- Requires charter schools to provide notice to parents that a student will be retained if not demonstrating reading proficiency by the end of 3rd grade, unless there is a good cause exemption. Parents must be given information on reading interventions to be provided.
- Requires charter schools to publish annually on their websites and report to the SBE the number and percentage of 3rd graders who are reading proficiently, who are not reading proficiently who do not return during the following year, and who were exempt from retention for good cause.

Section 1.(g): Principal's Authority to Grade and Classify Students

Current Law: Principals have the authority to grade and classify students.

Analysis: Limits principals' authority to grade and classify students when a student must be mandatorily retained in the 3rd grade for failing to demonstrate 3rd grade reading proficiency.

Sections 1.(h) and 1.(i): Conforming Changes and Appropriations

Analysis: Makes conforming changes regarding the kindergarten developmental screenings. Appropriates $34,087,650 to the Department of Public Instruction for 2012-2013 to implement the new requirements and states that it is the intent of the General Assembly to increase the appropriation in 2013-2014.

Effective Date: Section 1 would be effective when it becomes law and would apply beginning with the 2013-2014 school year. The developmental screening and kindergarten entry assessment would be administered beginning with the 2014-2015 school year.

Part II: State Employee Literacy Volunteer Leave Time

Current Law: Under the Community Service Leave Policy, employees may use one hour of leave each week for helping in a school, up to 36 hours for the weeks that schools are in session.

Analysis: Directs the State Personnel Commission to establish a leave program that allows employees to volunteer in a literacy program in a public school for up to 5 hours each month.

Effective Date: This section would become effective when it becomes law.

Part III: School Performance Grades

Sections 3.(a) and 3.(b): Annual Report Cards

Current Law: The SBE must issue an annual "report card" for the State and each LEA. Local boards of education must ensure that their report cards are distributed widely to the local press and public.

Analysis: Directs the SBE to award to each school an overall numerical school performance grade (on a scale of zero to 100) and corresponding letter grade of A, B, C, D, or F as a part of the LEA's annual report card. These performance grades must be placed on the LEA's website for the current year and the previous 4 years. The grades must reflect student performance on annual subject-specific assessments, college and workplace readiness measures, and graduation rates. The annual report card for schools with 3rd grade students must include information about reading proficiency and retention. Written notice must be provided to parents of students enrolled in schools that obtain a D or F grade.

Sections 3.(c) and 3.(d): Charter Schools and Regional Schools

Analysis: Requires charter schools and regional schools to ensure that the report cards issued to them by the SBE are publicized widely. The performance scores and grades for the current year and previous 4 years must be placed prominently on each school's website and if a school receives a D or F, written notice must be provided to parents of all enrolled students.

Section 3.(e): Calculation of School Performance Grades

Analysis:

- For schools serving grades K-8, the ***overall*** school performance grade would be calculated based on the sum of the percentage of students scoring at or above proficient on annual assessments in math, reading, and science. Reading and math grades would be separately reported.

- For schools serving grades 9-12, the ***overall*** school performance grade would be calculated based on a number of measures including measures of math, English, biology, college/workplace readiness, higher level math completers, and graduation rates.

A scale of points yielding letter grades is provided. The SBE would be required to make proportional adjustments to account for the absence of a school performance grade element if the school does not have a measure for that element. The SBE must annually report to the JLEOC by January 15 on recommended adjustments to the school performance grade elements and scale.

Effective Date: This section would become effective when it becomes law and applies beginning with the 2012-2013 school year.

Part IV: Instructional Time and Testing

Current Law: The SBE must establish a policy to minimize time spent taking tests through State and local testing programs, including limits on practice and field tests. Schools can participate in no more than 2 field tests in any one grade level in a school year unless the school improvement teams vote to participate in an expanded number of field tests.

Analysis: Prohibits schools from participating in more than 2 field tests. Annual tests adopted by the SBE and all final exams for courses must be administered within the final 10 instructional days of the school year for year-long courses and within the final 5 instructional days of the semester for semester courses. Exceptions would be allowed for individualized education plans and Section 504 plans and final exams for courses with national or international curriculums given on a schedule set by a national organization.

Effective Date: This section would become effective when it becomes law and applies beginning with the 2012-2013 school year.

Part V: Adjustments to School Calendar Start and End Dates

Current Law: School calendars must include 185 instructional days and 1,025 instructional hours. The SBE may grant waivers to allow an LEA to use up to 5 instructional days and corresponding instructional hours as teacher workdays upon a finding that the waiver will enhance student performance. Current law does not require the inclusion of protected teacher workdays in the school calendar.

Except for certain limited exceptions, the opening date for students cannot be before August 25 and the closing date cannot be after June 10. The SBE may grant 2 types of waivers to the opening and closing date requirements. A "good cause" waiver may be granted to schools if the school either:

- Has been closed 8 days per year in 4 of the last 10 years due to severe weather, energy shortages, power failures, or other emergency situations, or
- Has been closed for all or part of 8 days per year in 4 of the last 10 years due to severe weather conditions. Schools are deemed closed part of a day if closed for 2 or more hours.

The SBE may also grant an educational purpose waiver to the start and close dates. An educational purpose is the need to adopt a different calendar for:

- A specific school to accommodate a special program for the student body of that school.
- A school primarily serving a special population of students.
- A defined program within a school.

The SBE may grant the waiver if it finds the educational purpose is reasonable, the accommodation is necessary for the educational purpose, and the request is not to circumvent the opening and close date requirements.

Analysis:

- Provides that a school calendar shall include a minimum of 185 days or 1025 hours of instruction.

- Designates 3 teacher workdays as "protected" for instructional and classroom administrative duties with at least 1 of the days at the beginning of the school year and at least 1 at the end.
- Eliminates the authority of the SBE to grant a waiver for up to 5 instructional days to be used as teacher workdays.
- Provides that opening dates for students cannot be earlier than the Monday closest to August 26 and the closing dates cannot be later than the Friday closest to June 11. On a showing of good cause, the SBE may allow a local board of education to set an opening date no earlier than the Monday closest to August 19.
- Allows the SBE to grant "good cause" waivers from the opening and closing dates for weather only when schools were closed for 8 days per year during any 4 of the last 10 years. Part day closures could not count in the calculation.
- Eliminates the SBE's authority to grant calendar waivers for educational purposes and clarifies that cooperative innovative high schools are not subject to the general calendar law.

Effective Date: This section would become effective when it becomes law and applies beginning with the 2013-2014 school year.

Part VI: Funding for Addition of 5 Instructional Days Within the Existing School Calendar

Current Law: S.L. 2011-145 added five additional instructional days to the school calendar, resulting in a requirement for 185 days and 1025 hours of instruction.

Analysis: Revises funding for the additional instructional days to provide funding only for days for which chools have not received waivers from the SBE for the 2012-2013 school year. Appropriates $40,168 for the 012-2013 fiscal year to increase the non-instructional support personnel allotment and $351,469 for the 2012-013 fiscal year to increase the transportation allotment.

Effective Date: This section would become effective July 1, 2012.

Part VII: NC Teacher Corps

Analysis: Establishes the NC Teacher Corps (Corps) to recruit and place recent college graduates and mid-career professionals as teachers in high-needs public schools. The SBE would be directed to develop and administer the Corps including provision of an intensive summer training institution, ongoing support and professional development. Corps members would be given lateral entry teaching licenses.

Effective Date: This section would become effective when it becomes law and the SBE must recruit and place an initial cohort of Corps members no later than the 2012-2013 school year.

Part VIII: Teacher Licensure

Current Law: The SBE sets the licensure requirements for teaching position applicants and may require a minimum score on a standard exam. The SBE, collaborating with the Board of Governors of The University of North Carolina, must develop requirements for continuing licensure, align them with quality professional development programs, and sets the standards for approval for teacher education programs.

Analysis: Provides that elementary education (K-6) teachers be required to achieve a prescribed minimum score on subtests or standard exams specific to reading and language arts and mathematics. For continuing licensure, at least 3 continuing education credits related to literacy must be taken by elementary and middle school teachers. Teacher education program approval standards would require elementary education program completers to demonstrate competencies in assessment and intervention strategies to teach all children to read.

Effective Date: This section would become effective when it becomes law and applies beginning with the 2013-014 school year.

Part IX: Proof of State-Funded Liability Insurance

Current Law: Professional liability insurance coverage is provided to all public school employees.

Analysis: Directs the SBE to annually notify public school employees of the availability and coverage of the professional liability insurance.

Effective Date: This section would become effective when it becomes law and applies beginning with the 2012-2013 school year.

Part X: Performance Pay

Analysis: Directs local boards of education to develop a plan of performance pay for all licensed personnel. The licensed employees would be eligible to receive bonuses or adjustments to base salary for meeting certain performance criteria. The plans must be submitted to the SBE no later than March 1, 2013. The SBE must report on these plans and the achievement-based compensation models developed as a part of RttT to the Fiscal Research Division, the Joint Legislative Commission on Governmental Operations, and the House and Senate Subcommittees on Education Appropriations by April 15, 2013. Members of the public may also submit plans to these entities by April 15, 2013.

Effective Date: This section would become effective when it becomes law.

Part XI: Clarify NC Pre-K Program Eligibility

Current Law: Section 10.7(f) of S.L. 2011-145 (Budget) states that the NC prekindergarten program (NC Pre-K) may continue to serve at-risk children identified through existing "child find" methods in which at-risk children are currently served within the Division of Child Development. The Division of Child Development is directed to serve at-risk children regardless of income. However, the total number of at-risk children can constitute no more than twenty percent (20%) of the four-year olds served within the NC Pre-K program. Section 10.7(h) requires parent co-payments for the NC Pre-K program which are the same as those required of parents receiving regular child care subsidy.

Analysis: Clarifies the relevant section of S.L. 2011-145 (Budget) regarding NC Pre-K eligibility standards and removes the parent co-pay requirement for the NC Pre-K program. Appropriates $11,308,363 to the Department of Health and Human Services, Division of Child Development and Early Education, to add 2,261 slots to the NC Pre-K program for the 2012-2013 fiscal year.

Effective Date: This section would become effective when it becomes law.

Part XII: Repeal Prohibition on Teacher Prepayment

Current Law: G.S.115C-302.1(b) details how teachers are paid. Teachers may be prepaid on the monthly pay date for days not yet worked. However, if they fail to attend scheduled workdays, do not work the number of days for which they have been paid and resign, are dismissed, or do not receive a renewed contract, they must repay the local board any salary received for days not yet worked. Teachers who have been prepaid and continue to work for a local board but fail to attend scheduled work days are subject to dismissal or other disciplinary actions.

Section 5 of S.L. 2011-379 (HB 720) removed the ability for local boards of education to pre-pay for days not yet worked and provided that teachers may only be paid for days employed as of the set pay date. Payment for a full month when days employed are less than a full month would be prohibited. This prohibition on prepayment will become effective July 1, 2012.

Analysis: Repeals the prohibition on teacher prepayment which was enacted by Section 5 of S.L. 2011-379 (HB 720). Under Section 5 of S.L. 2011-379, the prohibition on prepayment does not become effective until July 1, 2012. This section would allow prepayment as is currently allowed under G.S. 115C-302.1(b) to continue as it is currently being implemented by local boards of education without any changes.

Effective date: This section would become effective July 1, 2012.

Part XIII: Tax Deduction for Educational Supplies

Analysis: Allows an individual income tax deduction for teachers in elementary or secondary education of up to $250 for unreimbursed expenses paid or incurred for school supplies. Congress enacted a tax benefit to help K-12

:aches defray some of the expenditures they voluntarily make to enhance the quality of their students' education. ,he deduction has been available for tax years 2002-2011. Since North Carolina begins its calculation of taxable income with federal AGI, teachers in North Carolina have been allowed the deduction at the State level as well.

Congress has not extended the tax deduction beyond the 2011 taxable year. This section allows North Carolina teachers to continue deducting up to $250 for unreimbursed expenses paid or incurred for school supplies for taxable years beginning on or after January 1, 2012. If a taxpayer files a joint return and both spouses are eligible educators, then they both may claim up to $250 of expenses for a $500 total on a joint return. If Congress extends the federal tax deduction beyond taxable year 2011, then this provision will not be needed. However, if it does not, this provision ensures that North Carolina educators will continue to receive the same tax benefit they have received since 2002.

Effective Date: This section becomes effective for taxable years beginning on or after January 1, 2012.

Part XIV: Teacher Contracts

Current Law: In North Carolina, teachers are eligible for career status when they have been employed by a local board of education for four consecutive years. Obtaining career status provides that the career employee may not be dismissed or demoted except if one or more statutory grounds are found. Certain procedures must be followed to dismiss or demote a career status teacher, including a right to a hearing in front of the local board of education with a further right of appeal to superior court. The procedure for the dismissal of career status teachers in schools that have been identified as low-performing by the SBE and that have been assigned assistance teams varies in that the SBE has the authority to dismiss career status teachers due to inadequate performance. Hearings must still be granted by the SBE in these cases and there are further rights to judicial review under Chapter 150B of the General Statutes.

Analysis: Eliminates career status in North Carolina. Teachers employed by a local board of education for less than 3 years would be employed by 1 year contracts. Contracts or renewal of contracts between a local board of education and teachers who have been employed by that board for 3 years or more would be terms of 1, 2, 3, or 4 school years. For the 2012-2013 school year, all teachers would be employed on a 1 year contract. All teachers would be employed by their local boards of education upon recommendation of the superintendent. Superintendents must also recommend contract length (for those with 3 or more years of employment) but can only recommend contracts of more than 1 year for teachers who have shown effectiveness as documented by the teacher evaluation instrument. Local boards of education would be able to approve the recommendation, not approve it or decide on a different term of length for the contract. Teachers could not be dismissed or demoted during the term of the contract except for one of the statutorily listed grounds. If the superintendent decides against recommending a renewal of a contract, the teacher would have the right to petition the local board of education for a hearing but whether to grant the hearing would be in the local board's discretion.

- Procedure for Dismissal or Demotion for Cause During the Contract Term:
  - Notice: The superintendent must give written notice to the teacher of his or her intention to recommend to the local board of education that teacher be dismissed or demoted and provide the grounds upon which the recommendation is being made. The superintendent must also meet with the teacher and (i) give written notice of the charges against the teacher; (ii) an explanation of the basis for the charges; and (iii) an opportunity to respond. The notice must also inform the teacher that he or she may request a hearing before the local board of education within 14 days of the receipt of the notice.
  - Request for a Hearing: The teacher may file a written request for a hearing before the local board of education within 14 days after receipt of the notice of recommendation of the superintendent. The board shall set a time and place for the hearing which is not less than 10 days nor more than 30 days after notification is given to the teacher unless the parties agree to an extension.
  - No Request for Hearing: If the teacher does not request a hearing before the board within 14 days of receipt of the recommendation, the superintendent may submit his or her recommendation to the board. The board may (i) reject the recommendation or (ii) accept or modify the recommendation.

- Hearing Before the Local Board of Education: The hearing must be private and the board must receive documentary evidence that will be used to support the recommendation from both the superintendent and teacher, who must provide the evidence to each other within certain time frames. Written statements may be provided to the board and both the superintendent and the teacher may make oral arguments before the board based on the record before the board. The board must make findings of fact based upon the preponderance of the evidence and must send a written copy of its findings and determinations within 2 days of the hearing to the teacher and the superintendent.
- Hearing for Disciplinary Suspension Without Pay: The hearing must be private and conducted according to reasonable rules adopted by the SBE governing such a hearing. Both the teacher and superintendent have the right to be present and represented by counsel and to present witnesses. The rules of evidence to not apply. The superintendent must give the teacher 8 days before the hearing, a list of witnesses who will be presented and a statement of the nature of each witness' testimony and copy of any documentary evidence that will be presented. The teacher must provide this same information to the superintendent 6 days before the hearing. New evidence may not be presented at the hearing unless the board finds that it is critical and could not have been found earlier.
- No Appeal of Local Board of Education's Decision: The bill would eliminate the right to appeal to superior court decisions of a local board of education regarding the terms or conditions of employment or employment status of a school employee.
- Teacher Resignation Following Recommendation for Dismissal: If a teacher has been recommended for dismissal and chooses to resign without the written consent of the superintendent: (i) the superintendent must report the matter to the SBE; (ii) the teacher is deemed to have consented to the placement in his or her personnel file of the written notice of the superintendent's intention to recommend dismissal and the release of this fact that the teacher has been reported to the SBE to prospective employers upon request; and (iii) the teacher is deemed to have voluntarily surrendered his or her license pending an investigation by the SBE in determination of whether to seek action against the teacher's license.
- 30 Days' Notice Required for Resignation: If a teacher who has not been recommended for dismissal decides to resign during the term of the contract without the consent of the superintendent, then he or she should give at least 30 days' notice. If the teacher does resign without giving this notice, then the board may request that the SBE revoke the teacher's license for the remainder of the school year.
- Dismissal of School Administrators and Teachers Employed in Low-Performing Residential Schools: The procedure would remain substantially the same as it is under current law but would make the following changes:
  - Clarify that it is the SBE (rather than the Secretary of Health and Human Services) that has the authority to dismiss school administrators and teachers in residential schools that have been identified as low-performing by the SBE and have been assigned assistance teams by the SBE.
  - Eliminate the provision that allowed the teacher or school administrator to seek judicial review under Chapter 150B of the General Statutes of a final decision of the SBE.
- Dismissal of School Administrators and Teachers Employed in Low-Performing Schools: The procedure would remain substantially the same as it is under current law but the bill would eliminate the provision that allowed the teacher or school administrator to seek judicial review under Chapter 150B of the General Statutes of a final decision of the SBE.

School Administrators.

Current Law: Most school administrators are employed through contracts with their local boards of education. Some school administrators who had or were eligible to receive career status in 1995 are employed pursuant to the teacher career status law. For those employed by contract, school administrators cannot be dismissed or demoted during the term of the contract except for cause for one of the statutorily listed grounds. Superintendents recommend new, renewed, or extended contracts for school administrators to their local boards of education

/hich may approve the recommendations or not. If a superintendent decides against recommending that the local oard of education offer a new, renewed, or extended contract to a school administrator, then written notice of this decision and the reasons for it must be given to the school administrator. The reasons may not be arbitrary, capricious, discriminatory, personal, or political. The school administrator may file a written request for a hearing before the local board and failure to file a timely request results in a waiver of the right of appeal of the superintendent's decision. If a timely request is filed, the local board of education must conduct a hearing on the matter and its decision is subject to judicial review under Chapter 150B of the General Statutes.

Analysis: Eliminates career status for all school administrators. Eliminates the current requirement that the superintendent's and local board of education's decisions to not offer a new, renewed, or extended contract to a school administrator may not be arbitrary, capricious, discriminatory, personal or political. Also eliminates the right to judicial review under Chapter 150B of the General Statutes of the decision of the local board of education.

Non-Licensed Employees

Current Law: Non-licensed employees may appeal a decision of the local board of education to superior court regarding decisions concerning dismissal, demotion or suspension without pay. The non-licensed employee may request and be entitled to receive written notice as to the reasons for the employee's dismissal, demotion or suspension without pay and it must be provided to the employee prior to any local board of education hearing on the issue.

Analysis: Eliminates this right of appeal to superior court and would eliminate the right to written notice for the reasons for the non-licensed employee's dismissal, demotion or suspension without pay.

Section 11.(d) through Section 11.(l) and Section 11.(n) through Section 11.(w): Conforming statutory changes regarding the elimination of career status. Creates cross-reference to existing law to clarify that exchange eachers are not eligible to participate in the State retirement system.

Effective Date: For the 2012-2013 school year, all teachers would be employed on a 1 year contract. These sections would become effective July 1, 2012 and would apply to all school employees employed on or after that date.

Part XV: Eliminate Public Financing for Superintendent of Public Instruction

Current Law: North Carolina currently provides a program called the North Carolina Voter Owned Election Fund for public financing of elections for 3 of the 10 Council of State races (Auditor, Superintendent of Public Instruction and Commissioner of Insurance).

Candidates must file declaration of intent to participate before collecting qualifying contributions, and must then collect qualifying contributions from a certain number of registered voters during the qualifying period. The State Board of Elections "certifies" that the candidate has filed a declaration of intent, collected the appropriate contributions, and filed a notice of candidacy. Once certified, the candidate is entitled to receive distributions from the public financing fund. Distributions are as follows: none for an uncontested primary or general election; an initial distribution within 5 business days of certification by the State Board for a candidate in a contested general election; and matching funds upon trigger.

The money for the distributions to the candidates is taken from the North Carolina Voter Owned Election Fund. The program is funded by voluntary check-off donations on personal income tax and appropriations.

Analysis: Eliminates the Superintendent of Public Instruction as one of the three Council of State offices that may participate in public financing through the North Carolina Voter Owned Election Fund.

Effective Date: This section would become effective when it becomes law and applies to elections held on or after that date. This section may not become effective until preclearance under Section 5 of the Voting Rights Act s received.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 467
Health Care Committee Substitute Adopted 6/14/11
PROPOSED COMMITTEE SUBSTITUTE S467-CSRBf-78 [v.1]

Short Title: Naturopathic Licensing Act. (Public)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA NATUROPATHIC DOCTORS LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 43.
"Naturopathic Doctors.

"**§ 90-730. Short title.**

This Article may be cited as the 'North Carolina Naturopathic Doctors Licensure Act.'

"**§ 90-731. Intent; purpose.**

(a) Intent. – The General Assembly finds that a significant number of residents of the State of North Carolina choose complementary and alternative health care and declares that naturopathic treatment is a distinct health care profession that affects the public health, safety, and welfare and provides for choices in health care. The General Assembly concludes that licensure is in the current interest of North Carolina citizens to aid in protecting citizens from deception, fraud, and damage to their health status. Licensure can provide a process in which citizens may more confidently rely on the level of skill, education, and competency possessed by licensed persons.

(b) Purpose. – The purpose of this Article is to provide standards for the licensure of naturopathic doctors desiring to practice naturopathic medicine in this State and to ensure the maintenance of professional competence and acceptable standards of practice.

"**§ 90-732. Definitions.**

The following definitions apply in this Article:

(1) Approved program of naturopathic medicine. – A program that meets all of the following conditions:

a. A program that provides graduate level full-time didactic and supervised clinical training that is accredited, or has achieved candidacy status for accreditation, by the Council on Naturopathic Medical Education Program.

b. A program that is offered by an institution of higher education that is accredited by a regional or national institutional accrediting agency recognized by the United States Department of Education.

c. If the program is offered in the United States, a program that awards the degree of Doctor of Naturopathy or Doctor of Naturopathic Medicine. If the program is offered in Canada, a program that awards the degree or diploma of Doctor of Naturopathy or Doctor of Naturopathic Medicine, and is offered by an institution of higher education that has provincial approval for participation in government-funded student aid programs.

(2) Board. – The North Carolina Naturopathic Doctors Licensing Board.

(3) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony.

(4) Integrative medicine. – As defined in G.S. 90-1.1(3).

(5) Natural medicines. – Any herbal, nutritional, supplemental, homeopathic, or other nonprescription remedies.

(6) Naturopathic medicine. – A system of natural health care that employs diagnosis and treatment using natural therapies and diagnostic techniques for the promotion, maintenance, and restoration of health and the prevention of disease, including the following:

a. Administering or providing any of the following for preventive and therapeutic purposes: natural medicines, natural therapies, natural topical medicines, hydrotherapy, dietary therapy, and naturopathic physical medicine.

b. Using diagnostic procedures, including physical and orificial examination, but excluding endoscopy, sigmoidoscopy, colonoscopy, and any other diagnostic or therapeutic endoscopy.

c. Ordering and interpreting laboratory tests and diagnostic imaging, but excluding electrocardiograms, echocardiograms, electroencephalograms, nuclear imagings, MRIs, CT scans, and other tests that should be conducted and interpreted by a physician licensed under Article 1 of this Chapter.

(7) Naturopathic physical medicine. – The manual use of massage, stretching, or resistance.

(8) Naturopathic doctor. – A person licensed to practice naturopathic medicine under this Article.

"**§ 90-733. Practice of naturopathic medicine; scope of practice.**

(a) Practice of Naturopathic Medicine. – A naturopathic doctor is a licensed health care provider having the same responsibilities as other licensed doctors regarding public health laws, reportable diseases and conditions, communicable disease control and prevention, and the recording of vital statistics. In diagnosing and treating an individual, a naturopathic doctor may employ the following therapies, modalities, procedures, or remedies consistent with naturopathic education and training:

(1) Dispense, administer, and advise the use of natural remedies derived from or substantially similar in molecular structure or function to natural sources for preventive and therapeutic purposes, including food, extracts of food, nutraceuticals, vitamins, minerals, enzymes, botanicals and their extracts, homeopathic remedies prepared according to the Homeopathic Pharmacopoeia of the United States, and all dietary supplements and nonprescription drugs as defined by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.A. § 301, et seq.

(2) Order and perform physical examinations.
(3) Order, perform, and interpret laboratory examinations and diagnostic imaging studies, except as prohibited in G.S. 90-732(6).
(4) Perform hot or cold hydrotherapy, naturopathic physical treatment, electromagnetic energy, and therapeutic exercise.
(5) Perform health education and health counseling.
(6) Utilize routes of administration, including oral, nasal, auricular, ocular, rectal, vaginal, and transdermal.
(7) Perform, repair, and care incidental to superficial lacerations and abrasions and apply topical and local anesthetics and antimicrobials.
(8) Remove foreign bodies located in the superficial tissues.

(b) Prohibitions. – A naturopathic doctor may not perform any of the following functions unless otherwise licensed by this State to do so:
(1) Prescribe, dispense, or administer any legend drug, except as authorized by this Article.
(2) Practice or attempt to practice as a medical physician, osteopath, acupuncturist, dentist, podiatrist, optometrist, chiropractor, dietitian or nutritionist, psychologist, advanced practice registered nurse, physician assistant, physical therapist, or any other health care professional not authorized by this Article.
(3) Use general or spinal anesthetics.
(4) Perform procedures using a laser device.
(5) Perform surgical procedures.
(6) Administer ionizing radioactive substances for therapeutic purposes.
(7) Perform chiropractic adjustments.
(8) Perform acupuncture.
(9) Performing any acts of prenatal, intrapartum, postpartum, newborn, and interconceptional care as defined under G.S. 90-178.2.

"**§ 90-734. License required; exemptions.**

(a) License Required. – On or after January 1, 2013, no person shall practice or offer to practice as a naturopathic doctor, perform naturopathic medicine, or use any card, title, or abbreviation to indicate that the person is a naturopathic doctor unless the person has been licensed under the provisions of this Article. Persons licensed under this Article have the exclusive right to use the titles 'Naturopathic Doctor,' 'Doctor of Naturopathic Medicine,' 'Doctor of Naturopathy,' 'Naturopathic Medicine,' 'Naturopath,' or the abbreviations 'D.N.,' 'N.D.,' 'ND,' and 'D.N.M.'

(b) Exemptions. – Nothing in this Article shall be construed to prohibit or affect any of the following:
(1) The practice of a profession by an individual who is licensed, certified, or registered under other laws of this State and is performing services within the authorized scope of practice.
(2) The practice of naturopathic medicine by a person employed by the federal government while the person is engaged in the performance of duties prescribed by laws and regulations of the United States.
(3) The practice of naturopathic medicine by a student or a resident completing a clinical requirement for graduation from a naturopathic training program approved by the Board, so long as the practice is performed under the supervision of a physician licensed under Article 1 of this Chapter and the clinical requirement does not exceed one year.

(c) Unlawful Act. – A person who violates this section is guilty of a Class I felony. The Board may make application to superior court for an order enjoining a violation of this section.

Upon a showing by the Board that a person has violated or is about to violate this section, the court may grant an injunction, restraining order, or take other appropriate action.

"**§ 90-735. North Carolina Naturopathic Doctors Licensing Board.**

(a) Board. – The North Carolina Naturopathic Doctors Licensing Board is created. The Board consists of seven members serving for staggered terms. The initial Board members shall be appointed on or before January 1, 2013, as follows:

(1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two naturopathic doctors who are licensed under this Article. One member shall serve a term of one year, and one member shall serve a term of three years.

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two naturopathic doctors who are licensed under this Article. One member shall serve a term of one year, and one member shall serve a term of two years.

(3) The Governor shall appoint two physicians licensed under Article 1 of Chapter 90 of the General Statutes, at least one of whom shall be involved in the practice of integrative medicine or who teaches integrative medicine at a medical school. Both of these members shall serve a term of three years.

(4) The Governor shall appoint for a two-year term a public member who is not a licensed health care professional and is not employed in a health care profession.

Upon the expiration of the terms of the initial Board members, each member is appointed for a term of three years, beginning on January 1 of each year. A member serves until the member's successor is appointed. No member shall serve on the Board for more than two consecutive terms.

(b) Vacancies. – A member of the Board serves at the pleasure of the authority that appointed the member. A vacancy shall be filled in the same manner as the original appointment. An appointee to fill a vacancy shall serve the remainder of the unexpired term and until the appointee's successor has been duly appointed.

(c) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(d) General Administration. – A Board member may not receive compensation but may receive reimbursement as provided in G.S. 93B-5. The officers of the Board include a chair, a secretary, and any other officer deemed necessary by the Board to carry out the purposes of this Article. All officers shall be elected annually by the Board at its first meeting held after appointments to the Board are made. The Board shall hold a meeting within 45 days of the appointment of new Board members. All officers shall serve one-year terms and shall serve until their successors are elected and qualified. No person shall chair the Board for more than one year. The Board may adopt rules governing the calling, holding, and conducting of regular and special meetings. A majority of Board members constitutes a quorum.

"**§ 90-736. Powers of the Board.**

The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this Article.

(2) Adopt rules as may be necessary to carry out the provisions of this Article.

(3) Establish, examine, and determine the qualifications and fitness of applicants for licensure and renewal of licensure.

(4) Issue, renew, deny, suspend, or revoke licenses and conduct any disciplinary actions authorized by this Article.

(5) Collect fees for licensure, licensure renewal, and other services deemed necessary to carry out the provisions of this Article.
(6) Establish and approve continuing education requirements for persons licensed under this Article.
(7) Employ and fix the compensation of personnel that the Board determines is necessary to carry out the provisions of this Article and incur other expenses necessary to perform the duties of the Board.
(8) Adopt a seal containing the name of the Board for use on all licenses and official reports issued by the Board.
(9) Institute corrective measures, as necessary, to rehabilitate naturopathic doctors or limit their practice.
(10) Investigate persons engaging in practices which violate the provisions of this Article.

"**§ 90-737. Qualifications for licensure; renewal; reinstatement.**

(a) Licensure. – Upon application to the Board and payment of the required fees, an applicant may be licensed under this Article as a naturopathic doctor if the applicant meets all of the following qualifications and conditions:
(1) Is of good moral and ethical character.
(2) Is a graduate of an approved program of naturopathic medicine as defined in G.S. 90-732(1).
(3) Meets one of the following two conditions:
a. Has successfully passed a competency-based national naturopathic licensing examination administered by the North American Board of Naturopathic Examiners as recognized by the Board.
b. Has successfully passed a competency-based examination approved by the Board and by the North American Board of Naturopathic Medical Education.
(4) Provides the Board with a list of at least four physicians licensed under Article 1 of this Chapter to practice medicine in this State who have agreed to work with the applicant and accept referrals from the applicant. The applicant shall also provide the Board with letters of verification from the listed physicians.
(5) Submits any other documentation the Board deems necessary to determine the applicant's fitness for licensure under this Article. This documentation may include successful completion of a Board-approved examination on State laws and rules related to naturopathic medicine.

(b) Renewal. – A license expires every year on the date it is issued unless it is renewed. Failure to renew a license within 30 days of the date the license expires shall result in automatic forfeiture of the right to practice naturopathic medicine in this State until such time that the license has been reinstated. To renew a license, a licensee shall meet all of the following conditions:
(1) Submit an application for license renewal.
(2) Pay the required fees.
(3) Complete at least 30 hours of continuing education approved by the Board per year.

(c) Reinstatement. – A licensed naturopathic doctor who has allowed the license to lapse by failure to renew within the time allowed under subsection (b) of this section may apply for reinstatement. The Board may reinstate the applicant's license if the applicant pays the required fees, furnishes a statement of the reason for failure to apply for renewal before the deadline, and complies with any other requirements established in rules adopted by the Board. If the license has lapsed for two years or longer, the Board may require the applicant to

satisfactorily complete a refresher course approved by the Board or to provide proof of active licensure within the past two years in another jurisdiction.

"**§ 90-738. Reciprocity.**

The Board may grant, upon application and payment of fees, a license to a person who resides in this State and has been licensed to practice as a naturopathic doctor in another state or a Canadian province if both of the following conditions are met:

(1) The standards for licensure in the state or province in which the naturopathic doctor is licensed are substantially equivalent to those provided in this Article.

(2) The applicant provides proof of licensure in good standing in all states and provinces in which the applicant has been licensed.

"**§ 90-739. Fees.**

The Board may impose the following fees:

(1)	Application and examination	$200.00
(2)	License	$600.00
(3)	License renewal	$400.00
(4)	Late renewal	$200.00
(5)	Reinstatement	$1,000.00
(6)	Reasonable charges for duplication services and material.	
(7)	Criminal history record check fee equal to the amount imposed by the Department of Justice to conduct the criminal history record check requested by the Board.	

"**§ 90-740. Disciplinary authority.**

(a) Authority. – The Board may impose probationary conditions upon a licensee, or it may deny, suspend, revoke, or refuse to issue or renew a license, if the licensee or applicant does any of the following:

(1) Engages in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board or aids, abets, or assists any other person in the violation of the provisions of this Article or rules adopted by the Board.

(2) Gives false information to or withholds information from the Board in procuring or attempting to procure a license.

(3) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a naturopathic doctor or that indicates the person has deceived or defrauded the public. A felony conviction shall result in the automatic revocation of a license issued by the Board unless the Board determines otherwise pursuant to rules adopted by the Board.

(4) Has been declared mentally incompetent by a court of competent jurisdiction.

(5) Habitually uses or is addicted to drugs or intoxicating liquors to the extent that it affects the licensee's professional competency. If a licensee violates this subdivision, the Board may require the licensee to undergo a mental or physical examination by physicians designated by the Board before or after the licensee has been charged. The results of the examination shall be admissible as evidence in a hearing before the Board.

(6) Has demonstrated gross negligence, incompetency, or misconduct in the performance of naturopathic medical treatment.

(7) Has had a health care provider license denied, restricted, revoked, or suspended by another state or jurisdiction.

(8) Fails to consent to a criminal history record check.
(9) Fails to respond, within a reasonable time, to inquiries from the Board concerning any matter affecting the individual's license to practice naturopathic medicine.
(10) Fails to complete continuing education requirements within the time prescribed.

(b) Hearing. – Denial, refusal to renew, suspension, or revocation of a license or imposition of probationary conditions upon a licensee may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted pursuant to this Article. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for not less than two years.

(c) Records. – The Board shall keep a record of its proceedings. The Board may, in a closed session, receive evidence regarding the treatment of a patient who has not expressly or impliedly consented to the public disclosure of the treatment when necessary for the protection of the rights of the patient or of the accused naturopathic doctor and the full presentation of relevant evidence. All records, papers, investigative files, investigative reports, and other documents containing information gathered or received by the Board as a result of investigations, inquiries, or interviews conducted in connection with an application for licensure, a complaint, or a disciplinary matter are not considered public documents within the meaning of Chapter 132 of the General Statutes. If a record, paper, or other document containing information collected and compiled by the Board is admitted into evidence in a hearing held by the Board, it shall then be a public record within the meaning of Chapter 132 of the General Statutes.

(d) Confidential Information. – The Board shall release confidential or nonpublic information about a licensee to any health care licensure board in this State or another state relating to the issuance, denial, suspension, revocation, or voluntary surrender of the license, including the reasons for the action or any investigative report prepared by the Board. The Board shall notify the naturopathic doctor within 30 days after the information is released. The Board shall furnish to the naturopathic doctor a summary of the information being released. However, if the naturopathic doctor requests, in writing, within 30 days from the date of notice, a copy of the information being released, the Board shall give to the naturopathic doctor a copy of all the information being released. Notice or copies shall not be provided by the Board if the information relates to an ongoing criminal investigation by a law enforcement agency or any Department of Health and Human Services personnel with enforcement or investigative responsibilities.

"**§ 90-741. Criminal history record check of applicants and licensees.**

(a) Criminal History Record Check. – The Board shall require a criminal history record check for a person who is either licensed under this Article or applying for licensure under this Article. The Board is responsible for providing to the North Carolina Department of Justice the fingerprints of the person to be checked, a form signed by the person consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) Conviction. – If a criminal history record check reveals one or more felony convictions, the Board shall deny licensure, however if a criminal history record check reveals one or more misdemeanor convictions, the convictions do not automatically bar licensure. The Board shall consider all of the following factors regarding the misdemeanor conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) The subsequent commission of a crime by the person.

(c) Denial of Licensure. – If the Board denies, revokes, or suspends a license based on information obtained in a criminal history record check, the Board shall disclose to the person the information contained in the criminal history record check that is relevant to the Board's actions. The Board may not provide a copy of the criminal history record check to the person. A person has the right to appear before the Board to appeal the Board's decision. An appearance before the Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for its actions based on information provided in a person's criminal history record check.

"**§ 90-742. Reports; immunity from suit.**

(a) Report. – A person who has reasonable cause to suspect misconduct or incapacity of a licensee, or who has reasonable cause to suspect that a person is in violation of this Article, may report the relevant facts to the Board. Upon receipt of a charge, or upon its own initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. A person who, in good faith, makes a report pursuant to this section is immune from any criminal prosecution or civil liability resulting from making the report.

(b) Immunity. – The Board and its staff are immune from any criminal prosecution or civil liability for exercising, in good faith, the powers and duties given to the Board under this Article.

"**§ 90-743. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article."

SECTION 2. G.S. 90-18(c) is amended by adding a new subdivision to read:

"(c) The following shall not constitute practicing medicine or surgery as defined in this Article:

...

(21) The practice of naturopathic medicine by a licensed naturopathic doctor under the provisions of Article 43 of this Chapter."

SECTION 3. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.31. Criminal history record checks for naturopathic doctors.**

(a) The Department of Justice shall provide to the North Carolina Naturopathic Doctors Licensing Board from the State and National Repositories of Criminal Histories the criminal history of an applicant for licensure by the Board or a licensee of the Board. The Judicial Department shall provide to the Department of Justice, along with the request, the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal history record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the applicant or licensee shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Judicial Department shall keep all information obtained pursuant to this section confidential.

(b) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 4. Notwithstanding the provisions of G.S. 90-735, as enacted by Section 1 of this act, the initial naturopathic doctors appointed to the North Carolina Naturopathic Doctors Licensing Board must be North Carolina residents, must be licensed as naturopathic doctors in a state that licenses this profession, and must be eligible for licensure under G.S. 90-737, as enacted by Section 1 of this act. Upon appointment, the appointee must immediately seek to become licensed under this act.

SECTION 5. This act is effective when it becomes law.

SENATE BILL 467:
Naturopathic Licensing Act

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	May 30, 2012
Introduced by:	Sens. Hartsell, Apodaca	**Prepared by:**	Amy Jo Johnson
Analysis of:	PCS to Second Edition S467-CSRBf-78		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 467 would establish the North Carolina Naturopathic Doctors Licensure Act.***

The PCS adds performing acts of prenatal, intrapartum, postpartum, newborn, and interconceptual care to the list of acts prohibited by naturopathic doctors. It also staggers the initial Board appointments and changes the penalty for practicing without licensure from a Class I misdemeanor to a Class I felony and moves the effective date of licensure from January 1, 2012, to January 1, 2013.

BILL ANALYSIS:

Senate Bill 467 defines "naturopathic medicine" as a system of natural health care that employs diagnosis and treatment using natural therapies and diagnostic techniques for the promotion, maintenance, and restoration of health and the prevention of disease, including the following:

- Administering or providing any of the following or preventative and therapeutic purposes: natural medicines, natural therapies, natural topical medicines, hydrotherapy, dietary therapy, and naturopathic physical medicine.
- Using diagnostic procedures, including physical and orificial examination, but excluding endoscopy, sigmoidoscopy, and colonoscopy.
- Ordering and interpreting laboratory tests and diagnostic imaging, but excluding electrocardiograms, echocardiograms, electroencephalograms, nuclear imaging, MRIs, CT scans, and other tests that should be conducted and interpreted by a licensed physician.

Senate Bill 467 defines the scope of practice of naturopathic medicine and creates a licensure requirement for anyone practicing naturopathic medicine on or after January 1, 2013. Licenses will be granted by the North Carolina Naturopathic Doctors Licensing Board (Board) as established in the bill. The Board is authorized to impose the following fees:

- Application and examination $200.00
- License $600.00
- License renewal $400.00
- Late renewal $200.00
- Reinstatement $1,000.00
- Criminal history record check fee equal to the amount imposed by the Department of Justice to conduct the criminal history record check requested by the Board.

Licenses will expire every year on the date issued unless it is renewed. Any person practicing as a naturopathic doctor, performing naturopathic medicine, or using any card, title, or abbreviation to indicate that the person is a naturopathic doctor without a license is guilty of a Class 1 Felony.

BACKGROUND: Sixteen states, the District of Columbia, and 4 Canadian provinces have enacted a licensure law for naturopathic doctors.

EFFECTIVE DATE: This act is effective when it becomes law.

S467-SMRB-125(CSRBf-78) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 29, 2012

TO: Senate Finance Committee

FROM: Chloe Gossage
Fiscal Research Division

RE: Senate Bill 467 (PCS to 2nd Edition S467-CSSQ-62) Naturopathic Licensure Act

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES:					
NC Naturopathic Doctors Licensing Bd	**$24,000**	**$16,800**	**$20,000**	**$24,400**	**$28,800**
Dept. of Justice	**$1,140**	**$228**	**$266**	**$342**	**$380**
EXPENDITURES:					
NC Naturopathic Doctors Licensing Bd		** See Assumptions & Methodology **			
Dept. of Justice	**$1,140**	**$228**	**$266**	**$342**	**$380**
Judicial Branch		** See Assumptions & Methodology **			
Dept. of Correction		** See Assumptions & Methodology **			
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Naturopathic Doctors Licensing Board (new), Department of Justice, Judicial Branch, Dept. of Correction

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY:

Senate Bill 467 defines "naturopathic medicine" as a system of natural health care that employs diagnosis and treatment using natural therapies and diagnostic techniques for the promotion, maintenance, and restoration of health and the prevention of disease, including the following:

- Administering or providing any of the following or preventative and therapeutic purposes: natural medicines, natural therapies, natural topical medicines, hydrotherapy, dietary therapy, and naturopathic physical medicine.
- Using diagnostic procedures, including physical and orificial examination, but excluding endoscopy, sigmoidoscopy, and colonoscopy.
- Ordering and interpreting laboratory tests and diagnostic imaging, but excluding electrocardiograms, echocardiograms, electroencephalograms, nuclear imaging, MRIs, CT scans, and other tests that should be conducted and interpreted by a licensed physician.

Senate Bill 467 defines the scope of practice of naturopathic medicine and creates a licensure requirement for anyone practicing naturopathic medicine on or after January 1, 2012. Licenses will be granted by the North Carolina Naturopathic Doctors Licensing Board (Board) as established in the bill. The Board is authorized to impose the following fees:

- Application and examination $200.00
- License $600.00
- License renewal $400.00
- Late renewal $200.00
- Reinstatement $1,000.00
- Reasonable charges for duplication services and material.
- Criminal history record check fee equal to the amount imposed by the Department of Justice to conduct the criminal history record check requested by the Board.

Licenses will expire every year on the date issued unless it is renewed. Any person practicing as a naturopathic doctor, performing naturopathic medicine, or using any card, title, or abbreviation to indicate that the person is a naturopathic doctor without a license is guilty of a Class I Felony.

Source: Legislative Research Division

ASSUMPTIONS AND METHODOLOGY:

North Carolina Naturopathic Doctors Licensure Board

Revenue

Materials presented to the Legislative Committee on New Licensing Boards indicate that the North Carolina Association of Naturopathic Physicians (NCANP) currently has 30 members who are naturopathic physicians who meet national licensure standards. It is anticipated that all 30 members will apply for licensure in North Carolina under this Act.

Additional data provided to the 2011 Legislative Committee on New Licensing Boards for comparison purposes indicated that, since the North Carolina Acupuncture Licensing Board was established in 1993, the number of licensed acupuncturists grew from 15 to more than 300. This would equate to a growth rate of approximately 20 percent annually.

Using an estimate of a 20 percent growth rate, licensure and fees in the first five years would be as follows:

	Fee	FY2013	FY2014	FY2015	FY2016	FY2017
New applicants		30	6	7	9	10
Renewals			30	36	43	52
Application & Examination	$200	$6,000	$1,200	$1,400	$1,800	$2,000
License	$600	$18,000	$3,600	$4,200	$5,400	$6,000
License Renewal	$400		$12,000	$14,400	$17,200	$20,800
Total		**$24,000**	**$16,800**	**$20,000**	**$24,400**	**$28,800**

The above analysis assumes that all applicants are issued licenses and renew those licenses annually in a timely manner. Potential fees due to late renewals ore reinstatements are unknown.

Expenditures
Although the legislation permits the Board to hire personnel and incur operating expenses, no funds are appropriated to the Board. Therefore, it is assumed that the Board's operating expenses will be constrained by the revenue generated from the aforementioned fees.

Department of Justice

Revenue
The Department of Justice (DOJ) reports that a fee of $38 is charged to perform each criminal background check. Of this fee, $22 is forward to the Federal Bureau of Investigation (FBI) for a check of federal databases, and the remaining $16 is retained by DOJ. Of this $16, $14 goes to a check of North Carolina databases and $2 is used for the processing cost associated with the request.

Expenditures
The proposed changes in the bill may increase the workload and number of background checks the SBI may have to review and process. However, the bill makes no changes to 114-19.2 (c) which allows DOJ to charge a reasonable fee to recover their costs. Because this fee mechanism remains intact, the Department does not project that the proposed legislation will have a material fiscal impact on the SBI or DOJ.

Judicial Branch & Department of Correction

The proposed legislation would create a new Class I felony offense. New charges would impact court resources, and new convictions would impact the Department of Correction, Division of Prisons or Division of Community Corrections. At this time, the projected impact has not been determined.

SOURCES OF DATA: Legislative Commission on New Licensing Boards, Department of Justice.

TECHNICAL CONSIDERATIONS: None

SENATE PAGES ATTENDING

COMMITTEE: Finance Hartsell Rucho ROOM: 544 LOB

DATE: 5-30 TIME: 1 PM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Lauren Strickland	Ellenboro	Wes Westmoreland
2 ~~Melinda Hobbs~~	~~Easton~~	~~Ed Jones~~
3 Elaine Kearney	Pinehurst	Blake
4 Tyler Coe	Denton	Bingham
5 Jonathan Glover	Bailey	Newton
6 Jeremy Glover	Bailey	Newton
7 Travis Gillespie	Aberdeen	Blue Jr.
8 Autumn Fulton	Pleasant Garden	Robinson
9 Mallory Lowe	Trinity	McKissick
10 Jaelyn Harvey	Fayetteville	Mansfield

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE FINANCE COMMITTEE
Wednesday, May 30, 2012 at 2:40 PM
Senate Floor, Legislative Building

MINUTES

The Senate Finance Committee met at 2:40 PM on May 30, 2012 in the Senate Chamber. Senator Hartsell presided as chair.

S.B. 795 – Excellent Public Schools Act

Senator Tillman was recognized to explain the finance portion of the bill – Section 13. Section 13 would ensure that the $250 deduction for educator expenses would continue for State individual income tax purposes, regardless of whether or not the federal deduction is reinstated for taxable years beginning on or after January 1, 2012. Senator Rucho and Senator Brock moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal memo is attached.

The meeting adjourned at 2:45 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

Sen. Hartsell chaired - floor convened 2:40p 6/30

Ruchoy moves Brock

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2011

S

tax credit deduction

Tillman explained $250 for Teacher's out of pocket school expenses.

SENATE BILL 795

Education/Higher Education Committee Substitute Adopted 5/29/12

PROPOSED COMMITTEE SUBSTITUTE S795-PCS35358-TC-39

FAV adjourned 2:45p.

Short Title:	Excellent Public Schools Act. (Public)
Sponsors:	
Referred to:	

April 25, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO IMPROVE K-3 LITERACY; PROVIDE LITERACY VOLUNTEER LEAVE TIME; ASSIGN SCHOOL PERFORMANCE GRADES; MAXIMIZE INSTRUCTIONAL TIME; ADJUST SCHOOL CALENDAR; FUND FIVE ADDITIONAL INSTRUCTIONAL DAYS WITHIN THE EXISTING SCHOOL CALENDAR; ESTABLISH AN NC TEACHER CORPS; STRENGTHEN TEACHER LICENSURE REQUIREMENTS; PROVIDE PROOF OF STATE-FUNDED LIABILITY INSURANCE; ESTABLISH PLANS FOR PAY FOR EXCELLENCE; CLARIFY NC PRE-K PROGRAM ELIGIBILITY AND ADD SLOTS; REPEAL PROHIBITION ON TEACHER PREPAYMENT; PROVIDE A TAX DEDUCTION FOR EDUCATIONAL SUPPLIES; ESTABLISH TEACHER CONTRACTS; AND ELIMINATE PUBLIC FINANCING FOR THE OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION.

The General Assembly of North Carolina enacts:

PART I. IMPROVE K-3 LITERACY

SECTION 1.(a) G.S. 115C-81.2 is repealed.

SECTION 1.(b) Article 8 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 1A. North Carolina Read to Achieve Program.

"**§ 115C-83.1A. State goal.**

The goal of the State is to ensure that every student read at or above grade level by the end of third grade and continue to progress in reading proficiency so that he or she can read, comprehend, integrate, and apply complex texts needed for secondary education and career success.

"**§ 115C-83.1B. Purposes.**

(a) The purposes of this Part are to ensure that (i) difficulty with reading development is identified as early as possible; (ii) students receive appropriate instructional and support services to address difficulty with reading development and to remediate reading deficiencies; and (iii) each student and his or her parent or guardian be continuously informed of the student's academic needs and progress.

(b) In addition to the purposes listed in subsection (a) of this section, the purpose of this Part is to determine that progression from one grade to another be based, in part, upon proficiency in reading.

"**§ 115C-83.1C. Definitions.**

The following definitions apply in this Part:

(1) "Accelerated reading class" means a class where focused instructional supports and services are provided to increase a student's reading level at least two grades in one school year.

(2) "Alternative assessment" means a valid and reliable standardized assessment of reading comprehension, approved by the State Board of Education, that is not the same test as the State approved standardized test of reading comprehension administered to third grade students.

(3) "Instructional supports and services" mean intentional strategies used with a majority of students to facilitate reading development and remediate emerging difficulty with reading development. Instructional supports and services include, but are not limited to, small group instruction, reduced teacher-student ratios, frequent progress monitoring, and extended learning time.

(4) "Difficulty with reading development" means not demonstrating appropriate developmental abilities in any of the major reading areas, including, but not limited to, oral language, phonological or phonemic awareness, vocabulary, fluency, or comprehension, according to observation-based, diagnostic, or formative assessments.

(5) "Reading interventions" mean evidence-based strategies frequently used to remediate reading deficiencies and include, but are not limited to, individual instruction, tutoring, or mentoring that target specific reading skills and abilities.

(6) "Reading proficiency" means reading at or above the third grade level by the end of a student's third grade year, demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students.

(7) "Reading deficiency" means not reading at the third grade level by the end of the student's third grade year, demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students.

(8) "Student reading portfolio" means a compilation of independently produced student work selected by the student's teacher, and signed by the teacher and principal, as an accurate picture of the student's reading ability. The student reading portfolio shall include an organized collection of evidence of the student's mastery of the State's reading standards that are assessed by the State-approved standardized test of reading comprehension administered to third grade students. For each benchmark, there shall be three examples of student work demonstrating mastery by a grade of seventy percent (70%) or above.

(9) "Summer reading camp" means an additional educational program outside of the instructional calendar provided by the local school administrative unit to any student who does not demonstrate reading proficiency. Parents or guardians of the student not demonstrating reading proficiency shall make the final decision regarding the student's summer camp attendance. Summer camps shall (i) be six to eight weeks long, four or five days per week; (ii) include at least three hours of instructional time per day; (iii) be taught by

compensated, licensed teachers selected based on demonstrated student outcomes in reading proficiency; and (iv) allow volunteer mentors to read with students.

(10) "Transitional third and fourth class combination" means a classroom specifically designed to produce learning gains sufficient to meet fourth grade performance standards while continuing to remediate areas of reading deficiency.

"**§ 115C-83.1D. Comprehensive plan for reading achievement.**

(a) The State Board of Education shall develop, implement, and continuously evaluate a comprehensive plan to improve reading achievement in the public schools. The plan shall be based on reading instructional practices with strong evidence of effectiveness in current empirical research in reading development. The plan shall be developed with the active involvement of teachers, college and university educators, parents and guardians of students, and other interested parties. The plan shall, when appropriate to reflect research, include revision of the standard course of study or other curricular standards, revision of teacher licensure and renewal standards, and revision of teacher education program standards.

(b) The State Board of Education shall report biennially to the Joint Legislative Education Oversight Committee by October 1 of each even-numbered year on the implementation, evaluation, and revisions to the comprehensive plan for reading achievement and shall include recommendations for legislative changes to enable implementation of current empirical research in reading development.

"**§ 115C-83.1E. Developmental screening and kindergarten entry assessment.**

(a) The State Board of Education shall ensure that every student entering kindergarten shall be administered a developmental screening of early language, literacy, and math skills within 30 days of enrollment.

(b) The State Board of Education shall ensure that every student entering kindergarten shall complete a kindergarten entry assessment within 60 days of enrollment.

(c) The developmental screening instrument may be composed of subsections of the kindergarten entry assessment.

(d) The kindergarten entry assessment shall address the five essential domains of school readiness: language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development.

(e) The kindergarten entry assessment shall be (i) administered at the classroom level in all local school administrative units; (ii) aligned to North Carolina's early learning and development standards and to the standard course of study; and (iii) reliable, valid, and appropriate for use with all children, including those with disabilities and those who are English language learners.

(f) The results of the developmental screening and the kindergarten entry assessment shall be used to inform the following:

(1) The status of children's learning at kindergarten entry.

(2) Instruction of each child.

(3) Efforts to reduce the achievement gap at kindergarten entry.

(4) Continuous improvement of the early childhood system.

"**§ 115C-83.1F. Facilitating early grade reading proficiency.**

(a) Kindergarten, first, second, and third grade students shall be assessed with valid, reliable, formative, and diagnostic reading assessments made available to local school administrative units by the State Board of Education pursuant to G.S. 115C-174.11(a). Difficulty with reading development identified through administration of formative and diagnostic assessments shall be addressed with instructional supports and services. To the greatest extent possible, kindergarten through third grade reading assessments shall yield data

that can be used with the Education Value Added Assessment System (EVAAS), or a compatible and comparable system approved by the State Board of Education, to analyze student data to identify root causes for difficulty with reading development and to determine actions to address them.

(b) Formative and diagnostic assessments and resultant instructional supports and services shall address oral language, phonological and phonemic awareness, phonics, vocabulary, fluency, and comprehension using developmentally appropriate practices.

(c) Local school administrative units are encouraged to partner with community organizations, businesses, and other groups to provide volunteers, mentors, or tutors to assist with the provision of instructional supports and services that enhance reading development and proficiency.

"**§ 115C-83.1G. Elimination of social promotion.**

(a) The State Board of Education shall require that a student be retained in the third grade if the student fails to demonstrate reading proficiency appropriate for a third grade student, as demonstrated on a State-approved standardized test of reading comprehension administered to third grade students. The test may be re-administered once prior to the end of the school year.

(b) Students may be exempt from mandatory retention in third grade for good cause but shall continue to receive instructional supports and services and reading interventions appropriate for their age and reading level. Good cause exemptions shall be limited to the following:

(1) Limited English Proficient students with less than two years of instruction in an English as a Second Language program.

(2) Students with disabilities, as defined in G.S. 115C-106.3(1), whose individualized education program indicates the use of alternative assessments and reading interventions.

(3) Students who demonstrate reading proficiency appropriate for third grade students on an alternative assessment approved by the State Board of Education. Teachers may administer the alternative assessment following the administration of the State-approved standardized test of reading comprehension typically given to third grade students at the end of the school year, or after a student's participation in the local school administrative unit's summer reading camp.

(4) Students who demonstrate, through a student reading portfolio, reading proficiency appropriate for third grade students. Teachers may submit the student reading portfolio at the end of the school year, or after a student's participation in the local school administrative unit's summer reading camp. The student reading portfolio and review process shall be established by the State Board of Education.

(5) Students who have (i) received reading intervention and (ii) previously been retained more than once in kindergarten, first, second, or third grades.

(c) The superintendent shall determine whether a student may be exempt from mandatory retention on the basis of a good cause exemption. The following steps shall be taken in making the determination:

(1) The teacher of a student eligible for a good cause exemption shall submit documentation of the relevant exemption and evidence that promotion of the student is appropriate based on the student's academic record to the principal. Such evidence shall be limited to the student's personal education plan, individual education program, if applicable, alternative assessment, or student reading portfolio.

(2) The principal shall review the documentation and make an initial determination whether the student should be promoted. If the principal determines the student should be promoted, the principal shall make a written recommendation of promotion to the superintendent for final determination. The superintendent's acceptance or rejection of the recommendation shall be in writing.

"**§ 115C-83.1H. Successful reading development for retained students.**

(a) Students not demonstrating reading proficiency shall be enrolled in a summer reading camp provided by the local school administrative unit prior to being retained. Students who demonstrate reading proficiency on an alternative assessment of reading comprehension or student reading portfolio after completing a summer reading camp shall be promoted to the fourth grade. Students who do not demonstrate reading proficiency on these measures after completing a summer reading camp shall be retained under G.S. 115C-83.1G(a) and provided with the instruction listed in subsection (b) of this section during the retained year.

(b) Students retained under G.S. 115C-83.1G(a) shall be provided with a teacher selected based on demonstrated student outcomes in reading proficiency and placed in an accelerated reading class or a transitional third and fourth grade class combination, as appropriate. Classroom instruction shall include at least 90 minutes of daily, uninterrupted, evidence-based reading instruction, not to include independent reading time, and other appropriate instructional supports and services and reading interventions.

(c) The State Board of Education shall establish a midyear promotion policy for any student retained under G.S. 115C-83.1G(a) who, by November 1, demonstrates reading proficiency through administration of the alternative assessment of reading comprehension, or student reading portfolio review.

(d) Parents or guardians of students who have been retained once under the provisions of G.S. 115C-83.1G(a) shall be provided with a plan for reading at home, including participation in shared and guided reading workshops for the parent or guardian, and outlined in a parental or guardian contract.

(e) Parents or guardians of students who have been retained twice under the provisions of G.S. 115C-83.1G(a) shall be offered supplemental tutoring for the retained student in evidence-based reading services outside the instructional day.

"**§ 115C-83.1I. Notification requirements to parents and guardians.**

(a) Parents or guardians shall be notified in writing, and in a timely manner, that the student shall be retained, unless he or she is exempt from mandatory retention for good cause, if the student is not demonstrating reading proficiency by the end of third grade. Parents or guardians shall receive this notice when a kindergarten, first, second or third grade student (i) is demonstrating difficulty with reading development; (ii) is not reading at grade level; or (iii) has a personal education plan under G.S. 115C-105.41.

(b) Parents or guardians of any student who is to be retained under the provisions of G.S. 115C-83.1G(a) shall be notified in writing of the reason the student is not eligible for a good cause exemption as provided in G.S. 115C-83.1G(b). Written notification shall also include a description of proposed reading interventions that will be provided to the student to remediate identified areas of reading deficiency.

(c) Parents or guardians of students retained under G.S. 115C-83.1G(a) shall receive at least monthly written reports on student progress towards reading proficiency. The evaluation of the student's progress shall be based upon the student's classroom work, observations, tests, assessments, and other relevant information.

(d) Teachers and principals shall provide opportunities to discuss with parents and guardians the notifications listed in this section.

"**§ 115C-83.1J. Accountability measures.**

(a) Each local board of education shall publish annually on a Web site maintained by that local school administrative unit and report in writing to the State Board of Education by September 1 of each year the following information on the prior school year:

(1) The number and percentage of third grade students demonstrating and not demonstrating reading proficiency on the State-approved standardized test of reading comprehension administered to third grade students.

(2) The number and percentage of third grade students who take and pass the alternative assessment of reading comprehension.

(3) The number and percentage of third grade students retained for not demonstrating reading proficiency.

(4) The number and percentage of third grade students exempt from mandatory third grade retention by category of exemption as listed in G.S. 115C-83.1G(b).

(b) Each local board of education shall report annually in writing to the State Board of Education by September 1 of each year a description of all reading interventions provided to students who have been retained under G.S. 115C-83.1G(a).

(c) The State Board of Education shall establish a uniform format for local boards of education to report the required information listed in subsections (a) and (b) of this section and shall provide the format to local boards of education no later than 90 days prior to the annual due date. The State Board of Education shall compile annually this information and submit a State-level summary to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Education Oversight Committee by October 1 of each year, beginning with the 2014-2015 school year.

(d) The State Board of Education and the Department of Public Instruction shall provide technical assistance as needed to aid local school administrative units to implement all provisions of this Part."

SECTION 1.(c) G.S. 115C-105.27(b)(1a) is repealed.

SECTION 1.(d) G.S. 115C-105.41 reads as rewritten:

"**§ 115C-105.41. Students who have been placed at risk of academic failure; personal education plans.**

In order to implement Part 1A of Article 8 of this Chapter, ~~Local~~ local school administrative units shall identify students who are at risk for academic failure and who are not successfully progressing toward grade promotion and graduation, beginning ~~no later than the fourth grade.~~in kindergarten. Identification shall occur as early as can reasonably be done and can be based on grades, observations, diagnostic and formative assessments, State assessments, and other factors, including reading on grade level, that impact student performance that teachers and administrators consider appropriate, without having to await the results of end-of-grade or end-of-course tests. No later than the end of the first quarter, or after a teacher has had up to nine weeks of instructional time with a student, a personal education plan for academic improvement with focused intervention and performance benchmarks shall be developed or updated for any student at risk of academic failure who is not performing at least at grade level, as identified by the State end-of-grade test and other factors noted above. Focused instructional supports and services, reading ~~intervention~~ interventions and accelerated activities should include ~~research-based best~~ evidence-based practices that meet the needs of students and may include coaching, mentoring, tutoring, summer school, Saturday school, and extended days. Local school administrative units shall provide these activities free of charge to students. Local school administrative units shall also provide transportation free of charge to all students for whom transportation is necessary for participation in these activities.

Local school administrative units shall give notice of the personal education plan and a copy of the personal education plan to the student's parent or guardian. Parents should be included in the implementation and ongoing review of personal education plans.

Local school administrative units shall certify that they have complied with this section annually to the State Board of Education. The State Board of Education shall periodically review data on the progress of identified students and report to the Joint Legislative Education Oversight Committee.

No cause of action for monetary damages shall arise from the failure to provide or implement a personal education plan under this section."

SECTION 1.(e) G.S. 115C-174.11(a) reads as rewritten:

"(a) Assessment Instruments for ~~First and Second Grades.~~Kindergarten, First, Second, and Third Grades. – The State Board of Education shall ~~adopt~~ develop, adopt, and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program and Part 1A of Article 8 of this Chapter for the ~~first and second grades, rather than standardized tests.~~ kindergarten, first, second, and third grades. Local school administrative units ~~may~~ shall use these assessment instruments provided to them by the State Board for ~~first and second grade students,~~ kindergarten, first, second, and third grade students to assess progress, diagnose difficulties, and to inform instruction and remediation needs. ~~and~~ Local school administrative units shall not use standardized tests for summative assessment of kindergarten, first, and second grade students except as required as a condition of receiving federal grants."

SECTION 1.(f) G.S. 115C-238.29F is amended by adding a new subsection to read:

"(d1) Reading Proficiency and Student Promotion. –

(1) Students in the third grade shall be retained if the student fails to demonstrate reading proficiency by reading at or above the third grade level as demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students. The charter school shall provide reading interventions to retained students to remediate reading deficiency, which may include 90 minutes of daily, uninterrupted, evidence-based reading instruction, accelerated reading classes, transition classes containing third and fourth grade students, and summer reading camps.

(2) Students may be exempt from mandatory retention in third grade for good cause but shall continue to receive instructional supports and services and reading interventions appropriate for their age and reading level. Good cause exemptions shall be limited to the following:

a. Limited English Proficient students with less than two years of instruction in an English as a Second Language program.

b. Students with disabilities, as defined in G.S. 115C-106.3(1), whose individualized education program indicates the use of alternative assessments and reading interventions.

c. Students who demonstrate reading proficiency appropriate for third grade students on an alternative assessment of reading comprehension. The charter school shall notify the State Board of Education of the alternative assessment used to demonstrate reading proficiency.

d. Students who demonstrate, through a student reading portfolio, reading proficiency appropriate for third grade students.

e. Students who have (i) received reading intervention and (ii) previously been retained more than once in kindergarten, first, second, or third grades.

(3) The charter school shall provide notice to parents and guardians when a student is not reading at grade level. The notice shall state that if the

student's reading deficiency is not remediated by the end of third grade, the student shall be retained unless he or she is exempt from mandatory retention for good cause. Notice shall also be provided to parents and guardians of any student who is to be retained under this subsection of the reason the student is not eligible for a good cause exemption, as well as a description of proposed reading interventions that will be provided to the student to remediate identified areas of reading deficiency.

(4) The charter school shall annually publish on the charter school's Web site and report in writing to the State Board of Education by September 1 of each year the following information on the prior school year:

a. The number and percentage of third grade students demonstrating and not demonstrating reading proficiency on the State-approved standardized test of reading comprehension administered to third grade students.

b. The number and percentage of third grade students not demonstrating reading proficiency and who do not return to the charter school for the following school year.

c. The number and percentage of third grade students who take and pass the alternative assessment of reading comprehension.

d. The number and percentage of third grade students retained for not demonstrating reading proficiency.

e. The number and percentage of third grade students exempt from mandatory third grade retention by category of exemption as listed in subdivision (2) of this subsection."

SECTION 1.(g) G.S. 115C-288(a) reads as rewritten:

"(a) To Grade and Classify Pupils. – The principal shall have authority to grade and classify ~~pupils~~pupils, except as provided in G.S. 115C-83.1G(a). In determining the appropriate grade for a pupil who is already attending a public school, the principal shall consider the pupil's classroom work and grades, the pupil's scores on standardized tests, and the best educational interests of the pupil. The principal shall not make the decision solely on the basis of standardized test scores. If a principal's decision to retain a child in the same grade is partially based on the pupil's scores on standardized tests, those test scores shall be verified as accurate.

A principal shall not require additional testing of a student entering a public school from a school governed under Article 39 of this Chapter if test scores from a nationally standardized test or nationally standardized equivalent measure that are adequate to determine the appropriate placement of the child are available."

SECTION 1.(h) G.S. 130A-440(b) reads as rewritten:

"(b) A health assessment shall include a medical history and physical examination with screening for vision and hearing and, if appropriate, testing for anemia and tuberculosis. Vision screening shall be conducted in accordance with G.S. 130A-440.1. The health assessment may also include dental screening and developmental screening for cognition, language, and motor function. The developmental screening of cognition and language abilities may be conducted in accordance with G.S. 115C-83.1E(a)."

SECTION 1.(i) There is appropriated from the General Fund to the Department of Public Instruction the sum of thirty-three million nine hundred fourteen thousand five hundred three dollars ($33,914,503) for the 2012-2013 fiscal year to implement the requirements of this section. It is the intent of the General Assembly to increase this appropriation for the 2013-2014 fiscal year to implement additional requirements in that fiscal year.

SECTION 1.(j) This section is effective when it becomes law and applies beginning with the 2013-2014 school year. The developmental screening and kindergarten

entry assessment required by this section shall be administered beginning with the 2014-2015 school year

PART II. STATE EMPLOYEE LITERACY VOLUNTEER LEAVE TIME

SECTION 2.(a) G.S. 126-4 reads as rewritten:

"**§ 126-4. Powers and duties of State Personnel Commission.**

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

...

(5b) A leave program that allows employees to volunteer in a literacy program in a public school for up to five hours each month.

...."

SECTION 2.(b) This section is effective when it becomes law.

PART III. SCHOOL PERFORMANCE GRADES

SECTION 3.(a) G.S. 115C-12(9)c1. reads as rewritten:

"c1. To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance. As a part of the annual "report card" for each local school administrative unit, the State Board shall award an overall numerical school performance score on a scale of zero to 100 and a corresponding letter grade of A, B, C, D, or F earned by each school within the local school administrative unit. The school performance score and grade shall reflect student performance on annual subject-specific assessments, college and workplace readiness measures, and graduation rates. For schools serving students in any grade from kindergarten to eighth grade, separate performance scores and grades shall also be awarded based on the school performance in reading and mathematics respectively. The annual "report card" for schools serving students in third grade also shall include the number and percentage of third grade students who (i) take and pass the alternative assessment of reading comprehension; (ii) were retained in third grade for not demonstrating reading proficiency as indicated in G.S. 115C-83.1G(a); and (iii) were exempt from mandatory third grade retention by category of exemption as listed in G.S. 115C-83.1G(b)."

SECTION 3.(b) G.S. 115C-47(58) reads as rewritten:

"(58) To Inform the Public About the North Carolina School Report Cards Issued by the State Board of Education. – Each local board of education shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or ~~otherwise.~~is otherwise provided to the public. Each local board of education shall ensure that the overall school performance score and grade earned by each school in the local school administrative unit for the current and previous four school years is prominently displayed on the Web site of the local school

administrative unit. If any school in the local school administrative unit is awarded a grade of D or F, the local board of education shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 3.(c) G.S. 115C-238.29F is amended by adding a new subsection to read:

"(l) North Carolina School Report Cards. – A charter school shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or is otherwise provided to the public. A charter school shall ensure that the overall school performance score and grade earned by the charter school for the current and previous four school years is prominently displayed on the school Web site. If a charter school is awarded a grade of D or F, the charter school shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 3.(d) G.S. 115C-238.66 is amended by adding a new subdivision to read:

"(11) North Carolina School Report Cards. – A regional school shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or is otherwise provided to the public. A regional school shall ensure that the overall school performance score and grade earned by the regional school for the current and previous four school years is prominently displayed on the school Web site. If a regional school is awarded a grade of D or F, the regional school shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 3.(e) The State Board of Education shall award school performance scores and grades as required by G.S. 115C-12(9)c1. as follows:

(1) The State Board of Education shall calculate school performance scores by totaling the sum of points earned by the school and converting the sum of points to a 100-point scale. Subsections (2) and (3) of this section provide the school performance elements for schools serving students in kindergarten through eighth grade. Subsection (4) of this section provides the school performance elements for schools serving grades nine through twelve. The school performance score shall be used to determine the school performance grade based on the following scale:
   a. At least 90 performance grade points for an overall school performance grade of A.
   b. At least 80 performance grade points for an overall school performance grade of B.
   c. At least 70 performance grade points for an overall school performance grade of C.
   d. At least 60 performance grade points for an overall school performance grade of D.
   e. A school that accumulates less than 60 points shall be assigned an overall school performance grade of F.

(2) For schools serving students in kindergarten through eighth grade the overall school performance score shall be calculated based on the sum of three school performance elements.
   a. The score shall be calculated as follows:
      1. One point for each percent of students who score at or above proficient on annual assessments for mathematics in grades three through eight.

2. One point for each percent of students who score at or above proficient on annual assessments for reading in grades three through eight.
3. One point for each percent of students who score at or above proficient on annual assessments for science in grades five and eight.

(3) For schools serving students in kindergarten through eighth grade, the school performance scores in reading and mathematics, respectively, shall be earned as follows:

a. The literacy school performance score shall be based on the percent of students who score at or above proficient on annual assessments for reading assessments in grades three through eight.
b. The mathematics school performance score shall be based on the percent of students who score at or above proficient on annual assessments for mathematics in grades three through eight.

(4) The school performance score earned by schools serving students in ninth through twelfth grades shall be calculated based on the sum of seven school performance elements.

a. The score shall be calculated as follows:
1. One point for each percent of students who score at or above proficient on annual assessments for mathematics.
2. One point for each percent of students who score at or above proficient on annual assessments for English.
3. One point for each percent of students who score at or above proficient on annual assessments for biology.
4. One point for each percent of students who complete a higher-level mathematics class with a passing grade.
5. One point for each percent of students who score at or above a level demonstrating college readiness on a nationally normed test of college readiness.
6. One point for each percent of students who graduate within four years of entering high school.
7. One point for each percent of students who demonstrate workplace readiness on a nationally normed test of workplace readiness.

(5) In calculating the overall school performance score earned by schools, the State Board of Education shall proportionally adjust the scale to account for the absence of a school performance element for award of scores to a school that does not have a measure of one of the school performance elements annually assessed for the grades taught at that school.

(6) The State Board of Education shall report to the Joint Legislative Education Oversight Committee annually by January 15 on recommended adjustments to the school performance grade elements and scales for award of scores and grades.

SECTION 3.(f) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

PART IV. MAXIMIZE INSTRUCTIONAL TIME

SECTION 4.(a) G.S. 115C-174.12(a) reads as rewritten:

"(a) The State Board of Education shall establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing

programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. These policies and guidelines shall include the following:

(1) Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning;

(2) Students in a school shall not be subject to field tests or national tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams; and

(3) No school shall participate in more than two field tests at any one grade level during a school ~~year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.~~year.

(4) All annual assessments of student achievement adopted by the State Board of Education pursuant to G.S. 115C-174.11(c)(1) and (3) and all final exams for courses shall be administered within the final 10 instructional days of the school year for year-long courses and within the final five instructional days of the semester for semester courses. Exceptions shall be permitted to accommodate a student's individualized education program and section 504 (29 U.S.C. § 794) plans, and for the administration of final exams for courses with national or international curriculums required to be held at designated times.

These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of ~~children~~ students with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a ~~child's~~ student's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit the use of statewide tests as the sole determinant of decisions about a ~~child's~~student's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article."

SECTION 4.(b) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

PART V. ADJUSTMENTS TO SCHOOL CALENDAR

SECTION 5.(a) G.S. 115C-84.2 reads as rewritten:

"**§ 115C-84.2. School calendar.**

(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of 185 days ~~and~~ or 1,025 hours of instruction covering at least nine calendar months. The local board shall designate when the ~~185~~ instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count

towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

...

(4a) Three days, as designated by the local board, for use as teacher workdays. These days shall be protected to allow teachers to complete instructional and classroom administrative duties. The local school administrative unit shall not impose any additional tasks on these days. The local board shall schedule at least one of these days at the beginning of the school year and at least one at the end of the school year.

(5) The remaining days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes. Before consulting with the local board, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled. Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. In order to make up days for school closing because of inclement weather, the local board may designate any of the days in this subdivision as additional make-up days to be scheduled after the last day of student attendance.

~~If the State Board of Education finds that it will enhance student performance to do so, the State Board may grant a local board of education a waiver to use up to five of the instructional days required by subdivision (1) of this subsection as teacher workdays. For each instructional day waived, the State Board shall waive an equivalent number of instructional hours.~~

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards shall designate at least two days scheduled under subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave. Local boards may designate the remaining days scheduled in subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave, but local boards shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on any of these days. A teacher may elect to waive this notice requirement for one or more of these days.

...

(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall ~~not be before August 25,~~be no earlier than the Monday closest to August 26, and the closing date for students shall ~~not be after June 10.~~be no later than the Friday closest to June 11. On a showing of good cause, the State Board of Education may waive ~~this requirement~~ the requirement that the opening date for students be no earlier than the Monday closest to August 26 and may allow the local board of education to set an opening date no earlier than the Monday closest to August 19, to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means ~~either that:~~that schools in any local school administrative unit in a county have been closed eight days per year during any four of

the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

~~(1) Schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations; or~~

~~(2) Schools in any local school administrative unit in a county have been closed for all or part of eight days per year during any four of the last 10 years because of severe weather conditions. For purposes of this subdivision, a school shall be deemed to be closed for part of a day if it is closed for two or more hours.~~

~~The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.~~

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar.

...."

SECTION 5.(b) G.S. 115C-238.29F(d)(1) reads as rewritten:

"(1) The school shall provide instruction each year for at least 185 ~~days.~~days or 1,025 hours over nine calendar months. ~~If the State Board of Education finds that it will enhance student performance to do so, the State Board may grant a charter school a waiver to use up to five of these instructional days as teacher workdays.~~"

SECTION 5.(c) G.S. 115C-238.53 is amended by adding a new subsection to read:

"(g) The requirements of G.S. 115C-84.2 shall not apply to a program approved under this Part, however, the program shall provide instruction each year for at least 185 days or 1,025 hours over nine calendar months."

SECTION 5.(d) G.S. 115C-238.66(1)d. reads as rewritten:

"d. The board of directors shall adopt a school calendar consisting of a minimum of 185 days or 1,025 hours of instruction covering at least nine calendar months."

SECTION 5.(e) This section is effective when it becomes law and applies beginning with the 2013-2014 school year.

PART VI. FUNDING FOR THE ADDITION OF FIVE INSTRUCTIONAL DAYS WITHIN THE EXISTING SCHOOL CALENDAR

SECTION 6.(a) To fully provide for the expansion of five additional instructional days in accordance with S.L. 2011-145, Section 7.29 for those days for which a local school administrative unit has not requested and received a waiver from the State Board of Education for the 2012-2013 school year:

(1) There is appropriated from the General Fund to the Department of Public Instruction the sum of forty thousand one hundred sixty-eight dollars ($40,168) for the 2012-2013 fiscal year to increase the amount appropriated for the noninstructional support personnel allotment.

(2) There is appropriated from the General Fund to the Department of Public Instruction the sum of three hundred fifty-one thousand four hundred sixty-nine dollars ($351,469) for the 2012-2013 fiscal year to increase the amount appropriated for the transportation allotment.

SECTION 6.(b) This section becomes effective July 1, 2012.

PART VII. ESTABLISH NC TEACHER CORPS

SECTION 7.(a) Article 20 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-296.7. North Carolina Teacher Corps.**

(a) There is established the North Carolina Teacher Corps (NC Teacher Corps) to recruit and place recent graduates of colleges and universities and mid-career professionals as teachers in high needs public schools.

(b) The State Board of Education, in consultation with the Board of Governors of The University of North Carolina and the North Carolina Independent Colleges and Universities, shall develop and administer the NC Teacher Corps. In the development of the NC Teacher Corps, the State Board of Education shall consider examples of other successful teacher recruitment models used nationally and in other states.

(c) Applications shall be received annually for admission to the NC Teacher Corps. The State Board of Education shall establish application criteria, including, at a minimum, an award of a bachelor's degree from an accredited college or university. The State Board of Education may establish a committee to annually evaluate and select candidates for admission to the NC Teacher Corps.

(d) The State Board of Education shall identify local school administrative units with unmet recruitment needs and high needs schools and shall coordinate placement of NC Teacher Corps members in those schools.

(e) The State Board of Education, in coordination with the Board of Governors, shall develop an intensive summer training institute for NC Teacher Corps members to provide coursework and training on essential teaching frameworks, curricula, and lesson planning skills, as well as identification and education of students with disabilities, positive management of student behavior, effective communication for defusing and deescalating disruptive and dangerous behavior, and safe and appropriate use of seclusion and restraint. The intensive summer training institute also shall address identification of difficulty with reading development and of reading deficiencies, and the provision of reading instruction, intervention, and remediation strategies.

(f) The State Board of Education, in coordination with the Board of Governors, shall provide ongoing support to NC Teaching Corps members through coaching, mentoring, and continued professional development.

(g) NC Teaching Corps members shall be granted lateral entry teaching licenses pursuant to G.S. 115C-296(c)."

SECTION 7.(b) This section is effective when it becomes law. The State Board of Education shall recruit and place an initial cohort of NC Teacher Corps members no later than the 2012-2013 school year.

PART VIII. STRENGTHEN TEACHER LICENSURE

SECTION 8.(a) G.S. 115C-296 reads as rewritten:

"§ 115C-296. Board sets licensure requirements; reports; lateral entry and mentor programs.

(a) The State Board of Education shall have entire control of licensing all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all licenses and shall determine and fix the salary for each grade and type of license which it authorizes.

The State Board of Education may require an applicant for an initial bachelors degree certificate or graduate degree certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose. Elementary Education (K-6) teachers shall also achieve a prescribed minimum score on subtests or standard examinations specific to teaching reading and mathematics. The State Board of Education shall permit an applicant to fulfill any such testing requirement before or during the applicant's second year of teaching provided the applicant took the examination at least once during the first year of teaching. The State Board of Education shall make any required standard initial licensure exam ~~sufficiently~~ rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has ~~adequate~~ received high quality academic and professional preparation to ~~teach.~~teach effectively.

...

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel licensed in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several licensure requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The licensure program shall provide for initial licensure after completion of preservice training, continuing licensure after three years of teaching experience, and license renewal every five years thereafter, until the retirement of the teacher. The last license renewal received prior to retirement shall remain in effect for five years after retirement. The licensure program shall also provide for lifetime licensure after 50 years of teaching.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall evaluate and modify, as necessary, the academic requirements for students preparing to teach science in middle and high schools to ensure that there is adequate preparation in issues related to science laboratory safety.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing licensure. The new requirements shall reflect more rigorous standards for continuing licensure and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement. Standards for continuing licensure shall include at least three continuing education credits related to literacy for elementary and middle school teachers. Literacy renewal credits shall include assessment, diagnosis, and intervention strategies for students not demonstrating reading proficiency. Oral language, phonemic and phonological awareness, phonics, vocabulary, fluency, and comprehension shall be addressed in literacy-related activities leading to certification renewal for elementary school teachers.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher licenses. The State Board shall consider modifications in the license renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. ~~The State Board shall adopt new standards for the renewal of teacher licenses by May 15, 1998.~~

The standards for approval of institutions of teacher education shall require that teacher education programs for all students include demonstrated competencies in (i) the identification and education of children with disabilities and (ii) positive management of student behavior and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. The standards for approval of institutions of teacher education shall require that elementary teacher education programs include demonstrated competencies in (i) teaching of reading, including a substantive understanding of reading as a process involving oral language, phonological and phonemic awareness, phonics, fluency, vocabulary, and comprehension; (ii) evidence-based assessment and diagnosis of specific areas of difficulty with reading development and of reading deficiencies; and (iii) appropriate application of instructional supports and services and reading interventions to ensure reading proficiency for all students. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

...

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Beginning with the 2006-2007 school year, the criteria and procedures shall include preservice training in (i) the identification and education of children with disabilities and (ii) positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. Skilled individuals who choose to enter the profession of teaching laterally may be granted a ~~provisional~~lateral entry teaching license for no more than three years and shall be required to obtain licensure before contracting for a fourth year of service with any local administrative unit in this State.

...."

SECTION 8.(b) This section is effective when it becomes law and applies beginning with the 2013-2014 school year.

PART IX. PROOF OF STATE-FUNDED LIABILITY INSURANCE

SECTION 9.(a) G.S. 115C-12 reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(9) Miscellaneous Powers and Duties. – All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution

and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

...

f. To annually notify public school employees of the availability and coverage of professional liability insurance.

...."

SECTION 9.(b) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

PART X. PAY FOR EXCELLENCE

SECTION 10.(a) Each local board of education shall develop a plan of performance pay for all licensed personnel employed by the local board. Under the performance pay plan, licensed employees should be eligible to receive bonuses or adjustments to base salary for meeting certain performance criteria. Criteria for award of bonuses or adjustments to base salary should include, but are not limited to, the following factors:

(1) Annual growth in student achievement of students assigned to a teacher's classroom, when applicable.

(2) Annual growth in student achievement of students assigned to a specific school.

(3) Assignment of additional academic responsibilities.

(4) Assignment to a hard-to-staff school.

(5) Assignment to a hard-to-staff subject area.

Local boards of education shall submit plans to the State Board of Education no later than March 1, 2013. The State Board of Education shall report on these plans and the achievement-based compensation models developed as part of the federal Race to the Top grant and shall submit the report and all plans to the Fiscal Research Division, the Joint Legislative Commission on Governmental Operations, and the respective Subcommittees on Education Appropriations of the Senate and House of Representatives no later than April 15, 2013. Members of the public may also submit plans for performance pay no later than April 15, 2013, to the Fiscal Research Division, the Joint Legislative Commission on Governmental Operations, and the respective Subcommittees on Education Appropriations of the Senate and House of Representatives.

SECTION 10.(b) This section is effective when it becomes law.

PART XI. CLARIFY NC PRE-K PROGRAM ELIGIBILITY

SECTION 11.(a) Section 10.7(f) of S.L. 2011-145 reads as rewritten:

"**SECTION 10.7.(f)** ~~The prekindergarten program may continue to serve at-risk children identified through the existing "child find" methods in which at-risk children are currently served within the Division of Child Development. The Division of Child Development shall serve at-risk children regardless of income. However, the total number of at-risk children served shall constitute no more than twenty percent (20%) of the four-year-olds served within the prekindergarten program. Any~~ The Division of Child Development and Early Education shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors. Furthermore, any age-eligible child who is a child of either of the following shall be eligible for the program: (i) an active duty member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was ordered to active duty by the proper authority within the last 18 months or is expected to be ordered within the next 18 months or (ii) a member of the Armed Forces of the United States, including the North Carolina National

Guard, State military forces, or a reserve component of the Armed Forces, who was injured or killed while serving on active duty. Eligibility determinations for prekindergarten participants may continue through local education agencies and local North Carolina Partnership for Children, Inc., partnerships."

SECTION 11.(b) Section 10.7(h) of S.L. 2011-145 is repealed.

SECTION 11.(c) There is appropriated from the General Fund to the Department of Health and Human Services, Division of Child Development and Early Education, the sum of eleven million three hundred eight thousand three hundred sixty-three dollars ($11,308,363) for the 2012-2013 fiscal year to add 2,261 slots to be used in the NC Pre-K program.

SECTION 11.(d) This section is effective when it becomes law.

PART XII. REPEAL PROHIBITION ON TEACHER PREPAYMENT

SECTION 12.(a) Section 5 of S.L. 2011-379 is repealed.

SECTION 12.(b) This section becomes effective July 1, 2012.

PART XIII. TAX DEDUCTION FOR EDUCATIONAL SUPPLIES

SECTION 13.(a) G.S. 105-134.6(d) is amended by adding a new subdivision to read:

"(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

...

(9) To the extent a deduction has not been claimed for educator expenses in determining federal adjusted gross income, an eligible educator may deduct an amount not to exceed two hundred fifty dollars ($250.00) paid or incurred in connection with items listed in this subdivision. For purposes of this subdivision, the term "eligible educator" has the same meaning as defined in section 62 of the Code, as it existed on December 31, 2011. In the case of a married couple filing a joint return where both spouses are eligible educators, the maximum dollar amount is five hundred dollars ($500.00).

a. Books.

b. Supplies, other than nonathletic supplies for courses of instruction in health or physical education.

c. Computer equipment, including related software and services.

d. Supplementary materials used by the eligible educator in the classroom."

SECTION 13.(b) This section becomes effective for taxable years beginning on or after January 1, 2012.

PART XIV. TEACHER CONTRACTS

SECTION 14.(a) G.S. 115C-325 is repealed.

SECTION 14.(b) Part 3 of Article 22 of Chapter 115C of the General Statutes is amended by adding new sections to read:

"**§ 115C-325.1. Definitions.**

As used in this Part, the following definitions apply:

(1) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.

(2) "Demote" means to reduce the salary of a person who is classified or paid by the State Board of Education as a classroom teacher or as a school administrator. The word "demote" does not include (i) a suspension without pay pursuant to G.S. 115C-325.5(a); (ii) the elimination or reduction of bonus payments, including merit-based supplements, or a systemwide

modification in the amount of any applicable local supplement; or (iii) any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.

(3) "Disciplinary suspension" means a final decision to suspend a teacher or school administrator without pay for no more than 60 days under G.S. 115C-325.5(b).

(4) "School administrator" means a principal, assistant principal, supervisor, or director whose major function includes the direct or indirect supervision of teaching or any other part of the instructional program as provided in G.S. 115C-287.1(a)(3).

(5) "Teacher" means a person meeting each of the following requirements:

a. Who holds at least one of the following licenses issued by the State Board of Education:

1. A current standard professional educator's license.
2. A current lateral entry teaching license.
3. A regular, not expired, vocational license.

b. Whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid either as a classroom teacher or instructional support personnel.

c. Who is employed to fill a full-time, permanent position.

"**§ 115C-325.2. Personnel files.**

(a) Maintenance of Personnel File. – The superintendent shall maintain in his or her office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from the teacher's personnel file that the teacher deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

(b) Inspection of Personnel Files. – The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before the teacher's employment by the board may be kept in a file separate from the teacher's personnel file and need not be made available to the teacher. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher, except the data may be used to substantiate G.S. 115C-325.4(a)(7) or G.S. 115C-325.4(a)(14) as grounds for dismissal or demotion.

"**§ 115C-325.3. Teacher contracts.**

(a) Length of Contract. – A contract between the local board of education and a teacher who has been employed by the local board of education for less than three years shall be for a term of one school year. A contract or renewal of contract between the local board of education and a teacher who has been employed by the local board of education for three years or more shall be for a term of one, two, three, or four school years.

(b) Superintendent Recommendation to Local Board. – Local boards of education shall employ teachers upon the recommendation of the superintendent. If a superintendent intends to recommend to the local board of education that a teacher be offered a new or renewed contract,

the superintendent shall submit the recommendation to the local board for action and shall include in the recommendation the length of the term of contract. A superintendent shall only recommend a teacher for a contract of a term longer than one school year if the teacher has shown effectiveness as demonstrated on the teacher evaluation instrument. The local board may approve the superintendent's recommendation, may decide not to offer the teacher a new or renewed contract, or may decide to offer the teacher a renewed contract for a different term than recommended by the superintendent.

(c) Dismissal During Term of Contract. – A teacher shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure set forth in G.S. 115C-325.4.

(d) Recommendation on Nonrenewal. – If a superintendent decides not to recommend that the local board of education offer a renewed contract to a teacher, the superintendent shall give the teacher written notice of the decision no later than May 15.

(e) Right to Petition for Hearing. – A teacher shall have the right to petition the local board of education for a hearing no later than June 1. The local board may, in its discretion, grant a hearing regarding the superintendent's recommendation for nonrenewal. The local board of education shall notify the teacher making the petition of its decision whether to grant a hearing. If the request for a hearing is granted, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the teacher a renewed contract. The board shall notify a teacher whose contract will not be renewed for the next school year of its decision by June 15; provided, however, if a teacher submits a request for a hearing, the board shall provide the nonrenewal notification by July 1 or such later date upon the written consent of the superintendent and teacher. A decision not to offer a teacher a renewed contract shall not be on any basis prohibited by State or federal law.

(f) Local boards of education and teachers employed by the local board may mutually modify the terms of the contract to permit part-time employment.

"**§ 115C-325.4. Dismissal or demotion for cause.**

(a) Grounds. – No teacher shall be dismissed or demoted or reduced to employment on a part-time basis for disciplinary reasons during the term of the contract except for one or more of the following:

(1) Inadequate performance. In determining whether the professional performance of a teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Inadequate performance for a teacher shall mean (i) the failure to perform at a proficient level on any standard of the evaluation instrument or (ii) otherwise performing in a manner that is below standard.

(2) Immorality.

(3) Insubordination.

(4) Neglect of duty.

(5) Physical or mental incapacity.

(6) Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.

(7) Conviction of a felony or a crime involving moral turpitude.

(8) Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.

(9) Failure to fulfill the duties and responsibilities imposed upon teachers or school administrators by the General Statutes of this State.

(10) Failure to comply with such reasonable requirements as the board may prescribe.

(11) Any cause which constitutes grounds for the revocation of the teacher's teaching license or the school administrator's administrator license.

(12) Failure to maintain his or her license in a current status.

(13) Failure to repay money owed to the State in accordance with the provisions of Article 60 of Chapter 143 of the General Statutes.

(14) Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.

(b) Dismissal Procedure. – The procedures provided in G.S. 115C-325.6 shall be followed for dismissals, demotions, or reductions to part-time employment for disciplinary reasons for any reason specified in subsection (a) of this section.

"**§ 115C-325.5. Teacher suspension.**

(a) Immediate Suspension Without Pay. – If a superintendent believes that cause exists for dismissing a teacher for any reason specified in G.S. 115C-325.4 and that immediate suspension of the teacher is necessary, the superintendent may suspend the teacher without pay. Before suspending a teacher without pay, the superintendent shall meet with the teacher and give him or her written notice of the charges against the teacher, an explanation of the basis for the charges, and an opportunity to respond. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal, demotion, or disciplinary suspension without pay as provided in this section. If it is finally determined that no grounds for dismissal, demotion, or disciplinary suspension without pay exist, the teacher shall be reinstated immediately, shall be paid for the period of suspension, and all records of the suspension shall be removed from the teacher's personnel file.

(b) Disciplinary Suspension Without Pay. – A teacher recommended for disciplinary suspension without pay may request a hearing before the board. If no request is made within 15 days, the superintendent may file his or her recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension.

(1) Board hearing for disciplinary suspensions for more than 10 days or for certain types of intentional misconduct. – The procedures for a board hearing under G.S. 115C-325.8 shall apply if any of the following circumstances exist:

a. The recommended disciplinary suspension without pay is for more than 10 days; or

b. The disciplinary suspension is for intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the teacher's or school administrator's license, or providing false information.

(2) Board hearing for disciplinary suspensions of no more than 10 days. – The procedures for a board hearing under G.S. 115C-325.7 shall apply to all disciplinary suspensions of no more than 10 days that are not for intentional misconduct as specified in G.S. 115C-325.5(b)(1).

(c) Suspension with Pay. – If a superintendent believes that cause may exist for dismissing or demoting a teacher for any reasons specified in G.S. 115C-325.4 but that additional investigation of the facts is necessary and circumstances are such that the teacher should be removed immediately from the teacher's duties, the superintendent may suspend the teacher with pay for a reasonable period of time, not to exceed 90 days. The superintendent

shall notify the board of education within two days of the superintendent's action and shall notify the teacher within two days of the action and the reasons for it. If the superintendent has not initiated dismissal or demotion proceedings against the teacher within the 90-day period, the teacher shall be reinstated to the teacher's duties immediately and all records of the suspension with pay shall be removed from the teacher's personnel file at the teacher's request. However, if the superintendent and the teacher agree to extend the 90-day period, the superintendent may initiate dismissal or demotion proceedings against the teacher at any time during the period of the extension.

"**§ 115C-325.6. Procedure for dismissal or demotion of a teacher for cause.**

(a) Recommendation of Dismissal or Demotion. – A teacher may not be dismissed, demoted, or reduced to part-time employment for disciplinary reasons during the term of the contract except upon the superintendent's recommendation based on one or more of the grounds in G.S. 115C-325.4.

(b) Notice of Recommendation. – Before recommending to a board the dismissal or demotion of a teacher, the superintendent shall give written notice to the teacher by certified mail or personal delivery of the superintendent's intention to make such recommendation and shall set forth as part of the superintendent's recommendation the grounds upon which he or she believes such dismissal or demotion is justified. The superintendent also shall meet with the teacher and provide written notice of the charges against the teacher, an explanation of the basis for the charges, and an opportunity to respond if the teacher has not done so under G.S. 115C-325.5(a). The notice shall include a statement to the effect that the teacher, within 14 days after the date of receipt of the notice, may request a hearing before the board on the superintendent's recommendation. A copy of Part 3 of Article 22 of Chapter 115C shall also be sent to the teacher.

(c) Request for Hearing. – Within 14 days after receipt of the notice of recommendation, the teacher may file with the superintendent a written request for a hearing before the board on the superintendent's recommendation. The superintendent shall submit his or her recommendation to the board. Within five days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and shall notify the teacher by certified mail or personal delivery of the date, time, and place of the hearing. The time specified shall not be less than 10 nor more than 30 days after the board has notified the teacher, unless both parties agree to an extension. The hearing shall be conducted as provided in G.S. 115C-325.7.

(d) No Request for Hearing. – If the teacher does not request a hearing before the board within the 14 days provided, the superintendent may submit his or her recommendation to the board. The board, if it sees fit, may by resolution (i) reject the superintendent's recommendation or (ii) accept or modify the superintendent's recommendation and dismiss, demote, reinstate, or suspend the teacher without pay.

"**§ 115C-325.7. Hearing before board.**

(a) Board Hearing. – The following procedures shall apply to a hearing conducted by the board:

(1) The hearing shall be private.

(2) The board shall receive the following:

a. Any documentary evidence the superintendent intends to use to support the recommendation. The superintendent shall provide the documentary evidence to the teacher seven days before the hearing.

b. Any documentary evidence the teacher intends to use to rebut the superintendent's recommendation. The teacher shall provide the superintendent with the documentary evidence three days before the hearing.

c. The superintendent's recommendation and the grounds for the recommendation.

(3) The superintendent and teacher may submit a written statement not less than three days before the hearing.

(4) The superintendent and teacher shall be permitted to make oral arguments to the board based on the record before the board.

(5) The board shall make findings of fact based upon a preponderance of the evidence.

(6) Within two days following the hearing, the board shall send a written copy of its findings and determination to the teacher and the superintendent.

(7) If the board elects to make a transcript, the teacher may request and shall receive at no charge a transcript of the proceedings. A teacher may have the hearing transcribed by a court reporter at the teacher's expense.

(b) The procedures of this section shall not apply to board hearings for disciplinary suspensions without pay. Board hearings for G.S. 115C-325.5(b), disciplinary suspensions without pay, shall be conducted as provided in G.S. 115C-325.8.

"**§ 115C-325.8. Board hearing for certain disciplinary suspensions.**

(a) The following procedures shall apply for a board hearing under G.S. 115C-325.5(b), disciplinary suspensions without pay:

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with reasonable rules adopted by the State Board of Education to govern such hearings.

(3) At the hearing, the teacher and the superintendent shall have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any competent testimony relevant to the issue of whether grounds exist for a disciplinary suspension without pay.

(4) Rules of evidence shall not apply to a hearing under this subsection and the board may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least eight days before the hearing, the superintendent shall provide to the teacher a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the superintendent intends to present.

(6) At least six days before the hearing, the teacher shall provide the superintendent a list of witnesses the teacher intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the teacher intends to present.

(7) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this section.

(8) The board may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for suspension without pay.

(9) The board shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.

(10) The superintendent shall provide for making a transcript of the hearing. The teacher may request and shall receive at no charge a transcript of the proceedings.

"**§ 115C-325.9. Teacher resignation.**

(a) Teacher Resignation Following Recommendation for Dismissal. – If a teacher has been recommended for dismissal under G.S. 115C-325.4 and the teacher chooses to resign without the written agreement of the superintendent, then:

(1) The superintendent shall report the matter to the State Board of Education.

(2) The teacher shall be deemed to have consented to (i) the placement in the teacher's personnel file of the written notice of the superintendent's intention to recommend dismissal and (ii) the release of the fact that the superintendent has reported this teacher to the State Board of Education to prospective employers, upon request. The provisions of G.S. 115C-321 shall not apply to the release of this particular information.

(3) The teacher shall be deemed to have voluntarily surrendered his or her license pending an investigation by the State Board of Education in a determination whether or not to seek action against the teacher's license. This license surrender shall not exceed 45 days from the date of resignation. Provided further that the cessation of the license surrender shall not prevent the State Board of Education from taking any further action it deems appropriate. The State Board of Education shall initiate investigation within five working days of the written notice from the superintendent and shall make a final decision as to whether to revoke or suspend the teacher's license within 45 days from the date of resignation.

(b) 30 Days' Notice Resignation Requirement. – A teacher who is not recommended for dismissal should not resign during the term of the contract without the consent of the superintendent unless he or she has given at least 30 days' notice. If a teacher who is not recommended for dismissal does resign during the term of the contract without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's license for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

"**§ 115C-325.10. Application to certain institutions.**

Notwithstanding any law or regulation to the contrary, this Part shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services, Public Instruction, Correction, or the Division of Juvenile Justice of the Department of Public Safety, regardless of the age of the students.

"**§ 115C-325.11. Dismissal of school administrators and teachers employed in low-performing residential schools.**

(a) Notwithstanding any other provision of this section or any other law, this section shall govern the dismissal by the State Board of Education of teachers, principals, assistant principals, directors, supervisors, and other licensed personnel assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team. The State Board shall dismiss a teacher, principal, assistant principal, director, supervisor, or other licensed personnel when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

(b) The State Board may dismiss a teacher, principal, assistant principal, director, supervisor, or other licensed personnel when:

(1) The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school.

(2) That assistance team makes the recommendation to dismiss the teacher, principal, assistant principal, director, supervisor, or other licensed personnel

for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion of a teacher.

Within 30 days of any dismissal under this subsection, a teacher, principal, assistant principal, director, supervisor, or other licensed personnel may request a hearing before a panel of three members designated by the State Board. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subsection. Decisions of the panel may be appealed on the record to the State Board.

(c) Notwithstanding any other provision of this section or any other law, this subsection shall govern the dismissal by the State Board of licensed staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed staff member.

Within 30 days of any dismissal under this subsection, a licensed staff member may request a hearing before a panel of three members designated by the State Board. The State Board shall adopt procedures to ensure that due process rights are afforded to licensed staff members recommended for dismissal under this subsection. Decisions of the panel may be appealed on the record to the State Board.

(d) The State Board or the superintendent of a residential school may terminate the contract of a school administrator dismissed under this section. Nothing in this section shall prevent the State Board from refusing to renew the contract of any person employed in a school identified as low-performing.

(e) Neither party to a school administrator or teacher contract is entitled to damages under this section.

(f) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section.

"**§ 115C-325.12. Procedure for dismissal of Principals employed in low-performing schools.**

(a) Dismissal of Principals Assigned to Low-Performing Schools With Assistance Teams. – Notwithstanding any other provision of this Part or any other law, this section governs the State Board's dismissal of principals assigned to low-performing schools to which the State Board has assigned an assistance team.

(b) Authority of State Board to Dismiss Principal. – The State Board through its designee may, at any time, recommend the dismissal of any principal who is assigned to a low-performing school to which an assistance team has been assigned. The State Board through its designee shall recommend the dismissal of any principal when the State Board receives from the assistance team assigned to that principal's school two consecutive evaluations that include written findings and recommendations regarding the principal's inadequate performance.

(c) Procedures for Dismissal of Principal. –

(1) If the State Board through its designee recommends the dismissal of a principal under this section, the principal shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed.

(2) The panel shall order the dismissal of the principal if it determines from available information, including the findings of the assistance team, that the low performance of the school is due to the principal's inadequate performance.

(3) The panel may order the dismissal of the principal if (i) it determines that the school has not made satisfactory improvement after the State Board assigned

an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the principal for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion of a teacher.

(4) If the State Board or its designee recommends the dismissal of a principal before the assistance team assigned to the principal's school has evaluated that principal, the panel may order the dismissal of the principal if the panel determines from other available information that the low performance of the school is due to the principal's inadequate performance.

(5) In all hearings under this section, the burden of proof is on the principal to establish that the factors leading to the school's low performance were not due to the principal's inadequate performance. In all hearings under this section, the burden of proof is on the State Board to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school and to establish one or more of the grounds established for dismissal or demotion of a teacher under G.S. 115C-325.4.

(6) In all hearings under this section, two consecutive evaluations that include written findings and recommendations regarding that principal's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the principal.

(7) The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this section. Decisions of the panel may be appealed on the record to the State Board.

(d) The State Board of Education or a local board may terminate the contract of a principal dismissed under this section.

(e) Neither party to a school administrator contract is entitled to damages under this section.

(f) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section.

"**§ 115C-325.13. Procedure for dismissal of teachers employed in low-performing schools.**

(a) Notwithstanding any other provision of this Part or any other law, this section shall govern the State Board's dismissal of teachers, assistant principals, directors, and supervisors assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a teacher, assistant principal, director, or supervisor when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher, assistant principal, director, or supervisor.

(b) The State Board may dismiss a teacher, assistant principal, director, or supervisor when:

(1) The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and

(2) That assistance team makes the recommendation to dismiss the teacher, assistant principal, director, or supervisor for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion for cause.

A teacher, assistant principal, director, or supervisor may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this section. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this section. Decisions of the panel may be appealed on the record to the State Board.

(c) Notwithstanding any other provision of this Part or any other law, this section shall govern the State Board's dismissal of licensed staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed staff member.

(d) A licensed staff member may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this section. The State Board shall adopt procedures to ensure that due process rights are afforded to licensed staff members recommended for dismissal under this section. Decisions of the panel may be appealed on the record to the State Board.

(e) The State Board of Education or a local board may terminate the contract of a teacher, assistant principal, director, or supervisor dismissed under this section.

(f) Neither party to a school administrator or teacher contract is entitled to damages under this section.

(g) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section."

SECTION 14.(c) G.S. 115C-45(c) reads as rewritten:

"(c) Appeals to Board of Education and to Superior Court. – An appeal shall lie to the local board of education from any final administrative decision in the following matters:

(1) The discipline of a student under G.S. 115C-390.7, 115C-390.10, or 115C-390.11;

(2) An alleged violation of a specified federal law, State law, State Board of Education policy, State rule, or local board policy, including policies regarding grade retention of students;

(3) The terms or conditions of employment or employment status of a school employee; and

(4) Any other decision that by statute specifically provides for a right of appeal to the local board of education and for which there is no other statutory appeal procedure.

As used in this subsection, the term "final administrative decision" means a decision of a school employee from which no further appeal to a school administrator is available.

Any person aggrieved by a decision not covered under subdivisions (1) through (4) of this subsection shall have the right to appeal to the superintendent and thereafter shall have the right to petition the local board of education for a hearing, and the local board may grant a hearing regarding any final decision of school personnel within the local school administrative unit. The local board of education shall notify the person making the petition of its decision whether to grant a hearing.

In all appeals to the board it is the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

The board of education may designate hearing panels composed of not less than two members of the board to hear and act upon such appeals in the name and on behalf of the board of education.

An appeal of right brought before a local board of education under subdivision (1), (2), ~~(3),~~ or (4) of this subsection may be further appealed to the superior court of the State on the grounds that the local board's decision is in violation of constitutional provisions, is in excess of the statutory authority or jurisdiction of the board, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence in view of the entire record as submitted, or is arbitrary or capricious. ~~However, the right of a noncertified employee to appeal decisions of a local board under subdivision (3) of this subsection shall only apply to decisions~~

~~concerning the dismissal, demotion, or suspension without pay of the noncertified employee. A noncertified employee may request and shall be entitled to receive written notice as to the reasons for the employee's dismissal, demotion, or suspension without pay. The notice shall be provided to the employee prior to any local board of education hearing on the issue. This subsection shall not alter the employment status of a noncertified employee.~~"

SECTION 14.(d) G.S. 115C-105.26(b)(2) reads as rewritten:

"(2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and ~~G.S. 115C-325,~~in Part 3 of Article 22 of this Chapter, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System."

SECTION 14.(e) G.S. 115C-105.37B(a)(2) reads as rewritten:

"(2) Restart model, in which the State Board of Education would authorize the local board of education to operate the school with the same exemptions from statutes and rules as a charter school authorized under Part 6A of Article 16 of this Chapter, or under the management of an educational management organization that has been selected through a rigorous review process. A school operated under this subdivision remains under the control of the local board of education, and employees assigned to the school are employees of the local school administrative unit with the protections provided by ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter."

SECTION 14.(f) G.S. 115C-105.38A(d) reads as rewritten:

"(d) Retesting; Dismissal. – Upon completion of the remediation plan required under subsection (c) of this section, the certified staff member shall take the general knowledge test a second time. If the certified staff member fails to acquire a passing score on the second test, the State Board shall begin a dismissal proceeding under ~~G.S. 115C-325(q)(2a).~~G.S. 115C-325.13."

SECTION 14.(g) G.S. 115C-105.38A(f) reads as rewritten:

"(f) Other Actions Not Precluded. – Nothing in this section shall be construed to restrict or postpone the following actions:

(1) The dismissal of a principal under ~~G.S. 115C-325(q)(1);~~G.S. 115C-325.12.

(2) The dismissal of a teacher, assistant principal, director, or supervisor under ~~G.S. 115C-325(q)(2);~~G.S. 115C-325.13.

(3) The dismissal or demotion of ~~a career~~ an employee for any of the grounds listed under ~~G.S. 115C-325(e);~~G.S. 115C-325.4.

(4) The nonrenewal of a school administrator's or ~~probationary~~ teacher's contract of ~~employment; or~~employment.

~~(5) The decision to grant career status.~~"

SECTION 14.(h) G.S. 115C-105.39 reads as rewritten:

"**§ 115C-105.39. Dismissal or removal of personnel; appointment of interim superintendent.**

(a) Within 30 days of the initial identification of a school as low-performing, whether by the local school administrative unit under G.S. 115C-105.37(a1) or by the State Board under G.S. 115C-105.37(a), the superintendent shall take one of the following actions concerning the school's principal: (i) recommend to the local board that the principal be retained in the same position, (ii) recommend to the local board that the principal be retained in the same position and a plan of remediation should be developed, (iii) recommend to the local board that the principal be transferred, or (iv) proceed under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal. The principal may be retained in the same position without a plan for

remediation only if the principal was in that position for no more than two years before the school is identified as low-performing. The principal shall not be transferred to another principal position unless (i) it is in a school classification in which the principal previously demonstrated at least 2 years of success, (ii) there is a plan to evaluate and provide remediation to the principal for at least one year following the transfer to assure the principal does not impede student performance at the school to which the principal is being transferred; and (iii) the parents of the students at the school to which the principal is being transferred are notified. The principal shall not be transferred to another low-performing school in the local school administrative unit. If the superintendent intends to recommend demotion or dismissal, the superintendent shall notify the local board. Within 15 days of (i) receiving notification that the superintendent intends to proceed under ~~G.S. 115C-325,~~G.S. 115C-325.4 or (ii) its decision concerning the superintendent's recommendation, but no later than September 30, the local board shall submit to the State Board a written notice of the action taken and the basis for that action. If the State Board does not assign an assistance team to that school or if the State Board assigns an assistance team to that school and the superintendent proceeds under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal, then the State Board shall take no further action. If the State Board assigns an assistance team to the school and the superintendent is not proceeding under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal, then the State Board shall vote to accept, reject, or modify the local board's recommendations. The State Board shall notify the local board of its action within five days. If the State Board rejects or modifies the local board's recommendations and does not recommend dismissal of the principal, the State Board's notification shall include recommended action concerning the principal's assignment or terms of employment. Upon receipt of the State Board's notification, the local board shall implement the State Board's recommended action concerning the principal's assignment or terms of employment unless the local board asks the State Board to reconsider that recommendation. The State Board shall provide an opportunity for the local board to be heard before the State Board acts on the local board's request for a reconsideration. The State Board shall vote to affirm or modify its original recommended action and shall notify the local board of its action within five days. Upon receipt of the State Board's notification, the local board shall implement the State Board's final recommended action concerning the principal's assignment or terms of employment. If the State Board rejects or modifies the local board's action and recommends dismissal of the principal, the State Board shall proceed under ~~G.S. 115C-325(q)(1).~~G.S. 115C-325.12.

(b) The State Board shall proceed under ~~G.S. 115C-325(q)(2)~~G.S. 115C-325.13 for the dismissal of teachers, assistant principals, directors, and supervisors assigned to a school identified as low-performing in accordance with ~~G.S. 115C-325(q)(2).~~G.S. 115C-325.13.

...."

SECTION 14.(i) G.S. 115C-238.29F(e)(3) reads as rewritten:

"(3) If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at a charter school, the local school administrative unit shall grant the leave for one year. For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has ~~career status under G.S. 115C-325 prior to receiving~~received a

leave of absence to teach at a charter school may return to a public school in the local school administrative unit ~~with career status~~ at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. ~~If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).~~"

SECTION 14.(j) G.S. 115C-238.68(3) reads as rewritten:

"(3) ~~Career status.~~Leave of absence from local school administrative unit. – ~~Employees of the board of directors shall not be eligible for career status.~~ If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at the regional school, the local school administrative unit shall grant the leave for one year. For the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has ~~career status under G.S. 115C-325 prior to receiving~~received a leave of absence to teach at the regional school may return to a public school in the local school administrative unit ~~with career status~~ at the end of the leave of absence or upon the end of employment at the regional school if an appropriate position is available. ~~If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers in accordance with G.S. 115C-325(e)(2).~~"

SECTION 14.(k) G.S. 115C-276(l) reads as rewritten:

"(l) To Maintain Personnel Files and to Participate in Firing and Demoting of Staff. – The superintendent shall maintain in his or her office a personnel file for each teacher that contains complaints, commendations, or suggestions for correction or improvement about the teacher and shall participate in the firing and demoting of staff, as provided in ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter."

SECTION 14.(l) G.S. 115C-285(7) reads as rewritten:

"(7) All persons employed as principals in the schools and institutions listed in ~~subsection (p) of G.S. 115C-325~~ G.S. 115C-325.10 shall be compensated at the same rate as are teachers in the public schools in accordance with the salary schedule adopted by the State Board of Education."

SECTION 14.(m) G.S. 115C-287.1 reads as rewritten:

"**§ 115C-287.1. Method of employment of principals, assistant principals, supervisors, and directors.**

(a) (1) ~~Beginning July 1, 1995, all~~All persons employed as school administrators shall be employed pursuant to this section.

~~(2) Notwithstanding G.S. 115C-287.1(a)(1), the following school administrators shall be employed pursuant to G.S. 115C-325:~~

~~a. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position with career status in that position; and~~

~~b. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position and who are eligible to achieve career status on or before June 30, 1997.~~

~~A school administrator shall cease to be employed pursuant to G.S. 115C-325 if the school administrator: (i) voluntarily relinquishes career status or the opportunity to achieve career status through promotion, resignation, or otherwise; or (ii) is dismissed or demoted or whose contract is not renewed pursuant to G.S. 115C-325.~~

(3) For purposes of this section, school administrator means a:

a. Principal;

b. Assistant principal;

c. Supervisor; or

d. Director,

whose major function includes the direct or indirect supervision of teaching or of any other part of the instructional program.

~~(4) Nothing in this section shall be construed to confer career status on any assistant principal or director, or to make an assistant principal eligible for career status as an assistant principal or a director eligible for career status as a director.~~

(b) Local boards of education shall employ school administrators ~~who are ineligible for career status as provided in G.S. 115C-325(e)(3),~~ upon the recommendation of the superintendent. The initial contract between a school administrator and a local board of education shall be for two to four years, ending on June 30 of the final 12 months of the contract. In the case of a subsequent contract between a principal or assistant principal and a local board of education, the contract shall be for a term of four years. In the case of an initial contract between a school administrator and a local board of education, the first year of the contract may be for a period of less than 12 months provided the contract becomes effective on or before September 1. A local board of education may, with the written consent of the school administrator, extend, renew, or offer a new school administrator's contract at any time after the first 12 months of the contract so long as the term of the new, renewed, or extended contract does not exceed four years. Rolling annual contract renewals are not allowed. Nothing in this section shall be construed to prohibit the filling of an administrative position on an interim or temporary basis.

(c) The term of employment shall be stated in a written contract that shall be entered into between the local board of education and the school administrator. The school administrator shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure by which a ~~career~~ teacher may be dismissed or demoted for cause as set forth in ~~G.S. 115C-325.~~G.S. 115C-325.4.

(d) If a superintendent intends to recommend to the local board of education that the school administrator be offered a new, renewed, or extended contract, the superintendent shall submit the recommendation to the local board for action. The local board may approve the superintendent's recommendation or decide not to offer the school administrator a new, renewed, or extended school administrator's contract.

If a superintendent decides not to recommend that the local board of education offer a new, renewed, or extended school administrator's contract to the school administrator, the superintendent shall give the school administrator written notice of his or her decision ~~and the reasons for his or her decision~~ no later than May 1 of the final year of the contract. ~~The superintendent's reasons may not be arbitrary, capricious, discriminatory, personal, or political.~~ No action by the local board or further notice to the school administrator shall be necessary unless the school administrator files with the superintendent a written request, within 10 days of receipt of the superintendent's decision, for a hearing before the local board. ~~Failure to file a~~

~~timely request for a hearing shall result in a waiver of the right to appeal the superintendent's decision.~~ If a school administrator files a timely request for a hearing, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the school administrator a new, renewed, or extended school administrator's contract.

If the local board decides not to offer the school administrator a new, renewed, or extended school administrator's contract, the local board shall notify the school administrator of its decision by June 1 of the final year of the contract. A decision not to offer the school administrator a new, renewed, or extended contract may not be for any cause ~~that is not arbitrary, capricious, discriminatory, personal, or political.~~ prohibited by State or federal law. ~~The local board's decision not to offer the school administrator a new, renewed, or extended school administrator's contract is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.~~

(e) Repealed by Session Laws 1995, c. 369, s. 1.

(f) If the superintendent or the local board of education fails to notify a school administrator by June 1 of the final year of the contract that the school administrator will not be offered a new school administrator's contract, the school administrator shall be entitled to 30 days of additional employment or severance pay beyond the date the school administrator receives written notice that a new contract will not be offered.

~~(g) If, prior to appointment as a school administrator, the school administrator held career status as a teacher in the local school administrative unit in which he or she is employed as a school administrator, a school administrator shall retain career status as a teacher if the school administrator is not offered a new, renewed, or extended contract by the local board of education, unless the school administrator voluntarily relinquished that right or is dismissed or demoted pursuant to G.S. 115C-325.~~

(h) An individual who holds a provisional assistant principal's certificate and who is employed as an assistant principal under G.S. 115C-284(c) shall be considered a school administrator for purposes of this section. Notwithstanding subsection (b) of this section, a local board may enter into one-year contracts with a school administrator who holds a provisional assistant principal's certificate. ~~If the school administrator held career status as a teacher in the local school administrative unit prior to being employed as an assistant principal and the State Board for any reason does not extend the school administrator's provisional assistant principal's certificate, the school administrator shall retain career status as a teacher unless the school administrator voluntarily relinquished that right or is dismissed or demoted under G.S. 115C-325.~~ Nothing in this subsection or G.S. 115C-284(c) shall be construed to require a local board to extend or renew the contract of a school administrator who holds a provisional assistant principal's certificate."

SECTION 14.(n) G.S. 115C-288(g) reads as rewritten:

"(g) To Report Certain Acts to Law Enforcement and the Superintendent. – When the principal has personal knowledge, a reasonable belief, or actual notice from school personnel that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency.

A principal who willfully fails to make a report to law enforcement required by this subsection may be subject to demotion or dismissal pursuant to ~~G.S. 115C-325.~~G.S. 115C-325.4.

Notwithstanding any other provision of law, the State Board of Education shall not require the principal to report to law enforcement acts in addition to those required to be reported by this subsection.

For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

The principal or the principal's designee shall notify the superintendent or the superintendent's designee in writing or by electronic mail regarding any report made to law enforcement under this subsection. This notification shall occur by the end of the workday in which the incident occurred when reasonably possible but not later than the end of the following workday. The superintendent shall provide the information to the local board of education.

Nothing in this subsection shall be interpreted to interfere with the due process rights of school employees or the privacy rights of students."

SECTION 14.(o) G.S. 115C-304 is repealed.

SECTION 14.(p) G.S. 115C-333 reads as rewritten:

"**§ 115C-333. Evaluation of licensed employees including certain superintendents; mandatory improvement plans; State board notification upon dismissal of employees.**

(a) Annual Evaluations; Low-Performing Schools. – Local school administrative units shall evaluate at least once each year all licensed employees assigned to a school that has been identified as low-performing. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of a mandatory improvement plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under ~~G.S. 115C-325(a)(6),~~G.S. 115C-325.1(5), either the principal, the assistant principal who supervises the teacher, or an assistance team assigned under G.S. 115C-105.38 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), either the superintendent or the superintendent's designee shall conduct the evaluation.

All teachers in low-performing schools who have ~~not attained career status~~been employed for less than three consecutive years shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school under G.S. 115C-105.38.

A local board shall use the performance standards and criteria adopted by the State Board and may adopt additional evaluation criteria and standards. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Mandatory Improvement Plans. –

(1) Repealed by Session Laws 2011-348, s. 2, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.

(1a) A mandatory improvement plan is an instrument designed to improve a teacher's performance or the performance of any licensed employee in a low-performing school by providing the individual with notice of specific performance areas that have substantial deficiencies and a set of strategies, including the specific support to be provided to the individual, so that the individual, within a reasonable period of time, should satisfactorily resolve such deficiencies.

(2) Repealed by Session Laws 2011-348, s. 2, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.

(2a) If a licensed employee in a low-performing school receives a rating on any standard on an evaluation that is below proficient or otherwise represents

unsatisfactory or below standard performance in an area that the licensed employee was expected to demonstrate, the individual or team that conducted the evaluation shall recommend to the superintendent that (i) the employee receive a mandatory improvement plan designed to improve the employee's ~~performance or~~ performance, (ii) the superintendent recommend to the local board that the ~~employee be dismissed or demoted.~~employee's contract not be recommended for renewal, or (iii) if the employee engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment that a proceeding for immediate dismissal or demotion be instituted. If the individual or team that conducted the evaluation elects not to make ~~either~~ any of the above recommendations, the said individual or team shall notify the superintendent of this decision. The superintendent shall determine whether to develop a mandatory improvement ~~plan~~plan, to not recommend renewal of the employee's contract, or to recommend a dismissal proceeding.

(3) If at any time a licensed employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, and immediate dismissal or demotion is not appropriate, then the principal may immediately institute a mandatory improvement plan regardless of any ratings on previous evaluations. The principal shall document the exigent reason for immediately instituting such a plan.

(4) Mandatory improvement plans shall be developed by the person who evaluated the licensed employee or the employee's supervisor unless the evaluation was conducted by an assistance team. If the evaluation was conducted by an assistance team, that team shall develop the mandatory improvement plan in collaboration with the employee's supervisor. Mandatory improvement plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board shall develop guidelines that include strategies to assist local boards in evaluating licensed employees and developing effective mandatory improvement plans within the time allotted under this section. Local boards may adopt policies for the development and implementation of mandatory improvement plans and policies for the implementation of monitored and directed growth plans.

(c) Reassessment of Employee in a Low-Performing School. – After the expiration of the time period for the mandatory improvement plan under subdivision (2a) of subsection (b) of this section, the superintendent, the superintendent's designee, or the assistance team shall assess the performance of the employee of the low-performing school a second time. If the superintendent, superintendent's designee, or assistance team determines that the employee has failed to become proficient in any of the performance standards articulated in the mandatory improvement plan or demonstrate sufficient improvement toward such standards, the superintendent shall recommend that the ~~employee~~ employee's contract not be renewed, or that the employee be immediately dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second assessment shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. – If a local board dismisses an employee of a low-performing school ~~for any reason~~for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (b) or (c) of this section, ~~except a reduction in force under G.S. 115C-325(e)(1)l.,~~ it shall notify the State Board of the action,

and the State Board annually shall provide to all local boards the names of those individuals. If a local board hires one of these individuals, within 60 days the superintendent or the superintendent's designee shall observe the employee, develop a mandatory improvement plan to assist the employee, and submit the plan to the State Board. The State Board shall review the mandatory improvement plan and may provide comments and suggestions to the superintendent. If on the next evaluation the employee receives a rating on any standard that was identified as an area of concern on the mandatory improvement plan that is again below proficient or otherwise represents unsatisfactory or below standard performance, the local board shall notify the State Board and the State Board shall initiate a proceeding to revoke the employee's license under G.S. 115C-296(d). If on this next evaluation the employee receives at least a proficient rating on all of the performance standards that were identified as areas of concern on the mandatory improvement plan, the local board shall notify the State Board that the employee is in good standing and the State Board shall not continue to provide the individual's name to local boards under this subsection unless the employee is subsequently dismissed under ~~G.S. 115C-325 except for a reduction in force.~~ G.S. 115C-325.4.

...."

SECTION 14.(q) G.S. 115C-333.1 reads as rewritten:

"**§ 115C-333.1. Evaluation of teachers in schools not identified as low-performing; mandatory improvement plans; State Board notification upon dismissal of teachers.**

(a) Annual Evaluations. – All teachers who are assigned to schools that are not designated as low-performing and who have not ~~attained career status~~been employed for at least three consecutive years shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. All teachers ~~with career status~~who have been employed for three or more years who are assigned to schools that are not designated as low-performing shall be evaluated annually unless a local board adopts rules that allow teachers ~~with career status~~employed for three or more years to be evaluated more or less frequently, provided that such rules are not inconsistent with State or federal requirements. Local boards also may adopt rules requiring the annual evaluation of nonlicensed employees. A local board shall use the performance standards and criteria adopted by the State Board and may adopt additional evaluation criteria and standards. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Mandatory Improvement Plans for Teachers. – If, in an observation report or year-end evaluation, a teacher receives a rating that is below proficient or otherwise represents unsatisfactory or below standard performance on any standard that the teacher was expected to demonstrate, the principal may place the teacher on a mandatory improvement plan as defined in G.S. 115C-333(b)(1a). The mandatory improvement plan shall be utilized only if the superintendent or superintendent's designee determines that an individual, monitored, or directed growth plan will not satisfactorily address the deficiencies.

If at any time a teacher engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, and immediate dismissal or demotion is not appropriate, then the principal may immediately institute a mandatory improvement plan regardless of any ratings on previous evaluations. The principal shall document the exigent reason for immediately instituting such a plan. The mandatory improvement plan shall be developed by the principal in consultation with the teacher. The teacher shall have five instructional days from receipt of the proposed mandatory improvement plan to request a modification of such plan before it is implemented, and the principal shall consider such suggested modifications before finalizing the plan. The teacher shall have at least 60 instructional days to complete the mandatory improvement plan. The State Board shall develop guidelines that include strategies to assist local boards in

evaluating teachers and developing effective mandatory improvement plans. Local boards may adopt policies for the implementation of mandatory improvement plans under this section.

(c) Observation by a Qualified Observer. –

(1) The term "qualified observer" as used in this section is any administrator or teacher who is licensed by the State Board of Education and working in North Carolina; any employee of the North Carolina Department of Public Instruction who is trained in evaluating licensed employees; or any instructor or professor who teaches in an accredited North Carolina school of education and holds an educator's license.

(2) The local board of education shall create a list of qualified observers who are employed by that board and available to do observations of employees on mandatory improvement plans. This list shall be limited to names of administrators and teachers selected by the local board of education. The local board of education shall strive to select administrators and teachers with excellent reputations for competence and fairness.

(3) Any teacher, other than a teacher assigned to a school designated as low-performing, who has been placed on a mandatory improvement plan shall have a right to be observed by a qualified observer in the area or areas of concern identified in the mandatory improvement plan. The affected teacher and the principal shall jointly choose the qualified observer within 20 instructional days after the commencement of the mandatory improvement plan. If the teacher and the principal cannot agree on a qualified observer within this time period, they each shall designate a person from the list of qualified observers created pursuant to subdivision (2) of this subsection, and these two designated persons shall choose a qualified observer within five instructional days of their designation. The qualified observer shall draft a written report assessing the teacher in the areas of concern identified in the mandatory improvement plan. The report shall be submitted to the principal before the end of the mandatory improvement plan period. If a teacher or administrator from the same local school administrative unit is selected to serve as the qualified observer, the administration of the local school administrative unit shall provide such qualified observer with the time necessary to conduct the observation and prepare a report. If someone who is not employed by the same local school administrative unit is selected to serve as the qualified observer, the teacher who is the subject of the mandatory improvement plan will be responsible for any expenses related to the observations and reports prepared by the qualified observer. The qualified observer shall not unduly disrupt the classroom when conducting an observation.

(4) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because of the employee's service or completion of a report as an objective observer pursuant to this subsection, unless the employee's report contained material information that the employee knew was false.

(d) Reassessment of the Teacher. – Upon completion of a mandatory improvement plan under subsection (b) of this section, the principal shall assess the performance of the teacher a second time. The principal shall also review and consider any report provided by the qualified observer under subsection (c) of this section if one has been submitted before the end of the mandatory improvement plan period. If, after the second assessment of the teacher and

consideration of any report from the qualified observer, the superintendent or superintendent's designee determines that the teacher has failed to become proficient in any of the performance standards identified as deficient in the mandatory improvement plan or demonstrate sufficient improvement toward such standards, the superintendent may recommend that the teacher's contract not be renewed, or if the teacher has engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, that the teacher be immediately dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second assessment produced pursuant to the terms of this subsection shall constitute substantial evidence of the teacher's inadequate performance.

(e) Dismissal Proceedings Without a Mandatory Improvement Plan. – The absence of a mandatory improvement plan as described in this section shall not prohibit a superintendent from initiating a dismissal proceeding against a teacher under the provisions of ~~G.S. 115C-325.~~G.S. 115C-325.4. However, the superintendent shall not be entitled to the substantial evidence provision in subsection (d) of this section if such mandatory improvement plan is not utilized.

(f) State Board Notification. – If a local board dismisses a teacher for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (d) of this section, ~~for any reason except a reduction in force under G.S. 115C-325(e)(1)l.,~~ it shall notify the State Board of the action, and the State Board annually shall provide to all local boards the names of those teachers. If a local board hires one of these teachers, within 60 days the superintendent or the superintendent's designee shall observe the teacher, develop a mandatory improvement plan to assist the teacher, and submit the plan to the State Board. The State Board shall review the mandatory improvement plan and may provide comments and suggestions to the superintendent. If on the next evaluation the teacher receives a rating on any standard that was an area of concern on the mandatory improvement plan that is again below proficient or a rating that otherwise represents unsatisfactory or below standard performance, the local board shall notify the State Board, and the State Board shall initiate a proceeding to revoke the teacher's license under G.S. 115C-296(d). If on the next evaluation the teacher receives at least a proficient rating on all of the overall performance standards that were areas of concern on the mandatory improvement plan, the local board shall notify the State Board that the teacher is in good standing, and the State Board shall not continue to provide the teacher's name to local boards under this subsection unless the teacher is subsequently dismissed under ~~G.S. 115C-325~~G.S. 115C-325.4. ~~except for a reduction in force.~~ If, however, on this next evaluation the teacher receives a developing rating on any standards that were areas of concern on the mandatory improvement plan, if the local board elects to renew the teacher's contract and ~~the teacher shall have one more year to bring the rating to proficient. If,~~ by the end of this second year, the teacher is not proficient in all standards that were areas of concern on the mandatory improvement plan, the local board shall notify the State Board, and the State Board shall initiate a proceeding to revoke the teacher's license under G.S. 115C-296(d).

...."

SECTION 14.(r) G.S. 115C-335(b) reads as rewritten:

"(b) Training. – The State Board, in collaboration with the Board of Governors of The University of North Carolina, shall develop programs designed to train principals and superintendents in the proper administration of the employee evaluations developed by the State Board. The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available to all principals and superintendents at locations that are geographically convenient to local school administrative units. The programs shall include methods to determine whether an employee's performance has improved student learning, the development and implementation of

appropriate professional growth and mandatory improvement plans, the process for contract nonrenewal, and the dismissal process under ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter. The Board of Governors shall ensure that the subject matter of the training programs is incorporated into the masters in school administration programs offered by the constituent institutions. The State Board, in collaboration with the Board of Governors, also shall develop in-service programs for licensed public school employees that may be included in a mandatory improvement plan created under G.S. 115C-333(b) or G.S. 115C-333.1(b). The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available at locations that are geographically convenient to local school administrative units."

SECTION 14.(s) Article 23 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-344. Employment benefits for exchange teachers.**

An exchange teacher is a nonimmigrant alien teacher participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62 or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q). For purposes of determining eligibility to receive employment benefits under this Chapter, including personal leave, annual vacation leave, and sick leave, an exchange teacher shall be considered a permanent teacher if employed with the expectation of at least six full consecutive monthly pay periods of employment and if employed at least 20 hours per week. An exchange teacher is not a teacher for purposes of the Teachers' and State Employees' Retirement System of North Carolina as provided in G.S. 135-1(25)."

SECTION 14.(t) G.S. 115C-404(b) reads as rewritten:

"(b) Documents received under this section shall be used only to protect the safety of or to improve the education opportunities for the student or others. Information gained in accordance with G.S. 7B-3100 shall not be the sole basis for a decision to suspend or expel a student. Upon receipt of each document, the principal shall share the document with those individuals who have (i) direct guidance, teaching, or supervisory responsibility for the student, and (ii) a specific need to know in order to protect the safety of the student or others. Those individuals shall indicate in writing that they have read the document and that they agree to maintain its confidentiality. Failure to maintain the confidentiality of these documents as required by this section is grounds for the dismissal ~~of an employee who is not a career employee and is grounds for dismissal of an employee who is a career employee,~~ in accordance with ~~G.S. 115C-325(e)(1)i.~~G.S. 115C-325.4(a)(9)."

SECTION 14.(u) G.S. 143B-146.7(b) reads as rewritten:

"(b) At any time after the State Board identifies a school as low-performing under this Part, the ~~Secretary~~ State Board shall proceed under ~~G.S. 115C-325(p1)~~G.S. 115C-325.11 for the dismissal of certificated instructional personnel assigned to that school."

SECTION 14.(v) G.S. 143B-146.8 reads as rewritten:

"**§ 143B-146.8. Evaluation of ~~certificated~~ licensed personnel and principals; action plans; State Board notification.**

(a) Annual Evaluations; Low-Performing Schools. – The principal shall evaluate at least once each year all ~~certificated~~ licensed personnel assigned to a participating school that has been identified as low-performing but has not received an assistance team. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of an action plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under ~~G.S. 115C-325(a)(6),~~G.S. 115C-325.1(5), either the principal or an assessment team assigned under G.S. 143B-146.9 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), the Superintendent shall conduct the evaluation.

Notwithstanding this subsection or any other law, the principal shall observe at least three times annually, a teacher shall observe at least once annually, and the principal shall evaluate at least once annually, all teachers who have ~~not attained career status.~~been employed for less than three consecutive years. All other employees who have been employed for three or more years and are defined as teachers under ~~G.S. 115C-325(a)(6)~~G.S. 115C-325.1(5) who are assigned to participating schools that are not designated as low-performing shall be evaluated annually unless the Secretary adopts rules that allow specified categories of teachers with ~~career status~~three or more years of employment to be evaluated more or less frequently. The Secretary also may adopt rules requiring the annual evaluation of ~~noncertificated~~ nonlicensed personnel. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school.

The Secretary shall use the State Board's performance standards and criteria unless the Secretary develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if an evaluation is used other than one adopted by the State Board.

(b) Action Plans. – If a ~~certificated~~ licensed employee in a participating school that has been identified as low-performing receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the principal that: (i) the employee receive an action plan designed to improve the employee's performance; (ii) the employee's contract not be recommended for renewal, or (iii) if the employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment that a proceeding for immediate dismissal or demotion be instituted. ~~or (ii) the principal recommend to the Secretary that the employee be dismissed or demoted.~~ The principal shall determine whether to develop an action ~~plan~~plan, to not recommend renewal of the employee's contract, or to recommend a dismissal proceeding. The person who evaluated the employee or the employee's supervisor shall develop the action plan unless an assistance team or assessment team conducted the evaluation. If an assistance team or assessment team conducted the evaluation, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board, in consultation with the Secretary, shall develop guidelines that include strategies to assist in evaluating ~~certificated~~ licensed personnel and developing effective action plans within the time allotted under this section. The Secretary may adopt policies for the development and implementation of action plans or professional development plans for personnel who do not require action plans under this section.

(c) Reevaluation. – Upon completion of an action plan under subsection (b) of this section, the principal or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the principal shall recommend that the employee's contract not be renewed, or if the employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, that the employee be dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. – If the Secretary dismisses an employee for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (b) or (c) of this section, ~~any reason except a reduction in force under G.S. 115C-325(e)(1)l.,~~ the Secretary shall notify the State Board of the action, and the State Board annually shall provide to all local boards of education the names of those individuals. If

a local board hires one of these individuals, that local board shall proceed under G.S. 115C-333(d).

...."

SECTION 14.(w) Notwithstanding the requirements for terms of contracts in G.S. 115C-325.3, for the 2012-2013 school year all teachers shall be employed on a contract for a term of one year. This section becomes effective July 1, 2012, and applies to all school employees employed on or after that date.

PART XV. ELIMINATION OF PUBLIC FINANCING FOR SUPERINTENDENT OF PUBLIC INSTRUCTION

SECTION 15.(a) G.S. 163-278.95 reads as rewritten:

"**§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.**

The purpose of this Article is to ensure the vitality and fairness of democratic elections in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of ~~Auditor, Superintendent of Public Instruction,~~Auditor and Commissioner of Insurance in elections to be held in 2008 and thereafter."

SECTION 15.(b) G.S. 163-278.96(12) reads as rewritten:

"(12) Office. – The Council of State offices of ~~Auditor, Superintendent of Public Instruction,~~ Auditor and Commissioner of Insurance."

SECTION 15.(c) Within five business days of the effective day of this act, the State Board of Elections shall notify any individual who is a candidate for Superintendent of Public Instruction and who has filed a declaration of intent to participate in the program for public financing through the North Carolina Voter-Owned Elections Fund that the candidate is no longer eligible to participate in the program.

SECTION 15.(d) This section is effective when it becomes law and applies to elections held on or after that date.

PART XVI. EFFECTIVE DATE

SECTION 16. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 795
Education/Higher Education Committee Substitute Adopted 5/29/12
PROPOSED COMMITTEE SUBSTITUTE S795-PCS35358-TC-39

Short Title: Excellent Public Schools Act. (Public)

Sponsors:

Referred to:

April 25, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO IMPROVE K-3 LITERACY; PROVIDE LITERACY VOLUNTEER LEAVE TIME; ASSIGN SCHOOL PERFORMANCE GRADES; MAXIMIZE INSTRUCTIONAL TIME; ADJUST SCHOOL CALENDAR; FUND FIVE ADDITIONAL INSTRUCTIONAL DAYS WITHIN THE EXISTING SCHOOL CALENDAR; ESTABLISH AN NC TEACHER CORPS; STRENGTHEN TEACHER LICENSURE REQUIREMENTS; PROVIDE PROOF OF STATE-FUNDED LIABILITY INSURANCE; ESTABLISH PLANS FOR PAY FOR EXCELLENCE; CLARIFY NC PRE-K PROGRAM ELIGIBILITY AND ADD SLOTS; REPEAL PROHIBITION ON TEACHER PREPAYMENT; PROVIDE A TAX DEDUCTION FOR EDUCATIONAL SUPPLIES; ESTABLISH TEACHER CONTRACTS; AND ELIMINATE PUBLIC FINANCING FOR THE OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION.

The General Assembly of North Carolina enacts:

PART I. IMPROVE K-3 LITERACY

SECTION 1.(a) G.S. 115C-81.2 is repealed.

SECTION 1.(b) Article 8 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 1A. North Carolina Read to Achieve Program.

"**§ 115C-83.1A. State goal.**

The goal of the State is to ensure that every student read at or above grade level by the end of third grade and continue to progress in reading proficiency so that he or she can read, comprehend, integrate, and apply complex texts needed for secondary education and career success.

"**§ 115C-83.1B. Purposes.**

(a) The purposes of this Part are to ensure that (i) difficulty with reading development is identified as early as possible; (ii) students receive appropriate instructional and support services to address difficulty with reading development and to remediate reading deficiencies; and (iii) each student and his or her parent or guardian be continuously informed of the student's academic needs and progress.

(b) In addition to the purposes listed in subsection (a) of this section, the purpose of this Part is to determine that progression from one grade to another be based, in part, upon proficiency in reading.

"**§ 115C-83.1C. Definitions.**

The following definitions apply in this Part:

(1) "Accelerated reading class" means a class where focused instructional supports and services are provided to increase a student's reading level at least two grades in one school year.

(2) "Alternative assessment" means a valid and reliable standardized assessment of reading comprehension, approved by the State Board of Education, that is not the same test as the State approved standardized test of reading comprehension administered to third grade students.

(3) "Instructional supports and services" mean intentional strategies used with a majority of students to facilitate reading development and remediate emerging difficulty with reading development. Instructional supports and services include, but are not limited to, small group instruction, reduced teacher-student ratios, frequent progress monitoring, and extended learning time.

(4) "Difficulty with reading development" means not demonstrating appropriate developmental abilities in any of the major reading areas, including, but not limited to, oral language, phonological or phonemic awareness, vocabulary, fluency, or comprehension, according to observation-based, diagnostic, or formative assessments.

(5) "Reading interventions" mean evidence-based strategies frequently used to remediate reading deficiencies and include, but are not limited to, individual instruction, tutoring, or mentoring that target specific reading skills and abilities.

(6) "Reading proficiency" means reading at or above the third grade level by the end of a student's third grade year, demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students.

(7) "Reading deficiency" means not reading at the third grade level by the end of the student's third grade year, demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students.

(8) "Student reading portfolio" means a compilation of independently produced student work selected by the student's teacher, and signed by the teacher and principal, as an accurate picture of the student's reading ability. The student reading portfolio shall include an organized collection of evidence of the student's mastery of the State's reading standards that are assessed by the State-approved standardized test of reading comprehension administered to third grade students. For each benchmark, there shall be three examples of student work demonstrating mastery by a grade of seventy percent (70%) or above.

(9) "Summer reading camp" means an additional educational program outside of the instructional calendar provided by the local school administrative unit to any student who does not demonstrate reading proficiency. Parents or guardians of the student not demonstrating reading proficiency shall make the final decision regarding the student's summer camp attendance. Summer camps shall (i) be six to eight weeks long, four or five days per week; (ii) include at least three hours of instructional time per day; (iii) be taught by

compensated, licensed teachers selected based on demonstrated student outcomes in reading proficiency; and (iv) allow volunteer mentors to read with students.

(10) "Transitional third and fourth class combination" means a classroom specifically designed to produce learning gains sufficient to meet fourth grade performance standards while continuing to remediate areas of reading deficiency.

"**§ 115C-83.1D. Comprehensive plan for reading achievement.**

(a) The State Board of Education shall develop, implement, and continuously evaluate a comprehensive plan to improve reading achievement in the public schools. The plan shall be based on reading instructional practices with strong evidence of effectiveness in current empirical research in reading development. The plan shall be developed with the active involvement of teachers, college and university educators, parents and guardians of students, and other interested parties. The plan shall, when appropriate to reflect research, include revision of the standard course of study or other curricular standards, revision of teacher licensure and renewal standards, and revision of teacher education program standards.

(b) The State Board of Education shall report biennially to the Joint Legislative Education Oversight Committee by October 1 of each even-numbered year on the implementation, evaluation, and revisions to the comprehensive plan for reading achievement and shall include recommendations for legislative changes to enable implementation of current empirical research in reading development.

"**§ 115C-83.1E. Developmental screening and kindergarten entry assessment.**

(a) The State Board of Education shall ensure that every student entering kindergarten shall be administered a developmental screening of early language, literacy, and math skills within 30 days of enrollment.

(b) The State Board of Education shall ensure that every student entering kindergarten shall complete a kindergarten entry assessment within 60 days of enrollment.

(c) The developmental screening instrument may be composed of subsections of the kindergarten entry assessment.

(d) The kindergarten entry assessment shall address the five essential domains of school readiness: language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development.

(e) The kindergarten entry assessment shall be (i) administered at the classroom level in all local school administrative units; (ii) aligned to North Carolina's early learning and development standards and to the standard course of study; and (iii) reliable, valid, and appropriate for use with all children, including those with disabilities and those who are English language learners.

(f) The results of the developmental screening and the kindergarten entry assessment shall be used to inform the following:

(1) The status of children's learning at kindergarten entry.

(2) Instruction of each child.

(3) Efforts to reduce the achievement gap at kindergarten entry.

(4) Continuous improvement of the early childhood system.

"**§ 115C-83.1F. Facilitating early grade reading proficiency.**

(a) Kindergarten, first, second, and third grade students shall be assessed with valid, reliable, formative, and diagnostic reading assessments made available to local school administrative units by the State Board of Education pursuant to G.S. 115C-174.11(a). Difficulty with reading development identified through administration of formative and diagnostic assessments shall be addressed with instructional supports and services. To the greatest extent possible, kindergarten through third grade reading assessments shall yield data

that can be used with the Education Value Added Assessment System (EVAAS), or a compatible and comparable system approved by the State Board of Education, to analyze student data to identify root causes for difficulty with reading development and to determine actions to address them.

(b) Formative and diagnostic assessments and resultant instructional supports and services shall address oral language, phonological and phonemic awareness, phonics, vocabulary, fluency, and comprehension using developmentally appropriate practices.

(c) Local school administrative units are encouraged to partner with community organizations, businesses, and other groups to provide volunteers, mentors, or tutors to assist with the provision of instructional supports and services that enhance reading development and proficiency.

"**§ 115C-83.1G. Elimination of social promotion.**

(a) The State Board of Education shall require that a student be retained in the third grade if the student fails to demonstrate reading proficiency appropriate for a third grade student, as demonstrated on a State-approved standardized test of reading comprehension administered to third grade students. The test may be re-administered once prior to the end of the school year.

(b) Students may be exempt from mandatory retention in third grade for good cause but shall continue to receive instructional supports and services and reading interventions appropriate for their age and reading level. Good cause exemptions shall be limited to the following:

(1) Limited English Proficient students with less than two years of instruction in an English as a Second Language program.

(2) Students with disabilities, as defined in G.S. 115C-106.3(1), whose individualized education program indicates the use of alternative assessments and reading interventions.

(3) Students who demonstrate reading proficiency appropriate for third grade students on an alternative assessment approved by the State Board of Education. Teachers may administer the alternative assessment following the administration of the State-approved standardized test of reading comprehension typically given to third grade students at the end of the school year, or after a student's participation in the local school administrative unit's summer reading camp.

(4) Students who demonstrate, through a student reading portfolio, reading proficiency appropriate for third grade students. Teachers may submit the student reading portfolio at the end of the school year, or after a student's participation in the local school administrative unit's summer reading camp. The student reading portfolio and review process shall be established by the State Board of Education.

(5) Students who have (i) received reading intervention and (ii) previously been retained more than once in kindergarten, first, second, or third grades.

(c) The superintendent shall determine whether a student may be exempt from mandatory retention on the basis of a good cause exemption. The following steps shall be taken in making the determination:

(1) The teacher of a student eligible for a good cause exemption shall submit documentation of the relevant exemption and evidence that promotion of the student is appropriate based on the student's academic record to the principal. Such evidence shall be limited to the student's personal education plan, individual education program, if applicable, alternative assessment, or student reading portfolio.

(2) The principal shall review the documentation and make an initial determination whether the student should be promoted. If the principal determines the student should be promoted, the principal shall make a written recommendation of promotion to the superintendent for final determination. The superintendent's acceptance or rejection of the recommendation shall be in writing.

"**§ 115C-83.1H. Successful reading development for retained students.**

(a) Students not demonstrating reading proficiency shall be enrolled in a summer reading camp provided by the local school administrative unit prior to being retained. Students who demonstrate reading proficiency on an alternative assessment of reading comprehension or student reading portfolio after completing a summer reading camp shall be promoted to the fourth grade. Students who do not demonstrate reading proficiency on these measures after completing a summer reading camp shall be retained under G.S. 115C-83.1G(a) and provided with the instruction listed in subsection (b) of this section during the retained year.

(b) Students retained under G.S. 115C-83.1G(a) shall be provided with a teacher selected based on demonstrated student outcomes in reading proficiency and placed in an accelerated reading class or a transitional third and fourth grade class combination, as appropriate. Classroom instruction shall include at least 90 minutes of daily, uninterrupted, evidence-based reading instruction, not to include independent reading time, and other appropriate instructional supports and services and reading interventions.

(c) The State Board of Education shall establish a midyear promotion policy for any student retained under G.S. 115C-83.1G(a) who, by November 1, demonstrates reading proficiency through administration of the alternative assessment of reading comprehension, or student reading portfolio review.

(d) Parents or guardians of students who have been retained once under the provisions of G.S. 115C-83.1G(a) shall be provided with a plan for reading at home, including participation in shared and guided reading workshops for the parent or guardian, and outlined in a parental or guardian contract.

(e) Parents or guardians of students who have been retained twice under the provisions of G.S. 115C-83.1G(a) shall be offered supplemental tutoring for the retained student in evidence-based reading services outside the instructional day.

"**§ 115C-83.1I. Notification requirements to parents and guardians.**

(a) Parents or guardians shall be notified in writing, and in a timely manner, that the student shall be retained, unless he or she is exempt from mandatory retention for good cause, if the student is not demonstrating reading proficiency by the end of third grade. Parents or guardians shall receive this notice when a kindergarten, first, second or third grade student (i) is demonstrating difficulty with reading development; (ii) is not reading at grade level; or (iii) has a personal education plan under G.S. 115C-105.41.

(b) Parents or guardians of any student who is to be retained under the provisions of G.S. 115C-83.1G(a) shall be notified in writing of the reason the student is not eligible for a good cause exemption as provided in G.S. 115C-83.1G(b). Written notification shall also include a description of proposed reading interventions that will be provided to the student to remediate identified areas of reading deficiency.

(c) Parents or guardians of students retained under G.S. 115C-83.1G(a) shall receive at least monthly written reports on student progress towards reading proficiency. The evaluation of the student's progress shall be based upon the student's classroom work, observations, tests, assessments, and other relevant information.

(d) Teachers and principals shall provide opportunities to discuss with parents and guardians the notifications listed in this section.

"**§ 115C-83.1J. Accountability measures.**

(a) Each local board of education shall publish annually on a Web site maintained by that local school administrative unit and report in writing to the State Board of Education by September 1 of each year the following information on the prior school year:

(1) The number and percentage of third grade students demonstrating and not demonstrating reading proficiency on the State-approved standardized test of reading comprehension administered to third grade students.

(2) The number and percentage of third grade students who take and pass the alternative assessment of reading comprehension.

(3) The number and percentage of third grade students retained for not demonstrating reading proficiency.

(4) The number and percentage of third grade students exempt from mandatory third grade retention by category of exemption as listed in G.S. 115C-83.1G(b).

(b) Each local board of education shall report annually in writing to the State Board of Education by September 1 of each year a description of all reading interventions provided to students who have been retained under G.S. 115C-83.1G(a).

(c) The State Board of Education shall establish a uniform format for local boards of education to report the required information listed in subsections (a) and (b) of this section and shall provide the format to local boards of education no later than 90 days prior to the annual due date. The State Board of Education shall compile annually this information and submit a State-level summary to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Education Oversight Committee by October 1 of each year, beginning with the 2014-2015 school year.

(d) The State Board of Education and the Department of Public Instruction shall provide technical assistance as needed to aid local school administrative units to implement all provisions of this Part."

SECTION 1.(c) G.S. 115C-105.27(b)(1a) is repealed.

SECTION 1.(d) G.S. 115C-105.41 reads as rewritten:

"**§ 115C-105.41. Students who have been placed at risk of academic failure; personal education plans.**

In order to implement Part 1A of Article 8 of this Chapter, ~~Local~~ local school administrative units shall identify students who are at risk for academic failure and who are not successfully progressing toward grade promotion and graduation, beginning ~~no later than the fourth grade.~~ in kindergarten. Identification shall occur as early as can reasonably be done and can be based on grades; observations, diagnostic and formative assessments, State assessments, and other factors, including reading on grade level, that impact student performance that teachers and administrators consider appropriate, without having to await the results of end-of-grade or end-of-course tests. No later than the end of the first quarter, or after a teacher has had up to nine weeks of instructional time with a student, a personal education plan for academic improvement with focused intervention and performance benchmarks shall be developed or updated for any student at risk of academic failure who is not performing at least at grade level, as identified by the State end-of-grade test and other factors noted above. Focused instructional supports and services, reading ~~intervention~~ interventions and accelerated activities should include ~~research-based best~~ evidence-based practices that meet the needs of students and may include coaching, mentoring, tutoring, summer school, Saturday school, and extended days. Local school administrative units shall provide these activities free of charge to students. Local school administrative units shall also provide transportation free of charge to all students for whom transportation is necessary for participation in these activities.

Local school administrative units shall give notice of the personal education plan and a copy of the personal education plan to the student's parent or guardian. Parents should be included in the implementation and ongoing review of personal education plans.

Local school administrative units shall certify that they have complied with this section annually to the State Board of Education. The State Board of Education shall periodically review data on the progress of identified students and report to the Joint Legislative Education Oversight Committee.

No cause of action for monetary damages shall arise from the failure to provide or implement a personal education plan under this section."

SECTION 1.(e) G.S. 115C-174.11(a) reads as rewritten:

"(a) Assessment Instruments for ~~First and Second Grades.~~Kindergarten, First, Second, and Third Grades. – The State Board of Education shall ~~adopt~~ develop, adopt, and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program and Part 1A of Article 8 of this Chapter for the ~~first and second grades, rather than standardized tests.~~ kindergarten, first, second, and third grades. Local school administrative units ~~may~~ shall use these assessment instruments provided to them by the State Board for ~~first and second grade students,~~ kindergarten, first, second, and third grade students to assess progress, diagnose difficulties, and to inform instruction and remediation needs. ~~and~~ Local school administrative units shall not use standardized tests for summative assessment of kindergarten, first, and second grade students except as required as a condition of receiving federal grants."

SECTION 1.(f) G.S. 115C-238.29F is amended by adding a new subsection to read:

"(d1) Reading Proficiency and Student Promotion. –

(1) Students in the third grade shall be retained if the student fails to demonstrate reading proficiency by reading at or above the third grade level as demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students. The charter school shall provide reading interventions to retained students to remediate reading deficiency, which may include 90 minutes of daily, uninterrupted, evidence-based reading instruction, accelerated reading classes, transition classes containing third and fourth grade students, and summer reading camps.

(2) Students may be exempt from mandatory retention in third grade for good cause but shall continue to receive instructional supports and services and reading interventions appropriate for their age and reading level. Good cause exemptions shall be limited to the following:

a. Limited English Proficient students with less than two years of instruction in an English as a Second Language program.

b. Students with disabilities, as defined in G.S. 115C-106.3(1), whose individualized education program indicates the use of alternative assessments and reading interventions.

c. Students who demonstrate reading proficiency appropriate for third grade students on an alternative assessment of reading comprehension. The charter school shall notify the State Board of Education of the alternative assessment used to demonstrate reading proficiency.

d. Students who demonstrate, through a student reading portfolio, reading proficiency appropriate for third grade students.

e. Students who have (i) received reading intervention and (ii) previously been retained more than once in kindergarten, first, second, or third grades.

(3) The charter school shall provide notice to parents and guardians when a student is not reading at grade level. The notice shall state that if the

student's reading deficiency is not remediated by the end of third grade, the student shall be retained unless he or she is exempt from mandatory retention for good cause. Notice shall also be provided to parents and guardians of any student who is to be retained under this subsection of the reason the student is not eligible for a good cause exemption, as well as a description of proposed reading interventions that will be provided to the student to remediate identified areas of reading deficiency.

(4) The charter school shall annually publish on the charter school's Web site and report in writing to the State Board of Education by September 1 of each year the following information on the prior school year:

a. The number and percentage of third grade students demonstrating and not demonstrating reading proficiency on the State-approved standardized test of reading comprehension administered to third grade students.

b. The number and percentage of third grade students not demonstrating reading proficiency and who do not return to the charter school for the following school year.

c. The number and percentage of third grade students who take and pass the alternative assessment of reading comprehension.

d. The number and percentage of third grade students retained for not demonstrating reading proficiency.

e. The number and percentage of third grade students exempt from mandatory third grade retention by category of exemption as listed in subdivision (2) of this subsection."

SECTION 1.(g) G.S. 115C-288(a) reads as rewritten:

"(a) To Grade and Classify Pupils. – The principal shall have authority to grade and classify ~~pupils~~pupils, except as provided in G.S. 115C-83.1G(a). In determining the appropriate grade for a pupil who is already attending a public school, the principal shall consider the pupil's classroom work and grades, the pupil's scores on standardized tests, and the best educational interests of the pupil. The principal shall not make the decision solely on the basis of standardized test scores. If a principal's decision to retain a child in the same grade is partially based on the pupil's scores on standardized tests, those test scores shall be verified as accurate.

A principal shall not require additional testing of a student entering a public school from a school governed under Article 39 of this Chapter if test scores from a nationally standardized test or nationally standardized equivalent measure that are adequate to determine the appropriate placement of the child are available."

SECTION 1.(h) G.S. 130A-440(b) reads as rewritten:

"(b) A health assessment shall include a medical history and physical examination with screening for vision and hearing and, if appropriate, testing for anemia and tuberculosis. Vision screening shall be conducted in accordance with G.S. 130A-440.1. The health assessment may also include dental screening and developmental screening for cognition, language, and motor function. The developmental screening of cognition and language abilities may be conducted in accordance with G.S. 115C-83.1E(a)."

SECTION 1.(i) There is appropriated from the General Fund to the Department of Public Instruction the sum of thirty-three million nine hundred fourteen thousand five hundred three dollars ($33,914,503) for the 2012-2013 fiscal year to implement the requirements of this section. It is the intent of the General Assembly to increase this appropriation for the 2013-2014 fiscal year to implement additional requirements in that fiscal year.

SECTION 1.(j) This section is effective when it becomes law and applies beginning with the 2013-2014 school year. The developmental screening and kindergarten

entry assessment required by this section shall be administered beginning with the 2014-2015 school year

PART II. STATE EMPLOYEE LITERACY VOLUNTEER LEAVE TIME

SECTION 2.(a) G.S. 126-4 reads as rewritten:

"**§ 126-4. Powers and duties of State Personnel Commission.**

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

...

(5b) A leave program that allows employees to volunteer in a literacy program in a public school for up to five hours each month.

...."

SECTION 2.(b) This section is effective when it becomes law.

PART III. SCHOOL PERFORMANCE GRADES

SECTION 3.(a) G.S. 115C-12(9)c1. reads as rewritten:

"c1. To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance. As a part of the annual "report card" for each local school administrative unit, the State Board shall award an overall numerical school performance score on a scale of zero to 100 and a corresponding letter grade of A, B, C, D, or F earned by each school within the local school administrative unit. The school performance score and grade shall reflect student performance on annual subject-specific assessments, college and workplace readiness measures, and graduation rates. For schools serving students in any grade from kindergarten to eighth grade, separate performance scores and grades shall also be awarded based on the school performance in reading and mathematics respectively. The annual "report card" for schools serving students in third grade also shall include the number and percentage of third grade students who (i) take and pass the alternative assessment of reading comprehension; (ii) were retained in third grade for not demonstrating reading proficiency as indicated in G.S. 115C-83.1G(a); and (iii) were exempt from mandatory third grade retention by category of exemption as listed in G.S. 115C-83.1G(b)."

SECTION 3.(b) G.S. 115C-47(58) reads as rewritten:

"(58) To Inform the Public About the North Carolina School Report Cards Issued by the State Board of Education. – Each local board of education shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or ~~otherwise.~~is otherwise provided to the public. Each local board of education shall ensure that the overall school performance score and grade earned by each school in the local school administrative unit for the current and previous four school years is prominently displayed on the Web site of the local school

administrative unit. If any school in the local school administrative unit is awarded a grade of D or F, the local board of education shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 3.(c) G.S. 115C-238.29F is amended by adding a new subsection to read:

"(l) North Carolina School Report Cards. – A charter school shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or is otherwise provided to the public. A charter school shall ensure that the overall school performance score and grade earned by the charter school for the current and previous four school years is prominently displayed on the school Web site. If a charter school is awarded a grade of D or F, the charter school shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 3.(d) G.S. 115C-238.66 is amended by adding a new subdivision to read:

"(11) North Carolina School Report Cards. – A regional school shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or is otherwise provided to the public. A regional school shall ensure that the overall school performance score and grade earned by the regional school for the current and previous four school years is prominently displayed on the school Web site. If a regional school is awarded a grade of D or F, the regional school shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 3.(e) The State Board of Education shall award school performance scores and grades as required by G.S. 115C-12(9)c1. as follows:

(1) The State Board of Education shall calculate school performance scores by totaling the sum of points earned by the school and converting the sum of points to a 100-point scale. Subsections (2) and (3) of this section provide the school performance elements for schools serving students in kindergarten through eighth grade. Subsection (4) of this section provides the school performance elements for schools serving grades nine through twelve. The school performance score shall be used to determine the school performance grade based on the following scale:
   a. At least 90 performance grade points for an overall school performance grade of A.
   b. At least 80 performance grade points for an overall school performance grade of B.
   c. At least 70 performance grade points for an overall school performance grade of C.
   d. At least 60 performance grade points for an overall school performance grade of D.
   e. A school that accumulates less than 60 points shall be assigned an overall school performance grade of F.

(2) For schools serving students in kindergarten through eighth grade the overall school performance score shall be calculated based on the sum of three school performance elements.
   a. The score shall be calculated as follows:
      1. One point for each percent of students who score at or above proficient on annual assessments for mathematics in grades three through eight.

2. One point for each percent of students who score at or above proficient on annual assessments for reading in grades three through eight.
3. One point for each percent of students who score at or above proficient on annual assessments for science in grades five and eight.

(3) For schools serving students in kindergarten through eighth grade, the school performance scores in reading and mathematics, respectively, shall be earned as follows:
a. The literacy school performance score shall be based on the percent of students who score at or above proficient on annual assessments for reading assessments in grades three through eight.
b. The mathematics school performance score shall be based on the percent of students who score at or above proficient on annual assessments for mathematics in grades three through eight.

(4) The school performance score earned by schools serving students in ninth through twelfth grades shall be calculated based on the sum of seven school performance elements.
a. The score shall be calculated as follows:
1. One point for each percent of students who score at or above proficient on annual assessments for mathematics.
2. One point for each percent of students who score at or above proficient on annual assessments for English.
3. One point for each percent of students who score at or above proficient on annual assessments for biology.
4. One point for each percent of students who complete a higher-level mathematics class with a passing grade.
5. One point for each percent of students who score at or above a level demonstrating college readiness on a nationally normed test of college readiness.
6. One point for each percent of students who graduate within four years of entering high school.
7. One point for each percent of students who demonstrate workplace readiness on a nationally normed test of workplace readiness.

(5) In calculating the overall school performance score earned by schools, the State Board of Education shall proportionally adjust the scale to account for the absence of a school performance element for award of scores to a school that does not have a measure of one of the school performance elements annually assessed for the grades taught at that school.

(6) The State Board of Education shall report to the Joint Legislative Education Oversight Committee annually by January 15 on recommended adjustments to the school performance grade elements and scales for award of scores and grades.

SECTION 3.(f) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

PART IV. MAXIMIZE INSTRUCTIONAL TIME

SECTION 4.(a) G.S. 115C-174.12(a) reads as rewritten:

"(a) The State Board of Education shall establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing

programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. These policies and guidelines shall include the following:

(1) Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning;

(2) Students in a school shall not be subject to field tests or national tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams; and

(3) No school shall participate in more than two field tests at any one grade level during a school ~~year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.~~year.

(4) All annual assessments of student achievement adopted by the State Board of Education pursuant to G.S. 115C-174.11(c)(1) and (3) and all final exams for courses shall be administered within the final 10 instructional days of the school year for year-long courses and within the final five instructional days of the semester for semester courses. Exceptions shall be permitted to accommodate a student's individualized education program and section 504 (29 U.S.C. § 794) plans, and for the administration of final exams for courses with national or international curriculums required to be held at designated times.

These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of ~~children~~ students with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a ~~child's~~ student's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit the use of statewide tests as the sole determinant of decisions about a ~~child's~~student's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article."

SECTION 4.(b) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

PART V. ADJUSTMENTS TO SCHOOL CALENDAR

SECTION 5.(a) G.S. 115C-84.2 reads as rewritten:

"**§ 115C-84.2. School calendar.**

(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of 185 days ~~and~~ or 1,025 hours of instruction covering at least nine calendar months. The local board shall designate when the ~~185~~ instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count

towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

...

(4a) Three days, as designated by the local board, for use as teacher workdays. These days shall be protected to allow teachers to complete instructional and classroom administrative duties. The local school administrative unit shall not impose any additional tasks on these days. The local board shall schedule at least one of these days at the beginning of the school year and at least one at the end of the school year.

(5) The remaining days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes. Before consulting with the local board, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled. Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. In order to make up days for school closing because of inclement weather, the local board may designate any of the days in this subdivision as additional make-up days to be scheduled after the last day of student attendance.

~~If the State Board of Education finds that it will enhance student performance to do so, the State Board may grant a local board of education a waiver to use up to five of the instructional days required by subdivision (1) of this subsection as teacher workdays. For each instructional day waived, the State Board shall waive an equivalent number of instructional hours.~~

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards shall designate at least two days scheduled under subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave. Local boards may designate the remaining days scheduled in subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave, but local boards shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on any of these days. A teacher may elect to waive this notice requirement for one or more of these days.

...

(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall ~~not be before August 25,~~be no earlier than the Monday closest to August 26, and the closing date for students shall ~~not be after June 10.~~be no later than the Friday closest to June 11. On a showing of good cause, the State Board of Education may waive ~~this requirement~~ the requirement that the opening date for students be no earlier than the Monday closest to August 26 and may allow the local board of education to set an opening date no earlier than the Monday closest to August 19, to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means ~~either that:~~that schools in any local school administrative unit in a county have been closed eight days per year during any four of

the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

~~(1) Schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations; or~~

~~(2) Schools in any local school administrative unit in a county have been closed for all or part of eight days per year during any four of the last 10 years because of severe weather conditions. For purposes of this subdivision, a school shall be deemed to be closed for part of a day if it is closed for two or more hours.~~

~~The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.~~

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar.

...."

SECTION 5.(b) G.S. 115C-238.29F(d)(1) reads as rewritten:

"(1) The school shall provide instruction each year for at least 185 ~~days.~~days or 1,025 hours over nine calendar months. ~~If the State Board of Education finds that it will enhance student performance to do so, the State Board may grant a charter school a waiver to use up to five of these instructional days as teacher workdays.~~"

SECTION 5.(c) G.S. 115C-238.53 is amended by adding a new subsection to read:

"(g) The requirements of G.S. 115C-84.2 shall not apply to a program approved under this Part, however, the program shall provide instruction each year for at least 185 days or 1,025 hours over nine calendar months."

SECTION 5.(d) G.S. 115C-238.66(1)d. reads as rewritten:

"d. The board of directors shall adopt a school calendar consisting of a minimum of 185 days or 1,025 hours of instruction covering at least nine calendar months."

SECTION 5.(e) This section is effective when it becomes law and applies beginning with the 2013-2014 school year.

PART VI. FUNDING FOR THE ADDITION OF FIVE INSTRUCTIONAL DAYS WITHIN THE EXISTING SCHOOL CALENDAR

SECTION 6.(a) To fully provide for the expansion of five additional instructional days in accordance with S.L. 2011-145, Section 7.29 for those days for which a local school administrative unit has not requested and received a waiver from the State Board of Education for the 2012-2013 school year:

(1) There is appropriated from the General Fund to the Department of Public Instruction the sum of forty thousand one hundred sixty-eight dollars ($40,168) for the 2012-2013 fiscal year to increase the amount appropriated for the noninstructional support personnel allotment.

(2) There is appropriated from the General Fund to the Department of Public Instruction the sum of three hundred fifty-one thousand four hundred sixty-nine dollars ($351,469) for the 2012-2013 fiscal year to increase the amount appropriated for the transportation allotment.

SECTION 6.(b) This section becomes effective July 1, 2012.

PART VII. ESTABLISH NC TEACHER CORPS

SECTION 7.(a) Article 20 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-296.7. North Carolina Teacher Corps.**

(a) There is established the North Carolina Teacher Corps (NC Teacher Corps) to recruit and place recent graduates of colleges and universities and mid-career professionals as teachers in high needs public schools.

(b) The State Board of Education, in consultation with the Board of Governors of The University of North Carolina and the North Carolina Independent Colleges and Universities, shall develop and administer the NC Teacher Corps. In the development of the NC Teacher Corps, the State Board of Education shall consider examples of other successful teacher recruitment models used nationally and in other states.

(c) Applications shall be received annually for admission to the NC Teacher Corps. The State Board of Education shall establish application criteria, including, at a minimum, an award of a bachelor's degree from an accredited college or university. The State Board of Education may establish a committee to annually evaluate and select candidates for admission to the NC Teacher Corps.

(d) The State Board of Education shall identify local school administrative units with unmet recruitment needs and high needs schools and shall coordinate placement of NC Teacher Corps members in those schools.

(e) The State Board of Education, in coordination with the Board of Governors, shall develop an intensive summer training institute for NC Teacher Corps members to provide coursework and training on essential teaching frameworks, curricula, and lesson planning skills, as well as identification and education of students with disabilities, positive management of student behavior, effective communication for defusing and deescalating disruptive and dangerous behavior, and safe and appropriate use of seclusion and restraint. The intensive summer training institute also shall address identification of difficulty with reading development and of reading deficiencies, and the provision of reading instruction, intervention, and remediation strategies.

(f) The State Board of Education, in coordination with the Board of Governors, shall provide ongoing support to NC Teaching Corps members through coaching, mentoring, and continued professional development.

(g) NC Teaching Corps members shall be granted lateral entry teaching licenses pursuant to G.S. 115C-296(c)."

SECTION 7.(b) This section is effective when it becomes law. The State Board of Education shall recruit and place an initial cohort of NC Teacher Corps members no later than the 2012-2013 school year.

PART VIII. STRENGTHEN TEACHER LICENSURE

SECTION 8.(a) G.S. 115C-296 reads as rewritten:

"§ 115C-296. Board sets licensure requirements; reports; lateral entry and mentor programs.

(a) The State Board of Education shall have entire control of licensing all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all licenses and shall determine and fix the salary for each grade and type of license which it authorizes.

The State Board of Education may require an applicant for an initial bachelors degree certificate or graduate degree certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose. Elementary Education (K-6) teachers shall also achieve a prescribed minimum score on subtests or standard examinations specific to teaching reading and mathematics. The State Board of Education shall permit an applicant to fulfill any such testing requirement before or during the applicant's second year of teaching provided the applicant took the examination at least once during the first year of teaching. The State Board of Education shall make any required standard initial licensure exam ~~sufficiently~~ rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has ~~adequate~~ received high quality academic and professional preparation to ~~teach.~~teach effectively.

...

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel licensed in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several licensure requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The licensure program shall provide for initial licensure after completion of preservice training, continuing licensure after three years of teaching experience, and license renewal every five years thereafter, until the retirement of the teacher. The last license renewal received prior to retirement shall remain in effect for five years after retirement. The licensure program shall also provide for lifetime licensure after 50 years of teaching.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall evaluate and modify, as necessary, the academic requirements for students preparing to teach science in middle and high schools to ensure that there is adequate preparation in issues related to science laboratory safety.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing licensure. The new requirements shall reflect more rigorous standards for continuing licensure and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement. Standards for continuing licensure shall include at least three continuing education credits related to literacy for elementary and middle school teachers. Literacy renewal credits shall include assessment, diagnosis, and intervention strategies for students not demonstrating reading proficiency. Oral language, phonemic and phonological awareness, phonics, vocabulary, fluency, and comprehension shall be addressed in literacy-related activities leading to certification renewal for elementary school teachers.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher licenses. The State Board shall consider modifications in the license renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. ~~The State Board shall adopt new standards for the renewal of teacher licenses by May 15, 1998.~~

The standards for approval of institutions of teacher education shall require that teacher education programs for all students include demonstrated competencies in (i) the identification and education of children with disabilities and (ii) positive management of student behavior and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. The standards for approval of institutions of teacher education shall require that elementary teacher education programs include demonstrated competencies in (i) teaching of reading, including a substantive understanding of reading as a process involving oral language, phonological and phonemic awareness, phonics, fluency, vocabulary, and comprehension; (ii) evidence-based assessment and diagnosis of specific areas of difficulty with reading development and of reading deficiencies; and (iii) appropriate application of instructional supports and services and reading interventions to ensure reading proficiency for all students. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

...

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Beginning with the 2006-2007 school year, the criteria and procedures shall include preservice training in (i) the identification and education of children with disabilities and (ii) positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. Skilled individuals who choose to enter the profession of teaching laterally may be granted a ~~provisional~~lateral entry teaching license for no more than three years and shall be required to obtain licensure before contracting for a fourth year of service with any local administrative unit in this State.

...."

SECTION 8.(b) This section is effective when it becomes law and applies beginning with the 2013-2014 school year.

PART IX. PROOF OF STATE-FUNDED LIABILITY INSURANCE

SECTION 9.(a) G.S. 115C-12 reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(9) Miscellaneous Powers and Duties. – All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution

and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

...

f. To annually notify public school employees of the availability and coverage of professional liability insurance.

...."

SECTION 9.(b) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

PART X. PAY FOR EXCELLENCE

SECTION 10.(a) Each local board of education shall develop a plan of performance pay for all licensed personnel employed by the local board. Under the performance pay plan, licensed employees should be eligible to receive bonuses or adjustments to base salary for meeting certain performance criteria. Criteria for award of bonuses or adjustments to base salary should include, but are not limited to, the following factors:

(1) Annual growth in student achievement of students assigned to a teacher's classroom, when applicable.

(2) Annual growth in student achievement of students assigned to a specific school.

(3) Assignment of additional academic responsibilities.

(4) Assignment to a hard-to-staff school.

(5) Assignment to a hard-to-staff subject area.

Local boards of education shall submit plans to the State Board of Education no later than March 1, 2013. The State Board of Education shall report on these plans and the achievement-based compensation models developed as part of the federal Race to the Top grant and shall submit the report and all plans to the Fiscal Research Division, the Joint Legislative Commission on Governmental Operations, and the respective Subcommittees on Education Appropriations of the Senate and House of Representatives no later than April 15, 2013. Members of the public may also submit plans for performance pay no later than April 15, 2013, to the Fiscal Research Division, the Joint Legislative Commission on Governmental Operations, and the respective Subcommittees on Education Appropriations of the Senate and House of Representatives.

SECTION 10.(b) This section is effective when it becomes law.

PART XI. CLARIFY NC PRE-K PROGRAM ELIGIBILITY

SECTION 11.(a) Section 10.7(f) of S.L. 2011-145 reads as rewritten:

"**SECTION 10.7.(f)** ~~The prekindergarten program may continue to serve at-risk children identified through the existing "child find" methods in which at-risk children are currently served within the Division of Child Development. The Division of Child Development shall serve at-risk children regardless of income. However, the total number of at-risk children served shall constitute no more than twenty percent (20%) of the four-year-olds served within the prekindergarten program. Any~~ The Division of Child Development and Early Education shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors. Furthermore, any age-eligible child who is a child of either of the following shall be eligible for the program: (i) an active duty member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was ordered to active duty by the proper authority within the last 18 months or is expected to be ordered within the next 18 months or (ii) a member of the Armed Forces of the United States, including the North Carolina National

Guard, State military forces, or a reserve component of the Armed Forces, who was injured or killed while serving on active duty. Eligibility determinations for prekindergarten participants may continue through local education agencies and local North Carolina Partnership for Children, Inc., partnerships."

SECTION 11.(b) Section 10.7(h) of S.L. 2011-145 is repealed.

SECTION 11.(c) There is appropriated from the General Fund to the Department of Health and Human Services, Division of Child Development and Early Education, the sum of eleven million three hundred eight thousand three hundred sixty-three dollars ($11,308,363) for the 2012-2013 fiscal year to add 2,261 slots to be used in the NC Pre-K program.

SECTION 11.(d) This section is effective when it becomes law.

PART XII. REPEAL PROHIBITION ON TEACHER PREPAYMENT

SECTION 12.(a) Section 5 of S.L. 2011-379 is repealed.

SECTION 12.(b) This section becomes effective July 1, 2012.

PART XIII. TAX DEDUCTION FOR EDUCATIONAL SUPPLIES

SECTION 13.(a) G.S. 105-134.6(d) is amended by adding a new subdivision to read:

"(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

...

(9) To the extent a deduction has not been claimed for educator expenses in determining federal adjusted gross income, an eligible educator may deduct an amount not to exceed two hundred fifty dollars ($250.00) paid or incurred in connection with items listed in this subdivision. For purposes of this subdivision, the term "eligible educator" has the same meaning as defined in section 62 of the Code, as it existed on December 31, 2011. In the case of a married couple filing a joint return where both spouses are eligible educators, the maximum dollar amount is five hundred dollars ($500.00).

a. Books.

b. Supplies, other than nonathletic supplies for courses of instruction in health or physical education.

c. Computer equipment, including related software and services.

d. Supplementary materials used by the eligible educator in the classroom."

SECTION 13.(b) This section becomes effective for taxable years beginning on or after January 1, 2012.

PART XIV. TEACHER CONTRACTS

SECTION 14.(a) G.S. 115C-325 is repealed.

SECTION 14.(b) Part 3 of Article 22 of Chapter 115C of the General Statutes is amended by adding new sections to read:

"**§ 115C-325.1. Definitions.**

As used in this Part, the following definitions apply:

(1) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.

(2) "Demote" means to reduce the salary of a person who is classified or paid by the State Board of Education as a classroom teacher or as a school administrator. The word "demote" does not include (i) a suspension without pay pursuant to G.S. 115C-325.5(a); (ii) the elimination or reduction of bonus payments, including merit-based supplements, or a systemwide

modification in the amount of any applicable local supplement; or (iii) any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.

(3) "Disciplinary suspension" means a final decision to suspend a teacher or school administrator without pay for no more than 60 days under G.S. 115C-325.5(b).

(4) "School administrator" means a principal, assistant principal, supervisor, or director whose major function includes the direct or indirect supervision of teaching or any other part of the instructional program as provided in G.S. 115C-287.1(a)(3).

(5) "Teacher" means a person meeting each of the following requirements:

a. Who holds at least one of the following licenses issued by the State Board of Education:

1. A current standard professional educator's license.

2. A current lateral entry teaching license.

3. A regular, not expired, vocational license.

b. Whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid either as a classroom teacher or instructional support personnel.

c. Who is employed to fill a full-time, permanent position.

"**§ 115C-325.2. Personnel files.**

(a) Maintenance of Personnel File. – The superintendent shall maintain in his or her office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from the teacher's personnel file that the teacher deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

(b) Inspection of Personnel Files. – The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before the teacher's employment by the board may be kept in a file separate from the teacher's personnel file and need not be made available to the teacher. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher, except the data may be used to substantiate G.S. 115C-325.4(a)(7) or G.S. 115C-325.4(a)(14) as grounds for dismissal or demotion.

"**§ 115C-325.3. Teacher contracts.**

(a) Length of Contract. – A contract between the local board of education and a teacher who has been employed by the local board of education for less than three years shall be for a term of one school year. A contract or renewal of contract between the local board of education and a teacher who has been employed by the local board of education for three years or more shall be for a term of one, two, three, or four school years.

(b) Superintendent Recommendation to Local Board. – Local boards of education shall employ teachers upon the recommendation of the superintendent. If a superintendent intends to recommend to the local board of education that a teacher be offered a new or renewed contract,

the superintendent shall submit the recommendation to the local board for action and shall include in the recommendation the length of the term of contract. A superintendent shall only recommend a teacher for a contract of a term longer than one school year if the teacher has shown effectiveness as demonstrated on the teacher evaluation instrument. The local board may approve the superintendent's recommendation, may decide not to offer the teacher a new or renewed contract, or may decide to offer the teacher a renewed contract for a different term than recommended by the superintendent.

(c) Dismissal During Term of Contract. – A teacher shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure set forth in G.S. 115C-325.4.

(d) Recommendation on Nonrenewal. – If a superintendent decides not to recommend that the local board of education offer a renewed contract to a teacher, the superintendent shall give the teacher written notice of the decision no later than May 15.

(e) Right to Petition for Hearing. – A teacher shall have the right to petition the local board of education for a hearing no later than June 1. The local board may, in its discretion, grant a hearing regarding the superintendent's recommendation for nonrenewal. The local board of education shall notify the teacher making the petition of its decision whether to grant a hearing. If the request for a hearing is granted, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the teacher a renewed contract. The board shall notify a teacher whose contract will not be renewed for the next school year of its decision by June 15; provided, however, if a teacher submits a request for a hearing, the board shall provide the nonrenewal notification by July 1 or such later date upon the written consent of the superintendent and teacher. A decision not to offer a teacher a renewed contract shall not be on any basis prohibited by State or federal law.

(f) Local boards of education and teachers employed by the local board may mutually modify the terms of the contract to permit part-time employment.

"**§ 115C-325.4. Dismissal or demotion for cause.**

(a) Grounds. – No teacher shall be dismissed or demoted or reduced to employment on a part-time basis for disciplinary reasons during the term of the contract except for one or more of the following:

(1) Inadequate performance. In determining whether the professional performance of a teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Inadequate performance for a teacher shall mean (i) the failure to perform at a proficient level on any standard of the evaluation instrument or (ii) otherwise performing in a manner that is below standard.

(2) Immorality.

(3) Insubordination.

(4) Neglect of duty.

(5) Physical or mental incapacity.

(6) Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.

(7) Conviction of a felony or a crime involving moral turpitude.

(8) Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.

(9) Failure to fulfill the duties and responsibilities imposed upon teachers or school administrators by the General Statutes of this State.

(10) Failure to comply with such reasonable requirements as the board may prescribe.

(11) Any cause which constitutes grounds for the revocation of the teacher's teaching license or the school administrator's administrator license.

(12) Failure to maintain his or her license in a current status.

(13) Failure to repay money owed to the State in accordance with the provisions of Article 60 of Chapter 143 of the General Statutes.

(14) Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.

(b) Dismissal Procedure. – The procedures provided in G.S. 115C-325.6 shall be followed for dismissals, demotions, or reductions to part-time employment for disciplinary reasons for any reason specified in subsection (a) of this section.

"**§ 115C-325.5. Teacher suspension.**

(a) Immediate Suspension Without Pay. – If a superintendent believes that cause exists for dismissing a teacher for any reason specified in G.S. 115C-325.4 and that immediate suspension of the teacher is necessary, the superintendent may suspend the teacher without pay. Before suspending a teacher without pay, the superintendent shall meet with the teacher and give him or her written notice of the charges against the teacher, an explanation of the basis for the charges, and an opportunity to respond. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal, demotion, or disciplinary suspension without pay as provided in this section. If it is finally determined that no grounds for dismissal, demotion, or disciplinary suspension without pay exist, the teacher shall be reinstated immediately, shall be paid for the period of suspension, and all records of the suspension shall be removed from the teacher's personnel file.

(b) Disciplinary Suspension Without Pay. – A teacher recommended for disciplinary suspension without pay may request a hearing before the board. If no request is made within 15 days, the superintendent may file his or her recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension.

(1) Board hearing for disciplinary suspensions for more than 10 days or for certain types of intentional misconduct. – The procedures for a board hearing under G.S. 115C-325.8 shall apply if any of the following circumstances exist:

a. The recommended disciplinary suspension without pay is for more than 10 days; or

b. The disciplinary suspension is for intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the teacher's or school administrator's license, or providing false information.

(2) Board hearing for disciplinary suspensions of no more than 10 days. – The procedures for a board hearing under G.S. 115C-325.7 shall apply to all disciplinary suspensions of no more than 10 days that are not for intentional misconduct as specified in G.S. 115C-325.5(b)(1).

(c) Suspension with Pay. – If a superintendent believes that cause may exist for dismissing or demoting a teacher for any reasons specified in G.S. 115C-325.4 but that additional investigation of the facts is necessary and circumstances are such that the teacher should be removed immediately from the teacher's duties, the superintendent may suspend the teacher with pay for a reasonable period of time, not to exceed 90 days. The superintendent

shall notify the board of education within two days of the superintendent's action and shall notify the teacher within two days of the action and the reasons for it. If the superintendent has not initiated dismissal or demotion proceedings against the teacher within the 90-day period, the teacher shall be reinstated to the teacher's duties immediately and all records of the suspension with pay shall be removed from the teacher's personnel file at the teacher's request. However, if the superintendent and the teacher agree to extend the 90-day period, the superintendent may initiate dismissal or demotion proceedings against the teacher at any time during the period of the extension.

"**§ 115C-325.6. Procedure for dismissal or demotion of a teacher for cause.**

(a) Recommendation of Dismissal or Demotion. – A teacher may not be dismissed, demoted, or reduced to part-time employment for disciplinary reasons during the term of the contract except upon the superintendent's recommendation based on one or more of the grounds in G.S. 115C-325.4.

(b) Notice of Recommendation. – Before recommending to a board the dismissal or demotion of a teacher, the superintendent shall give written notice to the teacher by certified mail or personal delivery of the superintendent's intention to make such recommendation and shall set forth as part of the superintendent's recommendation the grounds upon which he or she believes such dismissal or demotion is justified. The superintendent also shall meet with the teacher and provide written notice of the charges against the teacher, an explanation of the basis for the charges, and an opportunity to respond if the teacher has not done so under G.S. 115C-325.5(a). The notice shall include a statement to the effect that the teacher, within 14 days after the date of receipt of the notice, may request a hearing before the board on the superintendent's recommendation. A copy of Part 3 of Article 22 of Chapter 115C shall also be sent to the teacher.

(c) Request for Hearing. – Within 14 days after receipt of the notice of recommendation, the teacher may file with the superintendent a written request for a hearing before the board on the superintendent's recommendation. The superintendent shall submit his or her recommendation to the board. Within five days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and shall notify the teacher by certified mail or personal delivery of the date, time, and place of the hearing. The time specified shall not be less than 10 nor more than 30 days after the board has notified the teacher, unless both parties agree to an extension. The hearing shall be conducted as provided in G.S. 115C-325.7.

(d) No Request for Hearing. – If the teacher does not request a hearing before the board within the 14 days provided, the superintendent may submit his or her recommendation to the board. The board, if it sees fit, may by resolution (i) reject the superintendent's recommendation or (ii) accept or modify the superintendent's recommendation and dismiss, demote, reinstate, or suspend the teacher without pay.

"**§ 115C-325.7. Hearing before board.**

(a) Board Hearing. – The following procedures shall apply to a hearing conducted by the board:

(1) The hearing shall be private.

(2) The board shall receive the following:

a. Any documentary evidence the superintendent intends to use to support the recommendation. The superintendent shall provide the documentary evidence to the teacher seven days before the hearing.

b. Any documentary evidence the teacher intends to use to rebut the superintendent's recommendation. The teacher shall provide the superintendent with the documentary evidence three days before the hearing.

c. The superintendent's recommendation and the grounds for the recommendation.

(3) The superintendent and teacher may submit a written statement not less than three days before the hearing.

(4) The superintendent and teacher shall be permitted to make oral arguments to the board based on the record before the board.

(5) The board shall make findings of fact based upon a preponderance of the evidence.

(6) Within two days following the hearing, the board shall send a written copy of its findings and determination to the teacher and the superintendent.

(7) If the board elects to make a transcript, the teacher may request and shall receive at no charge a transcript of the proceedings. A teacher may have the hearing transcribed by a court reporter at the teacher's expense.

(b) The procedures of this section shall not apply to board hearings for disciplinary suspensions without pay. Board hearings for G.S. 115C-325.5(b), disciplinary suspensions without pay, shall be conducted as provided in G.S. 115C-325.8.

"**§ 115C-325.8. Board hearing for certain disciplinary suspensions.**

(a) The following procedures shall apply for a board hearing under G.S. 115C-325.5(b), disciplinary suspensions without pay:

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with reasonable rules adopted by the State Board of Education to govern such hearings.

(3) At the hearing, the teacher and the superintendent shall have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any competent testimony relevant to the issue of whether grounds exist for a disciplinary suspension without pay.

(4) Rules of evidence shall not apply to a hearing under this subsection and the board may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least eight days before the hearing, the superintendent shall provide to the teacher a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the superintendent intends to present.

(6) At least six days before the hearing, the teacher shall provide the superintendent a list of witnesses the teacher intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the teacher intends to present.

(7) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this section.

(8) The board may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for suspension without pay.

(9) The board shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.

(10) The superintendent shall provide for making a transcript of the hearing. The teacher may request and shall receive at no charge a transcript of the proceedings.

"**§ 115C-325.9. Teacher resignation.**

(a) Teacher Resignation Following Recommendation for Dismissal. – If a teacher has been recommended for dismissal under G.S. 115C-325.4 and the teacher chooses to resign without the written agreement of the superintendent, then:

(1) The superintendent shall report the matter to the State Board of Education.

(2) The teacher shall be deemed to have consented to (i) the placement in the teacher's personnel file of the written notice of the superintendent's intention to recommend dismissal and (ii) the release of the fact that the superintendent has reported this teacher to the State Board of Education to prospective employers, upon request. The provisions of G.S. 115C-321 shall not apply to the release of this particular information.

(3) The teacher shall be deemed to have voluntarily surrendered his or her license pending an investigation by the State Board of Education in a determination whether or not to seek action against the teacher's license. This license surrender shall not exceed 45 days from the date of resignation. Provided further that the cessation of the license surrender shall not prevent the State Board of Education from taking any further action it deems appropriate. The State Board of Education shall initiate investigation within five working days of the written notice from the superintendent and shall make a final decision as to whether to revoke or suspend the teacher's license within 45 days from the date of resignation.

(b) 30 Days' Notice Resignation Requirement. – A teacher who is not recommended for dismissal should not resign during the term of the contract without the consent of the superintendent unless he or she has given at least 30 days' notice. If a teacher who is not recommended for dismissal does resign during the term of the contract without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's license for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

"**§ 115C-325.10. Application to certain institutions.**

Notwithstanding any law or regulation to the contrary, this Part shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services, Public Instruction, Correction, or the Division of Juvenile Justice of the Department of Public Safety, regardless of the age of the students.

"**§ 115C-325.11. Dismissal of school administrators and teachers employed in low-performing residential schools.**

(a) Notwithstanding any other provision of this section or any other law, this section shall govern the dismissal by the State Board of Education of teachers, principals, assistant principals, directors, supervisors, and other licensed personnel assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team. The State Board shall dismiss a teacher, principal, assistant principal, director, supervisor, or other licensed personnel when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

(b) The State Board may dismiss a teacher, principal, assistant principal, director, supervisor, or other licensed personnel when:

(1) The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school.

(2) That assistance team makes the recommendation to dismiss the teacher, principal, assistant principal, director, supervisor, or other licensed personnel

for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion of a teacher.

Within 30 days of any dismissal under this subsection, a teacher, principal, assistant principal, director, supervisor, or other licensed personnel may request a hearing before a panel of three members designated by the State Board. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subsection. Decisions of the panel may be appealed on the record to the State Board.

(c) Notwithstanding any other provision of this section or any other law, this subsection shall govern the dismissal by the State Board of licensed staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed staff member.

Within 30 days of any dismissal under this subsection, a licensed staff member may request a hearing before a panel of three members designated by the State Board. The State Board shall adopt procedures to ensure that due process rights are afforded to licensed staff members recommended for dismissal under this subsection. Decisions of the panel may be appealed on the record to the State Board.

(d) The State Board or the superintendent of a residential school may terminate the contract of a school administrator dismissed under this section. Nothing in this section shall prevent the State Board from refusing to renew the contract of any person employed in a school identified as low-performing.

(e) Neither party to a school administrator or teacher contract is entitled to damages under this section.

(f) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section.

"**§ 115C-325.12. Procedure for dismissal of Principals employed in low-performing schools.**

(a) Dismissal of Principals Assigned to Low-Performing Schools With Assistance Teams. – Notwithstanding any other provision of this Part or any other law, this section governs the State Board's dismissal of principals assigned to low-performing schools to which the State Board has assigned an assistance team.

(b) Authority of State Board to Dismiss Principal. – The State Board through its designee may, at any time, recommend the dismissal of any principal who is assigned to a low-performing school to which an assistance team has been assigned. The State Board through its designee shall recommend the dismissal of any principal when the State Board receives from the assistance team assigned to that principal's school two consecutive evaluations that include written findings and recommendations regarding the principal's inadequate performance.

(c) Procedures for Dismissal of Principal. –

(1) If the State Board through its designee recommends the dismissal of a principal under this section, the principal shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed.

(2) The panel shall order the dismissal of the principal if it determines from available information, including the findings of the assistance team, that the low performance of the school is due to the principal's inadequate performance.

(3) The panel may order the dismissal of the principal if (i) it determines that the school has not made satisfactory improvement after the State Board assigned

an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the principal for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion of a teacher.

(4) If the State Board or its designee recommends the dismissal of a principal before the assistance team assigned to the principal's school has evaluated that principal, the panel may order the dismissal of the principal if the panel determines from other available information that the low performance of the school is due to the principal's inadequate performance.

(5) In all hearings under this section, the burden of proof is on the principal to establish that the factors leading to the school's low performance were not due to the principal's inadequate performance. In all hearings under this section, the burden of proof is on the State Board to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school and to establish one or more of the grounds established for dismissal or demotion of a teacher under G.S. 115C-325.4.

(6) In all hearings under this section, two consecutive evaluations that include written findings and recommendations regarding that principal's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the principal.

(7) The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this section. Decisions of the panel may be appealed on the record to the State Board.

(d) The State Board of Education or a local board may terminate the contract of a principal dismissed under this section.

(e) Neither party to a school administrator contract is entitled to damages under this section.

(f) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section.

"**§ 115C-325.13. Procedure for dismissal of teachers employed in low-performing schools.**

(a) Notwithstanding any other provision of this Part or any other law, this section shall govern the State Board's dismissal of teachers, assistant principals, directors, and supervisors assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a teacher, assistant principal, director, or supervisor when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher, assistant principal, director, or supervisor.

(b) The State Board may dismiss a teacher, assistant principal, director, or supervisor when:

(1) The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and

(2) That assistance team makes the recommendation to dismiss the teacher, assistant principal, director, or supervisor for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion for cause.

A teacher, assistant principal, director, or supervisor may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this section. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this section. Decisions of the panel may be appealed on the record to the State Board.

(c) Notwithstanding any other provision of this Part or any other law, this section shall govern the State Board's dismissal of licensed staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed staff member.

(d) A licensed staff member may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this section. The State Board shall adopt procedures to ensure that due process rights are afforded to licensed staff members recommended for dismissal under this section. Decisions of the panel may be appealed on the record to the State Board.

(e) The State Board of Education or a local board may terminate the contract of a teacher, assistant principal, director, or supervisor dismissed under this section.

(f) Neither party to a school administrator or teacher contract is entitled to damages under this section.

(g) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section."

SECTION 14.(c) G.S. 115C-45(c) reads as rewritten:

"(c) Appeals to Board of Education and to Superior Court. – An appeal shall lie to the local board of education from any final administrative decision in the following matters:

(1) The discipline of a student under G.S. 115C-390.7, 115C-390.10, or 115C-390.11;

(2) An alleged violation of a specified federal law, State law, State Board of Education policy, State rule, or local board policy, including policies regarding grade retention of students;

(3) The terms or conditions of employment or employment status of a school employee; and

(4) Any other decision that by statute specifically provides for a right of appeal to the local board of education and for which there is no other statutory appeal procedure.

As used in this subsection, the term "final administrative decision" means a decision of a school employee from which no further appeal to a school administrator is available.

Any person aggrieved by a decision not covered under subdivisions (1) through (4) of this subsection shall have the right to appeal to the superintendent and thereafter shall have the right to petition the local board of education for a hearing, and the local board may grant a hearing regarding any final decision of school personnel within the local school administrative unit. The local board of education shall notify the person making the petition of its decision whether to grant a hearing.

In all appeals to the board it is the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

The board of education may designate hearing panels composed of not less than two members of the board to hear and act upon such appeals in the name and on behalf of the board of education.

An appeal of right brought before a local board of education under subdivision (1), (2), ~~(3),~~ or (4) of this subsection may be further appealed to the superior court of the State on the grounds that the local board's decision is in violation of constitutional provisions, is in excess of the statutory authority or jurisdiction of the board, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence in view of the entire record as submitted, or is arbitrary or capricious. ~~However, the right of a noncertified employee to appeal decisions of a local board under subdivision (3) of this subsection shall only apply to decisions~~

~~concerning the dismissal, demotion, or suspension without pay of the noncertified employee. A noncertified employee may request and shall be entitled to receive written notice as to the reasons for the employee's dismissal, demotion, or suspension without pay. The notice shall be provided to the employee prior to any local board of education hearing on the issue. This subsection shall not alter the employment status of a noncertified employee.~~"

SECTION 14.(d) G.S. 115C-105.26(b)(2) reads as rewritten:

"(2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and ~~G.S. 115C-325,~~in Part 3 of Article 22 of this Chapter, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System."

SECTION 14.(e) G.S. 115C-105.37B(a)(2) reads as rewritten:

"(2) Restart model, in which the State Board of Education would authorize the local board of education to operate the school with the same exemptions from statutes and rules as a charter school authorized under Part 6A of Article 16 of this Chapter, or under the management of an educational management organization that has been selected through a rigorous review process. A school operated under this subdivision remains under the control of the local board of education, and employees assigned to the school are employees of the local school administrative unit with the protections provided by ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter."

SECTION 14.(f) G.S. 115C-105.38A(d) reads as rewritten:

"(d) Retesting; Dismissal. – Upon completion of the remediation plan required under subsection (c) of this section, the certified staff member shall take the general knowledge test a second time. If the certified staff member fails to acquire a passing score on the second test, the State Board shall begin a dismissal proceeding under ~~G.S. 115C-325(q)(2a).~~G.S. 115C-325.13."

SECTION 14.(g) G.S. 115C-105.38A(f) reads as rewritten:

"(f) Other Actions Not Precluded. – Nothing in this section shall be construed to restrict or postpone the following actions:

(1) The dismissal of a principal under ~~G.S. 115C-325(q)(1);~~G.S. 115C-325.12.

(2) The dismissal of a teacher, assistant principal, director, or supervisor under ~~G.S. 115C-325(q)(2);~~G.S. 115C-325.13.

(3) The dismissal or demotion of ~~a career~~ an employee for any of the grounds listed under ~~G.S. 115C-325(e);~~G.S. 115C-325.4.

(4) The nonrenewal of a school administrator's or ~~probationary~~ teacher's contract of ~~employment; or~~employment.

~~(5) The decision to grant career status.~~"

SECTION 14.(h) G.S. 115C-105.39 reads as rewritten:

"**§ 115C-105.39. Dismissal or removal of personnel; appointment of interim superintendent.**

(a) Within 30 days of the initial identification of a school as low-performing, whether by the local school administrative unit under G.S. 115C-105.37(a1) or by the State Board under G.S. 115C-105.37(a), the superintendent shall take one of the following actions concerning the school's principal: (i) recommend to the local board that the principal be retained in the same position, (ii) recommend to the local board that the principal be retained in the same position and a plan of remediation should be developed, (iii) recommend to the local board that the principal be transferred, or (iv) proceed under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal. The principal may be retained in the same position without a plan for

remediation only if the principal was in that position for no more than two years before the school is identified as low-performing. The principal shall not be transferred to another principal position unless (i) it is in a school classification in which the principal previously demonstrated at least 2 years of success, (ii) there is a plan to evaluate and provide remediation to the principal for at least one year following the transfer to assure the principal does not impede student performance at the school to which the principal is being transferred; and (iii) the parents of the students at the school to which the principal is being transferred are notified. The principal shall not be transferred to another low-performing school in the local school administrative unit. If the superintendent intends to recommend demotion or dismissal, the superintendent shall notify the local board. Within 15 days of (i) receiving notification that the superintendent intends to proceed under ~~G.S. 115C-325,~~G.S. 115C-325.4 or (ii) its decision concerning the superintendent's recommendation, but no later than September 30, the local board shall submit to the State Board a written notice of the action taken and the basis for that action. If the State Board does not assign an assistance team to that school or if the State Board assigns an assistance team to that school and the superintendent proceeds under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal, then the State Board shall take no further action. If the State Board assigns an assistance team to the school and the superintendent is not proceeding under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal, then the State Board shall vote to accept, reject, or modify the local board's recommendations. The State Board shall notify the local board of its action within five days. If the State Board rejects or modifies the local board's recommendations and does not recommend dismissal of the principal, the State Board's notification shall include recommended action concerning the principal's assignment or terms of employment. Upon receipt of the State Board's notification, the local board shall implement the State Board's recommended action concerning the principal's assignment or terms of employment unless the local board asks the State Board to reconsider that recommendation. The State Board shall provide an opportunity for the local board to be heard before the State Board acts on the local board's request for a reconsideration. The State Board shall vote to affirm or modify its original recommended action and shall notify the local board of its action within five days. Upon receipt of the State Board's notification, the local board shall implement the State Board's final recommended action concerning the principal's assignment or terms of employment. If the State Board rejects or modifies the local board's action and recommends dismissal of the principal, the State Board shall proceed under ~~G.S. 115C-325(q)(1).~~G.S. 115C-325.12.

(b) The State Board shall proceed under ~~G.S. 115C-325(q)(2)~~G.S. 115C-325.13 for the dismissal of teachers, assistant principals, directors, and supervisors assigned to a school identified as low-performing in accordance with ~~G.S. 115C-325(q)(2).~~G.S. 115C-325.13.

...."

SECTION 14.(i) G.S. 115C-238.29F(e)(3) reads as rewritten:

"(3) If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at a charter school, the local school administrative unit shall grant the leave for one year. For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has ~~career status under G.S. 115C-325 prior to receiving~~received a

leave of absence to teach at a charter school may return to a public school in the local school administrative unit ~~with career status~~ at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. ~~If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).~~"

SECTION 14.(j) G.S. 115C-238.68(3) reads as rewritten:

"(3) ~~Career status.~~Leave of absence from local school administrative unit. – ~~Employees of the board of directors shall not be eligible for career status.~~ If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at the regional school, the local school administrative unit shall grant the leave for one year. For the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has ~~career status under G.S. 115C-325 prior to receiving~~received a leave of absence to teach at the regional school may return to a public school in the local school administrative unit ~~with career status~~ at the end of the leave of absence or upon the end of employment at the regional school if an appropriate position is available. ~~If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers in accordance with G.S. 115C-325(e)(2).~~"

SECTION 14.(k) G.S. 115C-276(l) reads as rewritten:

"(l) To Maintain Personnel Files and to Participate in Firing and Demoting of Staff. – The superintendent shall maintain in his or her office a personnel file for each teacher that contains complaints, commendations, or suggestions for correction or improvement about the teacher and shall participate in the firing and demoting of staff, as provided in ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter."

SECTION 14.(l) G.S. 115C-285(7) reads as rewritten:

"(7) All persons employed as principals in the schools and institutions listed in ~~subsection (p) of G.S. 115C-325~~ G.S. 115C-325.10 shall be compensated at the same rate as are teachers in the public schools in accordance with the salary schedule adopted by the State Board of Education."

SECTION 14.(m) G.S. 115C-287.1 reads as rewritten:

"**§ 115C-287.1. Method of employment of principals, assistant principals, supervisors, and directors.**

(a) (1) ~~Beginning July 1, 1995, all~~All persons employed as school administrators shall be employed pursuant to this section.

~~(2) Notwithstanding G.S. 115C-287.1(a)(1), the following school administrators shall be employed pursuant to G.S. 115C-325:~~

~~a. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position with career status in that position; and~~

~~b. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position and who are eligible to achieve career status on or before June 30, 1997.~~

~~A school administrator shall cease to be employed pursuant to G.S. 115C-325 if the school administrator: (i) voluntarily relinquishes career status or the opportunity to achieve career status through promotion, resignation, or otherwise; or (ii) is dismissed or demoted or whose contract is not renewed pursuant to G.S. 115C-325.~~

(3) For purposes of this section, school administrator means a:

a. Principal;

b. Assistant principal;

c. Supervisor; or

d. Director,

whose major function includes the direct or indirect supervision of teaching or of any other part of the instructional program.

~~(4) Nothing in this section shall be construed to confer career status on any assistant principal or director, or to make an assistant principal eligible for career status as an assistant principal or a director eligible for career status as a director.~~

(b) Local boards of education shall employ school administrators ~~who are ineligible for career status as provided in G.S. 115C-325(e)(3),~~ upon the recommendation of the superintendent. The initial contract between a school administrator and a local board of education shall be for two to four years, ending on June 30 of the final 12 months of the contract. In the case of a subsequent contract between a principal or assistant principal and a local board of education, the contract shall be for a term of four years. In the case of an initial contract between a school administrator and a local board of education, the first year of the contract may be for a period of less than 12 months provided the contract becomes effective on or before September 1. A local board of education may, with the written consent of the school administrator, extend, renew, or offer a new school administrator's contract at any time after the first 12 months of the contract so long as the term of the new, renewed, or extended contract does not exceed four years. Rolling annual contract renewals are not allowed. Nothing in this section shall be construed to prohibit the filling of an administrative position on an interim or temporary basis.

(c) The term of employment shall be stated in a written contract that shall be entered into between the local board of education and the school administrator. The school administrator shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure by which a ~~career~~ teacher may be dismissed or demoted for cause as set forth in ~~G.S. 115C-325.~~G.S. 115C-325.4.

(d) If a superintendent intends to recommend to the local board of education that the school administrator be offered a new, renewed, or extended contract, the superintendent shall submit the recommendation to the local board for action. The local board may approve the superintendent's recommendation or decide not to offer the school administrator a new, renewed, or extended school administrator's contract.

If a superintendent decides not to recommend that the local board of education offer a new, renewed, or extended school administrator's contract to the school administrator, the superintendent shall give the school administrator written notice of his or her decision ~~and the reasons for his or her decision~~ no later than May 1 of the final year of the contract. ~~The superintendent's reasons may not be arbitrary, capricious, discriminatory, personal, or political.~~ No action by the local board or further notice to the school administrator shall be necessary unless the school administrator files with the superintendent a written request, within 10 days of receipt of the superintendent's decision, for a hearing before the local board. ~~Failure to file a~~

~~timely request for a hearing shall result in a waiver of the right to appeal the superintendent's decision.~~ If a school administrator files a timely request for a hearing, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the school administrator a new, renewed, or extended school administrator's contract.

If the local board decides not to offer the school administrator a new, renewed, or extended school administrator's contract, the local board shall notify the school administrator of its decision by June 1 of the final year of the contract. A decision not to offer the school administrator a new, renewed, or extended contract may not be for any cause ~~that is not arbitrary, capricious, discriminatory, personal, or political.~~ prohibited by State or federal law. ~~The local board's decision not to offer the school administrator a new, renewed, or extended school administrator's contract is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.~~

(e) Repealed by Session Laws 1995, c. 369, s. 1.

(f) If the superintendent or the local board of education fails to notify a school administrator by June 1 of the final year of the contract that the school administrator will not be offered a new school administrator's contract, the school administrator shall be entitled to 30 days of additional employment or severance pay beyond the date the school administrator receives written notice that a new contract will not be offered.

~~(g) If, prior to appointment as a school administrator, the school administrator held career status as a teacher in the local school administrative unit in which he or she is employed as a school administrator, a school administrator shall retain career status as a teacher if the school administrator is not offered a new, renewed, or extended contract by the local board of education, unless the school administrator voluntarily relinquished that right or is dismissed or demoted pursuant to G.S. 115C-325.~~

(h) An individual who holds a provisional assistant principal's certificate and who is employed as an assistant principal under G.S. 115C-284(c) shall be considered a school administrator for purposes of this section. Notwithstanding subsection (b) of this section, a local board may enter into one-year contracts with a school administrator who holds a provisional assistant principal's certificate. ~~If the school administrator held career status as a teacher in the local school administrative unit prior to being employed as an assistant principal and the State Board for any reason does not extend the school administrator's provisional assistant principal's certificate, the school administrator shall retain career status as a teacher unless the school administrator voluntarily relinquished that right or is dismissed or demoted under G.S. 115C-325.~~ Nothing in this subsection or G.S. 115C-284(c) shall be construed to require a local board to extend or renew the contract of a school administrator who holds a provisional assistant principal's certificate."

SECTION 14.(n) G.S. 115C-288(g) reads as rewritten:

"(g) To Report Certain Acts to Law Enforcement and the Superintendent. – When the principal has personal knowledge, a reasonable belief, or actual notice from school personnel that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency.

A principal who willfully fails to make a report to law enforcement required by this subsection may be subject to demotion or dismissal pursuant to ~~G.S. 115C-325.~~G.S. 115C-325.4.

Notwithstanding any other provision of law, the State Board of Education shall not require the principal to report to law enforcement acts in addition to those required to be reported by this subsection.

For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

The principal or the principal's designee shall notify the superintendent or the superintendent's designee in writing or by electronic mail regarding any report made to law enforcement under this subsection. This notification shall occur by the end of the workday in which the incident occurred when reasonably possible but not later than the end of the following workday. The superintendent shall provide the information to the local board of education.

Nothing in this subsection shall be interpreted to interfere with the due process rights of school employees or the privacy rights of students."

SECTION 14.(o) G.S. 115C-304 is repealed.

SECTION 14.(p) G.S. 115C-333 reads as rewritten:

"**§ 115C-333. Evaluation of licensed employees including certain superintendents; mandatory improvement plans; State board notification upon dismissal of employees.**

(a) Annual Evaluations; Low-Performing Schools. – Local school administrative units shall evaluate at least once each year all licensed employees assigned to a school that has been identified as low-performing. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of a mandatory improvement plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under ~~G.S. 115C-325(a)(6),~~G.S. 115C-325.1(5), either the principal, the assistant principal who supervises the teacher, or an assistance team assigned under G.S. 115C-105.38 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), either the superintendent or the superintendent's designee shall conduct the evaluation.

All teachers in low-performing schools who have ~~not attained career status~~been employed for less than three consecutive years shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school under G.S. 115C-105.38.

A local board shall use the performance standards and criteria adopted by the State Board and may adopt additional evaluation criteria and standards. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Mandatory Improvement Plans. –

(1) Repealed by Session Laws 2011-348, s. 2, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.

(1a) A mandatory improvement plan is an instrument designed to improve a teacher's performance or the performance of any licensed employee in a low-performing school by providing the individual with notice of specific performance areas that have substantial deficiencies and a set of strategies, including the specific support to be provided to the individual, so that the individual, within a reasonable period of time, should satisfactorily resolve such deficiencies.

(2) Repealed by Session Laws 2011-348, s. 2, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.

(2a) If a licensed employee in a low-performing school receives a rating on any standard on an evaluation that is below proficient or otherwise represents

unsatisfactory or below standard performance in an area that the licensed employee was expected to demonstrate, the individual or team that conducted the evaluation shall recommend to the superintendent that (i) the employee receive a mandatory improvement plan designed to improve the employee's ~~performance or~~ performance, (ii) the superintendent recommend to the local board that the ~~employee be dismissed or demoted.~~employee's contract not be recommended for renewal, or (iii) if the employee engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment that a proceeding for immediate dismissal or demotion be instituted. If the individual or team that conducted the evaluation elects not to make ~~either~~ any of the above recommendations, the said individual or team shall notify the superintendent of this decision. The superintendent shall determine whether to develop a mandatory improvement ~~plan~~plan, to not recommend renewal of the employee's contract, or to recommend a dismissal proceeding.

(3) If at any time a licensed employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, and immediate dismissal or demotion is not appropriate, then the principal may immediately institute a mandatory improvement plan regardless of any ratings on previous evaluations. The principal shall document the exigent reason for immediately instituting such a plan.

(4) Mandatory improvement plans shall be developed by the person who evaluated the licensed employee or the employee's supervisor unless the evaluation was conducted by an assistance team. If the evaluation was conducted by an assistance team, that team shall develop the mandatory improvement plan in collaboration with the employee's supervisor. Mandatory improvement plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board shall develop guidelines that include strategies to assist local boards in evaluating licensed employees and developing effective mandatory improvement plans within the time allotted under this section. Local boards may adopt policies for the development and implementation of mandatory improvement plans and policies for the implementation of monitored and directed growth plans.

(c) Reassessment of Employee in a Low-Performing School. – After the expiration of the time period for the mandatory improvement plan under subdivision (2a) of subsection (b) of this section, the superintendent, the superintendent's designee, or the assistance team shall assess the performance of the employee of the low-performing school a second time. If the superintendent, superintendent's designee, or assistance team determines that the employee has failed to become proficient in any of the performance standards articulated in the mandatory improvement plan or demonstrate sufficient improvement toward such standards, the superintendent shall recommend that the ~~employee~~ employee's contract not be renewed, or that the employee be immediately dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second assessment shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. – If a local board dismisses an employee of a low-performing school ~~for any reason~~for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (b) or (c) of this section, ~~except a reduction in force under G.S. 115C-325(e)(1)l.,~~ it shall notify the State Board of the action,

and the State Board annually shall provide to all local boards the names of those individuals. If a local board hires one of these individuals, within 60 days the superintendent or the superintendent's designee shall observe the employee, develop a mandatory improvement plan to assist the employee, and submit the plan to the State Board. The State Board shall review the mandatory improvement plan and may provide comments and suggestions to the superintendent. If on the next evaluation the employee receives a rating on any standard that was identified as an area of concern on the mandatory improvement plan that is again below proficient or otherwise represents unsatisfactory or below standard performance, the local board shall notify the State Board and the State Board shall initiate a proceeding to revoke the employee's license under G.S. 115C-296(d). If on this next evaluation the employee receives at least a proficient rating on all of the performance standards that were identified as areas of concern on the mandatory improvement plan, the local board shall notify the State Board that the employee is in good standing and the State Board shall not continue to provide the individual's name to local boards under this subsection unless the employee is subsequently dismissed under ~~G.S. 115C-325 except for a reduction in force.~~ G.S. 115C-325.4.

...."

SECTION 14.(q) G.S. 115C-333.1 reads as rewritten:

"**§ 115C-333.1. Evaluation of teachers in schools not identified as low-performing; mandatory improvement plans; State Board notification upon dismissal of teachers.**

(a) Annual Evaluations. – All teachers who are assigned to schools that are not designated as low-performing and who have not ~~attained career status~~been employed for at least three consecutive years shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. All teachers ~~with career status~~who have been employed for three or more years who are assigned to schools that are not designated as low-performing shall be evaluated annually unless a local board adopts rules that allow teachers ~~with career status~~employed for three or more years to be evaluated more or less frequently, provided that such rules are not inconsistent with State or federal requirements. Local boards also may adopt rules requiring the annual evaluation of nonlicensed employees. A local board shall use the performance standards and criteria adopted by the State Board and may adopt additional evaluation criteria and standards. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Mandatory Improvement Plans for Teachers. – If, in an observation report or year-end evaluation, a teacher receives a rating that is below proficient or otherwise represents unsatisfactory or below standard performance on any standard that the teacher was expected to demonstrate, the principal may place the teacher on a mandatory improvement plan as defined in G.S. 115C-333(b)(1a). The mandatory improvement plan shall be utilized only if the superintendent or superintendent's designee determines that an individual, monitored, or directed growth plan will not satisfactorily address the deficiencies.

If at any time a teacher engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, and immediate dismissal or demotion is not appropriate, then the principal may immediately institute a mandatory improvement plan regardless of any ratings on previous evaluations. The principal shall document the exigent reason for immediately instituting such a plan. The mandatory improvement plan shall be developed by the principal in consultation with the teacher. The teacher shall have five instructional days from receipt of the proposed mandatory improvement plan to request a modification of such plan before it is implemented, and the principal shall consider such suggested modifications before finalizing the plan. The teacher shall have at least 60 instructional days to complete the mandatory improvement plan. The State Board shall develop guidelines that include strategies to assist local boards in

evaluating teachers and developing effective mandatory improvement plans. Local boards may adopt policies for the implementation of mandatory improvement plans under this section.

(c) Observation by a Qualified Observer. –

(1) The term "qualified observer" as used in this section is any administrator or teacher who is licensed by the State Board of Education and working in North Carolina; any employee of the North Carolina Department of Public Instruction who is trained in evaluating licensed employees; or any instructor or professor who teaches in an accredited North Carolina school of education and holds an educator's license.

(2) The local board of education shall create a list of qualified observers who are employed by that board and available to do observations of employees on mandatory improvement plans. This list shall be limited to names of administrators and teachers selected by the local board of education. The local board of education shall strive to select administrators and teachers with excellent reputations for competence and fairness.

(3) Any teacher, other than a teacher assigned to a school designated as low-performing, who has been placed on a mandatory improvement plan shall have a right to be observed by a qualified observer in the area or areas of concern identified in the mandatory improvement plan. The affected teacher and the principal shall jointly choose the qualified observer within 20 instructional days after the commencement of the mandatory improvement plan. If the teacher and the principal cannot agree on a qualified observer within this time period, they each shall designate a person from the list of qualified observers created pursuant to subdivision (2) of this subsection, and these two designated persons shall choose a qualified observer within five instructional days of their designation. The qualified observer shall draft a written report assessing the teacher in the areas of concern identified in the mandatory improvement plan. The report shall be submitted to the principal before the end of the mandatory improvement plan period. If a teacher or administrator from the same local school administrative unit is selected to serve as the qualified observer, the administration of the local school administrative unit shall provide such qualified observer with the time necessary to conduct the observation and prepare a report. If someone who is not employed by the same local school administrative unit is selected to serve as the qualified observer, the teacher who is the subject of the mandatory improvement plan will be responsible for any expenses related to the observations and reports prepared by the qualified observer. The qualified observer shall not unduly disrupt the classroom when conducting an observation.

(4) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because of the employee's service or completion of a report as an objective observer pursuant to this subsection, unless the employee's report contained material information that the employee knew was false.

(d) Reassessment of the Teacher. – Upon completion of a mandatory improvement plan under subsection (b) of this section, the principal shall assess the performance of the teacher a second time. The principal shall also review and consider any report provided by the qualified observer under subsection (c) of this section if one has been submitted before the end of the mandatory improvement plan period. If, after the second assessment of the teacher and

consideration of any report from the qualified observer, the superintendent or superintendent's designee determines that the teacher has failed to become proficient in any of the performance standards identified as deficient in the mandatory improvement plan or demonstrate sufficient improvement toward such standards, the superintendent may recommend that the teacher's contract not be renewed, or if the teacher has engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, that the teacher be immediately dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second assessment produced pursuant to the terms of this subsection shall constitute substantial evidence of the teacher's inadequate performance.

(e) Dismissal Proceedings Without a Mandatory Improvement Plan. – The absence of a mandatory improvement plan as described in this section shall not prohibit a superintendent from initiating a dismissal proceeding against a teacher under the provisions of ~~G.S. 115C-325.~~G.S. 115C-325.4. However, the superintendent shall not be entitled to the substantial evidence provision in subsection (d) of this section if such mandatory improvement plan is not utilized.

(f) State Board Notification. – If a local board dismisses a teacher for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (d) of this section, ~~for any reason except a reduction in force under G.S. 115C-325(e)(1)l.,~~ it shall notify the State Board of the action, and the State Board annually shall provide to all local boards the names of those teachers. If a local board hires one of these teachers, within 60 days the superintendent or the superintendent's designee shall observe the teacher, develop a mandatory improvement plan to assist the teacher, and submit the plan to the State Board. The State Board shall review the mandatory improvement plan and may provide comments and suggestions to the superintendent. If on the next evaluation the teacher receives a rating on any standard that was an area of concern on the mandatory improvement plan that is again below proficient or a rating that otherwise represents unsatisfactory or below standard performance, the local board shall notify the State Board, and the State Board shall initiate a proceeding to revoke the teacher's license under G.S. 115C-296(d). If on the next evaluation the teacher receives at least a proficient rating on all of the overall performance standards that were areas of concern on the mandatory improvement plan, the local board shall notify the State Board that the teacher is in good standing, and the State Board shall not continue to provide the teacher's name to local boards under this subsection unless the teacher is subsequently dismissed under ~~G.S. 115C-325~~G.S. 115C-325.4. ~~except for a reduction in force.~~ If, however, on this next evaluation the teacher receives a developing rating on any standards that were areas of concern on the mandatory improvement plan, if the local board elects to renew the teacher's contract and ~~the teacher shall have one more year to bring the rating to proficient. If,~~ by the end of this second year, the teacher is not proficient in all standards that were areas of concern on the mandatory improvement plan, the local board shall notify the State Board, and the State Board shall initiate a proceeding to revoke the teacher's license under G.S. 115C-296(d).

...."

SECTION 14.(r) G.S. 115C-335(b) reads as rewritten:

"(b) Training. – The State Board, in collaboration with the Board of Governors of The University of North Carolina, shall develop programs designed to train principals and superintendents in the proper administration of the employee evaluations developed by the State Board. The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available to all principals and superintendents at locations that are geographically convenient to local school administrative units. The programs shall include methods to determine whether an employee's performance has improved student learning, the development and implementation of

appropriate professional growth and mandatory improvement plans, the process for contract nonrenewal, and the dismissal process under ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter. The Board of Governors shall ensure that the subject matter of the training programs is incorporated into the masters in school administration programs offered by the constituent institutions. The State Board, in collaboration with the Board of Governors, also shall develop in-service programs for licensed public school employees that may be included in a mandatory improvement plan created under G.S. 115C-333(b) or G.S. 115C-333.1(b). The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available at locations that are geographically convenient to local school administrative units."

SECTION 14.(s) Article 23 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-344. Employment benefits for exchange teachers.**

An exchange teacher is a nonimmigrant alien teacher participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62 or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q). For purposes of determining eligibility to receive employment benefits under this Chapter, including personal leave, annual vacation leave, and sick leave, an exchange teacher shall be considered a permanent teacher if employed with the expectation of at least six full consecutive monthly pay periods of employment and if employed at least 20 hours per week. An exchange teacher is not a teacher for purposes of the Teachers' and State Employees' Retirement System of North Carolina as provided in G.S. 135-1(25)."

SECTION 14.(t) G.S. 115C-404(b) reads as rewritten:

"(b) Documents received under this section shall be used only to protect the safety of or to improve the education opportunities for the student or others. Information gained in accordance with G.S. 7B-3100 shall not be the sole basis for a decision to suspend or expel a student. Upon receipt of each document, the principal shall share the document with those individuals who have (i) direct guidance, teaching, or supervisory responsibility for the student, and (ii) a specific need to know in order to protect the safety of the student or others. Those individuals shall indicate in writing that they have read the document and that they agree to maintain its confidentiality. Failure to maintain the confidentiality of these documents as required by this section is grounds for the dismissal ~~of an employee who is not a career employee and is grounds for dismissal of an employee who is a career employee,~~ in accordance with ~~G.S. 115C-325(e)(1)i.~~G.S. 115C-325.4(a)(9)."

SECTION 14.(u) G.S. 143B-146.7(b) reads as rewritten:

"(b) At any time after the State Board identifies a school as low-performing under this Part, the ~~Secretary~~ State Board shall proceed under ~~G.S. 115C-325(p1)~~G.S. 115C-325.11 for the dismissal of certificated instructional personnel assigned to that school."

SECTION 14.(v) G.S. 143B-146.8 reads as rewritten:

"**§ 143B-146.8. Evaluation of ~~certificated~~ licensed personnel and principals; action plans; State Board notification.**

(a) Annual Evaluations; Low-Performing Schools. – The principal shall evaluate at least once each year all ~~certificated~~ licensed personnel assigned to a participating school that has been identified as low-performing but has not received an assistance team. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of an action plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under ~~G.S. 115C-325(a)(6),~~G.S. 115C-325.1(5), either the principal or an assessment team assigned under G.S. 143B-146.9 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), the Superintendent shall conduct the evaluation.

Notwithstanding this subsection or any other law, the principal shall observe at least three times annually, a teacher shall observe at least once annually, and the principal shall evaluate at least once annually, all teachers who have ~~not attained career status.~~been employed for less than three consecutive years. All other employees who have been employed for three or more years and are defined as teachers under ~~G.S. 115C-325(a)(6)~~G.S. 115C-325.1(5) who are assigned to participating schools that are not designated as low-performing shall be evaluated annually unless the Secretary adopts rules that allow specified categories of teachers with ~~career status~~three or more years of employment to be evaluated more or less frequently. The Secretary also may adopt rules requiring the annual evaluation of ~~noncertificated~~nonlicensed personnel. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school.

The Secretary shall use the State Board's performance standards and criteria unless the Secretary develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if an evaluation is used other than one adopted by the State Board.

(b) Action Plans. – If a ~~certificated~~licensed employee in a participating school that has been identified as low-performing receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the principal that: (i) the employee receive an action plan designed to improve the employee's performance; (ii) the employee's contract not be recommended for renewal, or (iii) if the employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment that a proceeding for immediate dismissal or demotion be instituted. ~~or (ii) the principal recommend to the Secretary that the employee be dismissed or demoted.~~ The principal shall determine whether to develop an action ~~plan~~plan, to not recommend renewal of the employee's contract, or to recommend a dismissal proceeding. The person who evaluated the employee or the employee's supervisor shall develop the action plan unless an assistance team or assessment team conducted the evaluation. If an assistance team or assessment team conducted the evaluation, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board, in consultation with the Secretary, shall develop guidelines that include strategies to assist in evaluating ~~certificated~~licensed personnel and developing effective action plans within the time allotted under this section. The Secretary may adopt policies for the development and implementation of action plans or professional development plans for personnel who do not require action plans under this section.

(c) Reevaluation. – Upon completion of an action plan under subsection (b) of this section, the principal or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the principal shall recommend that the employee's contract not be renewed, or if the employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, that the employee be dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. – If the Secretary dismisses an employee for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (b) or (c) of this section, ~~any reason except a reduction in force under G.S. 115C-325(e)(1)l.,~~ the Secretary shall notify the State Board of the action, and the State Board annually shall provide to all local boards of education the names of those individuals. If

a local board hires one of these individuals, that local board shall proceed under G.S. 115C-333(d).

...."

SECTION 14.(w) Notwithstanding the requirements for terms of contracts in G.S. 115C-325.3, for the 2012-2013 school year all teachers shall be employed on a contract for a term of one year. This section becomes effective July 1, 2012, and applies to all school employees employed on or after that date.

PART XV. ELIMINATION OF PUBLIC FINANCING FOR SUPERINTENDENT OF PUBLIC INSTRUCTION

SECTION 15.(a) G.S. 163-278.95 reads as rewritten:

"**§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.**

The purpose of this Article is to ensure the vitality and fairness of democratic elections in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of ~~Auditor, Superintendent of Public Instruction,~~Auditor and Commissioner of Insurance in elections to be held in 2008 and thereafter."

SECTION 15.(b) G.S. 163-278.96(12) reads as rewritten:

"(12) Office. – The Council of State offices of ~~Auditor, Superintendent of Public Instruction,~~ Auditor and Commissioner of Insurance."

SECTION 15.(c) Within five business days of the effective day of this act, the State Board of Elections shall notify any individual who is a candidate for Superintendent of Public Instruction and who has filed a declaration of intent to participate in the program for public financing through the North Carolina Voter-Owned Elections Fund that the candidate is no longer eligible to participate in the program.

SECTION 15.(d) This section is effective when it becomes law and applies to elections held on or after that date.

PART XVI. EFFECTIVE DATE

SECTION 16. Except as otherwise provided, this act is effective when it becomes law.

SENATE FINANCE COMMITTEE
Tuesday, June 5, 2012 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on Tuesday, June 5, 2012 in room 544 of the Legislative Office Building. Thirty-one members of the committee were present. Allyson Wilson of Burlington, Alyssa Smith of Morganton, Meghan Breden of Wilkesboro, Ryan Phillips of Pinehurst, Tristan Gordon of Monroe, LaVell Williams of Clayton, Hugh Gore of Little River, S.C., Bryles Cutts and Beverly Foster of Henderson, and Catherine Blalock or Asheville served as pages. Senator Hartsell presided as chair.

S.B. 444 – UNC Nonappropriated Capital Projects

Senator Hartsell was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. Senate Finance considered for discussion purposes a PCS for Senate Bill 444 at its meeting on Wednesday, May30th. The PCS authorized the construction of numerous projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds, not appropriations from the General Fund. Senator Apodaca offered an amendment to remove two projects from the list that would impact the Horace Williams Airport property: Collaborative Science Building and Infrastructure Improvements – Phase 2. His amendment also would have changed how the State reimburses members of the Boards of Governors who reside outside North Carolina. The Committee did not vote on either the PCS or the amendment. The new PCS does two things: 1) it incorporates the first part of Senator Apodaca's amendment by removing the two projects from the list of UNC projects, and 2) it adds to the bill a new section authorizing 29 capital projects to be funded with receipts or from other non-General Fund sources (Section 10, page 3, line 38). The General Assembly must authorize these projects each year. Senator Hartsell asked that the PCS be temporary displaced on the agenda in order to allow Representative Folwell time to come to the meeting to explain a section. The PCS was displaced.

S.B. 827 – Extend Tax Provisions

This bill was displaced in order to take up H.B. 1025 – Extend Tax Provisions.

H.B. 1025 – Extend Tax Provisions

Representative Starnes was recognized to explain the bill. It is anticipated that major tax modernization will be undertaken during the 2013 session of the General Assembly. This act extends the following provisions in order to maintain the current state of the North Carolina tax code until comprehensive tax modernization can be accomplished. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 828 – Unemployment Insurance Changes

Senator Rucho was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS includes several changes to the unemployment laws that fall within these three categories: the extension of the three-year look-back period from January 1, 2012 to January 1, 2013; the resolution of outstanding issues associated with S.L. 2011-401, 532 – changes advised by the US Department of Labor; and the statutory changes required to comply with the federal Trade Adjustment Assistance Extension Act of 2011. Cindy Avrette and Jan Paul, attorneys with the Research Division, were recognized to further explain the PCS and answer questions. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1015 – Set Public Utility and Insurance Reg. Fees

Representative Starnes was recognized to explain the bill. Senator Apodaca moved to adopt the PCS for discussion and the motion carried. Cindy Avrette explained that the PCS would set the rates for the public utility regulatory fees and the insurance regulatory charge for fiscal year 2012-13. It would also make the following changes related to economic development: removes the cap on the number of grants, which is currently 25, that may be awarded in a calendar year under the Job Development Investment Grant program (it does not change the monetary cap); it permits the use of Industrial Development Fund moneys for sewer infrastructure projects in adjoining counties; it broadens the 20-year carryforward period under Article 3J by lowering the investment threshold from $150 million to $100 million to the extent an eligible company makes the investment in a tier one county; and it makes a technical correction to the definition of a port enhancement zone. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 444 – UNC Nonappropriated Capital Projects

Discussion on the bill resumed with Representative Folwell being recognized. He explained objections to Winston Salem State's purchase of the Bowman Gray Stadium since it will raise student fees, eliminate a quarter of the car races which draw large crowds and is a 61 year tradition. After much discussion, Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS, the summary, the fiscal memo and the amendment is attached.

The meeting adjourned at 1:41 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY

SENATE

FINANCE COMMITTEE REPORT

Senator Fletcher L. Hartsell, Jr., Co-Chair

Senator Bob Rucho, Co-Chair

Wednesday, May 30, 2012

Senator HARTSELL, JR.,

submits the following with recommendations as to passage:

FAVORABLE

S.B.(CS #2) **795** Excellent Public Schools Act.

Sequential Referral: None

Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Finance** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 5, 2012	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 444	UNC Nonappropriated Capital Projects.	Senator Hartsell
SB 827	Extend Tax Provisions.	Senator Blue Senator Hartsell Senator Rucho
SB 828	Unemployment Insurance Changes.	Senator Hartsell Senator Rucho
HB 1015	Set Public Utility and Insurance Reg. Fees.	Representative Starnes Representative Howard

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: H1025 (companion bill to S827) has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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DAY	DATE	TIME	ROOM
Tuesday	June 5, 2012	1:00 PM	544 LOB

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SB 444	UNC Nonappropriated Capital Projects.	Senator Hartsell
SB 827	Extend Tax Provisions.	Senator Blue Senator Hartsell Senator Rucho
HB 1025	Extend Tax Provisions.	Representative Starnes Representative Howard
SB 828	Unemployment Insurance Changes.	Senator Hartsell Senator Rucho
HB 1015	Set Public Utility and Insurance Reg. Fees.	Representative Starnes Representative Howard

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Senate Finance Committee
Tuesday, June 5, 2012, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

H1015	Set Public Utility and Insurance Reg. Fees.	Rep. Starnes Rep. Howard
H1025	Extend Tax Provisions.	Rep. Starnes Rep. Howard
S444	UNC Nonappropriated Capital Projects.	Sen. Hartsell
S827	Extend Tax Provisions.	Sen. Blue Sen. Hartsell Sen. Rucho
S828	Unemployment Insurance Changes.	Sen. Hartsell Sen. Rucho

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 06, 2012

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **444** UNC Nonappropriated Capital Projects.

Draft Number:	75203
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **828** Unemployment Insurance Changes.

Draft Number:	35369
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

S444 – Sen. Hartsell
S828 – Sen. Rucho or Sen. Hartsell

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, June 05, 2012

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1015** Set Public Utility and Insurance Reg. Fees.

Draft Number:	80380
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

H1015 – Sen. Rucho

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, June 05, 2012

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **1025** Extend Tax Provisions.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Rucho

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 444
PROPOSED COMMITTEE SUBSTITUTE S444-PCS75203-MC-22

Short Title: Nonappropriated Capital Projects. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS.

The General Assembly of North Carolina enacts:

STATEMENT OF PURPOSE

SECTION 1. The purpose of this act is to authorize (i) the planning or construction by certain constituent institutions of The University of North Carolina of the capital improvements projects listed in the act for the respective institutions, (ii) the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, hospital receipts from patient care, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State unless previously authorized by General Statute, and (iii) other expenditures for improvements.

UNC CAPITAL IMPROVEMENT PROJECTS

SECTION 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 5 of this act, or by both, are as follows:

Appalachian State University	
Winkler Residence Hall – Supplement	$ 3,000,000
Belk Residence Hall	9,765,000
East Carolina University	
Belk Residence Hall Demolition and Reconstruction	40,000,000
North Carolina State University	
Phytotron Energy Savings Performance Contract	6,200,000
The University of North Carolina at Asheville	
Mountain Area Health Education Center (MAHEC) Facility Acquisition	4,750,000

The University of North Carolina at Chapel Hill	
Chilled Water Infrastructure Improvements	11,700,000
Steam and Hot Water Infrastructure Improvements	12,000,000
Craige Parking Deck – Supplement	8,000,000
The University of North Carolina at Charlotte	
Campus Infrastructure Development	49,500,000
Residence Hall Phase XII	38,407,410
Cedar/Hickory/Sycamore (Phase IV-A) Renovation	10,000,000
The University of North Carolina at Greensboro	
1600 W. Lee Street Parking Lot Improvements	3,432,000
Reynolds and Grogan Residence Hall Renovation	16,640,000
Winston-Salem State University	
Restore the Core – Phase I (Hill Hall)	13,500,000
New Student Housing Building 1 Acquisition	14,500,000
South Campus Acquisitions and Improvements	7,500,000
North Campus Acquisitions and Improvements	7,000,000

SECTION 3. The capital improvements projects, and their respective costs, authorized by this act to be planned and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 5 of this act, or by both, are as follows:

North Carolina A&T State University	
New Student Center	$ 5,000,000
Williams Dining Hall Kitchen Replacement	500,000
North Carolina Central University	
New – Student Health Services Center – Phase 1	700,000
The University of North Carolina at Chapel Hill	
Athletic Facilities Master Plan and Phase 1 Improvements	5,000,000
Odum Village Replacement	5,000,000
Winston-Salem State University	
Restore the Core – Phase II (Hauser, Pegram, Physical Plant)	1,500,000

SECTION 4. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 5. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Section 2 and Section 3 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified

project costs in Section 2 and Section 3 of this act plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest, and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 4 of this act.

SECTION 6. With respect to UNC-Chapel Hill's Chilled Water Infrastructure Improvements capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and may accomplish the project either through (i) direct ownership of the project or (ii) an arrangement with Orange Water and Sewer Authority.

SECTION 7. With respect to Winston-Salem State University's New Student Housing Building 1 Acquisition project, the institution may accomplish construction, acquisition, and financing through arrangements to, from, and with Winston-Salem State University Foundation, Inc., and Winston-Salem State University Housing Foundation, LLC.

SECTION 8. With respect to Winston-Salem State University's South Campus Acquisitions and Improvements project, the institution may accomplish construction, acquisition, and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and either through (i) direct ownership of the project or (ii) by participation in a long-term agreement with the City of Winston-Salem.

SECTION 9. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at (i) performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 ~~seats, or to~~seats; (ii) any golf courses owned or leased by the institutions and open to the public for ~~use.~~use; or (iii) any stadiums that support a NASCAR-sanctioned one-fourth-mile asphalt flat oval short track, are owned or leased by the institutions, and limit the sale of malt beverages, unfortified wine, or fortified wine to events that are not sponsored or funded by the institutions."

NON-GENERAL FUND CAPITAL IMPROVEMENT AUTHORIZATIONS

SECTION 10. The General Assembly authorizes the following capital projects to be funded with receipts or from other non-General Fund sources available to the appropriate department:

Name of Project	Amount of Non-General Fund Funding Authorized for FY 2012-2013
Department of Public Safety	
Training Site Improvements	$ 620,000
Aviation Facilities Improvements	600,000
Logistics Facilities Improvements	310,000
Career Tech. Ed. Ctr. – Stonewall Jackson Y.D.C.	163,332
Storage Sheds – Statewide	51,765
Readiness Centers Improvements	40,000
Track and Field Facility – Stonewall Jackson Y.D.C.	161,046

Department of Agriculture	
Parking Improvement/Expansion-Raleigh Farmers Market	200,000
Wholesale Dock Enclosure – Raleigh Farmers Market	750,000
Phase II Greenhouse Exp. – Additional Funding – Tidewater RS	200,000
Phase II – Calf Barn Construction – Piedmont RS	150,000
Forest Road Construction	150,000
HVAC Campus Improvements – State Fairgrounds	2,500,000
Campus Infrastructure – State Fairgrounds	3,000,000
Renovations to Existing Buildings – State Fairgrounds	3,000,000
Hunt Horse Complex Site Rep & Improvements-State Fairgrounds	3,000,000
Department of Cultural Resources	
NC Maritime Museum Gallants Channel Multi-Use Facility	1,115,000
N.C. Museum of Art Trail Improvement Project	370,000
Duke Homestead Picnic Shelter	175,000
Department of Environment and Natural Resources	
Sound Side Dock & Education Gazebo at Roanoke Is. Aquarium	350,000
NC Zoo – Solar Pointe Restrooms	400,000
Wildlife Resources Commission	
Agency Land Purchase	3,750,000
Table Rock Hatchery Building Replacement	75,000
Watha Hatchery Building Replacement	300,000
New Construction of Fishing Access Areas	240,000
New Construction of Boating Access Areas	800,000
Renovations of Existing Boating Access Areas	800,000
ADA Initiative of Existing Boating Access Areas	280,000
Infrastructure Repair and Renovation	1,500,000
TOTAL AMOUNT OF NON-GENERAL FUND CAPITAL PROJECTS AUTHORIZED	**$25,051,143**

SECTION 11. This act is effective when it becomes law.

obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Section 2 and Section 3 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Section 2 and Section 3 of this act plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 4 of this act.

SECTION 6. With respect to UNC- Chapel Hill's Chilled Water Infrastructure Improvements capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and may accomplish the project either through (i) direct ownership of the project or (ii) an arrangement with Orange Water and Sewer Authority.

SECTION 7. With respect to Winston-Salem State University's New Student Housing Building 1 Acquisition project, the institution may accomplish construction, acquisition, and financing through arrangements to, from, and with Winston-Salem State University Foundation, Inc. and Winston-Salem State University Housing Foundation, LLC.

SECTION 8. With respect to Winston-Salem State University's South Campus Acquisitions and Improvements project, the institution may accomplish construction, acquisition, and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and either through (i) direct ownership of the project, or (ii) by participation in a long-term agreement with the City of Winston-Salem.

SECTION 9. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at (i) performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 ~~seats, or to~~seats; (ii) any golf courses owned or leased by the institutions and open to the public for ~~use~~use; or (iii) any stadiums that support a NASCAR-sanctioned one-fourth-mile asphalt flat oval short track, are owned or leased by the institutions, and limit the sale of malt beverages, unfortified wine, or fortified wine to events that are not sponsored or funded by the institutions."

SECTION 10. This act is effective when it becomes law.

SENATE BILL 444:
UNC Nonappropriated Capital Projects

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 5, 2012
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S444-CSMC-22		Committee Counsel

SUMMARY: ***Senate Finance considered for discussion purposes a PCS for Senate Bill 444 at its meeting on Wednesday, May 30th. The PCS authorized the construction of numerous projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds, not appropriations from the General Fund.***

Sen. Apodaca offered an amendment to remove two projects from the list that would impact the Horace Williams Airport property: Collaborative Science Building and Infrastructure Improvements – Phase 2. His amendment also would have changed how the State reimburses members of the Board of Governors who reside outside North Carolina. The Committee did not vote on either the PCS or the amendment.

The NEW proposed committee substitute, S444-CSMC-22, does two things:

- ***It incorporates the first part of Sen. Apodaca's amendment by removing the two projects from the list of UNC projects.***
- ***It adds to the bill a new section authorizing 29 capital projects to be funded with receipts or from other non-General Fund sources. (Section 10, Page 3, line 38) The General Assembly must authorize these projects each year.***

CURRENT LAW: Under Article 8 of the State Budget Act, no State agency may expend funds for the construction or renovation of a capital improvement project unless authorized to do so by the General Assembly. The Board of Governors of The University of North Carolina may approve expenditures for projects that are to be funded entirely with non-General Fund money. However, under Article 3 of Chapter 116D, the General Assembly must approve the issuance of special obligation bonds for UNC projects.

There are two types of self-liquidating bonds that may be issued by the Board of Governors of the University of North Carolina. Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds for the types of projects enumerated in the article. The types of projects for which revenue bonds may be issued include educational buildings, dormitories, recreational facilities, dining facilities, student centers, health care buildings, parking decks, etc. for the educational institutions, the University of North Carolina Health Care System, the University of North Carolina General Administration, and the University of North Carolina Hospitals at Chapel Hill. The revenue bonds are payable from rentals, charges, fees, and other revenues generated by the facility. The bonds are not payable from tax revenues.

Article 3 of Chapter 116D of the General Statutes authorizes the Board of Governors to issue special obligation bonds payable with any sources of income or receipts of the Board of Governors or a constituent or affiliated institution, but not including tuition payments or appropriations from the General Fund from State revenues. The bond proceeds could be used for construction, improvement, and acquisition of any capital facilities located at UNC constituent and affiliated institutions. The project must be approved by the board of trustees for the respective institution for which the project is authorized and the General Assembly must approve the project and the maximum aggregate principal amount for the project. The bonds are not payable from tax revenues.

BILL ANALYSIS: The *proposed committee substitute for Senate Bill 444* would authorize the construction and financing of the capital improvements projects at various constituent institutions of The University of North Carolina. The projects authorized by the bill would not be financed with funds appropriated from the State's General Fund; but may be financed with gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, other funds available to the constituent institutions, or a combination of any of those financing methods. The projects include academic, research, clinical and administrative space and improvements to student services, residential living, dining, recreation, and athletics facilities. Once approved, a detailed financial plan will be developed in consultation with financial advisors and bond counsel for each project. The plans must be approved by the Chancellor, the Boards of Trustees, the President, and the Board of Governors before construction contracts may be awarded and bonds issued.

The self-liquidating projects the Board of Governors plans to finance with revenue and/or special obligation bonds are listed in Sections 2 and 3 of the bill. The UNC revenue bond act in Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds to finance the cost of a variety of capital projects. The UNC special obligation bond act in Article 3 of Chapter 116D of the General Statutes requires that the specific projects and their costs be set forth in legislation approved by the General Assembly and that the maximum amount of special obligation bonds to be issued to finance the specific projects listed be stated. Section 5 of the bill expressly states that the maximum principal amount of special obligation bonds to be issued shall not exceed the amounts listed in Sections 2 and 3 of the act plus 5%. The additional 5% may be used for related additional costs for which bond proceeds are routinely used, such as issuance expenses, funding of reserve funds, and capitalized interest.

This year's bill includes 17 capital projects on eight campuses in Section 2 of the bill. The Chancellors and Boards of Trustees for the listed campuses, as well as the President and the Board, have approved these projects. Support from General Fund sources for operating costs will be required only for facilities used for academic programs.

Sections 6 through 8 authorize three institutions to construct and finance projects through lease arrangements to, from, and with named entities. Once constructed and approved by state reviewing agencies, the improvements would transfer to the respective institutions. The three projects are:

- Chilled Water Infrastructure Improvements capital project at UNC-Chapel Hill. The school will partner with the Orange Water and Sewer Authority.
- New Student Housing Building capital project at Winston-Salem State University. The school will partner with Winston-Salem State University Foundation, Inc. and Winston-Salem State University Housing Foundation, LLC.
- Bowman Gray Stadium, Fieldhouse, parking lots, and recreation area capital project at Winston-Salem State University. The school will partner with the City of Winston-Salem.

Section 3 authorizes the Board of Governors to expend non-General Fund money to plan six capital projects on four campuses.

Section 9 provides that the prohibition in the ABC laws for the sale of beer and wine on the property of a public school or college would not apply to the Bowman Gray Stadium. This exception would be limited to events that are not sponsored or funded by the institution, Winston-Salem State. NASCAR is a sponsored event at this stadium.

Section 10 authorizes the construction of 29 capital projects to be funded with non-General Fund sources totaling $25,051,143.

S444-SMRB-129(CSMC-22) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 4, 2012

TO: Sen. Hartsell and Rucho

FROM: Mark Bondo
Fiscal Research Division

RE: Senate Bill 444 (Unknown Edition)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES:					
General Fund	$0	$0	$0	$0	$0
Receipts	**See Chart on Page Two and Assumptions and Methodology**				
EXPENDITURES:	**Total Amounts: See Chart on Page 2 for Additional Information**				
General Fund*	**$367,742**	**$316,411**	**$325,719**	**$333,804**	**$340,982**
Receipt Supported	**$80,403,369**	**$23,328,144**	**$25,931,453**	**$26,153,207**	**$26,251,472**
POSITIONS (FTE)	18	44	53	53	53

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: University of North Carolina System; Departments of Public Safety, Agriculture and Consumer Services, Cultural Resources, Environment and Natural Resources, and Wildlife Resources Commission.

EFFECTIVE DATE: When the bill becomes law

Additional Fiscal Impact Detail from Page 1

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES:					
General Fund	$0	$0	$0	$0	$0
Receipts					
Debt Service Fee	$5,434,536	$5,791,315	$6,175,553	$6,589,587	$7,035,964
Other Receipts		See Assumptions and Methodology			
EXPENDITURES:					
General Fund (Total)	**$367,742**	**$316,411**	**$325,719**	**$333,804**	**$340,982**
Utility Savings*	$0	($450,000)	($463,500)	($477,405)	($491,727)
GESC*		$428,000	$440,825	$454,035	$467,641
Building Reserves	$367,742	$334,911	$344,791	$353,480	$361,292
DENR/NC Zoo	$0	$3,500	$3,603	$3,694	$3,776
Receipt Supported (Total)	**$80,403,369**	**$23,328,144**	**$25,931,453**	**$26,153,207**	**$26,251,472**
Building Reserves	$977,226	$1,010,703	$3,601,187	$3,809,732	$3,894,391
Planning	$17,700,000				
New Projects	$30,700,000				
Debt Service	5,975,000	22,317,441	22,330,266	22,343,475	22,357,081
Agency Projects	$25,051,143				
POSITIONS (FTE):					
General Fund FTE	4	4	4	4	4
Receipt Supported FTE	14	40	49	49	49

* This reflects the Phytotron Energy Savings Performance Project at North Carolina State University (Guaranteed Energy Savings Contract). The associated utility savings are supported entirely by the General Fund. Under State Law, these are allowed to be considered "obligated resources" by the campuses.

BILL SUMMARY: **Section 1:** Authorizes the construction or acquisition of capital improvement projects defined in subsequent sections by certain constituent institutions of the University of North Carolina (UNC) System and authorizes their financing with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds or a combination of these funds, but not including funds received from tuition or appropriations from the General Fund, unless previously authorized by General Statute.

Section 2: New Projects:

Projects By Campus	Amount
1. Appalachian State University	
Winkler Residence Hall – Supplement	$3,000,000
Belk Residence Hall	$9,765,000
2. East Carolina University	
Belk Residence Hall Demolition and Reconstruction	$40,000,000
3. North Carolina State University	
Phytotron Energy Savings Performance Contract[1]	$6,200,000
4. University of North Carolina – Asheville	
Mountain Area Health Education Center (MAHEC) Facility Acquisition	$4,750,000
5. University of North Carolina-Chapel Hill	
Chilled Water Infrastructure Improvements	$11,700,000
Steam and Hot Water Infrastructure Improvements	$12,000,000
Craige Parking Deck – Supplement	$8,000,000
6. University of North Carolina – Charlotte	
Campus Infrastructure Development	$49,500,000
Residence Hall Phase XII	$38,407,410
Cedar/Hickory/Sycamore (Phase IV-A) Renovation[2]	$10,000,000
7. University of North Carolina – Greensboro	
1600 W. Lee Street Parking Lot Improvements	$3,432,000
Reynolds and Grogan Residence Hall Renovation	$16,640,000

[1] Implements energy conservation measures in the Phytron Building.
[2] The facility is a residence hall

Projects By Campus	Amount
8. Winston Salem State University	
Restore the Core – Phase I (Hill Hall)[3]	$13,500,000
New Student Housing Building 1 Acquisition	$14,500,000
South Campus Acquisitions and Improvements[4]	$7,500,000
North Campus Acquisitions and Improvements[5]	$7,000,000
Total	**$255,894,410**

Section 3: Authorizes projects for planning pursuant to Section 1 of this bill. The projects are as follows:

Planning Projects By Campus	Amount
1. North Carolina A&T University	
New Student Center	$5,000,000
Williams Dining Hall Kitchen Replacement	$500,000
2. North Carolina Central University	
New Student Health Services Center – Phase 1	$700,000
3. University of North Carolina – Chapel Hill	
Athletic Facilities Master Plan and Phase 1 Improvements	$5,000,000
Odum Village Replacement	$5,000,000
4. Winston Salem State University	
Restore the Core – Phase II (Hauser, Pegram, Physical Plant)	$1,500,000
Total	**$17,700,000**

Section 4: At the request of the Board of Governors of the University of North Carolina, the Director of the Budget may authorize changes in project cost and financing. The Director is allowed to consult with the Joint Commission on Government Operations as necessary.

Section 5: Pursuant to G.S. 116D-26, the Board of Governors may, subject to the approval of the Director of the Budget, issue special obligation bonds of the Board of Governors specified in the previous sections. The total amount to be issued cannot exceed five percent of the costs specified in the previous sections, or altered subject to Section 4.

Section 6: Notwithstands G.S. 116D-22(5) to allow UNC-Chapel Hill to locate the project outside of UNC-Chapel Hill's property boundaries and allows the University to accomplish this project through either a direct ownership of the project or an arrangement with the Orange County Water and Sewer Authority.

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[3] Renovates and expands Hill Hall. The new building will provide student service (advisors, retention specialists, etc).
[4] Acquires and renovates Bowman-Gray Stadium, Fieldhouse, surrounding parking lots, Civitan Park, and construct a pedestrian bridge.
[5] Constructs a parking deck

Section 7: Allows Winston-Salem State University to enter into an arrangement with the Winston-Salem State University Foundation, Inc. and Winston Salem State University Housing Foundation, LLC to undertake the New Student Housing Building 1 Acquisition Project.

Section 8: Notwithstands G.S. 116D-22(5) and allows Winston Salem State University (WSSU) to locate the South Campus Acquisitions and Improvements Project outside of campus boundaries. This provision also allows the University to construct, acquire, and finance the project through direct ownership or through a long-term agreement with the City of Winston Salem.

Section 9: Amends G.S. 18B-1006(a) (Regulation of Alcoholic Beverages at Schools and College Campuses) to allow for the sale of alcohol at the Bowman Gray Stadium in association with a NASCAR sanctioned ¼ mile flat oval short track. Bowman Gray Stadium is currently owned by the City of Winston-Salem which leases the facility, in part, to Winston Salem Speedway Inc. for NASCAR related events.

Section 10: This section authorizes various projects to be funded from non-General Fund sources at the various State agencies. The projects are listed below:

Agency	Amount
1. Department of Public Safety	
Training and Site Improvements	$620,000
Aviation Facilities Improvements	$600,000
Logistics Facilities Improvements	$310,000
Career Tech. Ed. Ctr. – Stonewall Jackson Y.D.C	$163,332
Storage Sheds – Statewide	$51,765
Readiness Center Improvements	$40,000
Track and Field Facility – Stonewall Jackson Y.D.C	$161,046
2. Department of Agriculture	
Parking Improvement/Expansion-Raleigh Farmers Market	$200,000
Wholesale Dock Enclosure – Raleigh Farmers Market	$750,000
Phase II Greenhouse Exp. – Additional Funding – Tidewater Research Station	$200,000
Phase II – Calf Barn Construction – Piedmont RS	$150,000
Forest Road Construction	$150,000
HVAC Campus Improvements – State Fairgrounds	$2,500,000
Campus Infrastructure – State Fairgrounds	$3,000,000
Renovations to Existing Buildings – State Fairgrounds	$3,000,000
Hunt Horse Complex Site and Rep and Improvements – State Fairgrounds	$3,000,000

Agency	Amount
3. Department of Cultural Resources	
NC Maritime Museum Gallants Channel Multi-use Facility	$1,115,000
NC Museum of Art Trail Improvement Project	$370,000
Duke Homestead Picnic Shelter	$175,000
4. Department of Environment and Natural Resources	
Sound Side Dock & Education Gazebo at Roanoke Island Aquarium	$350,000
NC Zoo – Solar Pointe Restrooms	$400,000
5. Wildlife Resources Commission	
Agency Land Purchase	$3,750,000
Table Rock Hatchery Building Replacement	$75,000
Watha Hatchery Replacement	$300,000
New Construction of Fishing Boat Access Areas	$240,000
New Construction of Boating Access Areas	$800,000
Renovations of Existing Boating Access Areas	$800,000
ADA Initiative of Existing Boating Access Areas	$280,000
Infrastructure Repair and Renovation	$1,500,000
Total	**$25,051,143**

ASSUMPTIONS AND METHODOLOGY: The following table uses information supplied by the University of North Carolina to estimate various impacts of the University of North Carolina Capital Projects. When a campus seeks to issue Special Indebtedness, they are required under G.S. 116D-26(b) to submit information to the General Assembly regarding these projects. The following table consolidates this information.

Table 1: Projects by Source of Funds and Operating Costs

Campus	Project	Amount	Source of Capital Funds	Effect of Debt on Students	Increase in Annual Operating Costs (1st Year)	General Fund Support of Operating Costs (1st Year)
ASU	Winkler Residence Hall – Suppliment	$3,000,000	Housing Receipts		$152,368	$0
ASU	Belk Residence Hall	$9,765,000	Housing Receipts		$26,000	$0
ECU	Belk Residence Hall Demolition and Reconstruction	$40,000,000	Housing Receipts		$662,540	$0

Campus	Project	Amount	Source of Capital Funds	Effect of Debt on Students	Increase in Annual Operating Costs (1st Year)	General Fund Support of Operating Costs (1st Year)
NCSU	Phytotron Energy Savings Performance Contract	$6,200,000	Energy Savings*		$93,389	$0*
UNCA	MAHEC Facility Acquisition	$4,750,000	Debt service fee and other obligated resources	$90	$289,043	$0
UNCCH	Chilled Water Infrastructure Improvements	$11,700,000	Utility Receipts		$0	$0
UNCCH	Steam and Hot Water Infrastructure Improvements	$12,000,000	Utility Receipts		$0	$0
UNCCH	Craige Parking Deck	$8,000,000	Parking Receipts		$0	$0
UNCC	Campus Infrastructure Development	$49,500,000	Debt Service Fee	$100	$0	$0
UNCC	Residence Hall Phase XII	$38,407,410	Housing Receipts		$1,863,457	$0
UNCC	Cedar/Hickory/Sycamore (Phase IV-A) Renovation	$10,000,000	Housing Receipts		$98,031	$0
UNCG	Reynolds and Grogan Residence Hall Renovation	$16,640,000	Housing Receipts		$0	$0
WSSU**	Restore the Core Phase 1	$13,500,000	Debt service fee, grants, gifts	$115	$179,664	$179,664
WSSU	New Student Building Acquisition	$14,500,000	Housing Receipts		$654,365	$0
WSSU**	South Campus Acquisitions and Improvements	$7,500,000	Debt Service Fee	$110	$181,523	$181,523
WSSU**	North Campus Acquisitions	$7,000,000	Debt Service Fee	$115	$168,844	$0

* S.L. 2011-145, Sec 9.6D(h) allowed UNC to utilize General Fund appropriated utility savings as an obligated resource.

** There will be a reduction of $115 per student debt service fee at WSSU due to the retirement of debt. There is an additional $55 per student debt service fee to support the Student Union. The total debt service fee for FY 2012-13 is $270.

Several of the projects listed above have existing cash on hand from the various sources provided above that will be used to support the specific projects. The table below presents how this will impact new debt issuances. In total, this will Bill will authorize $225,194,410 in new debt at the campuses.

Table 2: Projects with Partial Cash Financing

Campus	Project	Total Project	Cash on Hand	New Debt
UNCCH	Chilled Water Infrastructure Improvements	$11,700,000	$4,700,000	$7,000,000
UNCCH	Steam and Hot Water Infrastructure Improvements	$12,000,000	$3,500,000	$8,500,000
UNCC	Campus Infrastructure Development	$49,500,000	$14,500,000	$35,000,000
UNCC	Cedar/Hickory/Sycamore (Phase IV-A) Renovation	$10,000,000	$2,500,000	$7,500,000
WSSU	Restore the Core Phase 1	$13,500,000	$5,500,000	$8,000,000
Total		**$96,700,000**	**$30,700,000**	**$66,000,000**

Operating Expenditures: At each of the following campuses with projects authorized by this Bill, it is expected that there will be an increase in operating requirements and associated positions. These operating impacts are commonly referred to as building reserves. The University of North Carolina System estimates that the projects at Winston Salem State University will lead to a request for a General Fund appropriation, as they are academic in nature. The table below reflects the estimated General Fund operating impact by campus where a request for General Fund support will be made, new positions are also included:

Table 4: General Fund Supported Building Reserves

Campus	2012-13	2013-14	2014-15	2015-16	2016-17
WSSU	$367,742	$334,911	$344,791	$353,480	$361,292
Total	**$367,742**	**$334,911**	**$344,791**	**$353,480**	**$361,292**
FTE	4	4	4	4	4

The following table reflects building reserves which will be paid from receipts at the campus:

Table 5: Receipt Supported Building Reserves

Campus	2012-13	2013-14	2014-15	2015-16	2016-17
ASU	$0	$49,079	$177,139	$182,208	$186,234
ECU	$0	$0	$345,527	$662,540	$677,182
UNCA	$248,367	$273,806	$281,883	$288,987	$295,373
UNCC	$0	$0	$2,047,153	$1,907,316	$1,949,468
UNCG	$0	$1,688	$43,114	$44,510	$45,958
WSSU	$728,859	$686,130	$706,371	$724,171	$740,176
Total	**$977,226**	**$1,010,703**	**$3,601,187**	**$3,809,732**	**$3,894,391**
FTE	14	40	49	49	49

Debt Service Expenditures: In addition to operating expenditures, the campuses will also be required to pay debt service on the various debt financed projects. The table below reflects the estimated amount of additional debt service by campus:

Table 6: Estimated New Debt Service By Project

Campus	2012-13	2013-14	2014-15	2015-16	2016-17
ASU	$0	$1,276,500	$1,276,500	$1,276,500	$1,276,500
ECU	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000
UNCA	$475,000	$475,000	$475,000	$475,000	$475,000
UNCCH	0	$2,350,000	$2,350,000	$2,350,000	$2,350,000
UNCC	$0	$8,090,741	$8,090,741	$8,090,741	$8,090,741
UNCG	$0	$2,007,200	$2,007,200	$2,007,200	$2,007,200
WSSU	$1,500,000	$3,700,000	$3,700,000	$3,700,000	$3,700,000
Total	**$5,975,000**	**$22,317,441**	**$22,330,266**	**$22,343,475**	**$22,357,081**

One project is listed separately: the Phytotron Energy Savings Performance Contract at North Carolina State University (NCSU). S.L. 2011-145, Sec 9.6D(h) allowed UNC to utilize General Fund appropriated utility savings as an obligated resource for the purposes of Special Indebtedness. According to NCSU, the project will be financed solely from the General Fund appropriated utility account, which is $28,691,627 for the current Fiscal Year. The project will be financed by savings associated with replacement and upgrade of systems at the Phytotron Building. Per the existing Statute, NCSU is responsible for any unrealized savings associated with this project. The table below presents the estimated energy savings, maintenance and verification costs (M&V Costs), debt service payments, and net savings. At the front of the Memo, M&V Costs and debt service are combined into the GESC line item.

Table 7: Phytotron Energy Savings Performance Contract

Costs	2012-13	2013-14	2014-15	2015-16	2016-17
Utility Savings	$0	$450,000	$463,500	$477,405	$491,727
Debt Service	$0	($418,000)	($430,825)	($444,035)	($457,641)
M&V Costs	$0	($10,000)	($10,000)	($10,000)	($10,000)
Net Savings	**$0**	**$22,000**	**$22,675**	**$23,370**	**$24,086**

Revenues: Three Campuses have elected to institute a new debt service fee in order to finance the various projects. Utilizing historic enrollment data from UNC for 2001-2010, Fiscal Research staff has projected the average annual revenue increase at the Campuses.

Table 8: Estimated Debt Service Fee Revenue

Campus	Average Growth	2012-13	2013-14	2014-15	2015-16	2016-17
UNCA	2.52%	$345,417	$354,122	$363,046	$372,195	$381,574
UNCC	4.22%	$2,522,801	$2,629,258	$2,740,208	$2,855,840	$2,976,351
WSSU*	9.41%	$2,566,318	$2,807,934	$3,072,298	$3,361,552	$3,678,039
Total		**$5,434,536**	**$5,791,315**	**$6,175,553**	**$6,589,587**	**$7,035,964**

* Assumes the $270 net fee increase at WSSU.

Other projects will be supported by other obligated resources at the campuses, such as housing receipts. As these reflect existing sources of revenue, an incremental increase in fees was not available. UNC currently does not anticipate increasing receipts specifically for these projects. However, should the existing revenue stream not be sufficient to cover related debt service, some increase may be necessary.

State Agency Non-General Fund Projects

The section below reflects information provided by the State agencies regarding their projects as submitted to the Office of State Management and Budget. Various agencies listed insignificant increases to operating budgets as a result of the projects, with no dollar amounts. Staff assumes that agencies can absorb costs from current budgeted sources. The Department of Agriculture sees a minimal increase in utilities related to the parking lot.

Table 9: Projects by Source of Funds and Operating Costs

Agency	Project	Amount	Source of Funds	Increase in Annual Operating Costs (1st Year)	General Fund Support of Operating Costs (1st Year)
DPS	Training and Site Improvements	$620,000	Federal	$0	$0
)PS	Aviation Facilities Improvements	$600,000	Federal	$0	$0

Agency	Project	Amount	Source of Funds	Increase in Annual Operating Costs (1st Year)	General Fund Support of Operating Costs (1st Year)
DPS	Logistics Facilities Improvements	$310,000	Federal	$0	$0
DPS	Storage Sheds - Statewide	$51,765	Receipts	$0	$0
DPS	Career Tech. Ed. Ctr. – Stonewall Jackson Y.D.C	$163,332	Grant	$0	$0
DPS	Readiness Center Improvements	$40,000	Federal	$0	$0
DPS	Track and Field Facility – Stonewall Jackson Y.D.C	$161,046	Donation	$0	$0
DACS	Parking Improvement/Expansion-Raleigh Farmers Market	$200,000	Receipts	Minimal	$0
DACS	Wholesale Dock Enclosure – Raleigh Farmers Market	$750,000	Receipts	$0	$0
DACS	Phase II Greenhouse Exp. – Additional Funding – Tidewater Research Station	$200,000	Receipts	$0	$0
DACS	Phase II – Calf Barn Construction – Piedmont RS	$150,000	Receipts	$0	$0
DACS	Forest Road Construction	$150,000	Receipts	$0	$0
DACS	HVAC Campus Improvements – State Fairgrounds	$2,500,000	Receipts	$0	$0
DACS	Campus Infrastructure – State Fairgrounds	$3,000,000	Receipts	$0	$0
DACS	Renovations to Existing Buildings – State Fairgrounds	$3,000,000	Receipts	$0	$0
DACS	Hunt Horse Complex Site and Rep and Improvements – State Fairgrounds	$3,000,000	Receipts	$0	$0
DCR	NC Maritime Museum Gallants Channel Multi-use Facility	$1,115,000	Donations	$0*	$0*

Agency	Project	Amount	Source of Funds	Increase in Annual Operating Costs (1st Year)	General Fund Support of Operating Costs (1st Year)
DCR	NC Museum of Art Trail Improvement Project	$370,000	Donations	$0**	$0**
DCR	Duke Homestead Picnic Shelter	$175,000	Donations	$0	$0
DENR	Sound Side Dock & Education Gazebo at Roanoke Island Aquarium	$350,000	Grant/Receipts	$0	$0
DENR	NC Zoo – Solar Pointe Restrooms	$400,000	Receipts	$3,500	$3,500
WRC	Agency Land Purchase	$3,750,000	Grants/Trust Funds	$0	$0
WRC	Table Rock Hatchery Building Replacement	$75,000	Grants/Receipts	$0	$0
WRC	Watha Hatchery Replacement	$300,000	Grants/Receipts	$0	$0
WRC	New Construction of Fishing Boat Access Areas	$240,000	Grants/Receipts	$0	$0
WRC	New Construction of Boating Access Areas	$800,000	Grants/Receipts	$0	$0
WRC	Renovations of Existing Boating Access Areas	$800,000	Grants/Receipts	$0	$0
WRC	ADA Initiative of Existing Boating Access Areas	$280,000	Grants/Receipts	$0	$0
WRC	Infrastructure Repair and Renovation	$1,500,000	Grants/Receipts	$0	$0

*Supporting Non-Profit entity will provide operational support.
**The Trail will be maintained by the City of Raleigh.

The table below reflects the expected General Funds needed to operate and maintain the Solar Pointe Restrooms at the NC Zoo, with inflationary increases.

Table 9: Solar Pointe Restroom General Fund Operating Costs

Agency	2012-13	2013-14	2014-15	2015-16	2016-17
DENR/NC Zoo	$0	$3,500	$3,603	$3,694	$3,776
Total	**$0**	**$3,500**	**$3,603**	**$3,694**	**$3,776**

SOURCES OF DATA: The financial data for these charts was provided by the Division of Finance at the University of North Carolina System and North Carolina State University, Office of State Management and Budget.

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 444

AMENDMENT NO. _____
(to be filled in by Principal Clerk)

S444-AMC-40 [v.3]

Comm. Sub. [YES]
Amends Title [YES]
S444-PCS65122-MC-19

Date _____,2012

Senator _____

moves to amend the bill on page 1, lines 2-5, by deleting the lines and substituting the following language to read:

"AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENT PROJECTS.";

and on page 1, line 11, by deleting "institutions and" and substituting "institutions,";

and on page 1, line 16, by deleting "Statute." and substituting "Statute, and (iii) other expenditures for improvements.";

and on page 3, line 40, by deleting the line and substituting the following language to read:

"**NON-GENERAL FUND CAPITAL IMPROVEMENT AUTHORIZATIONS**

SECTION 10. The General Assembly authorizes the following capital projects to be funded with receipts or from other non-General Fund sources available to the appropriate department:

Name of Project	**Amount of Non-General Fund Funding Authorized for FY 2012-2013**
Department of Public Safety	
Training Site Improvements	$ 620,000
Aviation Facilities Improvements	600,000
Logistics Facilities Improvements	310,000
Career Tech. Ed. Ctr. – Stonewall Jackson Y.D.C.	163,332
Storage Sheds – Statewide	51,765
Readiness Centers Improvements	40,000
Track and Field Facility – Stonewall Jackson Y.D.C.	161,046
Department of Agriculture	
Parking Improvement/Expansion-Raleigh Farmers Market	200,000
Wholesale Dock Enclosure – Raleigh Farmers Market	750,000
Phase II Greenhouse Exp. – Additional Funding – Tidewater RS	200,000

	Phase II – Calf Barn Construction – Piedmont RS	150,000
	Forest Road Construction	150,000
	HVAC Campus Improvements – State Fairgrounds	2,500,000
	Campus Infrastructure – State Fairgrounds	3,000,000
	Renovations to Existing Buildings – State Fairgrounds	3,000,000
	Hunt Horse Complex Site Rep & Improvements-St Fairgrounds	3,000,000
Department of Cultural Resources		
	NC Maritime Museum Gallants Channel Multi-use Facility	1,115,000
	N. C. Museum of Art Trail Improvement Project	370,000
	Duke Homestead Picnic Shelter	175,000
Department of Environment and Natural Resources		
	Sound Side Dock & Education Gazebo at Roanoke Is Aquarium	350,000
	NC Zoo – Solar Pointe Restrooms	400,000
Wildlife Resources Commission		
	Agency Land Purchase	3,750,000
	Table Rock Hatchery Building Replacement	75,000
	Watha Hatchery Building Replacement	300,000
	New Construction of Fishing Access Areas	240,000
	New Construction of Boating Access Areas	800,000
	Renovations of Existing Boating Access Areas	800,000
	ADA Initiative of Existing Boating Access Areas	280,000
	Infrastructure Repair and Renovation	1,500,000
TOTAL AMOUNT OF NON-GENERAL FUND CAPITAL PROJECTS AUTHORIZED		**$25,051,143**

SECTION 11. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 1025*
Committee Substitute Favorable 5/30/12

Short Title: Extend Tax Provisions. (Public)

Sponsors:

Referred to:

May 22, 2012

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET OF CERTAIN TAX PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2009-505 reads as rewritten:

"**SECTION 2.** This act is effective when it becomes law and expires ~~July 1, 2012.~~July 1, 2013."

SECTION 2. G.S. 105-129.16D(d) reads as rewritten:

"(d) Sunset. – This section is repealed effective for facilities placed in service on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 3. G.S. 105-129.16F(b) reads as rewritten:

"(b) Sunset. – This section is repealed for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 4. G.S. 105-129.16G(b) reads as rewritten:

"(b) Sunset. – This section expires for taxable years beginning on or after ~~January 1, 2012.~~January 1, 2014."

SECTION 5. G.S. 105-129.82(a) reads as rewritten:

"(a) Sunset. – This Article is repealed effective for business activities that occur on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 6.(a) G.S. 105-130.48(f) reads as rewritten:

"(f) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 6.(b) G.S. 105-151.30(f) reads as rewritten:

"(f) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 7. G.S. 105-151.28(d) reads as rewritten:

"(d) Sunset. – This section is repealed for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 8. G.S. 105-151.31(c) reads as rewritten:

"(c) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 9. G.S. 105-131.32(c) reads as rewritten:

"(c) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 10. G.S. 105-163.015 reads as rewritten:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 11.(a) G.S. 105-164.14A(a) reads as rewritten:

"(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) **(Repealed for purchases made on or after January 1, 2013)** Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars ($2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after ~~January 1, 2013.~~January 1, 2014.

(2) Major recycling facility. – An owner of a major recycling facility is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner.

(3) Business in low-tier area. – A taxpayer that is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area and that places machinery and equipment in service in that area is allowed a refund of the sales and use tax paid by it on the machinery and equipment. For purposes of this subdivision, "machinery and equipment" includes engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.83, capitalized for tax purposes under the Code, and not leased to another party. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. The sunset for Article 3J of Chapter 105 of the General Statutes for development tier one areas applies to this subdivision.

(4) **(Repealed for purchases made on or after January 1, 2013)** Motorsports team or sanctioning body. – A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after ~~January 1, 2013.~~January 1, 2014.

(5) **(Repealed for purchases made on or after January 1, 2014)** Professional motorsports team. – A professional motorsports racing team or a related member of a team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle. For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2014.

(6) **(Repealed for purchases made on or after January 1, 2013)** Analytical services business. – A taxpayer engaged in analytical services in this State is allowed a refund of sales and use tax paid by it. This subdivision is repealed

for purchases made on or after ~~January 1, 2013.~~January 1, 2014. The amount of the refund is the greater of the following:

a. Fifty percent (50%) of the eligible amount of sales and use tax paid by it on tangible personal property that is consumed or transformed in analytical service activities. The eligible amount of sales and use tax paid by the taxpayer in this State is the amount by which sales and use tax paid by the taxpayer in this State in the fiscal year exceed the amount paid by the taxpayer in this State in the 2006-2007 State fiscal year.

b. Fifty percent (50%) of the amount of sales and use tax paid by it in the fiscal year on medical reagents.

(7) **(Repealed for purchases made on or after January 1, 2038)** Railroad intermodal facility. – The owner or lessee of an eligible railroad intermodal facility is allowed a refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner or lessee of the facility for sales and use taxes on these items is considered tax paid by the owner or lessee. This subdivision is repealed for purchases made on or after January 1, 2038."

SECTION 11.(b) G.S. 105-164.14B(f) reads as rewritten:

"(f) Sunset. – This section is repealed for sales made on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 12.(a) G.S. 105-129.39 reads as rewritten:

"**§ 105-129.39. Sunset.**

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after ~~January 1, 2014.~~January 1, 2015."

SECTION 12.(b) G.S. 105-129.75 reads as rewritten:

"**§ 105-129.75. Sunset.**

This Article expires ~~January 1, 2014,~~January 1, 2015, for rehabilitation projects for which an application for an eligibility certification is submitted on or after that date."

SECTION 13. This act is effective when it becomes law.

HOUSE BILL 1025:
Extend Tax Provisions

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 5, 2012
Introduced by:	Reps. Howard, Starnes	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: The proposed draft extends several tax provisions.

[As introduced, this bill was identical to S827, as introduced by Sens. Rucho, Hartsell, Blue, which is currently in Senate Finance.]

BILL ANALYSIS: It is anticipated that major tax modernization will be undertaken during the 2013 session of the General Assembly. This act extends the following provisions in order to maintain the current state of the North Carolina tax code until comprehensive tax modernization can be accomplished.

Section 1: Extends the tier one designation for seafood industrial parks through July 1, 2013.

Sections 2-10: Extends the following tax credits through January 1, 2014:

2. Tax credit for renewable fuel facilities.
3. Tax credit for biodiesel producers.
4. Work opportunity tax credit.
5. Article 3J tax credits.
6. Tax credit for recycling oyster shells.
7. Tax credit for premiums on long-term care insurance.
8. Refundable earned income tax credit.
9. Tax credit for adoption expenses.
10. Tax credit for qualified business ventures.

Section 11: Extends the following sales tax refunds through January 1, 2014:

- Passenger air carriers
- Machinery and equipment place in a tier 1 county.
- Aviation fuel for motorsports team of sanctioning body.
- Analytical services.
- Certain industrial facilities.

Section 12: Extends the credits for rehabilitating historic structures and historic mill property to January 1, 2015.

EFFECTIVE DATE: This act is effective when it becomes law.

H1025-SMTD-118(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 828*
PROPOSED COMMITTEE SUBSTITUTE S828-CSRB-80 [v.1]

6/4/2012 2:07:36 PM

Short Title: Unemployment Insurance Changes. (Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

PART I. CHANGE THE LAW TO CONTINUE THE THREE-YEAR LOOK-BACK TRIGGER FOR EXTENDED BENEFITS

SECTION 1.(a) The General Assembly finds that the Governor's Executive Order No. 93, entitled "Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of North Carolina's Long-Term Unemployed," was the purported basis for action by the then Employment Security Commission to provide for the extension of unemployment benefits to thousands of North Carolinians. The extension of unemployment benefits was grounded upon amendments to Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (the "1970 Act"), as amended by Section 502(b) of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "Tax Relief Act of 2010").

SECTION 1.(b) The General Assembly finds that the Governor's Executive Order 113, entitled "Further Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of North Carolina's Long-Term Unemployed" was the purported basis for action by the then Employment Security Commission to provide for the extension of unemployment benefits to thousands of North Carolinians nearing the end of a two-month federal extension of unemployment benefits under Section 201 of the Temporary Payroll Tax Cut Continuation Act of 2011. That extension, authorized through February 29, 2012, was grounded upon amendments to Section 203 of the 1970 Act, as amended by Section 502(b) of the Tax Relief Act of 2010.

SECTION 1.(c) The General Assembly finds that Section 502(b) of the Tax Relief Act of 2010 specifies that the extension of benefits is to be made only as "the State may by law provide." Section 205(f) of the underlying 1970 Act defines "State law" as the "unemployment compensation law of the State, approved by the [U.S. Secretary of Labor]." In North Carolina, that law is Chapter 96 of the General Statutes, the "Employment Security Law." Nothing in Chapter 96 of the General Statutes, then or now, authorizes the Governor to extend unemployment benefits by Executive Order, nor does Executive Order 93 or Executive Order No. 113, or any other such order, constitute a "State law" within the meaning of the 1970 Act or the North Carolina Constitution. Section 1 of Article II of the North Carolina Constitution provides that "The legislative power of the State shall be vested in the General Assembly."

Further, Section 6 of Article I of the North Carolina Constitution provides that the legislative and executive powers are "...separate and distinct...."

SECTION 1.(d) The General Assembly finds that the people of this State entrusted the creation of laws to the General Assembly, not to the executive branch, and that Executive Order No. 93 and Executive Order No. 113 were issued and acted upon by the executive branch in a manner contrary to the rule of law.

SECTION 1.(e) Further, the General Assembly finds that it enacted Section 6.16 of Session Law 2011-145 and, in so doing, validated the effects of the Governor's Executive Order No. 113 with the stated intent to allow extended benefits to be paid under the Tax Relief Act of 2010 so long as payment of the extended benefits did not hinder the State's ability to reduce its debt owed to the federal government for unemployment benefits.

SECTION 1.(f) It is deemed, therefore, to be in the best interest of the people of this State that the General Assembly now ratify and hereby validate the effects of the Governor's Executive Order No. 113.

SECTION 1.(g) To maintain the rule of law with respect to State and federal relations pertaining to employment security laws in North Carolina, any executive order issued by the Governor that purports to extend unemployment insurance benefits, whether those benefits will be paid from federal or State funds, is void ab initio, unless the executive order is issued upon authority that is conferred expressly by an act enacted by the General Assembly or granted specifically to the Governor by the Congress of the United States.

SECTION 1.(h) Section 6.16(d) of S.L. 2011-145 reads as rewritten:

"**SECTION 6.16.(d)** This section becomes effective April 16, 2011, and expires ~~January 1, 2012.~~January 1, 2013."

SECTION 1.(i) G.S. 96-12.01(a1)(4)c.3. reads as rewritten:

"3. This section applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before ~~December 31, 2011,~~ December 31, 2012, provided that:

I. The average rate of (i) insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in all of the preceding three calendar years and equaled or exceeded five percent (5%) or (ii) total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent (6.5%); and

II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subsection, equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 1.(j) G.S. 96-12.01(a1)(4)e.3. reads as rewritten:

"3. This subdivision applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before ~~December 31, 2011,~~ December 31, 2012, provided that:

I. The average rate of total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent (8%); and

II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subdivision equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 1.(k) This section is effective when it becomes law and applies retroactively to January 1, 2012.

PART II. RESOLUTION OF OUTSTANDING ISSUES FROM S.L. 2011-401

SECTION 2.(a) The Current Operations Appropriations Act for the 2012-2013 fiscal year shall provide for the annual salaries of the Board of Review, as provided in G.S. 96-4(b).

SECTION 2.(b) G.S. 96-14(2) reads as rewritten:

"**§ 96-14. Disqualification for benefits.**

An individual shall be disqualified for benefits:

...

(2) For the duration of the individual's unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Division that such individual is, at the time such claim is filed, unemployed because he or she was discharged for misconduct connected with the work. Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard.

"Discharge for misconduct connected with the work" as used in this section is defined to include but not be limited to any one or more of the following:

a. ~~separation~~ Separation initiated by an employer for violating the employer's written alcohol or illegal drug ~~policy; reporting~~policy.

b. Reporting to work significantly impaired by alcohol or illegal ~~drugs; consuming~~drugs.

c. Consuming alcohol or illegal drugs on employer's ~~premises; conviction~~ premises.

d. Conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) ~~while in the employ of said employer; being~~ if the offense is related to or connected with an employee's work for an employer or is in violation of a reasonable work rule or policy.

e. Being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal ~~drugs; any~~ drugs if the offense is related to or connected with an employee's work for an employer or is in violation of a reasonable work rule or policy.

f. Any physical violence whatsoever related to an employee's work for an employer, including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general ~~public; inappropriate~~public.

g. Inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work ~~environment; theft~~ environment.

h. Theft in connection with the ~~employment; forging~~employment.

i. Forging or falsifying any document or data related to employment, including a previously submitted application for ~~employment; violation~~ employment.

j. Violation of an employer's written absenteeism ~~policy; refusing~~policy.

k. Refusing to perform reasonably assigned work ~~tasks; and the failure to adequately perform any other employment duties as evidenced by~~ tasks.

l. Intentional acts or omissions evincing disregard of the employer's interest or standards of behavior that the employer has a right to expect or has explained orally or in writing to the employee or evincing careless or negligence of such degree as to manifest equal disregard. For purposes of this sub-subdivision, evidence that an employee has received no fewer than three written reprimands ~~received~~ in the 12 months that immediately ~~preceding~~ precedes the employee's ~~termination.~~ termination is prima facie evidence of misconduct connected with the work. ~~This~~

The phrase "discharge for misconduct connected with the work" does not include the discharge or an employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for any act or omission of the veteran that the Division determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service."

SECTION 2.(c) G.S. 96-15(b)(2) reads as rewritten:

"(2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to

the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Division unless within 30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to rules adopted by the Division. The Division shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed ~~30~~10 days from the ~~earlier of mailing or~~ delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. A copy of the notice of the filing shall be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on file. Provided further, no question or issue may be raised or presented by the Division as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, after 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.

An employer shall receive written notice of the employer's appeal rights and any forms that are required to allow the employer to protest the claim. The forms shall include a section referencing the appropriate rules pertaining to appeals and the instructions on how to appeal."

SECTION 2.(d) G.S. 96-15(f) reads as rewritten:

"(f) Procedure. – The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules adopted by the Division for determining the rights of the parties, whether or not such rules conform to common-law or statutory rules of evidence and other technical rules of procedure. ~~All~~

All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded unless the ~~the parties have waived the evidentiary hearing and entered into a stipulation resolving the issues pending before the appeals referee, hearing officer, or other employee assigned to make the decision,~~ recording is waived by all interested parties. If the testimony is recorded, it ~~but~~ need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under such rules as the Division may adopt, to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual receiving the transcript shall pay to the Division such reasonable fee for the transcript as the Division may by regulation provide. The fee so prescribed by the Division for a party shall not exceed the lesser of sixty-five cents (65¢) per page or sixty-five dollars ($65.00) per transcript. The Division may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the Division shall waive the fee.

The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer, or other employee assigned to make the decision believes the stipulation provides sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision may accept the stipulation and render a decision based on the

stipulation. If the appeals referee, hearing officer, or other employee assigned to make the decision does not believe the stipulation provides sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision must reject the stipulation. The decision to accept or reject a stipulation must occur in a recorded hearing."

SECTION 2.(e) This section becomes effective November 1, 2012.

PART III. COMPLIANCE WITH THE TRADE ADJUSTMENT ASSISTANCE EXTENSION ACT OF 2011: NEW HIRE DIRECTORY

SECTION 3.(a) G.S. 110-129.2(c) reads as rewritten:

"(c) Report Contents. – Each report required by this section shall contain the name, address, ~~and~~ social security number of the newly hired employee, the date services for remuneration were first performed by the newly hired employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail."

SECTION 3.(b) G.S. 110-129.2(j) is amended by adding a new subdivision to read:

"(j) Definitions. – As used in this section, unless the context clearly requires otherwise, the term:

...

(5) "Newly hired employee" means (i) an employee who has not previously been employed by the employer and (ii) an employee who was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days."

SECTION 3.(b) This section becomes effective July 1, 2012.

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 828:
Unemployment Insurance Changes

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 5, 2012
Introduced by:	Sens. Rucho, Hartsell	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S828-CSRB-80		Committee Counsel

SUMMARY: ***Senate Bill 828 includes several changes to the unemployment laws that fall within these three categories:***

- ***The extension of the three-year look-back period from January 1, 2012, to January 1, 2013.***
- ***The resolution of outstanding issues associated with S. L. 2011-401, Senate Bill 532. The proposed committee substitute makes changes in this part of the bill, as advised by the US Department of Labor.***
- ***The statutory change required to comply with the federal Trade Adjustment Assistance Extension Act of 2011 this year.***

The bill is a recommendation of the Revenue Laws Study Committee.[1]

CHANGE IN THE LAW TO CONTINUE THE THREE-YEAR LOOK-BACK TRIGGER FOR EXTENDED BENEFIT

There are two permanent benefit programs required by federal law: regular unemployment benefits and extended benefits.[2] Regular unemployment benefits are fully funded by the State through its State Unemployment Insurance Trust Fund and claimants in North Carolina are eligible to receive benefits for up to 26 weeks under it. Extended benefits are available in a state when the state is experiencing high levels of unemployment.[3] The program is funded 50% by state contributions and 50% by the federal government. However, the federal government has paid 100% of the extended benefit claims since February 22, 2009.[4]

Extended benefits are triggered in a state when the unemployment rate is at least 6.5% and at least 10% higher than it was at the same time in either of the past two calendar years; this two-year window is known as the "two-year look-back". In the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010[5], Congress allowed states to amend their laws to temporarily increase the two-year look-back period to a three-year look-back period. This measure enabled more states to offer extended benefits. Under the 2010 legislation, the temporary measure ended December 31, 2011.

[1] House Bill 1024, introduced by Rep. Howard and Rep. Starnes, is identical to the bill as introduced.

[2] Congress enacted Emergency Unemployment Compensation in 2008, known as EUC08. These benefits are fully payable by the federal treasury.

[3] In North Carolina, a claimant may receive up to 20 weeks of extended benefits.

[4] P.L. 111-5, Sec. 2005, approved February 19, 2009, *American Recovery and Reinvestment Act of 2009.* The provision has been extended several times in other federal legislation. The current expiration date for federal funding of extended benefits is December 31, 2012.

[5] P.L.111-312, approved December 17, 2010.

However, Congress extended the temporary measure twice.[6] It is currently set to expire December 31, 2012.

North Carolina changed the law to permit a three-year look-back in S.L. 2011-145, Section 6.16. This provision expired January 1, 2012. *Senate Bill 828* would extend the sunset from January 1, 2012, until January 1, 2013. In North Carolina, extended benefits will not be allowed for claim weeks later than May 12, 2012, because the State's unemployment rate has fallen below the trigger. However, it is possible the extended benefits may trigger back "on" before the end of the year.

The Governor ordered the Employment Security Commission to use the three-year look-back in Executive Order 93, dated June 3, 2011. The Governor ordered the Division of Employment Security to use the three-year look-back in Executive Order 113, dated January 11, 2012. Although the Executive Orders purport to give the Governor the authority to make this change, the federal law clearly states that a "State may by law" provide for the temporary look-back extension.[7] *Legislative Proposal #2*, finds that the Governor did not have the authority under federal law, the North Carolina Constitution, or Chapter 96 of the North Carolina General Statutes to change the look-back period.

RESOLUTION OF OUTSTANDING ISSUES FROM S.L. 2011-401, SENATE BILL 532

The General Assembly enacted Senate Bill 532 on July 26, 2012. The Senate passed the bill on June 2, 2011, by a vote of 43 to 5. The House passed the bill on June 15, 2011, by a vote of 104 to 12. Senate Bill 532 had four operative parts:

- It created the Division of Employment Security within the Department of Commerce and transferred the functions of the Employment Security Commission to that Division.
- It made the Division subject to rulemaking under Article 2A of chapter 150B of the General Statutes.
- It made substantive changes to the employment security laws.
- It made conforming changes to the employment security laws.

On June 30, 2011, the Governor vetoed the bill. In the Governor's Objections and Veto Message, she stated the U.S. Department of Labor informed the administration that a lack of conformity between the bill and federal law could result in a loss of money for the State's unemployment insurance program and a reduction in the FUTA tax credit.[8] A state's law must conform to the provisions of the federal unemployment compensation laws in order for employers in a state to be eligible for a credit against the FUTA tax and for the state to be eligible to receive an administrative grant to operate its unemployment compensation programs.

The General Assembly overrode the Governor's veto on July 26, 2011.[9] After passage of the bill, the Employment Security Commission informed the General Assembly by a letter dated October 12, 2011, of its intention to suspend the provisions of the bill determined by the U.S. Department of Labor to be noncompliant with federal law. G.S. 96-19(b) gives the Division of Employment Security the authority

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[6] P.L. 112-78, approved December 23, 2011, *Temporary Payroll Tax Cut Continuation Act of 2011.* P.L. 112-96, approved February 22, 2012, *The Middle Class Tax Relief and Job Creation Act of 2012.*

[7] P. L. 11-312, approved December 2010, Sec. 502, *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.*

[8] The FUTA tax rate is 6% and is imposed on wages up to $7,000 a year. Federal law provides a credit against the tax liability of up to 5.4% to employers who pay state taxes timely under an approved state unemployment insurance program. The 2012 effective FUTA tax rate for NC employers is 0.9%, which is approximately $63 per employee.

[9] The Senate voted to override the veto on July 13, 2011, by a vote of 31 to 17. The House voted to override the veto on July 26, 2011, by a vote of 72 to 47.

:o suspend enforcement of a provision upon receiving notification from the U.S. Department of Labor that the provision is noncompliant with the requirements of federal law. The suspension may be in effect until the Legislature next has an opportunity to reconsider the provisions purported to be noncompliant with federal law.

Senate Bill 828 addresses the areas of concern noted by the U.S. Department of Labor. The changes have been shared with the U.S. Department of Labor and have been found to be in compliance with federal law.

- **Payment of UC with the greatest promptness that is administratively feasible.** Senate Bill 532 expanded the time for an employer to provide information required to protest a claim from 10 days to 30 days. The U.S. Department of Labor noted that the extension of time would make it virtually impossible for the agency to make timely determinations under the standards set by federal regulations.[10] Senate Bill 828 provides an employer has 30 days from the delivery of notice of the filing of a claim against the employer's account to protest the claim.
- **Misconduct connected with work and total reduction of benefit rights.** An individual is totally disqualified from receiving benefits if the Division of Employment Security determines the individual was discharged for misconduct connected with the work. Senate Bill 532 expanded the definition of "misconduct connected with the work" to include both of the following:
  - **Criminal offenses.**
    Arrest for or conviction of certain offenses. The U.S. Department of Labor noted that the new definition did not require that the criminal conduct be connected with the individual's work. Senate Bill 828 provides that the offense must be related to the employee's work with the employer or in violation of a reasonable work rule or policy. The PCS also amends a previous provision in North Carolina's law concerning the conviction of a person for drug offenses to make the same clarification that the offense be related to the employee's work with the employer or in violation of a work rule or policy.[11]
  - **Failure to perform.**
    Failure to adequately perform employment duties after being warned by three written reprimands within a 12-month period. The U.S. Department of Labor noted that, in order to be the basis for a disqualification to receive unemployment benefits, unsatisfactory job performance must be the result of intentional behavior or gross negligence, and must be egregious. Senate Bill 828 provides that three written reprimands within a 12-month period is prima facie evidence of intentional behavior or gross negligence.
- **Stipulation of the issues and the methods of administration requirement.** Senate Bill 532 allowed the parties to tender stipulation of the ultimate issues in cases pending on appeal to the agency and provided that the stipulation did not have to be recorded. The U.S. Department of Labor noted that while a stipulation of facts might be acceptable, a stipulation of the issues vitiates the agency's federally-mandated responsibility to apply the unemployment law to specific facts. The Department also recommended that any procedure or process by which an

[10] For most intrastate claims, federal regulations require that a state pay at least 87% of its claims within 14 days of the end of the first compensable week, or 21 days for states that do not have a waiting week requirement, and 93% of such claims within 35 days.

[11] In a e-mail message dated May 14, 2012, and in a phone conversation with Bob Johnston with USDOL, the issue of North Carolina's existing law was noted. Since NC is on notice that the provision of existing law does not conform with federal UC law, this PCS makes the necessary change.

appeals referee or hearing officer accepts a stipulation of fact should be recorded. Senate Bill 828 allows parties to agree to a stipulation of facts. The appeals referee or hearing officer may accept the stipulation if the stipulation provides sufficient information to make a UC benefit decision. If the stipulation does not provide sufficient information, the appeals referee or hearing officer must reject the stipulation. The decision to accept or reject the stipulation of facts must occur in a recorded hearing.

Senate Bill 532 created a Board of Review[12] to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Employment Security Section and the Employment Insurance Section. The annual salaries of the three-person board are to be set by the General Assembly in the current Operations Appropriations Act. The Current Operations and Capital Improvements Appropriations Act of 2011 did not set the salaries for the members of the Board of Review. Senate Bill 828 provides that the current Operations Appropriations Act of 2012 must provide for the annual salaries of the Board of Review, as provided in G.S. 96-4(b). The House budget contained in House Bill 950 sets the salaries of the Board of Review at the same level as the salaries set for the Industrial Commission. The members receive an annual salary of $119,305. The Chair receives an additional $1,500 for an annual salary of $120,805.

COMPLIANCE WITH THE TRADE ADJUSTMENT ASSISTANCE EXTENSION ACT OF 2011

In 2002, the United States General Accounting Office issued a report on the unemployment insurance program and the need for an increased focus on program integrity. The focus of President Obama's Executive Order 13520, issued November 23, 2009, was the reduction of improper payments in major programs administered by the federal government, including the unemployment insurance program. In response to the level of improper payments in the unemployment insurance program, the U.S. Department of Labor developed a strategic plan to address the root causes of improper payments. The plan involves new performance measures for the states; increased funding of new tools and technology; and a focus on the root causes leading to improper payments. The three identified root causes leading to improper payments are:

- A gap in employment service registration.
- Claimants continuing to claim benefits after returning to work.
- Untimely and insufficient separation information from employers and third party administrators.

As part of the increased focus on program integrity, the U.S. Department of Labor recommended legislative language to Congress in June of 2011. In October 2011, three key integrity provisions recommended by the Department were enacted as part of the Trade Adjustment Assistance Extension Act of 2011. *Senate Bill 828* includes the statutory change North Carolina must make to be in conformity with the program integrity provisions this year. States have until October 21, 2013, to enact the other two conforming changes; those changes are not included in this bill.

The New Hire Directory was created years ago to assist states with the collection of child support payments. The Directory is administered by the Department of Health and Human Services. The directory is also a valuable tool for unemployment insurance programs because it allows an agency to cross-check claimants with new hires. This information assists the agency with the detection of overpayments being made to individuals who have returned to work. To address the gap in employment service registration, the Trade Adjustment Assistance Extension Act of 2011 requires states to expand

[12] G.S. 96-4(b).

the definition of a 'newly hired employee' to include a rehired employee who was separated for at least 50 days. It also requires employers to enter the start date of employment when the employer submits the information to the New Hire Directory. States are required to make the necessary statutory changes to its New Hire Directory provisions within two months after the latest legislative session ends. *Senate Bill 828* includes the necessary changes.

The other two changes, which do not have to be made before October 2013, are not included in this bill. The first of those two changes addresses claimants who fraudulently continue to accept unemployment benefits after returning to work by requiring the states to impose a penalty on the claimant equal to 15% of the amount of an erroneous overpayment if it determines the overpayment is due to fraud. The money collected from the penalty is payable to the State Unemployment Trust Fund and its use is limited to the payment of unemployment compensation benefits. The second of those two changes addresses the untimely and insufficient separation information provided by employers and third party administrators to the agencies by requiring states to enact a provision prohibiting the non-charging of employer's unemployment insurance account when an improper payment is made because of the employer's failure to respond timely or adequately to a written request for separation information. This provision points to a trend whereby employers are expected to improve the quality of information provided to state employment agencies at the front end of the unemployment insurance claim process, rather than waiting until a hearing to provide details.

S828-SMRB-130(CSRB-80) v1

HOUSE BILL 1025*
Committee Substitute Favorable 5/30/12

Short Title: Extend Tax Provisions. (Public)

Sponsors:

Referred to:

May 22, 2012

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET OF CERTAIN TAX PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2009-505 reads as rewritten:

"**SECTION 2.** This act is effective when it becomes law and expires ~~July 1, 2012.~~July 1, 2013."

SECTION 2. G.S. 105-129.16D(d) reads as rewritten:

"(d) Sunset. – This section is repealed effective for facilities placed in service on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 3. G.S. 105-129.16F(b) reads as rewritten:

"(b) Sunset. – This section is repealed for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 4. G.S. 105-129.16G(b) reads as rewritten:

"(b) Sunset. – This section expires for taxable years beginning on or after ~~January 1, 2012.~~January 1, 2014."

SECTION 5. G.S. 105-129.82(a) reads as rewritten:

"(a) Sunset. – This Article is repealed effective for business activities that occur on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 6.(a) G.S. 105-130.48(f) reads as rewritten:

"(f) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 6.(b) G.S. 105-151.30(f) reads as rewritten:

"(f) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 7. G.S. 105-151.28(d) reads as rewritten:

"(d) Sunset. – This section is repealed for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 8. G.S. 105-151.31(c) reads as rewritten:

"(c) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 9. G.S. 105-131.32(c) reads as rewritten:

"(c) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 10. G.S. 105-163.015 reads as rewritten:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 11.(a) G.S. 105-164.14A(a) reads as rewritten:

"(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) **(Repealed for purchases made on or after January 1, 2013)** Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars ($2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after ~~January 1, 2013.~~January 1, 2014.

(2) Major recycling facility. – An owner of a major recycling facility is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner.

(3) Business in low-tier area. – A taxpayer that is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area and that places machinery and equipment in service in that area is allowed a refund of the sales and use tax paid by it on the machinery and equipment. For purposes of this subdivision, "machinery and equipment" includes engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.83, capitalized for tax purposes under the Code, and not leased to another party. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. The sunset for Article 3J of Chapter 105 of the General Statutes for development tier one areas applies to this subdivision.

(4) **(Repealed for purchases made on or after January 1, 2013)** Motorsports team or sanctioning body. – A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after ~~January 1, 2013.~~January 1, 2014.

(5) **(Repealed for purchases made on or after January 1, 2014)** Professional motorsports team. – A professional motorsports racing team or a related member of a team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle. For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2014.

(6) **(Repealed for purchases made on or after January 1, 2013)** Analytical services business. – A taxpayer engaged in analytical services in this State is allowed a refund of sales and use tax paid by it. This subdivision is repealed

for purchases made on or after ~~January 1, 2013.~~January 1, 2014. The amount of the refund is the greater of the following:

a. Fifty percent (50%) of the eligible amount of sales and use tax paid by it on tangible personal property that is consumed or transformed in analytical service activities. The eligible amount of sales and use tax paid by the taxpayer in this State is the amount by which sales and use tax paid by the taxpayer in this State in the fiscal year exceed the amount paid by the taxpayer in this State in the 2006-2007 State fiscal year.

b. Fifty percent (50%) of the amount of sales and use tax paid by it in the fiscal year on medical reagents.

(7) **(Repealed for purchases made on or after January 1, 2038)** Railroad intermodal facility. – The owner or lessee of an eligible railroad intermodal facility is allowed a refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner or lessee of the facility for sales and use taxes on these items is considered tax paid by the owner or lessee. This subdivision is repealed for purchases made on or after January 1, 2038."

SECTION 11.(b) G.S. 105-164.14B(f) reads as rewritten:

"(f) Sunset. – This section is repealed for sales made on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 12.(a) G.S. 105-129.39 reads as rewritten:

"**§ 105-129.39. Sunset.**

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after ~~January 1, 2014.~~January 1, 2015."

SECTION 12.(b) G.S. 105-129.75 reads as rewritten:

"**§ 105-129.75. Sunset.**

This Article expires ~~January 1, 2014,~~January 1, 2015, for rehabilitation projects for which an application for an eligibility certification is submitted on or after that date."

SECTION 13. This act is effective when it becomes law.

HOUSE BILL 1025: Extend Tax Provisions

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 5, 2012
Introduced by:	Reps. Howard, Starnes	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: The proposed draft extends several tax provisions.

[As introduced, this bill was identical to S827, as introduced by Sens. Rucho, Hartsell, Blue, which is currently in Senate Finance.]

BILL ANALYSIS: It is anticipated that major tax modernization will be undertaken during the 2013 session of the General Assembly. This act extends the following provisions in order to maintain the current state of the North Carolina tax code until comprehensive tax modernization can be accomplished.

Section 1: Extends the tier one designation for seafood industrial parks through July 1, 2013.

Sections 2-10: Extends the following tax credits through January 1, 2014:

2. Tax credit for renewable fuel facilities.
3. Tax credit for biodiesel producers.
4. Work opportunity tax credit.
5. Article 3J tax credits.
6. Tax credit for recycling oyster shells.
7. Tax credit for premiums on long-term care insurance.
8. Refundable earned income tax credit.
9. Tax credit for adoption expenses.
10. Tax credit for qualified business ventures.

Section 11: Extends the following sales tax refunds through January 1, 2014:

- Passenger air carriers
- Machinery and equipment place in a tier 1 county.
- Aviation fuel for motorsports team of sanctioning body.
- Analytical services.
- Certain industrial facilities.

Section 12: Extends the credits for rehabilitating historic structures and historic mill property to January 1, 2015.

EFFECTIVE DATE: This act is effective when it becomes law.

H1025-SMTD-118(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 1015
PROPOSED SENATE COMMITTEE SUBSTITUTE H1015-CSSVx-47 [v.2]

6/5/2012 10:58:41 AM

Short Title: Economic Devpt. & Finance Changes. (Public)

Sponsors:

Referred to:

May 22, 2012

A BILL TO BE ENTITLED

AN ACT TO SET THE REGULATORY FEES AND TO ENHANCE ECONOMIC DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2012.

SECTION 1.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2012-2013 fiscal year is two hundred thousand dollars ($200,000).

SECTION 1.(c) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six percent (6%) for the 2012 calendar year.

SECTION 1.(d) Subsections (a) and (b) of this section become effective July 1, 2012. The remainder of this section is effective when it becomes law.

SECTION 2.(a) G.S. 143B-437.52 reads as rewritten:

"**§ 143B-437.52. Job Development Investment Grant Program.**

...

(b) ~~Cap and~~ Priority. ~~The maximum number of grants the Committee may award in each calendar year is 25.~~ In selecting between applicants, a project that is located in an Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable project that is not located in a certified Eco-Industrial Park.

..."

SECTION 2.(b) This section becomes effective July 1, 2012.

SECTION 3. G.S. 143B-437.01(a) reads as rewritten:

"(a) Creation and Purpose of Fund. – There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating and retaining jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii)

construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, ~~sewer,~~ gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity. To be eligible for funding, the sewer infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity, even if the sewer infrastructure is located in a county other than the county in which the building is located.

...."

SECTION 4.(a) G.S. 105-129.84(c) reads as rewritten:

"(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.87 or G.S. 105-129.88 may be carried forward for the succeeding five years, and any unused portion of a credit allowed under G.S. 105-129.89 may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least ~~one hundred fifty million dollars ($150,000,000) worth of~~ the minimum investment amount of business and real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the five-year carryforward period rather than the 20-year carryforward period. For purposes of this subsection, the "minimum investment amount" is the following amount:

(1) For an eligible business investing the minimum investment amount in an establishment located, at the time the initial investment is made, in a development tier one area, one hundred million dollars ($100,000,000)."

(2) For any other eligible business, one hundred fifty million dollars ($150,000,000)."

SECTION 4.(b) This section is effective for taxable years beginning on or after January 1, 2012.

SECTION 5.(a) G.S. 143B-437.013(a) reads as rewritten:

"(a) Port Enhancement Zone Defined. – A port enhancement zone is an area that meets all of the following conditions:

(1) It is comprised of part or all of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.

(2) All of the area is located within 25 miles of a State port and is capable of being used to enhance port operations.

(3) Every census tract and census block group that comprises the area has at least eleven percent (11%) of households with incomes of fifteen thousand dollars ($15,000) or less."

SECTION 5.(b) This section is effective for taxable years beginning on or after January 1, 2013.

SECTION 6. Except as otherwise provided, this act is effective when it becomes law.

PCS for HOUSE BILL 1015: Economic Devpt. & Finance Changes

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 5, 2012
Introduced by:	Reps. Howard, Starnes	**Prepared by:**	Trina Griffin
Analysis of:	PCS to First Edition H1015-CSSVx-47		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1015 would set the rates for the public utility regulatory fees and the insurance regulatory charge for FY12-13 and make the following changes related to economic development:***

- ***Removes the cap on the number of grants, which is currently 25, that may be awarded in a calendar year under the Job Development Investment Grant (JDIG) program. It does not change the monetary cap.***
- ***Permits the use of Industrial Development Fund moneys for sewer infrastructure projects in adjoining counties.***
- ***Broadens the 20-year carryforward period under Article 3J by lowering the investment threshold from $150 million to $100 million to the extent an eligible company makes the investment in a tier one county.***
- ***Makes a technical correction to the definition of a port enhancement zone.***

CURRENT LAW & BILL ANALYSIS:

SET REGULATORY FEES

Section 1 of the PCS for House Bill 1015 sets the rates for the public utility regulatory fees and the insurance regulatory charge for FY12-13. The revenues generated by these provisions are used to defray the State's cost of regulating public utilities, electric membership corporations, and insurance companies. The General Assembly must set these rates each year. The rates are the same as they were last year.

Regulatory Fee for Utilities Commission

Subsection (a) sets the rate for the public utility regulatory fee for fiscal year 12-13 at 0.12%. The rate has not changed since fiscal year 04-05. The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is derived from providing utility service in North Carolina.

Regulatory Fee for Electric Membership Corporations

Subsection (b) sets at $200,000 for fiscal year 12-13 the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. The rate has not changed since the General Assembly enacted it in 1999. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations. The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products,

and water and wastewater collection and treatment. The subsidiary must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation.[1] Thus, the fee imposed on the North Carolina Electric Membership Cooperation will be passed on to its member electric membership corporations.

Insurance Regulatory Charge

Subsection (c) sets the insurance regulatory charge at 6% for the 2012 calendar year, the same as the rate set for the 2011 and 2010 calendar years. The insurance regulatory charge was first enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's gross premiums tax liability.[2]

REMOVE CAP ON THE NUMBER OF ANNUAL JDIG GRANTS

CURRENT LAW: The JDIG is a discretionary incentive that provides annual grants to new and expanding businesses measured against a percentage of withholding taxes paid by new employees. A proposed project must meet the following criteria as determined by the Economic Investment Committee (Committee):

- The project results in a net increase in employment.
- The project increases opportunities for employment and strengthens the State's economy.
- The project is consistent with the economic development goals of the State and of the area in which it is located.
- The project is competitive with another state(s) or country.
- The grant is necessary for the completion of the project in North Carolina.

The company must meet certain State health insurance and workplace safety requirements. A proposed project's benefits must outweigh its costs. A cost benefit analysis is done for each project, and the Committee identifies and selects projects that are most beneficial, after considering a number of different evaluation factors.

The Committee may only award a maximum of 25 grants in a calendar year and the total annual amount of the grants may not exceed $15 million.

BILL ANALYSIS: Section 2 of the PCS would eliminate the cap on the number of grants that the Department of Commerce may award in a calendar year under the JDIG program. It would not change the $15 million cap on the total annual liability that may be incurred for grants in a calendar year. The purpose of this provision is to provide increased flexibility to the Department of Commerce to award grants to as many companies as are interested and eligible to receive funds from JDIG. This provision was in the House budget (Section 13.6 of HB 950).

EFFECTIVE DATE: This section would become effective July 1, 2012.

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[1] The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives."

[2] Medical service corporations and health maintenance organizations began paying the charge in 2000.

INDUSTRIAL DEVELOPMENT FUND CHANGES

CURRENT LAW: The Industrial Development Fund (IDF), which is within the Department of Commerce, provides funds to assist local governments in economically distressed counties with creating jobs in certain industries.[3] "Economically distressed county" is defined as a county that has one of the 65 highest rankings under the development tier designation.[4] An eligible industry is defined as a company or person engaged in the business of air courier services, information technology and services, manufacturing, or warehousing and wholesale trade.

The IDF funds must be used for (i) installation of or purchases of equipment for eligible industries; (ii) structural repairs and renovations of buildings for expansion of eligible industries; or (iii) construction of or improvements to new or existing utility lines or equipment or transportation infrastructure for existing or new building for the eligible industries. Other requirements include that the funds have to be used by the city and county governments for projects that directly result in the creation of new jobs and must be expended at a maximum rate of $10,000 per new job created up to a maximum of $500,000 per project.

To be eligible for funding, the infrastructure being funded must be located on the site of the building or, if not located on the site, must be directly related to the operation of the specific eligible industrial activity. In all cases, the infrastructure must be located in an economically distressed county.

BILL ANALYSIS: **Section 3** of the PCS would modify the eligibility qualification for the funding of sewer infrastructure only by providing that the sewer infrastructure need not be located in the same county as the site of the building where the eligible industrial activity is being conducted. It does not change the requirement that the infrastructure project must be directly related to the operation of the eligible industrial activity.

BACKGROUND: This change would facilitate an economic development project in Davie County. Ashley Furniture is currently upfitting an existing building that requires additional sewer capacity. Forsyth County operates the water and sewer system that serves Davie County and would need to make improvements to the system in order to provide the additional capacity required by Ashley Furniture. Davie County is a tier 2 county and would be eligible for IDF funds. Forsyth County, however, is a tier 3 county and would not otherwise qualify. As applied to this project, the change would enable IDF funds to be used to improve sewer infrastructure located in a tier 3 county to the extent it is directly related to the operation of an eligible industrial activity in a tier 2 county. Forsyth County has indicated that the improvements to the sewer system for purposes of serving the Ashley Furniture site would not enhance sewer service in Forsyth County.

BROADEN THE 20-YEAR CARRYFORWARD PROVISION UNDER ARTICLE 3J

CURRENT LAW: Any unused portion of a credit for creating jobs or of a credit for investing in business property under Article 3J may be carried forward for the succeeding five years. Any unused portion of a credit for investing in real property under Article 3J may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period at least $150 million worth of business and real property, then any unused portion of a credit may be carried forward for 20 years.

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[3] IDF is currently funded by loan repayments only; there is no longer a General Fund appropriation for IDF. Loan repayments average around $50,000 annually.

[4] Under the development tier designation, the 40 most distressed counties are designated as tier 1, the next 40 as tier 2 and the 20 least distressed as tier 3.

BILL ANALYSIS: **Section 4** of the PCS would broaden the 20-year carryforward provision by lowering the threshold from $150 million to $100 million worth of business and real property investment for an eligible business that makes the investment in a tier one county. The threshold would remain the same for all other businesses.

EFFECTIVE DATE: This section would become effective for taxable years beginning on or after January 1, 2012.

PORT ENHANCEMENT ZONE TECHNICAL CORRECTION

CURRENT LAW: S.L. 2011-302 created a new type of zone eligible for enhanced credits[5] under Article 3J, known as a "ports enhancement zone." North Carolina has two State ports, the Port of Morehead City and the Port of Wilmington. The Port of Morehead City is located in Carteret County; Carteret County is a tier 3 county. The Port of Wilmington is located in New Hanover County; New Hanover County is also a tier 3 county.

A ports enhancement zone is an area that meets the following conditions:

- Is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal census.
- All of the area is located within 25 miles of a state port and is capable of being used to enhance port operations.
- Every census tract and census block group in the area has at least 11% of households with incomes of $15,000 or less.

The statute also stipulates that the area of the county that is included in one or more port enhancement zones may not exceed 5% of the total area of the county.

The enhanced credits available to an urban progress zone (UP zone) and an agrarian growth zone (AG zone)[6] will be available to a ports enhancement zone, effective for taxable years beginning on or after January 1, 2013.

BILL ANALYSIS: **Section 5** of the PCS would change one of the three conditions that must be met in order to qualify as a ports enhancement zone. Under the bill, the zone would have to be comprised of *part or all* of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census. Without this language, the areas intended to be covered by this provision would not meet the definition because the relevant tract exceeds the 5% limitation. This change would also make the port enhancement zone definition consistent with the UP zone definition.

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[5] North Carolina seeks to incent businesses to create jobs and invest in business property primarily through Article 3J tax credits. A taxpayer's eligibility for a credit and the amount of the credit varies depending upon the county or zone in which the jobs are created or the investments are made. These credits may be combined to offset up to 50% of the taxpayer's State income and franchise tax liability, and as a general rule, unused credits may be carried forward for up to five years.

[6] The enhanced credits available to an UP zone or an AG zone under Article 3J are as follows:

- **Jobs tax credit.** – The threshold for new full-time jobs created to qualify for the tax credit for creating new jobs is the same as for a tier 1 county, five ; and the amount of the credit is increased by $1,000 per job. If the job is filled by a resident of the zone or a long-term unemployed worker, the credit is increased by an additional $2,000 per job.
- **Machinery and equipment investment tax credit.** – The investment threshold requirement to qualify for the tax credit for investing in business property is the same as a tier 1 county, which is none. The amount of the investment tax credit is also the same as a tier 1 county, 7% of the cost of tangible personal property that is placed in service during the taxable year.

EFFECTIVE DATE: This section becomes effective for taxable years beginning on or after January 1, 2013.

H1015-SMSV-100(CSSVx-47) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1015

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1015-ASV-60 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Date _____,2012

Senator Rabon

moves to amend the bill on page 2, lines 47-48, by rewriting the lines to read:

"**SECTION 6.** For purchases made on or after July 1, 2012, but before July 1, 2013, a company located at a ports facility for waterborne commerce that purchases specialized equipment to be used at the facility to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities is allowed a refund of all local sales and use taxes paid and a portion of State sales and use taxes paid on the purchases as provided in this section. The portion of the State sales and use taxes that may be refunded is equal to the excess of the State sales and use taxes paid over the amount that would have been due had the taxpayer been subject to tax on the eligible property as if it were mill machinery under Article 5F of Chapter 105 of the General Statutes. A request for a refund under this section must be in writing and must include any information and documentation required by the Secretary.. A request for a refund under this section must be made on or after July 1, 2013, and is due before January 1, 2014. Refunds applied for after the due date are barred. Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21.

SECTION 7. Except as otherwise provided, this act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 5, 2012

TO: Senators Rucho and Hartsell

FROM: Rodney Bizzell, Sandra Johnson, Patrick McHugh, Kristin Walker, and Chloe Gossage
Fiscal Research Division

RE: PCS H1015n1

FISCAL IMPACT ($ In Millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES:					
Insurance Regulatory Fund	$29.98				
Utilities Comm/ Public Staff Special Fund	$14.20				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Dept. of Rev.; Utility Commission; NC Dept. of Commerce, JDIG Program;

EFFECTIVE DATE: Various effective dates.

BILL SUMMARY: The Proposed Committee Substitute for House Bill 1015 would make the following changes related to economic development and various finance laws:

- Sets the rates for the public utility regulatory fees and the insurance regulatory charge for FY 2012-13.
- Removes the cap on the number of grants, which is currently 25, that may be awarded in a calendar year under the Job Development Investment Grant (JDIG) program.
- Permits the use of Industrial Development Fund moneys for sewer infrastructure projects in adjoining counties.
- Broadens the 20-year carryforward period under Article 3J by lowering the investment threshold from $150 million to $100 million to the extent an eligible company makes the investment in a tier one county.
- Clarify and extend time to apply for sales tax refund of aviation fuel.
- Makes a technical correction to the definition of a port enhancement zone.

ASSUMPTIONS AND METHODOLOGY:

Section 1.(a): Public Utility Regulatory Fee

The Utilities Commission charges the public utility regulatory fee to 2,057 certificated companies with North Carolina jurisdictional revenues. Using past revenues as an estimate, it is assumed that these companies will have revenues of approximately $11.6 billion in FY 2012-13. Thus, a 0.12% regulatory fee would yield $14 million. These funds are deposited into a Special Fund at Commerce and then distributed to the Utility Commission and the Public Staff to fund their operations. The following table provides a 5-year history of NC utility jurisdictional revenues as well as fee revenues; the rate was 0.12% for all years shown:

History of North Carolina Utility and Fee Revenues at a 0.12% Rate, FY 2006-07 thru FY 2010-11

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
Utility Revenues	$11,026,252,488	$11,394,049,568	$11,321,344,624	$11,548,577,717	$11,671,551,467
Fee Revenue	$13,360,713	$13,782,929	$13,964,181	$13,721,517	$14,005,862

Section 1.(b): Electric Membership Corporation Regulatory Fee

The electric membership corporation fee is a flat fee and thus anticipated revenue is equal to the fee - $200,000.

Section 1.(c): Insurance Regulatory Charge

The insurance regulatory charge is an annual charge applied to each insurance company's annual premium tax liability for the taxable year. Monies are credited to the Insurance Regulatory Fund, and are used to reimburse the General Fund for the following:

(1) Money appropriated to the Department of Insurance to pay its expenses incurred in regulating the insurance industry and other industries in this State.

(2) Money appropriated to State agencies to pay the expenses incurred in regulating the insurance industry, in certifying statewide data processors under Article 11A of Chapter 131E of the

General Statutes, and in purchasing reports of patient data from statewide data processors certified under that Article.

(3) Money appropriated to the Department of Revenue to pay the expenses incurred in collecting and administering the taxes on insurance companies levied in Article 8B of Chapter 105 of the General Statutes.

(4) Money appropriated for the office of Managed Care Patient Assistance Program established under G.S. 143-730 to pay the actual costs of administering the program.

(5) Money appropriated to the Department of Insurance for the implementation and administration of independent external review procedures required by Part 4 of Article 50 of this Chapter.

(6) Money appropriated to the Department of Justice to pay its expenses incurred in representing the Department of Insurance in its regulation of the insurance industry and other related programs and industries in this State that fall under the jurisdiction of the Department of Insurance.

(7) Money appropriated to the Department of Insurance to pay its expenses incurred in connection with providing staff support for State boards and commissions, including the North Carolina Manufactured Housing Board, State Fire and Rescue Commission, North Carolina Building Code Council, North Carolina Code Officials Qualification Board, Public Officers and Employees Liability Insurance Commission, North Carolina Home Inspector Licensure Board, and the Volunteer Safety Workers' Compensation Board.

(8) Money appropriated to the Department of Insurance to pay its expenses incurred in connection with continuing education programs under Article 33 of this Chapter and in connection with the purchase and sale of copies of the North Carolina State Building Code.

(9) Money appropriated to the Department of Insurance for the regulation of the professional employer organization industry pursuant to Article 89A of Chapter 58 of the General Statutes.

Unexpended monies remain in the Insurance Regulatory Fund.

For taxable years 2010 and 2011, the surcharge was also 6.0 percent. These monies were collected in fiscal years 2010-11 and 2011-12. The Department of Insurance anticipates an increase of 0.0025 percent in premium tax liability and surcharge revenues for FY 2012-13 compared to FY 2011-12. Actual and anticipated collections are as follows:

Department of Insurance, Insurance Regulatory Fund Revenues, FY 20110-11 thru FY 2012-13		
FY 2010-11 Actual	**FY 2011-12 Estimated**	**FY 2012-13 Anticipated**
$29,877,292	$29,909,412	$29,984,412

Section 2: Remove Cap on the Number of Annual JDIG Grants

This section removes the cap on the number of Job Development Investment Grant (JDIG) projects that may be awarded in a calendar year. There is no change to the annual liability (remains at $15 million). Thus, there is not an anticipated fiscal impact from removing the cap on the number of projects.

Section 3: Industrial Development Fund Changes

Section 3 of the bill allows for the Industrial Development Fund (IDF) to fund sewer infrastructure projects in any county as long as the site that the sewer infrastructure is servicing is in an eligible county. This part of the bill is not estimated to have a fiscal impact as it is not known which projects would have applied before this change versus after this change. IDF is currently funded by loan repayments only; there is no longer a General Fund appropriation for IDF. Loan repayments average around $50,000 annually. As of May 25, 2012, IDF had a cash balance of $1,102,793.

Section 4: Broaden the 20-Year Carry Forward Provisions under Article 3J

Reducing the threshold required to qualify for 20-year carry-forward period from $150,000,000 to $100,000,000 in Tier 1 counties would create significant, but unknowable, future revenue liabilities for the State. However, because credits generated under Article 3J can be carried-forward for five years under existing law, extending the carry-forward period will not have a fiscal impact until year six.

Based on information provided by the Department of Commerce on one potential project that would invest $100,000,000 and hire 350 employees in a Tier 1 county, extending the carry-forward period would decrease State revenues by approximately $2,400,000 over the lifetime of the credits. Beyond this one project, it is difficult to accurately predict how many projects in the future would qualify for an extended carry-forward period, and thus what the full fiscal impact of extending the carry-forward period would ultimately be.

Section 5: Port Enhancement Zone Technical Correction

This section has no fiscal impact.

SOURCES OF DATA: U.S. Airways representatives; NC Dept. of Revenue; Department of Insurance; Utilities Commission

TECHNICAL CONSIDERATIONS: None

SENATE PAGES ATTENDING

COMMITTEE: Finance **ROOM:** 544

DATE: 6-5 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Allyson Wilson	Burlington	Rick Gunn
2 Alyssa Smith	Morganton	Warren Daniel
3 Meghan Breden	Wilkesboro	Dan Soucek
4 Ryan Phillips	Pinehurst	Harris Blake
5 Tristan Gordon	Monroe	Tucker
6 LaVell Williams	Clayton	David Rouzer
7 Hugh Gore	Little River, SC	Harris Blake
8 Bryles Cutts	Henderson	Doug Berger
9 Beverly Foster	Henderson	Doug Berger
10 Catherine Blalock	Asheville	Nesbitt

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 5, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Heather Barnett	Williams Mullen
Dianna Downey	PSNCuC
Kathy Harkes	Duke
K Bestman	TSS
Sam Taylor	NCBIO
Jennifer Hoffmann	OSBM
Gordon Myers	NCWRC
Chris Dillon	NCWRC
Stephen Kouba	compassnc
Chris McDaniel	BMCI
Michael A Thompson	Dominion NC Power

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Senate Finance Committee — June 5, 2012

Name of Committee — **Date**

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Betsy Bailey	PENC
Kendyth Robinson	
DAVID BARNES	PS
Amy Whited	NCMS
Maeve Gaden	GSK
John McAlister	Bank of America
Kent Yelverton	NCOA+CS
MARK COONEY	NC DCR
CORNELIUS GRAVES	WSSU
OWEN COOKS	WSSU

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 5, 2012

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
Clay Pittman	NC Dem Party
	/

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 5, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Anita McNeal	DENR
Dick Hamilton	Wildlife Federation
BERRY JENKINS	CAROLINAS AGC
[illegible]	NCuc
Will Culpepper	MVK
Susanna Hartley	K&L Gates
[illegible]	TWC
Bill Phillips	DWC
Joni Coats	NC NG - DPS
TOM BOWLIN	NC NG

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 5, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Douglas Holbrook	NC DPS
Mary Jennings	NC DPS
Kevin Howell	NCSU
DAVID RICE	MFS
Anne Murtha	DCR
Scott Whisnant	New Hanover Regional Medical Center
[illegible] Brewer	CTL
Butch Gunnells	CTL - intern to S. Brewer
Amy McConkey	NC Bev
Cameron Ervin	Gov. Office
[illegible]	UNC
Becki Gray	John Locke Foundation

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 5, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
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Bill Rowe	NC Justice Center
Michael Hauser	NC DJR
Mika Tarrant	UNCG
Lesley Gates	UNC GA
Erin Schwalbach	UNC-CH
Betty Doster	UNCC
Susan Camilleri	NCDOA
Christy Agner	NCDOA
Kari Barsness	DENR
Doug Lewis	DENR

SENATE FINANCE COMMITTEE
Tuesday, June 12, 2012 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on Tuesday, June 12, 2012 in room 544 of the Legislative Office Building. Twenty-nine members of the committee were present. Myra Waheed, Mark Burnett, Stephanie Lawer, Joey Sasso, Andy Shriver, Freeman Slaughter, and Ashley Hodges served as pages. Senator Rucho presided as chair.

H.B. 950 – Modify 2011 Appropriations Act

Senator Stevens was recognized to explain the finance portions bill (fourth edition with unengrossed amendments). The bill contains the following finance-related provisions: it provides a tax deduction for educational supplies; it sets the regulatory fees that are used to pay the expenses incurred in regulating the insurance industry and public utilities; it caps the motor fuel tax rate at 37 ½¢ a gallon for one-year (July 1, 2012 to June 30, 2013); it removes the discretionary up-front fee to participate in the driver education program and creates an additional $45 fee payable upon issuance of a limited learner permit by DMV; it requires DOT to establish and collect tolls on all ferry routes, including the Ocracoke/Hatteras Ferry and the Knotts Island Ferry; and, it prohibits the DOT from establishing or collecting tolls on I-95 prior to July 1, 2013 (DOT must conduct a comprehensive study of the transportation corridor containing I-95 and report its findings to the General Assembly by March 1, 2013). Senator Newton was recognized to offer an amendment which moves the 2013 ferry tolls to 2014. Senator Newton moved for the adoption of the amendment and the motion carried. Jim Trogdon, DOT's Chief Operating Officer, was recognized to explain the gas tax impact and potential use of funds. Bryce Paul, a fiscal analyst with the Fiscal Research Division, was recognized to explain learners permit funding. Senator White was recognized to object to ferry tolls. Senator Brunstetter moved for a favorable report as amended with a referral to the Pensions Committee. The motion was held. Senator Nesbit was recognized to speak in opposition of the gas tax cap and tolls. Bryce Paul was recognized to answer toll fund questions. He stated that $2.5 million was expected to be collected initially with an average of $5 million annually once the entire toll system was put in place. A vote was then taken on Senator Brunstetter's motion and the motion carried. A copy of the bill, the unengrossed amendments, the amendment, the summary and the fiscal note is attached.

The meeting adjourned at 1:28 PM.

Bob Rucho
Senator Bob Rucho, Presiding Chair

DeAnne Mangum
DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Finance** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 12, 2012	1:00 PM	544 LOB

Agenda – To be announced

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 06, 2012

Senator RUCHO,
submits the following with recommendations as to passage:

FAVORABLE, AS AMENDED

H.B.(SCS #1) **950** Modify 2011 Appropriations Act.

Sequential Referral:	Pensions & Retirement and Aging
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Brunstetter
Sen. Stevens
Sen. Hunt

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 950
Committee Substitute Favorable 5/29/12
Third Edition Engrossed 5/30/12
PROPOSED SENATE COMMITTEE SUBSTITUTE H950-PCS30634-MDxf-28

Short Title: Modify 2011 Appropriations Act. (Public)

Sponsors:

Referred to:

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 2011 AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

SECTION 1.1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the State Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year as provided in G.S. 143C-1-2(b).

TITLE OF ACT

SECTION 1.2. This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2012."

PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are adjusted for the fiscal year ending June 30, 2013, according to the schedule that follows. Amounts set out in parentheses are reductions from General Fund appropriations for the 2012-2013 fiscal year.

Current Operations – General Fund		**2012-2013**
EDUCATION		
Community Colleges System Office	$	(4,177,523)
Department of Public Instruction		34,142,118

University of North Carolina – Board of Governors		
Appalachian State University		260,876
East Carolina University		
Academic Affairs		4,447,287
Health Affairs		0
Elizabeth City State University		0
Fayetteville State University		473,656
NC A&T State University		0
NC Central University		0
NC State University		
Academic Affairs		5,346,252
Agricultural Research		0
Agricultural Extension		0
UNC-Asheville		0
UNC-Chapel Hill		
Academic Affairs		0
Health Affairs		0
AHEC		0
UNC-Charlotte		0
UNC-Greensboro		103,534
UNC-Pembroke		0
UNC-School of the Arts		0
UNC-Wilmington		434,038
Western Carolina University		0
Winston-Salem State University		0
General Administration		10,558,141
University Institution Programs		14,560,828
Related Educational Programs		(12,139,141)
UNC Financial Aid Private Colleges		0
NC School of Science & Math		0
UNC Hospitals		0
Total University of North Carolina – Board of Governors	$	24,045,471
HEALTH AND HUMAN SERVICES		
Department of Health and Human Services		
Division of Central Management and Support	$	(28,697,345)
Division of Aging and Adult Services		35,300,000
Division of Services for Blind/Deaf/Hard of Hearing		0
Division of Child Development		(10,000,000)
Division of Health Service Regulation		0
Division of Medical Assistance		229,575,042
Division of Mental Health, Dev. Disabilities and Sub. Abuse		3,245,954
NC Health Choice		0
Division of Public Health		5,077,450
Division of Social Services		0
Division of Vocational Rehabilitation		0
Total Health and Human Services	$	234,501,101
NATURAL AND ECONOMIC RESOURCES		
Department of Agriculture and Consumer Services	$	45,794,624
Department of Commerce		
Commerce		12,050,590
Commerce State-Aid		(2,843,040)
NC Biotechnology Center		(351,034)
Rural Economic Development Center		(7,007,535)

Department of Environment and Natural Resources		(41,893,545)
DENR Clean Water Management Trust Fund		(316,738)
Department of Labor		0
Wildlife Resources Commission		434,397
JUSTICE AND PUBLIC SAFETY		
Department of Public Safety	$	(35,437,508)
Judicial Department		(4,279,349)
Judicial Department – Indigent Defense		0
Department of Justice		(6,375,063)
GENERAL GOVERNMENT		
Department of Administration	$	(907,061)
Department of State Auditor		(213,521)
Office of State Controller		780,018
Department of Cultural Resources		
Cultural Resources		(1,233,940)
Roanoke Island Commission		(24,070)
State Board of Elections		461,404
General Assembly		1,570,422
Office of the Governor		
Office of the Governor		(94,823)
Office of State Budget and Management		(116,973)
OSBM – Reserve for Special Appropriations		(61,612)
Housing Finance Agency		(8,064,634)
Department of Insurance		
Insurance		(73,550)
Insurance – Volunteer Safety Workers' Compensation		0
Office of Lieutenant Governor		(144,150)
Office of Administrative Hearings		(82,845)
Department of Revenue		(1,563,991)
Department of Secretary of State		(213,091)
Department of State Treasurer		
State Treasurer		0
State Treasurer – Retirement for Fire and Rescue Squad Workers		0
RESERVES, ADJUSTMENTS AND DEBT SERVICE		
Information Technology Fund	$	(750,000)
Reserve for Job Development Investment Grants (JDIG)		(6,500,000)

Judicial Retirement System Contribution		100,000
Continuation Review Reserve		(35,576,758)
Performance Pay Reserve		(121,105,840)
Reserve for Compensation Increases and Personnel Flexibility		159,984,426
Disability Income Plan Rate Reduction		(8,688,000)
One North Carolina Fund		9,000,000
Reserve for VIPER		25,000,000
Debt Service		
General Debt Service		(52,904,635)
TOTAL CURRENT OPERATIONS – GENERAL FUND	**$**	**206,863,742**

GENERAL FUND AVAILABILITY STATEMENT

SECTION 2.2.(a) Section 2.2(a) of S.L. 2011-145, as amended by Section 2(b) of S.L. 2011-391 and Section 5(a) of S.L. 2011-395, is repealed. The General Fund availability used in adjusting the 2012-2013 budget is shown below:

		FY 2012-2013
Unappropriated Balance Remaining	$	41,232,325
Anticipated Overcollections from FY 2011-2012		232,500,000
Anticipated Reversions for FY 2011-2012		205,500,000
Net Supplemental Medicaid Appropriation (S.L. 2012-2)		(154,000,000)
Less Earmarkings of Year-End Fund Balance		
Savings Reserve Account		(139,339,925)
Repairs and Renovations Reserve Account		(39,339,925)
Beginning Unreserved Fund Balance	**$**	**146,552,475**
Revenue Based on Existing Tax Structure		**18,931,200,000**
Nontax Revenue		
Investment Income		21,600,000
Judicial Fees		258,700,000
Disproportionate Share		115,000,000
Insurance		73,700,000
Other Nontax Revenues		304,400,000
Highway Trust Fund Transfer		27,600,000
Highway Fund Transfer		212,280,000
Total – Nontax Revenues		**1,013,280,000**
Subtotal General Fund Availability		**20,091,032,475**
Adjustments to Availability: 2012 Session		
E-Commerce Reserve Cash Balance		2,470,642
One North Carolina Fund Cash Balance		50,000,000
Sale of State Assets Receipt		(25,000,000)
Information Technology Internal Service Fund Cash Balance		14,000,000
National Mortgage Settlement		9,610,000
Highway Fund Transfer – Technical Adjustment		8,000,000
Work Opportunity Tax Credit Extension		(800,000)
Subtotal Adjustments to Availability:		**58,280,642**
Revised Total General Fund Availability		**20,149,313,117**
Less General Fund Appropriations		**20,149,313,117**
Balance Remaining		**0**

SECTION 2.2.(b) Notwithstanding the provisions of G.S. 143C-4-3, the State Controller shall transfer only thirty-nine million six hundred eighty-nine thousand nine hundred twenty-five dollars ($39,689,925) from the unreserved fund balance to the Repairs and Renovations Reserve Account on June 30, 2012.

SECTION 2.2.(c) Funds transferred under this section to the Repairs and Renovations Reserve Account are appropriated for the 2012-2013 fiscal year to be used in accordance with G.S. 143C-4-3.

SECTION 2.2.(d) Notwithstanding G.S. 143C-4-2 and pursuant to subsection (a) of this section, the State Controller shall transfer one hundred thirty-nine million six hundred eighty-nine thousand nine hundred twenty-five dollars ($139,689,925) from the unreserved fund balance to the Savings Reserve Account on June 30, 2012.

This is not an "appropriation made by law," as that phrase is used in Section 7(1) of Article V of the North Carolina Constitution.

SECTION 2.2.(e) Notwithstanding any other provision of law, the sum of fourteen million dollars ($14,000,000) shall be transferred from the Information Technology Internal Service Fund ending balance for State fiscal year 2011-2012, Budget Code 74660, to the State Controller to be deposited in the appropriate budget code as determined by the State Controller for the 2012-2013 fiscal year.

SECTION 2.2.(g) Notwithstanding any other provision of law, the sum of fifty million dollars ($50,000,000) from the Department of Commerce, One North Carolina Fund, shall be transferred to the State Controller to be deposited in the appropriate budget code as determined by the State Controller for the 2012-2013 fiscal year.

SECTION 2.2.(h) Notwithstanding any other provision of law, the sum of two million four hundred seventy thousand six hundred forty-two dollars ($2,470,642) from the E-Commerce Reserve, Budget Code 24100, shall be transferred to the State Controller to be deposited in the appropriate budget code as determined by the State Controller for the 2012-2013 fiscal year.

SECTION 2.2.(k) This section becomes effective June 30, 2012.

PART III. CURRENT OPERATIONS/HIGHWAY FUND

CURRENT OPERATIONS/HIGHWAY FUND

SECTION 3.1. Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are adjusted for the fiscal year ending June 30, 2013, according to the following schedule. Amounts set out in parentheses are reductions from Highway Fund Appropriations for the 2012-2013 fiscal year.

Current Operations – Highway Fund	**2012-2013**
Department of Transportation	
Administration	$ 1,595,705
Division of Highways	
Administration	(164,266)
Construction	(17,737,270)
Maintenance	(40,866,948)
Planning and Research	0
OSHA Program	0
Ferry Operations	(3,000,000)
State Aid	
Municipalities	(912,604)
Public Transportation	(28,972,845)
Airports	0
Railroads	0
Governor's Highway Safety Program	0

Division of Motor Vehicles	50,173,639
Other State Agencies, Reserves, and Transfers	(64,065,411)
Capital Improvements	0
Total	**$ (103,950,000)**

HIGHWAY FUND AVAILABILITY STATEMENT

SECTION 3.2. Section 3.2 of S.L. 2011-145 is repealed. The Highway Fund availability used in adjusting the 2012-2013 fiscal year budget is shown below:

Highway Fund Availability Statement	**2012-2013**
Unreserved Fund Balance	$ 33,000,000
Revenue Based On Existing Law	2,062,680,000
Adjustment to Revenue Availability (Motor Fuels Tax)	$ (46,650,000)
Adjustment to Revenue Availability (Civil Penalties)	$ (22,000,000)
Adjustment to Revenue Availability (Limited Learner's Permit)	$ 3,180,000
Revised Total Highway Fund Availability	**$ 2,030,210,000**
Unappropriated Balance	**$ 0**

PART IV. HIGHWAY TRUST FUND APPROPRIATIONS

CURRENT OPERATIONS/HIGHWAY TRUST FUND

SECTION 4.1. Appropriations from the State Highway Trust Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are adjusted for the fiscal year ending June 30, 2013, according to the following schedule. Amounts set out in brackets are reductions from Highway Trust Fund Appropriations for the 2012-2013 fiscal year.

Current Operations – Highway Trust Fund	**2012-2013**
Intrastate System	$ (9,338,145)
Aid to Municipalities	(979,789)
Secondary Roads	(979,789)
Urban Loops	(3,775,957)
Program Administration	(1,516,320)
Turnpike Authority	(32,500,000)
Transfer to General Fund	0
Transfer to Highway Fund	0
Debt Service	0
Mobility Fund	77,500,000
Reserves	(45,000,000)
GRAND TOTAL CURRENT OPERATIONS	**$ (16,590,000)**

HIGHWAY TRUST FUND AVAILABILITY STATEMENT

SECTION 4.2. Section 4.2 of S.L. 2011-145 is repealed. The Highway Trust Fund availability used in developing the 2012-2013 fiscal year budget is shown below:

Highway Trust Fund Availability	**2012-2013**
Unreserved Fund Balance	$ 15,000,000
Revenue Based on Existing Law	1,070,870,000
Adjustment to Revenue Availability (Motor Fuels Tax)	(15,550,000)

Revised Total Highway Trust Fund Availability **$1,070,320,000**

PART V. OTHER APPROPRIATIONS

ELIMINATE REPORTING REQUIREMENT/APPROPRIATION OF OTHER FUNDS/USE OF DEPARTMENTAL RECEIPTS

SECTION 5.1. Section 5.1 of S.L. 2011-145 reads as rewritten:

"**SECTION 5.1.(a)** State funds, as defined in G.S. 143C-1-1(d)(25), are appropriated as provided in G.S. 143C-1-2 for the 2011-2013 fiscal biennium, with the adjustments made to the continuation budget as reflected in the Governor's Recommended Budget and Budget Support Document, as follows:

(1) For all budget codes listed in "The State of North Carolina Governor's Recommended Budget, 2011-2013" and in the Budget Support Document, cash balances and receipts are appropriated up to the amounts specified, as adjusted by the General Assembly, for the 2011-2012 fiscal year and the 2012-2013 fiscal year. Funds may be expended only for the programs, purposes, objects, and line items or as otherwise authorized by the General Assembly. Expansion budget funds listed in those documents are appropriated only as otherwise provided in this act.

(2) Notwithstanding the provisions of subdivision (1) of this subsection:

a. Any receipts that are required to be used to pay debt service requirements for various outstanding bond issues and certificates of participation are appropriated up to the actual amounts received for the 2011-2012 fiscal year and the 2012-2013 fiscal year and shall be used only to pay debt service requirements.

b. Other funds, cash balances, and receipts of funds that meet the definition issued by the Governmental Accounting Standards Board of a trust or agency fund are appropriated for and in the amounts required to meet the legal requirements of the trust agreement for the 2011-2012 fiscal year and the 2012-2013 fiscal year.

"**SECTION 5.1.(b)** Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by the State Budget Act. Overrealized receipts are appropriated up to the amounts necessary to implement this subsection.

~~"**SECTION 5.1.(c)** In addition to the consultation and reporting requirements set out in G.S. 143C-6-4, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division within 30 days after the end of each quarter on any overrealized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount overrealized, the amount authorized for expenditure, and the rationale for expenditure.~~

"**SECTION 5.1.(d)** ~~Notwithstanding subsections (a) and (b) of this section, there is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year.~~ Notwithstanding subsections (a) and (b) of this section, the following additional appropriations are hereby made:

(1) There is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year.

(2) There is appropriated from the General Fund an amount equal to the amount required to issue refunds for tax overpayments, in accordance with the provisions of Chapter 105 of the General Statutes or any other applicable law.

(3) There is appropriated from the Escheat Fund any escheated property awarded to a claimant in accordance with the provisions of Chapter 116B of the General Statutes or any other applicable law.

(4) There is appropriated from the appropriate fund, an amount equal to the amount required to refund any other overpayment made to a State agency, in accordance with applicable law."

EXPENDITURE OF FUNDS RECEIVED FROM GRANTS AWARDED SUBSEQUENT TO BUDGET ENACTMENT

SECTION 5.2. Section 5.2(a) of S.L. 2011-145 reads as rewritten:

"**SECTION 5.2.(a)** Notwithstanding G.S. 143C-6-4, State agencies may, with approval of the Director of the ~~Budget and after consultation with the Joint Legislative Commission on Governmental Operations,~~Budget, spend funds received from grants awarded subsequent to the enactment of this act. A State agency shall report expenditures of any grants received subsequent to the enactment of The Current Operations and Capital Improvements Appropriations Act of 2012 to the Joint Legislative Commission on Governmental Operations within 30 days."

EDUCATION LOTTERY

SECTION 5.3.(a) Notwithstanding G.S. 18C-164, the revenue used to support appropriations made in this act is transferred from the State Lottery Fund in the amount of four hundred forty-one million three hundred fifty-nine thousand four hundred one dollars ($441,359,401) for the 2012-2013 fiscal year.

SECTION 5.3.(b) Notwithstanding G.S. 18C-164, the North Carolina State Lottery Commission shall not transfer funds to the Education Lottery Reserve Fund for the 2012-2013 fiscal year.

SECTION 5.3.(c) Section 5.4(f) of S.L. 2011-145 is repealed.

SECTION 5.3.(d) Notwithstanding G.S. 18C-164(f) or any other provision of law, excess lottery receipts realized in the 2011-2012 fiscal year in the amount of twenty-five million five hundred eighty-eight thousand three hundred seventy dollars ($25,588,370) shall be allocated for UNC Need-Based Financial Aid.

SECTION 5.3.(g) Notwithstanding G.S. 18C-164, the appropriations made from the Education Lottery Fund for the 2012-2013 fiscal year are as follows:

Teachers in Early Grades	$ 220,643,188
Prekindergarten Program	$ 63,135,709
Public School Building Capital Fund	$ 100,000,000
Scholarships for Needy Students	$ 30,450,000
UNC Need-Based Financial Aid	$ 52,718,874
Total Appropriation	$ 466,947,771

SECTION 5.3.(h) Notwithstanding G.S. 18C-164(c), G.S. 115C-546.2(d), or any other provision of law, funds appropriated in this section to the Public School Building Capital Fund for the 2012-2013 fiscal year shall be allocated to counties on the basis of average daily membership (ADM).

SECTION 5.3.(i) Notwithstanding G.S. 18C-164(c), Article 35A of Chapter 115C of the General Statutes, or any other provision of law, the funds appropriated in this section for UNC Need-Based Financial Aid shall be administered in accordance with the policy adopted by the Board of Governors of The University of North Carolina.

SECTION 5.3.(j) Notwithstanding G.S. 18C-164(f), if the actual net lottery revenues for the 2012-2013 fiscal year exceed the amounts appropriated in subsection (g) of this section, the excess net lottery revenues shall be allocated for UNC Need-Based Financial Aid and are appropriated for that purpose.

PART VI. GENERAL PROVISIONS

REMOVE CONSULTATION BY GOVERNOR REQUIREMENT/INTERIM APPROPRIATIONS COMMITTEES

SECTION 6.1. Section 6.5 of S.L. 2011-145 is repealed.

EXTEND REPORTING DATE/UTILIZATION REVIEW/PUBLIC SCHOOL AND PUBLIC HEALTH NURSES

SECTION 6.2. Section 6.9(b) of S.L. 2011-145 reads as rewritten:

"**SECTION 6.9.(b)** By ~~May~~ December 1, 2012, the Fiscal Research Division shall report to the House and Senate Appropriations Committees."

VOICE INTEROPERABILITY PLAN FOR EMERGENCY RESPONSE (VIPER) SYSTEM

SECTION 6.3.(a) It is the intent of the General Assembly to continue to support development and implementation of the State's Voice Interoperability Plan for Emergency Response (VIPER) system in subsequent fiscal years. However, no State agency, office, commission, or non-State entity shall enter into a new contract or amend any existing contract that would commit or otherwise spend any State funds, as defined in G.S. 143C-1-1(d)(25), during the 2011-2012 fiscal year unless those funds were expressly appropriated by the General Assembly for the State's VIPER system.

SECTION 6.3.(b) Notwithstanding any other provision of law to the contrary, any unexpended, unencumbered State funds remaining on June 30, 2012, allotted to or received by the Department of Public Safety (Department) or any unexpended, unencumbered State funds allotted to or received by and remaining in the budgets of the previous agencies that now constitute the Department shall revert to the State's General Fund. For purposes of this section, the term "expenditure" means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge, or subscription of money or anything of value whatsoever, and any contract, agreement, promise or other obligation. For purposes of this section, the term "encumbrance" means a financial obligation created by a purchase order, contract, salary commitment, unearned or prepaid collections for services provided by the State, or other legally binding agreement.

SECTION 6.3.(c) Effective July 1, 2012, the Department is hereby authorized to commit or spend up to twenty-five million dollars ($25,000,000) in the 2012-2013 fiscal year to continue development and implementation of the State's VIPER system.

SECTION 6.3.(d) The Department of Public Safety shall report to the Joint Legislative Committee on Inf9ormation Technology and the Joint Legislative Oversight Committee on Justice and Public Safety on a quarterly basis on the progress of the State's VIPER system.

EXTEND MATURITY DATE/GLOBAL TRANSPARK

SECTION 6.4. G.S. 147-69.2(b)(11), as amended by Section 7 of S.L. 2005-144, Section 2 of S.L. 2005-201, Section 28.17 of S.L. 2005-276, Section 27.7 of S.L. 2007-323, Section 25.2 of S.L. 2009-451, Section 6.10(a) of S.L. 2011-145, and Section 4(b) of S.L. 2011-340, reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds. The State Treasurer may invest the funds as provided in this subsection. If an investment was authorized by this subsection at the time the investment was made or contractually committed to be made, then none of the percentage or other limitation on investments set forth in this subsection shall be construed to require the State Treasurer to subsequently dispose of the investment or fail to honor any contractual commitments as a result of changes in market values, ratings, or other investment qualifications.

...

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than October 1, ~~2012.~~2014. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the

divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision.

...."

NATIONAL MORTGAGE SETTLEMENT APPROPRIATIONS

SECTION 6.5.(a) The Consent Judgment in *U.S. v. Bank of America*, Civil Action No. 12-CV-0361, dated April 4, 2012, provides for monetary payments to the State and, therefore, the General Assembly authorizes the expenditure of these State revenues as set forth in subsection (b) of this section.

SECTION 6.5.(b) Settlement funds received by the State pursuant to the Consent Judgment in *U.S. v. Bank of America*, Civil Action No. 12-CV-0361, dated April 4, 2012, shall be deposited and credited in accordance with the North Carolina Constitution and Chapter 143C of the General Statutes and are appropriated for the 2012-2013 fiscal year as follows:

(1) The sum of four million seven hundred eighty thousand dollars ($4,780,000) to the Department of Justice, Consumer Protection Division, for financial fraud detection and prevention efforts.

(2) The sum of six million six hundred ninety thousand dollars ($6,690,000) to the Administrative Office of the Courts to be administered by the North Carolina Conference of District Attorneys. Funds shall be used for grants and training for prosecutorial offices to expand prosecution of lending and financial crimes.

(3) The sum of thirty million five hundred twenty thousand dollars ($30,520,000) to the Housing Finance Agency for housing counselors and other assistance to help distressed homeowners.

(4) The sum of five million seven hundred forty thousand dollars ($5,740,000) in civil penalties shall be deposited in the Civil Penalty and Forfeiture Fund.

(5) The sum of two million eight hundred seventy thousand dollars ($2,870,000) to the Department of Justice, State Bureau of Investigation, to expand its accounting and financial investigative ability and its expertise to investigate financial and lending crimes.

SECTION 6.5.(c) No State agency receiving money from the National Mortgage Settlement may make expenditures for purposes not authorized by the General Assembly, nor may a State agency spend an amount totaling more than that appropriated by the General Assembly; however, a State agency may use the funds to offset 2012-2013 fiscal year nonrecurring reductions. Any positions established by State agencies with funds appropriated pursuant to this section shall be temporary or time-limited positions.

SECTION 6.5.(d) Nothing in this section is intended to be in conflict with the mandatory provisions of the Consent Judgment.

EXECUTIVE ORDER NO. 115/HURRICANE IRENE DISASTER LOANS

SECTION 6.7.(a) Notwithstanding Executive Order No. 115, Proclamation of a State of Disaster for Pamlico and Tyrrell Counties, issued on February 21, 2012, or any other law to the contrary, the Counties of Pamlico and Tyrrell, upon proof of flood insurance coverage to the Department of Public Safety, Emergency Management Section, shall not be held liable for that portion of funds borrowed under Executive Order No. 115 to cover damage sustained to their county school buildings and county school structures as a result of Hurricane Irene.

SECTION 6.7.(b) If Pamlico or Tyrrell County allows the flood insurance coverage required in subsection (a) of this section to lapse at any time, that county shall be liable for the full repayment of funds borrowed under Executive Order No. 115.

AUTHORIZE CERTAIN MODIFICATIONS OF THE CERTIFIED BUDGET

SECTION 6.9. Section 6.1(b) of S.L. 2011-145, as amended by Section 5 of S.L. 2011-391, reads as rewritten:

"**SECTION 6.1.(b)** For the 2011-2013 fiscal biennium, and notwithstanding the provisions of Chapter 143C of the General Statutes or any other provision of law, the certified budget for each State agency shall reflect only the total of all appropriations enacted for each State agency by the General Assembly in this act as modified by this act; therefore, the Director of the

Budget shall modify the certified budget only to reflect the following actions and only to the extent that they are authorized by this act:

(1) The allocation of funds set out in reserves.
(2) Government reorganizations.
(3) ~~Funds~~ The allocation of funds authorized by G.S. 116-30.3A and G.S. 116-40.22(c).
(4) The allocation of funds carried forward from one fiscal year to another.
(5) Changes required by acts that become law after the effective date of this section, irrespective of whether they are authorized by this act.

The Director of the Budget shall set out all other budget modifications in the authorized budget."

ESTABLISHING OR INCREASING FEES UNDER THIS ACT

SECTION 6.10.(a) Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee to the level authorized or anticipated in this act.

SECTION 6.10.(b) Notwithstanding G.S. 150B-21.1A(a), an agency may adopt an emergency rule in accordance with G.S. 150B-21.1A to establish or increase a fee as authorized by this act if the adoption of a rule would otherwise be required under Article 2A of Chapter 150B of the General Statutes.

CONSULTATION WITH A LEGISLATIVE COMMITTEE

SECTION 6.11. G.S. 12-3 reads as rewritten:

"§ 12-3. Rules for construction of statutes.

In the construction of all statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the General Assembly, or repugnant to the context of the same statute, that is to say:

...

(15) Requirement to consult with a committee or commission of the General Assembly. – All words purporting to require an individual or other entity to consult with a committee or commission of the General Assembly before taking an action shall be construed to require the entity to do all of the following:

a. Submit a report of the action under consideration to the chairs and staff of the committee or commission. The report shall include all information required by statute and the rules of that committee or commission. The staff of the committee or commission shall make the report available electronically to the members of the committee or commission and to the public.

b. Appear at a meeting of the committee or commission at which the matter is heard. Unless another period of time is specified by statute, the requirement to appear is satisfied if the committee or commission does not have a meeting at which the matter is heard within 90 days of receiving the required submission."

MEDICAID PROGRAM DISCLOSURES TO THE FISCAL RESEARCH DIVISION

SECTION 6.12. G.S. 120-32.01 reads as rewritten:

"§ 120-32.01. Information to be supplied.

(a) Every State department, State agency, or State institution shall furnish the Legislative Services Office and the Research, Fiscal Research, Program Evaluation, and Bill Drafting Divisions any information or records requested by them and access to any facilities and personnel requested by them. Except when accessibility is prohibited by a federal statute, federal regulation, or State statute, every State department, State agency, or State institution shall give the Legislative Services Office and these divisions access to any data base or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission.

(b) Notwithstanding subsection (a) of this section, access to the BEACON/HR payroll system by the Research and Bill Drafting Divisions shall only be through the Fiscal Research

Division and access to the system by the Program Evaluation Division shall only be through the Division Director and two employees of the Division designated by the Division Director.

(c) Consistent with subsection (a) of this section and notwithstanding any other law relating to privacy of personnel records, the Retirement Systems Division of the Department of State Treasurer shall furnish the Fiscal Research Division direct online read-only access to active and retired member information or records maintained by the Retirement Systems Division in online information systems. Direct online read-only access shall not include access to medical records of individual members. Nothing in this subsection shall limit the provisions of subsection (a) of this section.

(d) For the purpose of ensuring financial transparency, accountability, and efficient operation of the Medicaid program finances by the Department of Health and Human Services, employees of the Fiscal Research Division designated by the Director of Fiscal Research shall have access to all records related to the Medicaid program. The Department of Health and Human Services shall cooperate fully with the designated employees of the Fiscal Research Division to facilitate (i) the evaluation of all financial and policy components of the Medicaid program, including financial projections, (ii) the evaluation of the budgetary construction and management of the Medicaid program, and (iii) the identification of unusual financial events. The Department shall also provide the Fiscal Research Division with electronic access to any departmental data for assessing or predicting Medicaid financial outcomes, and to any modeling software used for assessing or predicting Medicaid program financial outcomes. Employees of the Department shall not impede, delay, or restrict the provision of information or limit access to any departmental personnel necessary for the Fiscal Research Division to perform its monitoring and analysis of the Medicaid program.

Nothing in this subsection shall be construed to grant Fiscal Research Division employees access to medical records of individuals or other information protected under the Health Information Portability and Accountability Act (HIPAA).

Nothing in this subsection shall limit the provisions of subsection (a) of this section.

(e) The Department of Health and Human Services shall provide its annual financial projection of Medicaid program expenditures and requirements for any future fiscal years to the Chairs of the House Appropriations Committee and to the Chairs of the Senate Appropriations/Base Budget Committee no later than the date the Governor presents budget recommendations in accordance with G.S. 143C-3-5. Prior to providing this projection, the Secretary shall cooperatively engage designated employees of the Fiscal Research Division in ongoing bilateral analytical discussions about historical, current, and unanticipated factors that may impact projected Medicaid program financial outcomes that may affect the formulation of an official departmental annual financial projection.

Nothing in this subsection shall limit the provisions of subsection (a) of this section."

STATE CONTRACTS SHALL INCLUDE A CLAUSE MAKING THEM SUBJECT TO THE AVAILABILITY OF APPROPRIATIONS

SECTION 6.13.(a) G.S. 143C-6-8 reads as rewritten:

"**§ 143C-6-8. State agencies may incur financial obligations only if authorized by the Director of the Budget and subject to the availability of appropriated funds.**

(a) Limitation. – Unless otherwise authorized by the Director as provided by law, purchase orders, contracts, salary commitments, and any other financial obligations by State agencies shall be subject to the availability of appropriated funds or available funds that are not State funds as defined in this Chapter. Any employment contract or salary commitment that is paid in whole or in part with State funds shall also be subject to this limitation.

(b) Notice. – Any written purchase order, contract, salary commitment, or other financial obligation subject to this section shall include a clause that sets forth the limitation imposed by subsection (a) of this section. Where this section applies but there is no written document to which the limitation may be added, the entity that administers the State funds at issue shall notify the person or entity of the limitation."

SECTION 6.13.(b) The Office of State Personnel shall adopt a policy implementing the relevant portions of G.S. 143C-6-8, as amended by this section, for State employees.

SECTION 6.13.(c) This section becomes effective September 1, 2012.

MANAGEMENT FLEXIBILITY REDUCTIONS TO ENSURE ADEQUATE FUNDS ARE AVAILABLE TO COVER MEDICAID SHORTFALLS

SECTION 6.14.(a) The General Assembly finds that:

(1) In recent fiscal years, Medicaid program costs have grown disproportionately more than the remainder of the State budget.

(2) Addressing large and frequent Medicaid program shortfalls has required the reallocation of funds that could have been used for other purposes.

(3) To cover an early draw down of Medicaid funds during the 2009-2010 fiscal year, the 2011 General Assembly was required to make an additional one hundred twenty-five million dollars ($125,000,000) available to the Medicaid program.

(4) To cover a shortfall in the 2011-2012 Medicaid budget, the 2012 Session of the 2011 General Assembly was required to make an additional two hundred five million five hundred thousand dollars ($205,500,000) available to the Medicaid program.

(5) To ensure that adequate funds are available to cover any potential shortfall in the 2012-2013 Medicaid budget, it is necessary to implement management flexibility reductions across State government.

SECTION 6.14.(b) In order to provide adequate funds to cover any potential shortfall in the 2012-2013 Medicaid budget while minimizing the impact on State government services, the Director of the Budget shall ensure that cost savings required through the management flexibility reductions in this act are realized so that at least fifty percent (50%) of the cost savings are realized by December 31, 2012.

PART VI-A. INFORMATION TECHNOLOGY

INFORMATION TECHNOLOGY FUND/AVAILABILITY

SECTION 6A.1. Section 6A.1(a) of S.L. 2011-145 reads as rewritten:

"**SECTION 6A.1.(a)** The availability used to support appropriations made in this act from the Information Technology Fund established in G.S. 147-33.72H is as follows:

	FY 2011-2012	**FY 2012-2013**
Appropriation from General Fund	$4,458,142	$ 6,158,142
Interest	$ 25,000	$ 25,000
IT Fund Balance June 30	$ 792,000	$ ~~0~~794,928
Transfer to General Fund		$ (750,000)
Total Funds Available	**$5,275,142**	**$ ~~6,183,142~~**
		$ 6,228,070

Appropriations are made from the Information Technology Fund for the 2011-2013 fiscal biennium as follows:

	FY 2011-2012	**FY 2012-2013**
Information Technology Operations		
Center for Geographic Information and Analysis	$ 599,347	~~$599,347~~$461,871
Enterprise Security Risk Management	$ 864,148	$ 864,148
Enterprise Project Management Office	$1,473,285	$ 1,473,285
Architecture and Engineering	$ 581,986	~~$ 581,986~~$ 851,986
Criminal Justice Information Network	$ 166,422	~~$166,422~~$178,826
Statewide IT Procurement	$ 0	$ 0
State Web site	$ 100,000	$ ~~0~~ $150,000
ITS Overhead Reduction	$ (91,486)	$ (91,486)
Subtotal Information Technology Operations	$3,693,702	$ ~~3,593,702~~
		$ 3,888,630
Information Technology Projects		
State Portal	$ 0	$ 0
IT Consolidation	$ 776,440	~~$784,440~~$534,440
Transfer to OSC for E-Forms	$ 500,000	$ 500,000
Subtotal Information Technology Projects	$1,276,440	~~$1,284,440~~$1,034,440

Data Integration License Funding Transfer to State Agencies	$ 200,000	$ 1,200,000
Position Transfer to Office of State Budget and Management	$ 105,000	$ 105,000
Total	**$5,275,142~~$6,183,142~~**	**$6,228,070**".

OFFICE OF INFORMATION TECHNOLOGY SERVICES/CENTER FOR GEOGRAPHIC INFORMATION AND ANALYSIS/GIS FUNCTIONS AND COST RECOVERY

SECTION 6A.2. G.S. 147-33.82(a) is amended by adding a new subdivision to read:

"(a) In addition to any other functions required by this Article, the Office of Information Technology Services shall:

...

(10) Provide geographic information systems services through the Center for Geographic Information and Analysis on a cost recovery basis. The Office of Information Technology Services and the Center for Geographic Information and Analysis may contract for funding from federal or other sources to conduct or provide geographic information systems services for public purposes."

TAX INFORMATION MANAGEMENT SYSTEM/ADDITIONAL PUBLIC-PRIVATE PARTNERSHIP AUTHORIZED

SECTION 6A.3.(a) Additional Public-Private Partnership. – The Secretary of Revenue may enter into an additional public-private arrangement in order to expand the implementation of the Tax Information Management System (TIMS). All such arrangements will terminate June 30, 2018. The public-private arrangement may include terms necessary to implement additional revenue-increasing or cost-savings components if all of the following conditions are met:

(1) The funding of the project under the arrangement comes from revenue generated by or cost savings resulting from the project.

(2) The funding of the project is dependent on increased-revenue or cost-savings streams that are different from the existing benefits stream for the implementation of TIMS.

(3) The project involves additional identified initiatives that will be integrated into the TIMS solution.

SECTION 6A.3.(b) Contracts. – Work under an additional public-private arrangement that is authorized by this section may be contracted by requests for proposals, modifications to the existing contracts, purchases using existing contracts, or other related contract vehicles.

SECTION 6A.3.(c) Management/Performance Measurement. – The Secretary of Revenue shall follow the existing model for public-private arrangement oversight and shall establish a measurement process to determine the increased revenue or cost savings attributed to the additional public-private arrangement authorized by this section. To accomplish this, the Secretary shall consult subject matter experts in the Department of Revenue, in other governmental units, and in the private sector, as necessary. At a minimum, the measurement process shall include all of the following:

(1) Calculation of a revenue baseline against which the increased revenue attributable to the project is measured and a cost-basis baseline against which the cost savings resulting from the project are measured.

(2) Periodic evaluation to determine whether the baselines need to be modified based on significant measurable changes in the economic environment.

(3) Monthly calculation of increased revenue and cost savings attributable to contracts executed under this section.

SECTION 6A.3.(d) Funding. – Of funds generated from increased revenues or cost savings as compared to the baselines established by subdivision (1) of subsection (c) of this section, in the General Fund, the Highway Fund, and that State portion of the Unauthorized Substance Tax collections of the Special Revenue Fund, the sum of up to a total of sixteen million dollars ($16,000,000) may be used by the Office of State Budget and

Management to make purchases related to the implementation of the additional public-private arrangement authorized by this section, including payment for services from non-State entities.

SECTION 6A.3.(e) Internal Costs. – For the 2012-2013 fiscal year, in addition to the funding authorized in subsection (d) of this section and Section 6A.5(a) of S.L. 2011-145, the Department of Revenue may retain both of the following:

(1) An additional sum of ten million two hundred twenty-eight thousand dollars ($10,228,000) from benefits generated for the General Fund since the beginning of the public-private partnership described under Section 6A.5(a) of S.L. 2011-145. These funds shall be used as payment of internal costs for the fiscal biennium, and such funds are hereby appropriated for this purpose.

(2) An additional sum of six million dollars ($6,000,000) from benefits generated for the General Fund since the beginning of the public-private partnership described under Section 6A.5(a) of S.L. 2011-145. These funds shall be used to support internal costs and any new resources necessary to provide additional electronic services, to include payments and returns. Any requirements for electronic forms and digital signatures resulting from the electronic services expansion shall be coordinated with the Office of the State Controller.

SECTION 6A.3.(f) Expert Counsel Required. – Notwithstanding G.S. 114-2.3, the Department of Revenue shall engage the services of private counsel with the pertinent information technology and computer law expertise to negotiate and review contracts associated with an additional public-private arrangement authorized under this section.

SECTION 6A.3.(g) Oversight Committee. – The Oversight Committee established under Section 6A.5(c) of S.L. 2011-145 shall have the same responsibilities and duties with respect to an additional public-private arrangement authorized by this section as it does with respect to public-private arrangements to implement TIMS and the additional PDP components.

SECTION 6A.3.(h) Reporting. – Beginning August 1, 2012, and quarterly thereafter, the Department of Revenue shall submit detailed written reports to the Chairs of the House of Representatives and Senate Committees on Appropriations, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the General Assembly. The report shall include an explanation of all of the following:

(1) Details of each public-private contract.

(2) The benefits from each contract.

(3) A comprehensive forecast of the benefits of using public-private agreements to implement TIMS, the additional PDP components, and additional components authorized by this section, including cost savings and the acceleration of the project timeline.

(4) Any issues associated with the operation of the public-private partnership.

SECTION 6A.3.(i) Information Technology Project Oversight. – In addition to the oversight provided by the Oversight Committee established in Section 6A.5(c) of S.L. 2011-145, the additional public-private arrangement authorized by this section shall be subject to existing State information technology project oversight laws and statutes, and the project management shall comply with all statutory requirements and other criteria established by the State Chief Information Officer and the Office of State Budget and Management for information technology projects. The State Chief Information Officer and the Office of State Budget and Management shall immediately report any failure to do so to the Joint Legislative Oversight Committee on Information Technology, the Chairs of the House of Representatives and Senate Committees on Appropriations, and the Fiscal Research Division.

SECTION 6A.3.(j) Extension. – Section 6A.5(c) of S.L. 2011-145 reads as rewritten:

"**SECTION 6A.5.(c)** There is established within the Department of Revenue the Oversight Committee for reviewing and approving the benefits measurement methodology and calculation process. The Oversight Committee shall review and approve in writing all contracts, including change orders, amendments to contracts, and addendums to contracts, before they are executed under this section. This shall include (i) details of each public-private contract, (ii) the benefits from each contract, and (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including the measurement process established for the Secretary of Revenue. The Oversight Committee shall approve all of the fund transfers for this project. Within five days of entering into a

contract, the Department shall provide copies of each contract and all associated information to the Joint Legislative Oversight Committee on Information Technology, the Chairs of the House of Representatives and Senate Committees on Appropriations, and the Fiscal Research Division.

The members of the Committee shall include the following:

(1) The State Budget Director;
(2) The Secretary of the Department of Revenue;
(3) The State Chief Information Officer;
(4) Two persons appointed by the Governor;
(5) One member of the general public having expertise in information technology appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
(6) One member of the general public having expertise in economic and revenue forecasting appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate.

The State Budget Director shall serve as chair of the Committee. The Committee shall set its meeting schedule and adopt its rules of operation by majority vote. A majority of the members constitutes a quorum. Vacancies shall be filled by the appointing authority. Administrative support staff shall be provided by the Department of Revenue. Members of the Committee shall receive reimbursements for subsistence and travel expenses as provided by Chapter 138 of the General Statutes. The Committee shall terminate on ~~June 30, 2015.~~June 30, 2018.

The Department shall provide copies of the minutes of each meeting and all associated information to the Joint Legislative Oversight Committee on Information Technology, the Chairs of the House of Representatives and Senate Committees on Appropriations, and the Fiscal Research Division."

SECTION 6A.3.(k) One-Time Payment. – To accelerate the implementation of the Tax Information Management System, including any additional components authorized by subsection (a) of this section, the Office of State Budget and Management may authorize the Secretary of Revenue to make a one-time payment of two million dollars ($2,000,000) to the vendor of TIMS for implementation of TIMS if all of the conditions of this section are satisfied. The one-time payment shall be paid within 90 days of satisfaction of all conditions of this section or when sufficient funds are available, whichever is later. The source of funds for this payment is the same increased-revenue and cost-savings streams identified under subsection (a) of this section. The payment authorized by this subsection is in addition to the payments authorized by subsection (a) of this section. The mandatory conditions of this subsection are as follows:

(1) Release 5 of the Enterprise Technology Management (ETM) project is initially implemented on or before July 31, 2013.
(2) The post-implementation defect rate for Release 5 of the ETM project is within standards agreed to by the Secretary and the vendor. For purposes of this section, the post-implementation period is the period from the date of initial implementation until 90 days after initial implementation.
(3) All defects identified as part of Release 5 of the ETM project before the end of the post-implementation period are resolved within time frames agreed to by the Secretary and the vendor.

INFORMATION TECHNOLOGY PERSONAL SERVICES CONTRACTS/ REPORTING CHANGE

SECTION 6A.4. Section 6A.6(c) of S.L. 2011-145 reads as rewritten:

"**SECTION 6A.6.(c)** Beginning ~~August 1, 2011,~~ August 1, 2012, and ~~monthly~~ quarterly thereafter, each State agency, department, and institution employing information technology personal services contractors, or contract personnel performing information technology functions, shall provide a detailed report on those contracts to the Office of State Budget and Management, the Office of State Personnel, the Office of Information Technology Services, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division of the General Assembly. Each State agency's report shall include at least the following:

(1) For each contracted information technology position:

a. The title of the position, a brief synopsis of the essential functions of the position, and how long the position has existed.
b. The name of the individual filling the position and the vendor company, if any, that regularly employs that individual.
c. The type of contract, start date, and termination date.
d. The length of time that the individual filling the contracted position has been employed by the State as a contractor in any position.
e. The contracted position salary or hourly rate, the number of hours per year, and the total annualized cost of the contracted position.
f. The salary and benefits cost for a State employee performing the same function.
g. The purchase order number for the position.
h. Whether the position can be converted to a State employee position. This determination will be certified by the State Information Technology Purchasing Office.
i. When the agency anticipates converting the position to a State employee.

(2) The total annual cost for information technology contractors and the total annual salary and benefits cost for filling the contract positions with State employees.
(3) A determination of whether the information technology functions performed by the contractor can be performed by State employees.
(4) All information required by this subsection related to information technology contractors regardless of the contracting source."

OFFICE OF INFORMATION TECHNOLOGY SERVICES/INTERNAL SERVICE FUND RATE ESTABLISHED/CASH MANAGEMENT

SECTION 6A.5.(a) Section 6A.8(a) of S.L. 2011-145 reads as rewritten:

"**ITS/INTERNAL SERVICE FUND RATE ESTABLISHMENT/CASH MANAGEMENT**

"**SECTION 6A.8.(a)** For ~~each year of the 2011-2013 fiscal biennium,~~ the 2011-2012 fiscal year, receipts for the Information Technology Internal Service Fund shall not exceed one hundred ninety million dollars ($190,000,000), excluding a ~~60-day~~ 40-day balance for contingencies. Notwithstanding G.S. 147-33.88, for the 2012-2013 fiscal year, all receipts, regardless of the source, including agency allocations and fund-to-fund transfers, for the Information Technology Internal Service shall not exceed one hundred seventy-five million dollars ($175,000,000). Rates established by the Office of State Budget and Management (OSBM) to support the IT Internal Service Fund shall be based on ~~this~~ the required fund limit. Established rates shall be adjusted within 30 days in the event the fund exceeds the prescribed limit. In the event that an increase in receipts for the IT Internal Service Fund is required, the ~~Office of Information Technology Services~~ State Chief Information Officer may implement the increase only after consultation with the Joint Legislative Commission on Governmental Operations. Overhead applied to IT Internal Service Fund rates shall not exceed ten percent (10%) of the rate."

SECTION 6A.5.(b) Section 6A.8 of S.L. 2011-145 is amended by adding a new subsection to read:

"**SECTION 6A.8.(a1)** The 40-day balance for contingencies shall be based on the maximum receipts permitted for each fiscal year, and any balance in excess of the limit must be refunded within 30 days of the first day when the fund balance exceeded the limitation amount. The Office of Information Technology Services shall limit collections each quarter to an amount not to exceed twenty-five percent (25%) of the year's limit. For the 2012-2013 fiscal year, a 40-day balance shall be maintained."

SECTION 6A.5.(c) The State Chief Information Officer shall consult with the Joint Legislative Commission on Governmental Operations prior to:

(1) Eliminating any services currently provided by the Office of Information Technology Services or the State Chief Information Officer.
(2) Transferring positions currently funded by the Information Technology Fund to the IT Internal Service Fund.

SECTION 6A.5.(d) Agency IT Expenses Cannot Exceed Appropriations. – During the 2012-2013 fiscal year, no State agency shall be charged more for information technology

services provided by the Office of the State Chief Information Officer or the Office of Information Technology Services than the lower of the amount charged or the amount actually paid less refunds from available appropriations for the 2011-2012 fiscal year, unless the increase is agreed to in writing by the agency and the Office of the State Chief Information Officer.

SECTION 6A.5.(e) Limitation on Charges for Alternate Services. – In the event that the State Chief Information Officer discontinues or privatizes a service during the 2012-2013 fiscal year, if the agencies choose to use an alternate service provided by the Office of Information Technology Services or their vendor, the amount that State agencies are charged for alternate services, inclusive of any service charge the State Chief Information Officer adds to the vendor charge, shall not exceed the IT Internal Service Fund charges for the same service in effect on May 31, 2012.

SECTION 6A.5.(f) The State Chief Information Officer shall report on a monthly basis to the Chairs of the House of Representatives and Senate Committees on Appropriations, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the General Assembly. The reports required by this section shall include:

(1) How close the receipts of the Information Technology Internal Service are to the limits set forth in Section 6A.8(a) of S.L. 2011-145.

(2) The rates established by the Office of State Budget and Management (OSBM) to support the IT Internal Service Fund.

(3) The amount charged to date to each State agency for services provided by the Office of the State Chief Information Officer or the Office of Information Technology Services during the 2012-2013 fiscal year.

(4) The amount that State agencies are charged for alternate services in the event that a service is discontinued or privatized during the 2012-2013 fiscal year, inclusive of any service charge the State Chief Information Officer adds to the vendor charge.

INFORMATION TECHNOLOGY PRIVATIZATION

SECTION 6A.6.(a) Section 6A.9 of S.L. 2011-145 reads as rewritten:

"**SECTION 6A.9.(a)** Any privatization of any grouping of information technology services, or "towers," identified in the Infrastructure Study and Assessment (INSA) or any privatization to provide a new service or privatize an existing service shall require prior approval from the General Assembly. Funding to support any outsourcing of any of these towers or any privatization involving a new or existing service shall be specifically appropriated by the General Assembly for that purpose, to include any use of Information Technology Internal Service Fund receipts. No new privatization shall occur until the Office of the State Chief Information Officer and the Office of Information Technology Services accomplish the following:

(1) The establishment and presentation to the Joint Legislative Oversight Committee on Information Technology of a budget for the Information Technology Internal Service Fund with rates for services that accurately reflect costs.

(2) The development and implementation of an accurate, comprehensive asset management system for executive branch agencies and report to the Joint Legislative Oversight Committee on Information Technology the results of the implementation.

(3) Issuance of a new request for proposal to solicit bids for any privatization initiative.

(4) Consultation with and approval from the State Treasurer.

"**SECTION 6A.9.(a1)** The limitations set forth in this section shall apply to the IT Services Management Services Desk (Help Desk), the Application Development and Support Services (Hosting Services), and the video portfolio and to any other IT service privatization.

"**SECTION 6A.9.(b)** Before privatizing any ~~major information technology function~~new or existing information technology service during the 2011-2013 fiscal biennium, the State Chief Information Officer shall do all of the following:

(1) Develop a detailed plan for implementing any privatization initiative to include the following:

a. A governance and accountability structure for the privatization effort.

b. Detailed time line with milestones.
c. Any costs necessary to accomplish outsourcing with funding sources identified.
d. Estimated monthly cost for each participating agency for the first five years of privatization.
e. Risks associated with privatization, measures being taken to mitigate those risks, and any costs associated with the mitigation measures.
f. Any security issues associated with outsourcing each application impacted by the outsourcing, with a detailed plan to mitigate those issues.
g. A list of State employees to be terminated with information on their job description and how long they have been employed by the State, a schedule of when the terminations are to occur, the cost of terminating each employee, and plans to assist each terminated employee.

The State Chief Information Officer shall consult the Joint Legislative Commission on Governmental Operations and report to the Joint Legislative Oversight Committee on Information Technology on the completed plan prior to any implementation of privatization.

(2) Have a detailed plan in place, to include associated costs and sources of funding, to return the function to State control in the event privatization fails to provide anticipated cost-savings or required service levels.

(3) Privatize only those individual functions where verifiable market data collected after January 1, 2012, by a disinterested third-party consultant shows that privatization will result in cost-savings to the State and there is no data identifying alternatives that generate greater savings, ensuring that agencies receive at a minimum the same level of service and functionality as the level prior to privatization.

(4) Document and certify any anticipated savings resulting from privatization by individual function.

(5) Ensure full disclosure of any privatization decisions that combine multiple services or towers into a single contract, including the costs associated with each specific service or tower included in the contract.

(6) Ensure that any changes are made across the entire executive branch.

(7) Consult the Joint Legislative Commission on Governmental Operations and report to the Joint Legislative Oversight Committee on Information Technology regarding the plan for funding any requirements formerly covered by the receipts from the privatized function.

"**SECTION 6A.9.(b1)** Agency Participation in Privatization Initiatives Is Voluntary. – Notwithstanding any other provision of law, if a State-administered information technology service is privatized, or a new service is provided through a private vendor, continued receipt of or participation in the service by State agencies shall be voluntary.

"**SECTION 6A.9.(b2)** Agency Options in the Event of Privatization. – If a State-administered information technology service is privatized, or a new privatized service is offered, State agencies may do any of the following:

(1) Elect to discontinue receiving or participating in the service and to provide the service within the agency. If an agency elects to provide the service internally, any positions previously transferred to the Office of Information Technology Services to support the service shall be transferred back to that agency. The Office of the State Chief Information Officer and the Office of Information Technology Services shall provide necessary support to facilitate the transfers of positions.

(2) Submit their own requests for proposal and contract with a vendor to provide the privatized service.

(3) Enter into agreements with other agencies to independently obtain information technology services that have been privatized, either by participating in the other agency's current service or by executing contracts for services.

(4) Elect to receive or participate in a new or newly privatized service.

"SECTION 6A.9.(b3) Council of State Approval Required. – Notwithstanding any other provision of law, both requests for proposal and contracts privatizing State-administered information technology services must be approved by the Council of State.

"SECTION 6A.9.(c) After privatizing any major information technology function, the State Chief Information Officer shall do all of the following:

(1) Report quarterly on the results of the privatization, including a detailed comparison of projected savings to actual cost, data on whether or not the vendor is meeting service level agreements, and an explanation of the reasons for any deficiency or difference.

(2) Immediately notify the Joint Legislative Commission on Governmental Operations of any outsourcing effort that does not meet projected savings or required service levels for two quarters in a row or during any two quarters of a fiscal year, and develop a corrective action plan.

(3) Terminate any contract where privatization fails to achieve projected savings or meet service levels over a period of 12 months.

"SECTION 6A.9.(d) Reporting. – The State Chief Information Officer shall consult with the Joint Legislative Commission on Governmental Operations prior to issuing a request for proposal to privatize any State-administered information technology service.

"SECTION 6A.9.(e) Access by Private Vendors. – If the State Chief Information Officer provides to a potential vendor any information or access to State facilities in connection with or anticipation of the privatization of a State-administered information technology service, the State Chief Information Officer shall provide the same information or access to all potential vendors. The State Chief Information Officer shall certify the Officer's compliance with this subsection to the General Assembly."

SECTION 6A.6.(b) This section applies to all contracts entered into prior to February 1, 2013.

SECTION 6A.6.(c) This section expires February 1, 2013.

MOBILE ELECTRONIC DEVICE REPORTING CHANGE

SECTION 6A.7. Section 6A.14(a) of S.L. 2011-145, as amended by Section 11(f) of S.L. 2011-391, reads as rewritten:

"**SECTION 6A.14.(a)** Every executive branch agency within State government shall develop a policy to limit the issuance and use of mobile electronic devices to the minimum required to carry out the agency's mission. As used herein, mobile communication device includes goods provided by commercial mobile radio service providers and services for mobile telecommunications governed by Title 47 of the Code of Federal Regulations. By September 1, 2011, each agency shall provide a copy of its policy to the Chairs of the Appropriations Committee and the Appropriations Subcommittee on General Government of the House of Representatives, the Chairs of the Appropriations/Base Budget Committee and the Appropriations Committee on General Government and Information Technology of the Senate, the Chairs of the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management.

State-issued mobile electronic devices shall be used only for State business. Agencies shall limit the issuance of cell phones, smart phones, and any other mobile electronic devices to employees for whom access to a mobile electronic device is a critical requirement for job performance. The device issued and the plan selected shall be the minimum required to support the employees' work requirements. This shall include considering the use of pagers in lieu of a more sophisticated device. The requirement for each mobile electronic device issued shall be documented in a written justification that shall be maintained by the agency and reviewed annually. All State agency heads, in consultation with the Office of Information Technology Services and the Office of State Budget and Management, shall document and review all authorized cell phone, smart phone, and other mobile electronic communications device procurement, and related phone, data, Internet, and other usage plans for and by their employees. Agencies shall conduct periodic audits of mobile device usage to ensure that State employees and contractors are complying with agency policies and State requirements for their use.

Beginning ~~October 1, 2011,~~ October 1, 2012, each agency shall report ~~quarterly~~ annually to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on General Government, the Chairs of the Senate Committee on

Appropriations and the Senate Appropriations Committee on General Government and Information Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management on the following:

(1) Any changes to agency policies on the use of mobile devices.
(2) The number and types of new devices issued since the last report.
(3) The total number of mobile devices issued by the agency.
(4) The total cost of mobile devices issued by the agency.
(5) The number of each type of mobile device issued, with the total cost for each type."

ENHANCE ENTERPRISE-LEVEL BUSINESS INTELLIGENCE TO INCREASE EFFICIENCY IN STATE GOVERNMENT

SECTION 6A.7A.(a) Creation of Initiative. –

(1) Creation. – The enterprise-level business intelligence initiative (initiative) is established in the Office of State Controller. The purpose of the initiative is to support the effective and efficient development of State agency business intelligence capability in a coordinated manner and reduce unnecessary information silos and technological barriers. The initiative is not intended to replace transactional systems, but is instead intended to leverage the data from those systems for enterprise-level State business intelligence.

The initiative shall include a comprehensive evaluation of existing data analytics projects and plans in order to identify data integration and business intelligence opportunities that will generate greater efficiencies in, and improved service delivery by, State agencies. The Office of State Controller may partner with current vendors and providers to assist in the initiative. However, to limit the cost to the State, the Office of the State Controller shall use current licensing agreements wherever feasible.

(2) Application to State government. – The initiative shall include all State agencies, departments, and institutions, including The University of North Carolina.

(3) Governance. – The State Controller shall lead the initiative established pursuant to this section. The Chief Justice of the North Carolina Supreme Court and the Legislative Services Commission each shall designate an officer or agency to advise and assist the State Controller with respect to implementation of the initiative in their respective branches of government. The judicial and legislative branches shall fully cooperate in the initiative mandated by this section in the same manner as is required of State agencies.

SECTION 6A.7A.(b) Government Business Intelligence Competency Center. –

(1) GBICC established. – There is established in the Office of the State Controller the Government Business Intelligence Competency Center (GBICC). GBICC shall assume the work, purpose, and resources of the current data integration effort in the Office of the State Controller and shall otherwise advise and assist the State Controller in the management of the initiative. The State Controller shall make any organizational changes necessary to maximize the effectiveness and efficiency of GBICC.

(2) Powers and duties of the GBICC. – The State Controller shall, through the GBICC, do all of the following:

a. Continue and coordinate ongoing enterprise data integration efforts, including:
   1. The deployment, support, technology improvements, and expansion for CJLEADS.
   2. The pilot and subsequent phase initiative for NC FACTS.
   3. Individual-level student data and workforce data from all levels of education and the State workforce.
   4. Other capabilities developed as part of the initiative.

b. Identify technologies currently used in North Carolina that have the capability to support the initiative.

c. Identify other technologies, especially those with unique capabilities, that could support the State's business intelligence effort.
d. Compare capabilities and costs across State agencies.
e. Ensure implementation is properly supported across State agencies.
f. Ensure that data integration and sharing is performed in a manner that preserves data privacy and security in transferring, storing, and accessing data, as appropriate.
g. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section.
h. Coordinate data requirements and usage for State business intelligence applications in a manner that (i) limits impacts on participating State agencies as those agencies provide data and business knowledge expertise and (ii) assists in defining business rules so the data can be properly used.
i. Recommend the most cost-effective and reliable long-term hosting solution for enterprise-level State business intelligence as well as data integration, notwithstanding Section 6A.2(f) of S.L. 2011-145.

SECTION 6A.7A.(c) Implementation of the Enterprise-Level Business Intelligence Initiative. –

(1) Phases of the initiative. – The initiative shall commence no later than August 1, 2012, and shall be phased in accordance with this subsection. The initiative shall cycle through these phases on an ongoing basis:

a. Phase I requirements. – In the first phase, the State Controller through GBICC shall:
1. Inventory existing State agency business intelligence projects, both completed and under development.
2. Develop a plan of action that does all of the following:
I. Defines the program requirements, objectives, and end state of the initiative.
II. Prioritizes projects and stages of implementation in a detailed plan and benchmarked timeline.
III. Includes the effective coordination of all of the State's current data integration initiatives.
IV. Utilizes a common approach that establishes standards for business intelligence initiatives for all State agencies and prevents the development of projects that do not meet the established standards.
V. Determines costs associated with the development effort and identifies potential sources of funding.
VI. Includes a privacy framework for business intelligence consisting of adequate access controls and end user security requirements.
VII. Estimates expected savings.
3. Inventory existing external data sources that are purchased by State agencies to determine whether consolidation of licenses is appropriate for the enterprise.
4. Determine whether current, ongoing projects support the enterprise-level objectives.
5. Determine whether current applications are scalable, or are applicable for multiple State agencies, or both.

b. Phase II requirements. – In the second phase, the State Controller through the GBICC shall:
1. Identify redundancies and determine which projects should be discontinued.
2. Determine where gaps exist in current or potential capabilities.

c. Phase III requirements. – In the third phase:

1. The State Controller through GBICC shall incorporate or consolidate existing projects, as appropriate.
2. The State Controller shall, notwithstanding G.S. 147-33.76 or any rules adopted pursuant thereto, eliminate redundant business intelligence projects, applications, software, and licensing.
3. The State Controller through GBICC shall complete all necessary steps to ensure data integration in a manner that adequately protects privacy.

(2) Commencement of projects. – Subject to the availability of funds, and subsequent to the submission of the written report required by sub-subdivision a. of subdivision (1) of subsection (e) of this section, the State Controller shall begin projects to carry out the purposes of this section no later than November 1, 2012. The State Controller may also expand existing data integration or business intelligence contracts with current data integration efforts, as appropriate, in order to implement the plan required by this section in accordance with the schedule established and the priorities developed during Phase I of the initiative, and may use public-private partnerships as appropriate to implement the plan.

SECTION 6A.7A.(d) Funding. –

(1) Allocation. – Of the funds appropriated from the General Fund to the General Assembly for the 2011-2013 fiscal biennium, the sum of five million dollars ($5,000,000) shall be used to fund the initiative established by this section. The Office of the State Controller shall use up to seven hundred fifty thousand dollars ($750,000) to cover the cost of administering the initiative.

(2) Federal funds. – The Office of State Controller, with the support of the Office of State Budget and Management, shall identify and make all efforts to secure any matching funds or other resources to assist in funding this initiative.

(3) Use of savings. – Savings resulting from the cancellation of projects, software, and licensing, as well as any other savings from the initiative, shall be returned to the General Fund and shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year. It is the intent of the General Assembly that expansion of the initiative in subsequent fiscal years be funded with these savings and that the General Assembly appropriate funds for projects in accordance with the priorities identified by the Office of the State Controller in Phase I of the initiative.

SECTION 6A.7A.(e) Reporting. –

(1) Routine reports. – The Office of the State Controller shall submit and present the following reports:

a. By no later than October 1, 2012, a written report on the implementation of Phase I of the initiative and the plan developed as part of that phase to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the General Assembly. The State Controller shall submit this report prior to implementing any improvements, expending funding for expansion of existing business intelligence efforts, or establishing other projects as a result of its evaluations.

b. By February 1, 2013, and quarterly thereafter, a written report detailing progress on, and identifying any issues associated with, State business intelligence efforts.

(2) Extraordinary reports. – The Office of the State Controller shall report the following information as needed:

a. Any failure of a State agency to provide information requested pursuant to this section. The failure shall be reported to the Joint

Legislative Committee on Information Technology and to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees.

b. Any additional information to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology that is requested by those entities.

SECTION 6A.7A.(f) Duties of State Agencies. –

(1) Duties of State agencies. – The head of each State agency shall do all of the following:

a. Grant the Office of the State Controller access to all information required to develop and support State business intelligence applications pursuant to this section. The State Controller and the GBICC shall take all necessary actions and precautions, including training, certifications, background checks, and governance policy and procedure, to ensure the security, integrity, and privacy of the data in accordance with State and federal law and as may be required by contract.

b. Provide complete information on the State agency's information technology, operational, and security requirements.

c. Provide information on all of the State agency's information technology activities relevant to the State business intelligence effort.

d. Forecast the State agency's projected future business intelligence information technology needs and capabilities.

e. Ensure that the State agency's future information technology initiatives coordinate efforts with the GBICC to include planning and development of data interfaces to incorporate data into the initiative and to ensure the ability to leverage analytics capabilities.

f. Provide technical and business resources to participate in the initiative by providing, upon request and in a timely and responsive manner, complete and accurate data, business rules and policies, and support.

g. Identify potential resources for deploying business intelligence in their respective State agencies and as part of the enterprise-level effort.

h. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section, as appropriate.

SECTION 6A.7A.(g) Miscellaneous Provisions. –

(1) Status with respect to certain information. – The State Controller and the GBICC shall be deemed to be all of the following for the purposes of this section:

a. With respect to criminal information, and to the extent allowed by federal law, a criminal justice agency (CJA), as defined under Criminal Justice Information Services (CJIS) Security Policy. The State CJIS Systems Agency (CSA) shall ensure that CJLEADS receives access to federal criminal information deemed to be essential in managing CJLEADS to support criminal justice professionals.

b. With respect to health information covered under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and to the extent allowed by federal law:

1. A business associate with access to protected health information acting on behalf of the State's covered entities in support of data integration, analysis, and business intelligence.

2. Authorized to access and view individually identifiable health information, provided that the access is essential to the enterprise fraud, waste, and improper payment detection

program or required for future initiatives having specific definable need for the data.

c. Authorized to access all State and federal data, including revenue and labor information, deemed to be essential to the enterprise fraud, waste, and improper payment detection program or future initiatives having specific definable need for the data.

d. Authorized to develop agreements with the federal government to access data deemed to be essential to the enterprise fraud, waste, and improper payment detection program or future initiatives having specific definable need for such data.

(2) Release of information. – The following limitations apply to (i) the release of information compiled as part of the initiative, (ii) data from State agencies that is incorporated into the initiative, and (iii) data released as part of the implementation of the initiative:

a. Information compiled as part of the initiative. – Notwithstanding the provisions of Chapter 132 of the General Statutes, information compiled by the State Controller and the GBICC related to the initiative may be released as a public record only if the State Controller, in that officer's sole discretion, finds that the release of information is in the best interest of the general public and is not in violation of law or contract.

b. Data from State agencies. – Any data that is not classified as a public record under G.S. 132-1 shall not be deemed a public record when incorporated into the data resources comprising the initiative. To maintain confidentiality requirements attached to the information provided to the State Controller and GBICC, each source agency providing data shall be the sole custodian of the data for the purpose of any request for inspection or copies of the data under Chapter 132 of the General Statutes.

c. Data released as part of implementation. – Information released to persons engaged in implementing the State's business intelligence strategy under this section that is used for purposes other than official State business is not a public record pursuant to Chapter 132 of the General Statutes.

SECTION 6A.7A.(h) G.S. 75-66(d) reads as rewritten:

"(d) Nothing in this section shall:

(1) Limit the requirements or obligations under any other section of this Article, including, but not limited to, G.S. 75-62 and G.S. 75-65.

(2) Apply to the collection, use, or release of personal information for a purpose permitted, authorized, or required by any federal, State, or local law, regulation, or ordinance.

(3) Apply to data integration efforts to implement the State's business intelligence strategy as provided by law or under contract."

SECTION 6A.7A.(i) Transfer of Internal Audit Office. – The Council of Internal Auditing is hereby transferred to the Office of the State Controller. This transfer shall have all the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 6A.7A.(j) G.S. 143-747(b) reads as rewritten:

"(b) The Council shall be ~~supported by the Office of State Budget and Management.~~located within the Office of the State Controller."

STATE PRIVATE CLOUD

SECTION 6A.9.(a) Findings. – The General Assembly finds that:

(1) The wide distribution of information technology facilities across multiple locations causes infrastructure and operational inefficiencies.

(2) Infrastructure as a service, also known as cloud computing, has the potential to increase efficiency and enhance operations by reducing information technology costs and accelerating the provision of services.

(3) The creation of a secure and flexible State private cloud is in the best interest of the people of this State.

SECTION 6A.9.(b) Plan Required. – The State Chief Information Officer shall create a plan for the development and implementation of a State-owned, State-hosted infrastructure as a service, or private cloud, project to be operated and managed by the State.

SECTION 6A.9.(c) Components of the Plan. – The State private cloud plan created pursuant to this section shall include:

(1) Requirements for:
  a. The State to have complete control and ownership of all components of the private cloud, including hardware, software, network infrastructure, security, and data.
  b. All components of the private cloud to be maintained at State-owned, State-operated facilities.
  c. The private cloud to fully comply with all legislative, regulatory, policy, and security requirements that apply to State agencies and entities conducting business with the State.
  d. The State's existing information technology infrastructure to be used to support the private cloud.
  e. Documentation of any redundancy built into the infrastructure to support requirements for increased availability and disaster recovery.
  f. A service-centric approach to computing resources. Users of computing resources shall be able to efficiently access powerful, predefined computing environments based on their requirements.
  g. A self-service ability to provision and deprovision, as requested by users, while maintaining high levels of security.
  h. A fully functional, efficient, fair system to bill State agencies for private cloud usage. This requirement includes mechanisms to capture usage data and enable chargeback integration within the billing system.
  i. A plan to manage infrastructure resources that can be scaled in response to State agency requirements.
(2) A detailed timeline, documentation of agency requirements, identification and resolution of security issues, and an assessment of the impact on any ongoing projects or current applications.
(3) Identification of costs associated with developing the private cloud.
(4) Identification and documentation of private cloud management and monitoring tools to facilitate the maintenance of complete control of private cloud resources; automate provisioning, deprovisioning, and scheduling; and maintain system capacity.
(5) Identification of ways to improve the private cloud's supporting infrastructure.
(6) Identification of potential sources of savings to support development, implementation, and maintenance of the State private cloud.

SECTION 6A.9.(d) Funding and Implementation. – No funds from any source shall be used for the development and implementation of a private cloud without specific authorization by the General Assembly appropriating funds for this purpose.

SECTION 6A.9.(e) Report. – The State Chief Information Officer shall report the plan created pursuant to this section to the Joint Legislative Oversight Committee on Information Technology no later than January 1, 2013.

SECTION 6A.9.(f) Access by Private Vendors. – If the State Chief Information Officer provides to a potential vendor any information or access to State facilities in connection with or anticipation of the private cloud project described in this section, the State Chief Information Officer shall provide the same information or access to all potential vendors. The State Chief Information Officer shall certify the Officer's compliance with this subsection to the General Assembly.

ENTERPRISE GRANTS MANAGEMENT

SECTION 6A.10. Section 6A.7 of S.L. 2011-145, as amended by Section 11B of S.L. 2011-391, reads as rewritten:

"STATE INFORMATION TECHNOLOGY CONSOLIDATION

...

~~"SECTION 6A.7.(b) Beginning July 1, 2011, the State CIO shall plan and implement an enterprise level grants management system. Similar systems currently under development may be suspended by the State CIO with funding reprogrammed to support development of the enterprise level grants management system.~~

~~In coordination with the State CIO, the Department of Health and Human Services shall develop a plan to implement a single case management system throughout that Department, beginning in the 2012-2013 fiscal year, and shall report to the Joint Legislative Oversight Committee on Information Technology by February 1, 2012, on its initiatives to implement the system. The report shall include a detailed time line for completion and an explanation of the costs associated with case management consolidation.~~

"**SECTION 6A.7.(b1)** There is established a Grants Management Oversight Committee to coordinate the development of an enterprise grants management system. The Committee shall be chaired by the State Controller. Committee membership shall include the Senior Deputy State Controller, the Director of the Office of State Budget and Management, and the State Auditor.

The Committee shall:

(1) Establish priorities for agency projects.

(2) Establish priorities for development and implementation of system capabilities.

(3) Review and approve system requirements.

(4) Review and approve plans associated with system development and implementation.

(5) Review and approve costs and funding sources for system development and implementation.

(6) Ensure system benefits are realistic and realized.

"**SECTION 6A.7.(b2)** By August 1, 2013, the Office of State Budget and Management shall provide a detailed plan to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division for the development and implementation of the enterprise grants management system, including a time line, cost for each participating agency, a comprehensive business plan, and information on the anticipated benefits of system implementation.

"**SECTION 6A.7.(b3)** Beginning August 1, 2012, the Office of State Budget and Management shall report monthly to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on the status of the system, including the following information:

(1) Agencies currently participating in the system.

(2) Specific requirements for each agency project included in the system development.

(3) Cost and funding sources for each agency participating in the system.

(4) Status of each agency project included in the system.

(5) Comparison of the status of each project to the time line, with an explanation of any differences.

(6) Detailed descriptions of milestones to be completed that month and the following month.

(7) Any changes in project cost for any participating agency, the reasons, and the source of funding.

(8) Actual expenditures by agency, to date and during that month.

(9) Any potential funding shortfalls and their impact.

(10) Any issues identified during the month, with a corrective action plan and a time line for resolving them.

(11) Impact of any issues on schedule or cost.

(12) Any changes to agency projects or the system as a whole.

(13) Any change requests and their cost.

"**SECTION 6A.7.(b4)** The State CIO shall provide all required assistance and support for the development and implementation of the enterprise grants management system. Similar systems currently under development may be suspended by the State CIO with funding reprogrammed to support development of the enterprise grants management system.

"**SECTION 6A.7.(b5)** In coordination with the State CIO, the Department of Health and Human Services shall develop a plan to implement a single case management system

throughout that Department, beginning in the 2012-2013 fiscal year, and shall report to the Joint Legislative Oversight Committee on Information Technology by February 1, 2012, on its initiatives to implement the system. The report shall include a detailed time line for completion and an explanation of the costs associated with case management consolidation.

~~"SECTION 6A.7.(c) Beginning September 1, 2011, and quarterly thereafter, the Office of State Budget and Management, in conjunction with the State CIO, shall provide written reports to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division relating to State information technology consolidation."~~

PART VII. PUBLIC SCHOOLS

FUNDS FOR CHILDREN WITH DISABILITIES

SECTION 7.1. The State Board of Education shall allocate additional funds for children with disabilities on the basis of three thousand seven hundred nine dollars ($3,709) per child. Each local school administrative unit shall receive funds for the lesser of (i) all children who are identified as children with disabilities or (ii) twelve and five-tenths percent (12.5%) of its 2012-2013 allocated average daily membership in the local school administrative unit. The dollar amounts allocated under this section for children with disabilities shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve children with disabilities.

FUNDS FOR ACADEMICALLY GIFTED CHILDREN

SECTION 7.2. The State Board of Education shall allocate additional funds for academically or intellectually gifted children on the basis of one thousand two hundred twenty-three dollars and ninety-nine cents ($1,223.99) per child for fiscal year 2012-2013. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2012-2013 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The dollar amounts allocated under this section for academically or intellectually gifted children shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve academically or intellectually gifted children.

SCHOOL IMPROVEMENT PLANS AT RESIDENTIAL SCHOOLS

SECTION 7.3.(a) In order to improve student performance, the Eastern North Carolina School for the Deaf, the Governor Morehead School for the Blind, and the North Carolina School for the Deaf each shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board of Education. The principal of each school, instructional personnel and residential life personnel assigned to that school, and a minimum of five parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance.

Representatives of the instructional and residential life personnel shall be elected by their respective groups by secret ballot.

Parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. To the extent possible, parents serving on school improvement teams shall reflect the composition of the students enrolled in that school. No more than two parents on the team may be employees of the school. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with instructional and residential life personnel, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. Parents who are elected to serve on school improvement teams and who are not employees of the school shall receive travel and subsistence expenses in accordance with G.S. 138-5 and, if appropriate, may receive a stipend.

All school improvement plans shall be, to the greatest extent possible, data driven. School improvement teams shall use the Education Value Added Assessment System (EVAAS), or a compatible and comparable system approved by the State Board of Education,

to analyze student data to identify root causes for problems and to determine actions to address them. School improvement plans shall contain clear, unambiguous targets, explicit indicators and actual measures, and expeditious time frames for meeting the measurement standards.

SECTION 7.3.(b) The strategies for improving student performance shall include the following:

(1) A plan for the use of staff development funds that may be made available to the school to implement the school improvement plan. The plan may provide that a portion of these funds is used for mentor training and for release time and substitute teachers while teachers are meeting with mentors.

(2) A plan for preparing students to read at grade level by the time they enter second grade. The plan shall require kindergarten and first grade teachers to notify parents or guardians when a child is not reading at grade level and is at risk of not reading at grade level by the time the child enters second grade. The plan may include the use of assessments to monitor students' progress in learning to read and strategies for teachers and parents to implement that will help students improve and expand their reading ability, as well as provide for the recognition of teachers and strategies that appear to be effective at preparing students to read at grade level.

(3) A comprehensive plan to encourage parent involvement.

(4) A plan designed to provide that the school is safe, secure, and orderly; that there is a climate of respect in the school; and that appropriate personal conduct is a priority for all students and all residential school personnel.

(5) A plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school.

SECTION 7.3.(c) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed school improvement plan to all of the instructional personnel assigned to the school for their review and vote. The vote shall be by secret ballot. The principal shall submit the school improvement plan to the State Board of Education only if the proposed school improvement plan has the approval of a majority of the instructional personnel who voted on the plan.

SECTION 7.3.(d) The State Board of Education shall accept or reject the school improvement plan within 60 days after the submission plan. If the State Board rejects a school improvement plan, the State Board shall state with specificity the reasons for rejecting the plan to the principal and shall direct that the principal work with the school improvement team to resolve the disagreements. The school improvement team may then prepare another plan, present it to the instructional personnel assigned to the school for a vote, and submit it to the State Board to accept or reject. If there is no resolution within 30 days, then the State Board may develop a school improvement plan for the school; however, the General Assembly urges the State Board to utilize the school's proposed school improvement plan to the maximum extent possible when developing this plan.

SECTION 7.3.(e) A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the State Board finds that a school improvement plan is impeding student performance at a school, the State Board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this section shall apply to amendments and revisions to school improvement plans.

SECTION 7.3.(f) Any funds the State Board makes available to a school to meet the goals for that school under the ABCs Program and to implement the school improvement plan at that school shall be used in accordance with those goals and the school improvement plan.

SECTION 7.3.(g) The State Board shall develop a list of recommended strategies that it determines to be effective, which building-level committees may use to establish parent involvement programs designed to meet the specific needs of their schools.

SECTION 7.3.(h) Once the plan is developed, the principal shall ensure the plan is available and accessible to parents and the school community.

SCHOOL CALENDAR PILOT PROGRAM

SECTION 7.4.(a) The State Board of Education shall establish a school calendar pilot program in the Wilkes County Schools. The purpose of the pilot program is to determine whether and to what extent a local school administrative unit can save money during this extreme fiscal crisis by consolidating the school calendar.

Notwithstanding G.S. 115C-84.2(a)(1), the school calendar for the 2012-2013 calendar year for the pilot school system shall include a minimum of 180 days or 1,000 hours of instruction covering at least nine calendar months.

If the local board of education in a pilot school system adds instructional hours to previously scheduled days under this section, the local school administrative unit is deemed to have a minimum of 180 days of instruction, and teachers employed for a 10-month term are deemed to have been employed for the days being made up and shall be compensated as if they had worked the days being made up.

SECTION 7.4.(b) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by March 15, 2013, on the administration of the pilot program, cost savings realized by it, and its impact on student achievement.

SECTION 7.4.(c) The pilot program shall terminate at the end of the 2012-2013 school calendar year.

REPEAL PROHIBITION ON TEACHER PREPAYMENT

SECTION 7.6. Section 5 of S.L. 2011-379 is repealed.

RESIDENTIAL SCHOOLS

SECTION 7.8.(a) Section 7.25(a) of S.L. 2011-145 is repealed.

SECTION 7.8.(b) The Department of Public Instruction shall not transfer any school-based personnel from the residential schools to central office administrative positions.

SECTION 7.8.(c) Notwithstanding G.S. 146-30 or any other provision of law, the Department of Public Instruction shall retain all proceeds generated from the rental of building space on the residential school campuses. The Department of Public Instruction shall use all receipts generated from these leases to staff and operate the North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf, and the Governor Morehead School. These receipts shall not be used to support administrative functions within the Department.

CLARIFYING COOPERATIVE INNOVATIVE HIGH SCHOOL STATUTES

SECTION 7.11.(a) G.S. 115C-238.50A reads as rewritten:

"**§ 115C-238.50A. Definitions.**

The following definitions apply in this Part:

(1) Constituent institution. – A constituent institution as defined in G.S. 116-2(4).

(1a) Cooperative innovative high school. – A high school approved by the State Board of Education and the applicable governing Board that meets the following criteria:

a. It has no more than 100 students per grade level.

b. It partners with an institution of higher education to enable students to concurrently obtain a high school diploma and begin or complete an associate degree program, master a certificate or vocational program, or earn up to two years of college credit within five years.

c. It is located on the campus of the partner institution of higher education, unless the governing ~~board~~ Board or the local board of trustees for a private North Carolina college specifically waives the requirement through adoption of a formal resolution.

(1b) Cooperative innovative high school allotment. – Funds appropriated by the General Assembly to the Department of Public Instruction to provide additional resources to approved cooperative innovative high schools.

(2) Education partner. – An education partner as provided in G.S. 115C-238.52.

(3) Governing ~~board.~~Board. – The ~~State Board of Education, the~~ State Board of Community ~~Colleges,~~Colleges or the Board of Governors of The University of North ~~Carolina, or the Board of the North Carolina Independent Colleges and Universities.~~Carolina.

(3a) Local board of education. – A local board as defined in G.S. 115C-5(5) or a regional school board of directors as defined in G.S. 115C-238.61(5).

(4) Local board of trustees. – The board of trustees of a community college, constituent institution of The University of North Carolina, or private college located in North Carolina.

(5) Partner institution of higher education. – A community college, constituent institution of The University of North Carolina, or private college located in North Carolina."

SECTION 7.11.(b) G.S. 115C-238.51 reads as rewritten:

"**§ 115C-238.51. Application process.**

(a) A local board of education and at least one local board of trustees shall jointly apply to establish a cooperative innovative high school program under this Part.

(b) The application shall contain at least the following information:

(1) A description of a program that implements the purposes in G.S. 115C-238.50.

(2) A statement of how the program relates to the Economic Vision Plan adopted for the economic development region in which the ~~program~~ cooperative innovative high school is to be located.

(3) The facilities to be used by the ~~program~~cooperative innovative high school and the manner in which administrative services of the ~~program~~school are to be provided.

(4) A description of student academic and vocational achievement goals and the method of demonstrating that students have attained the skills and knowledge specified for those goals.

(5) A description of how the ~~program~~cooperative innovative high school will be operated, including budgeting, curriculum, transportation, and operating procedures.

(6) The process to be followed by the ~~program~~cooperative innovative high school to ensure parental involvement.

(7) The process by which students will be selected for and admitted to the ~~program.~~cooperative innovative high school.

(8) A description of the funds that will be used and a proposed budget for the first five years of the implementation of the ~~program.~~cooperative innovative high school. This description shall identify how the average daily membership (ADM) and full-time equivalent (FTE) students are counted. If additional funds are requested, a description of how those additional funds will be used shall be submitted. Additional funds may include the cooperative innovative high school allotment and tuition payments. For cooperative innovative high schools that have a community college as their partner institution of higher education, the proposed budget shall include the cost of including their students in calculations of budget full-time equivalent students for the North Carolina Community College System.

(9) The qualifications required for individuals employed in the ~~program.~~cooperative innovative high school.

(10) The number of students to be served.

(11) A description of how the ~~program's~~cooperative innovative high school's effectiveness in meeting the purposes in G.S. 115C-238.50 will be measured.

(c) The application shall be submitted to the State Board of Education and the applicable governing ~~Boards.~~Board. If the partner institution of higher education is a private North Carolina college, the application shall be submitted solely to the State Board of Education. ~~The Boards shall appoint a joint advisory committee to review the applications and to recommend to the Boards those programs that meet the requirements of this Part and that achieve the purposes set out in G.S. 115C-238.50.~~

~~(d) The Boards may approve programs recommended by the joint advisory committee or may approve other programs that were not recommended. The Boards shall approve all applications by June 30 of each year. No application shall be approved unless the State Board of Education and the applicable governing Board find that the application meets the requirements set out in this Part and that granting the application would achieve the purposes set out in G.S. 115C-238.50. Priority shall be given to applications that are most likely to~~

~~further State education policies, to address the economic development needs of the economic development regions in which they are located, and to strengthen the educational programs offered in the local school administrative units in which they are located.~~

~~(e) No additional State funds shall be provided to approved programs unless appropriated by the General Assembly.~~"

SECTION 7.11.(c) Part 9 of Article 16 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-238.51A. Approval process.**

(a) Joint Advisory Committee. – The State Board of Education and the applicable governing Board of the local board of trustees shall appoint a joint advisory committee to review the applications and to recommend approval for those applications that meet the requirements of this Part and achieve purposes set out in G.S. 115C-238.50. The recommendation shall indicate whether additional funds were requested in the application.

(b) No Additional Funds. – For applications which have not requested additional funds, the State Board of Education and the applicable governing Board may approve cooperative innovative high schools. In granting approval, consideration shall be given to the proposed budget and demonstration of sources of sustainable funding for the operation of the cooperative innovative high school. Approvals shall be made by June 30 of each year. No additional State funds, position allotments, earning of budget full-time equivalent students, or payments of tuition shall be provided to cooperative innovative high schools approved under this subsection.

(c) Additional Funds. – For applications which have requested additional funds, the State Board of Education and the applicable governing Board may approve cooperative innovative high schools contingent upon appropriation of the additional funds by the General Assembly. Contingent approval shall be made by April 1 of each year. The contingent approval shall expire if no appropriation is made by the General Assembly for the additional funds within one calendar year. No cooperative innovative high school shall open prior to the appropriation by the General Assembly of the full amount of the additional funds as requested in the application for that school under G.S. 115C-238.51 for the upcoming fiscal year or fiscal biennium, as appropriate. If no appropriation is made by the General Assembly, a revised application may be submitted under subsection (b) of the section."

SECTION 7.11.(d) G.S. 115C-238.52 reads as rewritten:

"**§ 115C-238.52. Participation by other education partners.**

(a) Any or all of the following education partners may participate in the development of a cooperative innovative ~~program~~ high school under this Part that is targeted to high school students who would benefit from accelerated academic instruction:

(1), (2) Repealed by Session Laws 2005-276, s. 7.33(a), effective July 1, 2005.

(3) A private business or organization.

(4) The county board of commissioners in the county in which the ~~program~~ cooperative innovative high school is located.

(b) Any or all of the education partners listed in subsection (a) of this section that participate shall:

(1) Jointly apply with the local board of education and the local board of trustees to establish a cooperative innovative ~~program~~high school under this Part.

(2) Be identified in the application.

(3) Sign the written agreement under G.S. 115C-238.53(b)."

SECTION 7.11.(e) G.S. 115C-238.53 reads as rewritten:

"**§ 115C-238.53. ~~Program operation.~~Operation of cooperative innovative high schools.**

(a) A ~~program~~cooperative innovative high school approved by the State is accountable to the local board of education.

(b) A ~~program~~cooperative innovative high school approved under this Part shall operate under the terms of a written agreement signed by the local board of education, local board of trustees, State Board of Education, and applicable governing Board. The agreement shall incorporate the information provided in the application, as modified during the approval process, and any terms and conditions imposed on the ~~program~~ school by the State Board of Education and the applicable governing Board. The agreement may be for a term of no longer than five school years.

(c) A ~~program~~cooperative innovative high school may be operated in a facility owned or leased by the local board of education, the local board of trustees, or the education partner, if any.

(d) A ~~program~~cooperative innovative high school approved under this Part shall provide instruction each school year for at least ~~180~~ 185 days during nine calendar months, shall comply with laws and policies relating to the education of students with disabilities, and shall comply with Article 27 of this Chapter.

(e) A ~~program~~cooperative innovative high school approved under this Part may use State, federal, and local funds allocated to the local school administrative unit, to the applicable governing Board, and to the ~~college or university~~partner institution of higher education to implement ~~the~~its program. If there is an education partner and if it is a public body, the ~~program~~cooperative innovative high school may use State, federal, and local funds allocated to that body.

(f) Except as provided in this Part and under the terms of the ~~agreement:~~agreement, cooperative innovative high schools:

(1) ~~A program shall~~ Shall have the same exemptions from statutes and rules as charter schools operating under Part 6A of this Article, other than those pertaining to personnel.

(2) ~~A program may~~ May be exempted by the State Board of Education or by the applicable governing Board from laws and rules applicable to a local board of education, a local school administrative unit, a community college, a constituent institution, or a local board of trustees."

SECTION 7.11.(f) G.S. 115C-238.54 reads as rewritten:

"**§ 115C-238.54. Funds for ~~programs.~~cooperative innovative high schools.**

(a) The Department of Public Instruction shall assign a school code for each ~~program~~cooperative innovative high school that is approved under this Part. Notwithstanding G.S. 115C-105.25, once the ~~program~~cooperative innovative high school has been assigned a school code, the local board of education may use these funds for the ~~programs~~school and may transfer these funds between funding allotment categories.

(a1) Repealed by Session Laws 2011-145, s. 7.1A(j), effective January 1, 2012.

(b) The local board of trustees may allocate State and federal funds for a ~~program~~ cooperative innovative high school that is approved under this Part.

(c) An education partner under G.S. 115C-238.52 that is a public body may allocate State, federal, and local funds for a ~~program~~cooperative innovative high school that is approved under this Part.

(d) If not an education partner under G.S. 115C-238.52, a county board of commissioners in a county where a ~~program~~cooperative innovative high school is located may nevertheless appropriate funds to ~~a program~~the school approved under this Part.

(e) The local board of education and the local board of trustees are strongly encouraged to seek funds from sources other than State, federal, and local appropriations. They are strongly encouraged to seek funds the Education Cabinet identifies or obtains under G.S. 116C-4.

(f) Students in cooperative innovative high schools shall not be charged tuition for courses taken through the partner institution of higher education.

(g) Students in cooperative innovative high schools that have a community college as their partner institution of higher education and were approved under G.S. 115C-238.51A(c) shall be included in calculations of budget full-time equivalent students for the North Carolina Community College System. Students in cooperative innovative high schools that have a community college as their partner institution of higher education and were approved under G.S. 115C-238.51A(b) shall not be included in calculations of budget full-time equivalent students for the North Carolina Community College System.

(h) The State Board of Education shall reimburse The University of North Carolina for tuition for courses taken by students at cooperative innovative high schools that have a constituent institution of The University of North Carolina as their partner institution of higher education and were approved under G.S. 115C-238.51A(c). Tuition payments shall not exceed the annual Board of Governors-approved undergraduate resident tuition rate calculated on a per credit hour basis and shall not include fees. In addition, the cooperative innovative high school students' credit hours shall be nonfundable under The University of North Carolina Semester Credit Hour Enrollment Change Funding Model. The State Board of Education shall not reimburse The University of North Carolina for tuition for courses taken by students at

cooperative innovative high schools that have a constituent institution of The University of North Carolina as their partner institution of higher education approved under G.S. 115C-238.51A(b).

(i) The State Board of Education shall reimburse private North Carolina colleges for tuition for courses taken by students at cooperative innovative high schools that have a private North Carolina college as their partner institution of higher education and were approved under G.S. 115C-238.51A(c). Tuition payments shall not exceed the highest undergraduate resident rate approved by the Board of Governors for the University of North Carolina constituent institutions and shall not include fees. The State Board of Education shall not reimburse private North Carolina colleges for tuition for courses taken by students at cooperative innovative high schools that have a private North Carolina college as their partner institution of higher education and were approved under G.S. 115C-238.51A(b)."

SECTION 7.11.(g) G.S. 115C-238.55 reads as rewritten:

"**§ 115C-238.55. Evaluation of ~~programs.~~cooperative innovative high schools.**

The State Board of Education and the governing Boards shall evaluate the success of students in ~~programs~~cooperative innovative high schools approved under this Part. Success shall be measured by high school retention rates, high school completion rates, high school dropout rates, certification and associate degree completion, admission to four-year institutions, postgraduation employment in career or study-related fields, and employer satisfaction of employees who participated in and graduated from the ~~programs.~~schools. The Boards shall jointly report by January 15 of each year to the Joint Legislative Education Oversight Committee on the evaluation of these ~~programs.~~schools."

SECTION 7.11.(h) Section 7.21(e) of S.L. 2010-31 is repealed.

SECTION 7.11.(i) This section is effective when it becomes law.

NORTH CAROLINA VIRTUAL PUBLIC SCHOOLS

SECTION 7.12. Section 7.22(k) of S.L. 2011-145 is repealed.

REPEAL OBSOLETE REPORTS

SECTION 7.13.(a) Section 7.19(d) of S.L. 2007-323 is repealed.

SECTION 7.13.(b) Section 7.21 of S.L. 2007-323 is repealed.

SECTION 7.13.(c) G.S. 115C-276(t) is repealed.

SECTION 7.13.(d) Subsections (c) and (g) of Section 7.5 of S.L. 2010-31 are repealed.

SECTION 7.13.(e) Section 7.19(c) of S.L. 2010-31 is repealed.

SECTION 7.13.(f) G.S. 115C-12(26) is repealed.

TEACHER/TEACHER ASSISTANT LEAVE ON INSTRUCTIONAL DAYS.

SECTION 7.14.(a) G.S. 115C-302.1(c) reads as rewritten:

"(c) Vacation. – Included within the 10-month term shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth of the annual rate for State employees for each month of employment. Local boards shall provide at least 10 days of annual vacation leave at a time when students are not scheduled to be in regular attendance. However, instructional personnel who do not require a substitute may use annual vacation leave on days that students are in attendance. Vocational and technical education teachers who are employed for 11 or 12 months may, with prior approval of the principal, work on annual vacation leave days designated in the school calendar and may use those annual vacation leave days during the eleventh or twelfth month of employment. Local boards of education may adopt policies permitting instructional personnel employed for 11 or 12 months in year-round schools to, with the approval of the principal, take vacation leave at a time when students are in attendance; local funds shall be used to cover the cost of substitute teachers.

On a day that pupils are not required to attend school due to inclement weather, but employees are required to report for a workday, a teacher may elect not to report due to hazardous travel conditions and to take an annual vacation day or to make up the day at a time agreed upon by the teacher and the teacher's immediate supervisor or principal. On a day that school is closed to employees and pupils due to inclement weather, a teacher shall work on the scheduled makeup day.

All vacation leave taken by the teacher will be upon the authorization of the teacher's immediate supervisor and under policies established by the local board of education. Annual vacation leave shall not be used to extend the term of employment.

Notwithstanding any provisions of this subsection to the contrary, no person shall be entitled to pay for any vacation day not earned by that person."

SECTION 7.14.(b) G.S. 115C-316(a)(3) reads as rewritten:

"(3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. The first 10 days of annual leave earned by a 10- or 11-month employee during any fiscal year period shall be scheduled to be used in the school calendar adopted by the respective local boards of education. Vacation days shall not be used for extending the term of employment of individuals. Ten- or 11-month employees may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any of these employees with more than 30 days of accumulated leave shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by these employees shall be upon the authorization of their immediate supervisor and under policies established by the local board of education. The policies may permit teacher assistants who require a substitute and are employed for 11 or 12 months in year-round schools to take vacation leave at a time when students are in attendance; local funds shall be used to cover the cost of substitutes. Vacation leave for instructional personnel who do not require a substitute shall not be restricted to days that students are not in attendance. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours or 30 days when separated from service due to resignation, dismissal, reduction in force, death or service retirement. Upon separation from service due to service retirement, any annual vacation leave over 30 days will convert to sick leave and may be used for creditable service at retirement in accordance with G.S. 135-4(e). If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision."

SECTION 7.14.(c) This section applies beginning with the 2012-2013 school year.

EDUCATION VALUE ADDED ASSESSMENT SYSTEM (EVAAS)

SECTION 7.15. The State Board of Education shall continue to further implement the Education Value Added Assessment System (EVAAS) by (i) enabling direct access to value-added information for teachers who teach classes with an End-of-Course/End-of-Grade test; (ii) creating the capability for users to export EVAAS data and merge it with other relevant analyses; and (iii) enabling further development of student-teacher linkages for measuring student growth.

PART VII-A. EXCELLENT PUBLIC SCHOOLS ACT

IMPROVE K-3 LITERACY

SECTION 7A.1.(a) G.S. 115C-81.2 is repealed.

SECTION 7A.1.(b) Article 8 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 1A. North Carolina Read to Achieve Program.

"**§ 115C-83.1A. State goal.**

The goal of the State is to ensure that every student read at or above grade level by the end of third grade and continue to progress in reading proficiency so that he or she can read, comprehend, integrate, and apply complex texts needed for secondary education and career success.

"**§ 115C-83.1B. Purposes.**

(a) The purposes of this Part are to ensure that (i) difficulty with reading development is identified as early as possible; (ii) students receive appropriate instructional and support services to address difficulty with reading development and to remediate reading deficiencies; and (iii) each student and his or her parent or guardian be continuously informed of the student's academic needs and progress.

(b) In addition to the purposes listed in subsection (a) of this section, the purpose of this Part is to determine that progression from one grade to another be based, in part, upon proficiency in reading.

"**§ 115C-83.1C. Definitions.**

The following definitions apply in this Part:

(1) "Accelerated reading class" means a class where focused instructional supports and services are provided to increase a student's reading level at least two grades in one school year.

(2) "Alternative assessment" means a valid and reliable standardized assessment of reading comprehension, approved by the State Board of Education, that is not the same test as the State approved standardized test of reading comprehension administered to third grade students.

(3) "Instructional supports and services" mean intentional strategies used with a majority of students to facilitate reading development and remediate emerging difficulty with reading development. Instructional supports and services include, but are not limited to, small group instruction, reduced teacher-student ratios, frequent progress monitoring, and extended learning time.

(4) "Difficulty with reading development" means not demonstrating appropriate developmental abilities in any of the major reading areas, including, but not limited to, oral language, phonological or phonemic awareness, vocabulary, fluency, or comprehension, according to observation-based, diagnostic, or formative assessments.

(5) "Reading interventions" mean evidence-based strategies frequently used to remediate reading deficiencies and include, but are not limited to, individual instruction, tutoring, or mentoring that target specific reading skills and abilities.

(6) "Reading proficiency" means reading at or above the third grade level by the end of a student's third grade year, demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students.

(7) "Reading deficiency" means not reading at the third grade level by the end of the student's third grade year, demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students.

(8) "Student reading portfolio" means a compilation of independently produced student work selected by the student's teacher, and signed by the teacher and principal, as an accurate picture of the student's reading ability. The student reading portfolio shall include an organized collection of evidence of the student's mastery of the State's reading standards that are assessed by the State-approved standardized test of reading comprehension administered to third grade students. For each benchmark, there shall be three examples of student work demonstrating mastery by a grade of seventy percent (70%) or above.

(9) "Summer reading camp" means an additional educational program outside of the instructional calendar provided by the local school administrative unit to any student who does not demonstrate reading proficiency. Parents or guardians of the student not demonstrating reading proficiency shall make the final decision regarding the student's summer camp attendance. Summer camps shall (i) be six to eight weeks long, four or five days per week; (ii) include at least three hours of instructional time per day; (iii) be taught by compensated, licensed teachers selected based on demonstrated student

outcomes in reading proficiency; and (iv) allow volunteer mentors to read with students.

(10) "Transitional third and fourth class combination" means a classroom specifically designed to produce learning gains sufficient to meet fourth grade performance standards while continuing to remediate areas of reading deficiency.

"**§ 115C-83.1D. Comprehensive plan for reading achievement.**

(a) The State Board of Education shall develop, implement, and continuously evaluate a comprehensive plan to improve reading achievement in the public schools. The plan shall be based on reading instructional practices with strong evidence of effectiveness in current empirical research in reading development. The plan shall be developed with the active involvement of teachers, college and university educators, parents and guardians of students, and other interested parties. The plan shall, when appropriate to reflect research, include revision of the standard course of study or other curricular standards, revision of teacher licensure and renewal standards, and revision of teacher education program standards.

(b) The State Board of Education shall report biennially to the Joint Legislative Education Oversight Committee by October 1 of each even-numbered year on the implementation, evaluation, and revisions to the comprehensive plan for reading achievement and shall include recommendations for legislative changes to enable implementation of current empirical research in reading development.

"**§ 115C-83.1E. Developmental screening and kindergarten entry assessment.**

(a) The State Board of Education shall ensure that every student entering kindergarten shall be administered a developmental screening of early language, literacy, and math skills within 30 days of enrollment.

(b) The State Board of Education shall ensure that every student entering kindergarten shall complete a kindergarten entry assessment within 60 days of enrollment.

(c) The developmental screening instrument may be composed of subsections of the kindergarten entry assessment.

(d) The kindergarten entry assessment shall address the five essential domains of school readiness: language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development.

(e) The kindergarten entry assessment shall be (i) administered at the classroom level in all local school administrative units; (ii) aligned to North Carolina's early learning and development standards and to the standard course of study; and (iii) reliable, valid, and appropriate for use with all children, including those with disabilities and those who are English language learners.

(f) The results of the developmental screening and the kindergarten entry assessment shall be used to inform the following:

(1) The status of children's learning at kindergarten entry.

(2) Instruction of each child.

(3) Efforts to reduce the achievement gap at kindergarten entry.

(4) Continuous improvement of the early childhood system.

"**§ 115C-83.1F. Facilitating early grade reading proficiency.**

(a) Kindergarten, first, second, and third grade students shall be assessed with valid, reliable, formative, and diagnostic reading assessments made available to local school administrative units by the State Board of Education pursuant to G.S. 115C-174.11(a). Difficulty with reading development identified through administration of formative and diagnostic assessments shall be addressed with instructional supports and services. To the greatest extent possible, kindergarten through third grade reading assessments shall yield data that can be used with the Education Value Added Assessment System (EVAAS), or a compatible and comparable system approved by the State Board of Education, to analyze student data to identify root causes for difficulty with reading development and to determine actions to address them.

(b) Formative and diagnostic assessments and resultant instructional supports and services shall address oral language, phonological and phonemic awareness, phonics, vocabulary, fluency, and comprehension using developmentally appropriate practices.

(c) Local school administrative units are encouraged to partner with community organizations, businesses, and other groups to provide volunteers, mentors, or tutors to assist

with the provision of instructional supports and services that enhance reading development and proficiency.

"**§ 115C-83.1G. Elimination of social promotion.**

(a) The State Board of Education shall require that a student be retained in the third grade if the student fails to demonstrate reading proficiency appropriate for a third grade student, as demonstrated on a State-approved standardized test of reading comprehension administered to third grade students. The test may be re-administered once prior to the end of the school year.

(b) Students may be exempt from mandatory retention in third grade for good cause but shall continue to receive instructional supports and services and reading interventions appropriate for their age and reading level. Good cause exemptions shall be limited to the following:

(1) Limited English Proficient students with less than two years of instruction in an English as a Second Language program.

(2) Students with disabilities, as defined in G.S. 115C-106.3(1), whose individualized education program indicates the use of alternative assessments and reading interventions.

(3) Students who demonstrate reading proficiency appropriate for third grade students on an alternative assessment approved by the State Board of Education. Teachers may administer the alternative assessment following the administration of the State-approved standardized test of reading comprehension typically given to third grade students at the end of the school year, or after a student's participation in the local school administrative unit's summer reading camp.

(4) Students who demonstrate, through a student reading portfolio, reading proficiency appropriate for third grade students. Teachers may submit the student reading portfolio at the end of the school year, or after a student's participation in the local school administrative unit's summer reading camp. The student reading portfolio and review process shall be established by the State Board of Education.

(5) Students who have (i) received reading intervention and (ii) previously been retained more than once in kindergarten, first, second, or third grades.

(c) The superintendent shall determine whether a student may be exempt from mandatory retention on the basis of a good cause exemption. The following steps shall be taken in making the determination:

(1) The teacher of a student eligible for a good cause exemption shall submit documentation of the relevant exemption and evidence that promotion of the student is appropriate based on the student's academic record to the principal. Such evidence shall be limited to the student's personal education plan, individual education program, if applicable, alternative assessment, or student reading portfolio.

(2) The principal shall review the documentation and make an initial determination whether the student should be promoted. If the principal determines the student should be promoted, the principal shall make a written recommendation of promotion to the superintendent for final determination. The superintendent's acceptance or rejection of the recommendation shall be in writing.

"**§ 115C-83.1H. Successful reading development for retained students.**

(a) Students not demonstrating reading proficiency shall be enrolled in a summer reading camp provided by the local school administrative unit prior to being retained. Students who demonstrate reading proficiency on an alternative assessment of reading comprehension or student reading portfolio after completing a summer reading camp shall be promoted to the fourth grade. Students who do not demonstrate reading proficiency on these measures after completing a summer reading camp shall be retained under G.S. 115C-83.1G(a) and provided with the instruction listed in subsection (b) of this section during the retained year.

(b) Students retained under G.S. 115C-83.1G(a) shall be provided with a teacher selected based on demonstrated student outcomes in reading proficiency and placed in an accelerated reading class or a transitional third and fourth grade class combination, as appropriate. Classroom instruction shall include at least 90 minutes of daily, uninterrupted,

evidence-based reading instruction, not to include independent reading time, and other appropriate instructional supports and services and reading interventions.

(c) The State Board of Education shall establish a midyear promotion policy for any student retained under G.S. 115C-83.1G(a) who, by November 1, demonstrates reading proficiency through administration of the alternative assessment of reading comprehension, or student reading portfolio review.

(d) Parents or guardians of students who have been retained once under the provisions of G.S. 115C-83.1G(a) shall be provided with a plan for reading at home, including participation in shared and guided reading workshops for the parent or guardian, and outlined in a parental or guardian contract.

(e) Parents or guardians of students who have been retained twice under the provisions of G.S. 115C-83.1G(a) shall be offered supplemental tutoring for the retained student in evidence-based reading services outside the instructional day.

"**§ 115C-83.1I. Notification requirements to parents and guardians.**

(a) Parents or guardians shall be notified in writing, and in a timely manner, that the student shall be retained, unless he or she is exempt from mandatory retention for good cause, if the student is not demonstrating reading proficiency by the end of third grade. Parents or guardians shall receive this notice when a kindergarten, first, second or third grade student (i) is demonstrating difficulty with reading development; (ii) is not reading at grade level; or (iii) has a personal education plan under G.S. 115C-105.41.

(b) Parents or guardians of any student who is to be retained under the provisions of G.S. 115C-83.1G(a) shall be notified in writing of the reason the student is not eligible for a good cause exemption as provided in G.S. 115C-83.1G(b). Written notification shall also include a description of proposed reading interventions that will be provided to the student to remediate identified areas of reading deficiency.

(c) Parents or guardians of students retained under G.S. 115C-83.1G(a) shall receive at least monthly written reports on student progress towards reading proficiency. The evaluation of the student's progress shall be based upon the student's classroom work, observations, tests, assessments, and other relevant information.

(d) Teachers and principals shall provide opportunities to discuss with parents and guardians the notifications listed in this section.

"**§ 115C-83.1J. Accountability measures.**

(a) Each local board of education shall publish annually on a Web site maintained by that local school administrative unit and report in writing to the State Board of Education by September 1 of each year the following information on the prior school year:

(1) The number and percentage of third grade students demonstrating and not demonstrating reading proficiency on the State-approved standardized test of reading comprehension administered to third grade students.

(2) The number and percentage of third grade students who take and pass the alternative assessment of reading comprehension.

(3) The number and percentage of third grade students retained for not demonstrating reading proficiency.

(4) The number and percentage of third grade students exempt from mandatory third grade retention by category of exemption as listed in G.S. 115C-83.1G(b).

(b) Each local board of education shall report annually in writing to the State Board of Education by September 1 of each year a description of all reading interventions provided to students who have been retained under G.S. 115C-83.1G(a).

(c) The State Board of Education shall establish a uniform format for local boards of education to report the required information listed in subsections (a) and (b) of this section and shall provide the format to local boards of education no later than 90 days prior to the annual due date. The State Board of Education shall compile annually this information and submit a State-level summary to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Education Oversight Committee by October 1 of each year, beginning with the 2014-2015 school year.

(d) The State Board of Education and the Department of Public Instruction shall provide technical assistance as needed to aid local school administrative units to implement all provisions of this Part."

SECTION 7A.1.(c) G.S. 115C-105.27(b)(1a) is repealed.

SECTION 7A.1.(d) G.S. 115C-105.41 reads as rewritten:

"**§ 115C-105.41. Students who have been placed at risk of academic failure; personal education plans.**

In order to implement Part 1A of Article 8 of this Chapter, ~~Local~~ local school administrative units shall identify students who are at risk for academic failure and who are not successfully progressing toward grade promotion and graduation, beginning ~~no later than the fourth grade.~~ in kindergarten. Identification shall occur as early as can reasonably be done and can be based on grades, observations, diagnostic and formative assessments, State assessments, and other factors, including reading on grade level, that impact student performance that teachers and administrators consider appropriate, without having to await the results of end-of-grade or end-of-course tests. No later than the end of the first quarter, or after a teacher has had up to nine weeks of instructional time with a student, a personal education plan for academic improvement with focused intervention and performance benchmarks shall be developed or updated for any student at risk of academic failure who is not performing at least at grade level, as identified by the State end-of-grade test and other factors noted above. Focused instructional supports and services, reading ~~intervention~~ interventions and accelerated activities should include ~~research based best~~ evidence-based practices that meet the needs of students and may include coaching, mentoring, tutoring, summer school, Saturday school, and extended days. Local school administrative units shall provide these activities free of charge to students. Local school administrative units shall also provide transportation free of charge to all students for whom transportation is necessary for participation in these activities.

Local school administrative units shall give notice of the personal education plan and a copy of the personal education plan to the student's parent or guardian. Parents should be included in the implementation and ongoing review of personal education plans.

Local school administrative units shall certify that they have complied with this section annually to the State Board of Education. The State Board of Education shall periodically review data on the progress of identified students and report to the Joint Legislative Education Oversight Committee.

No cause of action for monetary damages shall arise from the failure to provide or implement a personal education plan under this section."

SECTION 7A.1.(e) G.S. 115C-174.11(a) reads as rewritten:

"(a) Assessment Instruments for ~~First and Second Grades.~~ Kindergarten, First, Second, and Third Grades. – The State Board of Education shall ~~adopt~~ develop, adopt, and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program and Part 1A of Article 8 of this Chapter for the ~~first and second grades, rather than standardized tests.~~ kindergarten, first, second, and third grades. Local school administrative units ~~may~~ shall use these assessment instruments provided to them by the State Board for ~~first and second grade students,~~ kindergarten, first, second, and third grade students to assess progress, diagnose difficulties, and to inform instruction and remediation needs. ~~and~~ Local school administrative units shall not use standardized tests for summative assessment of kindergarten, first, and second grade students except as required as a condition of receiving federal grants."

SECTION 7A.1.(f) G.S. 115C-238.29F is amended by adding a new subsection to read:

"(d1) Reading Proficiency and Student Promotion. –

(1) Students in the third grade shall be retained if the student fails to demonstrate reading proficiency by reading at or above the third grade level as demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students. The charter school shall provide reading interventions to retained students to remediate reading deficiency, which may include 90 minutes of daily, uninterrupted, evidence-based reading instruction, accelerated reading classes, transition classes containing third and fourth grade students, and summer reading camps.

(2) Students may be exempt from mandatory retention in third grade for good cause but shall continue to receive instructional supports and services and reading interventions appropriate for their age and reading level. Good cause exemptions shall be limited to the following:

a. Limited English Proficient students with less than two years of instruction in an English as a Second Language program.
b. Students with disabilities, as defined in G.S. 115C-106.3(1), whose individualized education program indicates the use of alternative assessments and reading interventions.
c. Students who demonstrate reading proficiency appropriate for third grade students on an alternative assessment of reading comprehension. The charter school shall notify the State Board of Education of the alternative assessment used to demonstrate reading proficiency.
d. Students who demonstrate, through a student reading portfolio, reading proficiency appropriate for third grade students.
e. Students who have (i) received reading intervention and (ii) previously been retained more than once in kindergarten, first, second, or third grades.

(3) The charter school shall provide notice to parents and guardians when a student is not reading at grade level. The notice shall state that if the student's reading deficiency is not remediated by the end of third grade, the student shall be retained unless he or she is exempt from mandatory retention for good cause. Notice shall also be provided to parents and guardians of any student who is to be retained under this subsection of the reason the student is not eligible for a good cause exemption, as well as a description of proposed reading interventions that will be provided to the student to remediate identified areas of reading deficiency.

(4) The charter school shall annually publish on the charter school's Web site and report in writing to the State Board of Education by September 1 of each year the following information on the prior school year:
a. The number and percentage of third grade students demonstrating and not demonstrating reading proficiency on the State-approved standardized test of reading comprehension administered to third grade students.
b. The number and percentage of third grade students not demonstrating reading proficiency and who do not return to the charter school for the following school year.
c. The number and percentage of third grade students who take and pass the alternative assessment of reading comprehension.
d. The number and percentage of third grade students retained for not demonstrating reading proficiency.
e. The number and percentage of third grade students exempt from mandatory third grade retention by category of exemption as listed in subdivision (2) of this subsection."

SECTION 7A.1.(g) G.S. 115C-288(a) reads as rewritten:

"(a) To Grade and Classify Pupils. – The principal shall have authority to grade and classify ~~pupils~~pupils, except as provided in G.S. 115C-83.1G(a). In determining the appropriate grade for a pupil who is already attending a public school, the principal shall consider the pupil's classroom work and grades, the pupil's scores on standardized tests, and the best educational interests of the pupil. The principal shall not make the decision solely on the basis of standardized test scores. If a principal's decision to retain a child in the same grade is partially based on the pupil's scores on standardized tests, those test scores shall be verified as accurate.

A principal shall not require additional testing of a student entering a public school from a school governed under Article 39 of this Chapter if test scores from a nationally standardized test or nationally standardized equivalent measure that are adequate to determine the appropriate placement of the child are available."

SECTION 7A.1.(h) G.S. 130A-440(b) reads as rewritten:

"(b) A health assessment shall include a medical history and physical examination with screening for vision and hearing and, if appropriate, testing for anemia and tuberculosis. Vision screening shall be conducted in accordance with G.S. 130A-440.1. The health assessment may also include dental screening and developmental screening for cognition, language, and motor

function. The developmental screening of cognition and language abilities may be conducted in accordance with G.S. 115C-83.1E(a)."

SECTION 7A.1.(i) Of the funds appropriated from the General Fund to the Department of Public Instruction for the 2012-2013 fiscal year, the sum of thirty-three million nine hundred fourteen thousand five hundred three dollars ($33,914,503) shall be used to implement the requirements of this section. It is the intent of the General Assembly to increase this appropriation for the 2013-2014 fiscal year to implement additional requirements in that fiscal year.

SECTION 7A.1.(j) This section is effective when it becomes law and applies beginning with the 2013-2014 school year. The developmental screening and kindergarten entry assessment required by this section shall be administered beginning with the 2014-2015 school year.

STATE EMPLOYEE LITERACY VOLUNTEER LEAVE TIME

SECTION 7A.2.(a) G.S. 126-4 reads as rewritten:

"**§ 126-4. Powers and duties of State Personnel Commission.**

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

...

(5b) A leave program that allows employees to volunteer in a literacy program in a public school for up to five hours each month.

...."

SECTION 7A.2.(b) This section is effective when it becomes law.

SCHOOL PERFORMANCE GRADES

SECTION 7A.3.(a) G.S. 115C-12(9)c1. reads as rewritten:

"c1. To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance. As a part of the annual "report card" for each local school administrative unit, the State Board shall award an overall numerical school performance score on a scale of zero to 100 and a corresponding letter grade of A, B, C, D, or F earned by each school within the local school administrative unit. The school performance score and grade shall reflect student performance on annual subject-specific assessments, college and workplace readiness measures, and graduation rates. For schools serving students in any grade from kindergarten to eighth grade, separate performance scores and grades shall also be awarded based on the school performance in reading and mathematics respectively. The annual "report card" for schools serving students in third grade also shall include the number and percentage of third grade students who (i) take and pass the alternative assessment of reading comprehension; (ii) were retained in third grade for not demonstrating reading proficiency as indicated in G.S. 115C-83.1G(a); and (iii) were exempt from mandatory third grade retention by category of exemption as listed in G.S. 115C-83.1G(b)."

SECTION 7A.3.(b) G.S. 115C-47(58) reads as rewritten:

"(58) To Inform the Public About the North Carolina School Report Cards Issued by the State Board of Education. – Each local board of education shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or ~~otherwise.~~is otherwise provided to the public. Each local board of education shall ensure that the overall school performance score and grade earned by each school in the

local school administrative unit for the current and previous four school years is prominently displayed on the Web site of the local school administrative unit. If any school in the local school administrative unit is awarded a grade of D or F, the local board of education shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 7A.3.(c) G.S. 115C-238.29F is amended by adding a new subsection to read:

"(l) North Carolina School Report Cards. – A charter school shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or is otherwise provided to the public. A charter school shall ensure that the overall school performance score and grade earned by the charter school for the current and previous four school years is prominently displayed on the school Web site. If a charter school is awarded a grade of D or F, the charter school shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 7A.3.(d) G.S. 115C-238.66 is amended by adding a new subdivision to read:

"(11) North Carolina School Report Cards. – A regional school shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or is otherwise provided to the public. A regional school shall ensure that the overall school performance score and grade earned by the regional school for the current and previous four school years is prominently displayed on the school Web site. If a regional school is awarded a grade of D or F, the regional school shall provide notice of the grade in writing to the parent or guardian of all students enrolled in that school."

SECTION 7A.3.(e) The State Board of Education shall award school performance scores and grades as required by G.S. 115C-12(9)c1. as follows:

(1) The State Board of Education shall calculate school performance scores by totaling the sum of points earned by the school and converting the sum of points to a 100-point scale. Subsections (2) and (3) of this section provide the school performance elements for schools serving students in kindergarten through eighth grade. Subsection (4) of this section provides the school performance elements for schools serving grades nine through twelve. The school performance score shall be used to determine the school performance grade based on the following scale:
   a. At least 90 performance grade points for an overall school performance grade of A.
   b. At least 80 performance grade points for an overall school performance grade of B.
   c. At least 70 performance grade points for an overall school performance grade of C.
   d. At least 60 performance grade points for an overall school performance grade of D.
   e. A school that accumulates less than 60 points shall be assigned an overall school performance grade of F.

(2) For schools serving students in kindergarten through eighth grade the overall school performance score shall be calculated based on the sum of three school performance elements.
   a. The score shall be calculated as follows:
      1. One point for each percent of students who score at or above proficient on annual assessments for mathematics in grades three through eight.
      2. One point for each percent of students who score at or above proficient on annual assessments for reading in grades three through eight.
      3. One point for each percent of students who score at or above proficient on annual assessments for science in grades five and eight.

(3) For schools serving students in kindergarten through eighth grade, the school performance scores in reading and mathematics, respectively, shall be earned as follows:
a. The literacy school performance score shall be based on the percent of students who score at or above proficient on annual assessments for reading assessments in grades three through eight.
b. The mathematics school performance score shall be based on the percent of students who score at or above proficient on annual assessments for mathematics in grades three through eight.

(4) The school performance score earned by schools serving students in ninth through twelfth grades shall be calculated based on the sum of seven school performance elements.
a. The score shall be calculated as follows:
1. One point for each percent of students who score at or above proficient on annual assessments for mathematics.
2. One point for each percent of students who score at or above proficient on annual assessments for English.
3. One point for each percent of students who score at or above proficient on annual assessments for biology.
4. One point for each percent of students who complete a higher-level mathematics class with a passing grade.
5. One point for each percent of students who score at or above a level demonstrating college readiness on a nationally normed test of college readiness.
6. One point for each percent of students who graduate within four years of entering high school.
7. One point for each percent of students who demonstrate workplace readiness on a nationally normed test of workplace readiness.

(5) In calculating the overall school performance score earned by schools, the State Board of Education shall proportionally adjust the scale to account for the absence of a school performance element for award of scores to a school that does not have a measure of one of the school performance elements annually assessed for the grades taught at that school.

(6) The State Board of Education shall report to the Joint Legislative Education Oversight Committee annually by January 15 on recommended adjustments to the school performance grade elements and scales for award of scores and grades.

SECTION 7A.3.(f) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

MAXIMIZE INSTRUCTIONAL TIME

SECTION 7A.4.(a) G.S. 115C-174.12(a) reads as rewritten:

"(a) The State Board of Education shall establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. These policies and guidelines shall include the following:

(1) Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning;

(2) Students in a school shall not be subject to field tests or national tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams; and

(3) No school shall participate in more than two field tests at any one grade level during a school ~~year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.~~year.

(4) All annual assessments of student achievement adopted by the State Board of Education pursuant to G.S. 115C-174.11(c)(1) and (3) and all final exams for courses shall be administered within the final 10 instructional days of the school year for year-long courses and within the final five instructional days of the semester for semester courses. Exceptions shall be permitted to accommodate a student's individualized education program and section 504 (29 U.S.C. § 794) plans, and for the administration of final exams for courses with national or international curriculums required to be held at designated times.

These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of ~~children~~ students with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a ~~child's~~ student's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit the use of statewide tests as the sole determinant of decisions about a ~~child's~~student's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article."

SECTION 7A.4.(b) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

ADJUSTMENTS TO SCHOOL CALENDAR

SECTION 7A.5.(a) G.S. 115C-84.2 reads as rewritten:

"**§ 115C-84.2. School calendar.**

(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of 185 days ~~and~~ or 1,025 hours of instruction covering at least nine calendar months. The local board shall designate when the ~~185~~ instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

...

(4a) Three days, as designated by the local board, for use as teacher workdays. These days shall be protected to allow teachers to complete instructional and classroom administrative duties. The local school administrative unit shall not impose any additional tasks on these days. The local board shall schedule at least one of these days at the beginning of the school year and at least one at the end of the school year.

(5) The remaining days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes. Before consulting with the local board, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled. Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. In order to make up days for school closing because of inclement weather, the local board may designate any of the days in this subdivision as

additional make-up days to be scheduled after the last day of student attendance.

~~If the State Board of Education finds that it will enhance student performance to do so, the State Board may grant a local board of education a waiver to use up to five of the instructional days required by subdivision (1) of this subsection as teacher workdays. For each instructional day waived, the State Board shall waive an equivalent number of instructional hours.~~

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards shall designate at least two days scheduled under subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave. Local boards may designate the remaining days scheduled in subdivision (5) of this subsection as days on which teachers may take accumulated vacation leave, but local boards shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on any of these days. A teacher may elect to waive this notice requirement for one or more of these days.

...

(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall ~~not be before August 25,~~be no earlier than the Monday closest to August 26, and the closing date for students shall ~~not be after June 10.~~be no later than the Friday closest to June 11. On a showing of good cause, the State Board of Education may waive ~~this requirement~~ the requirement that the opening date for students be no earlier than the Monday closest to August 26 and may allow the local board of education to set an opening date no earlier than the Monday closest to August 19, to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means ~~either that:~~that schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

~~(1) Schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations; or~~

~~(2) Schools in any local school administrative unit in a county have been closed for all or part of eight days per year during any four of the last 10 years because of severe weather conditions. For purposes of this subdivision, a school shall be deemed to be closed for part of a day if it is closed for two or more hours.~~

~~The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.~~

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar.

...."

SECTION 7A.5.(b) G.S. 115C-238.29F(d)(1) reads as rewritten:

"(1) The school shall provide instruction each year for at least 185 ~~days.~~days or 1,025 hours over nine calendar months. ~~If the State Board of Education finds that it will enhance student performance to do so, the State Board may grant a charter school a waiver to use up to five of these instructional days as teacher workdays.~~"

SECTION 7A.5.(c) G.S. 115C-238.53(d) reads as rewritten:

"(d) A program approved under this Part shall provide instruction each school year for at least ~~180 days~~185 days or 1,025 instructional hours during nine calendar months, shall comply with laws and policies relating to the education of students with disabilities, and shall comply with Article 27 of this Chapter. The requirements of G.S. 115C-84.2 shall not apply to the school calendar of a program approved under this Part."

SECTION 7A.5.(d) G.S. 115C-238.66(1)d. reads as rewritten:

"d. The board of directors shall adopt a school calendar consisting of a minimum of 185 days or 1,025 hours of instruction covering at least nine calendar months."

SECTION 7A.5.(e) This section is effective when it becomes law and applies beginning with the 2013-2014 school year.

FUNDING FOR THE ADDITION OF FIVE INSTRUCTIONAL DAYS WITHIN THE EXISTING SCHOOL CALENDAR

SECTION 7A.6.(a) To fully provide for the expansion of five additional instructional days in accordance with S.L. 2011-145, Section 7.29 for those days for which a local school administrative unit has not requested and received a waiver from the State Board of Education for the 2012-2013 school year:

(1) Of the funds appropriated from the General Fund to the Department of Public Instruction for the 2012-2013 fiscal year, the sum of forty thousand one hundred sixty-eight dollars ($40,168) shall be used to increase the amount appropriated for the noninstructional support personnel allotment.

(2) Of the funds appropriated from the General Fund to the Department of Public Instruction for the 2012-2013 fiscal year, the sum of three hundred fifty-one thousand four hundred sixty-nine dollars ($351,469) shall be used to increase the amount appropriated for the transportation allotment.

SECTION 7A.6.(b) This section becomes effective July 1, 2012.

ESTABLISH NC TEACHER CORPS

SECTION 7A.7.(a) Article 20 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-296.7. North Carolina Teacher Corps.**

(a) There is established the North Carolina Teacher Corps (NC Teacher Corps) to recruit and place recent graduates of colleges and universities and mid-career professionals as teachers in high needs public schools.

(b) The State Board of Education, in consultation with the Board of Governors of The University of North Carolina and the North Carolina Independent Colleges and Universities, shall develop and administer the NC Teacher Corps. In the development of the NC Teacher Corps, the State Board of Education shall consider examples of other successful teacher recruitment models used nationally and in other states.

(c) Applications shall be received annually for admission to the NC Teacher Corps. The State Board of Education shall establish application criteria, including, at a minimum, an award of a bachelor's degree from an accredited college or university. The State Board of Education may establish a committee to annually evaluate and select candidates for admission to the NC Teacher Corps.

(d) The State Board of Education shall identify local school administrative units with unmet recruitment needs and high needs schools and shall coordinate placement of NC Teacher Corps members in those schools.

(e) The State Board of Education, in coordination with the Board of Governors, shall develop an intensive summer training institute for NC Teacher Corps members to provide coursework and training on essential teaching frameworks, curricula, and lesson planning skills, as well as identification and education of students with disabilities, positive management of student behavior, effective communication for defusing and deescalating disruptive and

dangerous behavior, and safe and appropriate use of seclusion and restraint. The intensive summer training institute also shall address identification of difficulty with reading development and of reading deficiencies, and the provision of reading instruction, intervention, and remediation strategies.

(f) The State Board of Education, in coordination with the Board of Governors, shall provide ongoing support to NC Teaching Corps members through coaching, mentoring, and continued professional development.

(g) NC Teaching Corps members shall be granted lateral entry teaching licenses pursuant to G.S. 115C-296(c)."

SECTION 7A.7.(b) This section is effective when it becomes law. The State Board of Education shall recruit and place an initial cohort of NC Teacher Corps members no later than the 2012-2013 school year.

STRENGTHEN TEACHER LICENSURE

SECTION 7A.8.(a) G.S. 115C-296 reads as rewritten:

"§ 115C-296. Board sets licensure requirements; reports; lateral entry and mentor programs.

(a) The State Board of Education shall have entire control of licensing all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all licenses and shall determine and fix the salary for each grade and type of license which it authorizes.

The State Board of Education may require an applicant for an initial bachelors degree certificate or graduate degree certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose. Elementary Education (K-6) teachers shall also achieve a prescribed minimum score on subtests or standard examinations specific to teaching reading and mathematics. The State Board of Education shall permit an applicant to fulfill any such testing requirement before or during the applicant's second year of teaching provided the applicant took the examination at least once during the first year of teaching. The State Board of Education shall make any required standard initial licensure exam ~~sufficiently~~ rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has ~~adequate~~ received high quality academic and professional preparation to ~~teach.~~teach effectively.

...

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel licensed in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several licensure requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The licensure program shall provide for initial licensure after completion of preservice training, continuing licensure after three years of teaching experience, and license renewal every five years thereafter, until the retirement of the teacher. The last license renewal received prior to retirement shall remain in effect for five years after retirement. The licensure program shall also provide for lifetime licensure after 50 years of teaching.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall evaluate and modify, as necessary, the academic requirements for students preparing to teach science in middle and high schools to ensure that there is adequate preparation in issues related to science laboratory safety.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing licensure. The new requirements shall reflect more rigorous standards for continuing licensure and to the extent possible shall be aligned with quality professional development programs that

reflect State priorities for improving student achievement. Standards for continuing licensure shall include at least three continuing education credits related to literacy for elementary and middle school teachers. Literacy renewal credits shall include assessment, diagnosis, and intervention strategies for students not demonstrating reading proficiency. Oral language, phonemic and phonological awareness, phonics, vocabulary, fluency, and comprehension shall be addressed in literacy-related activities leading to certification renewal for elementary school teachers.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher licenses. The State Board shall consider modifications in the license renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. ~~The State Board shall adopt new standards for the renewal of teacher licenses by May 15, 1998.~~

The standards for approval of institutions of teacher education shall require that teacher education programs for all students include demonstrated competencies in (i) the identification and education of children with disabilities and (ii) positive management of student behavior and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. The standards for approval of institutions of teacher education shall require that elementary teacher education programs include demonstrated competencies in (i) teaching of reading, including a substantive understanding of reading as a process involving oral language, phonological and phonemic awareness, phonics, fluency, vocabulary, and comprehension; (ii) evidence-based assessment and diagnosis of specific areas of difficulty with reading development and of reading deficiencies; and (iii) appropriate application of instructional supports and services and reading interventions to ensure reading proficiency for all students. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

...

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Beginning with the 2006-2007 school year, the criteria and procedures shall include preservice training in (i) the identification and education of children with disabilities and (ii) positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. Skilled individuals who choose to enter the profession of teaching laterally may be granted a ~~provisional~~lateral entry teaching license for no more than three years and shall be required to obtain licensure before contracting for a fourth year of service with any local administrative unit in this State.

...."

SECTION 7A.8.(b) This section is effective when it becomes law and applies beginning with the 2013-2014 school year.

PROOF OF STATE-FUNDED LIABILITY INSURANCE

SECTION 7A.9.(a) G.S. 115C-12 reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(9) Miscellaneous Powers and Duties. – All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution

and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

...

f. To annually notify public school employees of the availability and coverage of professional liability insurance.

...."

SECTION 7A.9.(b) This section is effective when it becomes law and applies beginning with the 2012-2013 school year.

PAY FOR EXCELLENCE

SECTION 7A.10.(a) Each local board of education shall develop a plan of performance pay for all licensed personnel employed by the local board. Under the performance pay plan, licensed employees should be eligible to receive bonuses or adjustments to base salary for meeting certain performance criteria. Criteria for award of bonuses or adjustments to base salary should include, but are not limited to, the following factors:

(1) Annual growth in student achievement of students assigned to a teacher's classroom, when applicable.

(2) Annual growth in student achievement of students assigned to a specific school.

(3) Assignment of additional academic responsibilities.

(4) Assignment to a hard-to-staff school.

(5) Assignment to a hard-to-staff subject area.

Local boards of education shall submit plans to the State Board of Education no later than March 1, 2013. The State Board of Education shall report on these plans and the achievement-based compensation models developed as part of the federal Race to the Top grant and shall submit the report and all plans to the Fiscal Research Division, the Joint Legislative Commission on Governmental Operations, and the respective Subcommittees on Education Appropriations of the Senate and House of Representatives no later than April 15, 2013. Members of the public may also submit plans for performance pay no later than April 15, 2013, to the Fiscal Research Division, the Joint Legislative Commission on Governmental Operations, and the respective Subcommittees on Education Appropriations of the Senate and House of Representatives.

SECTION 7A.10.(b) This section is effective when it becomes law.

CLARIFY NC PRE-K PROGRAM ELIGIBILITY

SECTION 7A.11.(a) Section 10.7(f) of S.L. 2011-145 reads as rewritten:

"**SECTION 10.7.(f)** ~~The prekindergarten program may continue to serve at-risk children identified through the existing "child find" methods in which at-risk children are currently served within the Division of Child Development. The Division of Child Development shall serve at-risk children regardless of income. However, the total number of at-risk children served shall constitute no more than twenty percent (20%) of the four-year-olds served within the prekindergarten program. Any~~ The Division of Child Development and Early Education shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors. Furthermore, any age-eligible child who is a child of either of the following shall be eligible for the program: (i) an active duty member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was ordered to active duty by the proper authority within the last 18 months or is expected to be ordered within the next 18 months or (ii) a member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was injured or killed while serving on active duty. Eligibility determinations for prekindergarten participants may continue through local education agencies and local North Carolina Partnership for Children, Inc., partnerships."

SECTION 7A.11.(b) Section 10.7(h) of S.L. 2011-145 is repealed.

SECTION 7A.11.(c) Of the funds appropriated from the General Fund to the Department of Health and Human Services, Division of Child Development and Early Education, for the 2012-2013 fiscal year, the sum of eleven million three hundred eight

thousand three hundred sixty-three dollars ($11,308,363) shall be used to add 2,261 slots to be used in the NC Pre-K program.

SECTION 7A.11.(d) This section is effective when it becomes law.

REPEAL PROHIBITION ON TEACHER PREPAYMENT

SECTION 7A.12.(a) Section 5 of S.L. 2011-379 is repealed.

SECTION 7A.12.(b) This section becomes effective July 1, 2012.

TAX DEDUCTION FOR EDUCATIONAL SUPPLIES

SECTION 7A.13.(a) G.S. 105-134.6(d) is amended by adding a new subdivision to read:

"(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

...

(9) To the extent a deduction has not been claimed for educator expenses in determining federal adjusted gross income, an eligible educator may deduct an amount not to exceed two hundred fifty dollars ($250.00) paid or incurred in connection with items listed in this subdivision. For purposes of this subdivision, the term "eligible educator" has the same meaning as defined in section 62 of the Code, as it existed on December 31, 2011. In the case of a married couple filing a joint return where both spouses are eligible educators, the maximum dollar amount is five hundred dollars ($500.00).

a. Books.

b. Supplies, other than nonathletic supplies for courses of instruction in health or physical education.

c. Computer equipment, including related software and services.

d. Supplementary materials used by the eligible educator in the classroom."

SECTION 7A.13.(b) This section becomes effective for taxable years beginning on or after January 1, 2012.

TEACHER CONTRACTS

SECTION 7A.14.(a) G.S. 115C-325 is repealed.

SECTION 7A.14.(b) Part 3 of Article 22 of Chapter 115C of the General Statutes is amended by adding new sections to read:

"**§ 115C-325.1. Definitions.**

As used in this Part, the following definitions apply:

(1) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.

(2) "Demote" means to reduce the salary of a person who is classified or paid by the State Board of Education as a classroom teacher or as a school administrator. The word "demote" does not include (i) a suspension without pay pursuant to G.S. 115C-325.5(a); (ii) the elimination or reduction of bonus payments, including merit-based supplements, or a systemwide modification in the amount of any applicable local supplement; or (iii) any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.

(3) "Disciplinary suspension" means a final decision to suspend a teacher or school administrator without pay for no more than 60 days under G.S. 115C-325.5(b).

(4) "School administrator" means a principal, assistant principal, supervisor, or director whose major function includes the direct or indirect supervision of teaching or any other part of the instructional program as provided in G.S. 115C-287.1(a)(3).

(5) "Teacher" means a person meeting each of the following requirements:

a. Who holds at least one of the following licenses issued by the State Board of Education:

1. A current standard professional educator's license.

2. A current lateral entry teaching license.

3. A regular, not expired, vocational license.

b. Whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid either as a classroom teacher or instructional support personnel.

c. Who is employed to fill a full-time, permanent position.

"**§ 115C-325.2. Personnel files.**

(a) Maintenance of Personnel File. – The superintendent shall maintain in his or her office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from the teacher's personnel file that the teacher deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

(b) Inspection of Personnel Files. – The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before the teacher's employment by the board may be kept in a file separate from the teacher's personnel file and need not be made available to the teacher. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher, except the data may be used to substantiate G.S. 115C-325.4(a)(7) or G.S. 115C-325.4(a)(14) as grounds for dismissal or demotion.

"**§ 115C-325.3. Teacher contracts.**

(a) Length of Contract. – A contract between the local board of education and a teacher who has been employed by the local board of education for less than three years shall be for a term of one school year. A contract or renewal of contract between the local board of education and a teacher who has been employed by the local board of education for three years or more shall be for a term of one, two, three, or four school years.

(b) Superintendent Recommendation to Local Board. – Local boards of education shall employ teachers upon the recommendation of the superintendent. If a superintendent intends to recommend to the local board of education that a teacher be offered a new or renewed contract, the superintendent shall submit the recommendation to the local board for action and shall include in the recommendation the length of the term of contract. A superintendent shall only recommend a teacher for a contract of a term longer than one school year if the teacher has shown effectiveness as demonstrated on the teacher evaluation instrument. The local board may approve the superintendent's recommendation, may decide not to offer the teacher a new or renewed contract, or may decide to offer the teacher a renewed contract for a different term than recommended by the superintendent.

(c) Dismissal During Term of Contract. – A teacher shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure set forth in G.S. 115C-325.4.

(d) Recommendation on Nonrenewal. – If a superintendent decides not to recommend that the local board of education offer a renewed contract to a teacher, the superintendent shall give the teacher written notice of the decision no later than May 15.

(e) Right to Petition for Hearing. – A teacher shall have the right to petition the local board of education for a hearing no later than June 1. The local board may, in its discretion, grant a hearing regarding the superintendent's recommendation for nonrenewal. The local board of education shall notify the teacher making the petition of its decision whether to grant a hearing. If the request for a hearing is granted, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the teacher a renewed contract. The board shall notify a teacher whose contract will not be renewed for the next school year of its decision by June 15; provided, however, if a teacher submits a request for a hearing, the board shall provide the nonrenewal notification by July 1 or such later date

upon the written consent of the superintendent and teacher. A decision not to offer a teacher a renewed contract shall not be on any basis prohibited by State or federal law.

(f) Local boards of education and teachers employed by the local board may mutually modify the terms of the contract to permit part-time employment.

"**§ 115C-325.4. Dismissal or demotion for cause.**

(a) Grounds. – No teacher shall be dismissed or demoted or reduced to employment on a part-time basis for disciplinary reasons during the term of the contract except for one or more of the following:

(1) Inadequate performance. In determining whether the professional performance of a teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Inadequate performance for a teacher shall mean (i) the failure to perform at a proficient level on any standard of the evaluation instrument or (ii) otherwise performing in a manner that is below standard.

(2) Immorality.

(3) Insubordination.

(4) Neglect of duty.

(5) Physical or mental incapacity.

(6) Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.

(7) Conviction of a felony or a crime involving moral turpitude.

(8) Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.

(9) Failure to fulfill the duties and responsibilities imposed upon teachers or school administrators by the General Statutes of this State.

(10) Failure to comply with such reasonable requirements as the board may prescribe.

(11) Any cause which constitutes grounds for the revocation of the teacher's teaching license or the school administrator's administrator license.

(12) Failure to maintain his or her license in a current status.

(13) Failure to repay money owed to the State in accordance with the provisions of Article 60 of Chapter 143 of the General Statutes.

(14) Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.

(b) Dismissal Procedure. – The procedures provided in G.S. 115C-325.6 shall be followed for dismissals, demotions, or reductions to part-time employment for disciplinary reasons for any reason specified in subsection (a) of this section.

"**§ 115C-325.5. Teacher suspension.**

(a) Immediate Suspension Without Pay. – If a superintendent believes that cause exists for dismissing a teacher for any reason specified in G.S. 115C-325.4 and that immediate suspension of the teacher is necessary, the superintendent may suspend the teacher without pay. Before suspending a teacher without pay, the superintendent shall meet with the teacher and give him or her written notice of the charges against the teacher, an explanation of the basis for the charges, and an opportunity to respond. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal, demotion, or disciplinary suspension without pay as provided in this section. If it is finally determined that no grounds for dismissal, demotion, or disciplinary suspension without pay exist, the teacher shall be reinstated immediately, shall be paid for the period of suspension, and all records of the suspension shall be removed from the teacher's personnel file.

(b) Disciplinary Suspension Without Pay. – A teacher recommended for disciplinary suspension without pay may request a hearing before the board. If no request is made within 15 days, the superintendent may file his or her recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension.

(1) Board hearing for disciplinary suspensions for more than 10 days or for certain types of intentional misconduct. – The procedures for a board hearing under G.S. 115C-325.8 shall apply if any of the following circumstances exist:

a. The recommended disciplinary suspension without pay is for more than 10 days; or

b. The disciplinary suspension is for intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the teacher's or school administrator's license, or providing false information.

(2) Board hearing for disciplinary suspensions of no more than 10 days. – The procedures for a board hearing under G.S. 115C-325.7 shall apply to all disciplinary suspensions of no more than 10 days that are not for intentional misconduct as specified in G.S. 115C-325.5(b)(1).

(c) Suspension with Pay. – If a superintendent believes that cause may exist for dismissing or demoting a teacher for any reasons specified in G.S. 115C-325.4 but that additional investigation of the facts is necessary and circumstances are such that the teacher should be removed immediately from the teacher's duties, the superintendent may suspend the teacher with pay for a reasonable period of time, not to exceed 90 days. The superintendent shall notify the board of education within two days of the superintendent's action and shall notify the teacher within two days of the action and the reasons for it. If the superintendent has not initiated dismissal or demotion proceedings against the teacher within the 90-day period, the teacher shall be reinstated to the teacher's duties immediately and all records of the suspension with pay shall be removed from the teacher's personnel file at the teacher's request. However, if the superintendent and the teacher agree to extend the 90-day period, the superintendent may initiate dismissal or demotion proceedings against the teacher at any time during the period of the extension.

"**§ 115C-325.6. Procedure for dismissal or demotion of a teacher for cause.**

(a) Recommendation of Dismissal or Demotion. – A teacher may not be dismissed, demoted, or reduced to part-time employment for disciplinary reasons during the term of the contract except upon the superintendent's recommendation based on one or more of the grounds in G.S. 115C-325.4.

(b) Notice of Recommendation. – Before recommending to a board the dismissal or demotion of a teacher, the superintendent shall give written notice to the teacher by certified mail or personal delivery of the superintendent's intention to make such recommendation and shall set forth as part of the superintendent's recommendation the grounds upon which he or she believes such dismissal or demotion is justified. The superintendent also shall meet with the teacher and provide written notice of the charges against the teacher, an explanation of the basis for the charges, and an opportunity to respond if the teacher has not done so under G.S. 115C-325.5(a). The notice shall include a statement to the effect that the teacher, within 14 days after the date of receipt of the notice, may request a hearing before the board on the superintendent's recommendation. A copy of Part 3 of Article 22 of Chapter 115C shall also be sent to the teacher.

(c) Request for Hearing. – Within 14 days after receipt of the notice of recommendation, the teacher may file with the superintendent a written request for a hearing before the board on the superintendent's recommendation. The superintendent shall submit his or her recommendation to the board. Within five days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and shall notify the teacher by certified mail or personal delivery of the date, time, and place of the hearing. The time specified shall not be less than 10 nor more than 30 days after the board has notified the teacher, unless both parties agree to an extension. The hearing shall be conducted as provided in G.S. 115C-325.7.

(d) No Request for Hearing. – If the teacher does not request a hearing before the board within the 14 days provided, the superintendent may submit his or her recommendation to the board. The board, if it sees fit, may by resolution (i) reject the superintendent's recommendation

or (ii) accept or modify the superintendent's recommendation and dismiss, demote, reinstate, or suspend the teacher without pay.

"**§ 115C-325.7. Hearing before board.**

(a) Board Hearing. – The following procedures shall apply to a hearing conducted by the board:

(1) The hearing shall be private.

(2) The board shall receive the following:

a. Any documentary evidence the superintendent intends to use to support the recommendation. The superintendent shall provide the documentary evidence to the teacher seven days before the hearing.

b. Any documentary evidence the teacher intends to use to rebut the superintendent's recommendation. The teacher shall provide the superintendent with the documentary evidence three days before the hearing.

c. The superintendent's recommendation and the grounds for the recommendation.

(3) The superintendent and teacher may submit a written statement not less than three days before the hearing.

(4) The superintendent and teacher shall be permitted to make oral arguments to the board based on the record before the board.

(5) The board shall make findings of fact based upon a preponderance of the evidence.

(6) Within two days following the hearing, the board shall send a written copy of its findings and determination to the teacher and the superintendent.

(7) If the board elects to make a transcript, the teacher may request and shall receive at no charge a transcript of the proceedings. A teacher may have the hearing transcribed by a court reporter at the teacher's expense.

(b) The procedures of this section shall not apply to board hearings for disciplinary suspensions without pay under G.S. 115C-325.5(b)(1). Board hearings for G.S. 115C-325.5(b)(1) shall be conducted as provided in G.S. 115C-325.8.

"**§ 115C-325.8. Board hearing for certain disciplinary suspensions.**

(a) The following procedures shall apply for a board hearing under G.S. 115C-325.5(b), disciplinary suspensions without pay:

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with reasonable rules adopted by the State Board of Education to govern such hearings.

(3) At the hearing, the teacher and the superintendent shall have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any competent testimony relevant to the issue of whether grounds exist for a disciplinary suspension without pay.

(4) Rules of evidence shall not apply to a hearing under this subsection and the board may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least eight days before the hearing, the superintendent shall provide to the teacher a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the superintendent intends to present.

(6) At least six days before the hearing, the teacher shall provide the superintendent a list of witnesses the teacher intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the teacher intends to present.

(7) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this section.

(8) The board may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for suspension without pay.

(9) The board shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.

(10) The superintendent shall provide for making a transcript of the hearing. The teacher may request and shall receive at no charge a transcript of the proceedings.

"**§ 115C-325.9. Teacher resignation.**

(a) Teacher Resignation Following Recommendation for Dismissal. – If a teacher has been recommended for dismissal under G.S. 115C-325.4 and the teacher chooses to resign without the written agreement of the superintendent, then:

(1) The superintendent shall report the matter to the State Board of Education.

(2) The teacher shall be deemed to have consented to (i) the placement in the teacher's personnel file of the written notice of the superintendent's intention to recommend dismissal and (ii) the release of the fact that the superintendent has reported this teacher to the State Board of Education to prospective employers, upon request. The provisions of G.S. 115C-321 shall not apply to the release of this particular information.

(3) The teacher shall be deemed to have voluntarily surrendered his or her license pending an investigation by the State Board of Education in a determination whether or not to seek action against the teacher's license. This license surrender shall not exceed 45 days from the date of resignation. Provided further that the cessation of the license surrender shall not prevent the State Board of Education from taking any further action it deems appropriate. The State Board of Education shall initiate investigation within five working days of the written notice from the superintendent and shall make a final decision as to whether to revoke or suspend the teacher's license within 45 days from the date of resignation.

(b) 30 Days' Notice Resignation Requirement. – A teacher who is not recommended for dismissal should not resign during the term of the contract without the consent of the superintendent unless he or she has given at least 30 days' notice. If a teacher who is not recommended for dismissal does resign during the term of the contract without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's license for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

"**§ 115C-325.10. Application to certain institutions.**

Notwithstanding any law or regulation to the contrary, this Part shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services, Public Instruction, Correction, or the Division of Juvenile Justice of the Department of Public Safety, regardless of the age of the students.

"**§ 115C-325.11. Dismissal of school administrators and teachers employed in low-performing residential schools.**

(a) Notwithstanding any other provision of this section or any other law, this section shall govern the dismissal by the State Board of Education of teachers, principals, assistant principals, directors, supervisors, and other licensed personnel assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team. The State Board shall dismiss a teacher, principal, assistant principal, director, supervisor, or other licensed personnel when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

(b) The State Board may dismiss a teacher, principal, assistant principal, director, supervisor, or other licensed personnel when:

(1) The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school.

(2) That assistance team makes the recommendation to dismiss the teacher, principal, assistant principal, director, supervisor, or other licensed personnel for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion of a teacher.

Within 30 days of any dismissal under this subsection, a teacher, principal, assistant principal, director, supervisor, or other licensed personnel may request a hearing before a panel of three members designated by the State Board. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subsection. Decisions of the panel may be appealed on the record to the State Board.

(c) Notwithstanding any other provision of this section or any other law, this subsection shall govern the dismissal by the State Board of licensed staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed staff member.

Within 30 days of any dismissal under this subsection, a licensed staff member may request a hearing before a panel of three members designated by the State Board. The State Board shall adopt procedures to ensure that due process rights are afforded to licensed staff members recommended for dismissal under this subsection. Decisions of the panel may be appealed on the record to the State Board.

(d) The State Board or the superintendent of a residential school may terminate the contract of a school administrator dismissed under this section. Nothing in this section shall prevent the State Board from refusing to renew the contract of any person employed in a school identified as low-performing.

(e) Neither party to a school administrator or teacher contract is entitled to damages under this section.

(f) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section.

"**§ 115C-325.12. Procedure for dismissal of Principals employed in low-performing schools.**

(a) Dismissal of Principals Assigned to Low-Performing Schools With Assistance Teams. – Notwithstanding any other provision of this Part or any other law, this section governs the State Board's dismissal of principals assigned to low-performing schools to which the State Board has assigned an assistance team.

(b) Authority of State Board to Dismiss Principal. – The State Board through its designee may, at any time, recommend the dismissal of any principal who is assigned to a low-performing school to which an assistance team has been assigned. The State Board through its designee shall recommend the dismissal of any principal when the State Board receives from the assistance team assigned to that principal's school two consecutive evaluations that include written findings and recommendations regarding the principal's inadequate performance.

(c) Procedures for Dismissal of Principal. –

(1) If the State Board through its designee recommends the dismissal of a principal under this section, the principal shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed.

(2) The panel shall order the dismissal of the principal if it determines from available information, including the findings of the assistance team, that the low performance of the school is due to the principal's inadequate performance.

(3) The panel may order the dismissal of the principal if (i) it determines that the school has not made satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the principal for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion of a teacher.

(4) If the State Board or its designee recommends the dismissal of a principal before the assistance team assigned to the principal's school has evaluated that principal, the panel may order the dismissal of the principal if the panel determines from other available information that the low performance of the school is due to the principal's inadequate performance.

(5) In all hearings under this section, the burden of proof is on the principal to establish that the factors leading to the school's low performance were not

due to the principal's inadequate performance. In all hearings under this section, the burden of proof is on the State Board to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school and to establish one or more of the grounds established for dismissal or demotion of a teacher under G.S. 115C-325.4.

(6) In all hearings under this section, two consecutive evaluations that include written findings and recommendations regarding that principal's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the principal.

(7) The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this section. Decisions of the panel may be appealed on the record to the State Board.

(d) The State Board of Education or a local board may terminate the contract of a principal dismissed under this section.

(e) Neither party to a school administrator contract is entitled to damages under this section.

(f) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section.

"**§ 115C-325.13. Procedure for dismissal of teachers employed in low-performing schools.**

(a) Notwithstanding any other provision of this Part or any other law, this section shall govern the State Board's dismissal of teachers, assistant principals, directors, and supervisors assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a teacher, assistant principal, director, or supervisor when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher, assistant principal, director, or supervisor.

(b) The State Board may dismiss a teacher, assistant principal, director, or supervisor when:

(1) The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and

(2) That assistance team makes the recommendation to dismiss the teacher, assistant principal, director, or supervisor for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion for cause.

A teacher, assistant principal, director, or supervisor may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this section. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this section. Decisions of the panel may be appealed on the record to the State Board.

(c) Notwithstanding any other provision of this Part or any other law, this section shall govern the State Board's dismissal of licensed staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed staff member.

(d) A licensed staff member may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this section. The State Board shall adopt procedures to ensure that due process rights are afforded to licensed staff members recommended for dismissal under this section. Decisions of the panel may be appealed on the record to the State Board.

(e) The State Board of Education or a local board may terminate the contract of a teacher, assistant principal, director, or supervisor dismissed under this section.

(f) Neither party to a school administrator or teacher contract is entitled to damages under this section.

(g) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section."

SECTION 7A.14.(c) G.S. 115C-45(c) reads as rewritten:

"(c) Appeals to Board of Education and to Superior Court. – An appeal shall lie to the local board of education from any final administrative decision in the following matters:

(1) The discipline of a student under G.S. 115C-390.7, 115C-390.10, or 115C-390.11;

(2) An alleged violation of a specified federal law, State law, State Board of Education policy, State rule, or local board policy, including policies regarding grade retention of students;

(3) The terms or conditions of employment or employment status of a school employee; and

(4) Any other decision that by statute specifically provides for a right of appeal to the local board of education and for which there is no other statutory appeal procedure.

As used in this subsection, the term "final administrative decision" means a decision of a school employee from which no further appeal to a school administrator is available.

Any person aggrieved by a decision not covered under subdivisions (1) through (4) of this subsection shall have the right to appeal to the superintendent and thereafter shall have the right to petition the local board of education for a hearing, and the local board may grant a hearing regarding any final decision of school personnel within the local school administrative unit. The local board of education shall notify the person making the petition of its decision whether to grant a hearing.

In all appeals to the board it is the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

The board of education may designate hearing panels composed of not less than two members of the board to hear and act upon such appeals in the name and on behalf of the board of education.

An appeal of right brought before a local board of education under subdivision (1), (2), ~~(3),~~ or (4) of this subsection may be further appealed to the superior court of the State on the grounds that the local board's decision is in violation of constitutional provisions, is in excess of the statutory authority or jurisdiction of the board, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence in view of the entire record as submitted, or is arbitrary or capricious. ~~However, the right of a noncertified employee to appeal decisions of a local board under subdivision (3) of this subsection shall only apply to decisions concerning the dismissal, demotion, or suspension without pay of the noncertified employee. A noncertified employee may request and shall be entitled to receive written notice as to the reasons for the employee's dismissal, demotion, or suspension without pay. The notice shall be provided to the employee prior to any local board of education hearing on the issue. This subsection shall not alter the employment status of a noncertified employee.~~"

SECTION 7A.14.(d) G.S. 115C-105.26(b)(2) reads as rewritten:

"(2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and ~~G.S. 115C-325,~~in Part 3 of Article 22 of this Chapter, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System."

SECTION 7A.14.(e) G.S. 115C-105.37B(a)(2) reads as rewritten:

"(2) Restart model, in which the State Board of Education would authorize the local board of education to operate the school with the same exemptions from statutes and rules as a charter school authorized under Part 6A of Article 16 of this Chapter, or under the management of an educational management organization that has been selected through a rigorous review process. A school operated under this subdivision remains under the control of the local board of education, and employees assigned to the school are employees of the local school administrative unit with the protections provided by ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter."

SECTION 7A.14.(f) G.S. 115C-105.38A(d) reads as rewritten:

"(d) Retesting; Dismissal. – Upon completion of the remediation plan required under subsection (c) of this section, the certified staff member shall take the general knowledge test a

second time. If the certified staff member fails to acquire a passing score on the second test, the State Board shall begin a dismissal proceeding under ~~G.S. 115C-325(q)(2a).~~G.S. 115C-325.13."

SECTION 7A.14.(g) G.S. 115C-105.38A(f) reads as rewritten:

"(f) Other Actions Not Precluded. – Nothing in this section shall be construed to restrict or postpone the following actions:

(1) The dismissal of a principal under ~~G.S. 115C-325(q)(1);~~G.S. 115C-325.12.

(2) The dismissal of a teacher, assistant principal, director, or supervisor under ~~G.S. 115C-325(q)(2);~~G.S. 115C-325.13.

(3) The dismissal or demotion of ~~a career~~ an employee for any of the grounds listed under ~~G.S. 115C-325(e);~~G.S. 115C-325.4.

(4) The nonrenewal of a school administrator's or ~~probationary~~ teacher's contract of ~~employment; or~~employment.

~~(5) The decision to grant career status.~~"

SECTION 7A.14.(h) G.S. 115C-105.39 reads as rewritten:

"**§ 115C-105.39. Dismissal or removal of personnel; appointment of interim superintendent.**

(a) Within 30 days of the initial identification of a school as low-performing, whether by the local school administrative unit under G.S. 115C-105.37(a1) or by the State Board under G.S. 115C-105.37(a), the superintendent shall take one of the following actions concerning the school's principal: (i) recommend to the local board that the principal be retained in the same position, (ii) recommend to the local board that the principal be retained in the same position and a plan of remediation should be developed, (iii) recommend to the local board that the principal be transferred, or (iv) proceed under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal. The principal may be retained in the same position without a plan for remediation only if the principal was in that position for no more than two years before the school is identified as low-performing. The principal shall not be transferred to another principal position unless (i) it is in a school classification in which the principal previously demonstrated at least 2 years of success, (ii) there is a plan to evaluate and provide remediation to the principal for at least one year following the transfer to assure the principal does not impede student performance at the school to which the principal is being transferred; and (iii) the parents of the students at the school to which the principal is being transferred are notified. The principal shall not be transferred to another low-performing school in the local school administrative unit. If the superintendent intends to recommend demotion or dismissal, the superintendent shall notify the local board. Within 15 days of (i) receiving notification that the superintendent intends to proceed under ~~G.S. 115C-325,~~G.S. 115C-325.4 or (ii) its decision concerning the superintendent's recommendation, but no later than September 30, the local board shall submit to the State Board a written notice of the action taken and the basis for that action. If the State Board does not assign an assistance team to that school or if the State Board assigns an assistance team to that school and the superintendent proceeds under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal, then the State Board shall take no further action. If the State Board assigns an assistance team to the school and the superintendent is not proceeding under ~~G.S. 115C-325~~G.S. 115C-325.4 to dismiss or demote the principal, then the State Board shall vote to accept, reject, or modify the local board's recommendations. The State Board shall notify the local board of its action within five days. If the State Board rejects or modifies the local board's recommendations and does not recommend dismissal of the principal, the State Board's notification shall include recommended action concerning the principal's assignment or terms of employment. Upon receipt of the State Board's notification, the local board shall implement the State Board's recommended action concerning the principal's assignment or terms of employment unless the local board asks the State Board to reconsider that recommendation. The State Board shall provide an opportunity for the local board to be heard before the State Board acts on the local board's request for a reconsideration. The State Board shall vote to affirm or modify its original recommended action and shall notify the local board of its action within five days. Upon receipt of the State Board's notification, the local board shall implement the State Board's final recommended action concerning the principal's assignment or terms of employment. If the State Board rejects or modifies the local board's action and recommends dismissal of the principal, the State Board shall proceed under ~~G.S. 115C-325(q)(1).~~G.S. 115C-325.12.

(b) The State Board shall proceed under ~~G.S. 115C-325(q)(2)~~G.S. 115C-325.13 for the dismissal of teachers, assistant principals, directors, and supervisors assigned to a school identified as low-performing in accordance with ~~G.S. 115C-325(q)(2).~~G.S. 115C-325.13.

...."

SECTION 7A.14.(i) G.S. 115C-238.29F(e)(3) reads as rewritten:

"(3) If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at a charter school, the local school administrative unit shall grant the leave for one year. For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has ~~career status under G.S. 115C-325 prior to receiving~~received a leave of absence to teach at a charter school may return to a public school in the local school administrative unit ~~with career status~~ at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. ~~If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).~~"

SECTION 7A.14.(j) G.S. 115C-238.68(3) reads as rewritten:

"(3) ~~Career status.~~Leave of absence from local school administrative unit. – ~~Employees of the board of directors shall not be eligible for career status.~~ If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at the regional school, the local school administrative unit shall grant the leave for one year. For the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has ~~career status under G.S. 115C-325 prior to receiving~~received a leave of absence to teach at the regional school may return to a public school in the local school administrative unit ~~with career status~~ at the end of the leave of absence or upon the end of employment at the regional school if an appropriate position is available. ~~If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers in accordance with G.S. 115C-325(e)(2).~~"

SECTION 7A.14.(k) G.S. 115C-276(l) reads as rewritten:

"(l) To Maintain Personnel Files and to Participate in Firing and Demoting of Staff. – The superintendent shall maintain in his or her office a personnel file for each teacher that contains complaints, commendations, or suggestions for correction or improvement about the teacher and shall participate in the firing and demoting of staff, as provided in ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter."

SECTION 7A.14.(l) G.S. 115C-285(7) reads as rewritten:

"(7) All persons employed as principals in the schools and institutions listed in ~~subsection (p) of G.S. 115C-325~~ G.S. 115C-325.10 shall be compensated at the same rate as are teachers in the public schools in accordance with the salary schedule adopted by the State Board of Education."

SECTION 7A.14.(m) G.S. 115C-287.1 reads as rewritten:

"§ 115C-287.1. Method of employment of principals, assistant principals, supervisors, and directors.

(a) (1) ~~Beginning July 1, 1995, all~~All persons employed as school administrators shall be employed pursuant to this section.

~~(2) Notwithstanding G.S. 115C-287.1(a)(1), the following school administrators shall be employed pursuant to G.S. 115C-325:~~

~~a. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position with career status in that position; and~~

~~b. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position and who are eligible to achieve career status on or before June 30, 1997.~~

~~A school administrator shall cease to be employed pursuant to G.S. 115C-325 if the school administrator: (i) voluntarily relinquishes career status or the opportunity to achieve career status through promotion, resignation, or otherwise; or (ii) is dismissed or demoted or whose contract is not renewed pursuant to G.S. 115C-325.~~

(3) For purposes of this section, school administrator means a:

a. Principal;

b. Assistant principal;

c. Supervisor; or

d. Director,

whose major function includes the direct or indirect supervision of teaching or of any other part of the instructional program.

~~(4) Nothing in this section shall be construed to confer career status on any assistant principal or director, or to make an assistant principal eligible for career status as an assistant principal or a director eligible for career status as a director.~~

(b) Local boards of education shall employ school administrators ~~who are ineligible for career status as provided in G.S. 115C-325(e)(3),~~ upon the recommendation of the superintendent. The initial contract between a school administrator and a local board of education shall be for two to four years, ending on June 30 of the final 12 months of the contract. In the case of a subsequent contract between a principal or assistant principal and a local board of education, the contract shall be for a term of four years. In the case of an initial contract between a school administrator and a local board of education, the first year of the contract may be for a period of less than 12 months provided the contract becomes effective on or before September 1. A local board of education may, with the written consent of the school administrator, extend, renew, or offer a new school administrator's contract at any time after the first 12 months of the contract so long as the term of the new, renewed, or extended contract does not exceed four years. Rolling annual contract renewals are not allowed. Nothing in this section shall be construed to prohibit the filling of an administrative position on an interim or temporary basis.

(c) The term of employment shall be stated in a written contract that shall be entered into between the local board of education and the school administrator. The school administrator shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure by which a ~~career~~ teacher may be dismissed or demoted for cause as set forth in ~~G.S. 115C-325.~~G.S. 115C-325.4.

(d) If a superintendent intends to recommend to the local board of education that the school administrator be offered a new, renewed, or extended contract, the superintendent shall submit the recommendation to the local board for action. The local board may approve the superintendent's recommendation or decide not to offer the school administrator a new, renewed, or extended school administrator's contract.

If a superintendent decides not to recommend that the local board of education offer a new, renewed, or extended school administrator's contract to the school administrator, the superintendent shall give the school administrator written notice of his or her decision ~~and the reasons for his or her decision~~ no later than May 1 of the final year of the contract. ~~The superintendent's reasons may not be arbitrary, capricious, discriminatory, personal, or political.~~ No action by the local board or further notice to the school administrator shall be necessary unless the school administrator files with the superintendent a written request, within 10 days

of receipt of the superintendent's decision, for a hearing before the local board. ~~Failure to file a timely request for a hearing shall result in a waiver of the right to appeal the superintendent's decision.~~ If a school administrator files a timely request for a hearing, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the school administrator a new, renewed, or extended school administrator's contract.

If the local board decides not to offer the school administrator a new, renewed, or extended school administrator's contract, the local board shall notify the school administrator of its decision by June 1 of the final year of the contract. A decision not to offer the school administrator a new, renewed, or extended contract may not be for any cause ~~that is not arbitrary, capricious, discriminatory, personal, or political.~~ prohibited by State or federal law. ~~The local board's decision not to offer the school administrator a new, renewed, or extended school administrator's contract is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.~~

(e) Repealed by Session Laws 1995, c. 369, s. 1.

(f) If the superintendent or the local board of education fails to notify a school administrator by June 1 of the final year of the contract that the school administrator will not be offered a new school administrator's contract, the school administrator shall be entitled to 30 days of additional employment or severance pay beyond the date the school administrator receives written notice that a new contract will not be offered.

~~(g) If, prior to appointment as a school administrator, the school administrator held career status as a teacher in the local school administrative unit in which he or she is employed as a school administrator, a school administrator shall retain career status as a teacher if the school administrator is not offered a new, renewed, or extended contract by the local board of education, unless the school administrator voluntarily relinquished that right or is dismissed or demoted pursuant to G.S. 115C-325.~~

(h) An individual who holds a provisional assistant principal's certificate and who is employed as an assistant principal under G.S. 115C-284(c) shall be considered a school administrator for purposes of this section. Notwithstanding subsection (b) of this section, a local board may enter into one-year contracts with a school administrator who holds a provisional assistant principal's certificate. ~~If the school administrator held career status as a teacher in the local school administrative unit prior to being employed as an assistant principal and the State Board for any reason does not extend the school administrator's provisional assistant principal's certificate, the school administrator shall retain career status as a teacher unless the school administrator voluntarily relinquished that right or is dismissed or demoted under G.S. 115C-325.~~ Nothing in this subsection or G.S. 115C-284(c) shall be construed to require a local board to extend or renew the contract of a school administrator who holds a provisional assistant principal's certificate."

SECTION 7A.14.(n) G.S. 115C-288(g) reads as rewritten:

"(g) To Report Certain Acts to Law Enforcement and the Superintendent. – When the principal has personal knowledge, a reasonable belief, or actual notice from school personnel that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency.

A principal who willfully fails to make a report to law enforcement required by this subsection may be subject to demotion or dismissal pursuant to ~~G.S. 115C-325.~~G.S. 115C-325.4.

Notwithstanding any other provision of law, the State Board of Education shall not require the principal to report to law enforcement acts in addition to those required to be reported by this subsection.

For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

The principal or the principal's designee shall notify the superintendent or the superintendent's designee in writing or by electronic mail regarding any report made to law enforcement under this subsection. This notification shall occur by the end of the workday in which the incident occurred when reasonably possible but not later than the end of the

following workday. The superintendent shall provide the information to the local board of education.

Nothing in this subsection shall be interpreted to interfere with the due process rights of school employees or the privacy rights of students."

SECTION 7A.14.(o) G.S. 115C-304 is repealed.

SECTION 7A.14.(p) G.S. 115C-333 reads as rewritten:

"**§ 115C-333. Evaluation of licensed employees including certain superintendents; mandatory improvement plans; State board notification upon dismissal of employees.**

(a) Annual Evaluations; Low-Performing Schools. – Local school administrative units shall evaluate at least once each year all licensed employees assigned to a school that has been identified as low-performing. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of a mandatory improvement plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under ~~G.S. 115C-325(a)(6),~~G.S. 115C-325.1(5), either the principal, the assistant principal who supervises the teacher, or an assistance team assigned under G.S. 115C-105.38 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), either the superintendent or the superintendent's designee shall conduct the evaluation.

All teachers in low-performing schools who have ~~not attained career status~~been employed for less than three consecutive years shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school under G.S. 115C-105.38.

A local board shall use the performance standards and criteria adopted by the State Board and may adopt additional evaluation criteria and standards. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Mandatory Improvement Plans. –

(1) Repealed by Session Laws 2011-348, s. 2, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.

(1a) A mandatory improvement plan is an instrument designed to improve a teacher's performance or the performance of any licensed employee in a low-performing school by providing the individual with notice of specific performance areas that have substantial deficiencies and a set of strategies, including the specific support to be provided to the individual, so that the individual, within a reasonable period of time, should satisfactorily resolve such deficiencies.

(2) Repealed by Session Laws 2011-348, s. 2, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.

(2a) If a licensed employee in a low-performing school receives a rating on any standard on an evaluation that is below proficient or otherwise represents unsatisfactory or below standard performance in an area that the licensed employee was expected to demonstrate, the individual or team that conducted the evaluation shall recommend to the superintendent that (i) the employee receive a mandatory improvement plan designed to improve the employee's ~~performance or~~ performance, (ii) the superintendent recommend to the local board that the ~~employee be dismissed or demoted.~~employee's contract not be recommended for renewal, or (iii) if the employee engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment that a proceeding for immediate dismissal or demotion be instituted. If the individual or team that conducted the evaluation elects not to make ~~either~~ any of the above recommendations, the said individual or team shall notify the superintendent of this decision. The superintendent shall determine whether to develop a mandatory improvement ~~plan~~plan, to

not recommend renewal of the employee's contract, or to recommend a dismissal proceeding.

(3) If at any time a licensed employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, and immediate dismissal or demotion is not appropriate, then the principal may immediately institute a mandatory improvement plan regardless of any ratings on previous evaluations. The principal shall document the exigent reason for immediately instituting such a plan.

(4) Mandatory improvement plans shall be developed by the person who evaluated the licensed employee or the employee's supervisor unless the evaluation was conducted by an assistance team. If the evaluation was conducted by an assistance team, that team shall develop the mandatory improvement plan in collaboration with the employee's supervisor. Mandatory improvement plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board shall develop guidelines that include strategies to assist local boards in evaluating licensed employees and developing effective mandatory improvement plans within the time allotted under this section. Local boards may adopt policies for the development and implementation of mandatory improvement plans and policies for the implementation of monitored and directed growth plans.

(c) Reassessment of Employee in a Low-Performing School. – After the expiration of the time period for the mandatory improvement plan under subdivision (2a) of subsection (b) of this section, the superintendent, the superintendent's designee, or the assistance team shall assess the performance of the employee of the low-performing school a second time. If the superintendent, superintendent's designee, or assistance team determines that the employee has failed to become proficient in any of the performance standards articulated in the mandatory improvement plan or demonstrate sufficient improvement toward such standards, the superintendent shall recommend that the ~~employee~~ employee's contract not be renewed, or that the employee be immediately dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second assessment shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. – If a local board dismisses an employee of a low-performing school ~~for any reason~~for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (b) or (c) of this section, ~~except a reduction in force under G.S. 115C-325(e)(1)l.,~~ it shall notify the State Board of the action, and the State Board annually shall provide to all local boards the names of those individuals. If a local board hires one of these individuals, within 60 days the superintendent or the superintendent's designee shall observe the employee, develop a mandatory improvement plan to assist the employee, and submit the plan to the State Board. The State Board shall review the mandatory improvement plan and may provide comments and suggestions to the superintendent. If on the next evaluation the employee receives a rating on any standard that was identified as an area of concern on the mandatory improvement plan that is again below proficient or otherwise represents unsatisfactory or below standard performance, the local board shall notify the State Board and the State Board shall initiate a proceeding to revoke the employee's license under G.S. 115C-296(d). If on this next evaluation the employee receives at least a proficient rating on all of the performance standards that were identified as areas of concern on the mandatory improvement plan, the local board shall notify the State Board that the employee is in good standing and the State Board shall not continue to provide the individual's name to local boards under this subsection unless the employee is subsequently dismissed under ~~G.S. 115C-325 except for a reduction in force.~~ G.S. 115C-325.4.

...."

SECTION 7A.14.(q) G.S. 115C-333.1 reads as rewritten:

"**§ 115C-333.1. Evaluation of teachers in schools not identified as low-performing; mandatory improvement plans; State Board notification upon dismissal of teachers.**

(a) Annual Evaluations. – All teachers who are assigned to schools that are not designated as low-performing and who have not ~~attained career status~~been employed for at

least three consecutive years shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. All teachers ~~with career status~~who have been employed for three or more years who are assigned to schools that are not designated as low-performing shall be evaluated annually unless a local board adopts rules that allow teachers ~~with career status~~employed for three or more years to be evaluated more or less frequently, provided that such rules are not inconsistent with State or federal requirements. Local boards also may adopt rules requiring the annual evaluation of nonlicensed employees. A local board shall use the performance standards and criteria adopted by the State Board and may adopt additional evaluation criteria and standards. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Mandatory Improvement Plans for Teachers. – If, in an observation report or year-end evaluation, a teacher receives a rating that is below proficient or otherwise represents unsatisfactory or below standard performance on any standard that the teacher was expected to demonstrate, the principal may place the teacher on a mandatory improvement plan as defined in G.S. 115C-333(b)(1a). The mandatory improvement plan shall be utilized only if the superintendent or superintendent's designee determines that an individual, monitored, or directed growth plan will not satisfactorily address the deficiencies.

If at any time a teacher engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, and immediate dismissal or demotion is not appropriate, then the principal may immediately institute a mandatory improvement plan regardless of any ratings on previous evaluations. The principal shall document the exigent reason for immediately instituting such a plan. The mandatory improvement plan shall be developed by the principal in consultation with the teacher. The teacher shall have five instructional days from receipt of the proposed mandatory improvement plan to request a modification of such plan before it is implemented, and the principal shall consider such suggested modifications before finalizing the plan. The teacher shall have at least 60 instructional days to complete the mandatory improvement plan. The State Board shall develop guidelines that include strategies to assist local boards in evaluating teachers and developing effective mandatory improvement plans. Local boards may adopt policies for the implementation of mandatory improvement plans under this section.

(c) Observation by a Qualified Observer. –

(1) The term "qualified observer" as used in this section is any administrator or teacher who is licensed by the State Board of Education and working in North Carolina; any employee of the North Carolina Department of Public Instruction who is trained in evaluating licensed employees; or any instructor or professor who teaches in an accredited North Carolina school of education and holds an educator's license.

(2) The local board of education shall create a list of qualified observers who are employed by that board and available to do observations of employees on mandatory improvement plans. This list shall be limited to names of administrators and teachers selected by the local board of education. The local board of education shall strive to select administrators and teachers with excellent reputations for competence and fairness.

(3) Any teacher, other than a teacher assigned to a school designated as low-performing, who has been placed on a mandatory improvement plan shall have a right to be observed by a qualified observer in the area or areas of concern identified in the mandatory improvement plan. The affected teacher and the principal shall jointly choose the qualified observer within 20 instructional days after the commencement of the mandatory improvement plan. If the teacher and the principal cannot agree on a qualified observer within this time period, they each shall designate a person from the list of qualified observers created pursuant to subdivision (2) of this subsection, and these two designated persons shall choose a qualified observer within five instructional days of their designation. The qualified observer shall draft a written report assessing the teacher in the areas of concern identified in the mandatory improvement plan. The report shall be submitted to the principal before the end of the mandatory improvement plan period. If a teacher or administrator from the same local school

administrative unit is selected to serve as the qualified observer, the administration of the local school administrative unit shall provide such qualified observer with the time necessary to conduct the observation and prepare a report. If someone who is not employed by the same local school administrative unit is selected to serve as the qualified observer, the teacher who is the subject of the mandatory improvement plan will be responsible for any expenses related to the observations and reports prepared by the qualified observer. The qualified observer shall not unduly disrupt the classroom when conducting an observation.

(4) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because of the employee's service or completion of a report as an objective observer pursuant to this subsection, unless the employee's report contained material information that the employee knew was false.

(d) Reassessment of the Teacher. – Upon completion of a mandatory improvement plan under subsection (b) of this section, the principal shall assess the performance of the teacher a second time. The principal shall also review and consider any report provided by the qualified observer under subsection (c) of this section if one has been submitted before the end of the mandatory improvement plan period. If, after the second assessment of the teacher and consideration of any report from the qualified observer, the superintendent or superintendent's designee determines that the teacher has failed to become proficient in any of the performance standards identified as deficient in the mandatory improvement plan or demonstrate sufficient improvement toward such standards, the superintendent may recommend that the teacher's contract not be renewed, or if the teacher has engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, that the teacher be immediately dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second assessment produced pursuant to the terms of this subsection shall constitute substantial evidence of the teacher's inadequate performance.

(e) Dismissal Proceedings Without a Mandatory Improvement Plan. – The absence of a mandatory improvement plan as described in this section shall not prohibit a superintendent from initiating a dismissal proceeding against a teacher under the provisions of ~~G.S. 115C-325.~~G.S. 115C-325.4. However, the superintendent shall not be entitled to the substantial evidence provision in subsection (d) of this section if such mandatory improvement plan is not utilized.

(f) State Board Notification. – If a local board dismisses a teacher for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (d) of this section, ~~for any reason except a reduction in force under G.S. 115C-325(e)(1)l.,~~ it shall notify the State Board of the action, and the State Board annually shall provide to all local boards the names of those teachers. If a local board hires one of these teachers, within 60 days the superintendent or the superintendent's designee shall observe the teacher, develop a mandatory improvement plan to assist the teacher, and submit the plan to the State Board. The State Board shall review the mandatory improvement plan and may provide comments and suggestions to the superintendent. If on the next evaluation the teacher receives a rating on any standard that was an area of concern on the mandatory improvement plan that is again below proficient or a rating that otherwise represents unsatisfactory or below standard performance, the local board shall notify the State Board, and the State Board shall initiate a proceeding to revoke the teacher's license under G.S. 115C-296(d). If on the next evaluation the teacher receives at least a proficient rating on all of the overall performance standards that were areas of concern on the mandatory improvement plan, the local board shall notify the State Board that the teacher is in good standing, and the State Board shall not continue to provide the teacher's name to local boards under this subsection unless the teacher is subsequently dismissed under ~~G.S. 115C-325~~G.S. 115C-325.4. ~~except for a reduction in force.~~ If, however, on this next evaluation the teacher receives a developing rating on any standards that were areas of concern on the mandatory improvement plan, if the local board elects to renew the teacher's contract and ~~the teacher shall have one more year to bring the rating to proficient. If,~~ by the end of this second year, the teacher is not proficient in all standards that were areas of

concern on the mandatory improvement plan, the local board shall notify the State Board, and the State Board shall initiate a proceeding to revoke the teacher's license under G.S. 115C-296(d).

...."

SECTION 7A.14.(r) G.S. 115C-335(b) reads as rewritten:

"(b) Training. – The State Board, in collaboration with the Board of Governors of The University of North Carolina, shall develop programs designed to train principals and superintendents in the proper administration of the employee evaluations developed by the State Board. The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available to all principals and superintendents at locations that are geographically convenient to local school administrative units. The programs shall include methods to determine whether an employee's performance has improved student learning, the development and implementation of appropriate professional growth and mandatory improvement plans, the process for contract nonrenewal, and the dismissal process under ~~G.S. 115C-325.~~Part 3 of Article 22 of this Chapter. The Board of Governors shall ensure that the subject matter of the training programs is incorporated into the masters in school administration programs offered by the constituent institutions. The State Board, in collaboration with the Board of Governors, also shall develop in-service programs for licensed public school employees that may be included in a mandatory improvement plan created under G.S. 115C-333(b) or G.S. 115C-333.1(b). The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available at locations that are geographically convenient to local school administrative units."

SECTION 7A.14.(s) Article 23 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-344. Employment benefits for exchange teachers.**

An exchange teacher is a nonimmigrant alien teacher participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62 or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q). For purposes of determining eligibility to receive employment benefits under this Chapter, including personal leave, annual vacation leave, and sick leave, an exchange teacher shall be considered a permanent teacher if employed with the expectation of at least six full consecutive monthly pay periods of employment and if employed at least 20 hours per week. An exchange teacher is not a teacher for purposes of the Teachers' and State Employees' Retirement System of North Carolina as provided in G.S. 135-1(25)."

SECTION 7A.14.(t) G.S. 115C-404(b) reads as rewritten:

"(b) Documents received under this section shall be used only to protect the safety of or to improve the education opportunities for the student or others. Information gained in accordance with G.S. 7B-3100 shall not be the sole basis for a decision to suspend or expel a student. Upon receipt of each document, the principal shall share the document with those individuals who have (i) direct guidance, teaching, or supervisory responsibility for the student, and (ii) a specific need to know in order to protect the safety of the student or others. Those individuals shall indicate in writing that they have read the document and that they agree to maintain its confidentiality. Failure to maintain the confidentiality of these documents as required by this section is grounds for the dismissal ~~of an employee who is not a career employee and is grounds for dismissal of an employee who is a career employee,~~ in accordance with ~~G.S. 115C-325(e)(1)i.~~G.S. 115C-325.4(a)(9)."

SECTION 7A.14.(u) G.S. 143B-146.7(b) reads as rewritten:

"(b) At any time after the State Board identifies a school as low-performing under this Part, the ~~Secretary~~ State Board shall proceed under ~~G.S. 115C-325(p1)~~G.S. 115C-325.11 for the dismissal of certificated instructional personnel assigned to that school."

SECTION 7A.14.(v) G.S. 143B-146.8 reads as rewritten:

"**§ 143B-146.8. Evaluation of ~~certificated~~ licensed personnel and principals; action plans; State Board notification.**

(a) Annual Evaluations; Low-Performing Schools. – The principal shall evaluate at least once each year all ~~certificated~~ licensed personnel assigned to a participating school that has been identified as low-performing but has not received an assistance team. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of an action plan if one is recommended under subsection (b) of this

section. If the employee is a teacher as defined under ~~G.S. 115C-325(a)(6),~~G.S. 115C-325.1(5), either the principal or an assessment team assigned under G.S. 143B-146.9 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), the Superintendent shall conduct the evaluation.

Notwithstanding this subsection or any other law, the principal shall observe at least three times annually, a teacher shall observe at least once annually, and the principal shall evaluate at least once annually, all teachers who have ~~not attained career status.~~been employed for less than three consecutive years. All other employees who have been employed for three or more years and are defined as teachers under ~~G.S. 115C-325(a)(6)~~G.S. 115C-325.1(5) who are assigned to participating schools that are not designated as low-performing shall be evaluated annually unless the Secretary adopts rules that allow specified categories of teachers with ~~career status~~three or more years of employment to be evaluated more or less frequently. The Secretary also may adopt rules requiring the annual evaluation of ~~noncertificated~~ nonlicensed personnel. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school.

The Secretary shall use the State Board's performance standards and criteria unless the Secretary develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if an evaluation is used other than one adopted by the State Board.

(b) Action Plans. – If a ~~certificated~~ licensed employee in a participating school that has been identified as low-performing receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the principal that: (i) the employee receive an action plan designed to improve the employee's performance; (ii) the employee's contract not be recommended for renewal, or (iii) if the employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment that a proceeding for immediate dismissal or demotion be instituted. ~~or (ii) the principal recommend to the Secretary that the employee be dismissed or demoted.~~ The principal shall determine whether to develop an action ~~plan~~plan, to not recommend renewal of the employee's contract, or to recommend a dismissal proceeding. The person who evaluated the employee or the employee's supervisor shall develop the action plan unless an assistance team or assessment team conducted the evaluation. If an assistance team or assessment team conducted the evaluation, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board, in consultation with the Secretary, shall develop guidelines that include strategies to assist in evaluating ~~certificated~~ licensed personnel and developing effective action plans within the time allotted under this section. The Secretary may adopt policies for the development and implementation of action plans or professional development plans for personnel who do not require action plans under this section.

(c) Reevaluation. – Upon completion of an action plan under subsection (b) of this section, the principal or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the principal shall recommend that the employee's contract not be renewed, or if the employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, that the employee be dismissed or demoted under ~~G.S. 115C-325.~~G.S. 115C-325.4. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. – If the Secretary dismisses an employee for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (b) or (c) of this section, ~~any reason except a reduction in force under G.S. 115C-325(e)(1)l.,~~ the Secretary shall notify the State Board of the action, and the State Board annually shall provide to all local boards of education the names of those individuals. If a local board hires one of these individuals, that local board shall proceed under G.S. 115C-333(d).

...."

SECTION 7A.14.(w) Notwithstanding the requirements for terms of contracts in G.S. 115C-325.3, for the 2012-2013 school year all teachers shall be employed on a contract

for a term of one year. This section becomes effective July 1, 2012, and applies to all school employees employed on or after that date.

EFFECTIVE DATE

SECTION 7A.15. Except as otherwise provided, this part is effective when it becomes law.

PART VIII. COMMUNITY COLLEGES

CARRYFORWARD FOR EQUIPMENT

SECTION 8.2.(a) In accordance with G.S. 115D-31, funds appropriated to the Community Colleges System Office for equipment for the 2011-2012 fiscal year shall not revert at the end of the fiscal year but shall be made available to the Community Colleges System Office for equipment for the 2012-2013 fiscal year.

SECTION 8.2.(b) This section becomes effective June 30, 2012.

REPEAL OBSOLETE REPORTS

SECTION 8.3.(a) G.S. 115D-5(o) reads as rewritten:

"(o) ~~The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by December 1 of each year.~~

All multicampus centers approved by the State Board of Community Colleges shall receive funding under the same formula. The State Board of Community Colleges shall not approve any additional multicampus centers without identified recurring sources of funding."

SECTION 8.3.(b) G.S. 116D-3(c) is repealed.

SECTION 8.3.(c) Section 9.11(e) of S.L. 1999-237 is repealed.

SECTION 8.3.(d) Section 4 of S.L. 2005-198, as amended by Section 35 of S.L. 2007-484, is repealed.

REPEAL DUPLICATIVE AUDIT REQUIREMENT

SECTION 8.4. G.S. 147-64.6A is repealed.

UPDATE COLLEGE PERFORMANCE MEASURES

SECTION 8.5. G.S. 115D-31.3 reads as rewritten:

"**§ 115D-31.3. Institutional performance accountability.**

(a) Creation of Accountability Measures and Performance Standards. – The State Board of Community Colleges shall create new accountability measures and performance standards for the Community College System. ~~Survey results shall be used as a performance standard only if the survey is statistically valid.~~ The State Board of Community Colleges shall review annually the accountability measures and performance standards to ensure that they are appropriate for use in recognition of successful institutional performance.

(b) through (d) Repealed by Session Laws 2000-67, s. 9.7, effective July 1, 2000.

(e) Mandatory Performance ~~Standards.~~Measures. – The State Board of Community Colleges shall evaluate each college on the following eight performance ~~standards:~~measures:

(1) Progress of basic skills ~~students;~~students.

(2) Passing rate for ~~licensure and certification examinations,~~General Educational Development (GED) diploma examinations.

(3) Performance of students who transfer to a four-year ~~institution,~~institution.

(4) ~~Passing~~Success rates ~~in~~of developmental ~~courses,~~students in subsequent college-level English courses.

(5) Success rates of developmental students in subsequent college-level ~~courses,~~math courses.

(5a) Progress of first-year curriculum students.

~~(6) The level of satisfaction of students who complete programs and those who do not complete programs,~~
(7) Curriculum student retention and ~~graduation, and~~graduation.
~~(8) Client satisfaction with customized training.~~
(9) Passing rate for licensure and certification examinations.

The State Board may also evaluate each college on additional performance ~~standards.~~measures.

(f) Publication of Performance Ratings. – Each college shall publish its performance on the eight ~~standards~~measures set out in subsection (e) of this section (i) annually in its electronic catalog or on the Internet and (ii) in its printed catalog each time the catalog is reprinted.

The Community Colleges System Office shall publish the performance of all colleges on all eight ~~standards.~~measures.

(g) Recognition for Successful Institutional Performance. – For the purpose of recognition for successful institutional performance, the State Board of Community Colleges shall evaluate each college on the eight performance ~~standards.~~measures. For each of these eight performance ~~standards~~measures on which a college performs successfully, the college may retain and carry forward into the next fiscal year one-fourth of one percent (¼ of 1%) of its final fiscal year General Fund appropriations. ~~If a college demonstrates significant improvement on a standard that has been in use for three years or less, the college may also carry forward one-fourth of one percent (¼ of 1%) of its final fiscal year General Fund appropriations for that standard.~~

(h) Recognition for Exceptional Institutional Performance. – Funds not allocated to colleges in accordance with subsection (g) of this section shall be used to reward exceptional institutional performance. A college is deemed to have achieved exceptional institutional performance if it succeeds on all eight performance measures. After all State aid budget obligations have been met, the State Board of Community Colleges shall distribute the remainder of these funds ~~equally~~ to colleges that ~~perform successfully on eight performance standards and meet the following criteria:~~achieve exceptional institutional performance status based on the pro rata share of total full time equivalent (FTE) students served at each college.

~~(1) The passing rate on all reported licensure and certification examinations for which the community colleges have authority over who sits for the examination must meet or exceed seventy percent (70%) for first-time test takers; and~~
~~(2) The percentage of college transfer students with a grade point average of at least 2.0 after two semesters at a four-year institution must equal or exceed the performance of students who began college at that four-year institution.~~

The State Board may withhold the portion of funds for which a college may qualify as an exceptional institution while the college is under investigation by a State or federal agency or if its performance does not meet the standards established by the Southern Association of Colleges and Schools, the State Auditor's Office, or the State Board of Community Colleges. The State Board may release the funds at such time as the investigations are complete and the issues are resolved.

(i) Permissible Uses of Funds. – Funds retained by colleges or distributed to colleges pursuant to this section shall be used for the purchase of equipment, initial program start-up costs including faculty salaries for the first year of a program, and one-time faculty and staff bonuses. These funds shall not be used for continuing salary increases or for other obligations beyond the fiscal year into which they were carried forward. These funds shall be encumbered within 12 months of the fiscal year into which they were carried forward.

(j) Use of funds in low-wealth counties. – Funds retained by colleges or distributed to colleges pursuant to this section may be used to supplement local funding for maintenance of plant if the college does not receive maintenance of plant funds pursuant to G.S. 115D-31.2, and if the county in which the main campus of the community college is located meets all of the following:

(1) Is designated as a Tier 1 county in accordance with G.S. 143B-437.08.
(2) Had an unemployment rate of at least two percent (2%) above the State average or greater than seven percent (7%), whichever is higher, in the prior calendar year.
(3) Is a county whose wealth, as calculated under the formula for distributing supplemental funding for schools in low-wealth counties, is eighty percent (80%) or less of the State average.

Funds may be used for this purpose only after all local funds appropriated for maintenance of plant have been expended."

MODIFY INSTITUTIONAL PERFORMANCE ACCOUNTABILITY FOR ONE YEAR

SECTION 8.6. Effective for the 2011-2012 reporting year, and notwithstanding G.S. 115D-31.3, the State Board of Community Colleges shall not require a college to report its performance on the progress of basic skills students as one of the mandatory performance standards prescribed by G.S. 115D-31.3(e). A college shall not be evaluated on the progress of basic skills students for the purpose of recognizing successful institutional performance or exceptional institutional performance. For each of the remaining seven performance standards on which a college performs successfully, the college may retain and carry forward into the 2013-2014 fiscal year two-sevenths of one percent (2/7 of 1%) of its final fiscal year General Fund appropriations.

COMMUNITY COLLEGE TUITION WAIVER

SECTION 8.8. G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds. The State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for the following:

(1) Persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate.

(2) Courses requested by the following entities that support the organizations' training needs and are on a specialized course list approved by the State Board of Community Colleges:

a. Volunteer fire departments.

b. Municipal, county, or State fire departments.

c. Volunteer EMS or rescue and lifesaving departments.

d. Municipal, county, or State EMS or rescue and lifesaving departments.

d1. Law enforcement, fire, EMS or rescue and lifesaving entities serving a lake authority that was created by a county board of commissioners prior to July 1, 2012.

e. Radio Emergency Associated Communications Teams (REACT) under contract to a county as an emergency response agency.

~~(v) (vi) municipal county, or State law enforcement officers~~

f. Municipal, county, or State law enforcement agencies.

g. The Division of Adult Correction of the Department of Public Safety for the training of full-time custodial employees and employees of the Division's Section of Community Corrections of the Division of Adult Correction required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission.

h. The Division of Juvenile Justice of the Department of Public Safety for the training of employees required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission.

i. The Eastern Band of Cherokee Indians law enforcement, fire, EMS or rescue and lifesaving tribal government departments or programs.

(3) Repealed by Session Laws 2011-145, s. 8.12(a), effective July 1, 2011.

(4) Trainees enrolled in courses conducted under the Customized Training Program.

(5) through (9) Repealed by Session Laws 2011-145, s. 8.12(a), effective July 1, 2011.

(10) Elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR).
(11) Up to six hours of credit instruction and one course of noncredit instruction per academic semester for senior citizens age 65 or older who are qualified as legal residents of North Carolina.
(12) All curriculum courses taken by high school students at community colleges, in accordance with G.S. 115D-20(4) and this section.
(13) Human resources development courses for any individual who (i) is unemployed; (ii) has received notification of a pending layoff; (iii) is working and is eligible for the Federal Earned Income Tax Credit (FEITC); or (iv) is working and earning wages at or below two hundred percent (200%) of the federal poverty guidelines.
(14) Repealed by Session Laws 2011-145, s. 8.12(a), effective July 1, 2011.

The State Board of Community Colleges shall not waive tuition and registration fees for other individuals."

INCREASE MAXIMUM PARKING FINE

SECTION 8.9. G.S. 115D-21 reads as rewritten:

"**§ 115D-21. Traffic regulations; fines and penalties.**

(a) All of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State of North Carolina and the operation of motor vehicles thereon shall apply to the streets, roads, alleys and driveways on the campuses of all institutions in the North Carolina Community College System. Any person violating any of the provisions of Chapter 20 of the General Statutes in or on the streets, roads, alleys and driveways on the campuses of institutions in the North Carolina Community College System shall, upon conviction thereof, be punished as prescribed in this section and as provided by Chapter 20 of the General Statutes relating to motor vehicles. Nothing contained in this section shall be construed as in any way interfering with the ownership and control of the streets, roads, alleys and driveways on the campuses of institutions in the system as is now vested by law in the trustees of each individual institution in the North Carolina Community College System.

(b) The trustees are authorized and empowered to make additional rules and regulations and to adopt additional ordinances with respect to the use of the streets, roads, alleys and driveways and to establish parking areas on or off the campuses not inconsistent with the provisions of Chapter 20 of the General Statutes of North Carolina. Upon investigation, the trustees may determine and fix speed limits on streets, roads, alleys, and driveways subject to such rules, regulations, and ordinances, lower than those provided in G.S. 20-141. The trustees may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of rules, regulations and ordinances. All rules, regulations and ordinances adopted pursuant to the authority of this section shall be recorded in the proceedings of the trustees; shall be printed; and copies of such rules, regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Violation of any such rules, regulations, or ordinances, is an infraction punishable by a penalty of not more than one hundred dollars ($100.00).

Regardless of whether an institution does its own removal and disposal of motor vehicles or contracts with another person to do so, the institution shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the institution operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
(2) If the institution operates in such a way that it is responsible for collecting towing fees, it shall:
  a. Provide by contract or ordinance for a schedule of reasonable towing fees,
  b. Provide a procedure for a prompt fair hearing to contest the towing,
  c. Provide for an appeal to district court from that hearing,
  d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
  e. If the institution chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in

G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the institution may destroy it.

(c) The trustees may by rules, regulations, or ordinances provide for a system of registration of all motor vehicles where the owner or operator does park on the campus or keeps said vehicle on the campus. The trustees shall cause to be posted at appropriate places on campus notice to the public of applicable parking and traffic rules, regulations, and ordinances governing the campus over which it has jurisdiction. The trustees may by rules, regulations, or ordinances establish or cause to have established a system of citations that may be issued to owners or operators of motor vehicles who violate established rules, regulations, or ordinances. The trustees shall provide for the administration of said system of citations; establish or cause to be established a system of fines to be levied for the violation of established rules, regulations and ordinances; and enforce or cause to be enforced the collection of said fines. The fine for each offense shall not exceed ~~five dollars ($5.00), which funds shall be retained in the institution and expended in the discretion of the trustees.~~twenty-five dollars ($25.00). The trustees shall be empowered to exercise the right to prohibit repeated violators of such rules, regulations, or ordinances from parking on the campus.

(d) The clear proceeds of all civil penalties collected pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

POWERS OF THE STATE BOARD OF PROPRIETARY SCHOOLS

SECTION 8.9A.(a) Article 8 of Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-89.4. Powers of the State Board of Proprietary Schools.**

(a) In order to carry out the purposes of this Article, the State Board of Proprietary Schools, subject to other provisions of this Article, shall:

(1) Have the powers of a body corporate, including the power to make contracts and to alter the same as may be deemed expedient;

(2) Be authorized and empowered to rent and lease such property, real or personal, as the State Board of Proprietary Schools may deem proper to carry out the purposes and provisions of this Article, all or any of them;

(3) Establish an office for the transaction of its business at such place or places as, in the opinion of the State Board of Proprietary Schools, shall be advisable or necessary in carrying out the purposes of this Article;

(4) Be authorized and empowered to pay from the Commercial Education Fund all necessary costs and expenses involved in and incident to the formation, organization, and administration of the State Board of Proprietary Schools and all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Article; and

(5) Be authorized and empowered to do any and all other acts and things in this Article authorized or required to be done, whether or not included in the general powers listed in this section.

(b) The purchase of goods and services by the State Board of Proprietary Schools shall be exempt from the requirements of Article 3 of Chapter 143 of the General Statutes."

SECTION 8.9A.(b) G.S. 115D-89.2 reads as rewritten:

"**§ 115D-89.2. Office of Proprietary Schools; staff.**

The Office of Proprietary Schools shall be the principal administrative unit under the direction of the State Board of Proprietary Schools. Unless otherwise specified in G.S. 115D-89.3, the State Board of Proprietary Schools has authority to recommend for adoption and to administer all policies, regulations, and standards which it deems necessary for the operation of the Office of Proprietary Schools.

The State Board of Proprietary Schools shall hire an executive director of the Office of Proprietary Schools, who shall serve as chief administrative officer of the Office of Proprietary Schools, or contract with an outside consultant to serve as the executive director. The compensation of this position shall be fixed by the State Board of Proprietary Schools from funds provided by fees deposited in the Commercial Education Fund.

The State Board of Proprietary Schools may hire other employees as it deems necessary to carry out the provisions of this Article. The compensation of the staff members hired by the

State Board of Proprietary Schools shall be fixed by the State Board of Proprietary Schools upon recommendation of the Executive Director of the Office of Proprietary Schools. The Executive Director shall provide an annual projected operating budget to the State Board of Proprietary Schools at a time each year designated by the State Board of Proprietary Schools. The budget will be approved by the State Board of Proprietary Schools from funds provided by fees deposited in the Commercial Education Fund."

SECTION 8.9A.(c) G.S. 126-5(c2) is amended by adding a new subdivision to read:

"(c2) The provisions of this Chapter shall not apply to:

(1) Public school superintendents, principals, teachers, and other public school employees.

(2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 41.

(3) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and employees of the Community Colleges System Office whose salaries are fixed by the State Board of Community Colleges in accordance with the provisions of G.S. 115D-3.

(4) Employees of the Office of Proprietary Schools whose salaries are fixed by the State Board of Proprietary Schools in accordance with the provisions of G.S. 115D-89.2."

AUTHORIZATION TO SPEND FUNDS FOR CERTAIN PURPOSES

SECTION 8.9B. Notwithstanding G.S. 143C-6-5, the State Board of Community Colleges may authorize the use of funds within the Community College System budget to do the following:

(1) Fund college-level mathematics at the Tier 1 level.

(2) Eliminate the scheduled continuing education fee increase.

(3) Restructure the multicampus funding formula and provide up to two million nine hundred twenty-two thousand five hundred forty-two dollars ($2,922,542) in additional funds for that program.

FINANCIAL AID PROGRAM ADMINISTRATIVE COSTS

SECTION 8.11.(a) Subsection (a) of Section 9.8 of S.L. 2011-145, as amended by Section 2(b) of S.L. 2011-340, reads as rewritten:

"**SECTION 9.8.(a)** There is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of forty-nine million six hundred twenty-two thousand two hundred forty-two dollars ($49,622,242) for the 2011-2012 fiscal year and the sum of ~~thirty-two million one hundred twenty-two thousand two hundred forty-two dollars ($32,122,242)~~ thirty-seven million two hundred eighty-seven thousand two hundred forty-two dollars ($37,287,242) for the 2012-2013 fiscal year to be used for The University of North Carolina Need-Based Financial Aid Program."

SECTION 8.11.(b) Subsection (c) of Section 9.8 of S.L. 2011-145 reads as rewritten:

"**SECTION 9.8.(c)** There is appropriated from the Escheat Fund income to the State Board of Community Colleges the sum of sixteen million five hundred thousand dollars ($16,500,000) for the 2011-2012 fiscal year and the sum of ~~sixteen million five hundred thousand dollars ($16,500,000)~~ sixteen million three hundred thirty-five thousand dollars ($16,335,000) for the 2012-2013 fiscal year to be used for community college grants."

SECTION 8.11.(c) G.S. 115D-40.1(c) reads as rewritten:

"(c) Administration of Program. – The State Board shall adopt rules and policies for the disbursement of the financial assistance provided in subsections (a) and (b) of this section. Degree, diploma, and certificate students must complete a Free Application for Federal Student Aid (FAFSA) to be eligible for financial assistance. The State Board may contract with the State Education Assistance Authority for administration of these financial assistance funds. These funds shall not revert at the end of each fiscal year but shall remain available until expended for need-based financial assistance. The interest earned on the funds provided in subsections (a) and (b) of this section may be used to support the costs of administering the Community College Grant Program. If the interest earnings are not adequate to support the

administrative costs, up to one percent (1%) of funds provided in subsection (a) of this section may be used to support the costs of administering the Community College Grant Program."

PART IX. UNIVERSITIES

STUDENT FINANCIAL AID/TECHNICAL CORRECTIONS

SECTION 9.2.(a) Section 9.18(d) of S.L. 2011-145 reads as rewritten:

"**SECTION 9.18.(d)** The State Education Assistance Authority shall report no later than ~~June 1, 2013,~~September 1, 2013, to the Joint Legislative Education Oversight Committee regarding the implementation of this section. The report shall contain, for the 2012-2013 academic year, the amount of scholarship and grant money disbursed, the number of students eligible for the funds, the number of eligible students receiving the funds, and a breakdown of the eligible private postsecondary institutions that received the funds."

SECTION 9.2.(b) Section 9.18(i) of S.L. 2011-145 reads as rewritten:

"**SECTION 9.18.(i)** Subsections (a), (d), and (i) of this section become effective July 1, 2011. Article 34 of Chapter 116 of the General Statutes, as enacted by subsection (a) of this section, applies to the 2012-2013 academic year and each subsequent academic year, except that the rule-making authority for the State Education Assistance Authority under G.S. 116-283(a) becomes effective immediately on July 1, 2011. Subsections (b), (c), (e), (f), (g), and (h) of this section become effective July 1, ~~2012.~~2012, except that the State Education Assistance Authority may continue to make payments pursuant to G.S. 116-43.5 until August 1, 2012, to students who attended certain private institutions of higher education in the 2011-2012 academic year."

SECTION 9.2.(c) Of the funds appropriated by this act to the Board of Governors for the 2012-2013 fiscal year and allocated to the State Education Assistance Authority for the North Carolina Need-Based Scholarships for Students Attending Private Institutions of Higher Education pursuant to Article 34 of Chapter 116 of the General Statutes, the State Education Assistance Authority may use up to two hundred eighty-one thousand five hundred seventeen dollars ($281,517) to make the payments authorized by subsection (b) of this section to students who attended certain private institutions of higher education in the 2011-2012 academic year.

UNC/REPEAL OBSOLETE OR REDUNDANT REPORTING REQUIREMENTS

SECTION 9.4.(a) G.S. 116-11(10a) reads as rewritten:

"(10a) The Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with nonprofit postsecondary educational institutions shall plan a system to provide an exchange of information among the public schools and institutions of higher education to be implemented no later than June 30, 1995. As used in this section, "institutions of higher education" shall mean (i) public higher education institutions defined in G.S. 116-143.1(a)(3), and (ii) those nonprofit postsecondary educational institutions as described in G.S. 116-280 that choose to participate in the information exchange. The information shall include:

a. The number of high school graduates who apply to, are admitted to, and enroll in institutions of higher education;

b. College performance of high school graduates for the year immediately following high school graduation including each student's: need for remedial coursework at the institution of higher education that the student attends; performance in standard freshmen courses; and continued enrollment in a subsequent year in the same or another institution of higher education in the State;

c. The progress of students from one institution of higher education to another; and

d. Consistent and uniform public school course information including course code, name, and description.

The Department of Public Instruction shall generate and the local school administrative units shall use standardized transcripts in an automated format for applicants to higher education institutions. The standardized

transcript shall include grade point average, class rank, end-of-course test scores, and uniform course information including course code, name, units earned toward graduation, and credits earned for admission from an institution of higher education. The grade point average and class rank shall be calculated by a standard method to be devised by the institutions of higher education. ~~The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1993, and annually thereafter.~~"

SECTION 9.4.(b) G.S. 116-11(12a) reads as rewritten:

"(12a) The Board of Governors of The University of North Carolina shall implement, administer, and revise programs for meaningful professional development for professional public school employees based upon the evaluations and recommendations made by the State Board of Education under G.S. 115C-12(26). The programs shall be aligned with State education goals and directed toward improving student academic achievement. ~~The Board of Governors shall submit to the State Board of Education an annual report evaluating the professional development programs administered by the Board of Governors.~~"

SECTION 9.4.(c) G.S. 116D-3(a)(1) is repealed.

SECTION 9.4.(d) Section 7 of S.L. 1989-936, as amended by S.L. 1991-346, reads as rewritten:

"Sec. 7. The Board of Governors of The University of North Carolina shall adopt standards to create and enhance an organized program of public service and technical assistance to the public schools. This program shall:

(1) Provide systematic access for public schools to consultation and advice available from members of the faculties of the constituent institutions;

(2) Facilitate and encourage research in the public schools and the application of the results of this research;

(3) Link the education faculties of the constituent institutions with public school teachers and administrators through public service requirements for the education faculties; and

(4) Create partnerships among all constituent institutions, their schools or departments of education, and the maximum number of public schools that could benefit from these partnerships.

~~The Board of Governors shall report on an annual basis to the Joint Legislative Commission on Governmental Operations on its progress in implementing the provisions of this section.~~"

SECTION 9.4.(e) Section 1.1 of S.L. 2000-3 reads as rewritten:

"Section 1.1. The General Assembly finds that although The University of North Carolina is one of the State's most valuable assets, the current facilities of the University have been allowed to deteriorate due to decades of neglect and have unfortunately fallen into a state of disrepair because of inadequate attention to maintenance. It is the intent of the General Assembly to reverse this trend and to provide a mechanism to assure that the University's capital assets are adequately maintained. The General Assembly commits to responsible stewardship of these assets to protect their value over the years, as follows:

(1) The Board of Governors of The University of North Carolina shall require each constituent and affiliated institution to monitor the condition of its facilities and their needs or repair and renovation, and to assure that all necessary maintenance is carried out within funds available.

~~(2) The Board of Governors shall report annually to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee on the condition of the University's capital facilities, the repair, renovation, and maintenance projects being undertaken, and all needs for additional funding to maintain the facilities.~~

(3) It is the intent of the General Assembly to assure that adequate oversight, funding, and accountability are continually provided so that the capital facilities of the University are properly maintained to preserve the level of

excellence the citizens of this State deserve. To this end, the Joint Legislative Education Oversight Committee shall report to the General Assembly annually its recommendations for legislative changes to implement this policy."

SECTION 9.4.(f) Section 6 of S.L. 2000-3 reads as rewritten:

"Section 6. Repair and Renovation Reports. – ~~The Board of Governors of The University of North Carolina shall report annually to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee on the condition of all of the University's capital facilities, including a status report on all repair, renovation, and maintenance projects being undertaken and an assessment of needs for additional funding to repair, renovate, and maintain the facilities.~~

The Board of Governors of The University of North Carolina shall also study the repairs and renovations formula currently utilized with respect to funding for the Repairs and Renovations Reserve Account to determine whether it adequately takes into account all of the appropriate maintenance needs of each constituent and affiliated institution, and shall recommend to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee any changes necessary to improve the formula. The Board shall make recommendations on the scope and adequacy of the methodology used to calculate the funding for the repairs and renovations reserve as specified in G.S. 143-15.2."

SECTION 9.4.(g) Section 13 of S.L. 2001-496 is repealed.

NC GRADUATES IN PRIMARY CARE CENTERS/CHANGE REPORT DATE

SECTION 9.5. G.S. 143-613(d) reads as rewritten:

"(d) The progress of the private and State-operated medical schools and State-operated health professional schools towards increasing the number and proportion of graduates entering primary care shall be monitored annually by the Board of Governors of The University of North Carolina. Monitoring data shall include (i) the entry of State-supported graduates into primary care residencies and clinical training programs, and (ii) the specialty practices by a physician and each midlevel provider who were State-supported graduates as of a date five years after graduation. The Board of Governors shall certify data on graduates, their residencies and clinical training programs, and subsequent careers by ~~October 1~~ November 15 of each calendar year, beginning in ~~October of 1995,~~ November of 2011, to the Fiscal Research Division of the Legislative Services Office and to the Joint Legislative Education Oversight Committee."

PERMANENT TRANSFER OF FUNDING FOR MILITARY ONE-STOP & BRAC OUTREACH

SECTION 9.7. The Military One-Stop & BRAC Outreach program previously vested in Fayetteville State University is transferred to The University of North Carolina General Administration with all of the elements of a Type I transfer as defined in G.S. 143A-6. The program transfer shall include the sum of two hundred fifty-one thousand five hundred dollars ($251,500).

STUDY UNC TUITION SURCHARGE

SECTION 9.8. The Fiscal Research Division, in cooperation with The University of North Carolina, shall study the tuition surcharge mandated by G.S. 116-143.7. As part of the study, the Fiscal Research Division shall examine the surcharge's effect, if any, on the number of credit hours taken by students at constituent institutions of The University of North Carolina and the resulting effect on the timely achievement of graduation; the number of students subject to the surcharge in each of the last five academic years; and the revenue generated by the surcharge. In its study, the Fiscal Research Division shall also examine the methods that The University of North Carolina employs to provide notice to a student that the student is approaching the credit hour limit and will be charged the tuition surcharge if the student exceeds that limit.

The Fiscal Research Division shall report its findings and recommendations, including any legislative recommendations, by January 1, 2013, to the Joint Legislative Education Oversight Committee and to the Education Appropriation Subcommittees of the House of Representatives and the Senate.

UNC STUDENT FEES/INSTITUTIONAL TRUST FUNDS

SECTION 9.9. G.S. 116-36.1(g) is amended by adding a new subdivision to read:

"(12) Any other moneys collected by an institution as student fees previously approved by the Board of Governors."

UNC ACQUISITION AND DISPOSITION OF REAL PROPERTY

SECTION 9.10.(a) G.S. 116-31.12 reads as rewritten:

"**§ 116-31.12. Acquisition of real property by lease.**

Notwithstanding G.S. 143-341(4), and in addition to the powers granted in G.S. 116-198.34(5), the Board of Governors may authorize the constituent institutions and the General Administration to acquire or dispose of real property by lease if the lease is for a term of not more than 10 years. The Board of Governors shall establish a policy for acquiring and disposing of an interest in real property for the use of The University of North Carolina and its constituent institutions by lease. This policy may delegate authorization of the acquisition or disposition of real property by lease to the boards of trustees of the constituent institutions or to the President of The University of North Carolina. The Board of Governors shall submit all initial policies adopted pursuant to this section to the State Property Office for review prior to adoption by the Board. Any subsequent changes to these policies adopted by the Board of Governors shall be submitted to the State Property Office for review. Any comments by the State Property Office shall be submitted to the President of The University of North Carolina. After the acquisition or disposition of an interest in real property by lease, The University of North Carolina shall promptly file a report concerning the acquisition or disposition to the Secretary of Administration. Acquisitions and dispositions of an interest in real property by lease pursuant to this section shall not be subject to the provisions of Article 36 of Chapter 143 of the General Statutes or to the provisions of ~~Article 6~~ Article 6 or 7 of Chapter 146 of the General Statutes."

SECTION 9.10.(b) G.S. 116-198.34(5) reads as rewritten:

"(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities upon such terms and conditions as the Board determines, subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

Notwithstanding G.S. 143-341 and Chapter 146 of the General Statutes, a disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus, on the Horace Williams Campus, ~~or~~ on a Millennial ~~Campus~~ Campus, or on the Kannapolis Research Campuses made for a period of 10 years or less shall not require the approval of the Governor and the Council of State. All other acquisitions and dispositions made under this subdivision for a period in excess of 10 years are subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes."

ECU PHYSICIANS INTEREST AND PENALTY FEES COLLECTION PRACTICE

SECTION 9.11.(a) G.S. 143-553(a) reads as rewritten:

"(a) All persons employed by an employing entity as defined by this Part who owe money to the State and whose salaries are paid in whole or in part by State funds must make full restitution of the amount owed as a condition of continuing employment; provided, however, that no employing entity shall terminate for failure to make full restitution the employment of such an employee who owes money to the University of North Carolina Health Care System or to East Carolina University's Division of Health Sciences for health care services."

SECTION 9.11.(b) G.S. 147-86.11(e) reads as rewritten:

"(e) Elements of Plan. – For moneys received or to be received, the statewide cash management plan shall provide at a minimum that:

(1) Except as otherwise provided by law, moneys received by employees of State agencies in the normal course of their employment shall be deposited as follows:

a. Moneys received in trust for specific beneficiaries for which the employee-custodian has a duty to invest shall be deposited with the State Treasurer under the provisions of G.S. 147-69.3.

b. All other moneys received shall be deposited with the State Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.

(2) Moneys received shall be deposited daily in the form and amounts received, except as otherwise provided by statute.

(3) Moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and deposited.

(4) Unpaid billings due to a State agency other than amounts owed by patients to the University of North Carolina Health Care System or East Carolina University's Division of Health Sciences shall be turned over to the Attorney General for collection no more than 90 days after the due date of the billing, except that a State agency need not turn over to the Attorney General unpaid billings of less than five hundred dollars ($500.00), or (for institutions where applicable) amounts owed by all patients which are less than the federally established deductible applicable to Part A of the Medicare program, and instead may handle these unpaid bills pursuant to agency debt collection procedures.

(4a) The University of North Carolina Health Care System and East Carolina University's Division of Health Sciences may turn over to the Attorney General for collection accounts owed by patients.

(5) Moneys received in the form of warrants drawn on the State Treasurer shall be deposited by the State agency directly with the State Treasurer and not through the banking system, unless otherwise approved by the State Treasurer.

(6) State agencies shall accept payment by electronic payment in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices."

SECTION 9.11.(c) G.S. 147-86.23 reads as rewritten:

"**§ 147-86.23. Interest and penalties.**

A State agency shall charge interest at the rate established pursuant to G.S. 105-241.21 on a past-due account receivable from the date the account receivable was due until it is paid. A State agency shall add to a past-due account receivable a late payment penalty of no more than ten percent (10%) of the account receivable. A State agency may waive a late-payment penalty for good cause shown. If another statute requires the payment of interest or a penalty on a past-due account receivable, this section does not apply to that past-due account receivable. This section does not apply to money owed to the University of North Carolina Health Care System or to East Carolina University's Division of Health Sciences for health care services."

ECU MAY RETAIN RENTAL RECEIPTS FROM HEALTH CARE SERVICE PROVIDERS CO-LOCATED IN CAMPUS FACILITIES

SECTION 9.12. G.S. 146-30(c) reads as rewritten:

"(c) The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. Provided, however, the net proceeds derived from the sale of land or timber from land owned by or under the supervision and control of the Department of Agriculture and Consumer Services shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services, to be used for such specific capital improvement projects or other purposes as are provided by transfer of funds from those accounts in the Capital Improvement Appropriations Act. Provided further, the net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Environment and Natural Resources shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as provided by transfer of funds from those accounts in the Capital Improvement Appropriations Act. In the Capital Improvement Appropriations Act, line items for purchase of park and agricultural lands will be established for use by the

Departments of Administration and Agriculture. The use of such funds for any specific capital improvement project or land acquisition is subject to approval by the Director of the Budget. No other use may be made of funds in these line items without approval by the General Assembly except for incidental expenses related to the project or land acquisition. Additionally with the approval of the Director of the Budget, either Department may request funds from the Contingency and Emergency Fund when the necessity of prompt purchase of available land can be demonstrated and funds in the capital improvement accounts are insufficient. Provided further, the net proceeds derived from the sale of any portion of the land owned by the State in or around the Butner Reservation on or after July 1, 1980, shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Health and Human Services to make capital improvements on or to property owned by the State in the Butner Reservation subject to approval by the Office of State Budget and Management, and may be used to build industrial access roads to industries located or to be located on the Butner Reservation, to construct new city streets in the Butner Reservation, extend water and sewer service on the Butner Reservation, repair storm drains on the Butner Reservation, and for other capital uses on the Reservation as determined by the Secretary. Provided further, notwithstanding any other provision of this Subchapter, the proceeds derived from the lease dispositions of land or facilities owned or under the supervision and control of East Carolina University's Division of Health Sciences for the delivery of health care services shall be deposited in clinical accounts at East Carolina University to be used to improve access to patient care."

UNC PARTNERSHIP FOR NATIONAL SECURITY

SECTION 9.13. The University of North Carolina may use funds available to it for the 2012-2013 fiscal year to continue and expand its work on the UNC Partnership for National Security to benefit the United States Marine Corps at Camp Lejeune and to build further its faculty and student capabilities in developing technologies for the special operations community. The Partnership works to connect the resources of The University of North Carolina system to the needs of our military, its service members, veterans, their families, and the defense industry in North Carolina. Partnership activities include all of the following: degree program development for service members and the defense industry; short courses, training, and subject matter expertise exchange; science and technology product development for the battle space; and scholar support, such as internships for The University of North Carolina system students, faculty research, and senior service college fellows. The Partnership's work has included the expansion of a "UNC at Fort Bragg" program that was previously in place for the Army.

UNC/FUNDS FOR CAMPUSES SPECIALIZING IN THE ARTS AND SCIENCES

SECTION 9.14.(a) Of the funds appropriated to The University of North Carolina by this act for the 2012-2013 fiscal year, the sum of five million six hundred seventy-seven thousand nine hundred seven dollars ($5,677,907) shall be allocated to the following campuses specializing in the arts and sciences in the following amounts:

(1) $2,485,144 for the University of North Carolina School of the Arts.
(2) $1,556,495 for the University of North Carolina at Asheville.
(3) $1,636,268 for the North Carolina School of Science and Mathematics.

SECTION 9.14.(b) It is the intent of the General Assembly that the Board of Governors shall not otherwise reduce appropriations to these three campuses as a result of the allocations directed in subsection (a) of this section.

PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES

NC PRE-K

SECTION 10.1.(a) The Division of Child Development and Early Education shall require the NC Pre-K contractor to issue multiple-year contracts for licensed private child care centers providing NC Pre-K classrooms.

SECTION 10.1.(b) The Division of Child Development and Early Education shall continue the implementation of the NC Pre-K program. The NC Pre-K shall serve children who reach the age of four on or before August 31 of that school year and who meet eligibility criteria.

SECTION 10.1.(c) G.S. 110-91(2) reads as rewritten:

"(2) Health-Related Activities. – ~~The Commission shall adopt rules for child care facilities to ensure that all children receive nutritious food and beverages according to their developmental needs. The Commission shall consult with the Division of Child Development of the Department of Health and Human Services to develop nutrition standards to provide for requirements appropriate for children of different ages. In developing nutrition standards, the Commission shall consider the following recommendations:~~

~~a. Limiting or prohibiting the serving of sweetened beverages, other than 100% fruit juice, to children of any age.~~

~~b. Limiting or prohibiting the serving of whole milk to children two years of age or older or flavored milk to children of any age.~~

~~c. Limiting or prohibiting the serving of more than six ounces of juice per day to children of any age.~~

~~d. Limiting or prohibiting the serving of juice from a bottle.~~

~~e. Creating an exception from the rules for parents of children who have medical needs, special diets, or food allergies.~~

~~f. Creating an exception from the rules to allow a parent or guardian, or to allow the center upon the request of a parent or guardian, to provide to a child food and beverages that may not meet the nutrition standards.~~

g. Nutrition standards. – The Commission shall adopt rules for child care facilities to ensure that food and beverages provided by a child care facility are nutritious and align with children's developmental needs. The Commission shall consult with the Division of Child Development and Early Education of the Department of Health and Human Services to develop nutrition standards to provide for requirements appropriate for children of different ages. In developing nutrition standards, the Commission shall consider the following recommendations:

1. Limiting or prohibiting the serving of sweetened beverages, other than one hundred percent (100%) fruit juice to children of any age.
2. Limiting or prohibiting the serving of whole milk to children two years of age or older or flavored milk to children of any age.
3. Limiting or prohibiting the serving of more than six ounces of juice per day to children of any age.
4. Limiting or prohibiting the serving of juice from a bottle.

h. Parental exceptions. –

1. Parents or guardians of a child enrolled in a child care facility may (i) provide food and beverages to their child that may not meet the nutrition standards adopted by the Commission and (ii) opt out of any supplemental food program provided by the child care facility. The child care facility shall not provide food or beverages to a child whose parent or guardian has opted out of any supplemental food program provided by the child care facility and whose parent or guardian is providing food and beverages for the child.
2. The Commission, the Division of Child Development and Early Education of the Department of Health and Human Services, or any State agency or contracting entity with a State agency shall not evaluate the nutritional value or adequacy of the components of food and beverages provided by a parent or guardian to his or her child enrolled in a child care facility as an indicator of environmental quality ratings.

i. Rest time. – Each child care facility shall have a rest period for each child in care after lunch or at some other appropriate time and

arrange for each child in care to be out-of-doors each day if weather conditions permit."

SECTION 10.1.(d) The Division of Child Development and Early Education shall establish a standard decision-making process to be used by local NC Pre-K committees in awarding NC Pre-K classroom slots and student selection.

SECTION 10.1.(e) The Division of Child Development and Early Education shall submit an annual report no later than March 15 of each year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Office of State Budget and Management, and the Fiscal Research Division. The report shall include the following:

(1) The number of children participating in the NC Pre-K program.

(2) The number of children participating in the NC Pre-K program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.

(3) The expected NC Pre-K expenditures for the programs and the source of the local contributions.

(4) The results of an annual evaluation of the NC Pre-K program.

SECTION 10.1.(f) If House Bill 966, 2012 Regular Session of the 2011 General Assembly, becomes law, then Section 10.7(f) of S.L. 2011-145 reads as rewritten:

"**SECTION 10.7.(f)** ~~The prekindergarten program may continue to serve at-risk children identified through the existing "child find" methods in which at-risk children are currently served within the Division of Child Development. The Division of Child Development shall serve at-risk children regardless of income. However, the total number of at-risk children served shall constitute no more than twenty percent (20%) of the four-year-olds served within the prekindergarten program. Any~~ The Division of Child Development and Early Education shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors. Furthermore, any age-eligible child who is a child of either of the following shall be eligible for the program: (i) an active duty member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was ordered to active duty by the proper authority within the last 18 months or is expected to be ordered within the next 18 months or (ii) a member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was injured or killed while serving on active duty. Eligibility determinations for prekindergarten participants may continue through local education agencies and local North Carolina Partnership for Children, Inc., partnerships."

SECTION 10.1.(g) If House Bill 966, 2012 Regular Session of the 2011 General Assembly, becomes law, then Section 10.7(h) of S.L. 2011-145 is repealed.

REVISE CHILD CARE SUBSIDY RATES PROVISION

SECTION 10.2. Section 10.1 of S.L. 2011-145 is amended by adding the following new subsection to read:

"**SECTION 10.1.(g1)** The Department of Health and Human Services, Division of Child Development and Early Education, shall require all county departments of social services to include on any forms used to determine eligibility for child care subsidy whether the family waiting for subsidy is receiving assistance through the NC Pre-K program or Head Start."

CHILD CARE ALLOCATION FORMULA/DIRECTION

SECTION 10.2A. Section 10.2(a) of S.L. 2011-145 is amended by adding the following new subdivision to read:

"**SECTION 10.2.(a)** The Department of Health and Human Services shall allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families. The mandatory thirty percent (30%) Smart Start subsidy allocation under G.S. 143B-168.15(g) shall constitute the base amount for each county's child care subsidy

allocation. The Department of Health and Human Services shall use the following method when allocating federal and State child care funds, not including the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation:

(1) Funds shall be allocated to a county based upon the projected cost of serving children under age 11 in families with all parents working who earn less than seventy-five percent (75%) of the State median income.

(2) No county's allocation shall be less than ninety percent (90%) of its State fiscal year 2001-2002 initial child care subsidy allocation.

(3) For the 2012-2013 fiscal year, the Division of Child Development and Early Education shall base the formula identified in subdivision (1) of this subsection on the same data source used for the 2011-2012 fiscal year."

EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES ENHANCEMENTS/SALARY SCHEDULE/MATCH REQUIREMENT ADJUSTMENTS

SECTION 10.3.(a) Section 10.5(c) of S.L. 2011-145 is repealed.

SECTION 10.3.(b) Section 10.5 of S.L. 2011-145 is amended by adding the following new subsection to read:

"**SECTION 10.5.(c1)** The North Carolina Partnership for Children, Inc., shall develop and implement a salary schedule for the Executive Director of the North Carolina Partnership for Children, Inc., and the directors of local partnerships. The salary schedule shall set the maximum amount of State funds that may be used for the salary of the Executive Director of the North Carolina Partnership for Children, Inc., and the directors of the local partnerships. In establishing a salary schedule, the North Carolina Partnership for Children, Inc., shall base the schedule on the following criteria:

(1) The population of the area serviced by a local partnership.

(2) The amount of State funds administered.

(3) The amount of total funds administered.

(4) The professional experience of the individual to be compensated.

(5) Any other relevant factors pertaining to salary, as determined by the North Carolina Partnership for Children, Inc.

The salary schedule shall be used only to determine the maximum amount of State funds that may be used for compensation. Nothing in this subsection shall be construed to prohibit a local partnership from using non-State funds to supplement an individual's salary in excess of the amount set by the salary schedule established under this subsection."

SECTION 10.3.(c) Section 10.5(e) of S.L. 2011-145, as amended by Section 21A of S.L. 2011-391, reads as rewritten:

"**SECTION 10.5.(e)** The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match one hundred percent (100%) of the total amount budgeted for the program in each fiscal year of the biennium. Of the funds the North Carolina Partnership for Children, Inc., and the local partnerships are required to match, contributions of cash shall equal to at least ~~seven percent (7%)~~ten percent (10%) and in-kind donated resources equal to no more than three percent (3%) for a total match requirement of ~~ten percent (10%)~~thirteen percent (13%) for each fiscal year. The North Carolina Partnership for Children, Inc., may carry forward any amount in excess of the required match for a fiscal year in order to meet the match requirement of the succeeding fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children, Inc., or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

(1) Be verifiable from the contractor's records.

(2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.
(3) Not include expenses funded by State funds.
(4) Be supplemental to and not supplant preexisting resources for related program activities.
(5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives.
(6) Be otherwise allowable under federal or State law.
(7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children, Inc., or the local partnership.
(8) Be reported to the North Carolina Partnership for Children, Inc., or the local partnership by the contractor in the same manner as reimbursable expenses.

Failure to obtain a ~~ten percent (10%)~~thirteen percent (13%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly."

MEDICAID THERAPIES LIMIT REVISED

SECTION 10.5. Section 10.37(a)(2) of S.L. 2011-145 is repealed.

MODIFY AND IMPROVE PHARMACY SERVICES

SECTION 10.8.(a) The Department of Health and Human Services, Division of Medical Assistance, shall lower the fees paid to pharmacies for dispensing prescription drugs to achieve a savings of at least two million six hundred thirty-nine thousand eight hundred one dollars ($2,639,801) in the 2012-2013 fiscal year and an annualized savings of five million two hundred seventy-nine thousand six hundred one dollars ($5,279,601) thereafter.

SECTION 10.8.(b) The Division of Medical Assistance shall implement a tiered payment structure for generic prescriptions dispensed through the Medicaid Program so that the statewide average fee paid to pharmacies is no more than five dollars and sixty cents ($5.60) per prescription. Each of the four tiered payment amounts for generic prescriptions as set forth in the Medicaid State Plan, effective as of June 1, 2012, shall be reduced by thirteen and eighty-five hundredths percent (13.85%). The pharmacy dispensing fees shall be implemented as follows:

(1) Three dollars and forty-five cents ($3.45) shall be paid to pharmacies with generic dispensing rates below seventy percent (70%).
(2) Three dollars and seventy-nine cents ($3.79) shall be paid to pharmacies with generic dispensing rates that are at least seventy percent (70%) but lower than seventy-five percent (75%).
(3) Five dollars and sixty cents ($5.60) shall be paid to pharmacies with generic dispensing rates that are at least seventy-five percent (75%) but lower than eighty percent (80%).
(4) Seven dollars and seventy-five cents ($7.75) shall be paid to pharmacies with generic dispensing rates of eighty percent (80%) or higher.

SECTION 10.8.(c) The fee to be paid for dispensing brand drugs through the Medicaid Program shall be reduced by one dollar ($1.00).

SECTION 10.8.(d) For the 2012-2013 fiscal year, the Department shall achieve a savings of one million three hundred ninety-one thousand nine hundred six dollars ($1,391,906) through the implementation of a special pharmacy program for hemophilia drugs. The savings shall be achieved through the use of the federal 340B Drug Pricing Program for the dispensing of hemophilia drugs under the Medicaid Program.

SECTION 10.8.(e) The Department of Health and Human Services shall apply to the Centers for Medicare and Medicaid Services for any necessary approvals to implement the changes required by this section.

PROHIBIT SMART CARD PILOT PROGRAM

SECTION 10.9.(a) S.L. 2011-117 is repealed.

SECTION 10.9.(b) The Department of Health and Human Services shall not establish or operate a smart card pilot program or any other type of smart card program. If the Department is currently operating such a program, the Department shall end the program immediately.

STATE AUDITOR AUDIT DIVISION OF MEDICAL ASSISTANCE

SECTION 10.9A. The State Auditor shall conduct a performance audit of the North Carolina Medicaid Program and the Division of Medical Assistance operated within the Department of Health and Human Services. The audit shall examine the program's effectiveness, results of the program, and compliance with requirements of the Centers for Medicare and Medicaid Services and the requirements of State law. The State Auditor shall give a preliminary report on the performance audit to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by November 1, 2012, and shall complete the performance audit by February 1, 2013.

PED/FRD JOINT STUDY MEDICAID ORGANIZATION

SECTION 10.9B.(a) The Program Evaluation Division and the Fiscal Research Division of the General Assembly shall jointly study the feasibility of creating a separate Department of Medicaid and make a joint recommendation on this issue to the 2013 Regular Session of the General Assembly no later than February 15, 2013.

SECTION 10.9B.(b) The joint study directed by subsection (a) of this section shall include the following:

(1) A review of how other states administer Medicaid programs, including the following aspects:
   a. State Plan development and policy management.
   b. Payment of claims.
   c. Budget forecasting.
   d. Rate-setting.
   e. Appeals.
   f. Involvement in management of care.

(2) An analysis of benefits and disadvantages of Medicaid becoming a stand-alone State department, including the following considerations:
   a. Overhead costs to be saved or increased as a result of any proposed changes.
   b. Identification of any efficiencies to be gained from such reorganization.
   c. Identification of any costs that would be incurred as a result of this reorganization.
   d. Whether it is feasible to also move any other divisions or programs within the Department of Health and Human Services (DHHS) into a new Department of Medicaid.

(3) Whether moving Medicaid into its own department would have any adverse impact on funding streams to and administration of other agencies within DHHS.

(4) Identification of various Medicaid organizational structures and their costs and savings.

REMOVE AUTHORITY FOR MEDICAID PROVIDER RATE AND SERVICE REDUCTION

SECTION 10.9C.(a) Except as otherwise provided in this act to achieve Medicaid pharmacy program savings or in Section 10.48 of S.L. 2011-145, notwithstanding any other provision of law for the 2012-2013 fiscal year, the Department of Health and Human Services shall not reduce Medicaid provider payment rates or Medicaid optional services.

SECTION 10.9C.(b) In achieving the management flexibility reductions set forth in the Report on the Continuation, Expansion, and Capital Budgets, the Department shall not further reduce Medicaid program funds in excess of the reductions authorized in S.L. 2011-145 and this act. To achieve management flexibility reductions, the Department shall make reductions in areas such as administrative costs, Information Technology Services (ITS), and

the elimination of vacant positions. To the extent possible, the Department shall not further reduce services throughout the Department of Health and Human Services to achieve the management flexibility reductions.

SECTION 10.9C.(c) In achieving the management flexibility reductions set forth in the Report on the Continuation, Expansion, and Capital Budgets, the Department shall not reduce the funding appropriated in this act for the plan to provide temporary, short-term assistance to adult care homes and the Transitions to Community Living Initiative.

SECTION 10.9C.(d) The requirements of subsection (a) of this section shall not affect (i) a Medicaid provider payment rate reduction or Medicaid optional service reduction made prior to the effective date of this act or (ii) any applications for Medicaid program modifications authorized by S.L. 2011-145 that are in the process of being approved by the Centers for Medicare and Medicaid Services as of the effective date of this act.

MEDICAID CONTRACT FOR OUTPATIENT IMAGING SERVICES

SECTION 10.9D. The Department of Health and Human Services, Division of Medical Assistance, and its medical management designee shall ensure that the vendor providing radiology management services for the Medicaid program shall maintain a prior authorization medical management system for all Medicaid enrollees through December 31, 2013, provided, however, that this provision shall not prohibit the Division of Medical Assistance from authorizing its radiology management services vendor to transition to a radiology decision support system so long as a prior authorization requirement remains in place for all Medicaid recipients through December 31, 2013.

MEDICAID OPTION/SPECIAL CARE AND MEMORY CARE UNITS

SECTION 10.9E.(a) The Department of Health and Human Services, Division of Medical Assistance, shall develop and submit a home- and community-based services program under Medicaid State Plan 1915(i) authority for individuals typically served in special care and memory care units that meet the criteria of the State/County Special Assistance Program.

SECTION 10.9E.(b) The Division shall implement the program upon approval of the application by the Centers for Medicare and Medicaid Services.

SECTION 10.9E.(c) On or before April 1, 2013, the Division shall provide a report on the status of approval and implementation of the program to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

PERSONAL CARE SERVICES/ADL ELIGIBILITY

SECTION 10.9F.(a) Section 10.38 of S.L. 2011-145 is repealed.

SECTION 10.9F.(b) Section 10.37(a)(1) of S.L. 2011-145, as amended by Section 25 of S.L. 2011-391, reads as rewritten:

"**AUTHORIZE THE DIVISION OF MEDICAL ASSISTANCE TO TAKE CERTAIN STEPS TO EFFECTUATE COMPLIANCE WITH BUDGET REDUCTIONS IN THE MEDICAID PROGRAM**

"**SECTION 10.37.(a)** The Department of Health and Human Services, Division of Medical Assistance, may take the following actions, notwithstanding any other provision of this act or other State law or rule to the contrary:

(1) ~~In-Home~~Personal Care Services for Children provision. – ~~In order to enhance in-home aide services to Medicaid recipients, the~~The Department of Health and Human Services, Division of Medical ~~Assistance,~~Assistance (DMA), shall:

a. ~~No longer provide~~Provide services ~~under PCS and PCS Plus whenever CMS approves the elimination of the PCS and PCS Plus programs and the implementation of the following two new services:~~

~~1.~~ ~~In-Home Care for Children (IHCC). Services~~ to assist families to meet the ~~in-home~~personal care needs of children, including those individuals under the age of 21 receiving comprehensive and preventive child health services through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program.

~~2. In Home Care for Adults (IHCA). Services to meet the eating, dressing, bathing, toileting, and mobility needs of individuals 21 years of age or older who, because of a medical condition, disability, or cognitive impairment, demonstrate unmet needs for, at a minimum, (i) three of the five qualifying activities of daily living (ADLs) with limited hands-on assistance; (ii) two ADLs, one of which requires extensive assistance; or (iii) two ADLs, one of which requires assistance at the full dependence level. The five qualifying ADLs are eating, dressing, bathing, toileting, and mobility. IHCA shall serve individuals at the highest level of need for in-home care who are able to remain safely in the home.~~

b. Establish, in accordance with G.S. 108A-54.2, a Medical Coverage Policy ~~for each of these programs,~~ to ~~include:~~include up

~~1. For IHCC, up~~ to 60 hours per month in accordance with an assessment conducted by DMA or its designee and a plan of care developed by the service provider and approved by DMA or its designee. Additional hours may be authorized when the services are required to correct or ameliorate defects and physical and mental illnesses and conditions in this age group, as defined in 42 U.S.C. § 1396d(r)(5), in accordance with a plan of care approved by DMA or its designee.

~~2. For IHCA, up to 80 hours per month in accordance with an assessment conducted by DMA or its designee and a plan of care developed by the service provider and approved by DMA or its designee.~~

c. Implement the following ~~program~~ limitations and restrictions to apply to ~~both IHCC and IHCA~~the provision of personal care services to children:

1. Additional services to children required under federal EPSDT requirements shall be provided to qualified ~~recipients in the IHCC Program.~~recipients.
2. Services shall be provided in a manner that supplements, rather than supplants, family roles and responsibilities.
3. Services shall be authorized in amounts based on assessed need of each recipient, taking into account care and services provided by the family, other public and private agencies, and other informal caregivers who may be available to assist the family. All available resources shall be utilized fully, and services provided by such agencies and individuals shall be disclosed to the DMA assessor.
4. Services shall be directly related to ~~the hands-on assistance and related tasks to complete each qualifying ADL in accordance with the IHCC or IHCA~~the personal care service assessment and plan of care, as applicable.
5. Services ~~provided under IHCC and IHCA~~ shall not include household chores not directly related to ~~the qualifying ADLs,~~ nonmedical transportation, financial management, and non-hands-on assistance such as cueing, prompting, guiding, coaching, or babysitting.

~~6. Essential errands that are critical to maintaining the health and welfare of the recipient may be approved on a case-by-case basis by the DMA assessor when there is no family member, other individual, program, or service available to meet this need. Approval, including the amount of time required to perform this task, shall be documented on the recipient's assessment form and plan of care.~~

d. Utilize the following process for ~~admission~~evaluation or reevaluation to ~~the IHCC and IHCA programs:~~provide personal care services to children:
   1. The recipient shall be seen by his or her primary or attending physician, who shall provide written authorization for referral for the service and written attestation to the medical necessity for the service.
   2. All assessments for ~~admission to IHCC and IHCA,~~the provision of services, continuation of these services, and change of status reviews for these services shall be performed by DMA or its designee. The DMA designee may not be an owner of a provider business or provider of ~~in-home or~~ personal care services of any type.
   3. DMA or its designee shall determine and authorize the amount of service to be provided on a "needs basis," as determined by its review and findings of each recipient's degree of functional disability and level of unmet ~~needs for hands-on personal assistance in the five qualifying ADLs.~~needs.

e. Take all appropriate actions to manage the cost, quality, program compliance, and utilization of personal care services ~~provided under the IHCC and IHCA programs,~~ including, but not limited to:
   ~~1. Priority independent reassessment of recipients before the anniversary date of their initial admission or reassessment for those recipients likely to qualify for the restructured IHCC and IHCA programs.~~
   2. Priority independent reassessment of recipients requesting a change of service provider.
   ~~3. Targeted reassessments of recipients prior to their anniversary dates when the current provider assessment indicates they may not qualify for the program or for the amount of services they are currently receiving.~~
   4. Targeted reassessment of recipients receiving services from providers with a history of ~~program noncompliance.~~noncompliance in providing personal care services to children.
   ~~5. Provider desk and on-site reviews and recoupment of all identified overpayments or improper payments.~~
   ~~6. Recipient reviews, interviews, and surveys.~~
   7. The use of mandated electronic transmission of referral forms, plans of care, and reporting forms.
   8. The use of mandated electronic transmission of uniform reporting forms for recipient complaints and critical incidents.
   9. The use of automated systems to monitor, evaluate, and profile provider performance against established performance indicators.
   10. Establishment of rules that implement the requirements of 42 C.F.R. § 441.16.

~~f. Time line for implementation of new IHCC and IHCA programs.~~
   ~~1. Subject to approvals from CMS, DMA shall make every effort to implement the new IHCC and IHCA programs by January 1, 2013.~~
   ~~2. DMA shall ensure that individuals who qualify for the IHCC and IHCA programs shall not experience a lapse in service and, if necessary, shall be admitted on the basis of their current provider assessment when an independent reassessment has not yet been performed and the current assessment documents that the medical necessity~~

~~requirements for the IHCC or IHCA program, as applicable, have been met.~~

~~3. Prior to the implementation date of the new IHCC and IHCA programs, all recipients in the PCS and PCS Plus programs shall be notified pursuant to 42 C.F.R. § 431.220(b) and discharged, and the Department shall no longer provide services under the PCS and PCS Plus programs, which shall terminate. Recipients who qualify for the new IHCC and IHCA programs shall be admitted and shall be eligible to receive services immediately.~~"

SECTION 10.9F.(c) A Medicaid recipient who meets each of the following criteria is eligible for personal care services:

(1) The recipient has a medical condition, disability, or cognitive impairment, and demonstrates unmet needs for, at a minimum, (i) two activities of daily living (ADLs), one of which requires extensive assistance; or (ii) two ADLs, one of which requires assistance at the full dependence level.

(2) The recipient resides either in a private living arrangement or a residential facility licensed by the State of North Carolina as an adult care home.

The five qualifying ADLs are eating, dressing, bathing, toileting, and mobility. Personal care services shall be available for up to 80 hours per month in accordance with an assessment conducted under subsection (d) of this section and a plan of care developed by the service provider and approved by the Department of Health and Human Services, Division of Medical Assistance (DMA), or its designee. Personal care services shall not include nonmedical transportation; financial management; non-hands-on assistance such as cueing, prompting, guiding, coaching, or babysitting; and household chores not directly related to the qualifying ADLs.

SECTION 10.9F.(d) All assessments for personal care services, continuation of service, and change of status reviews shall be performed by an independent assessment entity (IAE). The IAE shall not be an owner of a provider business or provider of personal care services of any type.

A recipient shall be assessed by the IAE after the recipient's primary or attending physician provides written authorization for referral for the service and written attestation to the medical necessity for the service. The IAE shall determine and authorize the amount of service to be provided as determined by its review and findings of each recipient's degree of functional disability and level of unmet needs for personal care services in the five qualifying ADLs.

SECTION 10.9F.(e) The Department of Health and Human Services shall report to the Joint Legislative Oversight Committee on Health and Human Services by September 1, 2012, on the implementation of this section and on its progress in making independent assessments of recipients.

SECTION 10.9F.(f) The Department of Health and Human Services shall apply to the Centers for Medicare and Medicaid Services by July 15, 2012, for a Medicaid State Plan Amendment to implement this section.

SECTION 10.9F.(g) Subsections (c) and (d) of this section become effective January 1, 2013.

FUNDS FOR INPATIENT PSYCHIATRIC BEDS OR BED DAYS

SECTION 10.10. Section 10.8(b) of S.L. 2011-145 reads as rewritten:

"**SECTION 10.8.(b)** Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of twenty-nine million one hundred twenty-one thousand six hundred forty-four dollars ($29,121,644) for the 2011-2012 fiscal year and the sum of twenty-nine million one hundred twenty-one thousand six hundred forty-four dollars ($29,121,644) for the 2012-2013 fiscal year shall be allocated for the purchase of local inpatient psychiatric beds or bed days. In addition, at the discretion of the Secretary of Health and Human Services, existing funds allocated to LMEs for community-based mental health, developmental disabilities, and substance abuse services may be used to purchase additional local inpatient psychiatric beds or bed days. These beds or bed days shall be distributed across the State in LME catchment ~~areas~~areas, including any catchment areas served by managed care organizations, and according to need as determined by the Department. The Department shall enter into contracts with the

LMEs and community hospitals for the management of these beds or bed days. The Department shall work to ensure that these contracts are awarded equitably around all regions of the State. Local inpatient psychiatric beds or bed days shall be managed and controlled by the LME, including the determination of which local or State hospital the individual should be admitted to pursuant to an involuntary commitment order. Funds shall not be allocated to LMEs but shall be held in a statewide reserve at the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to pay for services authorized by the LMEs and billed by the hospitals through the LMEs. LMEs shall remit claims for payment to the Division within 15 working days of receipt of a clean claim from the hospital and shall pay the hospital within 30 working days of receipt of payment from the Division. If the Department determines (i) that an LME is not effectively managing the beds or bed days for which it has responsibility, as evidenced by beds or bed days in the local hospital not being utilized while demand for services at the State psychiatric hospitals has not reduced, or (ii) the LME has failed to comply with the prompt payment provisions of this subsection, the Department may contract with another LME to manage the beds or bed days, or, notwithstanding any other provision of law to the contrary, may pay the hospital directly. The Department shall develop reporting requirements for LMEs regarding the utilization of the beds or bed days. Funds appropriated in this section for the purchase of local inpatient psychiatric beds or bed days shall be used to purchase additional beds or bed days not currently funded by or through LMEs and shall not be used to supplant other funds available or otherwise appropriated for the purchase of psychiatric inpatient services under contract with community hospitals, including beds or bed days being purchased through Hospital Utilization Pilot funds appropriated in S.L. 2007-323. Not later than March 1, 2012, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on a uniform system for beds or bed days purchased (i) with local funds, (ii) from existing State appropriations, (iii) under the Hospital Utilization Pilot, and (iv) purchased using funds appropriated under this subsection."

FUNDS FOR FAMILY PLANNING SERVICES BY LOCAL HEALTH DEPARTMENTS

SECTION 10.12. Of the funds appropriated in this act to the Department of Health and Human Services for the 2012-2013 fiscal year, none shall be allocated to renewing, extending, or entering into new contracts for the provision of family planning services and pregnancy prevention activities with providers other than local health departments. Upon the expiration of any contracts in effect during the 2011-2012 fiscal year between the Division of Public Health and private providers of family planning services and pregnancy prevention activities, the Department shall reallocate three hundred forty-three thousand dollars ($343,000) of these contract funds to local health departments. Local health departments receiving funds under this section shall not contract with private providers for the provision of family planning services or pregnancy prevention activities. These services and activities shall be provided directly by local health department recipients or by other governmental entities contracted by local health department recipients. This section does not apply to contracts administered by the Department pursuant to G.S. 130A-131.15A.

DELAY LOCAL RECEIPT OF LARGER PORTION OF FOOD & LODGING FEES

SECTION 10.15. Section 31.11A(c) of S.L. 2011-145, as amended by Section 61A of S.L. 2011-391, reads as rewritten:

"**SECTION 31.11A.(c)** Subsection (a) of this section becomes effective ~~July 1, 2012.~~July 1, 2013."

REDUCE FUNDING FOR NONPROFIT ORGANIZATIONS

SECTION 10.18.(a) Section 10.18 of S.L. 2011-145 is repealed.

SECTION 10.18.(b) For fiscal year 2012-2013, the Department of Health and Human Services shall reduce the amount of funds allocated to nonprofit organizations by five million dollars ($5,000,000) on a recurring basis. The Department shall not, under any circumstances, use any funds, including State funds, federal funds, special revenue funds, or departmental receipts, to supplement the reduced amount of funding to be allocated to nonprofit

organizations pursuant to this subsection. In achieving the reductions required by this subsection, the Department (i) shall minimize reductions to funds allocated to nonprofit organizations for the provision of direct services and (ii) shall not reduce funds allocated to nonprofit organizations to pay for direct services to individuals with developmental disabilities.

REPORT ON LAPSED SALARY FUNDS

SECTION 10.20. Beginning no later than November 1, 2012, the Department of Health and Human Services shall submit quarterly reports to the Joint Legislative Oversight Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the use of lapsed salary funds by each Division within the Department. For each Division, the report shall include the following information about the preceding calendar quarter:

(1) The total amount of lapsed salary funds.

(2) The number of full-time equivalent positions comprising the lapsed salary funds.

(3) The Fund Code for each full-time equivalent position included in the number reported pursuant to subdivision (2) of this section.

(4) The purposes for which the Department expended lapsed salary funds.

REVISE DATES/TANF BENEFIT IMPLEMENTATION

SECTION 10.22. Section 10.55 of S.L. 2011-145 reads as rewritten:

"**SECTION 10.55.(a)** The General Assembly approves the plan titled "North Carolina Temporary Assistance for Needy Families State Plan ~~FY 2010-2012,~~"2012-2015," prepared by the Department of Health and Human Services and presented to the General Assembly. The North Carolina Temporary Assistance for Needy Families State Plan covers the period October 1, ~~2010,~~2012, through September 30, ~~2012.~~2015. The Department shall submit the State Plan, as revised in accordance with subsection (b) of this section, to the United States Department of Health and Human Services, as amended by this act or any other act of the 2011 General Assembly.

"**SECTION 10.55.(b)** The counties approved as Electing Counties in the North Carolina Temporary Assistance for Needy Families State Plan ~~FY 2010-2012,~~2012-2015, as approved by this section are Beaufort, Caldwell, Catawba, Lenoir, Lincoln, Macon, and Wilson.

"**SECTION 10.55.(c)** Counties that submitted the letter of intent to remain as an Electing County or to be redesignated as an Electing County and the accompanying county plan for ~~fiscal year 2011~~ years 2012 through ~~2012,~~2015, pursuant to G.S. 108A-27(e), shall operate under the Electing County budget requirements effective July 1, ~~2009.~~2012. For programmatic purposes, all counties referred to in this subsection shall remain under their current county designation through September 30, ~~2012.~~2015.

"**SECTION 10.55.(d)** For the ~~2011-2012~~2012-2013 fiscal year, Electing Counties shall be held harmless to their Work First Family Assistance allocations for the ~~2010-2011~~2011-2012 fiscal year, provided that remaining funds allocated for Work First Family Assistance and Work First Diversion Assistance are sufficient for payments made by the Department on behalf of Standard Counties pursuant to G.S. 108A-27.11(b).

"**SECTION 10.55.(e)** In the event that departmental projections of Work First Family Assistance and Work First Diversion Assistance for the ~~2011-2012~~2012-2013 fiscal year indicate that remaining funds are insufficient for Work First Family Assistance and Work First Diversion Assistance payments to be made on behalf of Standard Counties, the Department is authorized to deallocate funds, of those allocated to Electing Counties for Work First Family Assistance in excess of the sums set forth in G.S. 108A-27.11, up to the requisite amount for payments in Standard Counties. Prior to deallocation, the Department shall obtain approval by the Office of State Budget and Management. If the Department adjusts the allocation set forth in subsection (d) of this section, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division."

EQUALIZE SPECIAL ASSISTANCE PAYMENTS UNDER IN-HOME, ADULT CARE HOME, AND RENTAL ASSISTANCE PROGRAMS

SECTION 10.23.(a) G.S. 108A-47.1 reads as rewritten:

"**§ 108A-47.1. Special Assistance in-home payments.**

(a) The Department of Health and Human Services may use funds from the existing State-County Special Assistance budget to provide Special Assistance payments to eligible individuals 18 years of age or older in in-home living arrangements. These payments may be made for up to fifteen percent (15%) of the caseload for all State-County Special Assistance. The standard monthly payment to individuals enrolled in the Special Assistance in-home program shall be ~~seventy-five percent (75%)~~one hundred percent (100%) of the monthly payment the individual would receive if the individual resided in an adult care home and qualified for Special Assistance, except if a lesser payment amount is appropriate for the individual as determined by the local case manager. The Department shall implement Special Assistance in-home eligibility policies and procedures to assure that in-home program participants are those individuals who need and, but for the in-home program, would seek placement in an adult care home facility. The Department's policies and procedures shall include the use of a functional assessment. ~~The Department shall make this in-home option available to all counties on a voluntary basis. To the maximum extent possible, the Department shall consider geographic balance in the dispersion of payments to individuals across the State.~~

(b) All county departments of social services shall participate in the State-County Special Assistance in-home program by making Special Assistance in-home slots available to individuals who meet the eligibility requirements established by the Department pursuant to subsection (a) of this section. Beginning July 1, 2013, and each July 1 thereafter, the Department shall establish a formula to determine the need for additional State-County Special Assistance in-home slots for each county."

SECTION 10.23.(b) County departments of social services with established State-County Special Assistance in-home slots that have filled some but not all slots as of July 1, 2012, shall maintain at least the same number of slots during the 2012-2013 fiscal year as the average number of slots filled during the 2011-2012 fiscal year.

SECTION 10.23.(c) County departments of social services with established State-County Special Assistance in-home slots, that have not filled any of these slots as of July 1, 2012, shall begin participating in the Special Assistance in-home program effective July 1, 2012, by filling all their established slots.

SECTION 10.23.(d) County departments of social services with no established State-County Special Assistance in-home slots shall begin participating in the Special Assistance in-home program effective July 1, 2012. The Department shall determine the designated number of slots to be established and filled in these counties by assessing the need for these slots based upon a percentage of the caseload for all State-County Special Assistance within that county.

SECTION 10.23.(e) Effective July 1, 2012, notwithstanding G.S. 108A-47.1(a) and within existing appropriations for State-County Special Assistance, the Secretary of the Department of Health and Human Services may waive the fifteen percent (15%) cap on Special Assistance in-home payments, as the Secretary deems necessary.

SECTION 10.23.(f) State funds available to the Department of Health and Human Services shall pay fifty percent (50%), and the counties shall pay fifty percent (50%) of the authorized rates for care in adult care homes including area mental health agency-operated or contracted-group homes. For the 2012-2013 fiscal year, the Department shall maintain the State's allocation to the State-County Special Assistance program at one hundred percent (100%) of the State certified budget enacted by the General Assembly for the 2011-2012 fiscal year. The Department shall use these allocated funds for the State-County Special Assistance program, the State-County Special Assistance in-home program, and rental assistance.

For the 2012-2013 fiscal year, each county department of social services shall maintain its allocation to the State-County Special Assistance program at one hundred percent (100%) of the county funds budgeted for this program for the 2011-2012 State fiscal year. Each county shall use these allocated funds for the State-County Special Assistance program, the State-County Special Assistance in-home program, and rental assistance. The Department of Health and Human Services, Division of Aging and Adult Services, shall monitor the counties' implementation of this section.

SECTION 10.23.(g) Section 10.59 of S.L. 2011-145 reads as rewritten:

"**STATE-COUNTY SPECIAL ASSISTANCE**

"**SECTION 10.59.(a)** The maximum monthly rate for residents in adult care home facilities shall be one thousand one hundred eighty-two dollars ($1,182) per month per ~~resident unless adjusted by the Department in accordance with subsection (d) of this section.~~ resident. The eligibility of Special Assistance recipients residing in adult care homes on September 30, 2009, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from the adoption of this maximum monthly rate, provided these recipients are otherwise eligible.

"**SECTION 10.59.(b)** The maximum monthly rate for residents in Alzheimer/Dementia special care units shall be one thousand five hundred fifteen dollars ($1,515) per month per ~~resident unless adjusted by the Department in accordance with subsection (d) of this section.~~resident.

~~"SECTION 10.59.(c) Notwithstanding any other provision of this section, the Department of Health and Human Services shall review activities and costs related to the provision of care in adult care homes and shall determine what costs may be considered to properly maximize allowable reimbursement available through Medicaid personal care services for adult care homes (ACH PCS) under federal law. As determined, and with any necessary approval from the Centers for Medicare and Medicaid Services (CMS), and the approval of the Office of State Budget and Management, the Department may transfer necessary funds from the State-County Special Assistance program within the Division of Social Services to the Division of Medical Assistance and may use those funds as State match to draw down federal matching funds to pay for such activities and costs under Medicaid's personal care services for adult care homes (ACH PCS), thus maximizing available federal funds. The established rate for State-County Special Assistance set forth in subsections (b) and (c) of this section shall be adjusted by the Department to reflect any transfer of funds from the Division of Social Services to the Division of Medical Assistance and related transfer costs and responsibilities from State-County Special Assistance to the Medicaid personal care services for adult care homes (ACH PCS). Subject to approval by the Centers for Medicare and Medicaid Services (CMS) and prior to implementing this section, the Department may disregard a limited amount of income for individuals whose countable income exceeds the adjusted State-County Special Assistance rate. The amount of the disregard shall not exceed the difference between the Special Assistance rate prior to the adjustment and the Special Assistance rate after the adjustment and shall be used to pay a portion of the cost of the ACH PCS and reduce the Medicaid payment for the individual's personal care services provided in an adult care home. In no event shall the reimbursement for services through the ACH PCS exceed the average cost of the services as determined by the Department from review of cost reports as required and submitted by adult care homes. The Department shall report any transfers of funds and modifications of rates to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.~~

~~"SECTION 10.59.(d) The Department of Health and Human Services shall recommend rates for State-County Special Assistance and for Adult Care Home Personal Care Services. The Department may recommend rates based on appropriate cost methodology and cost reports submitted by adult care homes that receive State-County Special Assistance funds and shall ensure that cost reporting is done for State-County Special Assistance and Adult Care Home Personal Care Services to the same standards as apply to other residential service providers.~~"

TRANSITIONS TO COMMUNITY LIVING INITIATIVE

SECTION 10.23A.(a) The General Assembly finds that the State's long-term care industry plays a vital role in ensuring that citizens are afforded opportunities for safe housing and adequate client-centered supports in order to live as independently as possible in their homes and communities across the State. This role is consistent with citizens of the State having the opportunity to live in the most appropriate, integrated settings of their choice. The General Assembly also is committed to the development of a plan that continues to advance the State's current system into a statewide system of person-centered, affordable services and supports that emphasize an individual's dignity, choice, and independence and provides new opportunities and increased capacity for community housing and community supports.

SECTION 10.23A.(b) Blue Ribbon Commission on Transitions to Community Living. – There is established the Blue Ribbon Commission on Transitions to Community Living (Commission). The Commission shall (i) examine the State's system of community housing and community supports for people with severe mental illness, severe and persistent

mental illness, and intellectual and developmental disabilities and (ii) develop a plan that continues to advance the State's current system into a statewide system of person-centered, affordable services and supports that emphasize an individual's dignity, choice, and independence. In the execution of its duties, the Commission shall consider the following:

(1) Policies that alter the State's current practices with respect to institutionally based services to community-based services delivered as close to an individual's home and family as possible.

(2) Best practices in both the public and private sectors in managing and administering long-term care to the disabled.

(3) An array of services and supports for people with severe mental illness and severe and persistent mental illness, such as respite, community-based supported housing and community-based mental health services, to include evidence-based, person-centered recovery supports and crisis services and supported employment.

(4) For adults with intellectual and other developmental disabilities, expansion of community-based services and supports, housing options, and supported work. Maximize the use of habilitation services that may be available via the Medicaid "I" option for individuals who do not meet the ICF-MR level of need.

(5) Methods to responsibly manage the growth in long-term care spending, including use of Medicaid waivers.

(6) Options for repurposing existing resources while considering the diverse economic challenges in communities across the State.

(7) Opportunities for systemic change and maximization of housing, and service and supports funding streams, including State-County Special Assistance and the State's Medicaid program.

(8) The appropriate role of adult care homes and other residential settings in the State.

(9) Other resources that might be leveraged to enhance reform efforts.

SECTION 10.23A.(c) The Commission shall be composed of 32 members as follows:

(1) Six members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) Six members of the Senate appointed by the President Pro Tempore of the Senate.

(3) Secretary of the Department of Health and Human Services (DHHS) or the Secretary's designee.

(4) Director of the Housing Finance Agency or the Director's designee.

(5) Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of DHHS or the Director's designee.

(6) Two mental health consumers or their family representatives.

(7) Two developmental disabilities consumers or their family representatives.

(8) Two persons in the field of banking or representing a financial institution with housing finance expertise.

(9) Two representatives of local management entities or managed care organizations.

(10) A county government representative.

(11) A North Carolina Association, Long-Term Care Facilities representative.

(12) A North Carolina Assisted Living Association representative.

(13) A family care home representative.

(14) A developmentally disabled adult group home representative.

(15) A mental health group home representative.

(16) Two representatives of service providers with proven experience in innovated housing and support services in the State.

(17) Director of the Division of Medical Assistance of DHHS or the Director's designee.

The Secretary of the Department of Health and Human Services shall ensure adequate staff representation and support from the following: Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Division of Aging and Adult

Services, Division of Health Services Regulations, Division of Social Services, and other areas as needed.

The Commission shall appoint a Subcommittee on Housing composed of 15 members and a Subcommittee on Adult Care Homes.

The chairs shall jointly appoint members described in subdivisions (6) through (16) of this subsection and shall fill vacancies in those positions. The Commission shall meet at the call of the chairs. Members of the Commission shall receive per diem, subsistence, and travel expenses as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission may contract for consultant services as provided in G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Commission in its work. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and Senate Directors of Legislative Assistants. The Commission may meet in the Legislative Building or the Legislative Office Building. The Commission may exercise all of the powers provided under G.S. 120-19 through G.S. 120-19.4 while in the discharge of its official duties. The funds needed to support the cost of the Commission's work shall be transferred from the Department of Health and Human Services upon request of the Legislative Services Director.

SECTION 10.23A.(d) Transitions to Community Living Fund. – There is established the Transitions to Community Living Fund (Fund) to facilitate implementation of the plans required in subsections (e) and (f) of this section. Accordingly, the State Controller shall reserve the sum of thirty-five million three hundred thousand dollars ($35,300,000) for transfer and appropriation into the Fund as directed by this section.

SECTION 10.23A.(e) Of the total reserved in subsection (d) of this section for the Fund, the sum of ten million three hundred thousand dollars ($10,300,000) is appropriated to support the Department of Health and Human Services in its plan for transitioning individuals with severe mental illness and severe and persistent mental illness into community living arrangements, including establishing a rental assistance program. If the State executes an agreement with the U.S. Department of Justice (USDOJ) in response to the USDOJ findings dated July 28, 2011, or implements a plan in response to the USDOJ findings, these funds shall be used to implement the requirements of the first year of the agreement or the plan. In the event such an agreement is reached, a recurring appropriation will be necessary to fully implement it. The Department may issue temporary rules to implement this subsection.

SECTION 10.23A.(f) Of the total reserved in subsection (d) of this section for the Fund, the sum of twenty-five million dollars ($25,000,000) is designated for implementation of the State's plan to provide temporary, short-term assistance to adult care homes as they transition into the State's Transitions to Community Living Initiative. The General Assembly recognizes that while transformation of the system is being undertaken, adult care homes provide stable and safe housing and care to many of North Carolina's frail and elderly population, and it is necessary during this time of transition and transformation of the statewide system that the industry remain able to provide such care.

Upon certification by the Department of Health and Human Services, in consultation with a local discharge team, that an individual cannot be safely and timely discharged into the community, the Department may pay a monthly stipend to the adult care home for the number of individuals it continues to serve who are no longer eligible to receive Medicaid reimbursable assistance but for whom a community placement has not yet been arranged.

The Department of Health and Human Services shall administer these funds but may, as needed, contract with a vendor for administration.

SECTION 10.23A.(g) The Department shall report its progress in complying with subsection (e) of this section to the House Appropriations Subcommittee on Health and Human Services, the Senate Committee on Health and Human Services, and the Fiscal Research Division no later than January 2, 2013, and submit a final report no later than April 1, 2013.

SECTION 10.23A.(h) The Commission shall issue an interim report by October 1, 2012, and a final plan to the 2013 General Assembly no later than February 1, 2013, at which time the Commission shall expire.

TELECOMMUNICATIONS RELAY SERVICE

SECTION 10.24.(a) G.S. 62-157(d1) reads as rewritten:

"(d1) The Department of Health and Human Services ~~shall~~ may utilize revenues from the wireless surcharge collected under subsection (i) of this section to ~~fund the Regional Resource Centers within~~support the Division of Services for the Deaf and the Hard of Hearing, in accordance with G.S. 143B-216.33, G.S. 143B-216.34, and Chapter 8B of the General Statutes."

SECTION 10.24.(b) G.S. 62-157(e) reads as rewritten:

"(e) Administration of Service. – The Department of Health and Human Services shall administer the statewide telecommunications relay service program, including its establishment, operation, and promotion. The Department may contract out the provision of this service for four-year periods to one or more service providers, using the provisions of G.S. 143-129. The Department shall administer all programs and services, including the Regional Resource Centers within the Division of Services for the Deaf and the Hard of Hearing in accordance with G.S. 143B-216.33, G.S. 143B-216.34, and Chapter 8B of the General Statutes."

DHHS BLOCK GRANTS

SECTION 10.25.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2013, according to the following schedule:

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) FUNDS

Local Program Expenditures		
Division of Social Services		
01.	Work First Family Assistance	$ 61,671,297
02.	Work First County Block Grants	83,386,330
03.	Work First Electing Counties	2,378,213
04.	Adoption Services – Special Children's Adoption Fund	2,026,877
05.	Child Protective Services – Child Welfare Workers for Local DSS	13,066,507
06.	Child Welfare Collaborative	754,115
Division of Child Development		
07.	Subsidized Child Care Program	59,645,662
08.	Swap Child Care Subsidy	6,352,644
Division of Public Health		
09.	Teen Pregnancy Initiatives	2,500,000
DHHS Administration		
10.	Division of Social Services	2,482,260
11.	Office of the Secretary	34,042
Transfers to Other Block Grants		
Division of Child Development		

12.	Transfer to the Child Care and Development Fund	71,773,001
13.	Transfer to Social Services Block Grant for Child Protective Services – Child Welfare Training in Counties	1,300,000
14.	Transfer to Social Services Block Grant for Child Protective Services	5,040,000
15.	Transfer to Social Services Block Grant for County Departments of Social Services for Children's Services	4,148,001
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) FUNDS		$ 316,558,949

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS

Local Program Expenditures

Division of Social Services

01.	Work First County Block Grants	$ 11,066,985
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS		$ 11,066,985

SOCIAL SERVICES BLOCK GRANT

Local Program Expenditures

Divisions of Social Services and Aging and Adult Services

01.	County Departments of Social Services (Transfer from TANF $4,148,001)	$ 35,077,206
02.	Child Protective Services (Transfer from TANF)	5,040,000
03.	State In-Home Services Fund	2,101,113
04.	Adult Protective Services	1,346,047
05.	State Adult Day Care Fund	2,155,301
06.	Child Protective Services/CPS Investigative Services-Child Medical Evaluation Program (Carousel Center for Abused Children $134,592)	744,047
07.	Special Children Adoption Incentive Fund	500,000
08.	Child Protective Services-Child Welfare Training for Counties (Transfer from TANF)	1,300,000
09.	Home and Community Care Block Grant (HCCBG)	1,834,077
10.	Maternity Homes	925,085
11.	Child Advocacy Centers	375,000

12.	Work First – Boys and Girls Clubs	2,452,500
13.	Food Banks	1,000,000
14.	Child Care Subsidy	2,452,500
15.	Developmental Disabilities Services Program	4,356,604
16.	UNC Cares Contract	247,920
	Division of Public Health	
17.	HIV/STD Prevention and Community Planning	145,819
18.	Prevent Blindness	150,000
	Division of Vocational Rehabilitation	
19.	Vocational Rehabilitation Services – Easter Seal Society/UCP Community Health Program	188,263
	DHHS Program Expenditures	
	Division of Services for the Blind	
20.	Independent Living Program	3,633,077
21.	Accessible Electronic Information for Blind and Disabled Persons	75,000
	Division of Health Service Regulation	
22.	Adult Care Licensure Program	411,897
23.	Mental Health Licensure and Certification Program	205,668
	DHHS Administration	
24.	Division of Aging and Adult Services	624,454
25.	Division of Social Services	604,311
26.	Office of the Secretary/Controller's Office	138,058
27.	Division of Child Development	15,000
28.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	29,665
29.	Division of Health Service Regulation	128,562
	TOTAL SOCIAL SERVICES BLOCK GRANT	$ 68,257,174
	LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT	
	Local Program Expenditures	
	Division of Social Services	
01.	Low-Income Energy Assistance Program (LIEAP)	$ 14,688,575

02.	Crisis Intervention Program (CIP)	33,255,130
Local Administration		
Division of Social Services		
03.	County DSS Administration	4,444,717
DHHS Administration		
04.	Office of the Secretary/DIRM	219,490
05.	Office of the Secretary/Controller's Office	9,779
Transfers to Other State Agencies		
Department of Commerce		
06.	Weatherization Program	8,464,517
07.	Heating Air Repair and Replacement Program (HARRP)	4,073,690
08.	Local Residential Energy Efficiency Service Providers – Weatherization	19,825
09.	Local Residential Energy Efficiency Service Providers – HARRP	180,041
10.	Department of Commerce Administration – Weatherization	19,825
11.	Department of Commerce Administration – HARRP	180,041
Department of Administration		
12.	N.C. Commission on Indian Affairs	87,736
TOTAL LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT		$ 65,643,366
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT		
Local Program Expenditures		
Division of Child Development		
01.	Child Care Services (Smart Start $10,000,000)	$ 158,179,897
02.	Electronic Tracking System	3,000,000
03.	Transfer from TANF Block Grant for Child Care Subsidies	71,773,001
04.	Quality and Availability Initiatives	23,000,000

DHHS Administration	
Division of Child Development	
05. DCDEE Administrative Expenses	6,000,000
06. Non-Direct Subsidy Services Support	15,898,602
Division of Central Administration	
07. DHHS Central Administration – DIRM Technical Services	775,000
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT	$ 278,626,500

MENTAL HEALTH SERVICES BLOCK GRANT

Local Program Expenditures	
01. Mental Health Services – Adult	$ 8,870,595
02. Mental Health Services – Child	5,121,991
03. Administration	100,000
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT	$ 14,092,586

SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT

Local Program Expenditures	
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	
01. Substance Abuse Services – Adult	$ 15,328,802
02. Substance Abuse Treatment Alternative for Women	6,050,300
03. Substance Abuse – HIV and IV Drug	3,919,723
04. Substance Abuse Prevention – Child	7,186,857
05. Substance Abuse Services – Child	4,940,500
06. Administration	454,000
Division of Public Health	
07. Risk Reduction Projects	575,654
08. Aid-to-Counties	190,295
TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT	$ 38,646,131

MATERNAL AND CHILD HEALTH BLOCK GRANT

Local Program Expenditures

Division of Public Health		
01.	Children's Health Services	$ 8,487,547
02.	Women's Health	8,404,244
03.	Oral Health	42,268
DHHS Program Expenditures		
Division of Public Health		
04.	Children's Health Services	1,250,000
05.	Women's Health	136,628
06.	State Center for Health Statistics	164,318
07.	Quality Improvement in Public Health	2,774
08.	Health Promotion	89,374
DHHS Administration		
Division of Public Health		
09.	Division of Public Health Administration	600,000
TOTAL MATERNAL AND CHILD HEALTH BLOCK GRANT		$ 19,259,071
PREVENTIVE HEALTH SERVICES BLOCK GRANT		
Local Program Expenditures		
Division of Public Health		
01.	Services to Rape Victims	180,470
02.	HIV/STD Prevention and Community Planning (Transfer from Social Services Block Grant)	145,819
DHHS Program Expenditures		
Division of Public Health		
03.	State Center for Health Statistics	160,000
TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT		$ 486,289
COMMUNITY SERVICES BLOCK GRANT		
Local Program Expenditures		
Office of Economic Opportunity		
01.	Community Action Agencies	$ 18,075,488
02.	Limited Purpose Agencies	1,004,194

DHHS Administration

03.	Office of Economic Opportunity	1,004,194
TOTAL COMMUNITY SERVICES BLOCK GRANT		$ 20,083,876

GENERAL PROVISIONS

SECTION 10.25.(b) Information to Be Included in Block Grant Plans. – The Department of Health and Human Services shall submit a separate plan for each Block Grant received and administered by the Department, and each plan shall include the following:

(1) A delineation of the proposed allocations by program or activity, including State and federal match requirements.
(2) A delineation of the proposed State and local administrative expenditures.
(3) An identification of all new positions to be established through the Block Grant, including permanent, temporary, and time-limited positions.
(4) A comparison of the proposed allocations by program or activity with two prior years' program and activity budgets and two prior years' actual program or activity expenditures.
(5) A projection of current year expenditures by program or activity.
(6) A projection of federal Block Grant funds available, including unspent federal funds from the current and prior fiscal years.

SECTION 10.25.(c) Changes in Federal Fund Availability. – If the Congress of the United States increases the federal fund availability for any of the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase proportionally across the program and activity appropriations identified for that Block Grant in this section. In allocating an increase in federal fund availability, the Office of State Budget and Management shall not approve funding for new programs or activities not appropriated in this section.

If the Congress of the United States decreases the federal fund availability for any of the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall develop a plan to adjust the block grants based on reduced federal funding.

Notwithstanding the provisions of this subsection, for the 2012-2013 fiscal year, increases in the federal fund availability for the Temporary Assistance to Needy Families (TANF) Block Grant shall be used for the North Carolina Child Care Subsidy program to pay for child care in four- or five-star rated facilities for four-year-old children.

Prior to allocating the change in federal fund availability, the proposed allocation must be approved by the Office of State Budget and Management. If the Department adjusts the allocation of any Block Grant due to changes in federal fund availability, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.25.(d) Appropriations from federal Block Grant funds are made for the fiscal year ending June 30, 2013, according to the schedule enacted for State fiscal year 2012-2013 or until a new schedule is enacted by the General Assembly.

SECTION 10.25.(e) All changes to the budgeted allocations to the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations for review prior to implementing the changes. The report shall include an itemized listing of affected programs, including associated changes in budgeted allocations. All changes to the budgeted allocations to the Block Grants shall be reported immediately to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

This subsection does not apply to Block Grant changes caused by legislative salary increases and benefit adjustments.

SECTION 10.25.(f) If the Preventive Health Services Block Grant is funded at the federal level and the State receives a block grant for Preventive Health Services, the 2011-2012 allocation plan shall remain in effect for the 2012-2013 fiscal year.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) FUNDS

SECTION 10.25.(g) The sum of eighty-three million three hundred eighty-six thousand three hundred thirty dollars ($83,386,330) appropriated in this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for the 2012-2013 fiscal year shall be used for Work First County Block Grants. The Division shall certify these funds in the appropriate State-level services based on prior year actual expenditures. The Division has the authority to realign the authorized budget for these funds among the State-level services based on current year actual expenditures.

SECTION 10.25.(h) The sum of two million four hundred eighty-two thousand two hundred sixty dollars ($2,482,260) appropriated in this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for the 2012-2013 fiscal year shall be used to support administration of TANF-funded programs.

SECTION 10.25.(i) The sum of thirteen million sixty-six thousand five hundred seven dollars ($13,066,507) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in TANF funds for the 2012-2013 fiscal year for child welfare improvements shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and post-adoption services for eligible families.

Counties shall maintain their level of expenditures in local funds for Child Protective Services' workers. Of the block grant funds appropriated for Child Protective Services' workers, the total expenditures from State and local funds for the 2012-2013 fiscal year shall not be less than the total expended from State and local funds for the 2011-2012 fiscal year.

SECTION 10.25.(j) The sum of two million twenty-six thousand eight hundred seventy-seven dollars ($2,026,877) appropriated in this section in TANF funds to the Department of Health and Human Services, Special Children Adoption Fund, for the 2012-2013 fiscal year shall be used in accordance with G.S. 108A-50.2, as enacted in Section 10.48 of S.L. 2009-451. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

SECTION 10.25.(k) The sum of seven hundred fifty-four thousand one hundred fifteen dollars ($754,115) appropriated in this section to the Department of Health and Human Services in TANF funds for the 2012-2013 fiscal year shall be used to continue support for the Child Welfare Collaborative.

SOCIAL SERVICES BLOCK GRANT

SECTION 10.25.(l) The sum of thirty-five million two hundred eleven thousand seven hundred ninety-eight dollars ($35,211,798) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2012-2013 fiscal year shall be used for County Block Grants. The Division shall certify these funds in the appropriate State-level services based on prior year actual expenditures. The Division has the authority to realign the authorized budget for these funds among the State-level services based on current year actual expenditures.

SECTION 10.25.(m) The sum of one million three hundred thousand dollars ($1,300,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2012-2013 fiscal year shall be used to support various child welfare training projects as follows:

(1) Provide a regional training center in southeastern North Carolina.
(2) Provide training for residential child caring facilities.
(3) Provide for various other child welfare training initiatives.

SECTION 10.25.(n) The Department of Health and Human Services is authorized, subject to the approval of the Office of State Budget and Management, to transfer Social Services Block Grant funding allocated for departmental administration between divisions that have received administrative allocations from the Social Services Block Grant.

SECTION 10.25.(o) Social Services Block Grant funds appropriated for the Special Children's Adoption Incentive Fund will require a fifty percent (50%) local match.

SECTION 10.25.(p) The sum of five million forty thousand dollars ($5,040,000) appropriated in this section in the Social Services Block Grant for the 2012-2013 fiscal year shall be allocated to the Department of Health and Human Services, Division of Social Services. The Division shall allocate these funds to local departments of social services to replace the loss of Child Protective Services State funds that are currently used by county government to pay for Child Protective Services staff at the local level. These funds shall be used to maintain the number of Child Protective Services workers throughout the State. These Social Services Block Grant funds shall be used to pay for salaries and related expenses only and are exempt from 10A NCAC 71R .0201(3) requiring a local match of twenty-five percent (25%).

SECTION 10.25.(q) The sum of two million four hundred fifty-two thousand five hundred dollars ($2,452,500) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the Social Services Block Grant for Boys and Girls Clubs for the 2012-2013 fiscal year shall be used to make grants for approved programs. The Department of Health and Human Services, in accordance with federal regulations for the use of Social Services Block Grant funds, shall administer a grant program to award funds to the Boys and Girls Clubs across the State in order to implement programs that improve the motivation, performance, and self-esteem of youths and to implement other initiatives that would be expected to reduce gang participation, school dropout, and teen pregnancy rates. The Department shall facilitate collaboration between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs and encourage them to submit joint applications for the funds if appropriate. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.25.(r) The sum of nine hundred twenty-five thousand eighty-five dollars ($925,085) appropriated in this section in the Social Services Block Grant for the 2012-2013 fiscal year to the Department of Health and Human Services, Division of Social Services, shall be used for maternity homes. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.25.(s) The sum of one hundred fifty thousand dollars ($150,000) appropriated in this section in the Social Services Block Grant for the 2012-2013 fiscal year to the Department of Health and Human Services, Division of Public Health, shall be allocated to Prevent Blindness North Carolina to be used for direct service programs. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.25.(t) The sum of seventy-five thousand dollars ($75,000) appropriated in this section in the Social Services Block Grant for the 2012-2013 fiscal year to the Department of Health and Human Services, Division of Services for the Blind, shall be used to provide accessible electronic information for blind and disabled persons. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.25.(u) The sum of three hundred seventy-five thousand dollars ($375,000) appropriated in this section in the Social Services Block Grant for the 2012-2013 fiscal year to the Department of Health and Human Services, Division of Social Services, shall be used to continue support for the Child Advocacy Centers and are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.25.(v) Social Services Block Grant funds allocated for the 2012-2013 fiscal year for child medical evaluations and the Carousel Center for Abused Children are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.25.(w) The sum of one million dollars ($1,000,000) appropriated in this section in the Social Services Block Grant for the 2012-2013 fiscal year to the Department of Health and Human Services, Division of Social Services, shall be allocated to North

Carolina Food Bank agencies to be used to purchase and distribute food staples for emergency food assistance. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT

SECTION 10.25.(x) Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Commission on Governmental Operations. Additional funds received shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Commission on Governmental Operations.

SECTION 10.25.(y) The sum of fourteen million six hundred eighty-eight thousand five hundred seventy-five dollars ($14,688,575) appropriated in this section in the Low-Income Home Energy Assistance Block Grant for the 2012-2013 fiscal year to the Department of Health and Human Services, Division of Social Services, shall be used for energy assistance payments for the households of (i) elderly persons age 60 and above with income up to one hundred thirty percent (130%) of the federal poverty level and (ii) disabled persons eligible for services funded through the Division of Aging and Adult Services. County departments of social services shall submit to the Division of Social Services an outreach plan for targeting households with 60-year-old household members no later than August 1 of each year.

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT

SECTION 10.25.(z) Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.25.(aa) If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

MATERNAL AND CHILD HEALTH BLOCK GRANT

SECTION 10.25.(bb) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2012-2013 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an abstinence until marriage education program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4) and (4a). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

SECTION 10.25.(cc) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

PART XI. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

B.R.I.D.G.E. YOUTHFUL OFFENDERS/PRIORITY AND REPORTING

SECTION 11.1.(a) The Division of Adult Correction of the Department of Public Safety shall give priority to the B.R.I.D.G.E. Youthful Offenders Program operated in cooperation with the North Carolina Forest Service when assigning youthful offenders from the Western Youth Institution to work programs.

SECTION 11.1.(b) The North Carolina Forest Service shall submit an annual report on the B.R.I.D.G.E. Youthful Offenders Program no later than October 1 of each year beginning October 1, 2012, to the Fiscal Research Division, the Chairs of the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources, the Chairs of the House Appropriations Subcommittee on Justice and Public Safety and the Senate Appropriations

Committee on Justice and Public Safety, the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include the following information for the prior fiscal year:

(1) The number of youthful offenders within the custody of the Division of Adult Correction eligible for B.R.I.D.G.E.
(2) The number of youthful offenders participating in B.R.I.D.G.E.
(3) The average daily participation in B.R.I.D.G.E.
(4) The average duration of participation in B.R.I.D.G.E.
(5) Summary of activities of B.R.I.D.G.E. participants.

FOREST FIRES/ANNUAL REPORT

SECTION 11.2. Article 75 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-911. Annual report on wildfires.**

No later than October 1 of each year, beginning October 1, 2012, the Commissioner shall submit a written report on wildfires in the State to the chairs of the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division of the General Assembly. The report shall include the following information for all major or project wildfires during the prior fiscal year:

(1) The date, location, and impacts (property damage and any casualties) from the wildfire.
(2) The following data for firefighters and related support personnel involved in fighting the wildfire:
  a. Total overtime hours worked.
  b. Total compensation paid for overtime.
  c. The portion of compensation paid that was reimbursed to the State.
(3) The fiscal impact of the wildfire, including total costs, reimbursable costs, and costs incurred by the State."

CLARIFY REQUIREMENTS TO RECEIVE NC AGRICULTURE COST SHARE PROGRAM FUNDS OR AGRICULTURE WATER RESOURCES ASSISTANCE

SECTION 11.2A.(a) G.S. 106-850(b) reads as rewritten:

"(b) The program shall be subject to the following requirements and limitations:

...

(10) To be eligible for cost share funds under this program, each applicant must establish that he or she is engaged in farming by providing any of the following to the Soil and Water Conservation Commission with his or her ~~application a copy of the applicant's federal tax Schedule F (Form 1040) for the most recent tax year showing the applicant's profit or loss from farming.~~application:
  a. A copy of the farm owner's or operator's federal tax Schedule F (Form 1040) or an equivalent form for the most recent tax year showing the owner's or operator's profit or loss from farming.
  b. A copy of the farm sales tax exemption certificate issued to the farm owner or operator by the Department of Revenue.
  c. For forestland actively engaged in the commercial growing of trees under a sound management program as defined in G.S. 105-277.2(6), a copy of the sound forest management plan described in G.S. 105-277.3(g).
(11) In extraordinary circumstances, the Commission may permit an applicant to establish that he or she is engaged in farming with an alternate form of documentation if the farm has a conservation plan that meets the statutory purposes of the program."

SECTION 11.2A.(b) G.S. 139-60 reads as rewritten:

"**§ 139-60. Agricultural Water Resources Assistance Program.**

...

(c1) To be eligible for assistance under this program, each applicant must establish that he or she is engaged in farming by providing to the Soil and Water Conservation Commission

with his or her ~~application a copy of the applicant's federal tax Schedule F (Form 1040) for the most recent tax year showing the applicant's profit or loss from farming.~~application:

(1) A copy of the farm owner's or operator's federal tax Schedule F (Form 1040) or an equivalent form for the most recent tax year showing the owner's or operator's profit or loss from farming.

(2) A copy of the farm sales tax exemption certificate issued to the farm owner or operator by the Department of Revenue.

(3) For forestland actively engaged in the commercial growing of trees under a sound management program as defined in G.S. 105-277.2(6), a copy of the sound forest management plan described in G.S. 105-277.3(g).

(c2) In extraordinary circumstances, the Commission may permit an applicant to establish that he or she is engaged in farming with an alternate form of documentation if the farm has a conservation plan that meets the statutory purposes of the program.

...."

PART XII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER INFRASTRUCTURE FUND CLOSING FEE CONFORMING CHANGES

SECTION 12.01. G.S. 159G-24 reads as rewritten:

"**§ 159G-24. Fee imposed on a loan or grant from ~~Wastewater Reserve or Drinking Water Reserve.~~Water Infrastructure Fund.**

(a) Amount. – A loan awarded from the ~~Wastewater Reserve or the Drinking Water Reserve~~ Water Infrastructure Fund is subject to a fee of two ~~and one-half~~ percent ~~(2 ½%)~~(2%) of the loan. A grant awarded from the ~~Wastewater Reserve or the Drinking Water Reserve~~ Water Infrastructure Fund is subject to a fee of one and one-half percent (1 ½%) of the grant. The fee is payable when a loan or grant is awarded.

(b) Departmental Receipt. – The fee on a loan from the ~~Wastewater Reserve or the Drinking Water Reserve~~ Water Infrastructure Fund is a departmental receipt and must be applied to the Department's and the Local Government Commission's costs in administering loans from these Reserves. The Department and the Local Government Commission must determine how to allocate the fee receipts between their agencies. The fee on a grant from the ~~Wastewater Reserve or the Drinking Water Reserve~~ Water Infrastructure Fund is a departmental receipt of the Department and must be applied to the Department's costs in administering grants from these Reserves."

DENR POSITIONS TO STAFF FOSSIL FUEL OVERSIGHT BODY

SECTION 12.1. Should the recommended legislation contained in the report of the Legislative Research Commission's Committee on Energy Policy Issues and filed as Senate Bill 820/House Bill 1054 become law and require the Department of Environment and Natural Resources to provide staff to an oil and gas board (or substantially similar fossil fuel oversight body), then the Department may fund the staff positions using savings from reclassifying and consolidating salaries, benefits, and associated operating costs from vacant positions and shall fill these reclassified and consolidated positions in a timely manner in order to provide support for implementation of the recommendations.

DENR TO CENTRALIZE OVERSIGHT OF ITS REGIONAL OFFICES

SECTION 12.2.(a) The Department of Environment and Natural Resources shall centralize and expand its oversight of the Department's regional offices by taking the following actions:

(1) The Department shall create a mission statement for the regional offices.

(2) In order to gather comparative data across the regional offices measuring their performance in carrying out their mission, the Department shall expand its existing performance measures pertinent to customer service delivery and process consistency. The expanded performance measures shall include timelines and milestones.

(3) The Department shall implement a new customer survey during the 2012-2013 fiscal year and use the findings of the survey to craft future goals for addressing customer service concerns. In order to consistently track customer service data, the survey shall be repeated every other year.

(4) The Department shall conduct a review of its regional offices and divisions to identify best practices for ensuring consistency across the Department and create a plan for implementing those best practices across regional offices and divisions.

SECTION 12.2.(b) The Department shall report no later than February 1, 2013, to the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division regarding (i) its progress, findings, and recommendations regarding the requirements of this section and (ii) its progress in establishing and implementing findings and recommendations regarding its operations from the public listening sessions conducted by the Department in 2011.

DRINKING WATER STATE REVOLVING FUND

SECTION 12.3. Notwithstanding G.S. 159G-22, the Department of Environment and Natural Resources may transfer State funds from the Drinking Water Reserve to the Drinking Water State Revolving Fund for the 2012-2013 fiscal year. The funds shall be used to match maximum available federal grant moneys authorized by section 1453 of the federal Safe Drinking Water Act of 1996, 42 U.S.C. § 300j-12, as amended.

TRANSFER GEODETIC SURVEY SECTION FROM DENR TO THE DIVISION OF EMERGENCY MANAGEMENT OF THE DEPARTMENT OF PUBLIC SAFETY

SECTION 12.4.(a) All functions, powers, duties, and obligations previously vested in the Geodetic Survey Section of the Division of Land Resources of the Department of Environment and Natural Resources are transferred to and vested in the Division of Emergency Management of the Department of Public Safety by a Type I transfer, as defined in G.S. 143A-6.

SECTION 12.4.(b) G.S. 102-1.1 reads as rewritten:

"**§ 102-1.1. Name and description in relation to 1983 North American Datum.**

From and after the date and time the North Carolina Geodetic Survey Section in the ~~Division of Land Resources of the Department of Environment and Natural Resources~~ Division of Emergency Management of the Department of Public Safety receives from the National Geodetic Survey, official notice of a complete, published definition of the North American Datum of 1983 including the State plane coordinate constants applicable to North Carolina, the official survey base for North Carolina shall be a system of plane coordinates to be known as the "North Carolina Coordinate System of 1983," said system being defined as a Lambert conformal projection of the "Geodetic Reference System (GRS 80 Ellipsoid)" having a central meridian of 79° – 00' west from Greenwich and standard parallels of latitude of 34° – 20' and 36° – 10' north of the equator, along which parallels the scale shall be exact. All coordinates of the system are expressed in metres, the x coordinate being measured easterly along the grid and the y coordinate being measured northerly along the grid. The U.S. Survey Foot, 1 meter = 39.37 inches or 3.2808333333 feet, shall be used as a conversion factor. The origin of the coordinates is hereby established on the meridian 79° – 00' west from Greenwich at the intersection of the parallels 33° – 45' north latitude, such origin being given the coordinates x = 609,601.22 metres, y = 0 metres. The precise position of said system shall be as marked on the ground by triangulation or traverse stations or monuments established in conformity with the standards adopted by the National Geodetic Survey for first- and second-order work, whose geodetic positions have been rigidly adjusted on the North American Datum of 1983, and whose plane coordinates have been computed on the system defined. Whenever plane coordinates are used in the description or identification of surface area or location within this State, the coordinates shall be identified as "NAD 83", indicating North American Datum of 1983, or as "NAD 27", indicating North American Datum of 1927."

SECTION 12.4.(c) G.S. 102-8 reads as rewritten:

"**§ 102-8. Administrative agency.**

The administrative agency of the North Carolina Coordinate System shall be the ~~Department of Environment and Natural Resources~~ Department of Public Safety through its appropriate division hereinafter called the "agency.""

SECTION 12.4.(d) G.S. 102-10 reads as rewritten:

"**§ 102-10. Prior work.**

The system of stations, monuments, traverses, computations, and other work which has been done or is under way in North Carolina by the so-called North Carolina Geodetic Survey, under the supervision of the United States Coast and Geodetic Survey, is, where consistent with the provisions of this Chapter, hereby made a part of the North Carolina Coordinate System. The surveys, notes, computations, monuments, stations, and all other work relating to the coordinate system, which has been done by said North Carolina Geodetic Survey, under the supervision of and in cooperation with the United States Coast and Geodetic Survey and federal relief agencies, hereby are placed under the direction of, and shall become the property of, the administrative agency. All persons or agencies having in their possession any surveys, notes, computations, or other data pertaining to the aforementioned coordinate system, shall turn over to the Department of ~~Environment and Natural Resources~~Public Safety such data upon request."

SECTION 12.4.(e) G.S. 102-12 reads as rewritten:

"**§ 102-12. Control system map.**

The agency shall prepare for publication and cause to be ~~published before July 1, 1962,~~published a map or maps setting forth the location of monuments for both horizontal and vertical control, together with such other pertinent data as the agency may direct for implementation of the North Carolina Coordinate System. The agency shall furnish such map or maps to any person or may make such charge as will defray the expense of printing and distribution. It shall be the responsibility of the agency to maintain this map, make revisions as often as necessary to provide up-to-date information and furnish up-to-date copies to the register of deeds of each county in the State."

SECTION 12.4.(f) G.S. 47-30(f) reads as rewritten:

"**§ 47-30. Plats and subdivisions; mapping requirements.**

...

(f) Plat to Contain Specific Information. – Every plat shall contain the following specific information:

...

(9) Where the plat is the result of a survey, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the North Carolina Geodetic Survey where the monument is within 2,000 feet of the subject property. Where the North Carolina Grid System coordinates of the monument are on file in the North Carolina Geodetic Survey Section in the ~~Division of Land Resources of the Department of Environment and Natural Resources,~~ Division of Emergency Management of the Department of Public Safety, the coordinates of both the referenced corner and the monuments used shall be shown in X (easting) and Y (northing) coordinates on the plat. The coordinates shall be identified as based on "NAD 83," indicating North American Datum of 1983, or as "NAD 27," indicating North American Datum of 1927. The tie lines to the monuments shall also be sufficient to establish true north or grid north bearings for the plat if the monuments exist in pairs. Within a previously recorded subdivision that has been tied to grid control, control monuments within the subdivision may be used in lieu of additional ties to grid control. Within a previously recorded subdivision that has not been tied to grid control, if horizontal control monuments are available within 2,000 feet, the above requirements shall be met; but in the interest of bearing consistency with previously recorded plats, existing bearing control should be used where practical. In the absence of grid control, other appropriate natural monuments or landmarks shall be used. In all cases, the tie lines shall be sufficient to accurately reproduce the subject lands from the control or reference points used.

...."

SECTION 12.4.(g) Notwithstanding G.S. 147-33.83, the North Carolina Geodetic Survey Section shall continue to provide free of charge to the Department of Environment and Natural Resources the services provided by the Section to the Department on or prior to the effective date of this act, including the following:

(1) Surveying assistance and expertise, including all of the following:

a. Review of survey plats related to development proposals, remediation activities, and redevelopment of contaminated sites.
b. Establishment of oyster lease boundaries.
c. Surveys of submerged lands.
d. Survey activities required to establish the location of mean high water.

(2) Providing surveying assistance and expertise to the Department of Justice related to DENR cases, including expert testimony in administrative contested cases or judicial proceedings.
(3) Providing technical training and assistance to DENR agencies in surveying and in the use of GPS and GPS software.
(4) Reviewing proposed purchases of GPS equipment by DENR agencies.
(5) Surveying lands managed by or lands proposed for acquisition by DENR agencies.

SECTION 12.4.(h) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfer under this section. The Revisor of Statutes may, where necessitated by this section, correct any reference in the General Statutes and make any other conforming changes.

SECTION 12.4.(i) Any references in this act to the North Carolina Geodetic Survey Section of the Division of Land Resources of the Department of Environment and Natural Resources shall be construed to refer to the North Carolina Geodetic Survey Section of the Division of Emergency Management of the Department of Public Safety.

PROHIBIT THE CONSTRUCTION OF NEW PIERS/SATELLITE AREAS

SECTION 12.5.(a) G.S. 143B-289.44(b) reads as rewritten:

"(b) Fund. – The North Carolina Aquariums Fund is hereby created as a special and nonreverting fund. The North Carolina Aquariums Fund shall be used for repair, renovation, expansion, maintenance, educational exhibit construction, and operational expenses at existing aquariums, to pay the debt service and lease payments related to the financing of expansions of ~~aquariums, including other relevant satellite areas,~~aquariums, and to match private funds that are raised for these purposes."

SECTION 12.5.(b) Notwithstanding G.S. 143B-289.44(b), as rewritten by subsection (a) of this section, the North Carolina Aquariums Fund may continue to be used for the North Carolina Aquarium Pier at Nags Head.

SECTION 12.5.(c) Part 5C of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-289.45. Satellite areas prohibited absent General Assembly authorization.**

Notwithstanding any other provision of law, State funds shall not be used for any of the following purposes unless specifically authorized by the General Assembly:

(1) Construction of any satellite area.
(2) Commencement of any capital project in connection with the construction or acquisition of any satellite area.
(3) Operation of any satellite area.

For purposes of this section, the term "satellite area" means any property or facility that is to be operated by the Division of North Carolina Aquariums that is located somewhere other than on the site of the aquariums at Pine Knoll Shores, Roanoke Island, and Fort Fisher."

SECTION 12.5.(d) Notwithstanding G.S. 143B-289.45, as enacted by subsection (c) of this section, the Division of North Carolina Aquariums may continue to operate the North Carolina Aquarium Pier at Nags Head.

SECTION 12.5.(e) This section is effective when it becomes law.

WILDLIFE RESOURCES COMMISSION BUDGET

SECTION 12.6. The Office of State Budget and Management, the State Controller, the Fiscal Research Division, and the Wildlife Resources Commission shall jointly implement, beginning with the 2013-2014 fiscal year, the use of Budget Code 14350 for budgeting the expenditures and receipts of any Wildlife Resources Commission programs that utilize General Fund appropriations. Receipts from any source utilized to support programs that receive General Fund appropriations shall be expended from Budget Code 14350. It is the intent of the General Assembly that the budgeting change required by this section not adversely impact

current federal funding or future funding eligibility. The Governor's Continuation Budget for the 2013-2014 fiscal year shall present the Wildlife Resources Commission operating budget in Budget Code 14350.

CLEAN WATER MANAGEMENT TRUST FUND

SECTION 12.7.(a) Notwithstanding the provisions of G.S. 113A-253(d), up to three million dollars ($3,000,000) may be used for the 2012-2013 fiscal year for the costs of administering the Clean Water Management Trust Fund, including costs to support the Board of Trustees of the Clean Water Management Trust Fund and its staff, the operating costs of the Board of Trustees of the Clean Water Management Trust Fund and its staff, and the costs of making debt payments to retire debt as provided under G.S. 113A-253(c).

SECTION 12.7.(b) The Board of Trustees of the Fund shall give priority consideration to any Clean Water Management Trust Fund application requesting State matching funds for infrastructure programs and for the Readiness and Environmental Protection Initiative or any other United States Department of Defense program that provides for military buffers and protects the overall military training mission.

AQUARIUM BUDGETING CLARIFICATION

SECTION 12.8. The Department of Environment and Natural Resources shall budget all line items related to daily operations of the State aquariums in Budget Code 14300. The Department may continue to use Budget Code 24300 for special events, activities, debt service, and other items not related to daily operations of the State aquariums.

PART XIII. DEPARTMENT OF COMMERCE

NER BLOCK GRANTS

SECTION 13.1. Section 14.1 of S.L. 2011-145 reads as rewritten:

"**SECTION 14.1.(a)** Appropriations from federal block grant funds are made for the fiscal year ending ~~June 30, 2012,~~June 30, 2013, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT

01.	State Administration	$ 1,000,000
~~02.~~	~~State Technical Assistance~~	~~450,000~~
03.	Scattered Site Housing	~~8,000,000~~7,200,000
04.	Economic Development	~~7,210,000~~7,000,000
05.	Small Business/Entrepreneurship	~~3,000,000~~2,500,000
06.	NC Catalyst	~~5,000,000~~4,500,000
07.	Infrastructure	~~19,740,000~~20,300,000
~~08.~~	~~Capacity Building~~	~~600,000~~
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT – ~~2012~~2013 Program Year		~~$ 45,000,000~~ $42,500,000

"**SECTION 14.1.(b)** Decreases in Federal Fund Availability. – If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

"**SECTION 14.1.(c)** Increases in Federal Fund Availability for Community Development Block Grant. – Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

"**SECTION 14.1.(d)** Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars ($1,000,000) may be used for State Administration; ~~up to four hundred fifty thousand dollars ($450,000) may be used for State Technical Assistance;~~ up to ~~eight million dollars ($8,000,000)~~seven million two hundred thousand dollars ($7,200,000) may be used for Scattered Site Housing; up to ~~seven million two hundred ten thousand dollars ($7,210,000)~~seven million dollars ($7,000,000) may be used for Economic Development; up to ~~three million dollars ($3,000,000)~~two million five hundred thousand dollars ($2,500,000) may be used for Small Business/Entrepreneurship; up to ~~five million dollars ($5,000,000)~~four million five hundred thousand dollars ($4,500,000) shall be used for NC Catalyst; up to ~~nineteen million seven hundred forty thousand dollars ($19,740,000)~~twenty million three hundred thousand dollars ($20,300,000) may be used for ~~Infrastructure; up to six hundred thousand dollars ($600,000) may be used for Capacity Building.~~Infrastructure. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

"**SECTION 14.1.(e)** The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

(1) A reallocation is required because of an emergency that poses an imminent threat to public health or public safety, the Director of the Budget may authorize the reallocation without consulting the Commission. The Department of Commerce shall report to the Commission on the reallocation no later than 30 days after it was authorized and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(2) The State will lose federal block grant funds or receive less federal block grant funds in the next fiscal year unless a reallocation is made, the Department of Commerce shall provide a written report to the Commission on the proposed reallocation and shall identify the reason that failure to take action will result in the loss of federal funds. If the Commission does not hear the issue within 30 days of receipt of the report, the Department may take the action without consulting the Commission.

"**SECTION 14.1.(f)** By ~~September 1, 2011,~~September 1, 2012, the Division of Community Assistance, Department of Commerce, shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of Community Development Block Grant Funds appropriated in the prior fiscal year. The report shall include the following:

(1) A discussion of each of the categories of funding and how the categories were selected, including information on how a determination was made that there was a statewide need in each of the categories.

(2) Information on the number of applications that were received in each category and the total dollar amount requested in each category.

(3) A list of grantees, including the grantee's name, county, category under which the grant was funded, the amount awarded, and a narrative description of the project.

"**SECTION 14.1.(g)** For purposes of this section, eligible activities under the category of Infrastructure in subsection (a) of this section are limited to the installation of public water or sewer lines and improvements to water or sewer treatment plants that have specific problems such as being under moratoriums or special orders of consent. Notwithstanding the provisions of subsection (e) of this section, funds allocated to the Infrastructure category in subsection (a) of this section shall not be reallocated to any other category."

NC SMALL BUSINESS CONTRACTOR AUTHORITY/REPORTING REQUIREMENT

SECTION 13.3. G.S. 143B-472.102 reads as rewritten:

"**§ 143B-472.102. Authority creation; powers.**

...

(j) Powers and Duties. – The Authority has the following powers and duties:

...

(9) To report quarterly to the Joint Legislative Commission on Governmental Operations on the activities of the Authority, including the amount of rates, sureties, and bonds. The Authority shall comply with the provisions of this subdivision only in the fiscal years in which funds are appropriated by the State to the Authority to perform the powers and duties authorized in this Part.

...."

DEPARTMENT OF COMMERCE/CHANGES TO STATUTORY REPORTING REQUIREMENTS

SECTION 13.4.(a) G.S. 143B-434.01 reads as rewritten:

"§ 143B-434.01. Comprehensive Strategic Economic Development Plan.

...

(e) Environmental Scan. – The first step in developing the Plan shall be to develop an environmental scan based on the input from economic development parties and the public and on information about the economic environment in North Carolina. To prepare the scan, the Board shall gather the following ~~information. Thereafter, the information shall be updated periodically.~~ information and ensure that the information is updated periodically. The updated information may be provided in whatever format and through whatever means is most efficient.

...

~~(f) Needs Assessment. The Board, using data from the public input sessions and the environmental scan, shall prepare an assessment of economic development strengths, weaknesses, threats, and opportunities within the State by Region and by county. An assessment shall also be conducted of each county to determine distressed areas existing within the county. The assessment will include the identification of key development issues within each geographic area and options available to address each issue.~~

...

(k) Annual ~~Report.~~ Evaluation. – ~~The Plan shall contain a section devoted to measuring results, to be called "An Annual Report on Economic Development for the State of North Carolina". The Annual Report shall contain a comparison of actual results with~~ The Board shall annually evaluate the State's economic performance based upon the statistics listed in this subsection and upon the Board's stated goals and objectives in its Plan. ~~and significant and meaningful statistics to allow policymakers to adjust strategy and tactics as necessary to achieve the formulated goals.~~ The statistics upon which the evaluation is made should be available to policymakers. The information may be provided in whatever format and through whatever means is most efficient.

~~The Annual Report shall break down data by Regions and counties including:~~

...

~~(9) An evaluation of the State's economic performance as indicated by the above statistics with the goals and objectives outlined in the Plan.~~

(l) Accountability. – The Board shall make all data, plans, and reports available to the General ~~Assembly and~~ Assembly, the Joint Legislative Commission on Governmental ~~Operations~~ Operations, the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Senate Appropriations Committee on Natural and Economic Resources, and the House of Representatives Appropriations Subcommittee on Natural and Economic Resources at appropriate times and upon request. The Board shall prepare and make available on an annual basis public reports on each of the major sections of the Plan and the Annual Report indicating the degree of success in attaining each development objective."

SECTION 13.4.(b) G.S. 143B-435.1 reads as rewritten:

"§ 143B-435.1. Clawbacks.

...

(d) Report. – ~~The~~ By April 1 and October 1 of each year, the Department of Commerce shall report to the Revenue Laws Study ~~Committee by April 1 and October 1 of each year~~ Committee, the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research

Division of the General Assembly on (i) all clawbacks that have been triggered under ~~programs it administers~~ the One North Carolina Fund established pursuant to G.S. 143B-437.71, the Job Development Investment Grant Program established pursuant to G.S. 143B-437.52, Job Maintenance and Capital Development Fund established pursuant to G.S. 143B-437.012, the Industrial Development Fund and Utility Account established pursuant to G.S. 143B-437.01, and the Site Infrastructure Fund established pursuant to G.S. 143B-437.02 and (ii) its progress on obtaining repayments. The report must include the name of each business, the event that triggered the clawback, and the amount forfeited or to be repaid."

SECTION 13.4.(c) G.S. 143B-437.01(c) and (c1) are repealed.

SECTION 13.4.(d) G.S. 143B-437.07 reads as rewritten:

"**§ 143B-437.07. Economic development grant reporting.**

(a) Report. – The Department of Commerce must publish on or before ~~March~~ October 1 of each year the information required by this subsection, itemized by business entity, for each business or joint private venture to which the State has, in whole or in part, granted one or more economic development incentives during the previous ~~five calendar years. The Department must provide the General Assembly with updated supplemental information consistent with this subsection on a quarterly basis in the form and manner requested by the General Assembly.~~ fiscal year. The information in the report must include all of the following:

...

(2) The date of the award and the date of the award agreement.

...

(b) Online ~~Posting.~~Posting/Written Submission. – The Department of Commerce must post on its Internet Web site a summary of the report compiled in subsection (a) of this section. The summary report must include the information required by subdivisions (2), (9), (11), and (12) of subsection (a) of this section. By October 1 of each year, the Department of Commerce must submit the written report required by subsection (a) of this section to the Joint Legislative Commission on Governmental Operations, the Revenue Laws Study Committee, the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division of the General Assembly.

(c) Economic Development Incentive. – An economic development incentive includes any grant ~~program administered by the Department of Commerce that disburses or awards monies to businesses. Examples of these grant programs include the~~from the following programs: Job Development Investment Grant ~~Program,~~Program; the Job Maintenance and Capital Development ~~Fund,~~Fund; One North Carolina ~~Fund,~~Fund; and the Industrial Development Fund, including the Utility Account. The State also incents economic development through the use of tax expenditures in the form of tax credits and refunds. The Department of Revenue must report annually on these statutory economic development incentives, as required under G.S. 105-256."

SECTION 13.4.(e) G.S. 143B-437.08 is amended by adding a new subsection to read:

"**§ 143B-437.08. Development tier designation.**

...

(k) Report. – By November 30 of each year, the Secretary of Commerce shall submit a written report to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division of the General Assembly on the tier rankings required by subsection (c) of this section, including a map of the State whereupon the tier ranking of each county is designated."

SECTION 13.4.(f) G.S. 143B-437.55(d) is repealed.

ALIGN ONE NORTH CAROLINA FUND WITH JDIG PROGRAM

SECTION 13.6.(a) The General Assembly acknowledges the importance of ongoing economic growth and development in this State. To that end, it is the intent of the General Assembly to fund the commitments of the One North Carolina Fund, as evidenced by the General Assembly's past and recurring appropriations to the Fund and as set forth in this section, and to establish a funding structure that aligns with the funding structure that is and has been used with the Job Development Investment Grant Program. The General Assembly has

continued this level of commitment while remaining fiscally responsible in addressing the other critical, high-priority needs of the State.

SECTION 13.6.(b) G.S. 143B-437.71 is amended by adding a new subsection to read:

"(b1) Awards. – The maximum amount of total annual liability for grants awarded in any single calendar year under this Part is fourteen million dollars ($14,000,000). No agreement may be entered into that, when considered together with other existing agreements governing grants awarded during a single calendar year, could cause the State's potential total annual liability for grants awarded in a single calendar year to exceed this amount."

SECTION 13.6.(c) G.S. 143B-437.72(b) is amended by adding a new subdivision to read:

"(b) Company Performance Agreements. – An agreement between a local government and a grantee business must contain the following provisions:

(1) A commitment to create or retain a specified number of jobs within a specified salary range at a specific location and commitments regarding the time period in which the jobs will be created or retained and the minimum time period for which the jobs must be maintained.

(2) A commitment to provide proof satisfactory to the local government and the State of new jobs created or existing jobs retained and the salary level of those jobs.

(3) A provision that funds received under the agreement may be used only for a purpose specified in G.S. 143B-437.71(b).

(4) A provision allowing the State or the local government to inspect all records of the business that may be used to confirm compliance with the agreement or with the requirements of this Part.

(5) A provision establishing the method for determining compliance with the agreement.

(6) A provision establishing a schedule for disbursement of funds under the agreement that allows disbursement of funds only in proportion to the amount of performance completed under the agreement.

(6a) A provision establishing that a business that has completed performance and become entitled to a disbursement of funds under the agreement must timely request, in writing to the local government, a disbursement of funds within one year from the date of completed performance or forfeit the disbursement.

(7) A provision requiring recapture of grant funds if a business subsequently fails to comply with the terms of the agreement.

(8) Any other provision the State or the local government finds necessary to ensure the proper use of State or local funds."

SECTION 13.6.(d) G.S. 143B-437.72(d) reads as rewritten:

"(d) Disbursement of Funds. – Funds may be disbursed from the One North Carolina Fund to the local government only after (i) a business has completed performance and is entitled to a disbursement of funds under the agreement and has requested, in writing to the local government no later than February 1 following the year of completed performance, a disbursement of funds and (ii) the local government has reported to the Secretary of Commerce no later than March 1 following the year of completed performance the total amount of disbursements that have been claimed by businesses in writing during the previous year and has demonstrated that the business has complied with the terms of the company performance agreement. The State shall disburse funds allocated under the One North Carolina Fund to a local government ~~in accordance with the disbursement schedule established in the local government grant agreement.~~no later than August 1 following the year of completed performance in an amount equal to that which the local government reported as having been claimed by businesses in writing during the previous year and demonstrated were due to be disbursed as a result of compliance by the businesses with the terms of the company performance agreements. Disbursements by the State to a local government from the One North Carolina Fund shall be made in one annual payment."

SECTION 13.6.(e) G.S. 143B-437.74 reads as rewritten:

"**§ 143B-437.74. ~~Reports.~~Reports; study.**

(a) Reports. – The Department of Commerce shall publish a report on the use of funds in the One North Carolina Fund at the end of each fiscal quarter. The report shall contain information on the commitment, disbursement, and use of funds allocated under the One North Carolina Fund. The report is due no later than one month after the end of the fiscal quarter and must be submitted to the following:

(1) The Joint Legislative Commission on Governmental Operations.
(2) The chairs of the House of Representatives and Senate Finance Committees.
(3) The chairs of the House of Representatives and Senate Appropriations Committees.
(4) The Fiscal Research Division of the General Assembly.

(b) Study. – The Department of Commerce shall conduct a study to determine the minimum funding level required to implement the One North Carolina Fund successfully. The Department shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than April 1 of each year."

SECTION 13.6.(f) Part 2H of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-437.75. Cash flow requirements.**

Notwithstanding any other provision of law, moneys allocated from the One North Carolina Fund shall be budgeted and funded on a cash flow basis. The Office of State Budget and Management shall periodically transfer funds from the One North Carolina Fund established pursuant to G.S. 143B-437.71 to the Department of Commerce in an amount sufficient to satisfy Fund allocations to be transferred pursuant to G.S. 143B-437.72 to be paid during the fiscal year."

SECTION 13.6.(g) Article 9 of Chapter 143C of the General Statutes is amended by adding a new section to read:

"**§ 143C-9-8. One North Carolina Fund Reserve.**

(a) The State Controller shall establish a reserve in the General Fund to be known as the One North Carolina Fund Reserve. Funds from the One North Carolina Fund Reserve shall not be expended or transferred except in accordance with G.S. 143B-437.75.

(b) It is the intent of the General Assembly to appropriate funds annually to the One North Carolina Fund Reserve established in this section in amounts sufficient to meet the anticipated cash requirements for each fiscal year of the One North Carolina Fund Program established pursuant to G.S. 143B-437.71."

SECTION 13.6.(h) G.S. 143B-437.52 reads as rewritten:

"**§ 143B-437.52. Job Development Investment Grant Program.**

...

(b) ~~Cap and~~ Priority. – ~~The maximum number of grants the Committee may award in each calendar year is 25.~~ In selecting between applicants, a project that is located in an Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable project that is not located in a certified Eco-Industrial Park.

(c) ~~Ceiling.~~ Awards. – The maximum amount of total annual liability for grants awarded in any single calendar ~~year,~~year under this Part, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, ~~may not exceed~~is fifteen million dollars ($15,000,000). No agreement may be entered into that, when considered together with other existing agreements governing grants awarded during a single calendar year, could cause the State's potential total annual liability for grants awarded in a single calendar year to exceed this amount.

...."

SECTION 13.6.(i) This section becomes effective July 1, 2012.

INDUSTRIAL COMMISSION FEES/COMPUTER SYSTEM REPLACEMENT

SECTION 13.7. Section 14.8 of S.L. 2011-145 reads as rewritten:

"**SECTION 14.8.** ~~The~~ For the 2012-2013 fiscal year, the North Carolina Industrial Commission ~~may~~ shall retain the additional revenue generated as a result of an increase in the fee charged to parties for the filing of compromised settlements. These funds shall be used for the purpose of replacing existing computer hardware and software used for the operations of

the Commission. These funds may also be used to prepare any assessment of hardware and software needs prior to purchase and to develop and administer the needed databases and new Electronic Case Management System, including the establishment of two time-limited positions for application development and support and mainframe migration. The Commission may not retain any fees under this section unless they are in excess of the former two-hundred-dollar ($200.00) fee charged by the Commission for filing a compromised settlement."

EMPLOYMENT SECURITY RESERVE FUND

SECTION 13.8.(a) Section 14.4 of S.L. 2011-145 reads as rewritten:

"**SECTION 14.4.(a)** Funds from the Employment Security ~~Commission~~ Reserve Fund shall be available to the ~~Employment Security Commission of North Carolina~~Department of Commerce, Division of Employment Security, to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security ~~Commission~~ Reserve Fund surcharge. The total administrative costs paid with funds from the Reserve in the ~~2011-2012~~2012-2013 fiscal year shall not exceed two million five hundred thousand dollars ($2,500,000).

"**SECTION 14.4.(b)** There is appropriated from the Employment Security ~~Commission~~ Reserve Fund to the ~~Employment Security Commission of North Carolina~~ Department of Commerce, Division of Employment Security, the sum of twenty million dollars ($20,000,000) for the ~~2011-2012~~2012-2013 fiscal year to be used for the following purposes:

(1) $19,500,000 for the operation and support of local Employment Security ~~Commission offices.~~offices operated by the Division of Employment Security.

(2) $200,000 to operate the system that tracks former participants in State education and training programs.

(3) $300,000 to maintain compliance with Chapter 96 of the General Statutes, which directs the ~~Commission~~ Department of Commerce, Division of Employment Security, to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs.

"**SECTION 14.4.(c)** There is appropriated from the Employment Security ~~Commission~~ Reserve Fund to the ~~Employment Security Commission of North Carolina~~Department of Commerce, Division of Employment Security, an amount not to exceed one million dollars ($1,000,000) for the ~~2011-2012~~2012-2013 fiscal year to fund State initiatives not currently funded through federal grants.

"**SECTION 14.4.(d)** There is appropriated from the Worker Training Trust Fund to the ~~Employment Security Commission of North Carolina~~Department of Commerce, Division of Employment Security, the sum of one million dollars ($1,000,000) for the ~~2011-2012~~2012-2013 fiscal year to fund "Opportunity NC," which provides work-based training opportunities to recipients of unemployment insurance benefits. Opportunity NC must meet all of the following factors:

(1) The training, even though it includes actual operation of the facilities of the employer, is similar to what would be given in a vocational school or academic educational instruction.

(2) The training is for the benefit of the trainee.

(3) The trainees do not displace regular employees, but work under their close observation.

(4) The employer who provides the training derives no immediate advantage from the activities of the trainees, and, on occasion, the employer's operations may actually be impeded.

(5) The trainees are not necessarily entitled to a job at the conclusion of the training period.

(6) The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

"**SECTION 14.4.(e)** Of the funds credited to and held in the State of North Carolina's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act and pursuant to Title II of Division B of P.L. 111-5, the Assistance for Unemployed Workers and Struggling Families Act, the ~~Employment Security Commission of North Carolina~~ Department of

Commerce, Division of Employment Security, may expend the sum of two hundred five million sixty-three thousand five hundred fifty-two dollars ($205,063,552) as follows: (i) one hundred million dollars ($100,000,000) shall be used to design and build the integrated unemployment insurance benefit and tax accounting system and (ii) the remaining funds shall be used for the operation of the unemployment insurance program.

"SECTION 14.4.(f) There is appropriated from the Employment Security Reserve Fund to the Department of Commerce, Division of Employment Security, the amount needed for the 2012-2013 fiscal year to fund the interest payment due to the federal government for the debt owed to the U.S. Treasury for unemployment benefits."

SET REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 13.8A. Section 31.4 of S.L. 2011-145 reads as rewritten:

"**SECTION 31.4.(a)** The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after ~~July 1, 2011.~~July 1, 2012.

"**SECTION 31.4.(b)** The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the ~~2011-2012~~2012-2013 fiscal year is two hundred thousand dollars ($200,000).

"**SECTION 31.4.(c)** This section becomes effective ~~July 1, 2011.~~July 1, 2012."

COUNCIL OF GOVERNMENT FUNDS

SECTION 13.10. Section 14.12A(a) of S.L. 2011-145 is repealed.

GRASSROOTS SCIENCE PROGRAM

SECTION 13.11. Section 14.11 of S.L. 2011-145 is amended by adding a new subsection to read as follows:

"SECTION 14.11.(b1) Any reductions in funds in the 2012-2013 fiscal year shall be taken on a pro rata basis from the museums listed in subsection (b) of this section."

REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS ALLOCATIONS

SECTION 13.12. Section 14.13 of S.L. 2011-145, as amended by Section 37 of S.L. 2011-391, reads as rewritten:

"**REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS ALLOCATIONS**

"**SECTION 14.13.(a)** Funds appropriated in this act to the Department of Commerce for regional economic development commissions shall be allocated to the following commissions in accordance with subsection (b) of this section: Western North Carolina Regional Economic Development Commission, Research Triangle Regional Partnership, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, North Carolina's Eastern Region Economic Development Partnership, and Carolinas Partnership, Inc.

"**SECTION 14.13.(b)** Funds appropriated pursuant to subsection (a) of this section shall be allocated to each regional economic development commission as follows:

(1) First, the Department shall establish each commission's allocation by determining the sum of allocations to each county that is a member of that commission. Each county's allocation shall be determined by dividing the county's development factor by the sum of the development factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this subdivision, the term "development factor" means a county's development factor as calculated under G.S. 143B-437.08; and

(2) Next, the Department shall subtract from funds allocated to the North Carolina's Eastern Region Economic Development Partnership the sum of ~~one hundred seventy-four thousand eight hundred ninety dollars ($174,890)~~ one hundred sixty-one thousand eight hundred sixty-one dollars ($161,861) in the ~~2011-2012~~ 2012-2013 fiscal year, which sum represents (i) the total interest earnings in the prior fiscal year on the estimated balance of the seven million five hundred thousand dollars ($7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the

1993 Session Laws and (ii) the total interest earnings in the prior fiscal year on loans made from the seven million five hundred thousand dollars ($7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and

(3) Next, the Department shall redistribute the sum of ~~one hundred seventy-four thousand eight hundred ninety dollars ($174,890)~~ one hundred sixty-one thousand eight hundred sixty-one dollars ($161,861) in the ~~2011-2012~~ 2012-2013 fiscal year to the seven regional economic development commissions named in subsection (a) of this section. Each commission's share of this redistribution shall be determined according to the development factor formula set out in subdivision (1) of this subsection. This redistribution shall be in addition to each commission's allocation determined under subdivision (1) of this subsection.

"**SECTION 14.13.(c)** No more than one hundred twenty thousand dollars ($120,000) in State funds shall be used for the annual salary of any one employee of a regional economic development commission.

"**SECTION 14.13.(d)** The General Assembly finds that successful economic development requires the collaboration of the State, regions of the State, counties, and municipalities. Therefore, the regional economic development commissions are encouraged to seek supplemental funding from their county and municipal partners to continue and enhance their efforts to attract and retain business in the State."

BIOFUELS CENTER OF NORTH CAROLINA

SECTION 13.12A. Section 14.14 of S.L. 2011-145 is amended by adding a new subsection to read as follows:

"**SECTION 14.14.(a1)** Any reductions in funds in the 2012-2013 fiscal year shall be taken on a pro rata basis from the programs listed in subsection (a) of this section."

NORTH CAROLINA BIOTECHNOLOGY CENTER

SECTION 13.12B. Section 14.15 of S.L. 2011-145 is amended by adding a new subsection to read as follows:

"**SECTION 14.15.(a1)** Any reductions in funds in the 2012-2013 fiscal year shall be taken on a pro rata basis from the programs listed in subsection (a) of this section."

RURAL CENTER/RURAL JOBS FUND

SECTION 13.13. Section 14.20(d) of S.L. 2011-145 reads as rewritten:

"**SECTION 14.20.(d)** Rural Jobs Infrastructure Grants. – A Rural Jobs Infrastructure Grant is available to supplement other funds to be applied to the construction or installation costs of an eligible project. Other funds contributed to the project may include federal funds, State funds, and local funds, including contributions from private sector enterprises that may benefit from the proposed improvements. A Rural Jobs Infrastructure Grant is subject to the following provisions:

(1) Eligibility. – A local government unit is eligible for a Rural Jobs Infrastructure Grant if it is a rural county or is located in a rural county.

(2) Maximum grant amount. – Grant funds shall be available based upon the number of private sector jobs to be created as a result of the investment from the Rural Jobs Infrastructure Grant Fund. An applicant for a grant may request up to five thousand dollars ($5,000) per job to be created. An applicant for a Rural Jobs Infrastructure Grant shall not receive more than five hundred thousand dollars ($500,000) for a proposed infrastructure project. Notwithstanding the provisions of this subdivision, the Rural Center may, if it deems it reasonable and appropriate based upon the number of private sector jobs created and/or the anticipated benefits to the community, award grant funds to a local government that exceed five thousand dollars ($5,000) per job to be created, provided that the average amount of the total grant funds from the funds appropriated in subsection (a) of this section does not exceed five thousand dollars ($5,000) per job to be created.

(3) Matching funds. – A local government unit shall match a Rural Jobs Infrastructure Grant on a dollar-for-dollar basis. As part of the matching

funds, recipients of grant funds under the provisions of this section shall contribute a cash match for the grant that is equivalent to at least five percent (5%) of the grant amount. The required applicant cash-matching contribution shall come from local resources and may not be derived from other State or federal grant funds or from funds provided by the Rural Center."

RURAL ECONOMIC DEVELOPMENT CENTER

SECTION 13.13A. Section 14.16(a) of S.L. 2011-145 reads as rewritten:

"**SECTION 14.16.(a)** Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc., (Rural Center) the sum of ~~three million five hundred eighty-three thousand six hundred ninety-one dollars ($3,583,691)~~two million three hundred fifty-one thousand two hundred sixty-three dollars ($2,351,263) for ~~each year in the 2011-2013 biennium~~the 2012-2013 fiscal year shall be allocated as follows:

	2011-2012	2012-2013
Center Administration, Technical Assistance, & Oversight	$1,302,173	~~$1,302,173~~$854,357
Research and Demonstration Grants	$294,120	~~$294,120~~$192,972
Institute for Rural Entrepreneurship	$114,570	~~$114,570~~$75,170
Community Development Grants	$844,250	~~$844,250~~$553,913
Microenterprise Loan Program	$155,610	~~$155,610~~$102,096
Water/Sewer/Business Development Matching Grants	$701,955	~~$701,955~~$460,553
Statewide Water/Sewer Database	$79,523	~~$79,523~~$ 52,175
Agricultural Advancement Consortium	$91,490	~~$91,490.~~$ 60,027."

RURAL ECONOMIC DEVELOPMENT CENTER/INFRASTRUCTURE PROGRAM

SECTION 13.14. Section 14.17 of S.L. 2011-145 reads as rewritten:

"**SECTION 14.17.(a)** Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of ~~sixteen million five hundred five thousand seven hundred fifty-eight dollars ($16,505,758)~~ ten million eight hundred twenty-nine thousand four hundred forty-six dollars ($10,829,446) for ~~each year in the 2011-2013 biennium~~ the 2012-2013 fiscal year shall be allocated as follows:

(1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. The grants under this Program shall not be subject to the provisions of G.S. 143-355.4.

(2) To provide matching grants or loans to local governments in distressed areas that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.

(3) To provide grants and technical assistance to reinvigorate the economies of towns with populations of less than 7,500, and to invest in economic innovation that stimulates business and job growth in distressed areas.

(4) Recipients of grant funds appropriated under this section shall contribute a cash match for the grant that is equivalent to at least five percent (5%) of the grant amount. The cash match shall come from local resources and may not be derived from other State or federal grant funds or from funds provided by the Rural Center.

...

"**SECTION 14.17.(c)** ~~During each year of the 2011-2013 biennium,~~For the 2012-2013 fiscal year, the Rural Center may use up ~~to three hundred twenty-nine thousand one hundred seventy-eight dollars ($329,178)~~two hundred fifteen thousand nine hundred seventy-four dollars ($215,974) of the funds appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

...."

OPPORTUNITIES INDUSTRIALIZATION CENTERS FUNDS

SECTION 13.14A. Section 14.18(a) of S.L. 2011-145 reads as rewritten:

"**SECTION 14.18.(a)** Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of ~~two hundred eighty-seven thousand two hundred eighty dollars ($287,280)~~ one hundred eighty-eight thousand four hundred eighty-five dollars ($188,485)for ~~each year in the 2011-2013 biennium~~ the 2012-2013 fiscal year shall be equally distributed among the certified Opportunities Industrialization Centers (OI Centers)."

REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS/STUDY

SECTION 13.15. The Legislative Research Commission is authorized to study the funding and alignment of the membership of each of the regional economic development commissions listed in Section 14.13 of S.L. 2011-145, as amended by Section 37 of S.L. 2011-391, in order to determine (i) whether the needs of each member organization are being adequately served by the commission of which it is a member and (ii) whether there are areas in which improvement in service can be made in the most cost-effective manner.

PART XIV. DEPARTMENT OF PUBLIC SAFETY

DIVISION OF ADULT CORRECTION/RELEASE DATES

SECTION 14.1. Notwithstanding any other provision of law, the Division of Adult Correction may establish more than two release dates per month for inmates leaving prison.

INMATE MEDICAL COSTS

SECTION 14.2.(a) Section 19.20 of S.L. 2009-451 is repealed.

SECTION 14.2.(b) Section 18.10(d) of S.L. 2011-145 reads as rewritten:

"**SECTION 18.10.(d)** The ~~Department of~~Division of Adult Correction shall report to the Joint Legislative ~~Commission on Governmental Operations~~Oversight Committee on Justice and Public Safety and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety no later than ~~November 1, 2011~~November 1, 2012, and quarterly thereafter on:

(1) The volume of services provided by community medical providers that can be scheduled in advance and, of that volume, the percentage of those services that are provided by contracted ~~providers; and~~providers.

(2) The volume of services provided by community medical providers that cannot be scheduled in advance and, of that volume, the percentage of those services that are provided by contracted providers.

(3) The volume of services provided by community medical providers that are emergent cases requiring hospital admissions and emergent cases not requiring hospital admissions.

(4) The volume of inpatient medical services provided to Medicaid-eligible inmates, the cost of treatment, and the estimated savings of paying the nonfederal portion of Medicaid for the services.

(5) The status of the Division's efforts to contract with hospitals to provide secure wards in each of the State's five prison regions."

JUSTICE REINVESTMENT ACT/LIMITED AUTHORITY TO RECLASSIFY VACANT POSITIONS

SECTION 14.2A.(a) Notwithstanding any other provision of law, subject to the approval of the Director of the Budget, the Secretary of Public Safety may reclassify existing vacant positions within the Department to create new probation parole officer and judicial service coordinator positions, in order to meet the increasing caseloads resulting from the implementation of the Justice Reinvestment Act of 2011, S.L. 2011-192, as amended.

SECTION 14.2A.(b) The Department of Public Safety shall report to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by March 1, 2013, on the following:

(1) The position number, position type, salary, and position location of each new position created under the authority of this section.

(2) The position number, position type, fund code, and position location of each vacant position used to create new positions under the authority of this section.

STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS

SECTION 14.4. Funds appropriated in this act to the Department of Public Safety for the Division of Juvenile Justice for the 2012-2013 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission shall consult with the Division of Juvenile Justice regarding the criteria for awarding federal funds. The Office of State Budget and Management, the Governor's Crime Commission, and the Division of Juvenile Justice shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the 2012-2013 fiscal year and the allocation of funds by program and purpose. Any Juvenile Accountability Incentive Block Grant awarded to North Carolina is subject to the provisions of G.S. 143C-7-1 and shall not obligate the State financially in future fiscal years.

JUVENILE CRIME PREVENTION COUNCIL FUNDS

SECTION 14.7. Section 17.4(b) of S.L. 2011-145 reads as rewritten:

"**SECTION 17.4.(b)** Of the funds appropriated by this act for the ~~2011-2012~~2012-2013 fiscal year to the ~~Department of Juvenile Justice and Delinquency Prevention~~ Department of Public Safety for Juvenile Crime Prevention Council grants, the sum of one hundred twenty-one thousand six hundred dollars ($121,600) shall be transferred to Project Challenge North Carolina, Inc., to be used for the continued support of Project Challenge programs throughout the State."

PART XV. DEPARTMENT OF JUSTICE

ITEMIZED BILLING FOR LEGAL SERVICES PROVIDED TO STATE AGENCIES

SECTION 15.1. Article 1 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-8.5. Itemized billing for legal services provided to State agencies.**

Whenever the Department of Justice charges a State agency, board, or commission for legal services rendered by the Department, the Department shall do so by providing the agency, board, or commission with an invoice that includes at least all of the following information for all charges:

(1) The case or matter for which the agency, board, or commission is being charged.

(2) The name of each attorney who worked on each case or matter and the number of hours worked by each attorney.

(3) The hourly rate being charged by each attorney."

BIANNUAL REPORTING ON ATTORNEY ACTIVITY

SECTION 15.2. Beginning on February 1, 2013, and every six months thereafter, the Attorney General shall report on the work of Department of Justice attorneys during the previous two quarters. The reports required by this section shall be filed with the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and with the Fiscal Research Division of the General Assembly as follows:

(1) Agency-specific work. – A report on the work of Department of Justice attorneys for State agencies. This report shall include at least all of the following information:

a. The amount of time spent working for each State department and agency.

b. The amount of time spent on each case for each State department and agency.

c. The amount billed to each State agency for the legal services provided.

(2) Other work. – A report on the work of Department of Justice attorneys that is not on behalf of a particular State agency. The report required by this

subdivision shall include all of the information required by subdivision (1) of this section. The report shall include at least all of the following information:

a. The amount of time spent by each unit of the Department of Justice.
b. The amount of time spent on each particular matter for each unit of the Department of Justice.

ESTABLISH HUMAN TRAFFICKING COMMISSION

SECTION 15.3.(a) Establishment. – There is established in the Department of Justice the North Carolina Human Trafficking Commission.

SECTION 15.3.(b) Members. – The Commission shall consist of 12 members as follows:

(1) The President Pro Tempore of the Senate shall appoint one representative from each of the following:
   a. The public at large.
   b. A county sheriff's department.
   c. A city or town police department.
(2) The Speaker of the House of Representatives shall appoint one representative from each of the following:
   a. The public at large.
   b. A county sheriff's department.
   c. A city or town police department.
(3) The Governor shall appoint one representative from the public at large.
(4) The following persons, or their designees, shall serve as ex officio members of the Commission:
   a. The Secretary of Public Safety.
   b. The Secretary of Administration.
   c. The Secretary of Labor.
   d. The Secretary of Health and Human Services.
   e. The Attorney General.

SECTION 15.3.(c) Powers. – The Commission shall have the following powers:

(1) To apply for and receive, on behalf of the State, funding from federal, public or private initiatives, grant programs, or donors that will assist in examining and countering the problem of human trafficking in North Carolina.
(2) To commission, fund, and facilitate quantitative and qualitative research to explore the specific ways human trafficking is occurring in North Carolina and the links to international and domestic human trafficking, and to assist in creating measurement, assessment, and accountability mechanisms.
(3) To contribute to efforts to inform and educate law enforcement personnel, social services providers, and the general public about human trafficking so that human traffickers can be prosecuted and victim-survivors can receive appropriate services.
(4) To suggest new policies, procedures, or legislation to further the work of eradicating human trafficking and to provide assistance and review with new policies, procedures, and legislation.
(5) To assist in developing regional response teams or other coordinated efforts to counter human trafficking at the level of law enforcement, legal services, social services, and nonprofits.
(6) To identify gaps in law enforcement or service provision and recommend solutions to those gaps.
(7) To consider whether human trafficking should be added to the list of criminal convictions that require registration under the sex offender and public protection registration program.

SECTION 15.3.(d) Terms. – Members shall serve until the Commission terminates.

SECTION 15.3.(e) Meetings. – The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than four times a year.

SECTION 15.3.(f) Quorum. – A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the

members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

SECTION 15.3.(g) Vacancies. – A vacancy on the Commission or as chair of the Commission resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

SECTION 15.3.(h) Removal. – The Commission may remove a member for misfeasance, malfeasance, nonfeasance, or neglect of duty.

SECTION 15.3.(i) Compensation. – Commission members shall receive no per diem for their services but shall be entitled to receive travel allowances in accordance with the provisions of G.S. 138-5 or G.S. 138-6, as appropriate.

SECTION 15.3.(j) Staffing. – The Department of Justice shall be responsible for staffing the Commission.

SECTION 15.3.(k) Termination. – The Commission established under this section shall terminate on December 31, 2014.

PART XVI. JUDICIAL DEPARTMENT

STUDY MANAGEMENT OF MAGISTRATE SCHEDULES

SECTION 16.1. The Administrative Office of the Courts shall study the management of magistrate schedules throughout the General Court of Justice and make recommendations to (i) provide for more efficient use of the magistrates established for each county; and (ii) ensure that each county has sufficient coverage to adequately respond to law enforcement and the public. The Administrative Office of the Courts shall report its finding and recommendations to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by March 1, 2013.

FOREIGN LANGUAGE INTERPRETERS FOR THE COURTS

SECTION 16.3.(a) G.S. 7A-314(f) is repealed.

SECTION 16.3.(b) G.S. 7A-343 reads as rewritten:

"**§ 7A-343. Duties of Director.**

The Director is the Administrative Officer of the Courts, and the Director's duties include all of the following:

...

(9c) Prescribe policies and procedures for the appointment and payment of foreign language ~~interpreters in those cases specified in G.S. 7A-314(f).~~ interpreters. These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so.

...."

SECTION 16.3.(c) The Judicial Department may use funds appropriated and funds available to the Department to provide assistance to persons with limited proficiency in English to assist the court in the fair, efficient, and accurate transaction of business and provide more meaningful access to the courts.

EXTEND SUNSET ON PILOT PROJECT FOR ELECTRONIC FILING IN DOMESTIC VIOLENCE AND CIVIL NO-CONTACT CASES IN ALAMANCE COUNTY

SECTION 16.4.(a) Section 15.13(b) of S.L. 2010-31 reads as rewritten:

"**SECTION 15.13.(b)** This section expires ~~June 30, 2012.~~ June 30, 2014."

SECTION 16.4.(b) This section becomes effective June 30, 2012.

EXPAND USES FOR COURT INFORMATION TECHNOLOGY FUND

SECTION 16.5.(a) G.S. 7A-343.2 reads as rewritten:

"**§ 7A-343.2. Court Information Technology and Facilities Fund.**

(a) Fund. – The Court Information Technology and Facilities Fund is established within the Judicial Department as a special revenue fund. Interest and other investment income earned by the Fund accrues to it. The Fund consists of the following revenues:

(1) All monies collected by the Director pursuant to G.S. 7A-109(d) and G.S. 7A-49.5.

(2) State judicial facilities fees credited to the Fund under G.S. 7A-304 through G.S. 7A-307.

(b) Use. – Money in the Fund derived from State judicial facilities fees must be used to upgrade, maintain, and operate State judicial facilities and the judicial and county courthouse phone systems. All other monies in the Fund must be used to supplement funds otherwise available to the Judicial Department for court information technology and office automation needs.

(c) Report. – The Director must report by August 1 and February 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety. The report must include the following:

(1) Amounts credited in the preceding six months to the Fund.

(2) Amounts expended in the preceding six months from the Fund and the purposes of the expenditures.

(3) Proposed expenditures of the monies in the Fund."

SECTION 16.5.(b) G.S. 7A-304 reads as rewritten:

"**§ 7A-304. Costs in criminal actions.**

(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected. No costs may be assessed when a case is dismissed. Costs under this section may not be waived unless the judge makes a written finding of just cause to grant such a waiver.

...

(2a) For the upgrade, maintenance, and operation of State judicial facilities and the judicial and county courthouse phone systems, the sum of four dollars ($4.00), to be credited to the Court Information Technology and Facilities Fund.

...."

SECTION 16.5.(c) G.S. 7A-305 reads as rewritten:

"**§ 7A-305. Costs in civil actions.**

(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

...

(1a) For the upgrade, maintenance, and operation of State judicial facilities and the judicial and county courthouse phone systems, the sum of four dollars ($4.00), to be credited to the Court Information Technology and Facilities Fund.

...

(a5) In every civil action in the superior or district court wherein a party files a pleading containing one or more counterclaims or cross-claims, except for counterclaim and cross-claim actions brought under Chapter 50B of the General Statutes for which costs are assessed pursuant to subsection (a1) of this section, the following shall be assessed:

...

(2) For the upgrade, maintenance, and operation of State judicial facilities and the judicial and county courthouse phone systems, the sum of four dollars ($4.00), to be credited to the Court Information Technology and Facilities Fund.

...."

SECTION 16.5.(d) G.S. 7A-306 reads as rewritten:

"**§ 7A-306. Costs in special proceedings.**

(a) In every special proceeding in the superior court, the following costs shall be assessed:

...

(1a) For the upgrade, maintenance, and operation of State judicial facilities and the judicial and county courthouse phone systems, the sum of four dollars ($4.00), to be credited to the Court Information Technology and Facilities Fund.

...."

SECTION 16.5.(e) G.S. 7A-307 reads as rewritten:

"**§ 7A-307. Costs in administration of estates.**

(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, and in collections of personal property by affidavit, the following costs shall be assessed:

...

(1a) For the upgrade, maintenance, and operation of State judicial facilities and the judicial and county courthouse phone systems, the sum of four dollars ($4.00), to be credited to the Court Information Technology and Facilities Fund.

...."

SECTION 16.5.(f) G.S. 7A-49.5(d) reads as rewritten:

"(d) Any funds received by the Administrative Office of the Courts from the vendor selected pursuant to subsection (c) of this section, other than applicable statutory court costs, as a result of electronic filing, shall be deposited in the Court Information Technology and Facilities Fund in accordance with G.S. 7A-343.2."

SECTION 16.5.(g) G.S. 7A-109(d) reads as rewritten:

"(d) In order to facilitate public access to court records, except where public access is prohibited by law, the Director may enter into one or more nonexclusive contracts under reasonable cost recovery terms with third parties to provide remote electronic access to the records by the public. Costs recovered pursuant to this subsection shall be remitted to the State Treasurer to be held in the Court Information Technology and Facilities Fund established in G.S. 7A-343.2."

SECTION 16.5.(h) G.S. 7A-455.1(f) reads as rewritten:

"(f) Of each appointment fee collected under this section, the sum of fifty-five dollars ($55.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars ($5.00) shall be credited to the Court Information Technology and Facilities Fund under G.S. 7A-343.2. These fees shall not revert."

SECTION 16.5.(i) This section is effective when it becomes law, and expires June 30, 2013.

WAIVER OF MEDIATION FEES TO REQUIRE FINDING OF JUST CAUSE

SECTION 16.6.(a) G.S. 7A-38.7 reads as rewritten:

"**§ 7A-38.7. Dispute resolution fee for cases resolved in mediation.**

(a) In each criminal case filed in the General Court of Justice that is resolved through referral to a community mediation center, a dispute resolution fee shall be assessed in the sum of sixty dollars ($60.00) per mediation to support the services provided by the community mediation centers and the Mediation Network of North Carolina. Fees assessed under this section shall be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the Mediation Network of North Carolina. The Mediation Network may retain up to three dollars ($3.00) of this amount as an allowance for its administrative expenses. The Mediation Network must remit the remainder of this amount to the community mediation center that mediated the case. The court may waive or reduce a fee assessed under this section only upon entry of a written order, supported by findings of fact and conclusions of law, determining there is just cause to grant the waiver or reduction.

(b) Before providing the district attorney with a dismissal form, the community mediation center shall require proof that the defendant has paid the dispute resolution fee as required by subsection (a) of this section and shall attach the receipt to the dismissal form."

SECTION 16.6.(b) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected. No costs may be assessed when a case is dismissed. ~~Costs under this section may not be waived unless the judge~~

~~makes a written finding of just cause to grant such a waiver.~~Only upon entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause, the court may (i) waive costs assessed under this section or (ii) waive or reduce costs assessed under subdivisions (7) or (8) of this section.

...

(7) For the services of the North Carolina State Crime Laboratory facilities, the district or superior court judge shall, upon conviction, order payment of the sum of six hundred dollars ($600.00) to be remitted to the Department of Justice for support of the State Bureau of Investigation. This cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratories have performed DNA analysis of the crime, tests of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. ~~The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction.~~

(8) For the services of any crime laboratory facility operated by a local government or group of local governments, the district or superior court judge shall, upon conviction, order payment of the sum of six hundred dollars ($600.00) to be remitted to the general fund of the local governmental unit that operates the laboratory to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The costs shall be assessed only if the court finds that the work performed at the local government's laboratory is the equivalent of the same kind of work performed by the State Bureau of Investigation under subdivision (7) of this subsection. ~~The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction.~~

(9) For the support and services of the State Bureau of Investigation DNA Database and DNA Databank, the sum of two dollars ($2.00). This amount is annually appropriated to the Department of Justice for this purpose. Notwithstanding the provisions of subsection (e) of this section, this cost does not apply to infractions.

...."

SECTION 16.6.(c) This section becomes effective July 1, 2012, and applies to fees waived on or after that date.

COLLECTION OF WORTHLESS CHECK FUNDS

SECTION 16.7. Section 15.4 of S.L. 2011-145 reads as rewritten:

"**SECTION 15.4.** Notwithstanding the provisions of G.S. 7A-308(c), the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on ~~June 30, 2011,~~ June 30, 2012, for the purchase or repair of office or information technology equipment during the ~~2011-2012 fiscal year.~~ 2012-2013 fiscal year. Prior to using any funds under this section, the Judicial Department shall report to the Joint Legislative Commission on Governmental ~~Operations and~~ Operations, the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public ~~Safety~~ Safety, and the Office of State Budget and Management on the equipment to be purchased or repaired and the reasons for the purchases."

OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS

SECTION 16.8. Section 15.16(a) of S.L. 2011-145 reads as rewritten:

"**SECTION 15.16.(a)** The Judicial Department, Office of Indigent Defense Services, may use up to the sum of two million one hundred fifty thousand dollars ($2,150,000) in appropriated funds during the 2011-2012 fiscal year for the expansion of existing offices currently providing legal services to the indigent population under the oversight of the Office of

Indigent Defense Services, for the creation of new public defender offices within existing public defender programs, or for the establishment of regional public defender programs. Notwithstanding the defender districts established by G.S. 7A-498.7, the Office of Indigent Defense Services may use a portion of these funds to create positions within existing public defender programs to handle cases in adjacent counties or districts. These funds may be used to create up to 50 new attorney positions and 25 new support staff positions during the ~~2011-2012 fiscal year~~ 2011-2013 biennium and for the salaries, benefits, equipment, and related expenses for these positions in both years of the biennium. Positions creation will be staggered across the two years of the biennium. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion."

OFFICE OF INDIGENT DEFENSE SERVICES/STATE MATCH FOR GRANTS

SECTION 16.9. Notwithstanding G.S. 143C-6-9, the Office of Indigent Defense Services may use the sum of up to fifty thousand dollars ($50,000) from funds available to provide the State matching funds needed to receive grant funds. Prior to using funds for this purpose, the Office shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

PART XVII. OFFICE OF THE STATE AUDITOR

EXEMPT OCCUPATIONAL LICENSING BOARDS FROM PAYING FOR AUDITS UNDER CERTAIN CIRCUMSTANCES

SECTION 17.1. G.S. 93B-4 reads as rewritten:

"**§ 93B-4. Audit of Occupational Licensing Boards; payment of costs.**

(a) The State Auditor shall audit occupational licensing boards from time to time to ensure their proper operation. The books, records, and operations of each occupational licensing board shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. In accordance with G.S. 147-64.7(b), the State Auditor may contract with independent professionals to meet the requirements of this section.

~~The cost of all audits shall be paid from funds of the occupational licensing board audited.~~

(b) Each occupational licensing board with a budget of at least fifty thousand dollars ($50,000) shall conduct an annual financial audit of its operations and provide a copy to the State Auditor."

SPECIAL RESPONSIBILITY CONSTITUENT INSTITUTIONS – AUDIT

SECTION 17.2. G.S. 116-30.8 reads as rewritten:

"**§ 116-30.8. Special responsibility constituent institutions: annual audit by State Auditor or certified public accountant.**

Each special responsibility constituent institution shall be audited annually. The Chancellor of the special responsibility constituent institution may use State funds to contract with the State Auditor or with a certified public accountant to perform the audit. The contract for audit services may be for up to three years in duration. The audit shall be provided to the Chancellor and Board of Trustees of the special responsibility institution, the Board of Governors of The University of North Carolina, and the State Auditor. The audit shall also be included in the State's Comprehensive Annual Financial Report (CAFR).

The Board of Governors of The University of North Carolina shall ensure that all special responsibility constituent institutions are audited in accordance with this section."

AUDITOR PUBLISH COST OF AUDITS

SECTION 17.3. Article 5A of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-64.6C. Cost of audit report published.**

Each audit report shall itemize the number of staff hours used in conducting the audit and in preparation of the audit report and the total cost of conducting the audit and preparing the audit report."

PART XVIII. DEPARTMENT OF CULTURAL RESOURCES

ROANOKE ISLAND COMMISSION REPORTING REQUIREMENT

SECTION 18.1. G.S. 143B-131.4 reads as rewritten:

"**§ 143B-131.4. Commission reports.**

Before July 1, 1995, the Commission shall submit to the General Assembly a comprehensive report incorporating specific recommendations of the Commission for development and promotion of the Elizabeth II State Historic Site and Visitor Center. After the initial report, the Commission shall submit a quarterly report to the ~~General Assembly within 30 days of the convening of each Regular Session of the General Assembly.~~ Chairs of the House Appropriations Subcommittee on General Government and the Chairs of the Senate Appropriations Committee on General Government and Information Technology and to the Fiscal Research Division of the General Assembly. The report shall include:

(1) A summary of actions taken by the Commission consistent with the powers and duties of the Commission set forth in G.S. 143B-131.2.

(2) Recommendations for legislation and administrative action to promote and develop the Elizabeth II State Historic Site and Visitor Center.

(3) An accounting of funds received and expended."

MODIFY STATE HISTORIC SITES SPECIAL FUND TO INCLUDE STATE HISTORY MUSEUMS

SECTION 18.2. G.S. 121-7.7 reads as rewritten:

"**§ 121-7.7. State Historic Sites and Museums special fund.**

(a) Fund. – The State Historic Sites and Museums Fund is created as a special, interest-bearing revenue fund in the Division of State Historic ~~Sites.~~Sites and the Division of State History Museums. The Fund consists of all receipts derived from the lease or rental of property or facilities, disposition of structures or products of the land, private donations, and admissions and fees collected at the State Historic ~~Sites.~~Sites, State History Museums, and Maritime Museums. The revenues in the Fund may be used only for the operation, interpretation, maintenance, preservation, development, and expansion of the individual State Historic ~~Site~~ Site, State History Museum, and Maritime Museum where the receipts are generated. The respective Division and the staff from each State Historic ~~Site~~Site, State History Museum, and Maritime Museum will determine how the funds will be used at that Historic ~~Site.~~Site, State History Museum, and Maritime Museum.

(b) Application. – This section applies to the individual State Historic Sites and State History and Maritime Museums owned by or under the control of the Division of State Historic ~~Sites,~~Sites and the Division of State History Museums, with the exception of the Bentonville Battlefield State Historic ~~Site.~~Site and the North Carolina Transportation Museum. The Bentonville Battlefield State Historic Site is subject to G.S. 121-7.5. The North Carolina Transportation Museum is subject to G.S. 121-7.6.

(c) Reports. – The Department of Cultural Resources must submit to the Joint Legislative Commission on Governmental Operations, the House of Representatives and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division by September 30 of each year a report on the Fund that includes the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year."

REQUIRE DEPARTMENT OF CULTURAL RESOURCES TO DEVELOP A FIVE-YEAR PLAN FOR CERTAIN HISTORIC SITES

SECTION 18.3. The Department of Cultural Resources shall develop comprehensive five-year plans for the Tryon Palace Historic Sites and Gardens, the Roanoke Island Commission, and the North Carolina Transportation Museum. The plans shall describe in detail revenue and expenditure projections, proposed reductions in scope or expenditures, and each site's plans to further develop non-State sources of funding in accordance with the reductions in appropriations implemented in S.L. 2011-145, including the feasibility of privatization. The Department shall submit its report to the Chairs of the House Appropriations Subcommittee on General Government and the Chairs of the Senate Appropriations Committee on General Government and Information Technology by October 1, 2012.

PART XIX. GENERAL ASSEMBLY

PROGRAM EVALUATION DIVISION TO STUDY THE DUTIES AND SERVICES OF THE NORTH CAROLINA HUMAN RELATIONS COMMISSION AND THE CIVIL RIGHTS DIVISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 19.1. Section 20.2 of S.L. 2011-145, as amended by Section 45(b) of S.L. 2011-391, reads as rewritten:

"**SECTION 20.2.(a)** The ~~Legislative Research Commission is authorized to~~Program Evaluation Division shall study the duties and services of the North Carolina Human Relations Commission and the Civil Rights Division of the Office of Administrative Hearings to determine whether there is unnecessary overlap and duplication of services and recommend the placement of the Commission and Division in the appropriate agency or agencies.

"**SECTION 20.2.(b)** The ~~Legislative Research Commission may make an interim report by May 1, 2012, to the Chairs of the House Appropriations Subcommittee on General Government and the Chairs of the Senate Appropriations Committee on General Government and Information Technology.~~Program Evaluation Division shall report its findings upon the convening of the 2013 General Assembly.

"**SECTION 20.2.(c)** This section is effective when it becomes law."

PART XX. DEPARTMENT OF INSURANCE

DOI TO STUDY FIRE PROTECTION GRANT FUND

SECTION 20.1.(a) The Department of Insurance shall study how the fund distribution method for the State Fire Protection Grant Fund could more fully meet the requirement of G.S. 58-85A-1(b) that the distribution method be equitable and uniform. The study shall consider the following factors, as well as any other factors the Department finds relevant:

(1) Whether the basis for determining the amount of compensation due a local fire district or political subdivision for providing local fire protection to State-owned buildings and their contents actually reflects the cost to the local fire district or political subdivision of providing the fire protection services.

(2) How the division in funds among properties supported by the General Fund, properties supported by the Highway Fund, and properties supported by The University of North Carolina receipts required by G.S. 58-85A-1(c) should be revised to support fire protection services provided to State-owned properties not receiving support from those Funds or receipts.

SECTION 20.1.(b) The Department shall report its findings and any recommendations for revision of the fund distribution method to the House and Senate Appropriations Subcommittees on General Government and to the Fiscal Research Division on or before October 1, 2012.

FUNDING OF BUILDING CODE REVIEWS FOR STATE BUILDINGS

SECTION 20.3. Section 7 of Session Law 2009-474 reads as rewritten:

"**SECTION 7.** The Department of Insurance shall transfer to the Department of Administration four building code review positions selected by the Department of Administration for the purpose of assisting the Department of Administration in administering G.S. 143-341(3) and G.S. 143-139(e). These positions shall be supported by the Insurance Regulatory Fund at one hundred percent (100%) of the full budgeted amount for each ~~position from fiscal year 2009-2010 through fiscal year 2011-2012. Beginning fiscal year 2012-2013, the State Treasurer, as custodian of the State Property Fire Insurance Fund, shall support those positions out of the State Property Fire Insurance Fund.~~position."

DOI TO ASSESS VOLUNTEER SAFETY WORKERS COMPENSATION FUND

SECTION 20.4. The Department of Insurance, from funds available to it, shall contract with an independent actuary to assess the Volunteer Safety Workers Compensation Fund. The assessment shall include the following components:

(1) Recommendations as to the level of funding required to ensure that the Fund can meet its financial obligations.

(2) The level and duration of funding required for the Fund to become self-sufficient in the future.
(3) The nature of the claims paid by the Fund and any claims-related trends that impact the health of the Fund.
(4) Recommendations as to the appropriate level of premiums to be paid by members or their departments.
(5) A projection of revenues to the Fund from sources other than State funding.
(6) A comparison of the projected timing and risk of the cash flow from investments with the cash flow needed to pay claims.

No later than October 1, 2012, the Department shall report the independent actuary's assessment and findings and also provide a comparison of the premiums paid into the Fund and premiums paid by municipal fire departments for their employees' workers compensation insurance to the Chairs of the House of Representatives and Senate Appropriations Committees, the Chairs of the House of Representatives and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division.

SET REGULATORY CHARGE

SECTION 20.5.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six percent (6%) for the 2012 calendar year.

SECTION 20.5.(b) This section is effective when it becomes law.

PART XXII. OFFICE OF STATE BUDGET AND MANAGEMENT

AUTHORIZATION TO SPEND FUNDS FOR CERTAIN PURPOSES

SECTION 22.2. Notwithstanding G.S. 143C-6-5, the Office of State Budget and Management may use funds within Budget Code 13005 to do the following:
(1) Reclassify one or more vacant positions to Senior Economists to provide support in developing Medicaid projections and monitoring Medicaid expenditures.
(2) Support Integrated Budget Information System ongoing operations and maintenance costs.

PART XXII-A. DEPARTMENT OF REVENUE

PROSECUTION OF CASES INVOLVING TAX FRAUD

SECTION 22A.1. The Department of Revenue and the Department of Justice shall enter into an agreement through which the Department of Revenue shall provide funding for an Attorney IV to be employed by the Department of Justice. This position shall be assigned on a full-time basis to assist the Department of Revenue in the investigation and prosecution of cases involving tax fraud.

The agreement shall specify that the attorney shall report periodically to the Secretary of Revenue on his or her work time devoted to prosecution of tax fraud cases rather than to other work within the Department of Justice.

PART XXIII. STATE BOARD OF ELECTIONS

HAVA FUNDS/DISABILITY ACCESS

SECTION 23.1.(a) The State Board of Elections shall not expend any Help America Vote Funds (HAVA) Title II Funds for the 2011-2012 fiscal year and, unless prohibited by federal law, shall retain those funds until Maintenance of Effort funds are appropriated, except that voting accessibility funds granted by the Secretary of Health and Human Services under Section 261 of HAVA may be applied for and expended by the State Board of Elections to improve voting accessibility for the disabled.

SECTION 23.1.(b) This section is effective when it becomes law.

HAVA FUNDS/STATE SUPPORT OF COUNTY BDS OF ELECTIONS

SECTION 23.2.(a) Effective July 1, 2013, G.S. 163-82.28 reads as rewritten:

"§ 163-82.28. The HAVA Election Fund.

There is established a special fund to be known as the Election Fund. All funds received for implementation of the Help America Vote Act of 2002, Public Law 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement HAVA. No HAVA funds may be granted to or used by counties for the operation of elections or for expenses which by this Chapter are borne by the counties, except that HAVA funds may be used for local infrastructure of SEIMS (State Elections Information Management System), which is necessary for the State to administer the elections. The State Board of Elections shall annually report to the House and Senate Committees on Appropriations, to the Fiscal Research Division, and to the Joint Legislative Commission on Governmental Operations on implementation of this section."

SECTION 23.2.(b) Effective July 1, 2013, Article 4 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-37.1. No State funds for county election expenses.**

No State funds shall be appropriated to counties, or allocated to them by the State Board of Elections, for expenses of the county boards of elections, except that State funds may be used for local infrastructure of SEIMS (State Elections Information Management System), which is necessary for the State to administer the elections. The State Board of Elections shall annually report to the House and Senate Committees on Appropriations, to the Fiscal Research Division, and to the Joint Legislative Commission on Governmental Operations on implementation of this section."

ELECTION SYSTEM MAINTENANCE CONTRACTS

SECTION 23.3.(a) G.S. 163-165.9(b)(2) reads as rewritten:

"(b) After the acquisition of any voting system, the county board of elections shall comply with any requirements of the State Board of Elections regarding training and support of the voting system by completing all of the following:

...

(2) The county board of elections shall annually maintain software license and maintenance agreements necessary to maintain the warranty of its voting system. A county board of elections may employ qualified personnel to maintain a voting system in lieu of entering into maintenance agreements necessary to maintain the warranty of its voting system. State Board of Elections is not required to provide routine maintenance to any county board of elections that does not maintain the warranty of its voting system. If the State Board of Elections provides any maintenance to a county that has not maintained the warranty of its voting system, the county shall reimburse the State for the cost. The State Board of Elections shall annually report to the House and Senate Committees on Appropriations, to the Fiscal Research Division, and to the Joint Legislative Commission on Governmental Operations on implementation of this subdivision. If requested by the county board of elections, the State Board of Elections may enter into contracts on behalf of that county under this subdivision. Any contract entered into by a county under this subdivision is not effective unless approved by the State Board of Elections. Neither a county nor the State Board of Elections shall enter into any contract with any vendor for software license and maintenance agreements unless the vendor agrees to (i) operate a training program for qualification of county personnel under this subsection with training offered within the State of North Carolina and (ii) not dishonor warranties merely because the county is employing qualified personnel to maintain the voting system as long as the county:

a. Pays the costs of the annual software licensing agreement for that county.

b. Ensures that equipment (i) remains in full compliance with State certification requirements and (ii) remains in stock and supply available to the county for up to five years after the vendor discontinues distribution or sale of the equipment.

c. Maintains a tracking record to record and timely report all hardware issues and all repairs and provides those records for review by the vendor and by the State Board of Elections.

d. Provides that only parts provided by the vendor would be used to repair the vendor's equipment, contingent on (i) the county being able to purchase necessary parts in a timely manner from the vendor and (ii) the vendor providing the equipment at least at the lowest price at which it sells the equipment to any other customer in the United States.

e. Accepts financial responsibility for expenses related to voting equipment failure during an election if the failure is caused solely by work of the county technician."

SECTION 23.3.(b) The State Board of Elections shall use funds appropriated for Help America Vote Act (HAVA) Title II maintenance of effort to pay for the training of county technicians under G.S. 163-165.9(b)(2) as amended by this section.

SECTION 23.3.(c) In administering G.S. 163-165.9(b)(2) as amended by this section, the State Board of Elections shall work with all county boards of election interested in obtaining certification for voting equipment maintenance technicians. The State Board of Elections shall work with the county boards of elections to develop a consensus estimate of the percentage of hardware maintenance previously provided by the vendor that will continue to be provided by the vendor rather than by the certified county technicians. In any contract entered into by either a county or the State Board of Elections on behalf of counties for voter equipment maintenance that includes certification of county technicians, the per machine price paid for hardware maintenance agreements shall not exceed the consensus percentage multiplied by the price per machine paid to the vendor for hardware maintenance agreements for the 2011-2012 fiscal year.

SBOE MOE VARIANCE

SECTION 23.4.(a) In the event that funds appropriated to the State Board of Elections (SBOE) for Maintenance of Effort (MOE) are insufficient, SBOE shall transfer funds from their Administration Fund Code (1100) to the Fund Code and Cost Center for MOE to expend on MOE activities to make up the difference.

SECTION 23.4.(b) In the event that funds appropriated to the SBOE for MOE are in excess of the required amount, SBOE shall retain the excess amount and revert it to the General Fund at the end of the 2012-2013 fiscal year.

SBOE SUPPLEMENTAL REPORT ON VOTER-OWNED ELECTIONS ACT

SECTION 23.5. The State Board of Elections shall not later than July 25, 2012, provide to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division a supplemental report on the administration and implementation of Article 22J of Chapter 163 of the General Statutes, the Voter-Owned Elections Act, including all certified candidates for the 2012 General Election and the amounts that have been and will be distributed to each such candidate.

PART XXIV. DEPARTMENT OF TRANSPORTATION

CASH FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 24.1.(a) Section 28.1 of S.L. 2011-145 is repealed.

SECTION 24.1.(b) The General Assembly authorizes and certifies anticipated revenues for the Highway Fund as follows:

For Fiscal Year 2013-2014	$ 2,162.1 million
For Fiscal Year 2014-2015	$ 2,281.8 million
For Fiscal Year 2015-2016	$ 2,407.2 million
For Fiscal Year 2016-2017	$ 2,523.8 million

SECTION 24.1.(c) The General Assembly authorizes and certifies anticipated revenues for the Highway Trust Fund as follows:

For Fiscal Year 2013-2014	$ 1,120.0 million
For Fiscal Year 2014-2015	$ 1,195.5 million
For Fiscal Year 2015-2016	$ 1,284.0 million
For Fiscal Year 2016-2017	$ 1,336.9 million

FURTHER PRIVATIZATION OF PRE-CONSTRUCTION ACTIVITIES

SECTION 24.2. For fiscal year 2013-2014, the Department of Transportation shall increase the outsourcing of preliminary engineering projects from fifty percent (50%) of the total funds in the annual work plan, as required by Section 28.9.(3) of S.L. 2011-145, to sixty percent (60%) of the total funds in the annual work plan.

FUNDS FROM INSPECTION PROGRAM ACCOUNT FOR OTHER HIGHWAY FUND USES

SECTION 24.3. Notwithstanding G.S. 20-183.7(d), the sum of eleven million dollars ($11,000,000) from the Inspection Program Account within the Highway Fund, as established under G.S. 20-183.7(d), is appropriated and allocated as shown in this act.

CLARIFY USE OF CREDIT RESERVE BALANCE IN HIGHWAY FUND

SECTION 24.6. G.S. 136-44.2 reads as rewritten:

"**§ 136-44.2. Budget and appropriations.**

(a) The Director of the Budget shall include in the "Current Operations Appropriations Act" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, State parks road systems, and other transportation systems. The State primary system shall include all portions of the State highway system located both inside and outside municipal corporate limits that are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located both inside and outside municipal corporate limits that is not a part of the State primary system. The State parks system shall include all State parks roads and parking lots that are not also part of the State highway system. The transportation systems shall include State-maintained, nonhighway modes of transportation as well.

(b) All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

(c) Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, transportation projects and systems, and ferry operations shall be enumerated in the budget.

(d) The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

(e) The "Current Operations Appropriations Act" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

(f) If the unreserved credit balance in the Highway Fund on the last day of a fiscal year is greater than the amount estimated for that date in the Current Operations Appropriations Act for the following fiscal year, the excess shall be used in accordance with this ~~paragraph.~~ subsection. The Director of the Budget ~~may~~shall allocate ~~part or all of~~ the excess ~~among reserves~~ to a reserve (i) for access and public ~~roads, for unforeseen events requiring prompt action,~~ roads or (ii) for other urgent needs. ~~The amount not allocated to any of these reserves by the Director of the Budget shall be credited to a reserve for maintenance. The Board of Transportation shall report monthly to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on the use of funds in the maintenance reserve.~~ The use of this reserve shall be subject to the following:

(1) Restrictions on use. – No more than five million dollars ($5,000,000) from this reserve may be spent on a single project. Funds from this reserve being used for an "other urgent need" project cannot be used for administrative costs, information technology costs, or economic development.

(2) Approval. – The Department of Transportation shall submit for approval to the Director of the Budget all expenditures from the reserve established under this subsection.

(3) Reporting. – At least five days, not including State holidays or weekend days, prior to submitting an expenditure request to the Director of the Budget under subdivision (2) of this subsection, the Department of Transportation shall submit a report on the expenditure request to the Fiscal Research Division and to the members of the House Appropriations Subcommittee on Transportation and the Senate Appropriations Committee on Department of Transportation. Such report shall be certified by the chief financial officer of the Department of Transportation and shall include (i) a project description, (ii) whether the project is for access and public roads or for other urgent needs, (iii) a justification of the project, (iv) the total project cost, (v) the amount of funding for the project coming from the reserve, and (vi) other funding sources for the project.

(4) Carryforward. – If on the last day of the fiscal year the balance in the reserve established by this subsection is greater than five million dollars ($5,000,000), then the Director of the Budget shall transfer the amount in excess of that sum to the Reserve for General Maintenance in the Highway Fund.

(g) The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. The Department of Transportation shall provide for this funding by allocating and reserving up to one hundred thousand dollars ($100,000) before any other allocations from the appropriations for State maintenance for primary, secondary, and urban road systems are made, based upon the same proportion as is appropriated to each system."

ADJUST TURNPIKE APPROPRIATIONS

SECTION 24.7.(a) Any funds appropriated to the North Carolina Turnpike Authority under G.S. 136-176(b2) to cover debt service or related financing costs for the Mid-Currituck Bridge project and that remain unencumbered at the end of fiscal year 2011-2012 are hereby transferred back to the Highway Trust Fund to be appropriated and allocated as shown in this act.

SECTION 24.7.(b) Notwithstanding G.S. 136-176(b2), the funds appropriated in G.S. 136-176(b2) to the Mid-Currituck Bridge and Garden Parkway projects for fiscal year 2012-2013 are hereby transferred to the Mobility Fund.

SECTION 24.7.(c) Effective July 1, 2013, G.S. 136-176(b2), as amended, reads as rewritten:

"(b2) **(Effective July 1, 2013)** There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of ~~one hundred twelve million dollars ($112,000,000).~~ eighty-one million five hundred thousand dollars ($81,500,000). Of the amount allocated by this subsection, twenty-five million dollars ($25,000,000) shall be used to pay debt service or related financing costs and expenses on revenue bonds or notes issued for the construction of the Triangle Expressway, twenty-four million dollars ($24,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Monroe Connector/Bypass, ~~twenty-eight million dollars ($28,000,000)~~ fifteen million dollars ($15,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Mid-Currituck Bridge, and ~~thirty-five million dollars ($35,000,000)~~ seventeen million five hundred thousand dollars ($17,500,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Garden Parkway. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or

related financing costs and expenses on revenue bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations made in this subsection at any time to decrease or eliminate the amount annually appropriated to the Authority. Funds transferred from the Highway Trust Fund to the Authority pursuant to this subsection are not subject to the equity formula in G.S. 136-17.2A."

CODIFY MOBILITY FUND FORMULA DEVELOPED BY DEPARTMENT OF TRANSPORTATION

SECTION 24.8.(a) G.S. 136-188 reads as rewritten:

"**§ 136-188. Use of North Carolina Mobility Fund.**

(a) The Department of Transportation shall use the Mobility Fund to fund transportation projects, selected by the Department, of statewide and regional significance that relieve congestion and enhance mobility across all modes of transportation. ~~The Department of Transportation shall establish project selection criteria based on the provisions of this Article.~~

(b) ~~The~~ Notwithstanding subsections (c) and (d) of this section, the initial project funded from the Mobility Fund shall be the widening and improvement of Interstate 85 north of the Yadkin River Bridge.

(c) To be eligible for funding from the Mobility Fund, a project must meet the following requirements:

(1) The project must be on statewide or Regional tier facilities.

(2) The project must be ready to have funds obligated for construction within five years.

(3) The project must be (i) consistent with MPO/RPO transportation planning efforts, (ii) included in an adopted transportation plan, and (iii) found to be consistent with local land-use plans, where available. As used in this subdivision, "MPO" means metropolitan planning organization and "RPO" means rural transportation planning organization.

(4) The project must be in a conforming transportation plan if the project is in a non-attainment or maintenance area.

(5) Only the project's capital costs, including right-of-way acquisition and construction, may be funded. Maintenance, operation, and planning costs may not be funded from the Mobility Fund.

(6) There is no minimum project capital cost as a threshold for funding a project.

(d) Eligible projects shall be scored and ranked, with the highest scored projects receiving funding priority. Ranking scores shall be determined according to the following formula:

(1) Mobility benefit-cost. – Eighty percent (80%) of the ranking score shall be the estimated travel time savings in vehicle hours that the project will provide over 30 years divided by the cost of the project to the Mobility Fund.

(2) Multimodal/intermodal. – Twenty percent (20%) of the ranking score shall be based on whether the project provides an improvement to more than one mode of transportation and what types of other modes of transportation are involved in the project. Using a scale from zero to 100, the Department of Transportation shall provide for the assignment of points under this subdivision. The Department's determination of a point system under this subdivision shall not be subject to rulemaking under Chapter 150B of the General Statutes."

SECTION 24.8.(b) Section 28.33(c) of S.L. 2011-145 is repealed.

CIVIL PENALTIES TO BE TREATED AS RECEIPTS FOR TRANSFER TO CIVIL PENALTY AND FORFEITURE FUND

SECTION 24.9. The clear proceeds of all civil penalties, civil forfeitures, and civil fines collected by the Department of Transportation for transfer to the Civil Penalty and Forfeiture Fund and which are currently recorded as revenue in the Highway Fund (Budget Code 84210) shall be eliminated from the Estimated Revenue for the Highway Fund. The corresponding Highway Fund appropriation in Fund 150889 shall also be eliminated.

Rather than recording the proceeds as revenue, the clear proceeds of all civil penalties, civil forfeitures, and civil fines collected by the Department of Transportation for transfer to the Civil Penalty and Forfeiture Fund shall be recorded as receipts and budgeted in a totally receipt-supported fund center (150889) in the Highway Fund (Budget Code 84210) for transfer to the Civil Penalty and Forfeiture Fund.

POSITIONS IN SUPPORT OF THE COMBINED MOTOR VEHICLE REGISTRATION AND PROPERTY TAX COLLECTION SYSTEM

SECTION 24.10.(a) Upon request from the Department of Transportation and notwithstanding any other provision of law to the contrary, the Office of State Budget and Management may authorize the creation of time-limited, full-time equivalent positions within the Department of Transportation and its Division of Motor Vehicles in excess of the positions authorized by this act for the sole purposes of implementing and administering the combined motor vehicle registration and property tax collection system, in accordance with the funding authorizations in G.S. 105-330.5 and G.S. 105-330.10. Positions created under this authorization shall terminate no later than June 30, 2014. Following the approval of a request, the Office of State Budget and Management shall direct the transfer of funds from the Combined Motor Vehicle and Registration Account, also known as the Division of Motor Vehicles Taxation Interest Fund for Integrated Computer System, to support personnel and related operating costs for the positions approved under this section.

SECTION 24.10.(b) Beginning October 1, 2012, the Office of State Budget and Management shall report quarterly on all transfers of funds from the Combined Motor Vehicle and Registration Account (Combined Account) and positions supported by the Combined Account during the 2012-2013 fiscal year to the House Appropriations Subcommittee on Transportation, the Senate Appropriations Committee on Department of Transportation, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division. The report shall include, at a minimum, the following:

(1) A summary of activities funded by the Combined Account to date.
(2) Amounts transferred from the Combined Account and expended per activity.
(3) A detailed listing of positions funded by receipts to the Combined Account, identifying the position number, title, effective date and duration, cost, functions performed, and organizational unit to which the position is assigned.

SECTION 24.10.(c) No later than May 1, 2013, the Department of Revenue and the Department of Transportation shall jointly report on the status of the Memorandum of Understanding required by G.S. 105-330.11 to the following: the House Appropriations Subcommittee on Transportation, the Senate Appropriations Committee on Department of Transportation, the cochairs of the House Appropriations Committee, the cochairs of the Senate Appropriations/Base Budget Committee, and the Fiscal Research Division. The report shall identify the estimated recurring costs of system administration and proposed administrative fees to support the costs of combined notice generation and collection of registration fees and vehicle property taxes.

REDUCE MOTOR FUEL EXCISE TAX RATE

SECTION 24.11. Notwithstanding G.S. 105-449.80(a), for the period July 1, 2012, through June 30, 2013, the motor fuel excise tax rate may not exceed thirty-seven and one-half cents (37 1/2¢) a gallon.

USE OF UNEXPENDED CONTINGENCY FUNDS

SECTION 24.12. Notwithstanding any other provision of law and not including the funds appropriated in Section 28.6(2) of S.L. 2011-145 for the 2011-2013 fiscal biennium, the sum of twenty-two million dollars ($22,000,000) is transferred from the unexpended

balance of contingency fund appropriations to the Highway Fund. That sum is appropriated and allocated as shown in this act.

INCREASE GENERAL FUND TRANSFER FROM HIGHWAY FUND

SECTION 24.13. Notwithstanding Section 28.27(b) of S.L. 2011-145 or any other provision of that act, as amended, the amount transferred from the Highway Fund to the General Fund under that act is hereby increased by eight million dollars ($8,000,000), recurring, in fiscal year 2012-2013.

EXEMPT B.S.I.P. SYSTEM FROM INFORMATION TECHNOLOGY HOSTING REQUIREMENT

SECTION 24.14. Section 6A.2(f) of S.L. 2011-145, as amended by Section 11(c) of S.L. 2011-391, reads as rewritten:

"**SECTION 6A.2.(f)** Information Technology Hosting. – State agencies developing and implementing information technology projects/applications shall use the State infrastructure to host their ~~projects.~~ projects, except for the SAP Business System Integration Portal (BSIP) system of the North Carolina Department of Transportation. An exception to this requirement may be granted only if approved by either the State Chief Information Officer on the basis of technology requirements or by the Office of State Budget and Management based on cost savings, subject to consultation with the Joint Legislative Commission on Governmental Operations and a report to the Joint Legislative Oversight Committee on Information Technology.

Projects/applications currently hosted outside the State infrastructure shall be returned to State infrastructure not later than the end of any current contract.

By October 1, 2011, the State Chief Information Officer shall report to the Joint Legislative Oversight Committee on Information Technology regarding projects currently hosted outside State infrastructure and a schedule to return those projects to State infrastructure."

PRIORITIZE PAVING OF UNPAVED ROADS THROUGHOUT THE STATE

SECTION 24.15. For fiscal year 2012-2013, the Department of Transportation shall expend funds allocated to the paving of unpaved secondary roads for the paving of unpaved secondary roads based on a statewide prioritization. The Department shall pave the eligible unpaved secondary roads that receive the highest priority ranking within this statewide prioritization, notwithstanding the distribution formula in G.S. 136-17.2A or any other funding distribution formula in law. This section applies to funding for the paving of secondary roads from both the Highway Fund and the Highway Trust Fund.

APPLY STATE ETHICS ACT TO METROPOLITAN PLANNING ORGANIZATIONS AND RURAL PLANNING ORGANIZATIONS

SECTION 24.16.(a) G.S. 136-202 is amended by adding a new subsection to read:

"(e) A Metropolitan Planning Organization shall be treated as a board for purposes of Chapter 138A of the General Statutes."

SECTION 24.16.(b) G.S. 136-211 is amended by adding a new subsection to read:

"(e) Ethics Requirements. – A Rural Transportation Planning Organization shall be treated as a board for purposes of Chapter 138A of the General Statutes."

SECTION 24.16.(c) Members of Metropolitan Planning Organizations and Rural Transportation Planning Organizations shall file an initial Statement of Economic Interest with the State Ethics Commission no later than April 15, 2013. All information provided in the Statement of Economic Interest shall be current as of December 31, 2012. The initial Statement of Economic Interest shall be filed electronically.

SECTION 24.16.(d) This section becomes effective January 1, 2013.

PAYMENT OF DRIVER EDUCATION FEE WHEN GETTING PERMIT; ADDITIONAL FUNDING FOR DRIVER EDUCATION

SECTION 24.17.(a) G.S. 20-11 reads as rewritten:

"**§ 20-11. Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.**

...

(j) ~~Duration and Fee.~~Duration. – A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A limited learner's permit or limited provisional license issued under this section that expires on a weekend or State holiday shall remain valid through the fifth regular State business day following the date of expiration. A full provisional license expires on the date set under G.S. 20-7(f).

(j1) Fees. – The fees for licenses issued under this section are as follows:

(1) The fee for a limited learner's permit ~~or~~for an applicant who did not participate in the driver education program established under Article 14 of Chapter 115C of the General Statutes is fifteen dollars ($15.00).

(2) An applicant for a limited learner's permit who did participate in the driver education program established under Article 14 of Chapter 115C of the General Statutes shall be subject to the following fees:

a. Fifteen dollars ($15.00).

b. Forty-five dollars ($45.00), which shall be credited to the costs of administering the driver education program established under Article 14 of Chapter 115C of the General Statutes.

(3) The fee for a limited provisional license is fifteen dollars ($15.00).

(4) The fee for a full provisional license is the amount set under G.S. 20-7(i).

...."

SECTION 24.17.(b) G.S. 115C-216(g) is repealed.

SECTION 24.17.(c) An applicant for a limited learner's permit who is subject to G.S. 20-11(j1)(2), as amended by this section, shall be entitled to a credit toward the forty-five dollar ($45.00) fee under G.S. 20-11(j1)(2)b., as amended by this section, for any fee previously paid under G.S. 115C-216(g). An applicant shall provide evidence of having previously paid a fee for driver education to a local board of education under G.S. 115C-216(g) at the time of applying for a limited learner's permit.

SECTION 24.17.(d) G.S. 105-449.125 reads as rewritten:

"**§ 105-449.125. Distribution of tax revenue among various funds and accounts.**

The Secretary shall allocate the amount of revenue collected under this Article from an excise tax of one-half cent (1/2¢) a gallon to the following funds and accounts in the fraction indicated:

Fund or Account	Amount
Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund	Nineteen thirty-seconds
Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund	Three thirty-seconds
Water and Air Quality Account	Five-sixteenths.

The Secretary shall allocate seventy-five percent (75%) of the remaining excise tax revenue collected under this Article to the Highway Fund and shall allocate twenty-five percent (25%) to the Highway Trust Fund.

The Secretary shall charge a proportionate share of a refund allowed under this Article to each fund or account to which revenue collected under this Article is credited. The Secretary shall credit revenue or charge refunds to the appropriate funds or accounts on a monthly basis.

Of the funds allocated to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund within a fiscal year under this section, the sum of two million eighty-five thousand five hundred eighty-five dollars ($2,085,585) shall be allocated by the Secretary to the Department of Public Instruction, and those funds are appropriated to the Department of Public Instruction for the driver education program."

CLARIFY FERRY TOLLING

SECTION 24.18.(a) G.S. 136-82 reads as rewritten:

"**§ 136-82. Department of Transportation to establish and maintain ferries.**

The Department of Transportation is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and ~~to prescribe and~~shall collect ~~such tolls therefor as may, in the discretion of the Department of Transportation, be expedient.~~tolls, as established by the Board of Transportation, on the ferry routes. The Board of Transportation shall establish

tolls for all ferry ~~routes, except for the Ocracoke/Hatteras Ferry and the Knotts Island Ferry.~~routes.

To accomplish the purpose of this section said Department of Transportation is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Department of Transportation represent the fair value of the public service rendered.

The Department of Transportation, notwithstanding any other provision of law, may operate, or contract for the operation of, concessions on the ferries and at ferry facilities to provide to passengers on the ferries food, drink, and other refreshments, personal comfort items, and souvenirs publicizing the ferry system."

SECTION 24.18.(b) Given that (i) under Section 1 of Article II of the North Carolina Constitution, the General Assembly holds the "legislative power of the State," which is the power to enact laws, (ii) under Section 1 of Article III of the North Carolina Constitution, the Governor holds the "executive power of the State," which is the power to carry out rather than enact laws, (iii) the Governor's Executive Order No. 116 directly conflicts with ferry tolling required by S.L. 2011-145, and (iv) as written by the Department of Justice in its April 12, 2012, letter to the Honorable Representative Phillip D. Frye, "a direct conflict between a law enacted by the General Assembly and an executive order issued by the Governor must be resolved through implementation of the law," the General Assembly, therefore, hereby declares Executive Order No. 116 an unconstitutional attempt to exercise authority that the Governor does not possess and, as such, the Department of Transportation shall disregard Executive Order No. 116 and shall collect the tolls required by S.L. 2011-145 and this section.

PUBLIC TRANSPORTATION FUNDING ADJUSTMENTS

SECTION 24.19.(a) The Regional New Starts & Capital Program within the Public Transportation Division of the Department of Transportation is eliminated. The unexpended balance of funds for this program are reallocated to the Reserve for General Maintenance in the Highway Fund.

SECTION 24.19.(b) G.S. 136-44.20 is amended by adding a new subsection to read as follows:

"**§ 136-44.20. Department of Transportation designated agency to administer and fund public transportation programs; authority of political subdivisions.**

...

(e) Public transportation appropriations from the Highway Fund shall not be expended on any fixed guideway project in Mecklenburg County."

SECTION 24.19.(c) G.S. 136-176 is amended by adding a new subsection to read as follows:

"**§ 136-176. Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.**

...

(e) Subject to G.S. 136-17.2A and other funding distribution formulas, funds allocated under subdivisions (1), (3), and (4) of subsection (b) of this section may also be used for fixed guideway projects, including providing matching funds for federal grants for fixed guideway projects."

REPEAL PROGRAM EVALUATION DIVISION STUDY OF NORTH CAROLINA RAILROAD COMPANY

SECTION 24.20. Section 28.12A of S.L. 2011-145, as amended by Section 52 of S.L. 2011-391, is repealed.

STUDY INTERSTATE 95 TOLLING

SECTION 24.21.(a) The Department of Transportation shall conduct a comprehensive study of the transportation corridor containing Interstate 95, including, but not limited to, the following:

(1) The economic impact of tolling the present road on the residents and businesses along the Interstate 95 corridor.

(2) The impact of tolling the present road on the alternative routes to Interstate 95, including expected increased traffic on those routes, any safety issues created by any increased traffic on those routes, and expected travel time delays for drivers using the alternative routes.
(3) New or existing alternative routes for Interstate 95.
(4) Options for funding to make critical repairs and lane mile expansions to Interstate 95 without the use of tolls.

The Department shall solicit feedback on its various tolling proposals from the local governments and residents along the Interstate 95 corridor.

SECTION 24.21.(b) The Department of Transportation shall report the results of its study to the 2013 General Assembly by March 1, 2013.

SECTION 24.21.(c) Notwithstanding G.S. 136-89.198, the Department of Transportation shall not establish or collect tolls on Interstate 95 prior to July 1, 2013.

PART XXV. SALARIES AND BENEFITS

GOVERNOR AND COUNCIL OF STATE

SECTION 25.01.(a) Section 29.1(a) of S.L. 2011-145 reads as rewritten:

"**SECTION 29.1.(a)** Effective for the ~~2011-2013 fiscal biennium;~~2011-2012 fiscal year, the salary of the Governor set by G.S. 147-11(a) in the amount of one hundred thirty-nine thousand five hundred ninety dollars ($139,590) annually, payable monthly, shall remain unchanged."

SECTION 25.01.(b) G.S. 147-11(a) reads as rewritten:

"(a) The salary of the Governor shall be ~~one hundred thirty-nine thousand five hundred ninety dollars ($139,590)~~ one hundred forty-one thousand two hundred sixty-five dollars ($141,265) annually, payable monthly."

SECTION 25.01.(c) The prefatory language contained in Section 29.1(b) of S.L. 2011-145 reads as rewritten:

"**SECTION 29.1.(b)** Effective for the ~~2011-2013 fiscal biennium,~~ 2011-2012 fiscal year, the annual salaries for the members of the Council of State, payable monthly, ~~for the 2011-2013 fiscal biennium shall remain unchanged as follows:~~ are set as follows:".

SECTION 25.01.(d) Effective for the 2012-2013 fiscal year, the annual salaries for members of the Council of State, payable monthly, are set as follows:

Council of State	Annual Salary
Lieutenant Governor	$124,676
Attorney General	124,676
Secretary of State	124,676
State Treasurer	124,676
State Auditor	124,676
Superintendent of Public Instruction	124,676
Agriculture Commissioner	124,676
Insurance Commissioner	124,676
Labor Commissioner	124,676

NONELECTED DEPARTMENT HEADS

SECTION 25.02.(a) Section 29.2(a) of S.L. 2011-145 reads as rewritten:

"**SECTION 29.2.(a)** Effective for the ~~2011-2013 fiscal biennium;~~2011-2012 fiscal year, the salaries set by G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments ~~remain unchanged~~ are set as follows:

Nonelected Department Heads	Annual Salary
Secretary of Administration	$120,363
Secretary of Cultural Resources	120,363
Secretary of Commerce	120,363
Secretary of Environment and Natural Resources	120,363
Secretary of Health and Human Services	120,363
Secretary of Public Safety	120,363
Secretary of Revenue	120,363

Secretary of Transportation	120,363".

SECTION 25.02.(b) Effective July 1, 2012, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments are set as follows:

Nonelected Department Heads	Annual Salary
Secretary of Administration	$121,807
Secretary of Cultural Resources	121,807
Secretary of Commerce	121,807
Secretary of Environment and Natural Resources	121,807
Secretary of Health and Human Services	121,807
Secretary of Public Safety	121,807
Secretary of Revenue	121,807
Secretary of Transportation	121,807

SECTION 25.02.(c) G.S. 143B-9 reads as rewritten:

"**§ 143B-9. Appointment of officers and employees.**

The head of each principal State department, except those departments headed by popularly elected officers, shall be appointed by the Governor and serve at his pleasure.

The salary of the head of each of the principal State departments shall be set by the Governor, and the salary of elected officials shall be as provided by law.

The head of a principal State department shall appoint a chief deputy or chief assistant, and such chief deputy or chief assistant shall not be subject to the State Personnel Act. The salary of such chief deputy or chief assistant ~~shall, upon the recommendation of the Governor, be set by the General Assembly.~~shall be set by the Governor. Unless otherwise provided for in the Executive Organization Act of 1973, and subject to the provisions of the Personnel Act, the head of each principal State department shall designate the administrative head of each transferred agency and all employees of each division, section, or other unit of the principal State department."

SECTION 25.02.(d) Subsection (c) of this section applies to persons appointed on or after January 1, 2013. Subsection (b) of this section does not apply to such persons.

CERTAIN EXECUTIVE BRANCH OFFICIALS

SECTION 25.1.(a) Section 29.3 of S.L. 2011-145 reads as rewritten:

"**CERTAIN EXECUTIVE BRANCH OFFICIALS**

"**SECTION 29.3.** Effective for the ~~2011-2013 fiscal biennium,~~ 2012-2013 fiscal year, the annual salaries, payable monthly, for the following executive branch officials ~~shall remain unchanged~~ are set as follows:

Executive Branch Officials	Annual Salary
Chairman, Alcoholic Beverage Control Commission	~~$109,553~~$110,868
State Controller	~~153,319~~155,159
Commissioner of Motor Vehicles	~~109,553~~110,868
Commissioner of Banks	~~123,198~~124,676
~~Chairman, Employment Security Commission~~	~~120,363~~
Chair, Board of Review, Division of Employment Security	122,255
Members, Board of Review, Division of Employment Security	120,737
State Personnel Director	~~120,363~~121,807
Chairman, Parole Commission	~~100,035~~101,235
Members of the Parole Commission	~~46,178~~46,732
Chairman, Utilities Commission	~~137,203~~138,849
Members of the Utilities Commission	~~123,198~~124,676
~~Executive Director, Agency for Public Telecommunications~~	~~92,356~~
Director, Museum of Art	~~112,256~~113,603
Executive Director, North Carolina Agricultural Finance Authority	~~106,635~~107,915
State Chief Information Officer	~~153,227~~155,066".

SECTION 25.1.(b) G.S. 20-2(a) reads as rewritten:

"(a) Commissioner and Assistants. – The Division of Motor Vehicles shall be administered by the Commissioner of Motor Vehicles, who shall be appointed by and serve at

the pleasure of the Secretary of the Department of Transportation. The Commissioner shall be paid an annual salary to be fixed by the ~~General Assembly in the Current Operations Appropriations Act~~ Governor and allowed ~~his~~ traveling expenses as allowed by law.

In any action, proceeding, or matter of any kind, to which the Commissioner of Motor Vehicles is a party or in which he may have an interest, all pleadings, legal notices, proof of claim, warrants for collection, certificates of tax liability, executions, and other legal documents, may be signed and verified on behalf of the Commissioner of Motor Vehicles by the Assistant Commissioner of Motor Vehicles or by any director or assistant director of any section of the Division of Motor Vehicles or by any other agent or employee of the Division so authorized by the Commissioner of Motor Vehicles."

SECTION 25.1.(c) G.S. 126-3(a) reads as rewritten:

"(a) There is hereby established the Office of State Personnel (hereinafter referred to as "the Office") which shall be placed for organizational purposes within the Department of Administration. Notwithstanding the provisions of North Carolina State government reorganization as of January 1, 1975, and specifically notwithstanding the provisions of Chapter 864 of the 1971 North Carolina Session Laws [Chapter 143A], the Office of State Personnel shall exercise all of its statutory powers in this Chapter independent of control by the Secretary of Administration and shall be under the administration and supervision of a State Personnel Director (hereinafter referred to as "the Director") appointed by the Governor and subject to the supervision of the Commission for purposes of this Chapter. The salary of the Director shall be fixed by the ~~General Assembly in the Current Operations Appropriations Act.~~ Governor. The Director shall serve at the pleasure of the Governor."

SECTION 25.1.(d) G.S. 140-5.15(c) reads as rewritten:

"(c) The State-funded portion of the salary of the Director shall be fixed by the ~~General Assembly in the Current Operations Appropriations Act.~~Governor."

SECTION 25.1.(e) G.S. 147-33.76(c) reads as rewritten:

"(c) The salary of the State Chief Information Officer shall be set by the ~~General Assembly in the Current Operations Appropriations Act.~~Governor. The State Chief Information Officer shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act."

SECTION 25.1.(f) Subsections (b) through (e) of this section apply to persons appointed to the positions of Commissioner of Motor Vehicles, State Personnel Director, Director of the North Carolina Museum of Art, and State Chief Information Officer on or after January 1, 2013. Subsection (a) of this section does not apply to such persons.

JUDICIAL BRANCH

SECTION 25.1A.(a) Section 29.4(a) of S.L. 2011-145 reads as rewritten:

"**SECTION 29.4.(a)** Effective for the ~~2011-2013 fiscal biennium,~~2012-2013 fiscal year, the annual salaries, payable monthly, for specified judicial branch officials ~~shall remain unchanged~~ are set as follows:

Judicial Branch Officials	Annual Salary
Chief Justice, Supreme Court	~~$140,932~~$142,623
Associate Justice, Supreme Court	~~137,249~~138,896
Chief Judge, Court of Appeals	~~135,061~~136,682
Judge, Court of Appeals	~~131,531~~133,109
Judge, Senior Regular Resident Superior Court	~~127,957~~129,492
Judge, Superior Court	~~124,382~~125,875
Chief Judge, District Court	~~112,946~~114,301
Judge, District Court	~~109,372~~110,684
District Attorney	~~119,305~~120,737
Administrative Officer of the Courts	~~126,738~~128,259
Assistant Administrative Officer of the Courts	~~115,763~~117,152
Public Defender	~~119,305~~120,737
Director of Indigent Defense Services	~~123,022~~124,498".

SECTION 25.1A.(b) The annual salaries of permanent full-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by one and two-tenths percent (1.2%).

SECTION 25.1A.(c) Section 29.4(b) of S.L. 2011-145 reads as rewritten:

"**SECTION 29.4.(b)** Effective for the ~~2011-2013 fiscal biennium,~~2011-2012 fiscal year, the annual salaries of employees of the Judicial Department shall remain unchanged as follows:

(1) The annual salaries of permanent full-time and part-time employees of the Judicial Department whose salaries are not itemized in this act shall remain unchanged.

(2) Notwithstanding anything to the contrary, the annual salaries of clerks of superior court under G.S. 7A-101(a) shall not change when a county changes from one population group to another.

(3) The annual salaries of assistant and deputy clerks of court set under G.S. 7A-102(c1) shall remain unchanged for the 2011-2013 fiscal biennium.

(4) The annual salaries of magistrates set under G.S. 7A-171.1(a) or G.S. 7A-171.1(a1)(1) shall remain unchanged."

SECTION 25.1A.(d) The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts or the Commission on Indigent Defense Services, respectively, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed seventy-one thousand seven hundred ninety-seven dollars ($71,797) and the minimum salary of any assistant district attorney or assistant public defender is at least thirty-seven thousand six hundred twenty-eight dollars ($37,628), effective July 1, 2012.

SECTION 25.1A.(e) G.S. 7A-101(a) reads as rewritten:

"(a) The clerk of superior court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county as determined in subsection (a1) of this section, according to the following schedule:

Population	Annual Salary
Less than 100,000	$ ~~82,401~~$ 83,390
100,000 to 149,999	~~92,468~~93,578
150,000 to 249,999	~~102,536~~103,766
250,000 and above	~~112,607.~~113,958

When a county changes from one population group to another, the salary of the clerk shall be changed, on July 1 of the fiscal year for which the change is reported, to the salary appropriate for the new population group, except that the salary of an incumbent clerk shall not be decreased by any change in population group during his continuance in office."

SECTION 25.1A.(f) G.S. 7A-102(c1) reads as rewritten:

"(c1) A full-time assistant clerk or a full-time deputy clerk, and up to one full-time deputy clerk serving as head bookkeeper per county, shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks and Head Bookkeeper	Annual Salary
Minimum	~~$32,222~~$32,609
Maximum	~~54,767~~55,424

Deputy Clerks	Annual Salary
Minimum	~~$27,888~~$28,223
Maximum	~~42,596.~~43,107".

SECTION 25.1A.(g) G.S. 7A-171.1(a)(1) reads as rewritten:

"(1) A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision. A full-time magistrate is a magistrate who is assigned to work an average of not less than 40 hours a week during the term of office. The Administrative Officer of the Courts shall designate whether a magistrate is full-time. Initial appointment shall be at the entry rate. A magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6.

Table of Salaries of Full-Time Magistrates

Step Level	Annual Salary
Entry Rate	~~$32,633~~$33,025
Step 1	~~35,525~~35,951
Step 2	~~38,671~~39,135

Step 3	~~42,134~~42,640
Step 4	~~45,999~~46,551
Step 5	~~50,335~~50,959
Step 6	~~55,238~~55,901".

SECTION 25.1A.(h) G.S. 7A-171.1(a1)(1) reads as rewritten:

"(a1) Notwithstanding subsection (a) of this section, the following salary provisions apply to individuals who were serving as magistrates on June 30, 1994:

(1) The salaries of magistrates who on June 30, 1994, were paid at a salary level of less than five years of service under the table in effect that date shall be as follows:

Less than 1 year of service	~~$26,528~~$26,846
1 or more but less than 3 years of service	~~27,695~~28,027
3 or more but less than 5 years of service	~~30,044.~~30,405

Upon completion of five years of service, those magistrates shall receive the salary set as the Entry Rate in the table in subsection (a)."

LEGISLATIVE BRANCH

SECTION 25.1B.(a) Section 29.5 of S.L. 2011-145 reads as rewritten:

"**GENERAL ASSEMBLY**

"**SECTION 29.5.** For the 2011-2013 fiscal biennium, the salaries of members and officers of the General Assembly shall remain unchanged at the amounts set under G.S. 120-3, as provided in 1994 by the 1993 General Assembly. Effective for the ~~2011-2013 fiscal biennium,~~2011-2012 fiscal year, salaries in the legislative branch shall remain unchanged, as follows:

~~(1) The salaries of members and officers of the General Assembly shall remain unchanged at the amounts set under G.S. 120-3, as provided in 1994 by the 1993 General Assembly.~~

(2) The annual salaries set by G.S. 120-37(c) for the principal clerks in each house shall remain unchanged.

(3) The annual salaries set by G.S. 120-37(b) of the sergeant-at-arms and the reading clerk in each house shall remain unchanged.

(4) The annual salaries of the Legislative Services Officer and of nonelected employees of the General Assembly set under G.S. 120-32 shall remain unchanged."

SECTION 25.1B.(b) G.S. 120-37(c) reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~one hundred four thousand eighty four dollars ($104,084)~~ one hundred five thousand three hundred thirty-three dollars ($105,333), payable monthly. Each principal clerk shall also receive such additional compensation as approved by the Speaker of the House of Representatives or the President Pro Tempore of the Senate, respectively, for additional employment duties beyond those provided by the rules of their House. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

SECTION 25.1B.(c) G.S. 120-37(b) reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~three hundred eighty dollars ($380.00)~~ three hundred eighty-five dollars ($385.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only."

SECTION 25.1B.(d) The Legislative Services Officer shall increase the salaries of nonelected employees of the General Assembly in effect on June 30, 2012, by one and two-tenths percent (1.2%).

COMMUNITY COLLEGES PERSONNEL

SECTION 25.1C.(a) Section 29.6 of S.L. 2011-145 reads as rewritten:

"**COMMUNITY COLLEGES PERSONNEL**

"**SECTION 29.6.(a)** The annual salaries of all community college nonfaculty and professional staff whose salaries are supported from the State's General Fund shall remain unchanged for the ~~2011-2013 fiscal biennium.~~2011-2012 fiscal year.

"**SECTION 29.6.(b)** For the ~~2011-2013 fiscal biennium,~~2011-2012 fiscal year, the annual salaries of all community college faculty whose salaries are supported from the State's General Fund shall remain unchanged. The minimum salaries for nine-month, full-time curriculum community college faculty shall also remain unchanged as follows:

Education Level	Minimum Salary
Vocational Diploma/Certificate or Less	$34,314
Associate Degree or Equivalent	$34,819
Bachelor's Degree	$37,009
Master's Degree or Education Specialist	$38,952
Doctoral Degree	$41,753.

No full-time faculty member shall earn less than the minimum salary for his or her education level.

The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members."

SECTION 25.1C.(b) For the 2012-2013 fiscal year, the Director of the Budget shall transfer from the Reserve for Compensation Increases created in this act to the State Board of Community Colleges funds sufficient to provide community college employees a salary increase of one and two-tenths percent (1.2%), including funds for the employers' retirement and social security contributions. These compensation funds may be used for any one or more of the following: (i) merit pay increases, (ii) across-the-board increases, (iii) recruitment bonuses, (iv) retention increases, (v) any other compensation increase, (vi) to offset the management flexibility reduction, or (vii) employ personnel. Categories (i) through (v) shall be pursuant to policies adopted by the State Board of Community Colleges. The State Board of Community Colleges shall make a preliminary report on the use of these funds to the 2013 Regular Session of the General Assembly no later than March 1, 2013, and a final report on September 1, 2013.

UNIVERSITY OF NORTH CAROLINA SYSTEM

SECTION 25.1D.(a) Section 29.7 of S.L. 2011-145 reads as rewritten:

"**UNIVERSITY OF NORTH CAROLINA SYSTEM**

"**SECTION 29.7.(a)** The annual salaries of all University of North Carolina EPA faculty, EPA nonfaculty, SPA employees, and teachers employed by the North Carolina School of Science and Math shall remain unchanged for the ~~2011-2013 fiscal biennium.~~2011-2012 fiscal year.

"**SECTION 29.7.(b)** The annual salaries of all employees of the University of North Carolina Health Care System and the Medical Faculty Practice Plan at East Carolina University shall remain unchanged for the ~~2011-2013 fiscal biennium.~~2011-2012 fiscal year."

SECTION 25.1D.(b) For the 2012-2013 fiscal year, the Director of the Budget shall transfer from the Reserve for Compensation Increases created in this act to the Board of Governors of The University of North Carolina funds sufficient to provide to employees who are exempt from the State Personnel Act (EPA) a salary increase of one and two-tenths percent (1.2%), including funds for the employers' retirement and social security contributions. These compensation funds may be used to award compensation increases to EPA employees, pursuant to policies adopted by the Board of Governors, including, but not limited to, any one or more of the following: (i) merit pay increases, (ii) across-the-board increases, (iii) recruitment bonuses, and (iv) retention increases. These compensation funds may also be used for one or more of the following (i) to offset the management flexibility reduction, or (ii) employ personnel. The Board of Governors shall make a preliminary report on the use of funds under this subsection to the 2013 Regular Session of the General Assembly no later than March 1, 2013, and a final report on September 1, 2013.

SECTION 25.1D.(c) For the 2012-2013 fiscal year, the Director of the Budget shall transfer from the Reserve for Compensation Increases created in this act to the Board of Governors of The University of North Carolina funds sufficient to provide to employees who

are subject to the State Personnel Act (SPA) a salary increase of one and two-tenths percent (1.2%), including funds for the employers' retirement and social security contributions.

MOST STATE EMPLOYEES

SECTION 25.1E.(a) Section 29.9 of S.L. 2011-145 reads as rewritten:

"**MOST STATE EMPLOYEES**

"**SECTION 29.9.(a)** Effective for the ~~2011-2013 fiscal biennium,~~2011-2012 fiscal year, the salaries in effect June 30, 2011, of all permanent, full-time State employees whose salaries are set in accordance with the State Personnel Act, shall remain unchanged.

"**SECTION 29.9.(b)** Effective for the ~~2011-2013 fiscal biennium,~~2011-2012 fiscal year, the compensation of permanent, full-time State officials and persons in exempt positions shall remain unchanged.

"**SECTION 29.9.(c)** Effective for the ~~2011-2013 fiscal biennium,~~2011-2012 fiscal year, the salaries of permanent, part-time State employees shall remain unchanged.

"**SECTION 29.9.(d)** Effective for the ~~2011-2013 fiscal biennium,~~2011-2012 fiscal year, the compensation of temporary and permanent hourly State employees shall remain unchanged."

SECTION 25.1E.(b) For the 2012-2013 fiscal year, the salaries in effect June 30, 2012, for the following employees shall be increased by one and two-tenths percent (1.2%), effective July 1, 2012:

(1) Permanent full-time State officials and persons whose salaries are set in accordance with the State Personnel Act.

(2) Permanent full-time State officials and persons in positions exempt from the State Personnel Act.

(3) Permanent part-time State employees.

(4) Temporary and permanent hourly State employees.

SECTION 25.1E.(c) Section 29.10(b) of S.L. 2011-145 reads as rewritten:

"**SECTION 29.10.(b)** For the ~~2011-2013 fiscal biennium,~~ 2011-2012 fiscal year, the salaries of permanent, full-time employees who work a nine-, ten-, or eleven-month work year schedule shall remain unchanged."

ALL STATE-SUPPORTED PERSONNEL/SALARY INCREASES

SECTION 25.1F.(a) The Director of the Budget shall transfer from the Reserve for Compensation Increases in this act for fiscal year 2012-2013 all funds necessary for the salary increases provided by this act, including funds for the employers' retirement and social security contributions.

SECTION 25.1F.(b) Salaries and related benefits for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund. Nothing in this act authorizes the transfer of funds between the General Fund and the Highway Fund for salary increases.

SECTION 25.1F.(c) The fiscal year 2012-2013 salary increases provided in this act are to be effective July 1, 2012, and do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement or whose last workday is prior to July 1, 2012.

SECTION 25.1F.(d) The granting of the salary increases under this act does not affect the status of eligibility for salary increments for which employees may be eligible unless otherwise required by this act.

SECTION 25.1F.(e) Payroll checks issued to employees July 1, 2012, which represent payment of services provided prior to these increases shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

SECTION 25.1F.(f) For the 2012-2013 fiscal year, permanent full-time employees who work a nine-, 10-, or 11-month work year schedule shall receive the one and two-tenths percent (1.2%) annual increase provided by this act.

SALARY ADJUSTMENTS FOR SPECIAL CIRCUMSTANCES ONLY/NO AUTOMATIC INCREASES

SECTION 25.2. Section 29.8 of S.L. 2011-145, as amended by Section 59A of S.L. 2011-391, reads as rewritten:

"**SECTION 29.8.(a)** The annual pay of all State employees for the ~~2011-2013 fiscal biennium~~ 2011-2012 fiscal year shall remain unchanged from that authorized on June 30, 2011, or the last date in pay status during the 2010-2011 fiscal year, if earlier, except that an increase may be allowed during the 2011-2012 fiscal year under the following special circumstances:

(1) For all State employees regardless of funding source, and for employees of the North Carolina Community College System and local school boards who are paid from State funds, salaries may be increased for reallocations or promotions, in-range adjustments for job change, career progression adjustments for demonstrated competencies, or any other adjustment related to an increase in job duties or responsibilities, none of which are subject to the salary freeze otherwise provided by this Part. All other salary increases are prohibited.

(1a) For employees of the North Carolina Community College System, notwithstanding subdivision (1) of this subsection, salaries may be increased if the increase is funded from local funding sources.

(2) For The University of North Carolina, (i) faculty using funds from the Faculty Recruiting and Retention Fund, the Distinguished Professors Endowment Fund, or the University Cancer Research Fund in the case of faculty involved in cancer research supported by that fund and (ii) faculty, nonfaculty, and other employee adjustments, including retention adjustments, funded from non-State funding sources.

(3) For employees of the judicial branch, for local supplementation as authorized by G.S. 7A-300.1.

The cumulative salary adjustment allowed under this subsection for the 2011-2012 fiscal year may exceed ten percent (10%) of annual salary only if the adjustment is approved in advance by the Office of State Budget and Management, The University of North Carolina Board of Governors, the Board of the North Carolina Community College System, the Legislative Services Commission, the local board of education, or other authorized body as appropriate.

"**SECTION 29.8.(b)** The automatic salary step increases for assistant and deputy clerks of superior court and magistrates are suspended for the 2011-2013 fiscal biennium.

"**SECTION 29.8.(c)** The salary increase provisions of G.S. 20-187.3 are suspended for the 2011-2013 fiscal biennium.

"**SECTION 29.8.(d)** Notwithstanding G.S. 53-96.1, ~~and except as provided by subdivision (1) of subsection (a) of this section,~~ employees of the Office of the Commissioner of Banks shall not be awarded compensation increases or bonuses during the 2011-2013 fiscal biennium. Employees of the Office of the Commissioner of Banks shall receive an across-the-board salary increase of one and two-tenths percent (1.2%) for the 2012-2013 fiscal year, as provided in section 25.1E of The Current Operations and Capital Improvements Appropriations Act of 2012.

"**SECTION 29.8.(e)** Employees of the Lottery Commission shall not receive compensation bonuses during the 2011-2013 fiscal biennium. Employees of the Lottery Commission shall receive an across-the-board salary increase of one and two-tenths percent (1.2%) for the 2012-2013 fiscal year, as provided in section 25.1E of The Current Operations and Capital Improvements Appropriations Act of 2012.

~~"SECTION 29.8.(f) No employee of any other State agency or constituent institution of The University of North Carolina, excluding employees of the University of North Carolina Health Care System and employees participating in a constituent institution's medical faculty practice plan, shall receive compensation bonuses.~~"

REPEAL OF PROVISIONS RELATED TO COMPENSATION ADJUSTMENT AND PERFORMANCE PAY RESERVE

SECTION 25.2A. Section 29.20A of S.L. 2011-145 is repealed.

MONITOR MOST SALARY INCREASES

SECTION 25.2B. Section 29.19 of S.L. 2011-145 reads as rewritten:

"**SECTION 29.19.(a)** The Office of State Budget and Management and the Office of State Personnel shall monitor jointly ~~the compliance of~~ salary increases awarded by the following units of government ~~with the provisions of Section 29.8 of this act~~ and shall submit quarterly reports of their monitoring activities to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division: (i) State agencies, departments, and institutions, including authorities, boards, and commissions; (ii) the judicial branch; and (iii) The University of North Carolina and its constituent institutions.

The quarterly reports required by this section shall include the following information:

(1) For agencies reporting through the BEACON HR/Payroll system, (i) a breakdown by action type ~~(including~~including, but not limited to, promotion, reallocation, career progression, salary adjustment, range revision, equity and any similar actions increasing employee pay) of the number and annual amount of those increases and (ii) a breakdown by action reason (including in-range higher level, acting pay, trainee adjustment, and other similar action reasons) of the number and annual amount of those action types coded as salary adjustment.

(2) For The University of North Carolina and its constituent institutions, a breakdown of the number and annual amount of those increases categorized by the University as promotions, changes in job duties or responsibilities, Distinguished Professorships, retention pay, career progression, and any other similar actions increasing employee pay.

~~(3) A summary of actions taken by the Office of State Budget and Management and the Office of State Personnel with respect to unauthorized salary increases.~~

"**SECTION 29.19.(b)** The Legislative Services Officer shall report quarterly to the President Pro Tempore of the Senate and the Speaker of the House of Representatives on compliance with this act."

REPEAL COMPREHENSIVE COMPENSATION SYSTEM

SECTION 25.2C.(a) The catch line of G.S. 126-7 reads as rewritten:

"**§ 126-7. ~~Compensation of State employees.~~Annual Compensation Survey.**"

SECTION 25.2C.(b) G.S. 126-7(a), (a2), (b1), (c), and (e) are repealed.

SECTION 25.2C.(c) G.S. 126-7(b) reads as rewritten:

"(b) To guide the Governor and the General Assembly in making ~~appropriations to fund the Comprehensive Compensation System,~~decisions regarding the compensation of State employees, the State Personnel Commission shall conduct annual compensation surveys. The Commission shall present the results of the compensation survey to the Appropriations Committees of the House and Senate no later than two weeks after the convening of the legislature in odd years and May 1st of even years."

SECTION 25.2C.(d) G.S. 20-187.3(a) reads as rewritten:

"(a) The Secretary of Public Safety shall not make or permit to be made any order, rule, or regulation requiring the issuance of any minimum number of traffic citations, or ticket quotas, by any member or members of the State Highway Patrol. Pay and promotions of members of the Highway Patrol shall be based on their overall job performance and not on the basis of the volume of citations issued or arrests made. ~~The provisions of G.S. 126-7 shall not apply to members of the State Highway Patrol.~~ Members of the Highway Patrol ~~shall, however,~~shall be subject to salary classes, ranges and longevity pay for service as are applicable to other State employees generally. Beginning July 1, 1985, and annually thereafter, each member of the Highway Patrol shall be granted a salary increase in an amount corresponding to the increments between steps within the salary range established for the class to which the member's position is assigned by the State Personnel Commission, not to exceed the maximum of each applicable salary range."

COMPREHENSIVE REVIEW FOR REFORM OF PUBLIC EMPLOYEE COMPENSATION PLANS/RECOMMENDATIONS FOR LEGISLATION BY MARCH 1, 2013

SECTION 25.2D. Section 29.20 of S.L. 2011-145 reads as rewritten:

"**SECTION 29.20.(a)** It is the intent of the General Assembly to create and implement a modernized, fair, and fully functional performance-based compensation system for employees

of State agencies, departments, ~~institutions,~~and institutions and for employees of The University of North Carolina ~~System, the North Carolina Community College System, and local education agencies.~~System who are subject to the State Personnel Act. To that end, the Legislative Services Commission, jointly through the Fiscal Research and Program Evaluation Divisions, is directed to commission a review and study of the current compensation plans of State agencies, departments, ~~institutions,~~ and institutions and employees of The University of North Carolina ~~System, the North Carolina Community College System, and local education agencies~~System who are subject to the State Personnel Act (government sectors). The Legislative Services Commission may use a Request for Information process or a Request for Proposals process to contract with a qualified consulting firm to perform this review and study. The study, at minimum, shall include all of the following:

(1) A labor market analysis of pay, fringe benefits, classification, and banding plans of government sector employees to determine whether current employees are compensated appropriately relative to market rates for similar positions as compared to (i) other North Carolina public employees, (ii) similar positions and employees in other states, and (iii) where applicable, employees in private industry.

(2) An analysis of current performance-based compensation plans in use by the North Carolina Banking ~~Commission,~~Commission and the University of North Carolina Health Care ~~System, and the performance-based compensation system proposed by Charlotte/Mecklenburg County Schools.~~System. This analysis should include an assessment of the effectiveness of these performance-based plans and should include identification of best practices.

(3) An evaluation of current longevity pay as applicable to most government sector employees and recommendations as to whether longevity pay should be continued for new hires.

(4) An evaluation of current laws and policies related to "career status" for employees subject to the State Personnel ~~Act and tenure for public school teachers and university professors. For public school teachers, the evaluation of tenure shall include its relationship with student performance, if any.~~ Act. This evaluation should also include recommendations as to whether these laws and policies should be continued or modified based upon human resource best practices.

~~(5) An evaluation of salary supplements for public school employees paid on account of master's degrees, attainment of other advanced degrees, and national board certification, including the relationship to student performance, if any. This evaluation should also include recommendations as to whether these salary supplements should be continued or modified based upon the effect on student performance, if any, and human resource best practices.~~

(6) An evaluation of the State Personnel Act, including recommendations as to whether these laws and policies should be continued or modified based upon human resource best practices.

(7) An analysis of the effect of in-State regional variables on employee compensation and recommendations as to how those variables should be addressed in the future.

(8) Recommendations of how to evaluate and compare the value of employee fringe benefits.

(9) Recommendations, timetable, and design of a comprehensive performance-based compensation plan across all government sectors for implementation by the General Assembly. Recommendations must include the design of an effective employee performance evaluation system, including the identification of effective employee performance measures and information systems (including estimated costs) to track and monitor employee performance.

(10) Training recommendations for supervisors and managers regarding employee productivity and performance evaluation.

(11) Recommendations to assure equity of compensation among public employees across government sectors.

(12) Feasibility of a consensus forecasting group to make annual recommendations for compensation policy across all government sectors. These recommendations should include how to establish and maintain priorities for General Fund appropriations necessary to fund the performance-based compensation system while remaining affordable for the State and its taxpayers.

"**SECTION 29.20.(b)** In the event that the Legislative Services Commission contracts with a qualified consulting firm to perform the review and study, the consultant shall report its progress to the Fiscal Research and Program Evaluation Divisions every 90 days.

"**SECTION 29.20.(c)** By ~~May 1, 2012,~~ March 1, 2013, the Fiscal Research and Program Evaluation Divisions, or at their direction by the consultant hired to perform the review and study, shall report all findings and any other final results of the study, including recommendations and legislative proposals, to the ~~2012 Regular Session of the 2011~~2013 General Assembly.

"**SECTION 29.20.(d)** All State agencies, departments, ~~institutions,~~and institutions, and The University of North Carolina ~~System, the North Carolina Community College System, and local education agencies~~ System shall provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them to the Fiscal Research and Program Evaluation Divisions and/or the consultant necessary to complete this review and study.

"**SECTION 29.20.(e)** The State Personnel Director, the State Budget Director, the State Controller, and the State Treasurer shall dedicate and identify staff for technical assistance, as needed, to aid in the reviews required by this section."

UNIVERSITY FACULTY RECRUITING AND RETENTION FUND

SECTION 25.3. The Faculty Recruiting and Retention Fund under the Office of the President of The University of North Carolina is reestablished for the 2012-2013 fiscal year. Allocations from the fund shall be made for salary increases at the discretion of the President of The University of North Carolina only for the purpose of recruiting and retaining faculty members as necessary at constituent institutions.

TEACHER SALARY SCHEDULES

SECTION 25.6.(a) The following monthly salary schedules shall apply for the 2012-2013 fiscal year to certified personnel of the public schools who are classified as teachers. The schedules contain 36 steps, with each step corresponding to one year of teaching experience. Public school employees paid according to this salary schedule and receiving NBPTS certification or obtaining a master's degree shall not be prohibited from receiving the appropriate increase in salary. Provided, however, teachers employed during the 2011-2012 school year who did not work the required number of months to acquire an additional year of experience shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2012-2013 Monthly Salary Schedule

Years of Experience	"A" Teachers	NBPTS Certification
	"A" Teachers	
0	$3,043	N/A
1	$3,043	N/A
2	$3,043	N/A
3	$3,043	$3,408
4	$3,043	$3,408
5	$3,085	$3,455
6	$3,129	$3,504
7	$3,264	$3,656
8	$3,404	$3,812
9	$3,538	$3,963
10	$3,667	$4,107
11	$3,771	$4,224

12	$3,819	$4,277
13	$3,868	$4,332
14	$3,918	$4,388
15	$3,967	$4,443
16	$4,018	$4,500
17	$4,069	$4,557
18	$4,122	$4,617
19	$4,176	$4,677
20	$4,231	$4,739
21	$4,286	$4,800
22	$4,345	$4,866
23	$4,403	$4,931
24	$4,461	$4,996
25	$4,523	$5,066
26	$4,584	$5,134
27	$4,650	$5,208
28	$4,714	$5,280
29	$4,779	$5,352
30	$4,845	$5,426
31	$4,913	$5,503
32	$4,984	$5,582
33	$5,055	$5,662
34	$5,153	$5,771
35+	$5,255	$5,886

2012-2013 Monthly Salary Schedule
"M" Teachers

Years of Experience	"M" Teachers	NBPTS Certification
0	$3,347	N/A
1	$3,347	N/A
2	$3,347	N/A
3	$3,347	$3,749
4	$3,347	$3,749
5	$3,394	$3,801
6	$3,442	$3,855
7	$3,590	$4,021
8	$3,744	$4,193
9	$3,892	$4,359
10	$4,034	$4,518
11	$4,148	$4,646
12	$4,201	$4,705
13	$4,255	$4,766
14	$4,310	$4,827
15	$4,364	$4,888
16	$4,420	$4,950
17	$4,476	$5,013
18	$4,534	$5,078
19	$4,594	$5,145
20	$4,654	$5,212
21	$4,715	$5,281
22	$4,780	$5,354
23	$4,843	$5,424
24	$4,907	$5,496
25	$4,975	$5,572
26	$5,042	$5,647
27	$5,115	$5,729
28	$5,185	$5,807
29	$5,257	$5,888
30	$5,330	$5,970

31	$5,404	$6,052
32	$5,482	$6,140
33	$5,561	$6,228
34	$5,668	$6,348
35+	$5,781	$6,475

SECTION 25.6.(b) Section 29.12(d) of S.L. 2011-145 reads as rewritten:

"**SECTION 29.12.(d)** The first step of the salary schedule for school psychologists shall be equivalent to ~~Step 5,~~ Step 9, corresponding to ~~five~~ nine years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified psychologists."

SCHOOL-BASED ADMINISTRATOR SALARY SCHEDULE

SECTION 25.7.(a) The following base salary schedule for school-based administrators shall apply only to principals and assistant principals. This base salary schedule shall apply for the 2012-2013 fiscal year, commencing July 1, 2012. Provided, however, school-based administrators (i) employed during the 2011-2012 school year who did not work the required number of months to acquire an additional year of experience and (ii) employed during the 2012-2013 school year in the same classification shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2012-2013 Principal and Assistant Principal Salary Schedules

	Classification				
Years of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-8	$3,781	-	-	-	-
9	$3,931	-	-	-	-
10	$4,074	-	-	-	-
11	$4,189	-	-	-	-
12	$4,243	$4,243	-	-	-
13	$4,298	$4,298	-	-	-
14	$4,353	$4,353	$4,408	-	-
15	$4,408	$4,408	$4,464	-	-
16	$4,464	$4,464	$4,521	$4,579	-
17	$4,521	$4,521	$4,579	$4,640	$4,701
18	$4,579	$4,579	$4,640	$4,701	$4,762
19	$4,640	$4,640	$4,701	$4,762	$4,828
20	$4,701	$4,701	$4,762	$4,828	$4,891
21	$4,762	$4,762	$4,828	$4,891	$4,956
22	$4,828	$4,828	$4,891	$4,956	$5,025
23	$4,891	$4,891	$4,956	$5,025	$5,092
24	$4,956	$4,956	$5,025	$5,092	$5,166
25	$5,025	$5,025	$5,092	$5,166	$5,237
26	$5,092	$5,092	$5,166	$5,237	$5,310
27	$5,166	$5,166	$5,237	$5,310	$5,383
28	$5,237	$5,237	$5,310	$5,383	$5,458
29	$5,310	$5,310	$5,383	$5,458	$5,537
30	$5,383	$5,383	$5,458	$5,537	$5,617
31	$5,458	$5,458	$5,537	$5,617	$5,725
32	$5,537	$5,537	$5,617	$5,725	$5,839
33	$5,617	$5,617	$5,725	$5,839	$5,956
34	$5,725	$5,725	$5,839	$5,956	$6,075

35	$5,839	$5,839	$5,956	$6,075	$6,197
36	-	$5,956	$6,075	$6,197	$6,321
37	-	-	$6,197	$6,321	$6,447
38	-	-	$6,321	$6,447	$6,576
39	-	-	-	$6,576	$6,708
40	-	-	-	$6,708	$6,842
41	-	-	-	-	$6,979

2012-2013 Principal and Assistant Principal Salary Schedules

	Classification			
Years of Exp	Prin V (44-54)	Prin VI (55-65)	Prin VII (66-100)	Prin VIII (101+)
0-18	$4,828	-	-	-
19	$4,891	-	-	-
20	$4,956	$5,025	-	-
21	$5,025	$5,092	$5,237	-
22	$5,092	$5,166	$5,310	$5,383
23	$5,166	$5,237	$5,383	$5,458
24	$5,237	$5,310	$5,458	$5,537
25	$5,310	$5,383	$5,537	$5,617
26	$5,383	$5,458	$5,617	$5,725
27	$5,458	$5,537	$5,725	$5,839
28	$5,537	$5,617	$5,839	$5,956
29	$5,617	$5,725	$5,956	$6,075
30	$5,725	$5,839	$6,075	$6,197
31	$5,839	$5,956	$6,197	$6,321
32	$5,956	$6,075	$6,321	$6,447
33	$6,075	$6,197	$6,447	$6,576
34	$6,197	$6,321	$6,576	$6,708
35	$6,321	$6,447	$6,708	$6,842
36	$6,447	$6,576	$6,842	$6,979
37	$6,576	$6,708	$6,979	$7,119
38	$6,708	$6,842	$7,119	$7,261
39	$6,842	$6,979	$7,261	$7,406
40	$6,979	$7,119	$7,406	$7,554
41	$7,119	$7,261	$7,554	$7,705
42	$7,261	$7,406	$7,705	$7,859
43	-	$7,554	$7,859	$8,016
44	-	$7,705	$8,016	$8,176
45	-	-	$8,176	$8,340

SECTION 25.7.(b) G.S. 29.13(h) of S.L. 2011-145 reads as rewritten:

"**SECTION 29.13.(h)** During the 2011-2012 fiscal ~~year,~~year and the 2012-2013 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher."

FUNDS FOR PERSONNEL FLEXIBILITY IN THE LEAS

SECTION 25.7A.(a) Effective July 1, 2012, the Director of the Budget shall transfer from the Reserve for Compensation Increases and Personnel Flexibility to the State Board of Education the sum of eighty-four million nine hundred sixty-four thousand one hundred forty-two dollars ($84,964,142) for the 2012-2013 fiscal year.

The State Board of Education shall allocate these funds to local school administrative units on the basis of average daily membership.

SECTION 25.7A.(b) Local school administrative units may use these funds to do one or more of the following: (i) award compensation increases to employees, including, but not limited to, merit increases, across-the-board increases, recruitment and retention bonuses, and other bonuses, pursuant to local personnel policies; (ii) offset the LEA flexibility adjustment; or (iii) employ personnel.

SECTION 25.7A.(c) No compensation increase awarded pursuant to this section shall be construed to modify an employee's placement on a State salary schedule.

SECTION 25.7A.(d) Local school administrative units shall report to the State Board of Education on the use of these funds. The State Board of Education shall make preliminary reports on the use of these funds by local school administrative units to the General Assembly on October 1, 2012, and March 1, 2013, and shall make a final report on September 1, 2013.

EXEMPT POSITIONS

SECTION 25.7B.(a) G.S. 126-5(d) reads as rewritten:

"(d) (1) Exempt Positions in Cabinet Department. – ~~The~~ Subject to the provisions of this Chapter, which is known as the State Personnel Act, the Governor may designate a total of ~~100~~1,000 exempt ~~policymaking~~ positions throughout the following departments:

a. Department of Administration;
b. Department of Commerce;
~~c. Division of Adult Correction of the Department of Public Safety;~~
d. Department of Public Safety;
e. Department of Cultural Resources;
f. Department of Health and Human Services;
g. Department of Environment and Natural Resources;
h. Department of Revenue;
i. Department of ~~Transportation; and~~ Transportation.
~~j. Division of Juvenile Justice of the Department of Public Safety.~~

~~The Governor may designate exempt managerial positions in a number up to one percent (1%) of the total number of full-time positions in each cabinet department listed above in this sub-subdivision, not to exceed 30 positions in each department. Notwithstanding the provisions of this subdivision, or the other requirements of this subsection, the Governor may at any time increase by five the number of exempt policymaking positions at the Department of Health and Human Services, but at no time shall the total number of exempt policymaking positions exceed 105. The Governor shall notify the General Assembly and the State Personnel Director of the additional positions designated hereunder.~~

(2) Exempt Positions in Council of State Departments and Offices. – The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. The State Board of Education may designate exempt positions in the Department of Public Instruction. The number of exempt policymaking positions in each department headed by an elected department head listed above in this sub-subdivision shall be limited to 20 exempt policymaking positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to 20 positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater.

(2a) Designation of Additional Positions. – The Governor, elected department head, or State Board of Education may request that additional positions be designated as exempt. The request shall be made by sending a list of exempt positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional positions to be designated as exempt positions. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the positions shall be designated as exempt positions. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or

reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt positions; the policymaking positions shall not be designated as exempt during the interim.

(3) Letter. – These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by ~~May 1~~ July 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.

(4) Vacancies. – In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within ~~120~~180 days after the oath of office is administered to that person. In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within ~~120~~ 180 days after the oath of office is administered to the Governor.

(5) Creation, Transfer, or Reorganization. – The Governor, elected department head, or State Board of Education may designate as exempt a position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after ~~May 1~~ July 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within ~~120~~180 days after such position is created, transferred, or in which reorganization has occurred.

(6) Reversal. – Subsequent to the designation of a position as an exempt position as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the Governor, by an elected department head, or by the State Board of Education in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(7) Hearing Officers. – Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision."

SECTION 25.7B.(b) This section becomes effective January 1, 2013.

SALARY-RELATED CONTRIBUTIONS

SECTION 25.10. Section 29.22(d) of S.L. 2011-145 reads as rewritten:

"**SECTION 29.22.(d)** Effective July 1, 2012, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2012-2013 fiscal year are: (i) ~~fourteen and thirty-one hundredths percent (14.31%)~~fourteen and twenty-three hundredths percent (14.23%) – Teachers and State Employees; (ii) ~~nineteen and thirty-one hundredths percent (19.31%)~~nineteen and twenty-three hundredths percent (19.23%) – State Law Enforcement Officers; (iii) ~~twelve and sixty-six hundredths percent (12.66%)~~ twelve and fifty-eight hundredths percent (12.58%) – University Employees' Optional Retirement System; (iv) ~~twelve and sixty-six hundredths percent (12.66%)~~twelve and fifty-eight hundredths percent (12.58%) – Community College Optional Retirement Program; (v) ~~thirty-one and seventy hundredths percent (31.70%)~~thirty-one and eighty-five hundredths percent (31.85%) – Consolidated Judicial Retirement System; and (vi) five and thirty hundredths percent (5.30%) – Legislative Retirement System. Each of the foregoing contribution rates includes five and thirty hundredths percent (5.30%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers,

Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes ~~fifty-two hundredths percent (0.52%)~~forty-four hundredths percent (0.44%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income."

EXPAND OPTIONAL RETIREMENT PROGRAM FOR UNIVERSITY OF NORTH CAROLINA SYSTEM

SECTION 25.12. G.S. 135-5.1(a) reads as rewritten:

"(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of participants in the Program. Participation in the Optional Retirement Program shall be limited to University personnel who are eligible for membership in the Teachers' and State Employees' Retirement Program and who are:

(1) Administrators and faculty of The University of North Carolina with the rank of instructor or above;

(2) The President and employees of The University of North Carolina who are appointed by the Board of Governors on recommendation of the President pursuant to G.S. 116-11(4), 116-11(5), and 116-14 or who are appointed by the Board of Trustees of a constituent institution of The University of North Carolina upon the recommendation of the Chancellor pursuant to G.S. 116-40.22(b);

(3) Nonfaculty instructional and research staff who are exempt from the State Personnel Act, as defined by the provisions of G.S. 126-5(c1)(8), and the faculty of the North Carolina School of Science and Mathematics; and

(4) Field faculty of the Cooperative Agriculture Extension Service, and tenure track faculty in North Carolina State University agriculture research programs who are exempt from the State Personnel Act and who are eligible for membership in the Teachers' and State Employees' Retirement System pursuant to G.S. 135-3(1), who in any of the cases described in this subsection (i) had been members of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have sought membership as required in subsection (b), below. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of such contracts or deposited in such trust on the participant's behalf.

(5) Employees of The University of North Carolina Health Care System, subject to rules for eligibility and participation as may be adopted by the Board of Governors in the Optional Retirement Program plan document.

(6) Employees hired on or after January 1, 2013."

PROVIDE COST-OF-LIVING INCREASES FOR RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE JUDICIAL RETIREMENT SYSTEM, AND THE LEGISLATIVE RETIREMENT SYSTEM

SECTION 25.13.(a) G.S. 135-5 is amended by adding a new subsection to read:

"(sss) From and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2011, shall be increased by one percent (1%) of the allowance payable on June 1, 2012, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2011, but before June 30, 2012, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2011, and June 30, 2012."

SECTION 25.13.(b) G.S. 135-65 is amended by adding a new subsection to read:

"(dd) From and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2011, shall be increased by one

percent (1%) of the allowance payable on June 1, 2012. Furthermore, from and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2011, but before June 30, 2012, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2011, and June 30, 2012."

SECTION 25.13.(c) G.S. 120-4.22A is amended by adding a new subsection to read:

"(x) In accordance with subsection (a) of this section, from and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2012, shall be increased by one percent (1%) of the allowance payable on June 1, 2012. Furthermore, from and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2012, but before June 30, 2012, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2012, and June 30, 2012."

PART XXVI. CAPITAL APPROPRIATIONS

CAPITAL APPROPRIATIONS/GENERAL FUND

SECTION 26.1. There is appropriated from the General Fund for the 2012-2013 fiscal year the following amounts for capital improvements:

Capital Improvements – General Fund	**2012-2013**
Department of Environment and Natural Resources	
Water Resources Development Projects	$ 5,000,000
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	**$ 5,000,000**

WATER RESOURCES DEVELOPMENT PROJECTS

SECTION 26.2.(a) The Department of Environment and Natural Resources shall allocate funds for water resources projects in accordance with the schedule that follows. The amounts set forth in the schedule include funds appropriated in this act for water resources projects and funds carried forward from previous fiscal years in accordance with subsection (b) of this section. These funds will provide a State match for an estimated eighty-six million three hundred ninety thousand dollars ($86,390,000) in federal funds.

	Name of Project	**2012-2013**
(1)	B. Everett Jordan Lake Water Supply Storage	$200,000
(2)	Wilmington Harbor Maintenance	1,200,000
(3)	Morehead City Harbor Maintenance	–
(4)	Wilmington Harbor Deepening	6,000,000
(5)	2012 Corps Long Term MOA for Dredging	3,350,000
(6)	Carolina Beach Renourishment Project	1,184,000
(7)	Wilmington Harbor Improvements Feasibility	500,000
(8)	John H. Kerr Dam and Reservoir Sec. 216	200,000
(9)	Aquatic Plant Control, Statewide and Lake Gaston	200,000
(10)	State-Local Projects	593,000
(11)	Catawba Water Management Group Study	100,000
TOTALS		**$ 13,527,000**

SECTION 26.2.(b) It is the intent of the General Assembly that funds carried forward from previous fiscal years be used to supplement the five million dollars ($5,000,000) appropriated for water resources development projects in Section 26.1 of this act. Therefore, the following funds carried forward from previous fiscal years shall be used for the following projects:

	Name of Project	Amount Carried Forward
(1)	B. Everett Jordan Lake Water Supply Storage	$ 200,000
(2)	Wilmington Harbor Maintenance	1,200,000
(3)	2012 Corps MOA for Shallow Draft Inlet Dredging	3,350,000
(4)	Wilmington Harbor Deepening	3,000,000
(5)	Wilmington Harbor Improvements Feasibility	250,000
(6)	State-Local Projects	527,000
TOTALS		**$ 8,527,000**

SECTION 26.2.(c) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 2012-2013 fiscal year, or if the projects funded under subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

(1) U.S. Army Corps of Engineers project feasibility studies.
(2) U.S. Army Corps of Engineers projects whose schedules have advanced and require State-matching funds in the 2012-2013 fiscal year.
(3) State-local water resources development projects.

Funds subject to this subsection that are not expended or encumbered for the purposes set forth in subdivisions (1) through (3) of this subsection shall revert to the General Fund at the end of the 2013-2014 fiscal year.

SECTION 26.2.(d) The Department shall make semiannual reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the General Assembly, and the Office of State Budget and Management. Each report shall include all of the following:

(1) All projects listed in this section.
(2) The estimated cost of each project.
(3) The date that work on each project began or is expected to begin.
(4) The date that work on each project was completed or is expected to be completed.
(5) The actual cost of each project.

The semiannual reports also shall show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

SECTION 26.2.(e) Notwithstanding any provision of law to the contrary, funds appropriated for a water resources development project shall be used to provide no more than fifty percent (50%) of the nonfederal portion of funds for the project. This subsection applies to funds appropriated in this act and to funds appropriated prior to the 2011-2013 fiscal biennium that are unencumbered and proposed for reallocation to provide the nonfederal portion of funds for water resources development projects. The limitation on fund usage contained in this subsection applies only to projects in which a local government or local governments participate.

SECTION 26.2.(f) The 2012 Long Term Dredging Memorandum of Agreement with the U.S. Army Corps of Engineers authorized by this section shall provide for all of the following:

(1) Prioritization of projects through joint consultation with the State, applicable units of local government, and the U.S. Army Corps of Engineers.
(2) Adherence to the requirements of subsection (e) of this section.
(3) Annual reporting by the Department on the use of funds provided to the U.S. Army Corps of Engineers under the 2012 Long Term Dredging Memorandum of Agreement. These reports shall be made to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the General Assembly, and the Office of State Budget and Management and shall include all of the following:
   a. A list of all projects commenced.

b. The estimated cost of each project.
c. The date that work on each project commenced or is expected to commence.
d. The date that work on each project was completed or is expected to be completed.
e. The actual cost of each project.

REPAIRS AND RENOVATIONS RESERVE ALLOCATION

SECTION 26.4.(a) Of the funds in the Reserve for Repairs and Renovations for the 2012-2013 fiscal year, the following allocations shall be made to the following agencies for repairs and renovations pursuant to G.S. 143C-4-3:

(1) Fifty-four percent (54%) shall be allocated to the Board of Governors of The University of North Carolina.
(2) Forty-six percent (46%) shall be allocated to the Office of State Budget and Management.

The Office of State Budget and Management shall consult with or report to the Joint Legislative Commission on Governmental Operations, as appropriate, in accordance with G.S. 143C-4-3(e). The Board of Governors shall report to the Joint Legislative Commission on Governmental Operations in accordance with G.S. 143C-4-3(d).

SECTION 26.4.(b) Notwithstanding G.S. 143C-4-3(d), of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for the installation of fire sprinklers in university residence halls. This portion shall be in addition to funds otherwise appropriated in this act for the same purpose. Such funds shall be allocated among the university's constituent institutions by the President of The University of North Carolina, who shall consider the following factors when allocating those funds:

(1) The safety and well-being of the residents of campus housing programs.
(2) The current level of housing rents charged to students and how that compares to an institution's public peers and other UNC institutions.
(3) The level of previous authorizations to constituent institutions for the construction or renovation of residence halls funded from the General Fund, or from bonds or certificates of participation supported by the General Fund, since 1996.
(4) The financial status of each constituent institution's housing system, including debt capacity, debt coverage ratios, credit rankings, required reserves, the planned use of cash balances for other housing system improvements, and the constituent institution's ability to pay for the installation of fire sprinklers in all residence halls.
(5) The total cost of each proposed project, including the cost of installing fire sprinklers and the cost of other construction, such as asbestos removal and additional water supply needs.

The Board of Governors shall submit progress reports to the Joint Legislative Commission on Governmental Operations. Reports shall include the status of completed, current; and planned projects. Reports also shall include information on the financial status of each constituent institution's housing system, the constituent institution's ability to pay for fire protection in residence halls, and the timing of installation of fire sprinklers. Reports shall be submitted on January 1 and July 1 until all residence halls have fire sprinklers.

SECTION 26.4.(c) Notwithstanding G.S. 143C-4-3(d), of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for campus public safety improvements allowable under G.S. 143C-4-3(b).

REPORTING ON CAPITAL PROJECTS

SECTION 26.5.(a) Definitions. – The following definitions apply in this section:

(1) Capital project. – Any capital improvement, as that term is defined in G.S. 143C-1-1, that is not complete by the effective date of this section and that is funded in whole or in part with either State funds or statutorily or constitutionally authorized indebtedness of any kind. This term includes only

projects with a total cost of one hundred thousand dollars ($100,000) or more.

(2) Construction phase. – The status of a particular capital project as described using the terms customarily employed in the design and construction industries.

(3) New capital project. – A capital project that is authorized in this act or subsequent to the effective date of this act.

SECTION 26.5.(b) Reporting. – The following reports are required:

(1) By October 1, 2012, and every six months thereafter, each State agency shall report on the status of agency capital projects to the Joint Legislative Commission on Governmental Operations and to the Joint Legislative Oversight Committee on Capital Improvements.

(2) By October 1, 2012, and quarterly thereafter, each State agency shall report on the status of agency capital projects to the Fiscal Research Division of the General Assembly and to the Office of State Budget and Management.

SECTION 26.5.(c) The reports required by this section shall include at least the following information about every agency capital project:

(1) The current construction phase of the project.

(2) The anticipated timeline from the current construction phase to project completion.

(3) Information about expenditures that have been made in connection with the project, regardless of source of the funds expended.

(4) Information about the adequacy of funding to complete the project, including estimates of how final expenditures will relate to initial estimates of expenditures, and whether or not scope reductions will be necessary in order to complete the project within its budget.

(5) For new capital projects only, an estimate of the operating costs for the project for the first five fiscal years of its operation.

UNCW SOCIAL AND BEHAVIORAL SCIENCES BUILDING

SECTION 26.6. Section 29.13(a) of S.L. 2007-323, as amended by Section 27.8(d) of S.L. 2008-107 and Section 2(b) of S.L. 2009-209, reads as rewritten:

"**SECTION 29.13.(a)** The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the projects described in this subsection. In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness:

...

(9) In the maximum aggregate principal amount of thirty-two million eight hundred ninety-nine thousand six hundred ninety-nine dollars ($32,899,699) to finance the capital facility costs of completing a new teaching laboratory at the University of North Carolina at Wilmington <u>and of renovating the Social and Behavioral Science Building at the University of North Carolina at Wilmington</u>. No more than a maximum aggregate amount of two million five hundred thousand dollars ($2,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of eight million six hundred thirty-one thousand two hundred fifty dollars ($8,631,250) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

...."

TRANSFER FOR PLANT CONSERVATION PROGRAM

SECTION 26.9. From funds deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services pursuant to G.S. 146-30, the sum of thirty thousand dollars ($30,000) for the 2012-2013 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be used, notwithstanding G.S. 146-30, by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of

land, such as land appraisals, land surveys, title searches, and environmental studies, and for the management of the plant conservation program preserves owned by the Department.

AUTHORIZE UNC CARRYFORWARD FUNDS TO BE USED FOR CAPITAL PROJECTS

SECTION 26.10. G.S. 143C-8-12 reads as rewritten:

"**§ 143C-8-12. University system capital improvement projects from sources that are not General Fund sources: approval of new project or change in scope of existing project.**

Notwithstanding any other provision of this Chapter, the Board of Governors of The University of North Carolina may approve: (i) expenditures to plan a capital improvement project of The University of North Carolina the planning for which is to be funded entirely with non-General Fund money, (ii) expenditures for a capital improvement project of The University of North Carolina that is to be funded and operated entirely with non-General Fund money, or (iii) a change in the scope of any previously approved capital improvement project of The University of North Carolina provided that both the project and change in scope are funded entirely with non-General Fund money. For purposes of this section, the term "non-General Fund money" includes funds carried forward from one fiscal year to another pursuant to G.S. 116-30.3. The Board of Governors shall report any expenditure made pursuant to this section to the Office of State Budget and Management and to the Joint Legislative Commission on Governmental Operations."

OSBM ALLOCATION OF REPAIRS AND RENOVATIONS FUNDS

SECTION 26.11. G.S. 143C-4-3 is amended by adding a new subsection to read:

"(e) Office of State Budget and Management May Allocate Funds to Particular Projects. – Any funds in the Reserve for Repairs and Renovations that are allocated to the Office of State Budget and Management may be allocated or reallocated by the State Budget Office for repairs and renovations projects so long as any project that receives an allocation or reallocation satisfies the requirements of subsection (b) of this section. The Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation of these funds. The State Budget Office shall report to the Joint Legislative Commission on Governmental Operations on the reallocation of funds pursuant to this section within 60 days of any reallocation under this subsection."

PART XXVII. MISCELLANEOUS PROVISIONS

STATE BUDGET ACT APPLIES

SECTION 27.1. The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

COMMITTEE REPORT

SECTION 27.2.(a) The Senate Base Budget/Appropriations Committee Report on the Continuation, Expansion and Capital Budgets dated June 12, 2012, which was distributed in the Senate and used to explain this act, shall indicate action by the General Assembly on this act and shall, therefore, be used to construe this act, as provided in the State Budget Act, Chapter 143C of the General Statutes, as appropriate, and for these purposes shall be considered a part of this act and, as such, shall be printed as a part of the Session Laws.

SECTION 27.2.(b) The budget enacted by the General Assembly is for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2012-2013 budget as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget submitted recommended adjustments to the budget to the General Assembly in May 2012 in the document "Investing in Our Future/Recommended Adjustments 2012-2013 North Carolina State Budget" for the 2012-2013 fiscal year for the various departments, institutions, and other spending agencies of the State. The adjustments to these documents made by the General Assembly are set out in the Committee Report.

SECTION 27.2.(c) The budget enacted by the General Assembly shall also be interpreted in accordance with G.S. 143C-5-5, the special provisions in this act, and other appropriate legislation.

In the event that there is a conflict between the line-item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

REPORT BY FISCAL RESEARCH DIVISION ON CHANGES TO 2012-2013 BUDGET/PUBLICATION

SECTION 27.3.(a) The Fiscal Research Division of the Legislative Services Commission shall issue a report on budget actions taken by the 2011 Regular Session of the General Assembly in 2012. The report shall be in the form of a revision of the Committee Report adopted for House Bill 950 pursuant to G.S. 143C-5-5, and shall include all modifications made to the 2012-2013 budget prior to sine die adjournment of the 2011 Regular Session.

SECTION 27.3.(b) The report issued pursuant to this section, and the Committee Report issued pursuant to G.S. 143C-5-5, shall be construed together with this act in determining the intent of the General Assembly.

SECTION 27.3.(c) The Director of the Fiscal Research Division of the Legislative Services Commission shall send a copy of the report issued pursuant to this section to the Director of the Budget. The report shall be published on the General Assembly's Internet Web site for public access.

MOST TEXT APPLIES ONLY TO THE 2012-2013 FISCAL YEAR

SECTION 27.4. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2012-2013 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2012-2013 fiscal year.

EFFECT OF HEADINGS

SECTION 27.5. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a part.

APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

SECTION 27.6.(a) Except where expressly repealed or amended by this act, the provisions of S.L. 2011-145, S.L. 2011-315, S.L. 2011-373, S.L. 2011-391, S.L. 2011-419, and S.L. 2012-2 remain in effect.

SECTION 27.6.(b) Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 2012-2013 fiscal year in S.L. 2011-145, S.L. 2011-315, S.L. 2011-373, S.L. 2011-391, S.L. 2011-419, and S.L. 2012-2 that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations and budget reductions of this act for those same particular purposes.

SEVERABILITY

SECTION 27.7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 27.8. Except as otherwise provided, this act becomes effective July 1, 2012.

SENATE APPROPRIATIONS/BASE BUDGET COMMITTEE

REPORT
ON THE
CONTINUATION, EXPANSION
AND
CAPITAL BUDGETS

House Bill 950

Proposed Senate Committee Substitute

June 12th, 2012

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	General Fund Availability Statement	FY 2012-13
1	Unappropriated Balance Remaining	41,232,325
2	Anticipated Overcollections from FY 2011-12	232,500,000
3	Anticipated Reversions for FY 2011-12	205,500,000
4	Net Supplemental Medicaid Appropriation (S.L. 2012-2; SB 797)	(154,000,000)
5	Less Earmarkings of Year End Fund Balance	
6	Savings Reserve Account	(139,339,925)
7	Repairs and Renovations Reserve Account	(39,339,925)
8	**Beginning Unreserved Fund Balance**	**146,552,475**
9		
10	**Revenue Based on Existing Tax Structure**	**18,931,200,000**
11		
12	**Non-tax Revenue**	
13	Investment Income	21,600,000
14	Judicial Fees	258,700,000
15	Disproportionate Share	115,000,000
16	Insurance	73,700,000
17	Other Non-tax Revenues	304,400,000
18	Highway Trust Fund Transfer	27,600,000
19	Highway Fund Transfer	212,280,000
20	Total - Non-Tax Revenues	**1,013,280,000**
21		
22	**Subtotal General Fund Availability**	**20,091,032,475**
23		
24	**Adjustments to Availability: 2012 Session**	
25	E-Commerce Reserve Cash Balance	2,470,642
26	One North Carolina Fund Cash Balance	50,000,000
27	Sale of State Assets Receipt	(25,000,000)
28	Information Technology Internal Service Fund Cash Balance	14,000,000
29	National Mortgage Settlement	9,610,000
30	Highway Fund Transfer - Technical Adjustment	8,000,000
31	Work Opportunity Tax Credit Extension	(800,000)
32		
33	**Subtotal Adjustments to Availability:**	**58,280,642**
34		
35	**Revised Total General Fund Availability**	**20,149,313,117**
36	**Less General Fund Appropriations**	**20,149,313,117**
37		
38	**Balance Remaining**	**0**

SUMMARY:

GENERAL FUND APPROPRIATIONS

SUMMARY OF GENERAL FUND APPROPRIATIONS Fiscal Year 2012-13						
		Legislative Adjustments				Revised
	2011 Approved Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2012-13
Education						
Community Colleges	985,000,000	(4,177,523)	0	(4,177,523)	0.00	980,822,477
Public Education	7,444,122,100	34,142,118	0	34,142,118	0.00	7,478,264,218
University System	2,551,672,698	29,756,254	(5,710,783)	24,045,471	244.90	2,575,718,169
Total Education	**10,980,794,798**	**59,720,849**	**(5,710,783)**	**54,010,066**	**244.90**	**11,034,804,864**
Health and Human Services						
Central Management and Support	44,577,987	(28,697,345)	0	(28,697,345)	0.00	15,880,642
Aging and Adult Services	37,019,667	10,300,000	25,000,000	35,300,000	0.00	72,319,667
Blind and Deaf / Hard of Hearing Services	8,372,886	0	0	0	0.00	8,372,886
Child Development	266,102,933	0	(10,000,000)	(10,000,000)	0.00	256,102,933
Health Service Regulation	16,133,031	0	0	0	0.00	16,133,031
Medical Assistance	2,907,276,302	176,668,118	52,906,924	229,575,042	0.00	3,136,851,344
Mental Health, Dev. Disabilities and Sub. Abuse	710,712,232	3,472,954	(227,000)	3,245,954	373.10	713,958,186
NC Health Choice	83,717,865	0	0	0	0.00	83,717,865
Public Health	157,538,834	5,077,450	0	5,077,450	53.05	162,616,284
Social Services	186,183,068	0	0	0	0.00	186,183,068
Vocational Rehabilitation	37,528,128	0	0	0	0.00	37,528,128
Total Health and Human Services	**4,455,162,933**	**166,821,177**	**67,679,924**	**234,501,101**	**426.15**	**4,689,664,034**
Justice and Public Safety						
Public Safety	1,694,715,876	(30,437,508)	(5,000,000)	(35,437,508)	14.92	1,659,278,368
Judicial Department	435,141,107	(4,279,349)	0	(4,279,349)	44.00	430,861,758
Judicial - Indigent Defense	112,748,733	0	0	0	0.00	112,748,733
Justice	80,864,138	(3,375,063)	(3,000,000)	(6,375,063)	(17.00)	74,489,075
Total Justice and Public Safety	**2,323,469,854**	**(38,091,920)**	**(8,000,000)**	**(46,091,920)**	**41.92**	**2,277,377,934**

SUMMARY OF GENERAL FUND APPROPRIATIONS Fiscal Year 2012-13						
		Legislative Adjustments				Revised
	2011 Approved Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2012-13
Natural and Economic Resources						
Agriculture and Consumer Services	62,198,634	45,794,624	0	45,794,624	514.06	107,993,258
Commerce	33,250,463	(449,410)	12,500,000	12,050,590	2.00	45,301,053
Commerce - State Aid	30,151,984	(2,829,040)	(14,000)	(2,843,040)	0.00	27,308,944
Environment and Natural Resources	148,148,105	(41,893,545)	0	(41,893,545)	(429.07)	106,254,560
Clean Water Mgmt. Trust Fund	11,250,000	0	0	0	0.00	11,250,000
Labor	15,836,887	(316,738)	0	(316,738)	0.00	15,520,149
NC Biotechnology Center	17,551,710	(351,034)	0	(351,034)	0.00	17,200,676
Rural Economic Development Center	25,376,729	(7,007,535)	0	(7,007,535)	0.00	18,369,194
Wildlife Resources Commission	17,221,179	434,397	0	434,397	0.00	17,655,576
Total Natural and Economic Resources	**360,985,691**	**(6,618,281)**	**12,486,000**	**5,867,719**	**86.99**	**366,853,410**
General Government						
Administration	66,353,073	(1,327,061)	420,000	(907,061)	0.00	65,446,012
Auditor	10,676,035	(213,521)	0	(213,521)	0.00	10,462,514
Cultural Resources	61,697,001	(1,233,940)	0	(1,233,940)	0.00	60,463,061
Cultural Resources - Roanoke Island Comm.	1,203,491	(24,070)	0	(24,070)	0.00	1,179,421
General Assembly	50,104,208	3,684,977	(2,114,555)	1,570,422	31.60	51,674,630
Governor	4,741,157	(94,823)	0	(94,823)	0.00	4,646,334
Housing Finance Agency	9,673,051	(187,879)	(7,876,755)	(8,064,634)	0.00	1,608,417
Insurance	36,393,921	(73,550)	0	(73,550)	0.00	36,320,371
Insurance - Worker's Compensation Fund	2,623,654	0	0	0	0.00	2,623,654
Lieutenant Governor	695,324	(144,150)	0	(144,150)	0.00	551,174
Office of Administrative Hearings	4,142,258	(82,845)	0	(82,845)	0.00	4,059,413
Revenue	78,199,538	(1,563,991)	0	(1,563,991)	0.00	76,635,547
Secretary of State	10,654,563	(213,091)	0	(213,091)	0.00	10,441,472
State Board of Elections	5,126,603	(102,532)	563,936	461,404	0.00	5,588,007
State Budget and Management (OSBM)	5,848,663	(116,973)	0	(116,973)	0.00	5,731,690
OSBM - Special Appropriations	440,612	(391,612)	330,000	(61,612)	0.00	379,000
State Controller	28,368,957	(567,379)	1,347,397	780,018	0.00	29,148,975
Treasurer - Operations	6,621,750	0	0	0	0.00	6,621,750
Treasurer - Fire/Rescue Retirement	17,812,114	0	0	0	0.00	17,812,114
Total General Government	**401,375,973**	**(2,652,440)**	**(7,329,977)**	**(9,982,417)**	**31.60**	**391,393,556**

SUMMARY OF GENERAL FUND APPROPRIATIONS

Fiscal Year 2012-13

		Legislative Adjustments				
	2011 Approved Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Revised Appropriation 2012-13
Debt Service and Statewide Reserves						
Debt Service:						
Interest / Redemption	759,984,974	(52,904,635)	0	(52,904,635)	0.00	707,080,339
Federal Reimbursement	1,616,380		0	0	0.00	1,616,380
Subtotal Debt Service	**761,601,354**	**(52,904,635)**	**0**	**(52,904,635)**		**708,696,719**
Statewide Reserves:						
Contingency and Emergency Fund	5,000,000			0	0.00	5,000,000
Information Technology Fund	6,158,142	0	(750,000)	(750,000)	0.00	5,408,142
Job Development Investment Grants (JDIG)	27,400,000	0	(6,500,000)	(6,500,000)	0.00	20,900,000
State Retirement System Contributions	336,000,000	0	0	0	0.00	336,000,000
Judicial Retirement System Contribution	7,800,000	100,000	0	100,000	0.00	7,900,000
Firemen & Rescue Squad Workers Pension Fund	5,366,928	0	0	0	0.00	5,366,928
State Health Plan	102,151,104	0	0	0	0.00	102,151,104
Continuation/Justification Review Reserve	35,576,758	0	(35,576,758)	(35,576,758)	0.00	0
Compensation and Performance Pay Reserve	121,105,840	(121,105,840)		(121,105,840)	0.00	0
Reserve for Compensation Increases and Personnel Flexibility	0	159,984,426	0	159,984,426	0.00	159,984,426
Disability Income Plan of North Carolina	0	(8,688,000)	0	(8,688,000)	0.00	(8,688,000)
Automated Fraud Detection Development	7,000,000	0	0	0	0.00	7,000,000
Controller - Fraud Detection Development	500,000	0	0	0	0.00	500,000
One North Carolina Fund	0	9,000,000	0	9,000,000	0.00	9,000,000
VIPER Reserve	0	0	25,000,000	25,000,000	0.00	25,000,000
Subtotal Statewide Reserves	**654,058,772**	**39,290,586**	**(17,826,758)**	**21,463,828**		**675,522,600**
Total Reserves and Debt Service	**1,415,660,126**	**(13,614,049)**	**(17,826,758)**	**(31,440,807)**		**1,384,219,319**
Total General Fund for Operations	**19,937,449,375**	**165,565,336**	**41,298,406**	**206,863,742**	**831.56**	**20,144,313,117**

SUMMARY OF GENERAL FUND APPROPRIATIONS Fiscal Year 2012-13						
		Legislative Adjustments				Revised
	2011 Approved Budget	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	FTE Changes	Appropriation 2012-13
Capital Improvements						
Water Resources Development Projects	0	0	0	5,000,000	0.00	5,000,000
Total Capital Improvements	**0**	**0**	**0**	**5,000,000**	**0**	**5,000,000**
Total General Fund Budget	**19,937,449,375**	**165,565,336**	**41,298,406**	**211,863,742**	**831.56**	**20,149,313,117**

EDUCATION
Section F

Senate Subcommittee on Education

Public Education

GENERAL FUND

Total Budget Approved 2011 Session	FY 12-13
	$7,444,122,100

Budget Changes

A. Technical Adjustments

1 Average Teacher Salary ($85,670,329) R

Revises budgeted funding for certified personnel salaries based on actual salary data from December 2011. The adjustment does not reduce any salary paid to certified personnel, nor does it reduce the number of guaranteed State-funded teachers, administrators, or instructional support personnel.

2 Average Daily Membership ($6,423,088) R

Revises projected ADM for FY 2012-13 to reflect 2,084 fewer students than originally projected. The adjustment includes revisions to all position, dollar, and categorical allotments.

Total allotted ADM for FY 2012-13 is 1,492,793, an increase of 11,802 students over FY 2011-12.

B. Other Public School Funding Adjustments

3 LEA Adjustment Reduction $74,076,032 R

Eliminates the budgeted increase to the LEA Adjustment in FY 2012-13. The State Board of Education shall distribute the remainder of this reduction to all LEAs and charter schools on the basis of ADM. LEAs and charters will then be responsible for identifying budget reductions in order to meet their share of the LEA Adjustment.

D. Department of Public Instruction

4 Residential Schools $4,500,000 R

Restores funds to operate all three Residential Schools. None of the Residential Schools shall be closed. The Department of Public Instruction is strongly encouraged to maximize the use of all three facilities to generate receipts to further defray General Fund reductions to program operations.

	FY 12-13	
5 Governor's Schools Provides funding for this program that supports summer enrichment activities for talented high school students.	$800,000	R
6 Liability Insurance for Public School Personnel The actual cost of securing the statewide liability insurance policy in school year 2011-12 was less than the appropriation. This reduction better aligns the appropriation with projected costs.	($555,000)	R
E. Excellent Public Schools Act		
7 Excellent Public Schools Act Provides full support for the first-year implementation of S.B. 795, the Excellent Public Schools Act.	$47,414,503	R
Budget Changes	**$34,142,118**	R
Total Position Changes		
Revised Total Budget	**$7,478,264,218**	

Community Colleges

GENERAL FUND

Total Budget Approved 2011 Session	FY 12-13 $985,000,000	
Budget Changes		
A. Technical Adjustments		
8 **Enrollment Growth Adjustments** Adjusts funds for FY 2012-13 based on the estimated decline in community college enrollment. According to the FY 2011-12 spring enrollment census, enrollment has declined by 1.1% (2,663 full-time-equivalent students or FTE) from the FY 2011-12 budgeted enrollment of 251,017 and by 2.5% (6,335 FTE) from the current budgeted enrollment for FY 2012-13. Total requirements will be reduced by $31,705,796. Of this reduction, $19,597,092 is due to revised tuition and fee revenue estimates based on the new enrollment estimates.	($12,108,704)	R
9 **NC Community College Grant Program Adjustment** Makes a technical adjustment to the General Fund funding for the NC Community College Grant, a need-based scholarship program for community college students. This will be offset by an equal reduction in funding from the Escheat Fund.	$165,000	R
B. Other Community College Funding Adjustments		
10 **Management Flexibility Reduction** Eliminates the budgeted increase to the management flexibility reduction for FY 2012-13. The State Board of Community Colleges shall distribute the remaining reduction accounting for the unique needs of each college.	$7,766,181	R
Budget Changes	($4,177,523)	R
Total Position Changes		
Revised Total Budget	$980,822,477	

UNC System

GENERAL FUND

Total Budget Approved 2011 Session	FY 12-13 $2,551,672,698

Budget Changes

A. Technical Adjustments

11	**Enrollment Adjustments** Funds projected enrollment growth for FY 2012-13 at the University of North Carolina. This $1.4 million net increase consists of projected enrollment increases of $17,434,805 and a reduction of $16,058,744 to adjust for campuses whose enrollment is projected to be less than what is currently budgeted. The Board of Governors shall determine the allocations by campus.	$1,376,061	R

B. Reserves for New and Renovated Facilities

12	**Building Reserves** Provides funds to operate new or renovated UNC buildings that will be completed in FY 2012-13. Specifically, funds are for the housekeeping, maintenance, and security requirements for the added building square footage.	$6,802,285 $2,263,358 101.90	R NR
13	**NCSU Centennial Campus Library Operational and Program Funds** Provides operating and program funds for a new library that will open in FY 2012-13 on NCSU's Centennial Campus. The library will serve as a second "main library" for NCSU to help ease overcrowding in the D.H. Hill Library on the school's North Campus. The appropriation includes funds for 27 additional FTE.	$2,000,000 27.00	R
14	**Joint School of Nanoscience & Nanoengineering Operational and Program Funds** Funds the NC A&T/UNC-G Joint School of Nanoscience and Nanoengineering located in the Gateway University Research Park in Greensboro. The program is designed to conduct research in areas such as drug design and delivery, nanobioengineering, and genetic screening. Specifically, the budget provides an additional $1 million in recurring funding and converts an existing $1 million nonrecurring appropriation to recurring.	$2,000,000 ($1,000,000)	R NR

C. Other UNC Funding Adjustments

15	**Faculty Recruiting and Retention Fund** Provides funding for the Faculty Recruiting and Retention Fund, which the General Assembly created in S.L. 2006-66, Sec. 22.12A, to offer salary increases to recruit and retain faculty members. This appropriation increases the Fund's total recurring budget to $13 million.	$3,000,000	R
16	**Management Flexibility Reduction** Eliminates the budgeted increase to the management flexibility reduction for FY 2012-13. The University of North Carolina Board of Governors shall allocate this reduction according the terms of S.L. 2011-145, Sec. 9.6.	$9,184,767	R
17	**Center for Public Television** Restores funding for the Center for Public Television, which was subject to a Continuation Review in FY 2011-12.	$10,558,141 116.00	R

D. Need-based Student Financial Aid

18	**UNC Need-based Financial Aid Program** Adjust the General Fund appropriation for the UNC Need-based Financial Aid program to account for corresponding increases in funding from the Escheat Fund and the Lottery Fund. In addition to the increases described above, an additional $35 million is appropriated for this program from the Lottery Fund in Section 5.3. Total funding for the UNC Need-based Financial Aid program from all sources will be $157,475,842, which is $35 million more than originally budgeted.	($5,165,000) ($6,974,141)	R NR

Budget Changes	**$29,756,254**	**R**
	($5,710,783)	**NR**
Total Position Changes	244.90	
Revised Total Budget	**$2,575,718,169**	

HEALTH
&
HUMAN SERVICES
Section G

Health and Human Services

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	**$4,455,162,933**

Budget Changes

(1.0) Division of Medical Assistance

1	**Pharmacy Savings - 340B Pricing Program** Reduces funds based upon savings from increased utilization of the federal 340B pricing program for hemophilia pharmaceuticals. The 340B program allows clinics and other facilities to purchase these prescription drugs at a reduced cost.	($1,391,906)	R
2	**Medicaid Rebase** Provides additional funds for the Medicaid program based upon projected growth in number of people eligible for Medicaid and growth in consumption.	$168,676,461	R
3	**Federal Repayment of 2009 Federal Overdraw of Funds** Provides funding to repay the federal government due to an erroneous federal draw down for the Medicaid program. FY 2012-13 will be the final year in which quarterly payments are due and satisfies this obligation to the federal government.	$31,300,776	NR
4	**Federal Drug Rebate Payment** Provides funding to pay the amount owed to the federal government as a result of a 2010 federal policy change related to drug rebates.	$24,606,148	NR
5	**Managed Care Organizations Schedule Delays** Provides necessary funds due to the delayed state-wide expansion of the Medicaid behavioral health 1915 b/c waiver sites (S.L. 2011-264). The loss is based upon changes to the implementation schedule as reported by the Division of Medical Assistance. In FY12-13, LMEs will convert to Managed Care Organizations (MCOs) and will receive capitated Medicaid funding to purchase mental health, developmental disabilities, and substance abuse services for eligible persons living within the LME coverage areas.	$11,000,000	NR

6	**Restructure Fee for Service Payments** Revises payment structures for various services provided within the Medicaid program. These changes will result in bundling of payments for services based upon a period of time or a diagnosis instead of fee-for-service.	($1,976,636)	R
7	**Revise Medicaid Pharmacy Dispensing Fees** Reduces funds paid to pharmacies to dispense prescription drugs. This reduction lowers the tiered fee structure for dispensing generic prescriptions and reduces the brand prescription dispensing fee by $1.00.	($2,639,801)	R
8	**CHIPRA Bonus** Reduces Medicaid funds in anticipation of receiving the FY12-13 federal Children's Health Insurance Program Reauthorization Act (CHIPRA) bonus for Health Choice enrollment growth.	($14,000,000)	NR
9	**Medicaid Contracts** Provides funding for Medicaid contracts, including claims processing, prior authorization, and various studies.	$5,000,000	R
10	**Medicaid Settlements** Provides funding for Medicaid cost settlements with various providers and fraud, waste, and abuse prevention initiatives.	$15,000,000	R
11	**Personal Care Services (PCS)** Budgets reduced Medicaid cost as a result of changing the eligibility criteria for personal care services (PCS) to needing assistance with two or more activities of daily living (ADL).	($6,000,000)	R

(2.0) Division of Child Development and Early Education

12	**Block Grant Funding** Provides federal block grant funds for the Smart Start Program. This continues similar actions taken by the Office of State Budget and Management during FY 2011-12 in which $4 million of Smart Start funds were replaced by $4 million of Block Grant funds.	($10,000,000)	NR

(5.0) Division of Central Management and Support

13 DIRM Contracts $5,599,390 R

Restores recurring State General Fund Appropriations for the Division of Information Resources Management (DIRM) for various contracts for Department-wide IT services. S.L. 2011-145 eliminated the recurring funds for this purpose pending the findings and recommendations from a continuation review.

14 Management Flexibility ($34,296,735) R

Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.

(7.0) Division of Aging and Adult Services

15 Transition to Community Living $10,300,000 R

Establishes a reserve fund, Transitions to Community Living Fund, to facilitate implementation of the plan to transition individuals with severe mental illness to community living arrangments, including establishing a rental assistance program.

16 Temporary Short-term Assistance $25,000,000 NR

Establishes a reserve fund for the implementation of the State's plan to provide temporary, short-term assistance to adult care and group homes as they transition to the State's Transitions to Community Living Plan. These funds will be used to pay monthly stipends to adult care and group homes for residents who are no longer eligible to receive Medicaid-reimbursable personal care services but for whom a community placement has not yet been arranged.

(10.0) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

17 Federal Block Grant Funding ($227,000) NR

Provides federal Substance Abuse Prevention and Treatment Block Grant funds for Division of Mental Health's administrative costs.

18 Cherry Hospital $3,472,954 R

Provides funding to support the expanded bed capacity at the new Cherry Hospital, which is scheduled to begin operating in April 2013. The new hospital will have 314 beds, an increase of 124 beds. 373.10

(11.0) Division of Public Health

19 Environmental Health Section $3,700,675 R

Provides for a technical correction reflecting the Type I transfer of the Division of Environmental Health from the Department of Natural and Economic Resources to the Department of Health and Human Services, Division of Public Health. This transfer was enacted during the 2011 Legislative Session via SL 2011-145. 38.05

S.L. 2011-145, Sec. 13.3

20 State Public Health Lab and Office of Chief Medical Examiner $1,155,666 R

Provides funds for new positions and operating costs for the new State Public Health Laboratory and the Chief Medical Examiner's Office which will begin operating in FY12-13. 12.00

21 Environmental Health Regional Office Positions $221,109 R

Restores funding for transferred positions formerly located in DENR regional offices. This funding was made non-recurring in FY 2011-12 pending a Justification Review. Due to the FY 2011-12 transfer of the Division of Environmental Health to the Division of Public Health in the Department of Health & Human Services (DHHS), the restored salaries and benefits of positions formerly located in DENR regional offices are transferred from DENR to DHHS as follows: 3.00

60034273	Env Health Reg Spec	$69,922
60034303	Env Health Reg Spec	$67,812
60034278	Soil Scientist	$83,375

S.L. 2011-145, Sec. 6.69(b)

Budget Changes	**$166,821,177**	R
	$67,679,924	NR
Total Position Changes	426.15	
Revised Total Budget	**$4,689,664,034**	

NATURAL & ECONOMIC RESOURCES
Section H

Senate Subcommittee on Natural and Economic Resources

Agriculture and Consumer Services

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	**$62,198,634**

Budget Changes

(1.0) Technical Correction

1 NC Forest Service — $36,462,776 R

Provides for a technical correction showing the transfer of the NC Forest Service from the Department of Environment & Natural Resources to the Department of Agriculture & Consumer Services. The Division was transferred in FY 2011-12 after certification of the budget. This item should not be certified in the FY 2012-13 budget as it will be certified through a budget revision.

452.16

2 Division of Soil & Water Conservation — $10,323,455 R

Provides for a technical correction showing the transfer of the Division of Soil & Water Conservation from the Department of Environment & Natural Resources to the Department of Agriculture & Consumer Services. The Division was transferred in FY 2011-12 after certification of the budget. This item should not be certified in the FY 2012-13 budget as it will be certified through a budget revision.

42.15

3 Four Central Office Positions — $178,410 R

Provides for a technical correction showing the transfer of 4.0 central office positions from the Department of Environment & Natural Resources to the Department of Agriculture & Consumer Services. The Division was transferred in FY 2011-12 after certification of the budget. This item should not be certified in the FY 2012-13 budget as it will be certified through a budget revision.

4.00

Department-wide

4 Management Flexibility Reduction — ($2,183,266) R

Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.

Markets

5	**Southeastern Agricultural Center & Farmers Market** Restores General Fund support for the Southeastern Agricultural Center & Farmers Market in Lumberton. This facility was subject to Justification Review in FY 2011-12.	$362,230 6.00	R

Soil & Water Conservation

6	**Restore Regional Office Positions - DACS** Restores funding for transferred positions formerly located in DENR regional offices. This funding was made non-recurring in FY 2011-12 pending a Justification Review. Due to the FY 2011-12 transfers of the Division of Soil & Water Conservation to the Department of Agriculture & Consumer Services (DACS), the restored salaries and benefits of positions formerly located in DENR regional offices will need to be transferred from DENR to DACS as follows:	$651,019 9.75	R

60032345	Engineer	$74,775	1.00 FTE
60032360	Engineer	$64,270	1.00 FTE
60032341	Soil Scientist	$62,380	1.00 FTE
60032328	Env Prog Super III	$79,165	1.00 FTE
60032369	Env Specialist	$55,581	1.00 FTE
60090071	Paralegal II	$47,567	0.75 FTE
60032346	Engineer	$69,056	1.00 FTE
60032323	Soil Scientist	$79,106	1.00 FTE
60032372	Env Specialist	$53,060	1.00 FTE
60032348	Engineer	$66,059	1.00 FTE

Budget Changes	**$45,794,624**	R
Total Position Changes	514.06	
Revised Total Budget	**$107,993,258**	

Senate Subcommittee on Natural and Economic Resources

Labor

	GENERAL FUND	
	FY 12-13	
Total Budget Approved 2011 Session	**$15,836,887**	
Budget Changes		
Department-wide		
7 **Management Flexibility Reduction** Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($316,738)	R
Budget Changes	**($316,738)**	**R**
Total Position Changes		
Revised Total Budget	**$15,520,149**	

Environment & Natural Resources

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	**$148,148,105**

Budget Changes

(1.0) Technical Correction

8	**NC Forest Service** Provides for a technical correction showing the transfer of the NC Forest Service from the Department of Environment & Natural Resources to the Department of Agriculture & Consumer Services. The Division was transferred in FY 2011-12 after certification of the budget. This item should not be certified in the FY 2012-13 budget as it will be certified through a budget revision.	($36,462,776) -452.16	R
9	**Division of Soil & Water Conservation** Provides for a technical correction showing the transfer of the Division of Soil & Water Conservation from the Department of Environment & Natural Resources to the Department of Agriculture & Consumer Services. The Division was transferred in FY 2011-12 after certification of the budget. This item should not be certified in the FY 2012-13 budget as it will be certified through a budget revision.	($10,323,455) -42.15	R
10	**Four Central Office Positions** Provides for a technical correction showing the transfer of 4.0 central office positions from the Department of Environment & Natural Resources to the Department of Agriculture & Consumer Services. The Division was transferred in FY 2011-12 after certification of the budget. This item should not be certified in the FY 2012-13 budget as it will be certified through a budget revision.	($178,410) -4.00	R
11	**Division of Environmental Health** Provides for a technical correction showing the transfer of the Division of Environmental Health from the Department of Environment & Natural Resources to the Department of Health & Human Services. The Division was transferred in FY 2011-12 after certification of the budget. This item should not be certified in the FY 2012-13 budget as it will be certified through a budget revision.	($3,700,675) -38.05	R

(1.0) Department-wide

12 Management Flexibility Reduction ($2,023,669) R

Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.

(1.0) Reserves & Transfers

13 Clean Water State Revolving Fund

Directs the Department to use $5,101,400 of its loan origination fee fund to provide the 20% State match needed to draw down $25,507,000, the maximum available federal funds for the Clean Water State Revolving Fund for FY 2012-13. The Department needs permission from the US EPA to use these funds for FY 2012-13 only.

14 Drinking Water State Revolving Fund

Directs the Department to use funds from the Drinking Water Reserve to provide the 20% State match needed to draw down the maximum available federal funds for the Drinking Water State Revolving Fund. The match amount of $4,939,600 for Federal Fiscal Year 2011-12 will allow the State to draw down $24,698,000 in federal funds, and the match amount of $4,707,400 for the Federal Fiscal Year 2012-13 will allow the State to draw down $23,537,000 in federal funds. The EPA encourages states to have their match amounts available prior to the beginning of the Federal Fiscal Year so the amount of the State grant can be encumbered in the EPA budget. The Department is currently a year in arrears obtaining these federal grants from EPA, and this will allow the Department to have its match amounts available prior to the beginning of future Federal Fiscal Years.

(2.0) Land Resources

15 Geodetic Survey Section to Emergency Management ($819,861) R

Transfers the Geodetic Survey Section from the Department of Environment and Natural Resources to the Department of Public Safety as a Type I transfer. Geodetic Survey will be housed in the Division of Law Enforcement, Emergency Management Section. The transfer includes the following positions: -12.92

General Fund Supported Positions (12.92 FTE):

60032386	Engineering/Architectural Supervisor	$104,835	1.00 FTE
60032388	Office Assistant III	$40,362	1.00 FTE
60032387	Office Assistant IV	$43,691	1.00 FTE
60032389	Engineering/Architectural Technician	$62,320	1.00 FTE
60032390	Engineering/Architectural Supervisor	$78,995	1.00 FTE
60032393	Technology Support Analyst	$60,575	1.00 FTE
60032395	Engineering/Architectural Technician	$66,407	1.00 FTE
60032396	Engineering/Architectural Technician	$52,381	1.00 FTE
60032399	Business And Technology Applic Tech	$72,037	1.00 FTE
60032400	Information & Communication Specialist	$58,698	1.00 FTE
60032402	Engineering/Architectural Technician	$38,901	0.92 FTE
60032403	Engineering/Architectural Technician	$46,161	1.00 FTE
60032405	Engineering/Architectural Technician	$59,173	1.00 FTE

Operating Costs $35,325

Receipt Supported Positions (4.08 FTE):

60032392	Engineer	$67,539	1.00 FTE
60032398	Engineering/Architectural Technician	$63,939	1.00 FTE
60032401	Engineering/Architectural Technician	$42,436	1.00 FTE
60032402	Engineering/Architectural Technician	$3,535	0.08 FTE
60032404	Engineering/Architectural Technician	$45,139	1.00 FTE
60032406	Engineering/Architectural Technician	$42,436	1.00 FTE

(2.0) Regional Offices

16 Restore Regional Offices $12,624,378 R

Restores funding for the regional offices. This funding was made non-recurring in FY 2011-12 pending a Justification Review. Due to the FY 2011-12 transfers of the Division of Soil & Water Conservation to the Department of Agriculture & Consumer Services (DACS) and the Division of Environmental Health to the Division of Public Health in the Department of Health & Human Services (DHHS), the restored salaries and benefits of positions formerly located in DENR regional offices will need to be transferred from DENR to those Departments as follows: 134.96

Division of Public Health (DHHS)	$221,109	3.00 FTE
Division of Soil & Water Conservation (DACS)	$651,019	9.75 FTE

17 Restore Regional Office Positions - DHHS ($221,109) R

Restores funding for transferred positions formerly located in DENR regional offices. This funding was made non-recurring in FY 2011-12 pending a Justification Review. Due to the FY 2011-12 transfer of the Division of Environmental Health to the Division of Public Health in the Department of Health & Human Services (DHHS), the restored salaries and benefits of positions formerly located in DENR regional offices will need to be transferred from DENR to DHHS as follows: -3.00

60034273	Env Health Reg Spec	$69,922	1.00 FTE
60034303	Env Health Reg Spec	$67,812	1.00 FTE
60034278	Soil Scientist	$83,375	1.00 FTE

18 Restore Regional Office Positions - DACS ($651,019) R

Restores funding for transferred positions formerly located in DENR regional offices. This funding was made non-recurring in FY 2011-12 pending a Justification Review. Due to the FY 2011-12 transfers of the Division of Soil & Water Conservation to the Department of Agriculture & Consumer Services (DACS), the restored salaries and benefits of positions formerly located in DENR regional offices will need to be transferred from DENR to DACS as follows: -9.75

60032345	Engineer	$74,775	1.00 FTE
60032360	Engineer	$64,270	1.00 FTE
60032341	Soil Scientist	$62,380	1.00 FTE
60032328	Env Prog Super III	$79,165	1.00 FTE
60032369	Env Specialist	$55,581	1.00 FTE
60090071	Paralegal II	$47,567	0.75 FTE
60032346	Engineer	$69,056	1.00 FTE
60032323	Soil Scientist	$79,106	1.00 FTE
60032372	Env Specialist	$53,060	1.00 FTE
60032348	Engineer	$66,059	1.00 FTE

19 Restore Regional Office Positions - DPS ($136,949) R

Restores funding for transferred positions formerly located in DENR regional offices. This funding was made non-recurring in FY 2011-12 pending a Justification Review. Due to the FY 2012-13 transfer of the Division of Land Resources' Geodetic Survey Section to the Emergency Management Section of the Division of Law Enforcement in the Department of Public Safety (DPS), the restored salaries and benefits of positions formerly located in DENR regional offices will need to be transferred from DENR to DPS as follows: -2.00

60032391	Engineering/Architectural Supervisor	$77,859	1.00 FTE
60032397	Engineering/Architectural Technician	$59,090	1.00 FTE

Budget Changes	**($41,893,545)**	**R**
Total Position Changes	-429.07	
Revised Total Budget	**$106,254,560**	

DENR-Clean Water Management Trust Fund

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	$11,250,000
Budget Changes	
20 No Legislative Changes	
Budget Changes	
Total Position Changes	
Revised Total Budget	$11,250,000

Wildlife Resources Commission

GENERAL FUND

	FY 12-13	
Total Budget Approved 2011 Session	**$17,221,179**	
Budget Changes		
Commission-wide		
21 Management Flexibility Reduction Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($344,424)	R
Conservation Education		
22 Continuation Review Restores the $778,821 appropriation for the Conservation Education program, the full amount of General Fund support for the program.	$778,821	R
Budget Changes	**$434,397**	R
Total Position Changes		
Revised Total Budget	**$17,655,576**	

Commerce

	GENERAL FUND
	FY 12-13
Total Budget Approved 2011 Session	**$33,250,463**

Budget Changes

Department-wide

23 Management Flexibility Reduction ($665,009) R

Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.

Commerce Finance Center

24 Job Maintenance and Capital Development Fund (JMAC) $6,000,000 NR

Provides $6 million nonrecurring to be allocated to fulfill existing agreements with Bridgestone/Firestone and Goodyear.

25 Economic Development Project $6,500,000 NR

Provides $6.5 million nonrecurring for an economic development project land purchase.

Energy Office

26 TVA Settlement Funds

Directs the Energy Office to apply for funding from the TVA Settlement Agreement in accordance with the Consent Decree. The requested funding will be for biofuels projects in alignment with work currently done by the Biofuels Center. Once funds are received, Commerce is to disburse them to the Biofuels Center. The Settlement is for a total of $11.2 million over 5 years, and it is anticipated that the funds will continue to be used for biofuels purposes.

Office of Science and Technology

27 Continuation Review $215,599 R

Restores funding eliminated due to the Continuation Review of this program in FY 2011-12. 2.00

Budget Changes	**($449,410)**	**R**
	$12,500,000	**NR**
Total Position Changes	2.00	
Revised Total Budget	**$45,301,053**	

Commerce - State Aid

GENERAL FUND

	FY 12-13	
Total Budget Approved 2011 Session	**$30,151,984**	
Budget Changes		
28 Management Flexibility Reduction to all Commerce State-Aid Nonprofits Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program. The Department is to allocate this cut out on a pro-rata basis to all non-profits funded through Commerce State-Aid.	($589,040) ($14,000)	R NR
29 Biofuels Center Provides $2.24 million in the Biofuels Center budget with receipts from the TVA Settlement Agreement. A corresponding item within the Commerce section of the budget directs Commerce to apply for funds from the TVA Settlement Agreement which will then be allocated to the Biofuels Center. The Biofuels Center is encouraged to allocate these funds to projects and programs in Western North Carolina. The Settlement is for a total of $11.2 million over 5 years, and it is anticipated that the funds will continue to be used for biofuels purposes.	($2,240,000)	R
Budget Changes	**($2,829,040)** **($14,000)**	**R** **NR**
Total Position Changes		
Revised Total Budget	**$27,308,944**	

N.C. Biotechnology Center

	GENERAL FUND	
	FY 12-13	
Total Budget Approved 2011 Session	**$17,551,710**	
Budget Changes		
30 **Management Flexibility Reduction** Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($351,034)	R
Budget Changes	**($351,034)**	**R**
Total Position Changes		
Revised Total Budget	**$17,200,676**	

Rural Economic Development Center

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	**$25,376,729**
Budget Changes	
31 Operating Reduction	($6,500,000) R
Reduces the General Fund appropriation for the Rural Economic Development Center.	
32 Management Flexibility Reduction	($507,535) R
Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	
Budget Changes	**($7,007,535) R**
Total Position Changes	
Revised Total Budget	**$18,369,194**

Commerce Special GF

Budget Code: 24609

	FY 2012-13	
Beginning Unreserved Fund Balance	**$77,403,582**	
Recommended Budget		
Requirements	**$28,711,556**	
Receipts	**$28,476,737**	
Positions	**0.00**	
Legislative Changes		
Requirements:		
One NC Fund - General Fund Transfer	$0	R
Transfers $50 million to the General Fund for general availability.	$50,000,000	NR
	0.00	
Subtotal Legislative Changes	**$0**	R
	$50,000,000	NR
	0.00	
Receipts:		
One North Carolina Fund	$0	R
	$0	NR
Subtotal Legislative Changes	**$0**	R
	$0	NR

	FY 2012-13
Revised Total Requirements	**$78,711,556**
Revised Total Receipts	**$28,476,737**
Change in Fund Balance	**($50,234,819)**
Total Positions	**0.00**
Unappropriated Balance Remaining	**$27,168,763**

DENR - Commercial LUST Cleanup

Budget Code: 64305

	FY 2012-13	
Beginning Unreserved Fund Balance	**$91,104,286**	
Recommended Budget		
Requirements	**$35,790,105**	
Receipts	**$32,994,218**	
Positions	**0.00**	

Legislative Changes

Requirements:

Reduce Motor Fuel Tax Transfer to Commercial LUST	($2,085,585)	R
Reduces the amount of Motor Fuel Tax transferred to the Commercial Leaking Underground Storage Tank (LUST) Fund.	$0	NR
	0.00	
Subtotal Legislative Changes	**($2,085,585)**	R
	$0	NR
	0.00	

Receipts:

Reduce Motor Fuel Tax Transfer to Commercial LUST	($2,085,585)	R
Reduces the amount of Motor Fuel Tax transferred to the Commercial Leaking Underground Storage Tank (LUST) Fund.	$0	NR
Subtotal Legislative Changes	**($2,085,585)**	R
	$0	NR

	FY 2012-13
Revised Total Requirements	**$33,704,520**
Revised Total Receipts	**$30,908,633**
Change in Fund Balance	**($2,795,887)**
Total Positions	**0.00**
Unappropriated Balance Remaining	**$88,308,399**

DENR Water Pollution Revolving Loan

Budget Code: 64311

	FY 2012-13	
Beginning Unreserved Fund Balance	**$251,442,946**	
Recommended Budget		
Requirements	**$64,304,756**	
Receipts	**$64,304,756**	
Positions	**0.00**	

Legislative Changes

Requirements:

Clean Water State Revolving Fund	$0	R
Directs the Department to use $5,101,400 of its loan origination fee fund to provide the 20% State match needed to draw down $25,507,000, the maximum available federal funds for the Clean Water State Revolving Fund for FY 2012-13.	$5,101,400	NR
	0.00	
Subtotal Legislative Changes	**$0**	R
	$5,101,400	NR
	0.00	

Receipts:

Clean Water State Revolving Fund	$0	R
	$0	NR
Subtotal Legislative Changes	**$0**	R
	$0	NR

Senate Appropriations Subcommittee on Natural and Economic Resources

	FY 2012-13
Revised Total Requirements	**$69,406,156**
Revised Total Receipts	**$64,304,756**
Change in Fund Balance	**($5,101,400)**
Total Positions	**0.00**
Unappropriated Balance Remaining	**$246,341,546**

DENR Drinking Water SRF

Budget Code: 64320

	FY 2012-13	
Beginning Unreserved Fund Balance	**$66,581,987**	
Recommended Budget		
Requirements	**$52,236,713**	
Receipts	**$51,066,125**	
Positions	**0.00**	

Legislative Changes

Requirements:

Drinking Water State Revolving Fund Directs the Department to use funds from the Drinking Water Reserve to provide the 20% State match needed to draw down the maximum available federal funds for the Drinking Water State Revolving Fund. The match amount of $4,939,600 for Federal Fiscal Year 2011-12 will allow the State to draw down $24,698,000 in federal funds, and the match amount of $4,707,400 for the Federal Fiscal Year 2012-13 will allow the State to draw down $23,537,000 in federal funds.	$0 $9,647,000 0.00	R NR
Subtotal Legislative Changes	**$0** **$9,647,000** 0.00	R NR

Receipts:

Drinking Water State Revolving Fund Directs the Department to use funds from the Drinking Water Reserve to provide the 20% State match needed to draw down the maximum available federal funds for the Drinking Water State Revolving Fund. The match amount of $4,939,600 for Federal Fiscal Year 2011-12 will allow the State to draw down $24,698,000 in federal funds, and the match amount of $4,707,400 for the Federal Fiscal Year 2012-13 will allow the State to draw down $23,537,000 in federal funds.	$0 $9,647,000	R NR
Subtotal Legislative Changes	**$0** **$9,647,000**	R NR

	FY 2012-13
Revised Total Requirements	**$61,883,713**
Revised Total Receipts	**$60,713,125**
Change in Fund Balance	**($1,170,588)**
Total Positions	**0.00**
Unappropriated Balance Remaining	**$65,411,399**

DENR – Drinking Water Reserve

Budget Code: 64324

	FY 2012-13	
Beginning Unreserved Fund Balance	**$11,970,949**	
Recommended Budget		
Requirements	**$472,051**	
Receipts	**$472,051**	
Positions	**0.00**	

Legislative Changes

Requirements:

Drinking Water State Revolving Fund Directs the Department to use funds from the Drinking Water Reserve to provide the 20% State match needed to draw down the maximum available federal funds for the Drinking Water State Revolving Fund. The match amount of $4,939,600 for Federal Fiscal Year 2011-12 will allow the State to draw down $24,698,000 in federal funds, and the match amount of $4,707,400 for the Federal Fiscal Year 2012-13 will allow the State to draw down $23,537,000 in federal funds.	$0 $9,647,000 0.00	R NR
Subtotal Legislative Changes	**$0** **$9,647,000** 0.00	R NR

Receipts:

Drinking Water State Revolving Fund	$0 $0	R NR
Subtotal Legislative Changes	**$0** **$0**	R NR

Senate Appropriations Subcommittee on Natural and Economic Resources

	FY 2012-13
Revised Total Requirements	**$10,119,051**
Revised Total Receipts	**$472,051**
Change in Fund Balance	**($9,647,000)**
Total Positions	**0.00**
Unappropriated Balance Remaining	**$2,323,949**

Wildlife Res. - MTR-BT-Int. Bearing

Budget Code: 24352

	FY 2012-13	
Beginning Unreserved Fund Balance	**$992,340**	
Recommended Budget		
Requirements	**$10,773,694**	
Receipts	**$10,773,694**	
Positions	**0.00**	

Legislative Changes

Requirements:

Motor Fuels Adjustment and Cap	$0	R
	$0	NR
	0.00	
Subtotal Legislative Changes	**$0**	R
	$0	NR
	0.00	

Receipts:

Motor Fuels Adjustment and Cap	($196,833)	R
Reduces the amount of receipts expected to be transferred from the Department of Transportation to the Wildlife Resources Commission.	$0	NR
Subtotal Legislative Changes	**($196,833)**	R
	$0	NR

	FY 2012-13
Revised Total Requirements	**$10,773,694**
Revised Total Receipts	**$10,576,861**
Change in Fund Balance	**($196,833)**
Total Positions	**0.00**
Unappropriated Balance Remaining	**$795,507**

JUSTICE
&
PUBLIC SAFETY
Section I

Senate Subcommittee on Justice and Public Safety

Public Safety

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	**$1,694,715,876**

Budget Changes

1 Management Flexibility Reserve ($31,394,318) R

Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.

2 Treatment for Effective Community Supervision ($5,000,000) NR

Transfers $5 million from the Statewide Misdemeanant Confinement Fund (Special Fund code 24500-2225), to the Division of Adult Correction (General Fund budget code 14500-1433) for the Treatment for Effective Community Supervision program. This program provides treatment services to probationers in the community.

3 Geodetic Survey Section Transfer $136,949 R

Transfers additional Geodetic Survey positions to the Emergency Management Section of the Division of Law Enforcement in the Department of Public Safety (DPS). These positions had been included in a Justification Review of DENR's Regional Offices. The following positions are transferred: 2.00

Position	Title	Total Position Cost	FTE
60032391	Engineering/Architectural Supervisor	$77,859	1.00
60032397	Engineering/Architectural Technician	$59,090	1.00

4 Geodetic Survey Section Transfer $819,861 R

Transfers the Geodetic Survey Section from the Department of Environment and Natural Resources to the Department of Public Safety as a Type I transfer. Geodetic Survey will be housed in the Division of Law Enforcement, Emergency Management Section. The transfer includes $35,325 in operating funds and the following positions: 12.92

General Fund Supported Positions:

Position	Title	Total Position Cost	FTE
60032386	Engineering/Architectural Supervisor	$104,835	1.00
60032387	Office Assistant IV	$ 43,691	1.00
60032388	Office Assistant III	$ 40,362	1.00
60032389	Engineering/Architectural Technician	$ 62,320	1.00
60032390	Engineering/Architectural Supervisor	$ 78,995	1.00
60032393	Technology Support Analyst	$ 60,575	1.00
60032395	Engineering/Architectural Technician	$ 66,407	1.00
60032396	Engineering/Architectural Technician	$ 52,381	1.00
60032399	Business And Technology Applic. Tech	$ 72,037	1.00
60032400	Information & Communication Specialist	$ 58,698	1.00
60032402	Engineering/Architectural Technician	$ 38,901	0.92
60032403	Engineering/Architectural Technician	$ 46,161	1.00
60032405	Engineering/Architectural Technician	$ 42,436	1.00

Receipt Supported Positions:

60032392	Engineer	$ 67,539	1.00
60032398	Engineering/Architectural Technician	$ 63,939	1.00
60032401	Engineering/Architectural Technician	$ 42,436	1.00
60032402	Engineering/Architectural Technician	$ 3,535	0.08
60032404	Engineering/Architectural Technician	$ 45,139	1.00
60032406	Engineering/Architectural Technician	$ 42,436	1.00

Budget Changes	**($30,437,508)**	R
	($5,000,000)	NR
Total Position Changes	14.92	
Revised Total Budget	**$1,659,278,368**	

Justice

	GENERAL FUND	
	FY 12-13	
Total Budget Approved 2011 Session	**$80,864,138**	
Budget Changes		
5 **Management Flexibility Reserve** Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($1,617,283)	R
6 **Non-recurring Operating Reduction** Uses DOJ receipts to partially fund operations for one year.	($3,000,000)	NR
B. Legal Services		
7 **Consumer Protection** Transfers the Consumer Protection Section to receipt support. Currently, half of this section is supported by receipts from settlement agreements. This reduction transfers the remaining consumer protection section to receipt support.	($1,757,780) -17.00	R
Budget Changes	**($3,375,063)**	R
	($3,000,000)	NR
Total Position Changes	-17.00	
Revised Total Budget	**$74,489,075**	

Senate Subcommittee on Justice and Public Safety

Judicial - Indigent Defense

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	$112,748,733

Budget Changes

8 No legislative changes.

Budget Changes

Total Position Changes

Revised Total Budget	**$112,748,733**

Senate Subcommittee on Justice and Public Safety

Judicial

	GENERAL FUND	
	FY 12-13	
Total Budget Approved 2011 Session	**$435,141,107**	
Budget Changes		
9 Management Flexibility Reserve Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($6,945,042)	R
10 Family Courts Restores the recurring appropriation for the Family Court Program.	$2,865,693 44.00	R
11 Administration of Mortgage Settlement Funds Reduces the pass-through appropriation to the Conference of District Attorneys by $200,000. The Conference of District Attorneys has been awarded $6.69 million in the Mortgage Settlement Agreement. These funds are to be used for grants and training for prosecutorial offices throughout the State. A portion of the funds can be used for administration at the Conference.	($200,000)	R
Budget Changes	**($4,279,349)**	R
Total Position Changes	44.00	
Revised Total Budget	**$430,861,758**	

Correction - Special

Budget Code: 24500

	FY 2012-13	
Beginning Unreserved Fund Balance	**$13,922,110**	
Recommended Budget		
Requirements	**$0**	
Receipts	**$0**	
Positions	**0.00**	
Legislative Changes		
Requirements:		
Statewide Misdemeanant Confinement Fund	$0	R
Transfers $5 million nonrecurring to the Division of Adult Correction for the Treatment of Effective Community Supervision program.	$5,000,000	NR
	0.00	
Subtotal Legislative Changes	**$0**	R
	$5,000,000	NR
	0.00	
Receipts:		
Statewide Misdemeanant Confinement Fund	$0	R
	$0	NR
Subtotal Legislative Changes	**$0**	R
	$0	NR

	FY 2012-13
Revised Total Requirements	**$5,000,000**
Revised Total Receipts	**$0**
Change in Fund Balance	**($5,000,000)**
Total Positions	**0.00**
Unappropriated Balance Remaining	**$8,922,110**

GENERAL GOVERNMENT
Section J

Senate Subcommittee on General Government

Administration

GENERAL FUND

Total Budget Approved 2011 Session	FY 12-13
	$66,353,073

Budget Changes

2401 - E-Commerce Reserve

1 **Reduce E-Commerce Reserve to Fund Cash Management Module**
Reduces the E-Commerce Reserve at the Department of Administration by $2,470,642 to transfer to General Availability. Of this amount, $1,347,397 will be utilized to fund the General Fund-supported portion of the Banking System Upgrade at the Office of the State Controller.

Department-wide

2 **Management Flexibility Reduction** ($1,178,696) R
Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.

Office of State Personnel

3 **Management Flexibility Reduction** ($125,473) R
Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.

State Ethics Commission

4 **Management Flexibility Reduction** ($22,892) R
Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.

Transition and Inauguration

5	**Fund Governor's Transition and Inauguration** Provides funding for the Transition Team and Governor's Inauguration to fund all fiscal activities related to the Governor Inauguration and Transition for the Governor and Council of State. In FY 2008-09 these items were funded, in total, at $420,000. Funds are to be distributed as follows: Fund Code: 1881: $170,000 Fund Code: 1882: $250,000	$420,000	NR

Budget Changes	**($1,327,061)**	**R**
	$420,000	**NR**
Total Position Changes		
Revised Total Budget	**$65,446,012**	

Senate Subcommittee on General Government

Auditor

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	**$10,676,035**
Budget Changes	
Department-wide	
6 **Management Flexibility Reduction**	($213,521) R
Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	
Budget Changes	**($213,521) R**
Total Position Changes	
Revised Total Budget	**$10,462,514**

Senate Subcommittee on General Government

Cultural Resources

GENERAL FUND

	FY 12-13	
Total Budget Approved 2011 Session	**$61,697,001**	
Budget Changes		
Department-wide		
7 **Management Flexibility Reduction** Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($1,233,940)	R
Budget Changes	**($1,233,940)**	**R**
Total Position Changes		
Revised Total Budget	**$60,463,061**	

Senate Subcommittee on General Government

Cultural Resources - Roanoke Island Commission

GENERAL FUND

	FY 12-13	
Total Budget Approved 2011 Session	**$1,203,491**	
Budget Changes		
All RIC Fund Codes		
8 **Technical Correction: Apply Reduction to Multiple Fund Codes** Clarifies that the reduction of $1.2 million (50%) in the 2011 Conference Report is to be achieved by reductions in Fund 1584 (RIC Operating Fund) and Fund 1586 (RIC Performing Arts Fund).	($1,203,491)	R
Fund Code 1584		
9 **Technical Correction: Restore Reduction to Operating Fund Code** Clarifies that the reduction of $1.2 million (50%) in the 2011 Conference Report is to be achieved by reductions in Fund 1584 (RIC Operating Fund) and Fund 1586 (RIC Performing Arts Fund).	$1,203,491	R
Roanoke Island Commission-Wide		
10 **Management Flexibility Reduction** Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($24,070)	R
Budget Changes	**($24,070)**	R
Total Position Changes		
Revised Total Budget	**$1,179,421**	

General Assembly

GENERAL FUND

Total Budget Approved 2011 Session	FY 12-13 $50,104,208	
Budget Changes		
Building & Maintenance		
11 **Building & Maintenance Continuation Review** Restores recurring funding for the Building & Maintenance Division, which was subject to Continuation Review for FY 2011-12.	$2,572,506 31.60	R
Department-wide		
12 **Management Flexibility Reduction** Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($1,002,084)	R
Information Systems Division		
13 **Clarify Funding Mechanism** Clarifies language in Item #61 of the 2011 Conference Report. Continues the elimination of appropriations for ISD non-personnel costs for FY 2012-13 by budgeting receipts from the Carryforward Reserve on a nonrecurring basis. Restores operating account requirements and offsets those requirements with Carryforward Reserve receipts.	$2,114,555 ($2,114,555)	R NR
Budget Changes	**$3,684,977** **($2,114,555)**	R NR
Total Position Changes	31.60	
Revised Total Budget	**$51,674,630**	

Governor

GENERAL FUND

	FY 12-13	
Total Budget Approved 2011 Session	**$4,741,157**	
Budget Changes		
Department-wide		
14 **Management Flexibility Reduction** Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($94,823)	R
Budget Changes	**($94,823)**	**R**
Total Position Changes		
Revised Total Budget	**$4,646,334**	

Housing Finance Agency

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	**$9,673,051**
Budget Changes	
1100 - Home Protection Pilot	
15 Eliminate Funding for Home Protection Pilot Eliminates funding for the Home Protection Pilot Program. Funding is unnecessary due to the Housing Finance Agency's participation in the Hardest Hit Program.	($187,879) R
1100: Housing Trust Fund	
16 Utilization of Housing Settlement Funds to Fund the Housing Trust Funds Eliminates, on a non-recurring basis, the General Fund appropriation to the Housing Trust Fund. Funds from the Mortgage Settlement Agreement to the Housing Finance Agency may be redirected or deposited into the Housing Trust Fund to offset FY 2012-13 non-recurring reductions to the fund. Nothing in this item is intended to, or shall be construed to, conflict with the mandatory requirements of the Mortgage Settlement Agreement.	($7,876,755) NR
Budget Changes	**($187,879) R**
	($7,876,755) NR
Total Position Changes	
Revised Total Budget	**$1,608,417**

Senate Subcommittee on General Government

Insurance

GENERAL FUND

	FY 12-13	
Total Budget Approved 2011 Session	**$36,393,921**	
Budget Changes		
State Fire Protection Grant Fund		
17 **Management Flexibility Reduction** Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($73,550)	R
Budget Changes	**($73,550)**	**R**
Total Position Changes		
Revised Total Budget	**$36,320,371**	

Senate Subcommittee on General Government

Insurance - Volunteer Safety Workers' Compensation Fund

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	$2,623,654
Budget Changes	
18 No Changes	
Budget Changes	
Total Position Changes	
Revised Total Budget	$2,623,654

Lieutenant Governor

GENERAL FUND

	FY 12-13	
Total Budget Approved 2011 Session	**$695,324**	
Budget Changes		
Department-wide		
19 **Consolidate Functions** Reduces appropriations for staff salaries and related expenses, effective December 31, 2012. The Office is directed to consolidate staff functions and reduce positions to achieve savings.	($144,150)	R
Budget Changes	($144,150)	R
Total Position Changes		
Revised Total Budget	$551,174	

Senate Subcommittee on General Government

Office of Administrative Hearings

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	**$4,142,258**
Budget Changes	
Department-wide	
20 Management Flexibility Reduction	($82,845) R
Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	
Budget Changes	**($82,845) R**
Total Position Changes	
Revised Total Budget	**$4,059,413**

Total Budget Approved 2011 Session	FY 12-13
	$78,199,538

Budget Changes

1629 - Local Government Division

21 Combined Registration and Tax Collection System

Budgets receipts from the Combined Motor Vehicle and Registration Account to support the development and implementation costs for the Combined Motor Vehicle Registration and Property Tax System as required by S.L. 2005-294. The total costs for FY 2012-13 are $377,797 with $353,197 of this amount as recurring costs. Four new positions within the division are created:

Business & Technology Application Specialist
DBE Specialist
Property Valuation Specialist I
Property Valuation Specialist II

1710 - Fuel Tax Compliance

22 Eliminate Vacant Positions

Eliminates ten (10) vacant positions for a total personnel savings to the Highway Fund of $488,366. Other costs to support these personnel, such as travel, per diem, and supplies are reduced by $32,000.

The positions eliminated include eight (8) Motor Fuel Auditors and two (2) Law Enforcement Agents. The position numbers supported by the Highway Fund are 60083149, 60083173, 60083153, 60083182, 60083177, 60083178, 60083201,and 60083205. Two positions supported with federal funds are 65007466 and 65007490.

Department-wide

23 Management Flexibility Reduction ($1,563,991) R

Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.

Budget Changes	**($1,563,991)**	**R**
Total Position Changes		
Revised Total Budget	**$76,635,547**	

Secretary of State

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	**$10,654,563**
Budget Changes	
Department-wide	
24 Management Flexibility Reduction Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($213,091) R
Budget Changes	**($213,091) R**
Total Position Changes	
Revised Total Budget	**$10,441,472**

Senate Subcommittee on General Government

State Board of Elections

GENERAL FUND

Total Budget Approved 2011 Session	FY 12-13 $5,126,603	
Budget Changes		
25 Management Flexibility Reduction Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program. For FY 2012-13, the reductions shall be taken in the Administration and Campaign Reporting Divisions, so that there will be no reduction to the Maintenance of Effort expenditures required to access federal Help America Vote Act Title II funds.	($102,532)	R
26 Maintenance of Effort Appropriates funds to meet federal Help America Vote Act (HAVA) Title II Maintenance of Effort requirements, which will enable the State Board of Elections to access and expend the remaining $4 million in federal HAVA Title II Funds. Total required to meet MOE is based on the most recent data from the State Board of Elections.	$563,936	NR
Budget Changes	($102,532)	R
	$563,936	NR
Total Position Changes		
Revised Total Budget	$5,588,007	

State Budget & Management

GENERAL FUND

Total Budget Approved 2011 Session	FY 12-13 $5,848,663	
Budget Changes		
27 Eliminate Receipt-Supported Positions Eliminates two receipt-supported internal auditor positions, which will no longer be funded with receipts from the Information Technology Internal Service Fund. Savings to the Information Technology Internal Service Fund total $170,152: #65009983 ($85,686) salary & benefits #65011783 ($84,466) salary & benefits		
Department-wide		
28 Management Flexibility Reduction Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($116,973)	R
Budget Changes	($116,973)	R
Total Position Changes		
Revised Total Budget	$5,731,690	

State Budget and Management - Special

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	**$440,612**

Budget Changes

29	**Align Budget With 2011 Reductions** Adjusts the total transferred to the Department of Insurance for the Fire Protection Grant Fund to account for the 10% reduction directed in the 2011 Conference Report.	($390,612)	R
30	**Transition Reserve** Funds a reserve for operating expenses and temporary staff for planning, reorganization, and other activities related to the transition of Executive Branch offices. Any unspent funds shall revert to the General Fund at the end of the fiscal year.	$330,000	NR

N.C. Humanities Council

31	**Management Flexibility Reduction** Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.	($1,000)	R

Budget Changes	**($391,612)**	**R**
	$330,000	**NR**
Total Position Changes		
Revised Total Budget	**$379,000**	

Senate Subcommittee on General Government

State Controller

GENERAL FUND

	FY 12-13	
Total Budget Approved 2011 Session	**$28,368,957**	
Budget Changes		
32 Cash Management Module		
Funds the Office of the State Controller's portion of the upgrade of the State's Cash Management System. This is a joint project between the Department of the State Treasurer and the Office of the State Controller.	$1,347,397	NR
Department-wide		
33 Management Flexibility Reduction	($567,379)	R
Implements a necessary management flexibility reduction to pay for unbudgeted overpayments, penalties and unachieved reductions in the Medicaid Program.		
Budget Changes	($567,379)	R
	$1,347,397	NR
Total Position Changes		
Revised Total Budget	**$29,148,975**	

Treasurer

GENERAL FUND

Total Budget Approved 2011 Session	FY 12-13
	$6,621,750

Budget Changes

1310 - Local Government Operations

34 Audit, Integrated Debt, And Fiscal Management System

Funds the acquisition of an electronic audit management system and the development and implementation of a debt management system. The Department received authorization for the first phase of the project in FY 2011-12 regarding a document management system. This is the second phase of the project. Funding for the project is from fees assessed by the Department on debt issuances which were previously approved by the General Assembly. Total cost for the system in FY 2012-13 is $1,082,219 with $200,419 recurring and $881,800 non-recurring.

1510 - Financial Operations Division

35 Banking System Upgrade

Funds the Department of State Treasurer's portion of the upgrade of the State's Cash Management System that is utilized by the State's Pension Fund. This is a joint project between the Department of the State Treasurer and the Office of the State Controller. The portions not related to the State's Pension Fund shall be funded by an appropriation to the Office of the State Controller. The total amount authorized to be used by the Department of the State Treasurer is $2,052,000 in FY 2012-13.

Budget Changes	
Total Position Changes	
Revised Total Budget	**$6,621,750**

Senate Subcommittee on General Government

Treasurer - Retirement for Fire and Rescue

GENERAL FUND

	FY 12-13
Total Budget Approved 2011 Session	**$17,812,114**
Budget Changes	
36 No Changes	
Budget Changes	
Total Position Changes	
Revised Total Budget	**$17,812,114**

TRANSPORTATION
Section K

Highway Fund

	HIGHWAY FUND
	FY 12-13
Total Budget Approved 2011 Session	$2,134,160,000

Budget Changes

Administration

1 **Information Technology** $2,020,000 R

Appropriates additional funds to support telecommunication ($750,000) and data processing costs ($930,000), as well as lease requirements ($340,000).

2 **Information Technology - Combined Registration and Tax Collection System**

Budgets receipts from the Combined Motor Vehicle and Registration Account to support development and implementation costs for the Combined Motor Vehicle Registration and Property Tax Collection System. Receipts budgeted for FY 2012-13 total $2,267,963 recurring and $12,290,309 non-recurring.

3 **Fiscal - Combined Registration and Tax Collection System**

Authorizes six (6) receipt-supported positions to oversee the collection of registration fees and property taxes in advance of the July 1, 2013 implementation date for the Combined Motor Vehicle Registration and Property Tax Collection System. Pre-implementation functions include initiation of system projects and changes which affect revenue capture and reporting from the: State Registration and Titling System (STARS), Vehicle Property Tax System (VPT), State Automated Driver's License System (SADLS), Fuel Tax Compliance System (FuelTacs), SAP, the Division of Motor Vehicles (DMV) Bad Debt System, and other DMV subsystems.

Budgeted receipts for FY 2012-13 total $370,038 recurring and $121,806 non-recurring, per transfers from the Combined Motor Vehicle and Registration Account.

Effective dates for the authorized positions are shown below:

Grade	Position Title	Effective Date
Banded - J	Accounting Manager	07/01/2012
Banded - A	Accountant	08/01/2012
Banded - C	Accountant	09/01/2012
Banded - J	Accounting Technician	09/01/2012
Banded - C	Accountant	12/01/2012
Banded - J	Accounting Technician	12/01/2012

Construction

4 Contingency Fund

Appropriates $22,000,000 of accumulated unencumbered fund balance from the Contingency Fund.

5 Secondary Roads ($17,737,270) R

Reduces funding to the secondary system construction program to meet new revenue target. The total budget is $35,742,912 in FY 2012-13.

Department-wide

6 Personnel Reduction ($588,561) R

-9.00

Eliminates 70 vacant positions throughout the Department, including: nine (9) positions funded with Highway Funds; 12 receipt-supported Highway Trust Fund positions totaling $661,669; and 49 field positions totaling $3,439,178. The total includes salary, benefits, and an employee cost multiplier of 2.31%. DOT is directed to identify the 12 receipt-supported Highway Trust Fund and 49 field positions for elimination. The nine (9) positions funded with Highway Funds are:

- Asset Management:
  2 vacant HF: 60027653 Engineering Director
  60027656 Technical Trainer

- Information Technology:
  1 vacant HF: 60015188 Business & Technology Analyst

- Fiscal Management:
  1 vacant HF: 60015370 Processing Asst IV

- Purchasing:
  2 vacant HF: 60015403 Departmental Purchasing Agent I
  60015404 Processing Asst IV

- Human Resources:
  3 vacant HF: 60027540 Personnel Technician III
  60015027 Personnel Analyst II
  60015026 Personnel Analyst II

Division of Motor Vehicles

7 Adjust Driver License Credit/Debit Costs ($792,641) NR

Reduces funds budgeted for credit/debit card transaction costs based on the revised implementation timeline for the Next Generation Secure Driver License System (NGSDLS) and a rate reduction for Information Technology Services (ITS) common payment services. Phased implementation of the NGSDLS is targeted for January 2013.

8 Bulk Data Fee Receipts $4,000,000 R

Adjusts net appropriations per projected FY 2012-13 bulk data fee receipts.

9 Internal Consolidation ($747,667) R

-13.00

Consolidates the Division of Motor Vehicles (DMV) fiscal, human resources, information technology, facility management, and associated functions assigned to the "DOT PAM/PD DMV II Operations" and "DOT PAM/PD DMV II Operations Budget" organizational units among respective central administrative units of the Department of Transportation.

The following positions are eliminated effective July 31, 2012, per this restructuring:

Position Number	Position Title
60029792	Administrative Assistant
60029795	Technology Support Analyst
60029798	Safety Officer II
60029799	Business Officer
60030094	Administrative Officer III
60029837	Departmental Purchasing Agent I
60029839	Accountant
60030103	Processing Assistant IV
60030155	Processing Assistant V
60030157	Processing Assistant V
60030165	Administrative Assistant I
60030168	Departmental Purchasing Agent I
60030596	Accountant
60030925	Departmental Purchasing Agent I
60088760	Accountant

To supplement administrative support for the Division of Motor Vehicles, two (2) full-time, permanent positions are created within the Division of Motor Vehicles Office of the Commissioner effective July 1, 2012.

Respective classifications and funding are:

Grade	Position Title	Position Cost

Banded - J	Accountant	$76,835
Banded - J	Accountant	$76,835

Net recurring savings per this restructuring total $747,667 for FY 2012-13. Annualized savings, beginning in FY 2013-14, total $829,606.

An additional $303,675 is appropriated, per item 22, on a non-recurring basis for estimated severance payments incurred during FY 2012-13.

10 Driver License Program Continuation Review $47,713,947 R

Restores recurring funds held in reserve for the Driver License Program per continuation review.

11 DMV - Combined Registration and Tax System

Authorizes 43 receipt-supported positions, of which 22 are time-limited, within the Vehicle Services Section to implement and administer the Combined Motor Vehicle Registration and Property Tax Collection System. This authorization includes: four (4) Staff Development Specialist I positions to conduct training in advance of system implementation; four (4) Administrative Assistant II positions to assist license plate agencies by recording and resolving system problems; two (2) Title Examiner Supervisor I positions to supervise call center employees; four (4) Information Processing Technicians to support transaction volumes at the Raleigh and Charlotte offices; 25 Information Processing Technicians to resolve customer service requests; and, four (4) Processing Assistant IV positions to accommodate increases in mailings and internet renewals. Time-limited positions shall terminate no later than June 30, 2014.

Budgeted receipts for FY 2012-13 total $1,407,763 recurring and $1,802,955 non-recurring. Non-recurring costs include equipment acquisitions to implement credit/debit payments at license plate agencies and State offices. These costs are offset by corresponding transfers from the Combined Motor Vehicle and Registration Account.

Effective dates for the authorized positions are shown below:

Grade	Position Title	Effective Date	FTE
67	Staff Development Specialist I	07/01/2012	1.00
67	Staff Development Specialist I - TL	07/01/2012	3.00
65	Administrative Assistant II	10/01/2012	2.00
65	Administrative Assistant II - TL	10/01/2012	2.00
64	Title Examiner Supervisor I	10/01/2012	2.00
63	Information Processing Technician	10/01/2012	14.00
63	Information Processing Technician - TL	10/01/2012	15.00
59	Processing Assistant IV	04/01/2013	2.00
59	Processing Assistant IV - TL	04/01/2013	2.00

Intermodal

12 **Public Transportation Division - New Starts** ($28,972,845) R

Eliminates the New Start & Regional Capital grant program within the Public Transportation Division. The remaining unexpended program balance within the Highway Fund is transferred to the General Maintenance Reserve.

13 **Rail Division - Personnel Reduction**

Eliminates one (1) vacant, receipt-supported field position (60015656 Engineering Technician) totaling $74,900 in estimated operating savings.

14 **Ferry Division - Dredge Replacement Project**

Adjusts funding for the dredge build project per the engineer's estimate of total project cost. ($3,000,000) NR

15 **Ferry Division - Personnel Reduction**

Eliminates nineteen (19) vacant, receipt-supported field positions totaling $787,294 in estimated operating savings. The total includes salary; benefits, and an employee cost multiplier of 2.31%. FTE reductions are as follows:

Position Number	Position Title
60018911	Office Assistant III
60018566	Processing Assistant III
60018501	Ferry Crew Member I
60018533	Security Guard
60018538	Security Guard
60018611	Security Guard
60018617	Security Guard
65009109	Security Guard
65009108	Security Guard
60089130	Ferry Crew Member I
60018643	Security Guard
60018667	Security Guard
60018729	Security Guard
65009103	Security Guard
60018490	Dredge Deckhand
60018796	Ferry Master
60018883	Maintenance Mechanic IV
60018872	Processing Assistant IV
60018864	Processing Assistant III

Maintenance

16	**Primary System** Reduces funding to the primary system maintenance program to meet new revenue target. The total budget is $152,408,682 in FY 2012-13.	($29,562,116)	R
17	**Secondary System** Reduces funding to the secondary system maintenance program to meet new revenue target. The total budget is $252,686,978 in FY 2012-13.	($11,824,846)	R
18	**System Preservation** Per G.S. 119-18(b), increases system preservation by $520,014 from cuts made to the Department of Revenue's Taxpayer Collection Division for motor fuel enforcement and auditing. The total budget is $235,504,017 in FY 2012-13.	$520,014	R

Reserves

19	**Compensation Adjustment and Performance Pay Reserve** Eliminates the reserve in FY 2012-13.	($4,906,715)	R
20	**Highway Fund Reserve for Compensation Increases** Provides funding to support an annual salary increase of 1.2% to permanent employees whose salaries are supported by Highway Fund appropriations.	$4,668,590	R
21	**Disability Income Plan of North Carolina** Reduces the State's contribution to the Disability Income Plan from .52% of payroll to .44% of payroll (a .08% reduction) as a result of the December 31, 2010 actuarial valuation.	($255,000)	R
22	**Severance Expenditure Reserve** Increases funding for severance salary continuation payments and health benefit coverage under the State Health Plan for employees reduced-in-force.	$303,675	NR
23	**State Retirement System Contributions - State Highway Patrol Transfer** Adjusts the budgeted retirement contribution to the Teachers' and State Employees' Retirement System for 2012-13 per the transfer of the State	($4,000,000)	R

Highway Patrol to the General Fund.

24 State Health Plan - State Highway Patrol Transfer ($1,000,000) R

Adjusts funding for the State Health Plan per the transfer of the State Highway Patrol to the General Fund.

25 Global TransPark ($152,000) R

Reduces operating assistance to the Global TransPark by $152,000. FY 2012-13 appropriations total $1.0 million.

26 Reserve for Continuation Review ($47,713,947) R

Eliminates the internal reserve for the Driver License Program per restoration of funding.

Revenue Availability

27 Inspection Program Account Balance

Notwithstands G.S. 20-183.7(d) to appropriate $11.0 million from the Inspection Program Account balance. Highway Fund availability is adjusted accordingly.

28 Civil Penalty Collections

Reduces estimated Highway Fund revenue by $22.0 million to reflect a change in accounting procedure. Rather than recording civil penalty proceeds as revenue, the clear proceeds of all civil penalties, civil forfeitures, and civil fines collected by the Department of Transportation for transfer to the Civil Penalty and Forfeiture Fund shall be recorded as receipts and budgeted in a receipt-supported fund center for transfer to the Civil Penalty and Forfeiture Fund.

29 Division of Motor Vehicles - Limited Learner Permit

Increases projected driver license revenues by $3.18 million per the establishment of a $45 supplemental fee to be paid by limited learner permit applicants who participated in public driver education programs.

Statutory Adjustments

30 Aid to Municipalities ($912,604) R

Reduces funds for State Aid to Municipalities for FY 2012-13, consistent with new revenue estimates and G.S. 136-41.1.

Transfers

31 State Retirement System Contributions - State Highway Patrol Transfer $4,000,000 R
$3,000,000 NR

Adjusts the budgeted retirement contribution to the Teachers' and State Employees' Retirement System for 2011-12 and 2012-13 per the transfer of the State Highway Patrol to the General Fund.

32 State Health Plan Contribution - State Highway Patrol Transfer $1,000,000 R

Adjusts the budgeted contribution for the State Health Plan in 2012-13 per the transfer of the State Highway Patrol to the General Fund.

33 Department of Revenue - Taxpayer Collections (Motor Fuels) ($520,014) R

Eliminates ten (10) vacant positions for a total personnel savings of $488,014. Other costs to support these personnel, such as travel, per diem, and supplies are reduced by $32,000. The savings transferred to System Preservation total $520,014.

The positions eliminated include eight (8) Motor Fuel Auditors and two (2) Law Enforcement Agents. The position numbers supported by the Highway Fund are 60083149, 60083173, 60083153, 60083182, 60083177, 60083178, 60083201,and 60083205. Two positions supported with federal funds are 65007466 and 65007490.

34 Motor Carrier Safety Assistance Program (MCSAP) $330,000 R

Increases budgeted State matching funds to match $6.0 million in anticipated federal MCSAP basic and incentive grants administered by the Department of Public Safety, State Highway Patrol. Appropriated matching and maintenance of effort funds total $1,980,458.

35 Civil Penalty and Forfeiture Fund ($22,000,000) R

Eliminates the appropriated reserve (84210-0889) historically used to budget civil penalty collections and transfer funds to the Civil Penalty and Forfeiture Fund. Civil penalties are instead budgeted as receipts to better account for the annual fluctuation in collections, and to establish consistency in statewide accounting procedures. Estimated Highway Fund revenue is reduced accordingly.

Per FY 2012-13 projections, an estimated $29.88 million will be transferred to the Civil Penalty and Forfeiture Fund.

36	**Department of Public Instruction - Driver Education Program** Appropriates $3.18 million for driver education funding per repeal of S.L. 2011-145, Sec. 31.1 and establishment of a new $45 supplemental fee for a (GDL-1) limited learner permit.	$3,180,000	R

Budget Changes	**($103,461,034)**	R
	($488,966)	NR
Total Position Changes	-22.00	
Revised Total Budget	**$2,030,210,000**	

Highway Trust Fund

	HIGHWAY TRUST FUND
	FY 12-13
Total Budget Approved 2011 Session	$1,086,910,000

Budget Changes

Administration

37 Statutory Adjustment to Program Administration ($1,516,320) R

Decreases funds for Program Administration for FY 2012-13 consistent with new revenue estimates and G.S. 136-176(b). The total budget is $45,590,880 in FY 2012-13.

Aid to Municipalities

38 Statutory Adjustment to Aid to Municipalities Allocation ($979,789) R

Decreases funds for State Aid to Municipalities for FY 2012-13, consistent with new revenue estimates and G.S. 136-176(b)(3). The total budget is $53,063,643 in FY 2012-13.

Construction

39 Urban Loops ($3,775,957) R

Reduces funds for Urban Loops by 25.05% of the total amount needed to balance the Highway Trust Fund in accordance to the formula in G.S. 136-176(b)(2). The total budget is $209,182,029 in FY 2012-13.

40 Intrastate System ($9,338,145) R

Reduces funds for the Intrastate System by 61.95% of the total amount needed to balance the Highway Trust Fund in accordance to the formula in G.S. 136-176(b)(1). The total budget is $478,164,889 in FY 2012-13.

41 Secondary Roads ($979,789) R

Reduces funds for Secondary Roads by 6.5% of the total amount needed to balance the Highway Trust Fund in accordance to the formula in G.S. 136-176(b)(4). The total budget is $48,341,155 in FY 2012-13.

Mobility Fund

42	**Mobility Fund** Transfers funds in the DOT Prioritization Reserve to the Mobility Fund and transfers $32.5 million in unneeded FY 2012-13 gap funds appropriated to the Garden Parkway and Mid-Currituck Bridge projects.	$45,000,000 $32,500,000	R NR
43	**DOT Prioritization Reserve** Eliminates the DOT Prioritization Reserve.	($45,000,000)	R

Turnpike Authority

44	**Mid-Currituck Bridge Project** Reallocates $15,000,000 of unencumbered gap funds appropriated in FY 2011-12 to the Mid-Currituck Bridge project.		
45	**Gap Funds** Eliminates the FY 2012-13 gap funding to the Garden Parkway and the Mid-Currituck Bridge projects based on a determination by DOT that these two projects will not issue debt until FY 2013-14.	($32,500,000)	NR

Budget Changes	**($16,590,000)**	R
	$0	NR
Total Position Changes		
Revised Total Budget	**$1,070,320,000**	

Turnpike Authority

TURNPIKE AUTHORITY

	FY 12-13
Total Budget Approved 2011 Session	**$3,642,571**
Budget Changes	
Turnpike Authority Administration	
46 Reduces Operating Funds	($336,193) R
Eliminates three (3) vacant receipt-supported positions totaling $336,193. The total includes salary, benefits, and an employee cost multiplier of 2.31%.	
60088764 Engineering Manager	
65004640 Technology Support Specialist	
65007229 Business Officer	
Budget Changes	($336,193) R
Total Position Changes	
Revised Total Budget	**$3,306,378**

RESERVES/ DEBT SERVICE/ ADJUSTMENTS Section L

Senate Committee on Appropriations/Base Budget

Statewide Reserves

	GENERAL FUND
	FY 12-13
Total Budget Approved 2011 Session	**$1,415,660,126**

Budget Changes

A. Employee Benefits

1	**Compensation and Performance Pay Reserve** The balance in this reserve is transferred to the Reserve for Compensation Increases and Personnel Flexibility.	($121,105,840)	R
2	**Reserve for Compensation Increases and Personnel Flexibility** Provide funds to support salary increases for employees of State agencies, departments, and university SPA employees and to support salary increases and personnel flexibility for university EPA employees, and employees of community college institutions and public schools.	$159,984,426	R
3	**State Agency/Department Salary Increases** Provides up to $30,046,765 to support an annual salary increase of 1.2% for permanent employees of State agencies and departments.		
4	**Public School Salary Increases/Personnel Flexibility** Provides up to $84,964,142 to local school administrative units for personnel expenditures. Local school administrative units may use these funds to award compensation increases to employees including but not limited to merit increases, across-the-board increases, recruitment bonuses, retention increases, and other bonuses pursuant to local personnel policies; to offset the LEA flexibility adjustment; and to employ personnel. No compensation increase awarded shall modify an employee's placement on a State salary schedule.		
5	**Community College Salary Increases/Personnel Flexibility** Provides up to $14,102,935, the amount necessary to support a 1.2% annual salary increase, to State-funded community college employees. The State Board of Community Colleges may use these funds to award compensation increases to employees, including but not limited to merit increases, across-the-board increases, recruitment bonuses, retention increases, and other increases pursuant to applicable personnel policies; to offset the management flexibility reduction; and to employ personnel.		

6 University Salary Increase/Personnel Flexibility

Provides up to $8,649,234 for SPA employees and $22,221,350 for EPA employees, the amount necessary to support a 1.2% annual salary increase. Permanent university SPA employees shall receive a 1.2% annual salary increase. The University Board of Governors may use funds designated for EPA faculty and EPA nonfaculty to award compensation increases to EPA employees including but not limited to merit increases, across-the-board increases, recruitment bonuses, retention increases, and other increases pursuant to applicable personnel policies; to offset the management flexibility reduction; and to employ personnel.

7 Highway Fund Reserve for Compensation Increases

Provides funding in the amount of $4,668,590 recurring to support an annual salary increase of 1.2% to permanent employees whose salaries are supported by Highway Fund appropriations.

8 Retirement Systems Cost of Living Increase

Provides a 1.0% cost of living adjustment to retirees of the Teachers' and State Employees' Retirement System effective July 1, 2012 at a cost of $32,142,000 annually.

Also, provides a 1.0% cost of living adjustment to retirees of the Legislative Retirement System effective July 1, 2012 at a cost of $21,000.

9 Consolidated Judicial Retirement System $100,000 R

Increases the State's contribution for Fiscal Year 2012-2013 to provide a 1.0% cost-of-living adjustment for retirees of the Consolidated Judicial Retirement System at a cost of $385,000 annually. This adjustment is funded in part with actuarial gains within the Retirement System.

10 Disability Income Plan of North Carolina ($8,688,000) R

Reduces the State's contribution to the Disability Income Plan from .52% of payroll to .44% of payroll (a .08% reduction) as a result of the December 31, 2010 actuarial valuation.

B. Other Reserves

11 One North Carolina Fund $9,000,000 R

Provides recurring funding for the One North Carolina Fund. A corresponding special provision changes the funding basis to cash flow. The Fund currently has a cash balance of over $60.0 million. $10.0 million will remain in the Fund and $50.0 million will be transferred to the General Fund.

12 VIPER Reserve

Authorizes the State Highway Patrol to use up to $25 million in FY 2012-13 for the Voice Interoperability Plan for Emergency Response (VIPER) system. Funds may be used for construction of the remaining 23 towers and for migrating existing and new sites to P25 technology. $25,000,000 NR

13 Job Development Investment Grant Reserves

Reduces the funding for Job Development Investment Grants to the amount needed to meet projected needs for FY 2012-13 grant payments. ($6,500,000) NR

14 Information Technology Fund		
Continues reduction in IT consolidation funding taken by the Office of State Budget and Management in FY 2011-12.	($750,000)	NR
15 Continuation/Justification Review Reserve		
Eliminates reserve due to the distribution of funds to agencies with programs under review.	($35,576,758)	NR
C. Debt Service		
16 Adjust Debt Service Payments	($52,904,635)	R
Budget Changes	**($13,614,049)**	**R**
	($17,826,758)	**NR**
Total Position Changes		
Revised Total Budget	**$1,384,219,319**	

State Health Plan (Administration)

Budget Code: 28410

	FY 2012-13	
Beginning Unreserved Fund Balance	**$40,005**	
Recommended Budget		
Requirements	**$183,604,143**	
Receipts	**$183,604,143**	
Positions	**42.00**	

Legislative Changes

Requirements:

Other Administrative Cost	$328,332	R
Creates three new staff positions to administer a Medicare Part D Employer Group Waiver Plan (EGWP) that will reduce the State Health Plan's cost of drug coverage.	$10,200	NR
	3.00	
Pharmacy Benefits Management Contract	$5,444,717	R
Increases the budgeted amount for the Pharmacy Benefit Management Contract to cover fees to administer a Medicare Part D Employer Group Waiver Plan (EGWP) that will reduce the State Health Plan's cost of drug coverage.	$0	NR
	0.00	
Subtotal Legislative Changes	**$5,773,049**	R
	$10,200	NR
	3.00	

Receipts:

Increase Transfers from Trust Funds	$5,773,049	R
Increases the amount of transfer from the Plan's health benefit trust fund budget codes to support administrative costs related to Medicare Part D Employer Group Waiver Plan (EGWP).	$10,200	NR
Subtotal Legislative Changes	**$5,773,049**	R
	$10,200	NR

	FY 2012-13
Revised Total Requirements	**$189,387,392**
Revised Total Receipts	**$189,387,392**
Change in Fund Balance	**$0**
Total Positions	**45.00**
Unappropriated Balance Remaining	**$40,005**

CAPITAL
Section M

Capital

	GENERAL FUND	
Department of Environment and Natural Resources		
1 Water Resources Development Projects Provides funds for the State's share of Water Resources Development Projects. Funds will provide a State match for $86.39 million in federal funds. The projects are listed in a special provision.	$5,000,000	NR
Total Appropriation to Capital	**$5,000,000**	**NR**

INFORMATION TECHNOLOGY SERVICES
Section N

Senate Report on Information Technology

Information Technology Fund

Budget Code: 24667

	FY 2012-13
Beginning Unreserved Fund Balance	**$794,928**
Recommended Budget	
Requirements	**$6,183,142**
Receipts	**$6,158,142**
Positions	**31.00**

Legislative Changes

Requirements:

Information Technology Consolidation Reduction Reduces IT Consolidation by $250,000 and transfer that amount to the General Fund to reflect previous year OSBM reduction to the IT Fund.	$0	R
	($250,000)	NR
	0.00	
Provide Architecture and Engineering Strategists Increases Architecture and Engineering funding to provide a Computer Strategist and a Network Strategist to build roadmaps and assessments to support Office of Information Technology Services systems and services deployments. Transfers two positions from the Information Technology Internal Service Fund to support this effort.	$270,000	R
	$0	NR
	2.00	
Reduction to CGIA Appropriation Reduces appropriation for the Center for Geographic Information and Analysis and transfer requirements to receipt support.	($137,476)	R
	$0	NR
	0.00	
Increase Appropriation to CJIN Increases appropriation to the Criminal Justice Information Network to include overhead costs.	$12,404	R
	$0	NR
	0.00	
Funding for State Website Provides funding to support current State website.	$150,000	R
	$0	NR
	0.00	

	FY 2012-13	
Subtotal Legislative Changes	**$294,928**	R
	($250,000)	NR
	2.00	

Receipts:

Information Technology Fund Interest	$25,000	R
Accounts for the interest generated by the Information Technology Fund.	$0	NR
Transfer to General Fund	$0	R
Transfers portion of carryforward balance to the General Fund.	($750,000)	NR
Subtotal Legislative Changes	**$25,000**	R
	($750,000)	NR

Revised Total Requirements	**$6,228,070**
Revised Total Receipts	**$5,433,142**
Change in Fund Balance	**($794,928)**
Total Positions	**33.00**
Ending Unreserved Fund Balance	**$0**

Information Technology Internal Service Fund

Budget Code: 74660

	FY 2012-13	
Beginning Unreserved Fund Balance	**$34,643,121**	
Recommended Budget		
Requirements	**$189,626,312**	
Receipts	**$189,095,142**	
Positions	**531.00**	

Legislative Changes

Requirements:

Reduction to IT Internal Service Fund Requires the Office of the State Chief Information Officer and the Office of Information Technology Services to reduce requirements for the Information Technology Internal Service Fund to reflect a reduction of 24 positions ($2,588,162), elimination of lease costs ($491,302), delay in replacement of lighting ($780,000), transfer of two positions to the IT Fund ($270,000), return internal auditors to OSBM ($170,152), elimination of in-kind services ($266,979), Gartner seat reductions ($270,155), email increase ($500,000), hosting exemption for the Department of Transportation that eliminates the need for ITS hosting ($2,500,000), and elimination of proposed increases in hosting contracts ($7,929,219). Eliminated positions include: 60087660, 65010103, 60087301, 60087342, 65000716, 60087484, 60087378, 60087439, 60087526, 65000533, 60089793, 60087677, 60087592, 60087668, 65000051, 60087657, 60087672, 60087643, 60093435, 60087699, 60087637, 60087701, 60089800, 65000708.	$0 ($15,765,969) -26.00	R NR
Transfer to General Fund Transfers $14 million in allowable receipts in excess of 40-day balance to the General Fund.	$0 $14,000,000 0.00	R NR
Subtotal Legislative Changes	**$0** **($1,765,969)** -26.00	R NR

Receipts:

	FY 2012-13	
Reduction to IT Internal Service Fund	$0	R
Reduces receipts for IT Internal Service Fund to reflect reduction in requirements.	($15,765,969)	NR
Subtotal Legislative Changes	**$0**	R
	($15,765,969)	NR
Revised Total Requirements	**$187,860,343**	
Revised Total Receipts	**$173,329,173**	
Change in Fund Balance	**($14,531,170)**	
Total Positions	**505.00**	
Ending Unreserved Fund Balance	**$20,111,951**	

HOUSE BILL 950:
Modify 2011 Appropriations Act

2011-2012 General Assembly

Committee:	Senate Appropriations/Base Budget	**Date:**	June 11, 2012
Introduced by:	Rep. Brubaker	**Prepared by:**	Cindy Avrette
Analysis of:	4th Edition, with unengrossed amendments		Committee Counsel

SUMMARY: ***Senate Appropriations gave H950-PCS30634-MDxf-28 a favorable report as amended earlier today. The bill contains the following finance-related provisions:***

- ***It provides a tax deduction for educational supplies. The Senate passed this provision earlier in Senate Bill 795.***
- ***It sets the regulatory fees that are used to pay the expenses incurred in regulating the insurance industry and public utilities. The Senate passed this provision earlier in House Bill 1015.***
- ***It caps the motor fuel tax rate at 37½¢ cents a gallon for one-year, July 1, 2012, through June 30, 2013.***
- ***It removes the discretionary up-front fee to participate in the driver education program and creates an additional $45 fee payable upon issuance of a limited learner permit by DMV.***
- ***It requires DOT to establish and collect tolls on all ferry routes, including the Ocracoke/Hatteras Ferry and the Knotts island Ferry.***
- ***It prohibits the Department of Transportation from establishing or collecting tolls on I-95 prior to July 1, 2013. DOT must conduct a comprehensive study of the transportation corridor containing I-95 and report its findings to the General Assembly by March 1, 2013.***

TAX DEDUCTION FOR EDUCATIONAL SUPPLIES (Section 7A.13, Page 51)

This section allows an individual income tax deduction for teachers in elementary or secondary education of up to $250 for unreimbursed expenses paid or incurred for school supplies. Congress enacted a tax benefit to help K-12 teachers defray some of the expenditures they voluntarily make to enhance the quality of their students' education. The deduction has been available for tax years 2002-2011. Since North Carolina begins its calculation of taxable income with federal AGI, teachers in North Carolina have been allowed the deduction at the State level as well.

Congress has not extended the tax deduction beyond the 2011 taxable year. This section allows North Carolina teachers to continue deducting up to $250 for unreimbursed expenses paid or incurred for school supplies for taxable years beginning on or after January 1, 2012. If a taxpayer files a joint return and both spouses are eligible educators, then they both may claim up to $250 of expenses for a $500 total on a joint return. If Congress extends the federal tax deduction beyond taxable year 2011, then this provision will not be needed. However, if it does not, this provision ensures that North Carolina educators will continue to receive the same tax benefit they have received since 2002.

This section becomes effective for taxable years beginning on or after January 1, 2012. The Senate passed this provision earlier in Senate Bill 795.

SET REGULATORY FEES (Section 13.8A, Page 119; Section 20.5, Page 132)

Section 13.8A sets the rate for the public utility regulatory fee for fiscal year 12-13 at 0.12%. It also sets at $200,000 for fiscal year 12-13 the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to reimburse the General Fund for appropriations made to the Utilities Commission to pay the expenses incurred in regulating public utilities.

The rate of the public utility regulatory fee has not changed since fiscal year 04-05. The rate for this fee must be set each year by the General Assembly. The utility regulatory fee is a tax that was first imposed in 1989. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is derived from providing utility service in North Carolina.

The rate of the fee imposed on electric membership corporations has not changed since the General Assembly enacted it in 1999. The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiary must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation.[1] Thus, the fee imposed on the North Carolina Electric Membership Cooperation will be passed on to its member electric membership corporations.

Section 20.5 sets the insurance regulatory charge at 6% for the 2012 calendar year, the same as the rate set for the 2011 and 2010 calendar years. The proceeds of the fee are credited to the Insurance Regulatory Fund and used to reimburse the General Fund for appropriations made to the Department of Insurance and other agencies to pay the expenses incurred in regulating the insurance industry. The insurance regulatory charge was first enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's gross premiums tax liability.[2]

The Senate passed these provisions earlier in House Bill 1015.

REDUCE MOTOR FUEL EXCISE TAX RATE (Section 24.11, Page 138)

This section places a cap of 37½¢ per gallon on the motor fuel excise tax rate for the period July 1, 2012, through June 30, 2013. The rate could fall below this amount, but it could not exceed this amount. The current motor fuel tax rate is 38.9¢ per gallon. The upcoming variable rate is expected to decrease based on the six-month period that ended March 31; the projected State motor fuel tax rate beginning July 1, 2012, is 37.7¢ a gallon.

A motor fuel excise tax is imposed on all motor fuel sold, distributed, or used in the State. The motor fuel tax rate has two components: a flat rate of 17.5¢ and a variable rate that may change every six

[1] The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives."

[2] Medical service corporations and health maintenance organizations began paying the charge in 2000.

months.[3] The variable rate is equal to 7% of the wholesale price of gasoline based on a weighted average price of gasoline and diesel, as reported by the US DOE Energy Information Administration. The variable rate is currently 21.4¢. The upcoming variable rate is expected to decrease based on the six-month period that ended March 31. However, it is projected that the variable rate effective January 1, 2013, would be higher based on the wholesale price of gasoline over the last few months. The variable tax rate effective January 1, 2013, would be based on the wholesale price of gasoline during the period April 1, 2012, through September 30, 2012.[4]

This section would become effective when the act becomes law. The House passed a similar provision in House Bill 142. House Bill 142 is currently in Senate Rules.

PAYMENT OF DRIVER EDUCATION FEE WHEN GETTING PERMIT (Section 24.17, Page 139)

This section would remove the discretionary up-front fee LEAs may charge a student to participate in a driver education program and replace it with an additional $45 fee payable upon issuance of a limited learner permit by DMV.[5] The current fee for a limited learner's permit is $15. With the additional fee, the cost to obtain a limited learner's permit for an applicant who participated in a publicly-supported driver education program would be $60.

Last year, in S.L. 2011-145, the General Assembly reduced the amount of revenue transferred from the Highway Fund to the driver education program by $5.27 million. The legislation authorized LEAs to charge a fee of up to $45 for student participation in the program. LEAs were free to determine the fee amount, the implementation date, the collection process, and any other policy issues surrounding the program fee. The Department of Public Instruction surveyed LEAs to identify implementation rates and fees as of September 2011. Ninety-five of the 115 LEAs responded. Of those 95, 40% had implemented a fee. Of those 38 LEAs that implemented a fee, 29 of them implemented it at the maximum amount of $45. The survey indicated the fees ranged from $25 to $45.

Anecdotal evidence from LEAs in Mecklenburg and Wake Counties suggests a reduction in the number of students participating of roughly 20%. However, the statewide effect on participation is unknown because DPI does not track student participation and outcomes. The Fiscal Research Division and the Program Evaluation Division of Legislative Services has requested DPI to conduct a follow-up survey to assess implementation and participation.

This section would become effective July 1, 2012.

CLARIFY FERRY TOLLING (Section 24.18, Page 140)

This section directs the Board of Transportation to establish a toll on all ferry routes, including the routes for the Ocracoke/Hatteras Ferry and the Knotts Island Ferry, and it directs DOT to collect those tolls. Last year, in S.L. 2011-145, the General Assembly directed the Board of Transportation to establish tolls for all ferry routes except for the Ocracoke/Hatteras Ferry and the Knotts Island Ferry, to

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[3]The variable rate component was introduced in 1986 as part of legislation that increased funding for road construction. In addition to the introduction of a 3% variable rate, which equated to 1.5¢ per gallon at that time, the legislation increased the flat rate from 12¢ per gallon to 14¢ per gallon. The General Assembly incorporated the variable rate in part as recognition that the cost of road construction increases as the cost of motor fuel increases because of the petroleum products used in road construction. In 1989, the General Assembly increased the flat tax rate to 17¢ per gallon and increased the variable component from 3% to 7% of the average wholesale price. In 1992, the tax rate was changed to the current rate of 17.5¢ per gallon plus 7% of the average wholesale price (S.L. 1991-538).

[4] The projected average rate for FY12-13 is 38.8¢.

[5] House Bill 985, currently in House Finance, would make a similar change in the law. Rep. Gillespie sponsored the bill.

become effective April 1, 2012. The Department of Transportation has set the new and increased rates for five ferry routes, but they are not currently being enforced.

This section also declares the Governor's Executive Order No. 116 an unconstitutional attempt to exercise authority the Governor does not possess, and accordingly directs DOT to disregard the Order and begin collecting the tolls. On February 29, 2012, the Governor issued an Executive Order placing a one-year moratorium on the new and increased ferry tolls. The legality of the Governor's order has been called into question by both the Attorney General's office and members of the General Assembly. In a statement issued on April 13, 2012, Attorney General Roy Cooper said that the state law as passed by the Legislature must be followed. He further stated that since it was the Legislature's decision to collect tolls, only the Legislature has the authority to remove them.

This section would become effective July 1, 2012. The House version of House Bill 950 (Edition 3) directed DOT not to collect the new and increased tolls required by the 2011 budget act during the 2012-2013 fiscal year.

STUDY INTERSTATE 95 TOLLING (Section 24.21, page 141)

This section prohibits DOT from establishing or collecting any tolls on I-95 for the foreseeable future. In S.L. 2005-276, the General Assembly directed DOT to apply to the US Department of Transportation for a permit to allow tolling on established interstate highways and it set I-95 as the priority project when applying for those permits. To date, no fees have been established for tolling on the interstate highways and none are foreseen for the next few fiscal years.

H950-SMRB-133(4, with unengrossed amendments) v6

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 9, 2012

TO: Senators Rucho and Hartsell

FROM: Rodney Bizzell, Amna Cameron, Lanier McRee, Claire Hester, Kristin Walker, and Chloe Gossage
Fiscal Research Division

RE: PCS H950 (Third Edition) Finance Provisions Only

FISCAL IMPACT (in millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES:					
7A.13 Tax Deduction for Educational Supplies General Fund	-$1.8	-$1.8	-$1.8	-$1.8	-$1.8
12.01 Water Infrastructure Fund No impact; fee currently being collected as described in Section 12.01.					
13.8A Utilities Commission Regulatory Fee Special Fund	$14.20				
20.5 Insurance Regulatory Fund	$29.98				
24.11 Motor Fuel Cap Highway Fund	-$46.65				

Highway Trust Fund	-$15.55
Wildlife Res. Fund	-$0.08
24.17 Driver Education Funding	
Highway Fund	$3.18
Commercial LUST (Special Fund)	-$2.09
24.18 Ferry Tolling	
Highway Fund	No impact. Fees are currently budgeted per S.L. 2011-145, Sec. 31.30.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation; NC Dept. of Wildlife Resources; Utilities Commission and Public Staff; Department of Environment and Natural Resources – Commercial LUST Fund;

EFFECTIVE DATE: See Assumptions and Methodology

BILL SUMMARY:

Section 7A.13 Tax Deduction for Educational Supplies
Section 7A.13 includes a tax deduction of $250 for educational supplies purchased by an eligible educator.

Section 12.01 Water Infrastructure Fund Closing Fee Conforming Changes
Section 12.01 makes a change to the closing fee for all funds within the Water Infrastructure Fund.

Section 13.8A Regulatory Fee for Utilities Commission
This section sets the fee for regulated utility companies at 0.12% of North Carolina jurisdictional revenues; this percentage remains unchanged from recent years. It also sets the fee for the Electric Membership Corporation at $200,000.

Section 20.5 Regulatory Fee for Insurance
Section 20.5 continues the rate of 6 percent for the insurance regulatory surcharge.

Section 24.11 Reduce Motor Fuel Excise Tax Rate
Section 24.11 applies a cap of 37.5 cents per gallon from July 1, 2012 through June 30, 2013.

Section 24.17 Payment of Driver Education Fee When Getting Permit; Additional Funding for Driver Education
Section 24.17 repeals the discretionary fee authorized by S.L. 2011-145, Sec. 31.1 for participation in a driver education course and establishes a supplemental fee of $45.00 on the limited learner's permit. Participants who paid the prior participation fee are entitled to a credit toward the supplemental limited learner's permit fee. Additionally, $2.09 million of motor fuel tax revenues allocated to the Commercial Leaking Petroleum Underground Storage Tank Fund (Commercial LUST fund) is transferred to the Department of Public Instruction for the driver education program to restore $5.3 million in program funding for FY 2012-13.

Section 24.18 Clarify Ferry Tolling
Section 24.18 directs the Department of Transportation to collect ferry tolls on all routes, removing the exceptions for the Hatteras/Ocracoke and Currituck/Knotts Island routes.

Section 24.21 Study Interstate 95 Tolling
Section 24.21 requires DOT to study 1) the economic impact of tolling I-95 on affected residents and businesses; 2) how traffic patterns, safety, and travel time are impacted on alternative routes; 3) new or existing alternative routes; and 4) options to repair I-95 without the use of tolls. This section requires DOT to report the results of this study to the 2013 General Assembly by March 1, 2013. This section prohibits DOT from tolling I-95 prior to July 1, 2013.

ASSUMPTIONS AND METHODOLOGY:

Section 7A.13 Tax Deduction for Educational Supplies
Based on data provided by the Department of Public Instruction and the Division of Non-Public Education, approximately 102,000 teachers will be able to take advantage of the deduction. This is multiplied by $250 because it is assumed that each teacher taking the deduction will take the maximum amount allowed. This number is then multiplied by an average tax rate of 7% to arrive at the fiscal impact of $1.8 million in reduced revenue collections per fiscal year.

Section 12.01 Water Infrastructure Fund Closing Fee Conforming Changes
Section 12.01 makes a change to conform the language for all closing fees for all funds within the Water Infrastructure Fund. This corrects an omission that occurred during a 2005 restructuring of the General Statutes that govern all of the Department of Environment and Natural Resources (DENR)'s water/wastewater infrastructure funds. During that restructuring, language that gave DENR authority to charge closing fees for certain of those funds was repealed, yet inadvertently not reinstated. AS DENR already has in place rules that align with the statutory language in Section 12.01, there would therefore be no change to the revenues collected through these closing fees.

Section 13.8A Regulatory Fee for Utilities Commission
The Utilities Commission charges the public utility regulatory fee to 2,057 certificated companies with North Carolina jurisdictional revenues. Using past revenues as an estimate, it is assumed that these companies will have revenues of approximately $11.6 billion in FY 2012-13. Thus, a 0.12% regulatory fee would yield $14 million. These funds are deposited into a Special Fund at Commerce and then distributed to the Utility Commission and the Public Staff to fund their operations. The following table provides a 5-year history of NC utility jurisdictional revenues as well as fee revenues; the rate was 0.12% for all years shown:

History of North Carolina Utility and Fee Revenues at a 0.12% Rate, FY 2006-07 thru FY 2010-11					
	FY 2006-07	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**	**FY 2010-11**
Utility Revenues	$11,026,252,488	$11,394,049,568	$11,321,344,624	$11,548,577,717	$11,671,551,467
Fee Revenue	$13,360,713	$13,782,929	$13,964,181	$13,721,517	$14,005,862

Electric Membership Corporation Regulatory Fee
The electric membership corporation fee is a flat fee and thus anticipated revenue is equal to the fee - $200,000.

Section 20.5 Regulatory Fee for Insurance
The insurance regulatory charge is an annual charge applied to each insurance company's annual premium tax liability for the taxable year. Monies are credited to the Insurance Regulatory Fund, and are used to reimburse the General Fund for the following:

(1) Money appropriated to the Department of Insurance to pay its expenses incurred in regulating the insurance industry and other industries in this State.

(2) Money appropriated to State agencies to pay the expenses incurred in regulating the insurance industry, in certifying statewide data processors under Article 11A of Chapter 131E of the General Statutes, and in purchasing reports of patient data from statewide data processors certified under that Article.

(3) Money appropriated to the Department of Revenue to pay the expenses incurred in collecting and administering the taxes on insurance companies levied in Article 8B of Chapter 105 of the General Statutes.

(4) Money appropriated for the office of Managed Care Patient Assistance Program established under G.S. 143-730 to pay the actual costs of administering the program.

(5) Money appropriated to the Department of Insurance for the implementation and administration of independent external review procedures required by Part 4 of Article 50 of this Chapter.

(6) Money appropriated to the Department of Justice to pay its expenses incurred in representing the Department of Insurance in its regulation of the insurance industry and other related programs and industries in this State that fall under the jurisdiction of the Department of Insurance.

(7) Money appropriated to the Department of Insurance to pay its expenses incurred in connection with providing staff support for State boards and commissions, including the North Carolina Manufactured Housing Board, State Fire and Rescue Commission, North Carolina Building Code Council, North Carolina Code Officials Qualification Board, Public Officers and Employees Liability Insurance Commission, North Carolina Home Inspector Licensure Board, and the Volunteer Safety Workers' Compensation Board.

(8) Money appropriated to the Department of Insurance to pay its expenses incurred in connection with continuing education programs under Article 33 of this Chapter and in connection with the purchase and sale of copies of the North Carolina State Building Code.

(9) Money appropriated to the Department of Insurance for the regulation of the professional employer organization industry pursuant to Article 89A of Chapter 58 of the General Statutes.

Unexpended monies remain in the Insurance Regulatory Fund.

For taxable years 2010 and 2011, the surcharge was also 6.0 percent. These monies were collected in fiscal years 2010-11 and 2011-12. The Department of Insurance anticipates an increase of

0.0025 percent in premium tax liability and surcharge revenues for FY 2012-13 compared to FY 2011-12. Actual and anticipated collections are as follows:

Department of Insurance, Insurance Regulatory Fund Revenues, FY 20110-11 thru FY 2012-13		
FY 2010-11 Actual	**FY 2011-12 Estimated**	**FY 2012-13 Anticipated**
$29,877,292	$29,909,412	$29,984,412

Section 24.11 Reduce Motor Fuel Excise Tax Rate

Consensus Revenue Forecast:

The motor fuels excise tax rate consists of a flat rate of 17.5 cents per gallon plus a variable rate that is 7% of the national weighted average wholesale price of gasoline and diesel for a six-month base period. For January through June 2012, the variable rate is 21.4 cents per gallon. Based on the April 2012 consensus revenue forecast, the variable rate will decrease to an average of 21.3 cents per gallon in FY 2013. Capping the tax at 37.5 cents per gallon sets a maximum variable rate at no more than 20.0 cents per gallon for FY 2013. Based on existing statutes, the variable rate will automatically readjust on July 1, 2013. Capping this automatic adjustment generates this fiscal impact.

Distribution of Motor Fuels Excise Tax:

Wildlife Resources Fund receives 1/6 of one percent of Motor Fuels Excise Tax attributed only to the Highway Fund. A cap impacts the Highway Fund, Highway Trust Fund, and Wildlife Resources Fund. The total cut to Wildlife Resource associated with the cap is $77,750.

Section 24.17 Payment of Driver Education Fee When Getting Permit; Additional Funding for Driver Education

Due to varied implementation and a limited time frame, the impact of the recently enacted discretionary participation fee is undocumented. Additionally, there is limited data from which to estimate the proportion of applicants which did not participate in a publicly-funded driver education program. Accordingly, Fiscal Research assumes a 15% reduction in baseline original issuances of limited learner permits to account for the potential reduction in applications based on anecdotal assessments of student participation in driver education programs that implemented the discretionary fee, as well as sensitivity to the increased fee.

Reported FY 2010-11 issuances of original limited learner's permits totaled 88,429, yielding estimated baseline revenue of $1.33 million. Net estimated revenues per implementation of the new fee total $3.18 million.

Motor fuel tax revenue formerly allocated to the Commercial LUST fund is transferred to the Department of Public Instruction for the driver education program to restore $5.3 million in program funding for FY 2012-13. The loss of this $2.1 million in revenue to the Commercial LUST fund will reduce the fund's total revenue by approximately eight percent, and accordingly will reduce the number of reimbursements that DENR can provide to eligible UST owners, operators, and landowners for the costs of environmental cleanup and third-party liability claims. According to the program's FY 2010-11 annual report, DENR knows of an additional 6,257 commercial releases needing clean-up with an expected cost in excess of $513 million. Approximately 300 new commercial releases are reported each year, resulting in another $25

million in potential annual reimbursement costs. Decreases to the funding for the Commercial LUST fund reduce the number of clean-ups that can be completed annually and could increase the wait-list for reimbursement.

Section 24.18 Clarify Ferry Tolling
Requires the Department of Transportation to adjust and collect ferry tolls to meet $2.5 million in additional receipts currently budgeted in FY 2012-13 per the 2011 Appropriations Act. DOT must revise the fare schedule contained in the submitted amendments to 19A NCAC 02D .0531 and 19A NCAC 02D .0532 to account for the removal of the Hatteras/Ocracoke and Currituck/Knotts Island route exemptions. Given the current status of tolling infrastructure, Fiscal Research anticipates an implementation delay of at least four weeks.

Section 24.21 Study Interstate 95 Tolling
This section has no fiscal impact.

SOURCES OF DATA: Consensus Revenue Forecast, April 2012, between the Office of State Budget and Management and the North Carolina General Assembly's Fiscal Research Division; Department of Environment and Natural Resources; Utilities Commission

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 950

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H950-AMD-94 [v.14]

Comm. Sub. [YES]
Amends Title [NO]
H950-PCS

Date _____,2012

Senator Stevens

Moves to amend the bill on Page 3, Lines 3 through 5, by deleting the lines and substituting the following:

"DENR Clean Water Management Trust Fund 0

Department of Labor (316,738)"; and

On Page 25, Lines 44 through 49, by deleting the lines; and

On Page 26, Lines 29 and 30, by inserting between the lines the following:

"j. An inventory of all potential resources, both public and private, available to support the development, implementation, operation, and management of the private cloud, and the costs and benefits associated with each."; and

On Page 81, Line 49, by adding a new section immediately after that line to read:

"**LIABILITY INSURANCE**

SECTION 9.15. G.S. 116-11 is amended by adding a new subsection to read:

"(13a) The Board of Governors may authorize the President to purchase commercial insurance of any kind to cover all risks or potential liability of the University, the Board of Governors, President, the University benefit plan administrators, and employees and agents of the University relating to the management, direction and administration of University employee benefit plans, including the risks and potential liability related to benefit plan investments managed by the University.

Members of the Board of Governors and employees of the University shall be considered State employees for purposes of Articles 31 and 31A of Chapter 143 of the General Statutes. To the extent that the President purchases commercial liability insurance coverage in excess of one hundred fifty thousand dollars ($150,000) per claim for liability arising under Article 31 or 31A of Chapter 143 of the General Statutes, the provisions of G.S. 143-299.4 shall not apply. To the extent that the President purchases commercial insurance coverage for liability arising under Article 31 or 31A

9.16
5

of Chapter 143 of the General Statutes, the provisions of G.S. 143-300.6(a) shall not apply.

The purchase of insurance by the President under this section shall not be construed to waive sovereign immunity or any other defense available to the University, the Board of Governors, President, University benefit plan administrators, and employees and agents of the University in an action or contested matter in any court, agency, or tribunal. The purchase of insurance by the President shall not be construed to alter or expand the limitations on claims or payments established in G.S. 143-299.2 or limit the right of the University, the Board of Governors, President, University benefit plan administrators, and employees and agents of the University to defense by the State as provided by G.S.-143 300.3."; and

On Page 87, Lines 14 through 22, by deleting the lines and substituting the following:
"**OUTPATIENT IMAGING SERVICES**

SECTION 10.9D. Prior to March 31, 2013, the Department of Health and Human Services shall not issue any request for proposals for the provision of outpatient imaging services for the Medicaid program."; and

On Page 92, Line 58 through Page 94, Line 44, by deleting the lines; and

On Page 98, Line 34, by reducing the amount by one hundred thousand dollars ($100,000); and

On Page 99, Line 21, by inserting the following:
"Division of Central Management and Support

19A. ALS Association Jim "Catfish" Hunter Chapter 100,000"; and

On Page 100, Line 59, by inserting on that line "(TEACH Program $3,800,000)"; and

On Page 101, Line 7, by rewriting the line to read:
"06. Local Subsidized Child Care Services Support
(4% Administrative Allowance) 15,898,602"; and

On Page 102, Lines 3 through 5, by rewriting the lines to read:
"01. Children's Health Services
(Nurse-Family Partnership $375,000)) 8,487,547

02. Women's Health
(March of Dimes $350,000; Teen Pregnancy
Prevention Initiatives $650,000; Perinatal
Quality Collaborative $250,000; 17P Project $47,000) 8,404,244"; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 950

AMENDMENT NO. _____
(to be filled in by Principal Clerk)

H950-AMD-94 [v.14]

On Page 105, Line 42, by inserting immediately after the line the following:

"**SECTION 10.25.(s1)** The sum of one hundred thousand dollars ($100,000) appropriated in this section in the Social Services Block Grant for the 2012-2013 fiscal year to the Department of Health and Human Services, Division of Central Management and Support, shall be allocated to the ALS Association, Jim "Catfish" Hunter Chapter, to be used to provide patient care and community services to persons with ALS and their families. These funds are exempt from the provisions of 10A NCAC 71R .0201(3)."; and

On Page 148, Line 55, by deleting "employees" and substituting "State agency employees".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

9:15
5

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 950

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H950-AMG-79 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H950-PCS30634-MDxf-28

Date _____,2012

Senator Pate

moves to amend the bill on page 99, line 7, by rewriting the line to read:
" 15. Guardianship $4,356,604";

and on page 106, line 3, by inserting a new section on the line to read:
"**SECTION 10.25.(w1)** The sum of four million three hundred fifty-six thousand six hundred four dollars ($4,356,604) appropriated in this section in the Social Services Block Grant for the 2012-13 fiscal year to the Department of Health and Human Services, Divisions of Social Services and Aging and Adult Services shall be used for guardianship services pursuant to Article 2 of Chapter 35A of the General Statutes. The Department may expend funds appropriated in this section to support existing state and local level corporate guardianship contracts entered into during the 2012-13 fiscal year."; and

By adjusting the appropriate totals accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

10
10:15

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 950

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H950-AMH-94 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H950-PCS30634-MDxf-28

Date _____,2012

Senator Rouzer

moves to amend the bill on page 111, lines 49-50, by inserting between those lines the following language:

"**SECTION 12.5.(d1)** Grants for projects with partnering local municipalities awarded prior to the effective date of this act may be transferred to the local partnering municipality for completion or fulfillment.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

8:57 H

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 950

AMENDMENT NO. 4
(to be filled in by Principal Clerk)

H950-ALE-109 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
PCS

Date _____,2012

Senator ~~Hise~~ Tillman

moves to amend the bill on page 35, line 47, by adding a new section to read:

" GEOGRAPHICALLY ISOLATED SCHOOLS

SECTION 7.16. A local school administrative unit receiving special allotments for a small, geographically isolated school shall continue to receive one-half of that special allotment funding for the fiscal year after the school is closed. These funds shall be used to assist in the transition of students from the closed school to other schools in the local school administrative unit."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

8:48
3

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 950

AMENDMENT NO. 5
(to be filled in by Principal Clerk)

H950-ALE-110 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
PCS

Date _____, 2012

Senator East

moves to amend the bill on page 35, line 47, by adding a new section after the line to read:

"INVESTING IN INNOVATION GRANT

SECTION 7.16.(a) The federal Investing in Innovation Fund Grant: Validating Early College Strategies for Traditional Comprehensive High Schools awarded to the North Carolina New Schools Project for 2012-2017, requires students to enroll in a community college course in the tenth grade. Notwithstanding any other provision of law, specified local school administrative units may offer one community college course to participating sophomore (tenth grade) students. Participating local school administrative units are Alleghany, Beaufort, Hertford, Jones, Madison, Richmond, Rutherford, Sampson, Surry, Wilkes, and Yancey County Schools.

SECTION 7.16.(b) Grant funds shall be used to pay for all costs incurred by the local school administrative units and the community college partners to implement the grant, including community college FTE. Community colleges shall not earn budget FTE for student course enrollments supported with this grant.

SECTION 7.16.(c) Research for the project shall address the effects of Early College strategies in preparing students for Career and College Promise. The North Carolina New Schools Project shall report on the implementation of the grant to the State Board of Education, State Board of Community Colleges, Office of the Governor, and the Joint Legislative Education Oversight Committee no later than March 15, 2013, and annually thereafter until the end of the grant period."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

8:31

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 950

AMENDMENT NO. 6
(to be filled in by Principal Clerk)

H950-AME-154 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Date _____,2012

Senator Brock

moves to amend the bill on page 85, line 58, by inserting the following after that line:

"**STUDY ELECTRONIC PRIOR AUTHORIZATION FOR MEDICAID PRESCRIPTIONS**

SECTION 10.8A. The Department of Health and Human services shall study the implementation of a system for the Medicaid program that would exchange standard electronic prior authorization requests with health care providers for drugs and devices using electronic data interchange standards consistent with those adopted by the National Council of Prescription Drug Programs for pharmacy benefits managers to exchange standard electronic prior authorization requests with health care providers. As part of its study, the Department shall review the experience of other states, including startup costs and annual savings, to provide an estimate of the potential costs and savings for this State. No later than March 1, 2013, the Department shall report its findings to the House Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Health and Human Services.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

9:51
9

H950-AME-154-V-1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 950

AMENDMENT NO. 7
(to be filled in by Principal Clerk)

H950-ALB-180 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Date _____,2012

Senator Tucker

moves to amend the bill on page 130, line 57, by deleting "October 1, 2012" and substituting "February 1, 2013"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

9:40
6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 950

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H950-AMEf-155 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H950-PCS30634-MDxf-28

Date _____,2012

Senator Newton

moves to amend the bill on page 142, line 13, by deleting the date "July 1, 2013." and substituting the date "July 1, 2014.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Committee Sergeants at Arms

NAME OF COMMITTEE _____

DATE: _____ **Room:** _____

House Sgt-At Arms:

1. **Name:** _____
2. **Name:** _____
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

Senate Sgt-At Arms:

1. **Name:** GLENN HARRISON
2. **Name:** DONNA BLAKE
3. **Name:** JON FITCHETT
4. **Name:** BOB MYRICK
5. **Name:** _____

PAGE

~~Mytawd~~

Myra Waheed
Mark Burnett
Stephanie Lamir
~~Joey~~ Sasso
Andy Shivel
Freeman Slaughter
Ashley Hodges

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 12, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Matthew McConnell	Carolinas HealthCare Sys.
Heather Robinson	NCRMA
Barbara Carlton	BBCOR
Daniel Ambern	NCRMA
CHRIS DILLON	NCWRC
ALLISON WALLER	Nelson Mullins
Whitney Christensen	NCRLA
KAREN GILLESPIE	BMS
Joyce Peters	CCS
Cameron Hanley	Electricities
Jordan McBride	The Policy Group

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 12, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Mc[illegible]	[illegible]
Sarah Preston	ACLU-NC
Michelle Frazier	
Bob Hall	Democracy North Carolina
Elise Quick	Treetop Soldiers
Jenni Bunn	NAACP
Susanna Hailey	K&L Gates
Jena M. Edelman	Jenkins LA
[illegible]	[illegible]
Suzanne Davis	Gov Office
Lauren White	Raleigh Public Record
Dave Hunn	Grant Anderson

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 12, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	— N. Hentzinger Assoc.
[signature]	
Ellen Lafferty	Rep. Crawford Intern
Kari Barsness	DENR
Clare FitzGerald	DENR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 12, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Crawford	ARA NC
Kara Weishaar	SA
Andy Ellen	NCRMA
CS Hollis	TSS
J. Goodman	NC Chamber
Preston Howard	MCK
Rick Techini	Progress Energy
Susan Valenzuela	NW
Jay Peters	CSS
Estherine Davis	Estherine Davis & Assoc.
George Smith	WM

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 12, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Cook	Conf of Clerks of Sup. Ct
Barbara Moore	Off of Clerk of Sup
Jaime King	NCEL
Tim Johnson	ITS-CGIA
Sarah Wolfe	MWC
Janice Davidson	NC DOR
John D Panza	NC DOR
Grayson McKissick	Intern NC Senate
Emily Doyle	NCPAPA
Patrenee Watts	NCASA
Charlie Boone	CBA of NC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 12, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Christa Beaulieu	CAPA
BERRY JENKINS	CAROLINAS AGC
Chuck Stone	SEANC
Mitch Leonard	SEANC
Brian Mancory	NCBA
JIM TROGDON	NCDOT
H. HASKINS	NCDOT-FM
Johanna Reese	DMV
Chris Kachadoorian	ENV NC
Betsy Bailey	PENC
Kim Crouch	NCBA

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 12, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Steve Metcalf	The Dolley Group
Rob Lehmann	PLW
JOE LANIER	NELSON MULLINS

SENATE FINANCE COMMITTEE
Tuesday, June 19, 2012 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on Tuesday, June 19, 2012 in room 544 of the Legislative Office Building. Twenty-three members of the committee were present. Vitoria Wendell and Hannah Cox of Laurinburg, Anna Garwood of Waxhaw, Kate Garwood of Lewisville, Darbi Harriman of Wade, Erin Jones of Raleigh, Chandler Byrd of Wake Forest, Aly Moser of Raleigh, and Margaret Carlson of Winston-Salem served as pages. Senator Hartsell presided as chair.

H.B. 180 – Wilmington Voluntary Annexations

Senator Goolsby was recognized to explain the bill which annexes three described areas into the City of Wilmington. Senator Dannelly moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 848 – Durham City Assessments

Senator McKissick was recognized to explain the bill. It amends the charter of the City of Durham to add additional bases for making assessments for improvements. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 857 – Add Stokes Cty to Tax Cert Before Recordation

Senator Rucho was recognized to explain the bill which authorizes Stokes County to require payment of delinquent property taxes prior to recording deeds conveying property. Heather Fennell, a staff attorney with the Research Division, was recognized to answer questions. Senator Rucho moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 900 – Surf City Deannexation

Senator Rabon was recognized to explain the bill which deannexes a described area from the Town of Surf City. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 901 – Ocean Isle Beach Satellite Annexations

Senator Rabon explained the bill. It exempts the Town of Ocean Isle Beach from the 10% area cap on voluntary satellite annexations. Senator Dannelly moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 918 – Amend Durham County Occupancy Tax Uses

Senator Robinson was recognized to explain the bill which would amend the purposes for which occupancy tax proceeds remitted to the Durham Convention and Visitors Bureau may be used. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

S.B. 945 – Modify Southport Occupancy Tax

This bill was removed from the agenda.

The meeting adjourned at 1:14 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Tuesday, June 19, 2012

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	**848**	Durham City Assessments.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**857**	Add Stokes Cty to Tax Cert Before Recordation.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**900**	Surf City Deannexation.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**901**	Ocean Isle Beach Satellite Annexations.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**918**	Amend Durham County Occupancy Tax Uses.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(SCS #1)	**180**	Wilmington Voluntary Annexations.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 6

Committee Clerk Comments:

H180 – Sen. Goolsby
S848 – Sen. McKissick
S857 – Sen. East
S900 – Sen. Rabon
S901 – Sen. Rabon
S918 – Sen. McKissick

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Finance** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 19, 2012	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 180	Wilmington Voluntary Annexations.	Representative Justice Representative McComas
SB 848	Durham City Assessments.	Senator McKissick Senator Atwater
SB 857	Add Stokes Cty to Tax Cert Before Recordation.	Senator East
SB 900	Surf City Deannexation.	Senator Rabon
SB 901	Ocean Isle Beach Satellite Annexations.	Senator Rabon
SB 918	Amend Durham County Occupancy Tax Uses.	Senator McKissick Senator Atwater
SB 945	Modify Southport Occupancy Tax.	Senator Rabon

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Senate Finance Committee
Tuesday, June 19, 2012, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 180	Wilmington Voluntary Annexations.	Rep. Justice Rep. McComas
SB 848	Durham City Assessments.	Sen. McKissick Sen. Atwater
SB 857	Add Stokes Cty to Tax Cert Before Recordation.	Sen. East
SB 900	Surf City Deannexation.	Sen. Rabon
SB 901	Ocean Isle Beach Satellite Annexations.	Sen. Rabon
SB 918	Amend Durham County Occupancy Tax Uses.	Sen. McKissick Sen. Atwater
SB 945	Modify Southport Occupancy Tax.	Sen. Rabon

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 180

Senate State and Local Government Committee Substitute Adopted 6/5/12

Short Title: Wilmington Voluntary Annexations. (Local)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO VOLUNTARILY ANNEX CERTAIN DESCRIBED AREAS TO THE CORPORATE LIMITS OF THE CITY OF WILMINGTON.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Wilmington are extended to include the following described area:

Belle Meade Plaza Tract: Commencing at an existing concrete monument in the centerline of St. Andrews Drive at its intersection with the north right-of-way line of U.S. 421 (Carolina Beach Road); thence along and with the north line of Carolina Beach Road South 39 degrees, 30 minutes, 53 seconds East a distance of 501.00 feet to an existing iron pipe, said pipe being the Point of Beginning; thence North 50 degrees, 25 minutes, 51 seconds East a distance of 200.00 feet to a point; thence North 39 degrees, 30 minutes, 53 seconds West a distance of 49.88 feet to an existing iron pipe; thence North 50 degrees, 29 minutes, 05 seconds East a distance of 732.86 feet to a point; thence North 40 degrees, 35 minutes, 47 seconds West a distance of 24.42 feet to a point; thence North 04 degrees, 24 minutes, 13 seconds East a distance of 45.26 feet to a point; thence North 40 degrees, 35 minutes, 46 seconds West a distance of 293.65 feet to a point; thence following along a curve to the left (Arc=50.11', Radius=170.00') a chord which bears North 49 degrees, 02 minutes, 29 seconds West a chord distance of 49.93 feet to a point; thence South 50 degrees, 29 minutes, 21 seconds West a distance of 627.43 feet to a point; thence North 03 degrees, 34 minutes, 31 seconds East a distance of 398.81 feet to a point; thence North 50 degrees, 28 minutes, 31 seconds East a distance of 299.73 feet to an existing iron pipe; thence South 03 degrees, 37 minutes, 27 seconds West a distance of 275.57 feet to an existing iron pipe; thence North 50 degrees, 23 minutes, 26 seconds East a distance of 1384.07 feet to an existing iron pipe; thence North 17 degrees, 05 minutes, 15 seconds East a distance of 225.05 feet to an existing iron pipe; thence South 46 degrees, 53 minutes, 49 seconds East a distance of 595.10 feet to a point; thence South 40 degrees, 53 minutes, 56 seconds West a distance of 39.64 feet to a point located in the Run of Barnard's Creek; thence North 67 degrees, 36 minutes, 33 seconds West a distance of 250.15 feet to a point; thence North 66 degrees, 54 minutes, 20 seconds West a distance of 131.32 feet to a point; thence South 49 degrees, 36 minutes, 10 seconds West a distance of 53.47 feet to a point; thence South 62 degrees, 59 minutes, 20 seconds West a distance of 202.70 feet to a point; thence South 04 degrees, 50 minutes, 57 seconds East a distance of 92.97 feet to a point; thence South 23 degrees, 24 minutes, 26 seconds East a distance of 167.04 feet to an existing iron pipe; thence South 39 degrees, 26 minutes, 08 seconds East a distance of 51.43 feet to an existing iron pipe; thence South 18 degrees, 32 minutes, 11 seconds East a distance of 28.38 feet to a point; thence South 36 degrees, 31 minutes, 16 seconds East a

distance of 66.14 feet to a point; thence South 13 degrees, 23 minutes, 36 seconds East a distance of 21.16 feet to an existing iron pipe; thence South 50 degrees, 30 minutes, 17 seconds West a distance of 11.18 feet to a point; thence South 05 degrees, 34 minutes, 46 seconds East a distance of 220.98 feet to an existing iron pipe; thence South 03 degrees, 35 minutes, 59 seconds East a distance of 19.56 feet to an existing iron pipe; thence South 03 degrees, 35 minutes, 21 seconds East a distance of 203.30 feet to an existing iron pipe; thence South 03 degrees, 06 minutes, 22 seconds East a distance of 68.14 feet to an existing iron pipe; thence South 67 degrees, 36 minutes, 46 seconds East a distance of 166.66 feet to a point; thence South 50 degrees, 44 minutes, 58 seconds West a distance of 442.58 feet to an existing iron pipe; thence South 50 degrees, 23 minutes, 58 seconds West a distance of 1093.30 feet to an existing iron pipe; thence South 50 degrees, 23 minutes, 58 seconds West a distance of 0.70 feet to a point located in the north right-of-way line of U.S. 421 (Carolina Beach Road); thence along and with said north right-of-way line North 39 degrees, 30 minutes, 53 seconds West a distance of 365.27 feet to an existing iron pipe; thence North 50 degrees, 26 minutes, 55 seconds East a distance of 200.00 feet to an existing iron pipe; thence North 39 degrees, 30 minutes, 53 seconds West a distance of 50.00 feet to an existing iron pipe; thence South 50 degrees, 26 minutes, 55 seconds West a distance of 200.00 feet to an existing R.R. spike located in the north right-of-way line of U.S. 421 (Carolina Beach Road); thence along and with said north right-of-way line North 39 degrees, 30 minutes, 53 seconds West a distance of 100.00 feet to the Point of Beginning; containing 34.69 acres, more or less. Subject to all of Grantor's right, title, and interest, if any, in the following: (1) "Non-exclusive access easement for ingress and egress" as recorded in Book 4137 Page 0536 at the New Hanover County Registry. (2) "20' x 50' Bellsouth Easement" as recorded in Book 4639 Page 0721 at the New Hanover County Registry. (3) "Deed of Easement" for Progress Energy Carolinas, Inc., as recorded in Book 4169 Page 239 at the New Hanover County Registry. (4) "90-Foot Wide Carolina Power & Light Company right-of-way" as recorded in Book 3760 Page 405 at the New Hanover County Registry. (5) "30' Public Sanitary Sewer Easement" per New Hanover County As-Built of "Sanitary Sewer Locations Johnson Farm" dated January 4, 1987. (6) "30' Public Sanitary Sewer Easement" per Carolina Power & Light Co. survey map prepared by Moore, Gardner & Associates, Inc., dated May 1971, revised date: December 16, 1999. Added sanitary sewer easement per New Hanover County. Together with all of Grantor's right, title, and interest, if any, in the following: (1) "25' Drainage and Utility Easement" as recorded in Book 4765 Page 0803 at the New Hanover County Registry. (2) "Deed of Right-of-Way" Tract 1 St. Andrews Place II as recorded in Book 4897 Page 0148 at the New Hanover County Registry. (3) "Reciprocal Easement" Tract 2 and Tract 3 St. Andrews Place II as recorded in Book 4897 Page 0156 at the New Hanover County Registry.

SECTION 2. The corporate limits of the City of Wilmington are extended to include the following described area:

Lockwood Village Apartments Tract: Commencing at an old concrete monument situated at point and place where the centerline of Greenbriar Road (S.R. 1698, being 60 feet in width) intersects the easterly right-of-way of South College Road (NC Highway 132, being 200 feet in width) and runs thence N 57-34-35 W, 232.65 feet to an old concrete monument located in the westerly right-of-way of said College Road, said monument lying at the southeasterly corner of the United Advent Christian Church, Inc., property (now or formerly) as recorded in Deed Book 1873, Page 9070; thence along the southerly line of said United Advent Christian Church, Inc., property N 70-06-47 W, 408.0 feet to the south easterly corner of the Simpson Property (now or formerly), as recorded in Deed Book 1851, Page 405 and the point and place of beginning of this description. thence N 70-06-47 W, 331.26 feet to the southeasterly corner of the Myrtle Properties LLC property (now or formerly) as shown on an easement plat recorded in Map Book 54, Page 277; thence along the southeasterly line of said Myrtle Properties LLC property N 25-54-03 E, 382.24 feet to a point; thence S 71-37-38 E, 566.40 feet

to a point of the westerly right-of-way of said College Road; thence along the right-of-way of said College Road S 01-16-52 W, 248.55 feet to a point; thence N 70-06-49 W, 354.29 feet to a point; thence S 19-53-13 W, 159.54 feet to the point of beginning. The above described parcel contains 4.42 acres, more or less, and is a combination of record information described in record deeds (Book/Page) 4962/296, 1905/485, and 1851/405, and is not a result of a boundary survey. The bearing directions have been rotated to a bearing base as shown on Map Book 54, Page 277.

SECTION 3. The corporate limits of the City of Wilmington are extended to include the following described area:

Certain parcel or parcels of land situated in Masonboro Township, New Hanover County, North Carolina, and being more particularly described as follows: Beginning at a point on the mean high water line along the eastern bank of the Cape Fear River and the southern bank and mouth of Barnard's Creek, said point having NC GRID NAD 83(86) coordinates of North 149760.05 and East 2319807.02 and being located South 62° 54' 02" West 1733.67 feet from a point in the centerline of Barnard's Creek Bridge on River Road, said centerline point having NC GRID NAD 83(86) coordinates of North 150478.77 and East 2321328.74, said point being the true Point of Beginning; thence from said Point of Beginning, along the eastern bank of said Cape Fear River the following courses and distances: S 01° 07' 11" E 400.25 feet, S 09° 04' 11" W 68.47 feet, S 00° 19' 35" E 47.79 feet, S 32° 18' 52" W 34.11 feet, S 01° 13' 39" W 45.88 feet, S 12° 03' 24" W 36.72 feet, S 21° 28' 10" W 25.70 feet, S 00° 06' 15" W 32.82 feet, S 08° 17' 04" W 100.02 feet, S 16° 08' 19" W 98.71 feet, S 38° 12' 53" W 37.66 feet, S 18° 02' 03" W 73.66 feet, S 29° 55' 48" W 119.32 feet, S 27° 01' 35" W 44.69 feet, S 15° 32' 10" W 54.99 feet, S 33° 19' 47" E 108.56 feet, S 13° 01' 34" E 79.17 feet, S 24° 40' 46" E 63.75 feet, S 18° 33' 42" E 75.11 feet, S 13° 21' 04" E 149.64 feet, S 19° 17' 08" E 80.31 feet, S 24° 57' 12" E 72.60 feet, and S 06° 48' 54" E 5.17 feet; thence leaving said eastern bank South 62° 54' 02" West 880.44 feet to a point; thence North 00° 00' 00" East 1761.24 feet to a point; thence North 62° 54' 02" East 881.82 feet to the Point of Beginning, containing 28.919 acres, more or less.

SECTION 4. This act becomes effective July 1, 2012.

HOUSE BILL 180:
Wilmington Voluntary Annexations

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Reps. McComas, Justice	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 180 annexes three described areas into the City of Wilmington

CURRENT LAW: Annexation is a method by which municipalities alter their boundaries. The municipality must follow the statutorily prescribed steps in order to add an area into its boundaries. As the municipality is receiving more tax revenue from the added area, the municipality must provide (or contract to provide) basic services to the area. These services include police protection, fire protection, solid waste collection and the extension of water and sewer lines to the area.

North Carolina law sets forth four basic ways in which a municpality may annex an area.

- Voluntary Annexation. The owners of all real property in an area contiguous to the municipality desiring to be annexed sign a petition requesting annexation.
- Voluntary Satellite Annexation. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation, if it otherwise meets the statutory requirements.
- Municipal-Initiated Annexation. The municipality initiates annexation proceeding, pursuant to statutory requirements.
- Legislative Act. The General Assembly has the authority to extend the boundaries of any municipality.

BILL ANALYSIS: House Bill 180 annexes into the corporate limits of the City of Wilmington three described tracts.

EFFECTIVE DATE: This act becomes effective July 1, 2012.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

H180-SMTD-129(e2) v2

SENATE BILL 848

Short Title:	Durham City Assessments.	(Local)
Sponsors:	Senators McKissick and Atwater.	
Referred to:	State and Local Government.	

May 22, 2012

A BILL TO BE ENTITLED

AN ACT INCORPORATING ADDITIONAL BASES FOR MAKING ASSESSMENTS UNDER THE CHARTER OF THE CITY OF DURHAM IN THE CASE OF BOTH PETITIONED AND NON-PETITIONED ASSESSMENTS.

Whereas, Section 77(14) of the Charter of the City of Durham (Charter) currently includes limited bases for making assessments against properties benefitting from improvements; and

Whereas, the limited bases for making assessments currently available under the Charter have the potential to allocate assessments to properties in a manner that is disproportionate to the benefits bestowed by the improvements to the properties; and

Whereas, by incorporating additional bases for making assessments into the Charter, the Durham City Council will be able to apportion both petitioned and non-petitioned assessments among the benefitted properties in a manner that is more reflective of the benefits bestowed on the benefitted properties; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Section 77(14) of the Charter of the City of Durham, being Chapter 671 of the Session Laws of 1975, as amended by Chapter 577 of the 1991 Session Laws, reads as rewritten:

"**Sec. 77.** Assessments for Water, Sewer, Street, Sidewalk, Grass Plot, Lighting, and Waterfront Improvements.

...

(14) Having determined such total cost, the City Council shall thereupon make a preliminary assessment as hereinafter set out in this section. Such preliminary assessment shall, however, be advisory only, and shall be subject to the action of the Council thereon as hereinafter set out in subsection 17 of this section. The preliminary assessment shall be made on the basis hereinafter set out in this subsection for the classes of improvements indicated; provided, that if the petition, or the resolution, in those cases where the improvement was ordered made without petition, specified that there should be specially assessed against the ~~abutting~~ benefited property a smaller proportion of the cost of any improvement than is hereinafter specified in this section, then there shall be assessed against the ~~abutting~~ benefiting property only such proportion of the cost of the improvement as was specified in the petition or in the resolution.

(a) Street paving. The total cost of any street paving improvement, exclusive of so much of the cost as is incurred at street intersections and the share of street railways or

railroads, shall be specially assessed against the lots and parcels of land abutting directly on the street paved, according to the extent of their respective frontages thereon, by an equal rate per foot of such frontage. The cost of that part of the paving required to be borne by a street railway or railroad, which paving is done by the City after default by the street railway in making the same, as hereinbefore provided in this section, or which is done by the City by contract with the railway or railroad as provided in subsection 12 of this section, shall be assessed against the street railway or railroad, and the assessment shall be a lien on all of the franchises and property of the street railway or railroad company, and may be collected by sale of such property and franchises as is provided in subsection 23 of this section; Provided, further, that in case of a corner lot, used as a single lot, the Council may provide by ordinance for the City to bear a part of the cost of paving in accordance with the following formula, the amounts or distances therein shown being maximum amounts or distances which may be reduced by the ordinance:

(1) In the event that neither of the streets abutting a corner lot, used as a single lot, has ever been paved, such lot shall be exempt from assessment for the paving improvement along side of such lot to the extent of 20 per cent of the first 150 feet thereof or 30 feet, whichever is less. Thereafter, upon the paving of the intersecting street on which such lot abuts, such lot shall be exempt from assessment for the paving of the street to the extent of 50 per cent of the frontage on such street or 30 feet, whichever is less.

(2) In the event that the street along side of a corner lot, used as a single lot, is paved and the intersecting street is to be paved, such lot shall be exempt from assessment for the paving of the intersecting street to the extent of 50 per cent of the frontage thereon or 30 feet, whichever is less.

(3) In the event a street in front of a corner lot, used as a single lot, has been paved and the street along side of such lot is to be paved, the lot shall be exempt from assessment for the paving improvement along side of such lot to the extent of 40 percent of the frontage on such street or 60 feet, whichever is less.

The exemption herein provided shall apply only in areas zoned for residential use or for apartments, and such portion of the cost of construction as would otherwise be assessed against such corner lot shall be borne by the City;

(b) Sidewalks. The total cost of constructing or reconstructing sidewalks shall be assessed against the lots and parcels of land abutting on that side of the street upon which the improvement is made, according to their respective frontages thereon by an equal rate per foot of such frontage, the lots within a block being deemed to abut upon a sidewalk although the latter extends beyond the lots to the curb line of an intersecting street; Provided, further, that in case of a corner lot, used as a single lot, the Council may provide by ordinance for the City to bear a part of the cost of sidewalk improvements in accordance with the following formula, the amounts or distances therein shown being maximum amounts or distances which may be reduced by the ordinance:

(1) In the event that neither of the streets abutting a corner lot, used as a single lot, has sidewalks, such lot shall be exempt from assessment for the sidewalk improvement along side of such lot to the extent of 20 per cent of the first 150 feet thereof or 30 feet, whichever is less. Thereafter, upon the construction of sidewalks on the intersecting street, on which such lot abuts, such lot shall be exempt from assessment for the sidewalk improvement on the street to the extent of 50 per cent of the frontage on such street or 30 feet, whichever is less.

(2) In the event that the street along side of a corner lot, used as a single lot, has sidewalks and sidewalks are constructed on the intersecting street, such lot shall be exempt from assessment for the sidewalks on the intersecting street to the extent of 50 per cent of the frontage thereon or 30 feet, whichever is less.

(3) In the event a street in front of a corner lot, used as a single lot, has sidewalks and sidewalks are to be constructed on the intersecting street, the lot shall be exempt from assessment for the sidewalk improvement along side of such lot to the extent of 40 per cent of the frontage thereon or 60 feet, whichever is less.

The exemptions herein provided shall apply only in areas zoned for residential use or for apartments, and such portion of the cost of construction as would otherwise be assessed against such corner lot shall be borne by the City;

(c) Water mains and sewers. In the case of water mains and storm and sanitary sewers, the cost of not exceeding an eight-inch water or sanitary sewer main and of not exceeding a thirty-inch storm sewer main and of such portion of the mains as lie within the limits of the street or streets, or parts thereof, to be improved as provided in the petition or resolution ordering the same, shall be assessed against the abutting property. Such cost shall be assessed against the lots and parcels of land abutting on the street or streets, or parts thereof, according to their respective frontages thereon (i.e., the entire frontage benefited by the water or sanitary sewer project) by an equal rate per foot of such frontage; provided, that in case of a corner lot, used as a single lot, no assessment shall be made against the long side of the lot abutting on the intersecting streets for any part of the frontage of such longer side of the lot except that portion in excess of 150 feet if the lot is in a residential section of the City, or in excess of 100 feet if the lot is in a business section of the City, and in such case the portion of the cost as would otherwise be assessed against the lot shall be borne by the City; provided further, that if a water or sanitary sewer main in excess of eight inches in size or a storm sewer main in excess of thirty inches in size is laid in the portion of the street or streets, then the cost of the water or sanitary sewer main in excess of the cost of an eight-inch main and the cost of the storm sewer main in excess of a thirty-inch main shall be borne by the City, provided further, that if the resolution ordered the construction of any septic tank or disposal plant, no part of the cost of the same shall be specially assessed; provided further, that if the resolution ordered the construction of any pumping station, force main or sanitary sewer outfall, the cost thereof may be assessed against the lots and parcels of land abutting on the street or streets, or parts thereof, according to their respective frontages thereon (i.e., the entire frontage benefited by such pumping station, force main or sanitary sewer outfall) by an equal rate per front foot of such frontage; provided, however, in the case of a corner lot, used as a single lot, where there is a sewer already laid on the intersecting street on which the lot abuts and by which the lot is or can be served, no assessment shall be made against the lot for the costs of any pumping station, force main or sanitary sewer outfall incident to the second sewer for any part of the frontage of the lot except that portion in excess of 150 feet if the lot is in a residential section, or in excess of 100 feet if the lot is in a business section, and in such case the portion of the cost as would otherwise be assessed against the lot shall be borne by the City. Nothing contained herein shall be construed to limit the right of the City to contract with any property owner or owners for the construction of any pumping station, outfall, septic tank or disposal plant or for the construction of water mains or storm or sanitary sewers and for the assessment of the cost thereof according to the terms of such contract;

(d) Water and Sewer Laterals. The entire cost of each water and sewer lateral required to be laid by the owner of the property for or in connection with which such lateral is laid, but laid by the City after default by the property owner in making the same as hereinbefore

provided, shall be specially charged against the particular lot or parcel of land for or in connection with which it was made;

(e) Water Mains and Sewers and Laterals; Flat Rate Assessment. In lieu of assessing each water and sanitary sewer improvement project on the basis of the cost of that particular project, the City Council shall have authority to establish flat rates per frontage foot for the assessment of property abutting water and sewer improvement projects, based on the average cost of constructing 8-inch water mains and 8-inch sanitary sewer mains in the City, and shall also have authority to establish flat rates for the assessment of property abutting the installation of water and sanitary sewer laterals, based on the average cost of installing such laterals in the City. The Council may then assess property abutting water and sanitary sewer improvement projects on the basis of the flat rates so established, subject to the right of any nonpetitioning property owner to have the assessment against his property adjusted as provided by law upon a showing that his property has not been benefited to the extent of the assessment;

(f) Grass plots. The entire cost of grading or otherwise improving, or of planting, the grass plots in any street or part thereof, shall be assessed against the lots and parcels of land abutting on the street or part thereof wherein or whereon such improvements are made by an equal rate per front foot of such frontage; provided, that this subsection shall be construed to mean that when a grass plot in any street is graded or planted or otherwise improved, the cost thereof shall be assessed against all of the property abutting on the street within the block where such grass plot is located;

(g) Lighting improvements. The cost of any lighting improvement, such cost being determined as provided in subsection thirteen of this section, shall be specially assessed against the lots and parcels of land abutting directly on the street or streets, or part thereof, where such improvement is made, according to their respective frontage thereon by an equal rate per foot of such frontage;

(h) Water front improvements. The cost of any water front improvement shall be specially assessed against the lots and parcels of land abutting on the improvement according to their respective frontages thereon by an equal rate per foot of such frontage.

(i) In addition to the bases for making assessments for the cost of improvements specified above in paragraphs (a) through (h) of this subdivision, the city council may alternatively, or in conjunction, make assessments on the following bases:

(1) The area of land served, or subject to being served, by the improvement, at an equal rate per unit of area.

(2) The value added to the land served by the improvement, or subject to being served by it, being the difference between the appraised value of the land without improvements as shown on the tax records of the county, and the appraised value of the land with improvements according to the appraisal standards and rules adopted by the county at its last revaluation, at an equal rate per dollar of value added.

(3) The number of lots served, or subject to being served, where the project involves extension of an existing system to a residential or commercial subdivision, at an equal rate per lot.

(4) A combination of two or more of these alternative bases, which may also be combined with the specific assessment basis listed above in paragraphs (a) through (h) of this subdivision, for each class of improvement.

Whenever the basis selected for assessment is either area or value added, the city council may provide for the laying out of benefit zones according to the distance of benefited property from the improvement being undertaken, and may establish differing rates of assessment to apply uniformly throughout each benefit zone. For each improvement, the city council shall endeavor to establish an assessment method from among the bases set out in this section

that will most accurately assess each lot or parcel of land according to the benefit conferred upon it by the improvement."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 848:
Durham City Assessments

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Sens. McKissick, Atwater	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 848 amends the charter of the City of Durham to add additional bases for making assessments for improvements.

CURRENT LAW: The current provisions of the Durham Charter generally provide for assessments for water, sewer, street, sidewalk, grass plots, lighting, and waterfront improvements to be made against abutting property based on frontage.

BILL ANALYSIS: Senate Bill 848 amends Durham's Charter to add several additional bases for assessing the cost of improvements to benefited property: area, value added, number of lots served, or a combination of these bases. These bases are already authorized under General Law (G.S. 160A-218). This bill makes then available for use by the City of Durham

EFFECTIVE DATE: Effective when it becomes law.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

S848-SMTD-130(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 857

Short Title:	Add Stokes Cty to Tax Cert Before Recordation.	(Local)
Sponsors:	Senator East.	
Referred to:	State and Local Government.	

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE STOKES COUNTY TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31 reads as rewritten:

"**§ 161-31. Tax certification.**

(a) Tax Certification. – The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

(a1) Exception to Tax Certification. – If a board of county commissioners adopts a resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register of deeds shall accept without certification a deed submitted for registration under the supervision of a closing attorney and containing this statement on the deed: "This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

(b) Applicability. – This section applies only to Alamance, Alexander, Anson, Beaufort, Bertie, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, Yadkin, and Yancey Counties."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 857:
Add Stokes Cty to Tax Cert Before Recordation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Sen. East	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 857 authorizes Stokes County to require payment of delinquent property taxes prior to recording deeds conveying property.***

[As introduced, this bill was identical to H1197, as introduced by Rep. Holloway, which is currently in Senate State and Local Government. The provisions of S857 and H1197 are identical.]

CURRENT LAW: *G.S. 161-31(a)* allows a county board of commissioners, by resolution, to require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

G.S. 161-31(a1) provides an exception. It requires the register of deeds to accept, without certification, a deed containing the following statement: "This instrument prepared by: ____ _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

G.S. 161-31(b) lists the 73 counties to which this provision currently applies.[1]

The following 4 counties have a similar requirement but under different authorizing legislation:

Avery County	Chapter 305 of the 1963 Session Laws, as amended by S.L. 1997-410 and S.L. 1998-73[2]
Ashe County	S.L. 1993-657, as amended by S.L. 1997-410 and S.L. 2005-433[3]
Alleghany County	S.L. 1997-410
Mitchell County	S.L. 1987-537, as amended by S.L. 1997-410 and S.L. 1999-326[4]

These local acts provide that the Register of Deeds shall not record any deed unless it is accompanied by a certification that all delinquent taxes have been paid. These local acts are in contrast to G.S. 161-31, which gives certain counties the discretion to pass a resolution to that effect.

BILL ANALYSIS: Senate Bill 857 amends G.S. 161-31(b) to add Stokes County to the list of counties in which the board of commissioners is permitted to pass a resolution requiring the register of deeds not to accept any deed transferring real property unless the county tax collector certifies that the taxes listed in the statute are not delinquent and are not a lien on the property.

EFFECTIVE DATE: This bill is effective when it becomes law.

S857-SMTD-128(e1) v3
Trina Griffin, counsel to House Finance, contributed to this summary.

[1] The Register of Deeds in Duplin County must also receive a certification that no municipal taxes or any other taxes the collector is charged with collecting are a lien on the property before a deed transferring the property may be recorded.
[2] The Town of Newland was added in 1997; the Town of Banner Elk was added in 1998.
[3] S.L. 2005-433 provides that in addition to receiving a certification from the county tax collector, the Register of Deeds must also receive a certification from any municipal tax collector, where applicable, verifying that all delinquent taxes on the property have been paid.
[4] This local act also provides that if the property is located in the Town of Spruce Pine or the Town of Bakersville, the deed must also be accompanied by a certification from the town tax collector that all municipal taxes have been paid with respect to the property.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 900

Short Title:	Surf City Deannexation.	(Local)
Sponsors:	Senators Rabon (Primary Sponsor); Bingham, Carney, Davis, Harrington, and Rouzer.	
Referred to:	State and Local Government.	

May 29, 2012

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF SURF CITY.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Surf City are reduced by removing three tracts totaling approximately 49.02 acres annexed by the Town Council of the Town of Surf City on May 2, 2006, as recorded with the Secretary of State as Ordinance 2006-05-02-2.

SECTION 2. This act becomes effective June 30, 2012.

SENATE BILL 900:
Surf City Deannexation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Sen. Rabon	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 900 deannexes a described area from the Town of Surf City. The bill received a favorable report from the Senate State and Local Government Committee on June 7, 2012.***

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

Pursuant to this Section, the General Assembly enacted Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to *deannex* property -- that power remains with the General Assembly.

BILL ANALYSIS: Senate Bill 900 deannexes a described area totaling approximately 49.02 acres from the Town of Surf City. The area was subject to a voluntary satellite annexation ordinance dated May 2, 2006.

EFFECTIVE DATE: This act becomes effective June 30, 2012.

Giles Perry, counsel to the Senate State and Local Government Committee, substantially contributed to this summary.

S900-SMRB-145(e1) v1

S 1

SENATE BILL 901

Short Title:	Ocean Isle Beach Satellite Annexations.	(Local)
Sponsors:	Senators Rabon (Primary Sponsor); and Davis.	
Referred to:	State and Local Government.	

May 29, 2012

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF OCEAN ISLE BEACH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Belmont, Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Apex, Ayden, Benson, Bladenboro, Bridgeton, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Huntersville, Jamestown, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Ocean Isle Beach, Pembroke, Pine Level, Princeton, Ranlo, Richlands, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 901:
Ocean Isle Beach Satellite Annexations

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Sen. Rabon	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 901 exempts the Town of Ocean Isle Beach from the 10% area cap on voluntary satellite annexations. The bill received a favorable report from the Senate State and Local Government Committee on June 7, 2012.

CURRENT LAW: G.S. 160A-58.1 governs voluntary municipal annexation of noncontiguous property (known as voluntary satellite annexation). If all property owners in a satellite area petition a municipality for voluntary annexation of the noncontiguous property, the municipality may annex the property, if it meets all of the following five standards:

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. *The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.*

BILL ANALYSIS: Senate Bill 901 adds the Town of Ocean Isle Beach to the group of municipalities exempted from the 10% area cap on satellite annexations.

EFFECTIVE DATE: This act is effective when it becomes law.

Giles Perry, counsel to the Senate State and Local Government Committee, substantially contributed to this summary.

S901-SMRB-146(e1) v1

SENATE BILL 918

Short Title:	Amend Durham County Occupancy Tax Uses.	(Local)
Sponsors:	Senators McKissick and Atwater (Primary Sponsors).	
Referred to:	State and Local Government.	

May 30, 2012

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PURPOSES FOR WHICH OCCUPANCY TAX PROCEEDS REMITTED TO THE DURHAM CONVENTION AND VISITORS BUREAU MAY BE USED.

The General Assembly of North Carolina enacts:

SECTION 1. Section 9(c) of S.L. 2001-480, as amended by S.L. 2002-36, reads as rewritten:

"**SECTION 9.(c)** Use of Proceeds From Additional Two Percent (2%) Tax. – Durham County shall, on a monthly basis, remit the net proceeds of the tax levied under Section 6(b) of this act to the Durham Convention and Visitors Bureau as set out in Section 10 of this act.

The Bureau may use the funds remitted to it under this subsection only to promote travel, tourism, and conventions in Durham ~~County.~~County, for tourism-related expenditures, and to retire debt incurred to finance tourism-related expenditures."

SECTION 2. Section 9(e) of S.L. 2001-480, as amended by S.L. 2002-36 and S.L. 2005-233, reads as rewritten:

"**SECTION 9.(e)** Use of Proceeds From Additional One Percent (1%) Tax After First 24 Months. – The net proceeds of the tax collected under Section 6(c) of this act after the first 24 months that the tax is levied shall be remitted monthly to the Durham Convention and Visitors Bureau as set out in Section 10 of this act. The Bureau shall use and distribute these net proceeds in the following priority order:

(1) To the City of Durham, the first one million four hundred thousand dollars ($1,400,000) collected annually to finance the debt service associated with the construction of the Performing Arts Theater and for the design and engineering costs associated with the construction of the Theater. But no more than two million seven hundred fifty-two thousand dollars ($2,752,000) of those proceeds may be used for design and engineering costs associated with the construction of the Theater. Until those funds are distributed to the City of Durham for that purpose, they shall be held by the Durham Convention and Visitors Bureau in a capital reserve fund as provided by Part 2 of Article 3 of Chapter 159 of the General Statutes except they may be expended as provided by the last sentence of Section 7(a) of this act if the tax is repealed as provided by Section 7(a) of this act. Any interest earned by that fund shall be credited to the fund.

(2) Thirty-two years after the levy of the tax authorized under Section 6(c) of this act, instead of the allocation under subdivision (1) of this subsection, the first one million four hundred thousand dollars ($1,400,000) collected

annually shall be used by the Bureau to promote travel and tourism or for tourism related expenditures.

(3) To Durham County, the next five hundred thousand dollars ($500,000) collected annually to be used for improvements to the Museum of Life and Science. This may include the financing of debt service. Any of these funds that are not needed for this purpose shall be returned to the Bureau and used to promote travel and tourism.

(4) The Bureau shall use any net proceeds in excess of that provided by subdivisions (1), (2), and (3) of this subsection to promote travel, tourism, and conventions in Durham ~~County.~~County, for tourism-related expenditures, and to retire debt incurred to finance tourism-related expenditures.

As used in this subsection, "annually" means the 12-month period beginning after the first 24 months that the tax authorized under Section 6(c) of this act is levied."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 918:
Amend Durham County Occupancy Tax Uses

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Sens. McKissick, Atwater	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 918 would amend the purposes for which occupancy tax proceeds remitted to the Durham Convention and Visitors Bureau may be used.

CURRENT LAW: Durham County may levy an occupancy tax totaling 6%. The tax is a percentage of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax Durham's occupancy tax authorization came over time and its allocation of the tax proceeds is complicated:

- In 1985, the General Assembly authorized Durham County to levy a 3% occupancy tax. Of the amount collected from this 3%, 57 ½% is distributed to the county and the remaining 42 ½% is distributed to the City of Durham. The proceeds from this 3% may be used for any public purpose.
- In 1991, the General Assembly authorized Durham to levy an additional 2% occupancy tax, the proceeds of which are remitted to the Durham Convention and Visitors Bureau and may be used only to promote travel and tourism.
- In 2001, the General Assembly authorized Durham to levy an additional 1% occupancy tax. Currently, the proceeds of the 1% tax are distributed according to the following priority:
    - The first $1.4 million annually to the City of Durham to finance debt associated with the construction of the Performing Arts Center. Thirty-two years after the levy of the 1% tax, the first $1.4 million is remitted to the CVB and used to promote travel and tourism.
    - The next $500,000 annually to Durham County for improvements to the Museum of Life and Science.
    - Any remaining net proceeds are remitted to the CVB to promote travel and tourism.

BILL ANALYSIS: Senate Bill 918 would expand the purposes for which the Durham Convention and Visitors Bureau may use the net proceeds of the 2% occupancy tax to include tourism-related expenditures and to retire debt incurred to finance tourism-related expenditures. Currently, the proceeds of this portion of the tax may only be used for tourism promotion.

EFFECTIVE DATE: The act is effective when it becomes law.

S918-SMSV-121(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 918 (First Edition)

SHORT TITLE: Amend Durham County Occupancy Tax Uses.

SPONSOR(S): Senators Atwater and McKissick

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES					
Durham County	****No Fiscal Impact****				
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Durham County

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY:

Senate Bill 918 amends Section 9 of SL 2001-480, as amended, to add that the Durham Convention and Visitors Bureau may use occupancy tax proceeds to cover tourism-related expenses and to retire debt incurred to finance such expenses.

ASSUMPTIONS AND METHODOLOGY:

Senate Bill 918 redefines what items the Durham Convention and Visitors Bureau may use excess occupancy tax proceeds to cover. There is no fiscal impact associated with this change.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Mark Trogdon, Acting Director
Fiscal Research Division

DATE: June 18, 2012

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 945

Short Title:	Modify Southport Occupancy Tax.	(Local)
Sponsors:	Senator Rabon (Primary Sponsor).	
Referred to:	State and Local Government.	

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SOUTHPORT OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 639 of the 1989 Session Laws, as rewritten by S.L. 2002-129, reads as rewritten:

"**Section 1.** Occupancy tax. (a) Authorization and scope. – The Southport Board of Aldermen may levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the City of Southport that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of whether the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. – In addition to the tax authorized by subsection (a) of this section, the Southport Board of Aldermen may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The City of Southport may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this act through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(e) Distribution and use of tax revenue. – The City of Southport shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a) of this section to the Southport Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Southport and shall use the remainder for tourism-related expenditures. The City of Southport shall use the net proceeds of the occupancy tax levied under subsection (a1) of this section only for beach renourishment and protection.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures."

SECTION 2. Section 1.3 of Chapter 639 of the 1989 Session Laws, as enacted by S.L. 2002-129, reads as rewritten:

"**Sec. 1.3.** Duties. – The Authority shall expend the net proceeds of the tax levied under subsection (a) of Section 1 of this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 918 (First Edition)

SHORT TITLE: Amend Durham County Occupancy Tax Uses.

SPONSOR(S): Senators Atwater and McKissick

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES					
Durham County	****No Fiscal Impact****				
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Durham County

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY:

Senate Bill 918 amends Section 9 of SL 2001-480, as amended, to add that the Durham Convention and Visitors Bureau may use occupancy tax proceeds to cover tourism-related expenses and to retire debt incurred to finance such expenses.

ASSUMPTIONS AND METHODOLOGY:

Senate Bill 918 redefines what items the Durham Convention and Visitors Bureau may use excess occupancy tax proceeds to cover. There is no fiscal impact associated with this change.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Mark Trogdon, Acting Director
Fiscal Research Division

DATE: June 18, 2012

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE BILL 945:
Modify Southport Occupancy Tax

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Sen. Rabon	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 945 modifies the distribution of the Southport occupancy tax by directing that 40% of the net proceeds of the existing 5% tax be used only for beach nourishment and protection.

CURRENT LAW: In 1989, the City of Southport was authorized to levy an occupancy tax of 3%. In 2002, the City was authorized to levy an additional 2% occupancy tax. Currently, the net proceeds of the total 5% tax 5% are remitted to the Southport Tourism Development Authority, which is required to use at least 2/3 of the funds to promote travel and tourism in Southport, and the remainder for tourism-related expenditures. This distribution scheme conforms to the Occupancy Tax Guidelines established by the House Finance Committee.

BILL ANALYSIS: Senate Bill 945 would modify the distribution of the additional 2% occupancy tax by directing that the net proceeds be retained by the Town and be used only for beach nourishment and protection. The net proceeds of the first 3% would continue to be remitted to the Tourism Development Authority, which must use at least two-thirds for tourism promotion and the remainder for tourism-related expenditures.

Under the Occupancy Tax Guidelines adopted by the House Finance Committee[1], beach nourishment is an authorized "tourism-related expenditure" and is defined as follows:

Beach nourishment. – The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program along the shorelines of the Atlantic Ocean of North Carolina and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and erosion from storms to inland property. The term includes expenditures for any of the following:

a. *Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies.*
b. *The nonfederal share of the cost required to construct these projects.*
c. *The costs associated with providing enhanced public beach access.*
d. *The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.*

However, the Guidelines require that no more than one-third of the total net proceeds of an occupancy tax levied by a county or city be used for tourism-related expenditures. Under this bill, forty percent (40%) of the total tax would be authorized for beach nourishment.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the

[1] The Senate has never formally adopted these guidelines.

occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,[2] which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium. The Senate has never formally adopted these guidelines.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

[2] G.S. 153A-155 and G.S. 160A-215.

SENATE PAGES ATTENDING

COMMITTEE: Finance ROOM: 544 LOB

DATE: 6-19 TIME: 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 ~~Kevin Alfaro~~	~~Raleigh~~	~~Atwater~~
2 Victoria Wendell	Laurinburg	Purcell
3 Hannah Cox	Laurinburg	Purcell
4 Anna Garwood	Waxhaw	Apodaca
5 Kate Garwood	Lewisville	Apodaca
6 Darbi Harriman	Wade	Meredith
7 Erin Jones	Raleigh	Neal Hunt
8 Chandler Byrd	Wake Forest	Jackson
9 Aly Moser	Raleigh	Hunt
10 Margaret Carlson	Winston-Salem	Garrou

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

Committee Sergeants at Arms

NAME OF COMMITTEE SENATE FINANCE

DATE: 6-19-12 **Room:** 544

House Sgt-At Arms:

1. **Name:** _____
2. **Name:** _____
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

Senate Sgt-At Arms:

1. **Name:** RONALD SPANN
2. **Name:** STEVE WILSON
3. **Name:** ERNIE SNORELL
4. **Name:** Billy Fritscher
5. **Name:** Charles Harper

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 19, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chuck Allen	US Airways
Allison Walker	Nelson Mullins
Will Culpepper	MVA
Justin Pearson	Nu Cor
Angel Sams	NSS
[illegible]	Town of Boone
DAVID BARNES	PS

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 19, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Solari	DST
Dora Fazzini	DST
Vance Holloman	NCOST
Penny Griffin	School of Gov.
Sheely Green	Durham Convention & Visitors Bureau
Sarah Wolfe	MWC
Kara Weisbaar	SA
Whitney Christensen	NCRLA
[illegible]	Jordan, Price
Kelli [illegible]	WCLM
JOE LANIER	NELSON MULLINS

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 19, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Nathan McHenry	City of Durham
Robert N. Joyner Jr.	City of Durham (Public Works)
Don O'Toole	" " " (Atty)
Kim Council	NCBA
Rob Lamm	RLA
Grayson McKissick	Intern Sen. McKissick
Jake Cashion	NC Chamber
Rebecca Troxler	NCACC

SENATE FINANCE COMMITTEE
Wednesday, June 20, 2012 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on Wednesday, June 20, 2012 in room 544 of the Legislative Office Building. Twenty-eight members of the committee were present. Shirley Marshall of Cary, Grant Murphy Herndon of Durham, Caroline Tervo of Wilmington, Anna Garwood of Waxhaw and Kate Garwood of Lewisville served as pages. Senator Rucho presided as chair.

H.B. 1207 – Granville/Person Local Stormwater Fees

Representative Crawford was recognized to explain the bill. It would allow Granville and Person counties, the City of Creedmoor, and the Towns of Butner and Stem to bill stormwater utility fees in the same n=manner as property taxes, and in the case of nonpayment, to collect them in the same manner as property taxes. Senator Brock moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 943 – Davidson County Annexations

Representative Dockham was recognized to explain the bill which requires the Davidson County Board of Commissioners to approve, prior to the adoption of a municipal annexation ordinance, any annexation by a city primarily located outside of that County. Senator Brock moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 224 – Foxfire Village Assessment Validated

Senator Blake was recognized to explain the bill which would validate the assessment actions taken by Foxfire Village for the Woodland Circle Extension project. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1088 – Graham/Swain TVA Allocation/Border

Senator Brock was recognized to explain the bill. It provides for the apportionment of Tennessee Valley Authority payments in lieu of taxes between Graham and Swain Counties. The bill also establishes the common boundary line between the two counties as the center line of the Little Tennessee River. Senator Atwater moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1032 – Morganton Deannexation

Senator Daniel was recognized to explain the bill which deannexes two described areas from the City of Morganton in Burke County. Senator Dannelly moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 876 – Mooresville Deannexation

Senator Carney was recognized to explain the bill which deannexes two described parcels from the Town of Mooresville. Senator Allran moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 552 – Asheville Airport/WNC Agricultural Center

Senator Clodfelter and Senator Atwater wanted it noted that they abstained from discussion and voting on this bill. Senator Apodaca was recognized to explain the bill. The bill would create the Greater Asheville Regional Airport Authority, remove the Asheville Regional Airport and the Western North Carolina Agricultural Center from the zoning jurisdiction of the City of Asheville, require the City of Asheville to convey to the State of North Carolina any of its right, title, and interest to the Western North Carolina Agricultural Center and remove the Western North Carolina Agricultural Center from the corporate limits of the City of Asheville. Senator Nesbitt was recognized to speak in opposition to the bill. Senator Hartsell moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1028 – Appraisal Mgmt Co Reported to DOR

Representative Howard was recognized to explain the bill. It would require the NC Appraisal Board to report annually to the NC Department of Revenue the following information about register appraisal management companies: name, address, process agent if any, type of entity, employer identification number or social security number, and NC Secretary of State identification number is any. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 605 – Expand Setoff Debt Collection Act

Senator Hartsell was recognized to explain the bill. It would allow counties that jointly operate a solid waste facility as a regional solid waste management authority the same collection tool that would be available to them if they operated the facility individually. It does so by adding a regional solid waste management authority to the list of local agencies authorized under the Setoff Debt Collection Act to collect debts owed to them by obtaining setoff against a debtor's North Carolina tax refund. Senator Brown was recognized to offer a technical amendment which changed the effective date from 2011 to 2013. He moved for its adoption and the motion carried. Senator Clodfelter moved to adopt the bill as amended and the motion carried. A copy of the bill, the summary and the amendment is attached.

H.B. 956 – Zoning/Johnston County Open Space

This bill was removed from the agenda.

The meeting adjourned at 1:23 PM.

Senator Bob Rucho, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 20, 2012

Senator RUCHO,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **876** Mooresville Deannexation.
Sequential Referral: None
Recommended Referral: None

H.B. **224** Foxfire Village Assessment Validated.
Sequential Referral: None
Recommended Referral: None

H.B.(SCS #1) **552** Asheville Airport/WNC Agricultural Center.
Sequential Referral: None
Recommended Referral: None

H.B. **943** Davidson County Annexations.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1028** Appraisal Mgmt Co Reported to Dept of Revenue.
Sequential Referral: None
Recommended Referral: None

H.B. **1032** Morganton Deannexation.
Sequential Referral: None
Recommended Referral: None

H.B. **1088** Graham/Swain TVA Allocation/Border.
Sequential Referral: None
Recommended Referral: None

H.B. **1207** Granville/Person Local Stormwater Fees.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

H.B.(CS #1) **605** Expand Setoff Debt Collection Act.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 9

Committee Clerk Comments:

H224 – Sen. Blake
H552 – Sen. Apodaca
H605 – Sen. Brown
H943 – Sen. Bingham
H1028 – Sen. Brock
H1032 – Sen. Daniel
H1088 – Sen. Davis
H1207 – Sen. Gunn
S876 – Sen. Carney

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Finance** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	June 20, 2012	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 224	Foxfire Village Assessment Validated.	Representative Boles, Jr.
HB 552	Asheville Airport/WNC Agricultural Center.	Representative McGrady Representative Moffitt
HB 605	Expand Setoff Debt Collection Act.	Representative McElraft
HB 943	Davidson County Annexations.	Representative Dockham Representative Brown
HB 956	Zoning/Johnston County Open Space.	Representative Daughtry
HB 1028	Appraisal Mgmt Co Reported to Dept of Revenue.	Representative Starnes Representative Howard
HB 1032	Morganton Deannexation.	Representative Blackwell Representative Gillespie
HB 1088	Graham/Swain TVA Allocation/Border.	Representative Haire Representative West
HB 1207	Granville/Person Local Stormwater Fees.	Representative Crawford, Jr. Representative Wilkins, Jr.
SB 876	Mooresville Deannexation.	Senator Carney

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Senate Finance Committee
Wednesday, June 20, 2012, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 224	Foxfire Village Assessment Validated.	Rep. Boles
HB 552	Asheville Airport/WNC Agricultural Center.	Rep. McGrady Rep. Moffitt
HB 605	Expand Setoff Debt Collection Act.	Rep. McElraft
HB 943	Davidson County Annexations.	Rep. Dockham Rep. Brown
HB 956	Zoning/Johnston County Open Space.	Rep. Daughtry
HB 1028	Appraisal Mgmt Co Reported to Dept of Revenue.	Rep. Starnes Rep. Howard
HB 1032	Morganton Deannexation.	Rep. Blackwell Rep. Gillespie
HB 1088	Graham/Swain TVA Allocation/Border.	Rep. Haire Rep. West
HB 1207	Granville/Person Local Stormwater Fees.	Rep. Crawford Rep. Wilkins
SB 876	Mooresville Deannexation.	Sen. Carney

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 1

HOUSE BILL 1207

Short Title:	Granville/Person Local Stormwater Fees.	(Local)
Sponsors:	Representatives Crawford and Wilkins (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO ALLOW GRANVILLE COUNTY, PERSON COUNTY, THE CITY OF CREEDMOOR, THE TOWN OF BUTNER, AND THE TOWN OF STEM TO COLLECT DELINQUENT STORMWATER UTILITY FEES IN THE SAME MANNER AS DELINQUENT PERSONAL AND REAL PROPERTY TAXES.

Whereas, water quality standards mandated by State and federal law are requiring that local governments develop more detailed, advanced, and costly stormwater programs; and

Whereas, effective stormwater management should be provided to protect, to the extent practicable, the citizens from the loss of life and property damage from flooding; and

Whereas, aging stormwater conveyance systems and increasing demand upon those systems from development require that local governments engage in long-term planning; and

Whereas, the construction, operation, and maintenance of stormwater conveyance systems requires long-term planning and stable and adequate funding; and

Whereas, it is often most efficient to bill and collect rents, rates, fees, charges, and penalties for stormwater management programs and structural and natural stormwater and drainage systems in the same manner as property taxes; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 153A-277(a1) is amended by adding a new subdivision to read:

"(4) A county may adopt an ordinance providing that any fee imposed under this subsection may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee."

SECTION 1.(b) G.S. 153A-277(c) reads as rewritten:

"(c) Except as provided in subsections (a1) and (d) of this section and G.S. 153A-293, rents ~~Rents,~~ rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and ~~are~~ shall in no case be a lien upon the property or premises served, ~~served and, except as provided in subsection (d) of this section, are legal obligations of the person contracting for them,~~ provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems."

SECTION 1.(c) This section applies only to the Counties of Granville and Person.

SECTION 2. Section 4 of S.L. 2005-441, as amended by S.L. 2011-109, reads as rewritten:

"**SECTION 4.** This act is effective when it becomes law and applies to stream-clearing activities commenced on or after that date. Section 3 of this act applies only to the Cities of Creedmoor, Durham and Winston-Salem, the Towns of Butner, Garner, Kernersville, Knightdale, Morrisville, Stem, Wendell, and Zebulon, and the Village of Clemmons."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 1207:
Granville/Person Local Stormwater Fees

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 20, 2012
Introduced by:	Reps. Crawford, Wilkins	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1207 would allow Granville and Person Counties, the City of Creedmoor, and the Towns of Butner and Stem to bill stormwater utility fees in the same manner as property taxes, and in the case of nonpayment, to collect them in the same manner as property taxes.

CURRENT LAW: Cities and counties may operate a stormwater management program as a public enterprise[1] and may establish a schedule of fees for the services furnished by the program. A county or city may collect delinquent fees by any remedy provided by law for collecting and enforcing private debts. As a general rule, fees for enterprisory services cannot be a lien upon the property served by the enterprisory service. In 1991, the General Assembly provided an exception to this rule for fees imposed for solid waste collection and disposal services when it allowed cities and counties to collect the fees for this service in the same manner as property taxes. Delinquent property taxes may be collected using any one or more of the remedies provided in G.S. 105-366 through G.S. 105-375:

- Levy upon and sell or attach personal property.
- Attachment and garnishment of wages and other compensation, rents, bank deposits, the proceeds of property subject to levy, or any other intangible property.
- Foreclosure of real property.

By local acts, the General Assembly has already authorized the Cities of Durham, Winston-Salem, Garner, Knightdale, Morrisville, Wendell, and Zebulon, and the Village of Clemmons to collect delinquent stormwater management fees in the same manner as property taxes.

BILL ANALYSIS: House Bill 1207 authorizes Granville and Person Counties, the City of Creedmoor, and the Towns of Butner and Stem to adopt an ordinance providing that stormwater management fees may be billed with property taxes and made payable in the same manner as property taxes, and in the case of nonpayment, may be collected in the same manner as delinquent property taxes. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee.

EFFECTIVE DATE: This act is effective when it becomes law.

Giles Perry, counsel to House Government, substantially contributed to this summary.

H1207-SMSV-123(e1) v1

[1] Other types of public enterprises a city may operate include electric power generation, water and sewer systems, natural gas distribution, public transportation systems, cable television systems, parking facilities, and solid waste collection and disposal.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 876

Short Title:	Mooresville Deannexation.	(Local)
Sponsors:	Senator Carney.	
Referred to:	State and Local Government.	

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO REMOVE A CERTAIN DESCRIBED TRACT FROM THE CORPORATE LIMITS OF THE TOWN OF MOORESVILLE AT THE REQUEST OF THE TOWN BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Mooresville are reduced by removing the following two parcels, shown on the Annexation Plat for Morrison Plantation, LLC, dated December 20, 2006, and recorded in the Office of Register of Deeds of Iredell County on July 16, 2007, in Map Book 52 page (slide) 74: (i) property of William Elvin Lawing and wife, Sara King Lawing, DB 644 page 825, Iredell County Registry, PIN # 4637-65-6354, containing 43,056 sf+/-, and (ii) property of Kathryn K. Lawing, DB 541, page 595, Iredell County Registry, PIN # 4637-65-6037, containing 59,309 sf+/-.

SECTION 2. This act becomes effective June 30, 2012.

SENATE BILL 876:
Mooresville Deannexation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Sen. Carney	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 876 deannexes two described parcels from the Town of Mooresville. The bill received a favorable recommendation from the Senate State and Local Government Committee on June 19, 2012.

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

Pursuant to this Section, the General Assembly enacted Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to *deannex* property -- that power remains with the General Assembly.

BILL ANALYSIS: The bill deannexes two described parcels from the Town of Mooresville.

EFFECTIVE DATE: This act becomes effective June 30, 2012.

Giles Perry, counsel to the Senate State and Local Government Committee, substantially contributed to this summary.

S876-SMRB-152(e1) v1

HOUSE BILL 943*

Short Title:	Davidson County Annexations.	(Local)
Sponsors:	Representatives Dockham and R. Brown (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE APPROVAL OF THE BOARD OF COMMISSIONERS OF DAVIDSON COUNTY BEFORE A CITY NOT PRIMARILY LOCATED WITHIN DAVIDSON COUNTY MAY ANNEX ANY TERRITORY WITHIN DAVIDSON COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. No city not primarily located within the territory of Davidson County may adopt an annexation ordinance under any of the provisions of Article 4A of Chapter 160A of the General Statutes that applies to any territory located within Davidson County unless the Board of Commissioners of Davidson County has, prior to the adoption of the annexation ordinance, approved a resolution consenting to that annexation.

SECTION 2. This act is effective when it becomes law and applies with respect to any annexation ordinance adopted after that date.

HOUSE BILL 943:
Davidson County Annexations

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 20, 2012
Introduced by:	Reps. Dockham, R. Brown	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 943 requires the Davidson County Board of Commissioners to approve, prior to the adoption of a municipal annexation ordinance, any annexation by a city primarily located outside of that County.

CURRENT LAW: Current Chapter 160A of the General Statutes authorizes several types of annexation: voluntary annexation by petition, voluntary satellite annexation, and municipal-initiated annexation. Annexation by a municipality across county lines is authorized if the annexation meets the other requirements of law.

BILL ANALYSIS: House Bill 943 provides that no city not primarily located in Davidson County may adopt an annexation ordinance under Article 4A of Chapter 160A of the General Statutes (voluntary annexation by petition, voluntary satellite annexation, and municipal-initiated annexation) that applies to any territory located within Davidson County unless the Board of Commissioners of Davidson County has, prior to the adoption of the annexation ordinance, approved a resolution consenting to that annexation.

EFFECTIVE DATE: This act is effective when it becomes law and applies with respect to any annexation ordinance adopted after that date.

Giles Perry, counsel to House Government, substantially contributed to this summary.

H943-SMTD-133(e1) v1

HOUSE BILL 224

Short Title:	Foxfire Village Assessment Validated.	(Local)
Sponsors:	Representative Boles (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO VALIDATE A SPECIAL ASSESSMENT LEVIED BY FOXFIRE VILLAGE.

The General Assembly of North Carolina enacts:

SECTION 1. Any and all acts and proceedings heretofore done, and any and all procedures heretofore followed by Foxfire Village in assessing the cost of the Woodland Circle Extension project (involving the construction of a two-lane, paved road and the installation of electric power and water utility lines to serve properties that previously had no road access or utility service) pursuant to Article 10 of Chapter 160A of the General Statutes, are hereby in all respects validated, legalized, and confirmed. Any and all special assessments relating to this project levied by Foxfire Village at a rate of $0.20782 per square foot of the area of the lots or tracts abutting the project are hereby in all respects validated, legalized, and confirmed.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 224:
Foxfire Village Assessment Validated

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 20, 2012
Introduced by:	Rep. Boles	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 224 is a local bill that would validate the assessment actions taken by Foxfire Village for the Woodland Circle Extension project.***

CURRENT LAW: Under G.S. 160A-216, cities may levy special assessments to finance the following public improvements: streets, sidewalks, water systems, sewer systems, and storm sewer and drainage systems. The amount of each assessment must bear some relationship to the amount of benefit that accrues to the assessed property. The most common basis of assessment is front footage: Each property is assessed on a uniform rate per foot of property that abuts on the project. Other bases include the area of land served or the value added to the property because of the improvement. For street and sidewalk improvements, the city must receive a petition requesting the assessment from a majority of the property owners to be assessed who represent over half of the front footage of the property to be improved.

BILL ANALYSIS: House Bill 224 would cure any procedural defects that occurred as part of Foxfire Village's special assessment for the Woodland Circle Extension project by validating all acts and procedures followed by the town. The project involved the construction of a two-lane paved road and the installation of electric power and water utility lines. The bill would also validate any and all special assessments relating to the project and levied by the Village.

EFFECTIVE DATE: House Bill 224 would be effective when it becomes law.

BACKGROUND[1]: When the town initially undertook the improvement project in 2006, it failed to follow all of the statutory procedural requirements for making an assessment. Among the defects, the original petition did not contain the signatures of the majority of property owners to be assessed[2] and although the town informed all of the affected property owners by letter and held a meeting, it did not hold a public hearing. After the town opened the project to bids, the town obtained a proper petition and held a public hearing. However, the public hearing was not held until after the contract was awarded.

In addition to these procedural issues, one of the property owners objected to the method used to determine the amount of the assessment for the project. The owner's share of the assessment was 76% of the total cost, which he believed did not accurately represent the extent to which his property would benefit from the improvement.[3] Since the town did not change its methodology, the owner decided to donate the property to the town rather than pay the $1.4 million assessment. The change in ownership of the tract did not change the amount of the assessments imposed on the remaining property owners. The Village is currently selling the property that was donated.

Trina Griffin, counsel to House Finance, substantially contributed to this summary.

H224-SMTD-131(e1) v1

[1] This information was obtained from the minutes of the Foxfire Village Council meetings, the Mayor, and the town attorney.
[2] The original petition did, however, contain signatures of property owners representing a majority of the lineal feet of frontage to be improved.
[3] The contesting owner's property represented about 156 acres or 75% of the total acreage; however, he only owned 30% of the platted lots, and according to a wetlands survey, approximately 20% of the property is unusable.

HOUSE BILL 1088*

Short Title:	Graham/Swain TVA Allocation/Border.	(Local)
Sponsors:	Representatives West and Haire (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 24, 2012

A BILL TO BE ENTITLED

AN ACT CONCERNING THE DIVISION BETWEEN GRAHAM AND SWAIN COUNTIES OF TVA PAYMENTS IN LIEU OF TAXES, AND CLARIFYING THE COMMON BOUNDARY BETWEEN THOSE COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-458 reads as rewritten:

"**§ 105-458. Apportionment of payments in lieu of taxes between local units.**

The payments received by the State and local governments from the Tennessee Valley Authority in lieu of taxes under section 13 of the Act of Congress creating it, and as amended, shall be apportioned between the local governments in which the property is owned or an operation is carried on, on the basis of each local government's percentage of the total value of the Authority's property in the State, determined as hereinafter provided: Provided, however, that the minimum annual payment to any local government from said fund, including the amounts paid direct to said local government by the Authority, shall not be less than the amount of annual actual tax loss to such local government based upon the two-year average on said property next prior to it being taken over by the ~~Authority.~~Authority; Provided further that as to the apportionment of funds between Graham County and Swain County:

(1) The dam itself will be allocated and assessed between Graham and Swain Counties based on the location of survey marker 1475 as located on the power house.

(2) The two generators and all other equipment located in Graham County will be assessed in Graham County.

(3) Two-thirds of the generator building will be assessed in Graham County and the remaining one-third will be assessed in Swain Couny.

(4) The remaining one generator and all other equipment located in Swain County will be assessed in Swain County.

(5) The nearby transmission facilities, which are located in Swain County, will be assessed in Swain County.

(6) All off-site property (such as off-site transmission lines and land) will be assessed in the county where such property is located."

SECTION 2. Notwithstanding Chapter 94 of the Public Laws of 1870-71 and Chapters 77 and 154 of the Public Laws of 1871-72, the common boundary line between Graham County and Swain County is the center line of the Little Tennessee River for the full length of the boundary between the two counties, the line running through the 1944 survey marker, being survey marker 1475 as located on the power house.

SECTION 3. This act applies to Graham and Swain Counties only.

SECTION 4. This act becomes effective June 1, 2012.

HOUSE BILL 1088:
Graham/Swain TVA Allocation/Border

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Reps. West, Haire	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 1088 provides for the apportionment of Tennessee Valley Authority (TVA) payments in lieu of taxes between Graham and Swain Counties. The bill also establishes the common boundary line between the two counties as the center line of the Little Tennessee River.

The Senate companion bill, Senate Bill 941, introduced by Senator Davis, is also in Senate Finance and the bills contents remain identical. Senate bill 941 received a favorable recommendation from the Senate State and Local Government Committee on June 19, 2012.

CURRENT LAW: The TVA makes payments in lieu of taxes under the provisions of the Federal Tennessee Valley Authority Act of 1933.[1] The money is apportioned between the local governments in which the property is owned or an operation is carried on, on the basis of each local government's percentage of the total value of the TVA's property in the State.[2] The minimum payment is to be not less than the amount of annual actual tax loss to the local government. The Department of Revenue (DOR) determines annually the allocation of the TVA's valuation among the local governments in the same manner as if the property were owned or operated by a privately owned public utility. The DOR and the State Treasurer then prorate funds received from TVA on the basis of their calculations.

BILL ANALYSIS: Section 1 provides for the apportionment of TVA funds between Graham and Swain counties. Specifically,

- The dam will be allocated as assessed between the two counties based on the location of survey marker 1475 located on the powerhouse.
- The two generators all other equipment located in Graham County will be assessed in Graham and the remaining one generator and all other equipment located in Swain County will be assessed in Swain.
- 2/3 of the generator building will be assessed in Graham and 1/3 in Swain.
- The nearby transmission facilities located in Swain County will be assessed in Swain.
- All off-site property such as transmission lines and land will be assessed in the county in which the property is located.

Section 2 of the bill establishes the center line of the Little Tennessee River as the common boundary line between Graham and Swain Counties.

EFFECTIVE DATE: The act becomes effective June 1, 2012.

BACKGROUND[3]: In 2009, the General Assembly enacted legislation[4] that changed the formula of TVA payments in lieu of taxes from that based on a county's millage rate to actual TVA assets in a

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[1] 16 USC 881k-1.

TVA property is located in the following North Carolina counties: Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Mitchell, Swain, and Watauga. The counties of Cherokee, Swain, and Graham have the most TVA property. TVA property is also located in the towns of Murphy in Cherokee County and Bryson City in Swain County.

[3] This information was taken from newspaper reports about the ongoing litigation.

[4] S.L. 2009-569.

particular county. Under the change in the PILT formula, Graham lost about $12,436 a month, which amounted to about $150,000 a year. After the change in the formula, Graham officials argued TVA's key assets — Fontana Dam's powerhouse and three generators— were actually in Graham and not Swain as defined by the original channel of the Little Tennessee River believed to be the county line. The North Carolina Department of Revenue agreed with an advisory letter from the North Carolina Attorney General Office that seemed to indicate Graham's argument was valid. With the backing of the State, Graham was awarded about $17,000 more in PILT funds each month.

In December 2010, Graham County filed a lawsuit to get back payments in lieu of taxes estimated at $15 million from when the dam was built in 1943, claiming the boundaries between the two counties put most of TVA's assets in Graham. However, depositions during the lawsuit showed the original assumption was incorrect, and Graham County's historic boundary, when the county was formed from Cherokee County in 1872, was the south bank of the Little Tennessee River. Swain was prepared to argue Graham's boundary was originally the south bank, and the county was not entitled to the dam; the Attorney General eventually sided with Swain.

Earlier this year, the parties reached a settlement. As part of the settlement, the official boundary between the two counties will be marker 1475 on Fontana Dam, which is the approximate point of the original channel of the Little Tennessee River. With the settlement, Graham will lose about $8,000 to $12,000 a month in PILT funds, according to the Department of Revenue.

The following is the settlement agreement:

1. The value of Fontana Dam generating facilities at the dam is to be split two thirds in Graham and one-third in Swain. The nearby transmission facilities are to be assessed in Swain and the dam itself will be split equally between Graham and Swain. Off-site property will be assessed by the county where the property is located.
2. The center line of the Little Tennessee River will be the official Graham/Swain county line, with the line running through the survey marker 1475 on the powerhouse.
3. Items 1 and 2 are to be implemented by mutually agreed legislation, which is to be effective June 1, 2012.
4. The pending lawsuit will be stayed pending passage of legislation. If the above legislation is passed in 2012, the lawsuit will be dismissed with prejudice by both counties.
5. PILT funds will be distributed according to the current Department of Revenue approach until the above legislation is passed and effective June 1, 2012 or an unstayed court order directs otherwise. The distribution shall be without prejudice to either county to contend in court that such distribution is not correct. If the legislation is passed after June 1, 2012, Graham County shall pay to Swain any funds received in excess of what is called for in this agreement.
6. This settlement is subject to formal approval by commissions in Swain and Graham.
7. Each party shall bear its own costs of the lawsuit.

Barbara Riley, counsel to Senate State and Local Government, substantially contributed to this summary.

H1088-SMRB-149(e1) v1

HOUSE BILL 1032*

Short Title:	Morganton Deannexation.	(Local)
Sponsors:	Representatives Blackwell and Gillespie (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 22, 2012

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED NONCONTIGUOUS PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF MORGANTON.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the City of Morganton:

Tract 1: All that property designated as lots 1, 2, and 3 (2.57 acres total) as shown on map recorded in Plat Book 39, pages 101-102, recorded in the Burke County Register of Deeds; said property being located in Morganton Township, Burke County, and also assigned Burke County Tax Record Numbers 60305, 35234, and 60306.

Tract 2: All that property designated as Parcel "A" (23.87 acres) as shown on map recorded in Plat Book 37, Page 17, in the Burke County Register of Deeds; said property being located in Morganton Township, Burke County, and also being assigned Burke County Tax Record Number 59930.

SECTION 2. Section 1 of this act shall have no effect upon the validity of any liens of the City of Morganton for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the City of Morganton.

SECTION 3. The property removed from the corporate limits of the City of Morganton by Section 1 of this act shall remain under the jurisdiction of that city for the purposes of Article 19 of Chapter 160A of the General Statutes under G.S. 160A-360 until removed from that jurisdiction as provided in G.S. 160A-360.

SECTION 4. This act becomes effective June 30, 2012.

HOUSE BILL 1032:
Morganton Deannexation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 20, 2012
Introduced by:	Reps. Blackwell, Gillespie	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1032 deannexes two described areas from the City of Morganton in Burke County.***

[As introduced, this bill was identical to S831, as introduced by Sen. Daniel, which is currently in Senate State and Local Government.]

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

Pursuant to this Section, the General Assembly enacted Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to *deannex* property – that power remains with the General Assembly.

BILL ANALYSIS:

Section 1 of House Bill 1032 deannexes two tracts from the City of Morganton in Burke County.

Section 2 of the bill provides that liens for property taxes or special assessments on property in the area outstanding before the effective date would remain in effect.

Section 3 of the bill specifies that the property would remain in the extraterritorial planning and zoning jurisdiction of the City.

EFFECTIVE DATE: This act becomes effective June 30, 2012.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

H1032-SMTD-136(e1) v1

HOUSE BILL 552

Committee Substitute Favorable 4/21/11
Committee Substitute #2 Favorable 6/2/11
Fourth Edition Engrossed 6/6/11
Senate State and Local Government Committee Substitute Adopted 6/7/12

Short Title: Asheville Airport/WNC AG Center. (Local)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO CREATE THE GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY, TO REMOVE THE ASHEVILLE REGIONAL AIRPORT AND THE WESTERN NORTH CAROLINA AGRICULTURAL CENTER FROM THE ZONING JURISDICTION OF THE CITY OF ASHEVILLE, TO REQUIRE THE CITY OF ASHEVILLE TO CONVEY TO THE STATE OF NORTH CAROLINA ANY OF ITS RIGHT, TITLE, AND INTEREST TO THE WESTERN NORTH CAROLINA AGRICULTURAL CENTER, AND TO REMOVE THE WESTERN NORTH CAROLINA AGRICULTURAL CENTER FROM THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

PART I. GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY ACT.

SECTION 1.1. This Part shall be known and may be cited as the "Greater Asheville Regional Airport Authority Act," and any reference in this Part to "this act" means the Greater Asheville Regional Airport Authority Act.

SECTION 1.2. There is hereby created the Greater Asheville Regional Airport Authority, which shall be a body corporate and politic, having the powers, authority, and jurisdiction hereinafter enumerated and such other and additional powers and authority as shall be conferred upon it by future acts of the General Assembly.

SECTION 1.3. Unless the context requires otherwise, the following definitions apply throughout this act to the defined words and phrases and their cognates:

(1) "Airport facilities" means airport facilities of all kinds, including, but not limited to, landing fields, hangars, fixed base operations, shops, restaurants and catering facilities, terminals, buildings, and parking facilities and all other facilities necessary, beneficial, and/or helpful for the landing, taking off, operating, servicing, repairing, and parking of aircraft, the loading, unloading, and handling of cargo and mail, express and freight, and the accommodation, convenience, and comfort of crews and passengers, together with related transportation facilities, all necessary, beneficial, and/or helpful appurtenances, machinery, and equipment, and all lands, properties, rights, easements, and franchises relating thereto and considered

necessary, beneficial, and/or helpful by the Authority in connection therewith.

(2) "ARAA member" means a member of the Asheville Regional Airport Authority in existence when this act becomes law.

(3) "Authority" means the Greater Asheville Regional Airport Authority created by this act or, if such Authority is abolished, the authority, board, body, commission, or other entity succeeding to the principal functions thereof.

(4) "Member" means an individual who is appointed to the Authority as provided by this act.

SECTION 1.4.(a) The Authority shall consist of seven members, (i) one of whom must have experience in aviation, (ii) one of whom must have experience in travel and tourism, and (iii) one of whom must have experience in one or more of marketing, business development, or economic development. In addition, the appointing authorities are encouraged to appoint members who, when practical, have experience in logistics, construction and/or facilities management, law, accounting and/or finance. The seven members shall be appointed as follows:

(1) Two shall be registered voters of the City of Asheville appointed by the Asheville City Council.

(2) Two shall be registered voters of the County of Buncombe appointed by the Board of Commissioners of Buncombe County.

(3) Two shall be registered voters of the County of Henderson appointed by the Board of Commissioners of Henderson County.

(4) One shall be appointed by majority vote of the other six members.

SECTION 1.4.(a1) No person holding any elected public office may be a member of the Authority, provided that if an ARAA member also holds an elective public office when this act becomes effective, that member may serve as a member of the Authority until the completion of the term of elective office and until a successor is appointed and qualified.

SECTION 1.4.(b) No person who, at the time of appointment, is transacting business with the Authority or who is reasonably expected to transact business with the Authority, or is an employee, agent, or consultant of an entity transacting or expecting to transact business with the Authority, may be appointed as a member of the Authority, provided this sentence does not apply to a person who is an employee of a public utility which is the sole available supplier for the Authority. No person who, at the time of appointment, is an employee or agent of or consultant to the Authority may be appointed as a member of the Authority.

SECTION 1.4.(c) Members of the Authority shall serve four-year terms and may serve up to a total of two successive four-year terms. A member may not be reappointed to the Authority except after a lapse of four years following the most recent term served. In the event a member is appointed to fill an unexpired term, and at least two years of the unexpired term remain to be served, such appointment shall be counted in applying the two-term limit, otherwise it shall not be counted. Notwithstanding the foregoing, those individuals serving as ARAA members as of the effective date of this act may continue to serve as members of the Authority until the completion of their respective then current terms and until their successors are appointed and qualified. In the event an ARAA member resigns or is removed, the appointing authority under the agreement between the County of Buncombe and the City of Asheville shall forthwith appoint a replacement ARAA member to complete the unexpired term. Thereafter, and with respect to the four ARAA members whose terms expire June 30, 2012, the Asheville City Council, the Board of Commissioners of Buncombe County, and the Board of Commissioners of Henderson County each shall appoint one member of the Authority, and the other members shall appoint, by majority vote, the fourth member. With respect to the three ARRA members whose terms expire June 30, 2014, the Asheville City

Council, the Board of Commissioners of Buncombe County, and the Board of Commissioners of Henderson County each shall appoint one member of the Authority.

SECTION 1.4.(d) Any vacancy occurring among the membership of the Authority shall be filled within 60 days after notice thereof by appointment of the appointing authority of a member to serve for the remainder of the unexpired term.

SECTION 1.4.(e) Members of the Authority and their successors shall take and subscribe to an oath of office before an officer authorized to administer oaths, which oath shall be filed with the Authority.

SECTION 1.4.(f) Any member of the Authority may be suspended or removed from office by that member's appointing authority for cause affecting that member's duties and responsibilities as a member; for misfeasance, malfeasance, or nonfeasance in office; or for conduct tending to undermine any decisions of the Authority, or conduct exposing the Authority to liability for damages.

SECTION 1.4.(g) Members of the Authority shall not be personally liable, in any manner, for their acts or omissions as members of the Authority, except for malfeasance.

SECTION 1.4.(h) Each member may continue to serve until a successor has been duly appointed and qualified, but not for more than 60 days.

SECTION 1.5.(a) The organization and business of the Authority shall be conducted as provided in this act.

SECTION 1.5.(b) Members of the Authority shall constitute the governing board of the Authority and may, among other things and from time to time, adopt suitable bylaws, not inconsistent with the provisions of this act.

SECTION 1.5.(c) The Authority shall appoint from its members a chair, vice-chair, and such other officers as it may from time to time deem necessary, beneficial, and/or helpful for the orderly conduct of its business. The term of office of the chair and vice-chair is two years.

SECTION 1.5.(d) Each member of the Authority, including the chair, shall have one vote. A majority of the members of the Authority shall constitute a quorum, and all actions of the Authority shall be determined by a majority vote of all the members, that is four votes in favor.

SECTION 1.5.(e) The Authority shall hold meetings at least monthly at such times and places as it from time to time may designate and at such other times on the call of the chair or by four members of the Authority. Notice of meetings shall be provided as required by Article 33C of Chapter 143 of the General Statutes. A monthly meeting of the Authority may be cancelled if it is determined by the chair or four members that such meeting is not required.

SECTION 1.5.(f) Members may receive payment or reimbursement for travel, lodging, and meal expenses incurred in transacting business on behalf of the Authority. Members may also receive free parking at any airport owned, leased, subleased, or controlled by the Authority, which members may use for official and nonofficial purposes during the respective member's term of office.

SECTION 1.5.(g) The fiscal year of the Authority shall begin on July 1 and end on June 30. On or before May 15 of each year, the Authority shall prepare and adopt a proposed budget for the next ensuing fiscal year and deliver copies of such proposed budget to the Buncombe and Henderson County Boards of Commissioners and the Asheville City Council.

SECTION 1.5.(h) All meetings and closed sessions of the Authority shall be conducted in accordance with Article 33C of Chapter 143 of the General Statutes as it may be amended or in accordance with any successor statute.

SECTION 1.6.(a) The Authority shall constitute a body, both corporate and politic, and shall have the power and authority to do the following:

(1) Adopt and from time to time revise an official seal.

(2) Maintain an office or offices at such place or places as it may designate within Buncombe or Henderson Counties only.

(3) Purchase, acquire, develop, establish, construct, own, control, lease, equip, improve, administer, maintain, operate, and/or regulate airports and/or landing fields for the use of airplanes and other aircraft and all facilities incidental thereto, within the limits of Buncombe and/or Henderson Counties; and for any of such purposes, purchase, acquire, own, develop, hold, lease, sublease, and operate real and/or personal property.

(4) Purchase real and personal property.

(5) Sue and be sued in the name of the Authority, to acquire by purchase or otherwise and to hold lands for the purpose of constructing, maintaining, and/or operating any airport within the limits of said counties, and to make such contracts and to hold such personal property as may be necessary, beneficial, and/or helpful for the exercise of the powers of the Authority. The Authority may acquire by purchase or otherwise any existing lease, sublease, leasehold right, or other interest in any existing airport facility located in the Counties of Buncombe and/or Henderson.

(6) Charge and collect fees, royalties, rents, and/or other charges, including fuel flowage fees, for the use and/or occupancy of property owned, leased, subleased, or otherwise controlled or operated by the Authority or for services rendered in the operation thereof.

(7) Make all reasonable rules, regulations, and policies as it may from time to time deem to be necessary, beneficial, or helpful for the proper maintenance, use, occupancy, operation, and/or control of any airport or airport facility owned, leased, subleased, or controlled by the Authority; provide and enforce civil and criminal penalties for the violation of such rules, regulations, and/or policies; provided that such rules, regulations, policies, and penalties are not in conflict with any applicable law, rule, or regulation of the State of North Carolina, the United States, or any agency, department, or subdivision of either of them, including the rules and regulations of the Federal Aviation Administration.

(8) Sell, exchange, lease, sublease, or otherwise dispose of, any property, real or personal, belonging to the Authority, or grant easements over, through, under, or across any real property belonging to the Authority, or donate to another governmental entity within this State or to the United States any surplus, obsolete, or unused personal property; provided that Article 12 of Chapter 160A of the General Statutes does not apply and is not applicable to any such sale, exchange, lease, sublease, grant, donation, or other disposition.

(9) Purchase such insurance and insurance coverages as the Authority may from time to time deem to be necessary, beneficial, or helpful.

(10) Maintain and/or operate any airport or landing field jointly with any county or counties adjoining either the County of Buncombe or the County of Henderson or both of them and/or with other aviation/airport authority or authorities operating under authorization from one or more adjoining counties and/or any municipality located therein.

(11) Deposit, invest, and/or reinvest any of its funds as provided by the Local Government Finance Act for the deposit or investment of unit funds.

(12) Issue revenue bonds and/or refunding bonds pursuant to the State and Local Government Revenue Bond Act.

(13) Purchase any of its outstanding bonds or notes.

(14) Operate, own, lease, sublease, control, regulate, and/or grant to others the right to operate on any airport premises restaurants, snack bars and vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service stations, garage service facilities, motion picture shows, personal service establishments, and/or all other types of facilities as may be directly or indirectly related to the maintenance and/or furnishing of the public commercial and/or general aviation airport facilities.

(15) Accept grants of money and/or materials or property of any kind for any existing or future airport facilities from the State of North Carolina, the United States, or any agency, department, or subdivision of either of them, including the Federal Aviation Administration, or from any private agency, entity, or individual, upon such terms and conditions as may be imposed, and enter into contracts and grants agreements with the Federal Aviation Administration, or any successor or successors thereof, and/or with the State of North Carolina or any of its agencies, departments, or subdivisions in the capacity of sponsor or cosponsor of any airport development project involving the acquisition, construction, development, reconstruction, improvement, extension, enlargement, or equipment of any existing or future airport facilities.

(16) Employ and fix the compensation of an airport director, who shall serve at the pleasure of the Authority and who shall manage the affairs of the Authority under the supervision of the Authority.

(17) Employ, or provide for the employment of, such employees, including law enforcement officers, as the Authority may from time to time deem to be necessary, beneficial, or helpful. All such employees shall be employees at will, and no such employee shall have a defined or definite term of employment or an expectation of continued employment or an expectation of continued indefinite employment.

(18) Employ, hire, retain, or contract with, such accountants, auditors, agents, engineers, attorneys, and other persons and entities whose services may from time to time be deemed by the Authority to be necessary, beneficial, or helpful.

(19) Make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings, and/or estimates of cost and revenues as the Authority may from time to time deem necessary, beneficial, or helpful, and prepare and adopt a comprehensive plan or plans for the location, construction, improvement, and development of any project.

(20) Undertake and/or enter into leases, subleases, agreements, easements, and contracts, and/or grant concessions, with respect to alternative energy, energy conservation, energy reduction, and/or renewable energy activities, programs, projects, and/or ventures, and the administration, construction, development, enlargement, equipment, improvement, maintenance, management, operation, regulation, and/or repair thereof.

(21) Exercise all of the powers conferred by Chapter 63 of the General Statutes or any successor Chapter or law.

SECTION 1.6.(b) The Authority has the same exemptions with respect to payment of taxes and license fees as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 1.7.(a) The Authority is hereby authorized and empowered to acquire from the Counties of Buncombe and Henderson and the City of Asheville, by agreement therewith, and such Counties and City may grant and convey, either by gift or for such consideration as allowed by federal law and as it may be deemed wise, any real and/or personal property which it now owns or may hereafter acquire, and which may be necessary, beneficial, or helpful for the construction, development, operation, and/or maintenance of any airport or facilities of same located in the Counties of Buncombe or Henderson. If the airport ceases to operate or if the Authority is dissolved, any applicable real property of the Counties of Buncombe or Henderson or the City of Asheville conveyed or transferred to the Authority under this act shall revert to the grantor.

SECTION 1.7.(b) The County of Buncombe, the County of Henderson, and the City of Asheville shall transfer to the Authority within 90 days after enactment of this act all its right, title, and interest to the property known as the Asheville Regional Airport, except if approval of a federal agency is required, then within 90 days of that approval.

SECTION 1.7.(c) Private property needed by the Authority for any airport, landing field, or facility may be acquired by the Authority by gift, devise, or private purchase. Aviation easements needed by the Authority for any airport, landing field, or facility may likewise be acquired by gift, devise, or private purchase. Unless the power of eminent domain is required by federal law or federal regulation, Chapter 40A of the General Statutes does not apply to the Authority, and it may not exercise the power of eminent domain. If a federal law or federal regulation does require the Authority to have the power to exercise eminent domain, it may only do so for public use for an airport purpose or purposes, and any eminent domain proceeding must be authorized jointly by all of the three appointing authorities. In no case, however, may the power of eminent domain be used for purposes not necessary for the operation of the airport, and more specifically no property may be acquired by eminent domain for such uses as hotels, motels, restaurants, or industrial parks. The power of eminent domain may not be used to acquire any interest in the Ferncliff Industrial Park as it existed on June 1, 2011, except for a proven and present aviation need required by a federal agency.

SECTION 1.7.(d) Any lands acquired, owned, controlled, or occupied by the Authority shall and/or are hereby declared to be acquired, owned, controlled, and occupied for a public purpose.

SECTION 1.7.(e) The Authority is not authorized to levy any tax.

SECTION 1.7.(f) Any claim by Henderson County against the City of Asheville or the current airport authority on account of acquisition of property by either or both of them in Henderson County is extinguished.

SECTION 1.8. The Authority shall make annual reports to the Buncombe County Board of Commissioners, the Asheville City Council, and the Henderson County Board of Commissioners setting forth a summary of its general operations and transactions conducted by it pursuant to this act. The Authority shall be regarded as the corporate instrumentality and agent for Buncombe and Henderson Counties and the City of Asheville for the purpose of developing aviation facilities in the Counties of Buncombe and Henderson, but it shall have no power to pledge the credit of the Counties of Buncombe or Henderson or the City of Asheville, or to impose any obligation upon those counties, or the City of Asheville, except and when such power is expressly granted by statute.

SECTION 1.9. All rights, powers, and authority given to the counties and/or municipalities by the statutes of North Carolina, which may now be in effect, or which may be enacted in the future, relating to the development, operation, maintenance, regulation, and/or control of municipal or other governmental airports and the regulations of aircraft are hereby vested in the Authority.

SECTION 1.10. The Authority is hereby expressly authorized to make and enter into contracts, leases, subleases, conveyances, and other agreements with any political

subdivision, agency, department, or instrumentality of this State, any agency, department, or subdivision of the United States, or any other legal entity or person for the purpose of carrying out the provisions of this act.

SECTION 1.11. The powers of the Authority created by this act shall be construed liberally in favor of the Authority. No listing of powers included in this act is intended to be exclusive or restrictive, and the specific mention of, or failure to mention, particular powers in this act shall not be construed as limiting in any way the general powers of the Authority as stated in Section 1.6(a) of this act. It is the intent of this act to grant the Authority full power and right to exercise all authority necessary for the effective operation and conduct of the Authority. It is further intended that the Authority should have all implied powers necessary or incidental to carrying out the expressed powers and the expressed purposes for which the Authority is created. The fact that this act specifically states that the Authority possesses a certain power does not mean that the Authority must exercise such power unless this act specifically so requires.

SECTION 1.12. G.S. 66-58(a) does not apply to the Greater Asheville Regional Airport Authority or a lessee or sublessee of the Greater Asheville Regional Airport Authority.

SECTION 1.13. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

PART II. ASHEVILLE REGIONAL AIRPORT AND WNC AG CENTER PROVISIONS

SECTION 2.1.(a) All the property within Buncombe County owned by the City of Asheville that is part of the Asheville Regional Airport is not subject to regulation by that city under Article 19 (Planning and Regulation of Development) of Chapter 160A of the General Statutes and instead shall be subject to ordinances of Buncombe County under Article 18 (Planning and Regulation of Development) of Chapter 153A of the General Statutes. No property in Buncombe County that may hereinafter be acquired by the City of Asheville or by the Greater Asheville Regional Airport Authority to be part of the Asheville Regional Airport shall be subject to ordinances under Article 19 of Chapter 160A of the General Statutes but instead shall be subject to ordinances of Buncombe County under Article 18 (Planning and Regulation of Development) of Chapter 153A of the General Statutes.

SECTION 2.1.(b) This section is effective on the effective date of an ordinance adopted by Buncombe County to make the area under subsection (a) of this section subject to the zoning ordinance of that county.

SECTION 2.2.(a) The City of Asheville shall convey to the State of North Carolina by warranty or quitclaim deed all its right, title, and interest to the "City of Asheville Parcel" below, which is part of the Western North Carolina Agricultural Center, and the corporate limits of the City of Asheville are reduced by removing all three parcels below from the corporate limits:

NORTH PARCEL

BEGINNING at a concrete monument located at the intersection of the West boundary of right-of-way for Interstate Highway I-26 and the South Boundary of right-of-way for Fanning Bridge Road and running South 75 degrees 50 minutes West 454.65 feet along the South Boundary of right-of-way for Fanning Bridge Road to a concrete monument; thence running parallel to, and 50 feet from, the centerline of Fanning Bridge Road the following bearings and distances: South 72 degrees 23 minutes West 456.00 feet; South 71 degrees 40 minutes West 100.00 feet; South 48 degrees 51 minutes West 51.00 feet; South 41 degrees 47 minutes West 65.00 feet; South 31 degrees 44 minutes West 50.00 feet; South 1 degree 42 minutes West 50.00 feet; South 2 degrees 29 minutes East 650.56 feet to a stake; thence leaving the right-of-way, North 84 degrees 52 minutes 12 seconds East 1301.80 feet to a stake in the

West edge of Interstate Highway I-26 right-of-way; thence along the West edge of Interstate Highway I-26 right-of-way North 13 degrees 54 minutes 45 seconds West 1018.70 feet to the point of BEGINNING, and containing 25.10 acres, more or less.

CITY OF ASHEVILLE PARCEL

BEGINNING at the southwest corner of the property of the State of North Carolina as described in Deed Book 917, Page 605 said point being an iron pipe in the east right-of-way of Fanning Bridge Road (SR 3526); thence N84°19'30"E 1251.01 feet to a concrete monument on the right-of-way of Interstate 26; then with the right-of-way of Interstate 26 the following four calls: S14°24'34"E 355.92 feet to a concrete monument, S11°38'02"W 669.75 feet to a concrete monument, S14°15'41"E 398.94 feet to a concrete monument, and S51°17'26"E 183.08 feet to an iron pipe; then leaving the right-of-way of Interstate 26 and running with the west line of the property now or formerly owned by Sybil Lance et al S03°49'11"W 347.22 feet to an iron pipe; then S86°52'48"W 1020.44 feet to an iron pipe; then N03°07'12"W 400.00 feet to an iron pipe; then S86°52'48"W 300.00 feet; then N03°07'12"W 1399.12 feet with the east right-of-way of Fanning Bridge Road (SR 3526) to the beginning containing 50.00 acres. Being a portion of the property conveyed to the City of Asheville by City Loans Incorporated by deed dated April 4, 1958, and recorded in the Henderson County Register of Deeds office in Deed book 366, Page 607.

SOUTH PARCEL

BEGINNING at an iron pin which is located South 21 degrees 36 minutes 41 seconds West 612.00 feet (Ground) and South 23 degrees 38 minutes 51 seconds West 622.53 feet (Grid) from NCGS Monument "Rest" (NC Grid Coordinates(NAD 83)) N191587.805m and E289213.047m, and runs thence from said Beginning point on a curve to the right having a radius of 663.94 feet, a chord bearing of South 59 degrees 23 minutes 33 seconds West 413.45 feet and an arc length of 420.44 feet to an iron pin; thence South 79 degrees 32 minutes 36 seconds West 342.65 feet to an iron pin; thence North 64 degrees 21 minutes 42 seconds West, crossing an iron pin at 52 feet, a total distance of 182.47 feet to a right-of-way monument, said right-of-way monument being located North 30 degrees 44 minutes 38 seconds West 216.86 feet from a County Line monument; thence North 02 degrees 48 minutes 04 seconds West, crossing an iron pin at 182.64 feet, a total distance of 445.09 feet to an iron pin thence North 25 degrees 31 minutes 19 seconds West 89.43 feet to an iron pin located in the eastern margin of the 100' right of way of Airport Road; thence with the eastern margin of said right-of-way, North 03 degrees 07 minutes 12 seconds West 63.53 feet to an iron pin; thence North 86 degrees 52 minutes 48 seconds East 300 feet to an iron pin; thence South 86 degrees 52 minutes 48 seconds East 981.81 feet to the point and place of Beginning, containing 8.31 acres, more or less, and being shown on a survey dated November 17, 1995, last revised December 1, 1995. Entitled "Survey of Addition to WNC Agricultural Center," prepared by Hutchison-Biggs & Associates, Inc. (B95-885).

SECTION 2.2.(b) The property described in subsection (a) of this section, and any other property contiguous to that property and which is acquired by the State of North Carolina to be part of the Western North Carolina Agricultural Center, is not subject to regulation by the City of Asheville under Article 19 (Planning and Regulation of Development) of Chapter 160A of the General Statutes and instead shall be subject to ordinances of Buncombe County under Article 18 (Planning and Regulation of Development) of Chapter 153A of the General Statutes. This subsection is effective on the effective date of an ordinance adopted by Buncombe County to make the area under subsection (a) of this section subject to the zoning ordinance of that county.

PART III. EFFECTIVE DATE

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 552:
Asheville Airport/WNC AG Center

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 20, 2012
Introduced by:	Reps. Moffitt, McGrady	**Prepared by:**	Heather Fennell
Analysis of:	Fifth Edition		Committee Counsel

SUMMARY: ***House Bill 552 would create the Greater Asheville Regional Airport Authority, remove the Asheville Regional Airport and the Western North Carolina Agricultural Center from the zoning jurisdiction of the City of Asheville, require the City of Asheville to convey to the State of North Carolina any of its right, title, and interest to the Western North Carolina Agricultural Center, and remove the Western North Carolina Agricultural Center from the corporate limits of the City of Asheville.***

CURRENT LAW: The Asheville Regional Airport is governed by the Asheville Regional Airport Authority (ARAA), created by interlocal agreement, and governed by a Board from Asheville and Buncombe County.

BILL ANALYSIS:

Part I of the bill would create the Greater Asheville Regional Airport Authority (Authority) to succeed the current Asheville Regional Airport Authority (ARAA). The bill:

- Provides for a seven member board including:
  - Two members appointed by the Asheville City Council from the registered voters of Asheville.
  - Two members appointed by the Board of Commissioners of Buncombe County from the registered voters of Buncombe County.
  - Two members appointed by the Board of Commissioners of Henderson County from the registered voters of Henderson County.
  - One member appointed by majority vote of the other six members.
  - Members may not hold elected office or conduct business with the Authority.
- Provides for current ARAA members to continue to serve until the completion of their terms.
- Provides that a majority of all members is a quorum, and action requires four votes in favor.
- Sets out the powers of the Authority including:
  - Authority to issue revenue bonds and/or refunding bonds pursuant to the Local Government Revenue Bond Act.
  - Exemption from G.S. 66-58(a) thereby allowing competition with private businesses.
- Denies the Authority the power to tax or exercise the power of eminent domain unless the power of eminent domain is required by federal law or federal regulation. If a federal law requires the Authority to have the power to exercise eminent domain, any eminent domain proceeding must be authorized jointly by all of the three appointing authorities. In no case may the power of eminent domain be used for purposes not necessary for the operation of the airport. No property may be acquired by eminent domain for such uses as hotels, motels, restaurants, or industrial parks. Specifically provides that eminent domain may not be used to acquire any interest in the

Ferncliff Industrial Park as it existed on June 1, 2011, except for an aviation need required by a federal agency.

- Provides that any claim by Henderson County against Asheville or the current airport authority on account of acquisition of property by either or both in Henderson County is extinguished.

Part II of the bill would provide that all property within Buncombe County owned by the City of Asheville, or that may be acquired by the City of Asheville or the Greater Asheville Regional Airport Authority, that is part of the Asheville Regional Airport would no longer be subject to the zoning regulation of the City of Asheville, but would be subject to the zoning regulation of Buncombe County. This provision becomes effective on the effective date of an ordinance adopted by Buncombe County.

This part of the bill would also require the City of Asheville to convey to the State of North Carolina three described parcels of property which are part of the Western North Carolina Agricultural Center, and remove those parcels from the corporate limits of Asheville. Those parcels, and any other property which is contiguous to those parcels and is acquired by the State to be part of the Western North Carolina Agricultural Center, shall not be subject to the zoning regulation of Asheville, but rather to the zoning regulation of Buncombe County.

EFFECTIVE DATE: The bill is effective when it becomes law.

Giles S. Perry and Greg Roney, staff attorneys, substantially contributed to this summary.

HOUSE BILL 605
Committee Substitute Favorable 5/18/11

Short Title: Expand Setoff Debt Collection Act. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE DEFINITION OF LOCAL AGENCY FOR PURPOSES OF THE DEBT SETOFF COLLECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105A-2 reads as rewritten:

"**§ 105A-2. Definitions.**

The following definitions apply in this Chapter:

...

(6) Local agency. – Any of the following:

a. A county, to the extent it is not considered a State agency.

b. A municipality.

c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.

e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes or other authorizing legislation.

f. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.

g. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

h. A regional solid waste management authority created under Article 22 of Chapter 153A of the General Statutes.

...."

SECTION 2. This act becomes effective January 1, 2011, and applies to tax refunds determined by the Department on or after that date.

HOUSE BILL 605:
Expand Setoff Debt Collection Act

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Rep. McElraft	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 605 would allow counties that jointly operate a solid waste facility as a regional solid waste management authority the same collection tool that would be available to them if they operated the facility individually. It does so by adding a regional solid waste management authority to the list of local agencies authorized under the Setoff Debt Collection Act to collect debts owed to them by obtaining a setoff against a debtor's North Carolina tax refund.***

CURRENT LAW: The Setoff Debt Collection Act authorizes State and local agencies to collect debts by diverting part or all of a debtor's North Carolina tax refund to pay a debt that an individual or a business owes to a particular agency. Before January 1, 2001, the setoff program was open only to State agencies. Now, counties and municipalities participate through a clearinghouse.[1] While the use of debt setoff for State agencies is mandatory, usage by local agencies is optional. The Act also only applies to debts that are at least $50 and to a refund that is at least this same amount. Local agencies are required to give written notice to the debtor of the intent to submit the debt for setoff, explaining the basis for the agency's claim, that the agency intends to apply the debtor's refund against the debt, and that an administrative fee of $15 will be charged.

BILL ANALYSIS: This bill would allow a regional solid waste management authority created under Article 22 of Chapter 153A of the General Statutes to participate under the Setoff Debt Collection Act in the same manner as counties and cities. Most counties operate their own landfill and recycling operations, and as such may use the setoff debt collection act. However, ten counties came together for economics of scale to provide these services as a regional authority. This bill would allow the counties who operate their solid waste management services collectively to have the same collection tool available that would be available to them if they operated the service individually. Currently, there are only two regional authorities:

- Coastal Regional Solid Waste Management Authority, which is comprised of Carteret, Craven, and Pamlico Counties.
- Albemarle Regional Solid Waste Authority, which is comprised of Perquimans, Chowan, Gates, Dare, Currituck, Hyde, and Tyrell Counties.

EFFECTIVE DATE: This act is effective January 1, 2011, and applies to tax refunds determined by the Department on or after that date.

TECHNICAL CONSIDERATION: The effective date needs to be changed to January 1, 2013.

H605-SMRB-154(e2) v2

[1] Because there are so many local agencies, funneling their claims through a clearinghouse avoids an undue administrative burden on the Department of Revenue. A $15.00 collection assistance fee is added to each local agency debt submitted for setoff, which is remitted to the clearinghouse that submitted the debt. The fee does not, however, apply to child support debts.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 605

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H605-ARB-94 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date _____,2012

Senator _____

moves to amend the bill on page 1, line 26, by deleting "January 1, 2011," and substituting "January 1, 2013,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 1028*
Committee Substitute Favorable 5/23/12

Short Title: Appraisal Mgmt Co Reported to Dept of Revenue. (Public)

Sponsors:

Referred to:

May 22, 2012

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE NORTH CAROLINA APPRAISAL BOARD TO REPORT THE RECORDS OF APPRAISAL MANAGEMENT COMPANIES TO THE NORTH CAROLINA DEPARTMENT OF REVENUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93E-2-9 is amended by adding the following new subsection to read:

"**§ 93E-2-9. Records.**

(a) The Board shall maintain a list of all applicants for registration under this Article that includes for each applicant the date of application, the name and primary business location of the applicant, and whether the registration was granted or refused.

(b) The Board shall maintain a current roster showing the names and places of business of all registered appraisal management companies that lists the appraisal management companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of the Board; (ii) contain information regarding all orders or other action taken against the company, its officers, and other persons; and (iii) be open to public inspection.

(b1) The Board shall report annually by December 31 to the Department of Revenue the following information about registered appraisal management companies:

(1) Name and name used to do business in the State.

(2) Main address of company.

(3) Name and address of agent for service of process in the State if not domiciled in the State.

(4) Legal structure, such as domestic corporation, foreign corporation, domestic partnership, or foreign partnership.

(5) Employer identification number or social security number.

(6) Secretary of State identification number if required.

(c) Every registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company as prescribed in rules adopted by the Board, including in electronic form. All records shall be preserved for five years unless the Board, by rule, prescribes otherwise for particular types of records.

(d) If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall promptly file a correcting amendment to the information contained in the document."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1028: Appraisal Mgmt Co Reported to Dept of Revenue

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Reps. Howard, Starnes	**Prepared by:**	Greg Roney Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 1028 would require the NC Appraisal Board to report annually to the NC Department of Revenue the following information about registered appraisal management companies: name, address, process agent if any, type of entity, employer identification number or social security number, and NC Secretary of State identification number if any.***

The bill is a recommendation of the Revenue Laws Study Committee. The Senate companion bill, S825, introduced by Senators Rucho and Hartsell, is also in Senate Finance.

CURRENT LAW: S.L. 2010-141 added a new Article 2 in Chapter 93E to regulate real estate appraisal management companies. G.S. 93E-2-1 requires appraisal management companies meet certain requirements and register with the Appraisal Board beginning January 1, 2011.

S.L. 2010-141 defines an appraisal management company as an entity that uses a network of licensed appraisers who are independent contractors to perform appraisals. Additionally, the appraisal management company must administer the network of appraisers including recruiting appraisers, negotiating fees and contracts with the appraisers, and conducting quality control of the appraisals.

All of the information the Bill Draft would require the Appraisal Board to report is already disclosed when an appraisal management company registers.

Under G.S. 93E-2-9(b), the public records of the Appraisal Board include the roster showing the names, places of business, and listing of officers and directors of all registered appraisal management companies.

BILL ANALYSIS: House Bill 1028 would require the Appraisal Board to report annually to the Department of Revenue information collected from appraisal management companies during the registration process. Specifically, bill would require the following information be reported annually to the Department of Revenue: name, address, process agent if any, type of entity, employer identification number or social security number, and NC Secretary of State identification number if any.

BACKGROUND: Federal regulations adopted in response to the housing crisis led to the growth of appraisal management companies. The Appraisal Board has approximately 140 registered appraisal management companies. Only 6 of the 140 are NC companies. The out-of-state companies owe State income tax on the appraisal work conducted within the State.

The purpose of the bill is to insure out-of-state appraisal management companies are paying NC taxes. The Department of Revenue could use the information from the Appraisal Board to check the filing status of registered appraisal management companies.

EFFECTIVE DATE: The bill would become effective when it becomes law.

H1028-SMRB-153(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 956
Committee Substitute Favorable 5/31/12

Short Title: Zoning/Johnston County Open Space. (Local)

Sponsors:

Referred to:

May 17, 2012

A BILL TO BE ENTITLED

AN ACT RELATING TO THE USE OF OPEN SPACE FUNDS FOR JOHNSTON COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-331(c) reads as rewritten:

"(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the ~~immediate area~~ county. All funds received by the county under this paragraph shall be used solely for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the county determines that this combination is in the best interests of the citizens of the area to be served.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this ~~section~~ paragraph shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning board. For the authorization to reserve school sites to be effective, the board of commissioners or planning board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning board shall immediately notify the board of education. The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation."

SECTION 2. This act applies to Johnston County only.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 956:
Zoning/Johnston County Open Space

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 19, 2012
Introduced by:	Rep. Daughtry	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 956 would require the County of Johnston to use moneys paid by a developer for the acquisition of recreational lands for that purpose only.***

CURRENT LAW:

Municipal Law. G.S. 160A-372 states that a subdivision ordinance may provide for the provision of funds by a developer to be used by a municipality to acquire recreational areas to serve the residents of the subdivision or development, or more than one subdivision or development, within the immediate area. Funds received by a municipality may be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds to be provided by a developer shall be based upon the value of the development for property tax purposes. A combination of funds and partial dedication of land may be allowed when the municipality determines that this combination is in the best interests of the area residents. G.S. 160A-372(c)

County Law. G.S. 153A-331 also states that a subdivision ordinance may provide for the provision of funds by a developer to be used by a municipality to acquire recreational areas to serve the residents of the subdivision or development, or more than one subdivision or development, within the immediate area.

BILL ANALYSIS: House Bill 956 would grant Johnston County the ability to require funds for recreational areas of developers to serve the residents of the county, and limit Johnston County in that ability to using those funds only for recreational lands, like cities are currently restricted.

EFFECTIVE DATE: House Bill 956 is effective when it becomes law.

Erika Churchill, counsel to House Government, substantially contributed to this summary.

H956-SMTD-134(e2) v2

SENATE PAGES ATTENDING

COMMITTEE: Finance ROOM: 544

DATE: 6-20 TIME: 1 PM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Shirley Marshall	Cary	Stein
2 Grant Murphy ~~Hyatt~~ Herndon	Durham	~~Hise~~ Atwater
3 Caroline Tervo	Wilmington	Goolsby
4 Anna Garwood	Waxhaw	Apodaca
5 Kate Garwood	Lewisville	Apodaca
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

SENATE FINANCE

(Committee Name)

June 20, 2012

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	[illegible]
Chris Anderson	[illegible]
Jeff Hudson	NCCBA
Chris Hudson	NCBFA
Erica Bernstein	NC Dem Senate Caucus
Marc Finlayson	Finlayson Consulting, LLC

09-21-2011

VISITOR REGISTRATION SHEET

SENATE FINANCE

(Committee Name)

June 20, 2012

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Franks	NCACC
Jim Dolan	BSA
Susanna Hailey	K&L Gates
Braeden Blackwell	NCHA
Jena Edelman	Sen. Jenkins LA
Allison Walker	Nelson Mullins
Angel Sams	NSS
David Heinen	NC Center for Nonprofits
Martha McCurley	
Mary Harden	GSK
Amy McConkey	NC Bev Assn
Allen Hardison	CRSWMA
Steve Metcalf	Pork Council
PAIGE WORSHAM	LEGISLATIVE REPORTING SERVICE
KYLE CHERMAK	L.A. REP. HOWARD
Michael Hunter	NC DOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 20, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NSS
Jack Cozort	NSS
Dave Foster	CLT
Edgar Miller	CTNC
Bill Rowe	NC Justice Center
Matt Meinig	NC LM
David Baker	NCDOR
Michelle Frazier	NFS
Mitch Lunard	SEANC
Chuck Stone	SEANC
Amy Whited	NCMS

SENATE FINANCE COMMITTEE
Wednesday, June 27, 2012 at 12:30 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 12:30 PM on Wednesday, June 27, 2012 in room 544 of the Legislative Office Building. Twenty members of the committee were present. Chris Dougherty of Pinehurst, David Rosero of Black Mountain, Damonique Levy of Sampson, and Staci Batts of Rocky Mount served as pages. Senator Hartsell presided as chair.

H.B. 988 – Averasboro Township TDA Changes

This bill was removed from the agenda.

H.B. 989 – Permanent License Plates

Representative Howard was recognized to explain the bill. As recommended by the Program Evaluation Division, this bill would limit eligibility for permanent registration plates and would provide for a revocation of permanent registration plates issued to vehicles that are 90 days or more past due for inspection. Senator Brown moved for a favorable report and the motion carried. A copy of the bill, the summary, and the fiscal note is attached.

H.B. 945 – Marion Legislative Annexation

Representative Gillespie was recognized to explain the bill which would annex certain described property into the City of Marion. Senator Clodfelter moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 956 – Zoning/Johnston County Open Space

Senator Newton was recognized to explain the bill. Senator Rucho moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would require Johnston County to use moneys paid by a developer for the acquisition of recreational lands for that purpose only. Senator Clodfelter moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 963 – Town of Columbia/Deannexation

Representative Owens was recognized to explain the bill which deannexes a described area from the Town of Columbia in Tyrrell County. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1196 – Albemarle Mental Health Center Property

Representative Owens explained the bill. It applies to Camden, Currituck, and Perquimans Counties and allows the Director of the Division of Mental Health,

Developmental Disabilities and Substance Abuse Service to enter into interlocal agreements to convey real property interests in those counties to East Carolina Behavioral Health in an effort to bring closure to the affairs of Albemarle Mental Health Center which no longer exists. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B., 1041 – High Point/Archdale Boundaries

Senator Bingham was recognized to explain the bill which would exchange tracts of land between the Cities of Archdale and High Point. Senator Robinson moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1050 – Elizabethtown Industrial Park Deannexation

Senator Meredith was recognized to explain the bill. The bill would deannex 4 tracts of land that were involuntarily annexed by the Town of Elizabethtown in an industrial park area and would prohibit involuntary annexation of those tracts for 12 years. Senator Newton moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1051 – Elizabethtown Hayfields Deannexation

Senator Meredith explained the bill which would deannex 3 tracts of land that were involuntarily annexed by the Town of Elizabethtown in the Hayfields residential area and would prohibit involuntary annexation of those tracts for 12 years. Senator Newton moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1215 – Henderson County Occupancy Tax Changes

Senator Apodaca was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The bill would authorize Henderson County to levy an additional one percent (1%) room occupancy tax and would make other administrative changes. The PCS directs the net proceeds of the additional 1% tax to be remitted directly to the Flat Rock Playhouse for three years. At the end of three years, the proceeds of the total room occupancy tax (6%) would be remitted to the Tourism Development Authority and expended for tourism promotion and tourism-related expenditures. It also provides that members may serve no more than five consecutive years on the TDA. Senator Jenkins moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal memo is attached.

H.B. 1087 – Fontana Dam Occupancy Tax

Representative West was recognized to explain the bill. It would authorize the Town of Fontana Dam to levy a room occupancy tax of up to 3%, the proceeds of which would be remitted to a Tourism Development Authority. The Authority would be required to use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourist-related expenditures. Senator White moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal memo is attached.

S.B. 1106 – Apex Annexation

Representative Murry was recognized to explain the bill which annexes a described area into the Town of Apex. Senator Stevens moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1090 – Orange-Alamance Remaining 9% Boundary

Senator Kinnaird was recognized to explain the bill which would establish the remaining nine percent of the common boundary between Orange and Alamance counties, as authorized by S.L. 2011-87. Senator Harrington moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1110 – Matthews/Stallings Boundary Adjustment

Representative Brawley was recognized to explain the bill. It would remove certain specified land in five parcels from the corporate limits of the Town of Matthews and would place it within the corporate limits of the Town of Stallings. Senator Rucho moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1122 – Martin County Fire Districts

Senator Jenkins was recognized to explain the bill which would validate the tax-supported fire districts of Martin County, and authorize the County of Martin to transition to county service districts for the provision of fire protection. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1169 – Town of Burgaw/Deannexation

Senator Rabon was recognized to explain the bill which would deannex two described areas from the Town of Burgaw. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1197 – Add Stokes Cty to Tax Cert Before Recordation

Representative Holloway was recognized to explain the bill which authorizes Stokes County to require payment of delinquent property taxes prior to recording deeds conveying property. Senator Hunt moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1202 – Roanoke Rapids Deannex/Halifax N'Hmpt Airport

Representative Bryant was recognized to explain the bill which deannexes a described area from the City of Roanoke Rapids, and changes the powers of the Halifax-Northampton Regional Airport Authority. Senator Robinson moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1206 – Butner Boundary Clarification

Representative Crawford was recognized to explain the bill. It does two things: 1) amends the Charter of the Town of Butner to reflect recorded documents establishing the corporate limits of the Town; and 2) adds to the corporate limits property on which the South Granville Water and Sewer Authority wastewater treatment plant is situated. Senator Daniel moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1216 – Town of Wallace/Satellite Annexations

Representative Dixon was recognized to explain the bill which changes the standards for voluntary satellite annexations applicable to the Town of Wallace's voluntary satellite annexation of the property on which the Vidant Family Medicine facility is located. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1217 – Asheville/Woodfin Boundary Adjustments

Representative Fisher was recognized to explain the bill which adjusts the boundaries of the Town of Woodfin and the City of Asheville, as requested by the governing boards of those municipalities. Senator Clodfelter moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1114 – NCEMPA/Use of Rate Revenue

Senator Newton was recognized to explain the bill. It would require revenues from the municipal owned electric systems of cities and towns that are members of the North Carolina Eastern Municipal Power Agency to be used only for the following: direct/indirect costs of the systems; transfers to other funds of the municipality that represent a rate of return on the investment in the system; and debt service payments on the system. Senator Newton moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 991 – Jackson County Occupancy Tax Changes

Trina Griffin, a staff attorney with the Research Division, was recognized to explain the bill. It would delay the effective date of legislation enacted during the 2011 session authorizing Jackson County to levy an additional 3% room occupancy tax and requiring other administrative changes. Senator Meredith moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

The meeting adjourned at 12:56 PM.

Senator Fletcher Hartsell, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Wednesday, June 27, 2012

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.	**945**	Marion Legislative Annexation.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**963**	Town of Columbia/Deannexation.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #1)	**989**	Permanent License Plates.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**991**	Jackson Co. Occupancy Tax Changes.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**1041**	High Point/Archdale Boundaries.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**1050**	Elizabethtown Industr. Park Deannexation.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**1051**	Elizabethtown Hayfields Deannexation.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**1087**	Fontana Dam Occupancy Tax.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #1)	**1090**	Orange-Alamance Remaining 9% Boundary.	
		Sequential Referral:	None
		Recommended Referral:	None

H.B. **1106** Apex Annexation.
Sequential Referral: None
Recommended Referral: None

H.B. **1110** Matthews/Stallings Boundary Adjustment.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1114** NCEMPA/Use of Rate Revenue.
Sequential Referral: None
Recommended Referral: None

H.B. **1122** Martin County Fire Districts.
Sequential Referral: None
Recommended Referral: None

H.B. **1169** Town of Burgaw/Deannexation.
Sequential Referral: None
Recommended Referral: None

H.B. **1196** Albemarle Mental Health Center Property.
Sequential Referral: None
Recommended Referral: None

H.B. **1197** Add Stokes Cty to Tax Cert Before Recordation.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1202** Roanoke Rapids Deannex/Halifax N'hmpt Airport.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1206** Butner Boundary Clarification.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1216** Town of Wallace/Satellite Annexations.
Sequential Referral: None
Recommended Referral: None

H.B. **1217** Asheville/Woodfin Boundary Adjustments.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **956** Zoning/Johnston County Open Space.

Draft Number:	70315
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1215** Henderson County Occupancy Tax Changes.

Draft Number:	30661
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 22

Committee Clerk Comments:

H945 – Sen. Hise
H956 – Sen. Newton
H963 – Sen. White
H989 – Sen. Hartsell
H991 – Sen. Davis
H1041 – Sen. Bingham
H1050 – Sen. Meredith
H1051 – Sen. Meredith
H1087 – Sen. Davis
H1090 – Sen. Kinnaird
H1106 – Sen. Stevens
H1110 – Sen. Rucho
H1114 – Sen. Newton
H1122 – Sen. Jenkins
H1169 – Sen. Rabon
H1196 – Sen. White
H1197 – Sen. East
H1202 – Sen. Jones
H1206 – Sen. D. Berger
H1215 – Sen. Apodaca
H1216 – Sen. Jackson
H1217 – Sen. Nesbitt

Principal Clerk ____
Reading Clerk ____

Corrected: H1196 - Albemarle Mental Health Center Property has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Finance** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	June 27, 2012	12:30 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 945	Marion Legislative Annexation.	Representative Gillespie
HB 956	Zoning/Johnston County Open Space.	Representative Daughtry
HB 963	Town of Columbia/Deannexation.	Representative Owens, Jr.
HB 988	Averasboro Township TDA Changes.	Representative Lewis
HB 989	Permanent License Plates.	Representative Howard
HB 991	Jackson Co. Occupancy Tax Changes.	Representative Haire
HB 1041	High Point/Archdale Boundaries.	Representative Faircloth, Jr. Representative Brandon, Jr.
HB 1050	Elizabethtown Industr. Park Deannexation.	Representative Brisson
HB 1051	Elizabethtown Hayfields Deannexation.	Representative Brisson
HB 1087	Fontana Dam Occupancy Tax.	Representative West
HB 1090	Orange-Alamance Remaining 9% Boundary.	Representative Bordsen Representative Ingle Representative Hackney Representative Insko
HB 1106	Apex Annexation.	Representative Dollar Representative Stam Representative Murry
HB 1110	Matthews/Stallings Boundary	Representative Horn

	Adjustment.	Representative Cotham Representative Brawley, Jr. Representative McGuirt
HB 1114	NCEMPA/Use of Rate Revenue.	Representative Collins Representative Brawley, Jr.
HB 1122	Martin County Fire Districts.	Representative Warren Representative Tolson
HB 1169	Town of Burgaw/Deannexation.	Representative Justice
HB 1196	Albemarle Mental Health Center Property.	Representative Owens, Jr.
HB 1197	Add Stokes Cty to Tax Cert Before Recordation.	Representative Holloway
HB 1202	Roanoke Rapids Deannex/Halifax N'hmpt Airport.	Representative Bryant Representative Bradley, Jr. Representative Wray
HB 1206	Butner Boundary Clarification.	Representative Crawford, Jr.
HB 1215	Henderson County Occupancy Tax Changes.	Representative McGrady
HB 1216	Town of Wallace/Satellite Annexations.	Representative Dixon
HB 1217	Asheville/Woodfin Boundary Adjustments.	Representative Keever Representative Fisher Representative Moffitt

Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Principal Clerk ____
Reading Clerk ____

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HB 1106	Apex Annexation.	Representative Dollar Representative Stam Representative Murry
HB 1110	Matthews/Stallings Boundary Adjustment.	Representative Horn Representative Cotham

		Representative Brawley, Jr. Representative McGuirt
HB 1114	NCEMPA/Use of Rate Revenue.	Representative Collins Representative Brawley, Jr.
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Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Senate Finance Committee
Wednesday, June 27, 2012, 12:30 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 945	Marion Legislative Annexation.	Rep. Gillespie
HB 956	Zoning/Johnston County Open Space.	Rep. Daughtry
HB 963	Town of Columbia/Deannexation.	Rep. Owens
HB 988	Averasboro Township TDA Changes.	Rep. Lewis
HB 989	Permanent License Plates.	Rep. Howard
HB 991	Jackson Co. Occupancy Tax Changes.	Rep. Haire
HB 1041	High Point/Archdale Boundaries.	Rep. Faircloth Rep. Brandon
HB 1050	Elizabethtown Industr. Park Deannexation.	Rep. Brisson
HB 1051	Elizabethtown Hayfields Deannexation.	Rep. Brisson
HB 1087	Fontana Dam Occupancy Tax.	Rep. West
HB 1090	Orange-Alamance Remaining 9% Boundary.	Rep. Bordsen Rep. Ingle Rep. Hackney Rep. Insko
HB 1106	Apex Annexation.	Rep. Dollar Rep. Stam Rep. Murry
HB 1110	Matthews/Stallings Boundary Adjustment.	Rep. Horn Rep. Cotham Rep. Brawley Rep. McGuirt
HB 1114	NCEMPA/Use of Rate Revenue.	Rep. Collins Rep. Brawley
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HB 1169	Town of Burgaw/Deannexation.	Rep. Justice
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HB 1197	Add Stokes Cty to Tax Cert Before Recordation.	Rep. Holloway
HB 1202	Roanoke Rapids Deannex/Halifax N'hmpt Airport.	Rep. Bryant Rep. Bradley, Rep. Wray
HB 1206	Butner Boundary Clarification.	Rep. Crawford
HB 1215	Henderson County Occupancy Tax Changes.	Rep. McGrady
HB 1216	Town of Wallace/Satellite Annexations.	Rep. Dixon
HB 1217	Asheville/Woodfin Boundary Adjustments.	Rep. Keever Rep. Fisher Rep. Moffitt

Adjournment

HOUSE BILL 989*
Committee Substitute Favorable 6/12/12

Short Title: Permanent License Plates. (Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO LIMIT ELIGIBILITY FOR PERMANENT REGISTRATION PLATES TO GOVERNMENTAL ENTITIES, AND TO REFORM THE PROCESS BY WHICH ELIGIBLE ENTITIES APPLY FOR AND ARE ISSUED PERMANENT REGISTRATION PLATES, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE BASED ON RECOMMENDATIONS FROM THE PROGRAM EVALUATION DIVISION, BUT TO CONTINUE TO ALLOW CIVIL AIR PATROLS, INCORPORATED EMERGENCY RESCUE SQUADS, RURAL FIRE DEPARTMENTS, AND LOCAL CHAPTERS OF THE AMERICAN NATIONAL RED CROSS TO BE ELIGIBLE FOR PERMANENT REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-84 reads as rewritten:

"**§ 20-84. Permanent registration plates; State Highway Patrol.**

(a) General. – The Division may issue a permanent registration plate for a motor vehicle owned by one of the ~~persons~~ entities authorized to have a permanent registration plate in this section. To obtain a permanent registration plate, ~~a person~~ an authorized representative of the entity must provide proof of ownership, provide proof of financial responsibility as required by G.S. 20-309, and pay a fee of six dollars ($6.00). A permanent plate issued under this section may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. A permanent registration plate issued under this section must be a distinctive color and bear the word "permanent". In addition, a permanent registration plate issued under subdivision (b)(1) of this section must have distinctive color and design that is readily distinguishable from all other permanent registration plates issued under this section. Every eligible entity that receives a permanent registration plate under this section shall ensure that the permanent registration plate is registered under a single name. That single name shall be the full legal name of the eligible entity.

(b) Permanent Registration Plates. – The Division may issue permanent plates for the following motor vehicles:

(1) A motor vehicle owned by the State or one of its agencies.
(2) A motor vehicle owned by a county, city or town.
(3) A motor vehicle owned by a board of education.
~~(4) A motor vehicle owned by an orphanage.~~
(5) A motor vehicle owned by the civil air patrol.
(6) A motor vehicle owned by an incorporated emergency rescue squad.

~~(7) A motor vehicle owned by an incorporated REACT ("Radio Emergency Associations of Citizen Teams") Team.~~

~~(8) A motor vehicle owned by a person and used exclusively in the support of a disaster relief effort.~~

~~(9) A bus owned by a church and used exclusively for transporting individuals to Sunday school, to church services, and to other church related activities.~~

(10) A motor vehicle owned by a rural fire department, agency, or association.

~~(11) A motor vehicle in the form of a mobile X-ray unit operated exclusively in this State for the purpose of diagnosis, treatment, and discovery of tuberculosis, and owned by the North Carolina Tuberculosis Association, Incorporated, or by a local chapter or association of the North Carolina Tuberculosis Association, Incorporated.~~

(12) A motor vehicle owned by a local chapter of the American National Red Cross and used for emergency or disaster work.

~~(13) A motor vehicle owned by a sheltered workshop recognized or approved by the Division of Vocational Rehabilitation Services.~~

~~(14) A motor vehicle owned by a nonprofit agency or organization that provides transportation for or operates programs subject to and approved in accordance with standards adopted by the Commission for Mental Health and Human Services.~~

~~(15) A bus or trackless trolley owned by a city and operated under a franchise authorizing the use of city streets. This subdivision does not apply to a bus or trackless trolley operated under a franchise authorizing an intercity operation.~~

~~(16) A trailer owned by a nationally chartered charitable organization and used exclusively for parade floats and for transporting vehicles and structures used only in parades.~~

(17) A motor vehicle owned by a community college. A community college vehicle purchased with State equipment funds shall be issued a permanent registration plate with the same distinctive color and design as a permanent registration plate issued under subdivision (1) of this subsection.

(c) State Highway Patrol. – In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of six dollars ($6.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to the member pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy of it shall be furnished to the registration division of the Division. Information as to the individual assignments of the registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that the reassignment shall appear upon the index required under this subsection within 20 days after the reassignment.

(d) Revocation. – The Division may revoke all permanent registration plates issued to eligible entities for vehicles that are 90 days or more past due for a vehicle inspection, as required by G.S. 20-183.4C. This subsection does not limit or restrict the authority of the Division to revoke permanent registration plates pursuant to other applicable law."

SECTION 2. G.S. 117-33 reads as rewritten:

"**§ 117-33. Declared public agency of State; taxes and assessments.**

A telephone membership corporation heretofore or hereafter organized under this Article shall be, and is hereby declared to be a public agency, and shall have within its limits for which it was formed the same rights as any other political subdivision of the State, and all property owned by said telephone membership corporation and used exclusively for the purpose of said corporation shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State so long as said property is owned by said telephone membership corporation and is used for the purposes for which the corporation was formed. Notwithstanding the foregoing, a telephone membership corporation shall not be eligible to receive a permanent registration plate issued under G.S. 20-84."

SECTION 3. Except for State entities issued permanent registration plates under G.S. 20-84(b)(1), the Division of Motor Vehicles shall cancel all permanent registration plates issued to non-State entities and reissue permanent registration plates with a new design to eligible non-State entities by January 15, 2013. The Division shall determine the new design of the permanent registration plates reissued to eligible non-State entities.

SECTION 4. This act becomes effective July 1, 2012.

HOUSE BILL 989:
Permanent License Plates

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Howard	**Prepared by:**	Trina Griffin
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 989 would limit eligibility for permanent registration plates and would provide for the revocation of permanent registration plates issued to vehicles that are 90 days or more past due for inspection. This bill is a recommendation of the Program Evaluation Division.***

[As introduced, this bill was identical to S840, as introduced by Sen. Hartsell, which is currently in Senate Finance.]

CURRENT LAW: The issuance of permanent registration plates is governed by G.S. 20-84. The plates are issuable to governmental entities as well as a number of specified human services agencies, nonprofit entities, and charitable organizations. In order to obtain the plate, a person must provide proof of ownership, proof of financial responsibility, and pay a one-time $6.00 fee.

BILL ANALYSIS: The bill would limit the issuance of permanent registration plates to include only vehicles owned by State or local government entities, boards of education, civil air patrol, incorporated emergency rescue squads, rural fire departments, American Red Cross, and community colleges. These entities would be issued a permanent plate with a new design by January 15, 2013 at a one-time replacement cost of $6.00.

Permanent registration plates issued to the following non-State entities would be cancelled by January 15, 2013, and those entities would be required to obtain a regular registration plate and pay the annual $28 fee:

1. A motor vehicle owned by an orphanage.[1]
2. A motor vehicle owned by an incorporated REACT ("Radio Emergency Association of Citizen Teams") Team.
3. A motor vehicle owned by a person and used exclusively in the support of a disaster relief effort.
4. A bus owned by a church and used exclusively for transporting individuals to Sunday school, to church services, and to other church related activities.[2]
5. A motor vehicle in the form of a mobile X-ray unit operated exclusively in this State for the purpose of diagnosis, treatment, and discovery of tuberculosis, and owned by the North Carolina Tuberculosis Association, Incorporated, or by a local chapter or association of the North Carolina Tuberculosis Association, Incorporated.
6. A motor vehicle owned by a sheltered workshop recognized or approved by the Division of Vocational Rehabilitation Services.[3]

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[1] As of April 13, 2012, DMV reports that there are 38 properly registered vehicles belonging to orphanages or children's homes.

[2] As of April 13, 2012, DMV reports that there are 26 properly registered church buses.

[3] As of April 13, 2012, DMV reports that there are 370 properly registered vehicles belonging to "sheltered workshops." However, the term "sheltered workshops" is no longer used by DHHS. These entities are commonly referred to as Community Rehabilitation Programs (CRPs), which are not approved or recognized by DHHS. These entities are a combination of nonprofit and for-profit providers.

7. A motor vehicle owned by a nonprofit agency or organization that provides transportation for or operates programs subject to and approved in accordance with standards adopted by the Commission for Mental Health and Human Services.[4]
8. A bus or trackless trolley owned by a city and operated under a franchise authorizing the use of city streets. This subdivision does not apply to a bus or trackless trolley operated under a franchise authorizing an intercity operation.
9. A trailer owned by a nationally chartered charitable organization and used exclusively for parade floats and for transporting vehicles and structures used only in parades.
10. A motor vehicle owned by a telephone membership corporation.[5]

EFFECTIVE DATE: The bill would become effective July 1, 2012.

BACKGROUND: The Program Evaluation Division conducted an analysis of permanent license plates owned by the State and non-State entities. The two key concerns they identified were that permanent silver license plates have been registered to ineligible entities and that the issuance of permanent plates to non-State entities should be reviewed because DMV is often unable to ensure that the entities meet the statutory qualifications. In an April 13, 2012 memo, DMV recommended that the General Assembly remove eligibility for vehicles used exclusively for disaster relief, sheltered workshops, and entities overseen by the Commission for Mental Health and Human Services of the Division of Vocational Rehabilitation, buses and trackless trollies, and trailers used exclusively for parades. DMV also recommended that all permanent license plates be registered in the name of an organization, not an individual.

Brenda Carter, counsel to House Transportation, contributed to this summary.

H989-SMSV-134(e2) v1

[4] The qualifying entities under this subdivision would be the same as the entities that qualify under subdivision (13).
[5] G.S. 117-33 declares telephone membership corporations to be public agencies of the State and are, therefore, eligible for a permanent registration plate. As of April 13, 2012, DMV reports that there are 412 properly registered vehicles belonging to a telephone membership corporation.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: 06/26/2012

TO: Senate Finance

FROM: Bryce Ball
Fiscal Research Division

RE: H989 (Second Edition)

FISCAL IMPACT ($ In Millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES:					
Highway Fund	≤ $0.94	≤ $0.28	≤ $.28	≤ $.28	≤ $.28
EXPENDITURES:					
Highway Fund	≤ $.19				
POSITIONS (cumulative):	N/A				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Division of Motor Vehicles

EFFECTIVE DATE: July 1, 2012

BILL SUMMARY:

Section 1 amends G.S. 20-84 to require issuance of permanent registration plates to eligible entities under the full legal name of the eligible entity. Also makes the following vehicles, owned by non-State entities, ineligible for permanent plates:

- A vehicle owned by an orphanage;
- A vehicle owned by an incorporated REACT ("Radio Emergency Association of Citizen Teams") Team;
- A vehicle owned by a person for exclusive use in the support of disaster relief;
- A bus owned by a church and used exclusively for transport to church activities;
- A mobile X-ray unit owned by the North Carolina Tuberculosis Association or local chapter/association and used exclusively for the diagnosis, treatment, and discovery of tuberculosis;
- A vehicle owned by a sheltered workshop recognized or approved by the Division of Vocational Rehabilitation Services;
- A vehicle owned by a non-profit which provides transportation or operates programs approved in accordance with standards adopted by the Commission for Mental Health and Human Services;
- A bus or trackless trolley owned by a city and operated under a franchise; and,
- A trailer owned by a nationally chartered charitable organization and used exclusively for parades.

Clarifies that vehicles owned by community colleges shall be issued permanent registration plates for State agencies, and authorizes the Division of Motor Vehicles to revoke permanent registration plates for vehicles that are 90 or more days past due for a vehicle inspection.

Section 2 makes a telephone membership corporation ineligible for a permanent registration plate.

Section 3 directs the Division of Motor Vehicles to 1) cancel all permanent plates issued to non-state entities, and 2) reissue newly-designed plates by January 15, 2013.

ASSUMPTIONS AND METHODOLOGY:

- The Division of Motor Vehicles, Quality Assurance Unit will review all permanent plate issuances prior to generating mailings to notify plate holders of the plate cancellation and reissuance process.
- The State Titling and Registration System (STARS) will generate a form for applicants to sign and demonstrate their qualification to obtain a new permanent plate.
- Notices will be mailed to all recorded holders of the estimated 120,461 permanent plates that are currently issued on behalf of eligible non-State entities. Estimated material, printing, and postage costs total $53,319
- The estimated potential cost to produce the newly designed permanent plates and additional First in Flight plates is $137,326 (120,461 potential issuances at $1.14 per plate).
- Permanent plates will be changed to a different color and will be issued to those that qualify under the statutory change:
    - Approximately 10,067 of the currently issued permanent plates would become ineligible for reissuance;
    - A maximum of 10,067 registered vehicles could be re-registered and annually renewed in accordance with private passenger vehicle fees (minimum of $28), yielding maximum potential revenue of $281,876/yr.; and,
    - A maximum of 110,394 permanent plates would be eligible for one-time reissuance to non-State entities at the applicable $6 fee, yielding maximum potential revenue of $662,364 in FY2012-13
- Fiscal Research cannot estimate the percentage of owners who will choose not to re-register vehicles.

SOURCES OF DATA: Program Evaluation Division; Department of Transportation, Division of Motor Vehicles; Correction Enterprises

TECHNICAL CONSIDERATIONS: None

HOUSE BILL 945

Short Title:	Marion Legislative Annexation.	(Local)
Sponsors:	Representative Gillespie (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO ANNEX TO THE CITY OF MARION A SECTION OF RIGHT-OF-WAY OF US HIGHWAY 70 WEST WHERE A SIDEWALK TO BE MAINTAINED BY THE CITY IS TO BE CONSTRUCTED.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Marion are increased by adding the following described area:

BEGINNING at a point in the southwestern corner of Lot 9673 Block 64 on the McDowell County Tax Map 0792.00; thence following the northern boundary of US Highway 70 in a southwesterly direction 1250 feet to a point at the southeastern corner of Lot 1497 Block 53 on the McDowell County Tax Map 0792.00; thence in a straight southeasterly direction 100 feet to a point on the southern boundary of US Highway 70; thence following the southern boundary of US Highway 70 in a northeasterly direction 1250 feet to a point; thence in a straight northwesterly direction 100 feet to the point of BEGINNING.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 945:
Marion Legislative Annexation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Gillespie	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 945 is a local bill that would annex certain described property into the City of Marion.

CURRENT LAW: Annexation is a method by which municipalities alter their boundaries. The municipality must follow the statutorily prescribed steps in order to add an area into its boundaries.

North Carolina law sets forth four basic ways in which a municipality may annex an area.

- Voluntary Annexation. The owners of all real property in an area contiguous to the municipality desiring to be annexed sign a petition requesting annexation.
- Voluntary Satellite Annexation. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation, if it otherwise meets the statutory requirements.
- Municipal-Initiated Annexation. The municipality initiates annexation proceeding, pursuant to statutory requirements.
- Legislative Act. The General Assembly has the authority to extend the boundaries of any municipality.

BILL ANALYSIS: House Bill 945 annexes into the corporate limits of the City of Marion a section of right-of-way of US Highway 70 West where the city plans to construct and maintain a sidewalk.

EFFECTIVE DATE: This act is effective when it becomes law.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

H945-SMTD-140(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 956
Committee Substitute Favorable 5/31/12
PROPOSED SENATE COMMITTEE SUBSTITUTE H956-PCS70315-LB-129

Short Title: Zoning/Johnston County Open Space. (Local)

Sponsors:

Referred to:

May 17, 2012

A BILL TO BE ENTITLED

AN ACT RELATING TO THE USE OF OPEN SPACE FUNDS FOR JOHNSTON COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-331(c) reads as rewritten:

"(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the county under this paragraph shall be used solely for the acquisition or development of recreation, park, or open space sites.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this ~~section~~ paragraph shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning board. For the authorization to reserve school sites to be effective, the board of commissioners or planning board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning board shall immediately notify the board of education. The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation."

SECTION 2. This act applies to Johnston County only.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 956:
Zoning/Johnston County Open Space

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Daughtry	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition H956-CSLB-129		

SUMMARY: ***House Bill 956 would require the County of Johnston to use moneys paid by a developer for the acquisition of recreational lands for that purpose only.***

CURRENT LAW:

Municipal Law. G.S. 160A-372 states that a subdivision ordinance may provide for the provision of funds by a developer to be used by a municipality to acquire recreational areas to serve the residents of the subdivision or development, or more than one subdivision or development, within the immediate area. Funds received by a municipality may be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds to be provided by a developer shall be based upon the value of the development for property tax purposes. A combination of funds and partial dedication of land may be allowed when the municipality determines that this combination is in the best interests of the area residents. G.S. 160A-372(c)

County Law. G.S. 153A-331 also states that a subdivision ordinance may provide for the provision of funds by a developer to be used by a municipality to acquire recreational areas to serve the residents of the subdivision or development, or more than one subdivision or development, within the immediate area.

BILL ANALYSIS: House Bill 956 would limit Johnston County use of funds under G.S. 153A-331 to be used only for the purchase or development of recreation, park, or open space sites.

EFFECTIVE DATE: When it becomes law.

Erika Churchill, counsel to House Government, substantially contributed to this summary.

H956-SMTD-151(CSLB-129) v1

HOUSE BILL 963

Short Title:	Town of Columbia/Deannexation.	(Local)
Sponsors:	Representative Owens (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 17, 2012

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF COLUMBIA.

The General Assembly of North Carolina enacts:

SECTION 1. The property described in Section 1 of S.L. 2007-140 is removed from the corporate limits of the Town of Columbia.

SECTION 2. This act has no effect upon the validity of any liens of the Town of Columbia for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the Town of Columbia.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 963:
Town of Columbia/Deannexation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Owens	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 963 deannexes a described area from the Town of Columbia in Tyrrell County.***

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

Pursuant to this Section, the General Assembly enacted Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to *deannex* property -- that power remains with the General Assembly.

BILL ANALYSIS: House Bill 963 deannexes a described area from the Town of Columbia in Tyrrell County. The area was added to the Town by act of the General Assembly in 2007 (S.L. 2007-140). Liens for property taxes or special assessments on property in the area outstanding before the effective date would remain in effect.

EFFECTIVE DATE: This act is effective when it becomes law.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

H963-SMTD-141(e1) v2

HOUSE BILL 1196

Short Title:	Albemarle Mental Health Center Property.	(Local)
Sponsors:	Representative Owens (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A PROCESS FOR CONVEYING AN INTEREST IN REAL PROPERTY OWNED BY ALBEMARLE MENTAL HEALTH CENTER TO EAST CAROLINA BEHAVIORAL HEALTH.

Whereas, Albemarle Mental Health Center (AMHC), Developmental Disabilities and Substance Abuse Services, was a Local Management Entity and political subdivision of the State pursuant to G.S. 122C-116 covering 10 counties; and

Whereas, AMHC was dissolved under Chapter 122C of the General Statutes effective July 1, 2010; and

Whereas, AMHC owned real property in Camden, Currituck, and Perquimans Counties; and

Whereas, the real property was to have been conveyed to East Carolina Behavioral Health (ECBH) upon dissolution of AMHC; and

Whereas, proper provision was not made for the conveyance in the winding up of AMHC; and

Whereas, the General Assembly desires to create a process by which this conveyance may occur; and

Whereas, the catchment area of AMHC was Camden, Chowan, Currituck, Dare, Hyde, Martin, Pasquotank, Perquimans, Tyrrell, and Washington Counties; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services of the Department of Health and Human Services may wind up the affairs of the Albemarle Mental Health Center (AMHC), Developmental Disabilities and Substance Abuse Services by entering into any necessary interlocal agreements and conveying its interests in real property in Camden, Currituck, and Perquimans Counties to East Carolina Behavioral Health (ECBH) as provided in the consolidation agreement between AMHC, ECBH, and the 10 counties in the catchment area.

SECTION 2. This act applies in Camden, Currituck, and Perquimans Counties only.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 1196:
Albemarle Mental Health Center Property

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Owens	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1196 applies to Camden, Currituck, and Perquimans Counties and allows the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS), DHHS, to enter into interlocal agreements to convey real property interests in those counties to East Carolina Behavioral Health (ECBH) in an effort to bring closure to the affairs of Albemarle Mental Health Center (AMHC) which no longer exists.***

BILL ANALYSIS: HB 1196 allows the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS), DHHS, to enter into interlocal agreements to convey interests in real property to East Carolina Behavioral Health (ECBH). The property is located in Camden Currituck and Perquimans Counties and was identified in the consolidation agreement.

EFFECTIVE DATE: HB 1196 would become effective when it becomes law.

BACKGROUND: According to information supplied to committee staff, Albemarle Mental Health Center (AMHS), served 10 counties in eastern NC and owned 3 pieces of property – one each in of the following counties: Camden, Currituck and Perquimans. AMHC went under in SFY 2008-2009 and was taken over by the State (G. S. 122C-124.1 and 122C-125). During the remainder of SFY 2009 the Division of MH/DD/SAS ran the Local Management Entity (LME).

Effective July 1, 2009 the Division asked East Carolina Behavioral Health (ECBH) to manage the ten (10) counties under its auspices while the 10 counties decided how they wanted to move forward. The counties decided that they wanted to dissolve AMHC, in accordance with G. S. 122C-115.3, and join ECBH. As part of the merger agreement, all 10 counties agreed that ownership of the 3 pieces of property would convey to ECBH. However, after Albemarle dissolved effective June 30, 2010, there was no one to actually sign the deeds to convey ownership. The State had control of the program until July 1, 2010, but the Attorney General's Office questioned whether the Secretary of DHHS or the Director of the Division of MH/DD/SAS had clear legal authority to sign the deeds. The intent of this bill is to allow the Director DMH/DD/SAS the authority to make the final transfer of property.

CURRENT LAW: G.S. 122C-3(1) defines an "**area authority**" as the area mental health, developmental disabilities, and substance abuse authority. G.S. 122C-3(20b) defines a "**local management entity**" as an area authority, county program, or consolidated human services agency. It is a collective term that refers to functional responsibilities rather than governance structure.

G.S. 122C-115.3 provides for the dissolution of an area authority when the board of commissioners of each county constituting an area authority determines that the area authority is not operating in the best interests of consumers. G.S. 122C-115.3 (c-g) prescribes the process and procedures that should take place prior to dissolution.

G.S. 122C-124.1 outlines actions the Secretary of DHHS may take when and area authority or county program is not providing minimally adequate services.

G.S. 122C-125 specifies when the Secretary of DHHS may assume control of the financial affairs of the area authority.

Theresa Matula, counsel to House Government, substantially contributed to this summary.

H1196-SMTD-150(e1) v2

HOUSE BILL 1041

Short Title:	High Point/Archdale Boundaries.	(Local)
Sponsors:	Representatives Faircloth and Brandon (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO EXCHANGE CERTAIN DESCRIBED TRACTS OF LAND BETWEEN THE CITY OF ARCHDALE AND THE CITY OF HIGH POINT.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the City of Archdale and added to the corporate limits of the City of High Point:

TRACT 1

BEGINNING at a point on the northwest property corner of Guilford County Tax Parcel 0158327, said corner being also the eastern right-of-way of Baker Road; thence in a southerly direction for approximately 447 feet along the eastern right-of-way line of Baker Road to the southwestern property corner of Guilford County Tax Parcel 0158330; thence in a westerly direction across the approximately 50-foot right-of-way of Baker Road to a point on the western right-of-way line, said point being also the southeast property corner of Guilford County Tax Parcel 0158060; thence continuing in a westerly direction for approximately 777 feet along the southern property line of said Tax Parcel 0158060 to its southwest property corner, said point being also a corner of Guilford County Tax Parcel 0200547; thence in a northerly direction for approximately 235 feet, said point being also the southwest corner of Guilford County Tax Parcel 0200543; thence in an easterly direction for approximately 567 feet along the northern property line of said Tax Parcel 0158060 to the southwest property corner of Guilford County Tax Parcel 0158067, said point being also the southeast property corner of Guilford County Tax Parcel 0158064; thence in a northerly direction for a distance of approximately 221 feet along the western property lines of Guilford County Tax Parcels 0158067, 0158066, and 0158065 to the northwest property corner of said Tax Parcel 0158065, said point being also a point on the southern right-of-way of Weaver Avenue; thence in an easterly direction for a distance of approximately 24 feet along the southern right-of-way of Weaver Avenue, thence in a northerly direction across the approximately 50-foot right-of-way of Weaver Avenue to a point on its northern right-of-way line, said point being also the southwest property corner of Guilford County Tax Parcel 0158063; thence continuing in a northerly direction for a distance of approximately 66 feet along the western property line of said Tax Parcel 0158063 to its northwest property corner; thence in an easterly direction for a distance of approximately 162 feet along the northern property line of said Tax Parcel 0158063, said point being also a point on the western right-of-way line of Baker Road; thence in a southerly direction for approximately 62 feet along the western right-of-way line of Baker Road, said point being also the southwest property corner of said Tax Parcel 0158063; thence continuing in a southerly direction across the approximately 50-foot right-of-way of Weaver

Avenue to the northeast property corner of Guilford County Tax Parcel 0158065; thence in an easterly direction across the approximately 50-foot right-of-way of Baker Road to the northwest property corner of Guilford County Tax Parcel 0158327 and the END.

TRACT 2

BEGINNING at a point on the northwest property corner of Guilford County Tax Parcel 0158079; thence in a easterly direction for approximately 209 feet along the northern property line of said Tax Parcel 0158079 to its northeastern property corner, said corner being also a point on the western right-of-way line of Baker Road; thence continuing in a easterly direction across the approximately 50- foot right-of-way of Baker Road to a point on its eastern right-of-way line, said point being also a point on the western property line of Guilford County Tax Parcel 0158392; thence in a southerly direction for approximately 429 feet along the western property lines of Guilford County Tax Parcels 0158392, 0158393, 0158394, and 0158407; thence in a northwesterly direction across the approximately 50-foot right-of-way of Baker Road to a point on its western right-of-way line, said point being also the southeastern property corner of Guilford County Tax Parcel 0158076; thence continuing in a northwesterly direction for approximately 204 feet along the southern property line of said Tax Parcel 0158076 to its southwest property corner; thence in a northerly direction for approximately 383 feet along the western property lines of Guilford County Tax Parcels 0158076, 0158078, and 0158079, said point being also the northwest property corner of said Tax Parcel 0158079 and the END.

SECTION 2. The following described property is removed from the corporate limits of the City of High Point and added to the corporate limits of the City of Archdale:

BEGINNING at an existing iron pipe, said point located on the Eastern right-of-way of Kersey Valley Road (S.R. 1154) and North 12 Deg. 17 Min. 31 Sec. East, 259.01 feet from North Carolina Grid monument "HEN"; thence from said point of BEGINNING with the Southern line of Lot 1, W. W. Paige Heirs per Plat Book 108 Page 37, South 85 Deg. 31 Min. 42 Sec. East, 404.13 feet to an existing iron pipe; thence with the Southern line of Lot 2, W. W. Paige Heirs as recorded in Plat Book 66 Page 121, South 85 Deg. 30 Min. 34 Sec. East, 523.85 feet to an existing iron pipe; thence with the Southern line of Lot 3, W. W. Paige Heirs as recorded in Plat Book 68 Page 16, South 85 Deg. 30 Min. 42 Sec. East, 465.12 feet to an existing iron pipe, the Southeast corner of said Lot 3 in the West line of Robert L. Conner and wife, Juanita D. Conner as recorded in Deed Book 4309 Page 1020; thence with West line of the Conner property South 06 Deg. 02 Min. 28 Sec. West, 104.36 feet to a right of monument on the Northern right-of-way of Interstate Highway 85; thence with the right-of-way of Interstate Highway 85 the following 3 courses and distances; South 57 Deg. 45 Min. 09 Sec. West, 301.85 feet to a right-of-way monument; thence South 59 Deg. 38 Min. 49 Sec. West, 341.25 feet to a right-of-way monument; thence South 60 Deg. 49 Min. 21 Sec. West, 152.30 feet to a point; thence leaving the right-of-way of Interstate Highway 85, North 29 Deg. 10 Min. 39 Sec. West, 137.71 feet to a point; thence North 09 Deg. 11 Min. 30 Sec. East, 150.61 feet to a point; thence with a curve to the right having a radius of 100.00 feet, an arc of 52.23 feet and a chord of South 71 Deg. 01 Min. 26 Sec. East, 51.64 feet to a point; thence with a curve to the left having a radius of 50.00 feet and arc of 209.31 feet and a chord of North 04 Deg. 00 Min. 46 Sec. East, 86.67 feet to a point; thence with a curve to the right having a radius of 100.00 feet and arc of 52.23 feet and a chord of South 79 Deg. 02 Min. 58 Sec. West, 51.64 feet to a point; thence North 85 Deg. 59 Min. 14 Sec. West, 129.26 feet to a point; thence with a curve to the right having a radius of 420.00 feet and arc of 52.55 feet and a chord of North 82 Deg. 24 Min. 10 Sec. West, 52.51 feet to a point; thence North 78 Deg. 49 Min. 07 Sec. West, 206.97 feet to a point; thence with a curve to the left having a radius of 430.00 feet and arc of 62.91 feet and a chord of North 83 Deg. 00 Min. 36 Sec. West, 62.86 feet to a point; thence North 87 Deg. 12 Min. 05 Sec. West, 220.69 feet to a point on the East right-of-way of Kersey Valley Road; thence with the East right-of-way of Kersey Valley Road North 02 Deg. 47 Min.

55 Sec. East, 217.43 feet to the point and place of BEGINNING. Containing 9.09 acres more or less per a map by Jamestown Engineering Group, Inc., entitled Annexation Map for the City of High Point and designated as Job No. 99038.

SECTION 3. This act has no effect upon the validity of any liens of the City of Archdale or the City of High Point for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the City of Archdale or the City of High Point, as appropriate.

SECTION 4. This act becomes effective July 1, 2012.

HOUSE BILL 1041:
High Point/Archdale Boundaries

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Reps. Faircloth, Brandon	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1041 would exchange tracts of land between the Cities of Archdale and High Point.***

BILL ANALYSIS: House Bill 1041 would remove two tracts of land from the City of Archdale and place them within the City of High Point. The bill also would remove one tract of land from the City of High Point and adds it to the City of Archdale. The removal and addition of land specified in this bill will not affect the validity of any liens for ad valorem taxes or special assessments outstanding prior to the effective date of this act.

EFFECTIVE DATE: This act becomes effective July 1, 2012.

Kelly Quick with the Research Division substantially contributed to this summary.

H1041-SMTD-149(e1) v1

HOUSE BILL 1050

Short Title:	Elizabethtown Industr. Park Deannexation.	(Local)
Sponsors:	Representative Brisson (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY REPEALING SPECIFIED INVOLUNTARY ANNEXATION ORDINANCES OF THE TOWN OF ELIZABETHTOWN RELATING TO THE INDUSTRIAL PARK AREA, AND BY PROHIBITING MUNICIPAL INITIATION OF ANY PROCEDURE TO INVOLUNTARILY ANNEX THOSE AREAS FOR TWELVE YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Repeal annexation ordinances. – All annexation ordinances described in Section 3 of this act are repealed as of the effective date of this act.

SECTION 2. Twelve-year prohibition on involuntary annexation. – All areas affected by the annexation ordinances described in Section 3 of this act shall not be subject to any annexation proceeding, other than a voluntary annexation under Part 1 or Part 4 of Article 4A of Chapter 160A of the General Statutes, or local act of the General Assembly, for a period of 12 years from and after the effective date of this act. After the 12-year period, the area may be subject to annexation in accordance with State law effective at that time.

SECTION 3. Repealed involuntary annexation ordinances. –

(1) Elizabethtown Annexation Ordinance 2011-04 (Area A) adopted June 6, 2011.

(2) Elizabethtown Annexation Ordinance 2011-05 (Area B) adopted June 6, 2011.

(3) Elizabethtown Annexation Ordinance 2011-06 (Area C) adopted June 6, 2011.

(4) Elizabethtown Annexation Ordinance 2011-07 (Area D) adopted June 6, 2011.

SECTION 4. Severability. – If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 5. This act is effective from and after June 29, 2012.

HOUSE BILL 1050:
Elizabethtown Industr. Park Deannexation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Brisson	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 1050 would deannex 4 tracts of land that were involuntarily annexed by the Town of Elizabethtown in an industrial park area and would prohibit involuntary annexation of those tracts for 12 years.

CURRENT LAW: Under Section 1 of Article VII of the NC Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." The General Assembly has not enacted any method for municipalities to deannex property – that power remains with the General Assembly.

BILL ANALYSIS:

Section 1 repeals the local involuntary annexation ordinances listed in Section 3 of the bill.

Section 2 provides that the 4 tracts covered by the bill shall not be subject to any involuntary annexation for 12 years after the effective date.

Section 3 lists the 4 tracts covered by the bill.

Section 4 is a severability clause, providing that if any provision of the bill is held invalid then the remainder of the bill can be enforced.

EFFECTIVE DATE: This act is effective from and after June 29, 2012.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

H1050-SMTD-142(e1) v1

HOUSE BILL 1051

Short Title:	Elizabethtown Hayfields Deannexation.	(Local)
Sponsors:	Representative Brisson (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY REPEALING SPECIFIED INVOLUNTARY ANNEXATION ORDINANCES OF THE TOWN OF ELIZABETHTOWN RELATING TO THE HAYFIELDS AREA, AND BY PROHIBITING MUNICIPAL INITIATION OF ANY PROCEDURE TO INVOLUNTARILY ANNEX THOSE AREAS FOR TWELVE YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Repeal annexation ordinances. – All annexation ordinances described in Section 3 of this act are repealed as of the effective date of this act.

SECTION 2. Twelve-year prohibition on involuntary annexation. – All areas affected by the annexation ordinances described in Section 3 of this act shall not be subject to any annexation proceeding, other than a voluntary annexation under Part 1 or Part 4 of Article 4A of Chapter 160A of the General Statutes, or local act of the General Assembly, for a period of 12 years from and after the effective date of this act. After the 12-year period, the area may be subject to annexation in accordance with State law effective at that time.

SECTION 3. Repealed involuntary annexation ordinances. –

(1) Elizabethtown Annexation Ordinance 2011-09 (Area J) adopted June 6, 2011.

(2) Elizabethtown Annexation Ordinance 2011-10 (Area N) adopted June 6, 2011.

(3) Elizabethtown Annexation Ordinance 2011-11 (Area Q) adopted June 6, 2011.

SECTION 4. Severability. – If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 5. This act is effective from and after June 29, 2012.

HOUSE BILL 1051:
Elizabethtown Hayfields Deannexation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Brisson	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1051 would deannex 3 tracts of land that were involuntarily annexed by the Town of Elizabethtown in the Hayfields residential area and would prohibit involuntary annexation of those tracts for 12 years.

CURRENT LAW: Under Section 1 of Article VII of the NC Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." The General Assembly has not enacted any method for municipalities to deannex property – that power remains with the General Assembly.

BILL ANALYSIS:

Section 1 repeals the local involuntary annexation ordinances listed in Section 3 of the bill.

Section 2 provides that the 3 tracts covered by the bill shall not be subject to any involuntary annexation for 12 years after the effective date.

Section 3 lists the 3 tracts covered by the bill.

Section 4 is a severability clause, providing that if any provision of the bill is held invalid then the remainder of the bill can be enforced.

EFFECTIVE DATE: This act is effective from and after June 29, 2012.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

H1051-SMTD-143(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1215*
Committee Substitute Favorable 6/21/12
PROPOSED SENATE COMMITTEE SUBSTITUTE H1215-CSSVx-64 [v.2]

6/26/2012 4:20:51 PM

Short Title: Henderson County Occupancy Tax Changes. (Local)

Sponsors:

Referred to:

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE HENDERSON COUNTY BOARD OF COMMISSIONERS TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 5 and 6 of Chapter 172 of the 1987 Session Laws, as amended by Chapter 55 of the 1991 Session Laws and by Section 21(p) of S.L. 2007-527, read as rewritten:

"**Sec. 5.** Occupancy Tax. (a) Authorization and Scope. – The Board of Commissioners of Henderson County may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development tax of no less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of Henderson County may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Henderson County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section. ~~The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay an additional tax, as a penalty, of one percent (1%) of the tax due for each day's omission up to 30 days, with a minimum penalty of twenty-five dollars ($25.00). In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of ten percent (10%) of the tax and penalty due in addition to any other penalty, with an additional tax of ten percent (10%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax or penalty imposed under this act or who willfully fails to pay the tax or penalty or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds of the room occupancy and tourism development tax levied under subsection (a) of this section to the Henderson County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under subsection (a) of this section to promote travel and tourism in Henderson County and shall use the remainder for tourism-related expenditures.

The county shall, on a quarterly basis, remit the net proceeds collected from a tax levied under subsection (a1) of this act to the Flat Rock Playhouse, State Theater of North Carolina, to be used for the maintenance, operation, renovation, and promotion of the Flat Rock Playhouse, State Theater of North Carolina, including the Mainstage and the Playhouse Downtown locations.

(e1) Definitions. – The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the entity responsible for expending the net proceeds of the tax, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~shall place the net proceeds collected from a tax levied under this act in a special Travel and Tourism Fund. Revenue in this fund may be used only to promote travel and tourism in the county. This fund will be administered by the Henderson Travel and Tourism Committee. As used in this subsection, "net proceeds" means gross proceeds less five percent (5%) of the gross proceeds which the county may retain to defray the cost of administering and collecting the tax.~~

~~The scope of promotion of travel and tourism in the county may include the following:~~

~~(1) Contracting with any person, firm, or agency to advise and assist in travel and tourism promotion.~~

~~(2) Advertising via appropriate media.~~

~~(3) Assisting in the initial funding and possible annual subsidy of a fine arts center or other similar facility which could logically be expected to promote tourism in the county.~~

~~(4) Promoting special events which would bring tourists to the county.~~

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the board of commissioners of the county. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"**Sec. 6.** Henderson ~~Travel and Tourism Committee.~~Tourism Development Authority. (a) Appointment and Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under subsection (a1) of ~~this~~ Section 5 of this act, it shall also adopt a resolution creating the Henderson ~~Travel and Tourism Committee,~~ Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution adopted by the Board of Commissioners shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. However, no member shall serve on the Authority for more than five consecutive years. The Committee shall consist of nine voting members as follows:

(1) ~~Four~~ Three members who are registered to vote in Henderson County, appointed by the Henderson County Board of ~~Commissioners;~~Commissioners.

(2) ~~Four~~ Three members who are registered to vote in Henderson County, appointed by the Hendersonville City ~~Council; and~~Council.

(3) ~~The President of the Greater Hendersonville Chamber of Commerce, or his designee, to serve ex officio.~~One member who is registered to vote in Henderson County, appointed by the Fletcher Town Council.

(4) One member who is registered to vote in Henderson County, appointed by the Flat Rock Village Council.

(5) One member appointed by the Henderson County Board of Commissioners upon a recommendation of the Henderson County Chamber of Commerce.

Of these members, at least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the county.

The board of commissioners shall designate one member of the ~~Committee~~ Authority as chair and shall determine the compensation, if any, to be paid to members of the ~~Committee.~~Authority. The ~~Committee~~ Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer for Henderson County shall be the ex officio finance officer of the ~~Committee.~~Authority. ~~The Committee shall administer the Travel and Tourism Fund as provided in Section 1(e) of this act.~~

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under subsections (a) and (a1) of Section 5 of this act for the purposes provided in Section 5 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The ~~Committee~~ Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

SECTION 2.(a) Subsection (e) of Section 5 of Chapter 172 of the 1987 Session Laws, as amended by Chapter 55 of the 1991 Session Laws, by Section 21(p) of S.L. 2007 527, and by Section 1(a) of this act, reads as rewritten:

"(e) Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds of the room occupancy and tourism development tax levied under ~~subsection (a) of this section~~ this act to the Henderson County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it ~~under subsection (a) of this section~~ to promote travel and tourism in Henderson County and shall use the remainder for tourism-related expenditures.

~~The county shall, on a quarterly basis, remit the net proceeds collected from a tax levied under subsection (a1) of this act to the Flat Rock Playhouse, State Theater of North Carolina, to be used for the maintenance, operation, renovation, and promotion of the Flat Rock Playhouse, State Theater of North Carolina, including the Mainstage and the Playhouse Downtown locations.~~"

SECTION 2.(b) This section becomes effective July 1, 2015, and applies to room occupancy taxes collected on or after that date.

SECTION 3. G.S. 153A-155(g) reads as rewritten:

"(g) Applicability. – Subsection (c) of this section applies to all counties and county districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Henderson, Jackson, Madison, Martin, McDowell, Montgomery, Moore, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson Counties, to Surry County District S, to Watauga County District U, to Wilkes County District K, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District."

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 1215:
Henderson County Occupancy Tax Changes

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. McGrady	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	PCS to Second Edition H1215-CSSVx-64		

SUMMARY: House Bill 1215 would authorize Henderson County to levy an additional one percent (1%) room occupancy tax and would make other administrative changes.

The Proposed Committee Substitute directs the net proceeds of the additional 1% tax to be remitted directly to the Flat Rock Playhouse for three years. At the end of three years, the proceeds of the total room occupancy tax (6%) would be remitted to the Tourism Development Authority and expended for tourism promotion and tourism-related expenditures. It also provides that members may serve no more than five consecutive years on the TDA.

[As introduced, this bill was identical to S948, as introduced by Sen. Apodaca, which is currently in Rules and Operations of the Senate.]

CURRENT LAW: Henderson County may levy a room occupancy tax of no less than three percent (3%) and no more than five percent (5%). The proceeds of the tax are placed in a special Travel and Tourism Fund administered by the Henderson Travel and Tourism Committee. The Committee is made up of nine members, four of whom are individuals registered to vote in Henderson County and are appointed by the board of commissioners, four of whom are registered to vote in Henderson County and are appointed by the Hendersonville City Council, and the President of the Greater Hendersonville Chamber of Commerce. The net proceeds may be used only to promote travel and tourism in the county. The scope of tourism promotion as used in the legislation includes:

- Contracting with any person, firm, or agency to advise and assist in travel and tourism promotion.
- Advertising via appropriate media.
- Assisting in the initial funding and possible annual subsidy of a fine arts center or other similar facility which could logically be expected to promote tourism in the county.
- Promoting special events which would bring tourists to the county.

BILL ANALYSIS: House Bill 1215 would authorize Henderson County to levy an additional one percent (1%) occupancy tax and would make other administrative changes to the existing authority so that it conforms to the Occupancy Tax Guidelines adopted by the House Finance Committee. Among those changes, is the requirement that the County establish a Tourism Development Authority to administer the proceeds. The TDA would consist of three members appointed by Henderson County, three members appointed by Hendersonville, one member appointed by the Town of Fletcher, one member appointed by Flat Rock Village, and one member appointed by the county upon recommendation of the Chamber of Commerce.

The **Proposed Committee Substitute** modifies the manner in which the net proceeds are distributed. The proceeds of the first 5% would be remitted to the TDA. The TDA must use at least two-thirds for tourism promotion and the remainder for tourism-related expenditures. The net proceeds of the additional 1% would, for three years, be remitted directly to the Flat Rock Playhouse, the State Theater of North Carolina, for maintenance, operations, renovations, and promotion. At the end of three years,

the entire net proceeds of the room occupancy tax would be remitted to the TDA and used as stated above for tourism promotion and tourism-related expenditures. The PCS also provides that a member of the TDA board may serve no more than five consecutive years.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,[1] which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

H1215-SMSV-142(CSSVx-64) v1

[1] G.S. 153A-155 and G.S. 160A-215.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 26, 2012

TO: Senators Rucho and Hartsell

FROM: Brian Slivka
Fiscal Research Division

RE: PCS to House Bill 1215 (Second Edition)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2012-13	**FY 2013-14**	**FY 2014-15**	**FY 2015-16**	**FY 2016-17**
REVENUES:					
Henderson County	**$222,900**	**$236,900**	**$249,900**	**$261,200**	**$270,100**
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Henderson County

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY:

House Bill 1215 amends SL 1987-172, as amended, to authorize the Henderson County Board of Commissioners to levy an additional room occupancy and tourism development tax of up to 1%. It provides that both the existing and additional tax must be levied, administered, collected, and repealed as provided in GS 153A-155 (uniform provisions for room occupancy taxes). The bill requires the Henderson County Tourism Development Authority (TDA) to use at least two-thirds of the tax proceeds to promote travel and tourism in the county and the remainder for other tourism–related expenditures (may include tourism-related capital expenditures). Also, it mandates that at least one-third of the TDA's members must be affiliated with businesses that collect the tax in the county and at least one-half must be currently active in the county's travel and tourism promotion.

The PCS directs the net proceeds of the additional 1% tax to be remitted directly to the Flat Rock Playhouse for three years. At the end of three years, the proceeds of the total room occupancy tax (6%) would be remitted to the Tourism Development Authority and expended for tourism promotion and tourism-related expenditures. It also provides that members may serve no more than five consecutive years on the TDA.

ASSUMPTIONS AND METHODOLOGY:

Henderson County currently has a 5% room occupancy tax. House Bill 1215 would increase the county occupancy tax to 6%. According to the North Carolina Department of State Treasurer Financial Information Report for Henderson County, the 5% occupancy tax brought in $1,114,954 in revenue for tax year 2011. It's estimated that a one percentage point increase in Henderson County's occupancy tax (to 6%) would yield $222,900 in additional revenue in FY2012-13. That amount was then grown using the Leisure and Hospitality portion of North Carolina Gross State Product as forecast by Moody's Economy.com

SOURCES OF DATA: North Carolina Department of State Treasurer, Moody's Economy.com, Committee Counsel Summary

TECHNICAL CONSIDERATIONS: None

HOUSE BILL 1087

Short Title:	Fontana Dam Occupancy Tax.	(Local)
Sponsors:	Representative West (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF FONTANA DAM TO LEVY AN OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

TOWN OF FONTANA DAM OCCUPANCY TAX

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Town Council of the Town of Fontana Dam may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Fontana Dam shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Fontana Dam Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Fontana Dam and shall use the remainder for tourism-related expenditures.

The following definitions apply in this section:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Fontana Dam Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the

town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 1.(d) Tourism Development Authority. – Appointment and Membership. – When the Town Council adopts a resolution levying a room occupancy tax under this section, it shall also adopt a resolution creating the Fontana Dam Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Town Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer for the Town of Fontana Dam shall be the ex officio finance officer of the Authority.

SECTION 1.(e) Duties. – The Authority shall expend the net proceeds of the tax levied under this section for the purposes provided in subsection (c) of this section. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 1.(f) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Fontana Dam Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Town Council may require.

SECTION 2. G.S. 160A-215(g) reads as rewritten:

"(g) Applicability. – Subsection (c) of this section applies to all cities that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this section applies only to Beech Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lenoir, Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville, Roanoke Rapids, Salisbury, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Bermuda Run, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach, Carrboro, Cooleemee, Cramerton, Dallas, Dobson, Elkin, Fontana Dam, Franklin, Grover, Hillsborough, Jonesville, Kenly, Kure Beach, Leland, McAdenville, Mocksville, Mooresville, Murfreesboro, North Topsail Beach, Pembroke, Pilot Mountain, Ranlo, Selma, Smithfield, St. Pauls, Swansboro, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 1087:
Fontana Dam Occupancy Tax

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. West	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 1087 would authorize the Town of Fontana Dam to levy a room occupancy tax of up to 3%, the proceeds of which would be remitted to a Tourism Development Authority. The Authority would be required to use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourist-related expenditures.

[As introduced, this bill was identical to S942, as introduced by Sen. Davis, which is currently in Senate State and Local Government.]

CURRENT LAW: The Town of Fontana Dam was incorporated in 2011.[1] The Town is located in Graham County, which has the authority to levy a 3% room occupancy tax.[2] The proceeds of that tax may be, but are not required to be, administered by a Travel and Tourism Authority. All of the proceeds must be used to promote travel and tourism in the county. The Fontana Village Resort, which is the only hotel accommodation within the municipal limits, currently collects both the State and local sales and use tax and the county occupancy tax on the rental of its accommodations.

BILL ANALYSIS: House Bill 1087 would authorize Fontana Dam to levy a 3% room occupancy tax. The Town would be required to establish a Tourism Development Authority to administer the proceeds. The proceeds must be used as follows: at least two-thirds for tourism promotion and the remainder for tourism-related expenditures. The bill conforms to the Guidelines for Occupancy Tax adopted by the House Finance Committee.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,[3] which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

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[1] The Joint Legislative Commission on Municipal Incorporation did not give a favorable recommendation to the incorporation of Fontana Dam in its report, dated March 16, 2009, because the Commission found that the proposed Town did not meet the Commission standards for population and population density. The petition said Fontana Dam has 25 to 30 people with 25 people per half square mile, and the standard is 100 people with 250 people per square mile. Failure to get a favorable recommendation from the Commission does not prevent the General Assembly from incorporating a municipality. In the past 10 years, six petitions have failed to get a favorable recommendation, and incorporation occurred anyway. In most of those cases, the Commission found that the area seeking to be incorporated did not meet the criterion of 40% development. In the same years, eight failed petitions resulted in no incorporation.

[2] Originally enacted in 1985, Graham County's authorizing legislation does not conform to the House Finance Guidelines for Occupancy Tax. On previous occasions the Subcommittee has been presented with the issue of whether to require nonconforming county legislation to be brought into conformity with the Guidelines when a municipality in that county seeks the authority to levy or increase an occupancy tax, which effectively prevents conforming the county legislation in the future to the extent there remains a 6% cap on the rate of tax. To date, the Occupancy Tax Subcommittee has not established such a requirement.

[3] G.S. 153A-155 and G.S. 160A-215.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

H1087-SMSV-141(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 1087 (First Edition)

SHORT TITLE: Fontana Dam Occupancy Tax.

SPONSOR(S): Representative West

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES					
Town of Fontana Dam	**$100,600**	**$106,800**	**$112,700**	**$117,800**	**$121,800**
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Fontana Dam, Town of Fontana Dam Tourism Development Authority

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY:

House Bill 1087 would authorize the Town of Fontana Dam to levy a room occupancy tax of up to 3%, the proceeds of which would be remitted to a Tourism Development Authority. The Authority would be required to use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourist-related expenditures.

ASSUMPTIONS AND METHODOLOGY:

The Town of Fontana Dam has one resort with approximately 200 rentable rooms. In 2011, the North Carolina Department of Commerce estimated a room occupancy rate of 56.1%, with an average daily room rate of $81.86. Using this information (200 rooms * 365 days * 56.1% occupancy rate * $81.86 room rate * 3% occupancy tax) yields a revenue estimate of $100,600 for 2012-13. Future fiscal year impacts were forecast using the Leisure and Tourism portion of the North Carolina Gross State Product, as forecast by Moody's.

SOURCES OF DATA: Committee Counsel Report, Fontana Village, Moody's Economy.com, North Carolina Department of Commerce Division of Tourism, Film and Sports Development

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Mark Trogdon, Acting Director
Fiscal Research Division

DATE: June 6, 2012

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 1106

Short Title:	Apex Annexation.	(Local)
Sponsors:	Representatives Murry, Dollar, and Stam (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF APEX.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Apex are extended to include the following described area:

BEING all that tract of land containing 0.208 acres more or less, located in White Oak Township, Wake County, and bounded by lands owned by and/or in possession of persons as follows: on the north by the right-of-way (allowing 65 feet) of Beaver Creek Commons Drive Extension, on the northwest by the lands of Grayson G. Kelley, and wife Blaine Brown Kelley, on the northwest, northeast, southeast and south by the NC-540 Corridor (right-of-way width varies) and Beaver Creek Commons Drive Extension and being more particularly described by courses based on North Carolina Grid Coordinate System North (NAD 83) and distances according to a survey entitled "Annexation Plat of Section 2-Beaver Creek Commons Drive Extension Right-of-Way for The Town of Apex" by McKim and Creed, Inc., dated March 26, 2012, last revised April 20, 2012 and being more particularly described as follows: COMMENCING at NCGS Monument "JUNCTION 2", said monument having N.C. Grid (NAD 83) Coordinates N = 727,401.45 feet, E = 2,036,839.97 feet; thence as a tie line south 63 deg. 20 min. 35 sec. west 5400.73 feet to a computed point; said computed point being the POINT OF BEGINNING, said computed point also being within the right-of-way of the NC-540 Corridor; thence running as the southeastern right-of-way line (allowing 65 feet) of Beaver Creek Commons Drive Extension south 51 deg. 25 min. 18 sec. west 120.89 feet to a computed point, said computed point being in the southeastern right-of-way line (allowing 65 feet) of the Beaver Creek Commons Drive Extension, thence crossing the right-of-way (allowing 65 feet) of Beaver Creek Commons Drive Extension the following two calls: (1) north 81 deg. 37 min. 39 sec. west 75.05 feet to a computed point, and (2) north 38 deg. 34 min. 42 sec. west 10.16 feet to a computed point, said computed point being in a southeastern line of the Grayson G. Kelley, and wife Blaine Brown Kelley property, said computed point also being in the northwestern right-of-way line (allowing 65 feet) of the Beaver Creek Commons Drive Extension; thence with the northwestern right-of-way line (allowing 65 feet) of the Beaver Creek Commons Drive Extension and a southeastern line of the Grayson G. Kelley, and wife Blaine Brown Kelley property north 51 deg. 25 min. 18 sec. east 12.55 feet to a computed point, said computed point being a southeastern corner of the Grayson G. Kelley, and wife Blaine Brown Kelley property; thence continuing with the western right-of-way line (allowing 65 feet) of Beaver Creek Commons Drive Extension north 51 deg. 25 min. 18 sec.

east 137.15 feet to a computed point; thence crossing the Beaver Creek Commons Drive Extension right-of-way (allowing 65 feet) south 57 deg. 36 min. 31 sec. east 68.76 feet to a computed point, the POINT OF BEGINNING.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1106:
Apex Annexation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Reps. Murry, Dollar, Stam	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1106 annexes a described area into the Town of Apex.

CURRENT LAW: Annexation is a method by which municipalities alter their boundaries. The municipality must follow the statutorily prescribed steps in order to add an area into its boundaries. As the municipality is receiving more tax revenue from the added area, the municipality must provide (or contract to provide) basic services to the area. These services include police protection, fire protection, solid waste collection and the extension of water and sewer lines to the area.

North Carolina law sets forth four basic ways in which a municpality may annex an area.

- Voluntary Annexation. The owners of all real property in an area contiguous to the municipality desiring to be annexed sign a petition requesting annexation.
- Voluntary Satellite Annexation. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation, if it otherwise meets the statutory requirements.
- Municipal-Initiated Annexation. The municipality initiates annexation proceeding, pursuant to statutory requirements.
- Legislative Act. The General Assembly has the authority to extend the boundaries of any municipality.

BILL ANALYSIS: House Bill 1106 annexes a 0.208 acre tract into the corporate limits of the Town of Apex.

EFFECTIVE DATE: This act becomes effective when it becomes law.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

H1106-SMTD-145(e1) v1

HOUSE BILL 1090*
Committee Substitute Favorable 6/13/12

Short Title: Orange-Alamance Remaining 9% Boundary. (Local)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE REMAINING NINE PERCENT OF THE COMMON BOUNDARY BETWEEN ALAMANCE COUNTY AND ORANGE COUNTY NOT ADDRESSED BY SESSION LAW 2011-88 AND AS AUTHORIZED BY THE GENERAL ASSEMBLY BY SESSION LAW 2010-61 ENABLING THE CHANGES IN THE HISTORIC ORANGE COUNTY-ALAMANCE COUNTY BOUNDARY LINE AS DESCRIBED IN THE 1849 SURVEY ESTABLISHING ALAMANCE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. The historic boundary line forming Alamance County from Orange County was described and surveyed in 1849. In the subsequent 160 years, this line became uncertain, resulting in unintentional modifications to the boundary line affecting taxation, school attendance, zoning maps, and elections, within and among Alamance County, Orange County, and the Town of Mebane, North Carolina. Pursuant to G.S. 153A-18(a) entitled "Uncertain or Disputed Boundary", both county boards of commissioners passed resolutions (Alamance County, December 17, 2007 and Orange County, January 18, 2008) to request that North Carolina Geodetic Survey perform a preliminary resurvey and present a proposed map for consideration by both counties.

SECTION 2. In the 2011 session, the General Assembly, through S.L. 2011-88, ratified and adopted ninety-one percent (91%) of the boundary line between Alamance County and Orange County. Also in the 2011 session, the General Assembly, through S.L. 2011-87, authorized the boards of commissioners of Alamance County and Orange County to determine the most appropriate location for the remaining nine percent (9%) of the boundary line.

SECTION 3. The General Assembly recognizes the difficulties in addressing the issues associated with adopting a county boundary line and authorizes Alamance County and Orange County to maintain the current taxing, elections, education and any other recognized government functions in place in the transition areas affected by this act, if so needed, until July 1, 2013.

SECTION 4.(a) Except as otherwise provided in this act, on and after January 1, 2013, all papers, documents, and instruments required or permitted to be filed or registered, involving residents and property in areas affected by the resurvey of the boundary line, which previously may have been recorded in the adjoining counties, shall be recorded in the county to which the property has been reassigned by this act.

SECTION 4.(b) On and after January 1, 2013, all real and personal property in areas affected by the resurvey of the boundary line that was subject to ad valorem taxation on January 1, 2013, shall be subject to ad valorem taxes in the county to which the property is reassigned for the fiscal year beginning July 1, 2013, to the same extent as it would have been

had it been correctly recognized by the tax departments of each county on March 1, 2013, except as hereinafter provided with respect to classified registered motor vehicles. On September 1, 2012, the adjoining county tax administrators shall commence the transfer to the respective county tax assessors the ad valorem tax listings and valuations for all real and personal property subject to ad valorem taxation in areas affected by the resurvey of the boundary line, except classified motor vehicles which were registered in the adjoining counties prior to July 1, 2012. For the fiscal year that begins July 1, 2012, all real and personal property in areas affected by the resurvey of the boundary line, which was subject to ad valorem taxation in that area on January 1, 2013, shall be assessed and taxed as follows:

(1) The ad valorem property taxes assessed on all classified registered motor vehicles registered or listed in adjoining counties between January 1, 2012, and March 1, 2013, shall be collected by the appropriate adjoining county tax collector, and all such taxes shall be retained by that adjoining county. The taxes on all classified registered motor vehicles registered after March 1, 2013, shall be assessed and collected by the county tax department in the county to which the real property wherein the classified registered motor vehicles are situated has been reassigned.

(2) The values established by the particular adjoining county tax administrator on all personal property other than classified registered motor vehicles shall be used by each county tax assessor without adjustment in computing taxes due for the fiscal year beginning July 1, 2013. All such taxes shall be assessed and collected by the appropriate county tax department.

(3) For the interim time period between the reassignment of properties into their respective counties and until such time as the next regularly scheduled revaluation period, Alamance County and Orange County may select either of two methods of valuating the property reassigned into their respective counties by this act. The selection of either method by a county shall not give any individual or entity grounds for challenging such temporary valuation. Such methods are delineated as follows:

a. The values established by the adjoining county tax administrators on all real property formerly taxed in their county shall be adjusted by the appropriate county tax assessor by applying the difference between one hundred percent (100%) of such values and the appropriate county median ratio, as established by the Sales Assessment Ratio Study compiled by the North Carolina Department of Revenue as of January 1, 2009. The taxes determined by applying this method will be collected and retained by the appropriate county tax collector. The value of such property shall then be revalued according to the regularly scheduled revaluation period for each county.

b. The values established by the adjoining county tax administrators on all real property formerly taxed in their county shall be adopted by the appropriate county tax assessor upon the transition of property to the adjoining county. The valuation of such property shall then be revalued according to the regularly scheduled revaluation period for each county.

(4) Beginning January 1, 2014, all property in areas affected by the resurvey of the boundary line that is subject to ad valorem taxation shall be listed, assessed, and taxed by the appropriate county tax administrator in the same manner as is prescribed by law for all other property located within each county.

(5) The final tax values of property subject to ad valorem taxation in areas affected by the resurvey of the boundary line as of January 1, 2014, shall be determined by the adjoining county tax administrator. Appeals to the North Carolina Property Tax Commission or to the courts by property owners of properties affected by the boundary line change shall be defended by both counties, and both counties shall be responsible for the counties' costs and expenses, including attorneys' fees, incurred in connection with such appeals.

(6) Any unpaid taxes or tax liens for the fiscal year ending June 30, 2013, or for prior years on property subject to taxation in areas affected by the resurvey of the boundary line shall continue to be valid and enforceable by the respective adjoining county, including the foreclosure remedies provided for in G.S. 105-374 and G.S. 105-375, and the remedies of attachment and garnishment provided for in G.S. 105-366 through G.S. 105-368. The Alamance County and Orange County tax administrators shall supply one another with a list of unpaid taxes for properties in areas of the boundary line affected by the resurveys for the tax year 2012 on or before July 1, 2013. Any such taxes collected by either county shall be promptly paid to the appropriate adjoining county including accrued interest. The provisions of G.S. 105-352(d) shall not apply to (i) those areas in adjoining county previously taxed by either county outside the areas affected by the resurvey of the boundary line, that shall forthwith be properly listed and taxed in the county to which they have been reassigned by this act; and (ii) those areas within each county that were in the past improperly listed and taxed by the adjoining counties due to uncertainty as to the exact location of the true historic Alamance County-Orange County boundary line.

SECTION 4.(c) No cause of action, including criminal actions, involving persons or property in areas affected by the resurvey of the boundary line that is pending on July 1, 2013, shall be abated, and such actions shall continue in the appropriate adjoining county. In no event shall a defense to a criminal act be maintained where such defense alleges a lack of jurisdiction due to any act or failure to act related to the adjustment of the boundary line by this act, regardless of when such criminal act is alleged to have occurred.

SECTION 4.(d) The board of elections of each adjoining county shall, effective July 1, 2013, transfer the voter registration records pertaining to persons residing in areas affected by the resurvey of the boundary line and located in either county to the adjoining county's board of elections, and thereafter the registered voters so transferred shall be validly registered to vote in that adjoining county. Persons in areas affected by the resurvey of the boundary line shall continue to be in the same State House, State Senate, and United States House of Representatives Districts as they were prior to the resurvey.

SECTION 4.(e) The Jury Commission of each adjoining county shall revise its jury lists to add to or eliminate therefrom those persons subject to jury duty who reside in areas affected by the resurvey of the boundary line, said revised jury lists to be effective July 1, 2013.

SECTION 5.(a) Any properties affected by S.L. 2010-61 or this act and that are subject to taxation under G.S. 105-274 and that were taxed by both the Alamance County and Orange County taxing authorities on or after January 1, 2007, are hereby granted the following relief:

(1) Property owners of any such dually taxed properties may, pursuant to the terms of G.S. 105-381, demand refund and/or release of taxes paid to the county from which their property, or portion thereof, was transitioned.

(2) Any claim for relief pursuant to this section and under the terms of G.S. 105-381 may be made for taxes assessed January 1, 2007, through

December 31, 2012. All such claims for relief must be made in writing to the county from which the affected property was transitioned on or before February 28, 2013. Should a claim for relief pursuant to this section not be made by February 28, 2013, such claim is waived and no further relief shall be granted pursuant to this or any other act. Alamance County and Orange County shall not grant refunds or releases pursuant to this section for any claims made after February 28, 2013, and are released from all liability, and no court action shall be maintained for any such claims made for any act or failure to act pursuant to this section.

SECTION 5.(b) The provisions of this section shall apply only to properties transitioned or reassigned from one county to the other, in whole or in part, by the resurveys of individual qualifying properties pursuant to S.L. 2010-61 and this act.

SECTION 5.(c) For purposes of this section only, the term "property owner" shall include any builder or developer that paid property taxes on real property to both counties and subsequently sold said property or that, as part of an escrow agreement in which the buyer of such property paid taxes to one county and the builder or developer who sold the property, paid taxes on the same piece of property to the adjoining county.

SECTION 5.(d) The taxing authorities of Alamance County and Orange County shall notify property owners affected by this section of the terms of this section within 30 days of this act becoming law. Such notice shall be by United States mail at the mailing address to which any tax bills were previously submitted. No other notice is or shall be required.

SECTION 6. Any child who was a resident of any area reassigned by this act on its date of ratification and who was a student in the Orange or Alamance school system during the 2011-2012 school year, and the siblings of any such person, may attend school in the same school system attended in the 2011-2012 school year without necessity of a release or payment of tuition. Any such student, while attending the Orange County school system, shall be considered a resident of Orange County for all public school purposes, including transportation, athletics, and funding formulas. Any such student, while attending the Alamance County School system, shall be considered a resident of Alamance County for all public school purposes, including transportation, athletics, and funding formulas. Notice must be given to all affected school systems by the parent or guardian in order to exercise the privilege granted by this section.

SECTION 7. The establishment of a county boundary line is, pursuant to Section 1 of Article VII of the North Carolina Constitution, the sole responsibility of the General Assembly. Further, it is vital to the State of North Carolina and all affected local governments that county boundary lines be fixed and any uncertainty as to the location of county boundary lines be resolved. For this reason and in the interest of justice, neither Alamance County nor Orange County, nor any agent, employee, or appointed or elected official thereof, shall be liable to any individual, group, organization, for-profit or not-for-profit business entity of any kind, governmental entity or agency of any type or kind for any damages, costs, fees, or fines, and or court action shall be maintained against said counties, officials, employees, and agents for any recommendation, act, failure to act, or conduct related to S. L. 2010-61, S.L. 2011-88, or this act and/or the adoption of a fixed boundary line separating the two counties. Except as set out in Section 5 of this act, and effective upon this act becoming law, Alamance County and Orange County, their officials, employees, and agents are released from all liability for any claims made, and no court action shall be maintained against said officials, employees, and agents for any act or failure to act pursuant to the terms of this act, S.L. 2011-88, or S.L. 2010-61, and no further relief shall be granted or cause of action sustained except as provided herein.

SECTION 8. Should any provision of S.L. 2010-61, as amended by S.L. 2011-88, conflict with any provision of this act, the provisions of this act shall control. Should any line

marking the area of the nine percent (9%) reflected in the surveys referenced herein conflict with any line shown on the surveys describing the area of the ninety-one percent (91%), the surveys marking the area of the nine percent (9%) shall control.

SECTION 9. Pursuant to Section 1 of Article VII of the North Carolina Constitution, any boundary line between Alamance County and Orange County previously surveyed, recognized, adopted, described, utilized, or ratified, save and except the ninety-one percent (91%) of the boundary line adopted by S.L. 2011-88, is modified as set forth herein upon ratification of this act.

SECTION 10. Pursuant to Section 1 of Article VII of the North Carolina Constitution, the official boundary line regarding the remaining nine percent (9%) of the line separating Alamance County and Orange County, as recommended by the Alamance County Board of Commissioners at its meeting of December 6, 2010, and the Orange County Board of Commissioners at its meeting of December 14, 2010, is hereby formally recognized and adopted by the General Assembly.

SECTION 11. Upon adoption, the survey plats reflecting the boundary line shall be filed with the Alamance County Register of Deeds, with the Orange County Register of Deeds, and in the office of the Secretary of State as provided in G.S. 153A-18(a).

SECTION 12. This act is effective when it becomes law.

HOUSE BILL 1090:
Orange-Alamance Remaining 9% Boundary

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 26, 2012
Introduced by:	Reps. Insko, Hackney, Bordsen, Ingle	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1090 would establish the remaining nine percent of the common boundary between Orange and Alamance counties, as authorized by S.L. 2011-87.***

[As introduced, this bill was identical to S873, as introduced by Sen. Kinnaird, which is currently in Senate State and Local Government.]

BILL ANALYSIS:

Section 1. Notes that the historic boundary line forming Alamance County from Orange County was described and surveyed in 1849. In the 160 years since, this line became uncertain, resulting in unintentional modifications to the boundary line affecting taxation, school attendance, zoning maps, and elections. The section also notes that both boards of commissioners authorized the North Carolina Geodetic Survey (NCGS) to conduct a preliminary resurvey.

Section 2. Explains that in 2011 the General Assembly passed two local acts, S.L. 2011-88 which established the 91% of the common boundary between Orange and Alamance counties, and S.L. 2011-87 which required the counties to recommend the location of the remaining 9% of the common boundary.

Section 3. Authorizes Alamance County and Orange County to maintain the current taxing, elections, education, and any other recognized government functions in place in the transition areas affected by the bill up to July 1, 2013.

Section 4. Requires recordation of all papers, documents, and instruments required or permitted to be filed involving the resurvey of the boundary line to be recorded in the county to which the property is reassigned by the bill. The section also addresses transfer of the following:

- Property taxation. The tax administrators are to begin transferring tax listings and valuations on September 1, 2012, for taxation by the county of reassignment effective January 1, 2013. For the tax year 2013, a temporary valuation and assessment is specified. Beginning January 1, 2014, the property is to be listed, assessed and taxed by the appropriate county in the same manner as prescribed by law for all other property in that county.
- Voter registration. The local boards of elections are to transfer voter registrations effective July 1, 2013.
- Jury lists. The Jury Commission of each county is to revise its lists, effective July 1, 2013.

Section 5. Provides certain relief for property owners which were taxed by both Alamance and Orange County taxing authorities. The owners may demand refund and/or release of taxes paid from the county from which their property was transitioned. Claims for relief may be made for taxes assessed from January 1, 2007, through December 31, 2011 if certain procedures are followed.

Section 6. Provides that if a child was a resident of any area reassigned by this act and that child was a student in Orange County or Alamance County during the 2011-2012 school years, then the child and any siblings may continue to attend the same school system.

Section 7. Grants immunity to the counties, their agents, and elected or appointed officials from suits in connection with local bills related to the location of the boundary line.

Section 8. States that S.L. 2010-61, as amended by S.L. 2011-88, remains in effect, but that the present bill controls if there is a conflict.

Section 9. Provides that pursuant to the North Carolina Constitution, any boundary line previously utilized is modified as provided in this act.

Section 10. Provides that the boundary line approved by the commissioners of Alamance County and Orange County is adopted by the General Assembly.

Section 11. Provides when the resurveys have been finished, a complete description of the resurveyed land must be filed with the Registers of Deeds in Alamance and Orange Counties and with the Secretary of State.

EFFECTIVE DATE: When it becomes law.

Erika Churchill and Greg Roney, Staff Attorneys in the Research Division, substantially contributed to this summary.

H1090-SMTD-144(e2) v1

HOUSE BILL 1110

Short Title:	Matthews/Stallings Boundary Adjustment.	(Local)
Sponsors:	Representatives Horn, Brawley, Cotham, and McGuirt (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTIES FROM THE CORPORATE LIMITS OF THE TOWN OF MATTHEWS AND ANNEX IT TO THE TOWN OF STALLINGS, BOTH AT THE REQUEST OF THE RESPECTIVE TOWN GOVERNING BOARDS.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Matthews are reduced by removing the following described property in Mecklenburg County:

Address	Parcel ID	Legal Description Lot# Block Book Page
2230 Community Park	21505210	18 M 51-649
2224 Community Park	21505207	19 M 6-62
2208 Community Park	21505208	20 M 6-62
2308 Community Park	21505205	17 M 51-649
2304 Community Park	21505204	16 M 6-62

Also removed from the corporate limits of the Town of Matthews is the part of the right-of-way of Community Park Drive that is bounded by the Mecklenburg/Union County line and by one or more of those five listed parcels.

SECTION 2. The corporate limits of the Town of Stallings are extended by adding the following described property in Mecklenburg County:

Address	Parcel ID	Legal Description Lot# Block Book Page
2230 Community Park	21505210	18 M 51-649
2224 Community Park	21505207	19 M 6-62
2208 Community Park	21505208	20 M 6-62
2308 Community Park	21505205	17 M 51-649
2304 Community Park	21505204	16 M 6-62

Also added to the corporate limits of the Town of Stallings is the part of the right-of-way of Community Park Drive that is bounded by the Mecklenburg/Union County line and by one or more of those five listed parcels.

SECTION 3. This act has no effect upon the validity of any liens of the Town of Matthews for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the Town of Matthews.

SECTION 4. This act becomes effective June 30, 2012.

HOUSE BILL 1110:
Matthews/Stallings Boundary Adjustment

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Reps. Horn, Brawley, Cotham, McGuirt	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1110 would remove certain specified land in five parcels from the corporate limits of the Town of Matthews and would place it within the corporate limits of the Town of Stallings.***

BILL ANALYSIS: House Bill 1110 removes from the town limits of Matthews five specified parcels and the part of the right-of-way of Community Park Drive that is bounded by the Mecklenburg/Union County line and by one or more of those five parcels. The bill adds the specified property to the town limits of Stallings. The removal from the town limits of Matthews will not affect the validity of any liens of the Town of Matthews for ad valorem taxes or special assessments outstanding prior to the effective date of this act, and those liens may be collected or foreclosed upon after the effective date of the act as though the property were still within the corporate limits of the Town of Matthews.

BACKGROUND: This bill was requested by both town governing boards.

EFFECTIVE DATE: This act becomes effective June 30, 2012.

Kelly Quick with the Research Division substantially contributed to this summary.

H1110-SMTD-146(e1) v1

HOUSE BILL 1122*

Short Title:	Martin County Fire Districts.	(Local)
Sponsors:	Representatives E. Warren and Tolson (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN LEVIES AND COLLECTION OF FIRE DISTRICT TAXES IN MARTIN COUNTY AND TO ALLOW MARTIN COUNTY TO ABOLISH BY RESOLUTION ITS CHAPTER 69 FIRE PROTECTION DISTRICTS UPON ESTABLISHMENT OF FIRE PROTECTION SERVICE DISTRICTS UNDER CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. All collections of fire protection district revenues under Article 3A of Chapter 69 of the General Statutes by Martin County since 1956 are valid and lawful, without regard to which fire protection district (and corresponding fire tax rate) those revenues were collected from, and without regard to which fire department those revenues were allocated.

SECTION 2. Subject to the provisions of G.S. 105-378, the levies of fire protection district taxes by Martin County since 1956 that remain uncollected are valid and lawful, and the lien for such taxes remains, without regard to which fire protection district (and corresponding fire tax rate) those levies attached, and without regard to which fire department revenues (when collected) are to be allocated.

SECTION 3. Pending action by Martin County to establish fire protection service districts under Part 1 of Article 16 of Chapter 153A of the General Statutes, the boundaries of the fire protection districts in Martin County under Article 3A of Chapter 69 of the General Statutes are as defined by a district map prepared to delineate revised district boundaries and approved prior to July 1, 2012, by the Board of Commissioners of Martin County.

SECTION 4. Upon establishment of fire protection service districts in Martin County under Part 1 of Article 16 of Chapter 153A of the General Statutes with a limitation on the maximum rate under G.S. 153A-309.2, the Board of Commissioners of Martin County by resolution may abolish the corresponding fire protection districts in Martin County under Article 3A of Chapter 69 of the General Statutes as of the effective date of the creation of the new districts.

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 1122:
Martin County Fire Districts

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Reps. E. Warren, Tolson	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1122 would validate the tax-supported fire districts of Martin County, and authorize the County of Martin to transition to county service districts for the provision of fire protection.***

[As introduced, this bill was identical to S883, as introduced by Sen. Jenkins, which is currently in Senate State and Local Government.]

CURRENT LAW: Fire protection in areas outside cities is provided through the establishment of fire protection districts. The statutes provide for the creation of three types of rural fire districts:

- **Insurance districts.** G.S. 153A-233 authorizes counties to designate fire districts and prescribe their boundaries for insurance-grading purposes. To pay for this protection, the county is authorized to appropriate funds "not otherwise limited as to use by law."
- **Tax-supported fire districts.** Article 3A of Chapter 69 of the General Statutes authorizes tax-supported fire districts. They are created by a petition and an election. To pay for this protection, a special tax is levied and collected on all taxable property in the district at a rate not exceeding 15¢ on the $100 valuation of property. The district may be abolished by an election to abolish the fire district, called upon petition of at least 15% of the resident freeholders of the district. Unused funds are to be relinquished to the county and used as part of its general fund if a majority of the registered voters vote to abolish the fire district tax.
- **County service districts for fire protection.** Article 16 of Chapter 153A of the General Statutes authorizes the county commissioners to define service districts for fire protection after a public hearing. To pay for this protection, a county may levy an additional property tax within the district for the purpose of financing fire protection services. The county may also use revenues whose use is not otherwise restricted by law and it may issue general obligation bonds.

BILL ANALYSIS:

Sections 1-2. The bill would validate the collection of revenue from Martin County fire tax districts (created pursuant to Article 3A of Chapter 69), which taxes have been imposed since 1956. The County is currently able to locate a substantial portion of the documentation establishing the tax-supported fire districts. However, not all of the documentation regarding the districts can be located.

The bill further provides that the levies of fire protection district taxes by Martin County since 1956 that remain uncollected are valid and lawful, and any liens for these taxes remain.

Sections 3-4. The bill would authorize Martin County to delineate revised tax-supported fire district boundaries pending action by the County to establish a service district or districts for fire protection. The bill would also authorize the board of county commissioners to dissolve the tax-supported fire districts upon establishment of the county service districts for fire protection.

EFFECTIVE DATE: When it becomes law.

Erika Churchill, Staff Attorney with the Research Division, substantially contributed to this summary.

H1122-SMTD-147(e1) v1

HOUSE BILL 1169*

Short Title:	Town of Burgaw/Deannexation.	(Local)
Sponsors:	Representative Justice (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 30, 2012

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF BURGAW.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Burgaw:

All that land located in Burgaw Township, Pender County, State of North Carolina, adjoining the lands of James Henry (Bud) Moore, Marion Lane, Roy Lanier, Acme Wood Corporation, and others and being more particularly described as follows:

TRACT I

Beginning at a concrete location corner 3.4 feet from center of a cypress stump on the east side of the run of Burgaw Creek, J. H. (Bud) Moore's corner; thence his line and ditch North 65 degrees 09 minutes East 660.00 feet to a concrete monument; thence North 74 degrees 14 minutes East 1155.00 feet to a concrete monument; thence 77 degrees 09 minutes East 686.0 feet to an iron stake; thence North 88 degrees 58 minutes East 825.0 feet to an iron stake; thence North 84 degrees 51 minutes 1337.3 feet to two iron pipes at a ditch intersection; thence the same course North 84 degrees 51 minutes East 1367.5 feet to a plowed fire lane at a point South 62 degrees 25 minutes East 304.2 feet from a marked corner; thence with said fire lane South 62 degrees 25 minutes East 356.3 feet to a marked corner; thence South 51 degrees 05 minutes East 982.3 feet to a corner; thence South 12 degrees 15 minutes East 1072.6 feet to a pine stump with gum pointers; thence with line of Acme Wood Corporation, South 9 degrees 56 minutes West 2920.4 feet to a "D.L.G." stone; thence South 89 degrees 42 minutes West 455.4 feet to a concrete monument; thence North 86 degrees 30 minutes West 1483.35 feet to a pipe at a field cross ditch; thence North 85 degrees 50 minutes West 1333.3 feet to a concrete monument; thence the line of Marion Lane North 4 degrees 08 minutes East 1654.5 feet to a point upon the present avenue, leading to the house; thence with the avenue (Lane's line) North 85 degrees 58 minutes West 2845.9 feet to a spike in center of bridge over Burgaw Creek (Public Paved Road bridge); thence up the run of Burgaw Creek the following traversed courses and distances:

(1) North 16 degrees 02 minutes East 323.1 feet;
(2) North 09 degrees 33 minutes West 204.2 feet;
(3) North 22 degrees 55 minutes West 205.8 feet;
(4) North 87 degrees 36 minutes West 183.0 feet;
(5) North 27 degrees 18 minutes West 153.6 feet;
(6) South 89 degrees 24 minutes West 71.7 feet;

(7) North 3 degrees 32 minutes East 149.9 feet;
(8) North 18 degrees 18 minutes West 160.5 feet;
(9) North 76 degrees 04 minutes West 75.2 feet;
(10) North 33 degrees 16 minutes West 170.2 feet;
(11) North 56 degrees 37 minutes West 115.9 feet;
(12) North 24 degrees 47 minutes West 87.9 feet;
(13) North 60 degrees 48 minutes West 135.9 feet; and
(14) North 48 degrees 01 minutes West 191.6 feet to the point of Beginning, containing 523.99 acres, more or less, and described according to map of M.R. Walton, Registered Surveyor, entitled "Map of Survey for Teal A. Rivenbark" Burgaw Township, Pender County, North Carolina dated May-June 1962, reference to which is hereby made for a more particular description.

TRACT II

Beginning at a point in a fire lane which is South 62 degrees 25 minutes East 304.2 feet from a marked corner of Corbett Package Company, also being the most Northeasterly corner of the above "First Tract" herein and running thence with the fire line South 62 degrees 25 minutes East 356.3 feet to a marked corner; thence South 51 degrees 05 minutes East 982.3 feet to a corner; thence South 12 degrees 15 minutes East 1072.5 feet to a pine stump with gum pointers; thence leaving the lines of "First Tract" herein North 9 degrees 56 minutes East 2005.1 feet to a stake; thence South 84 degrees 51 minutes West 1649.7 feet to the point of Beginning, containing 23.65 acres, more or less, and described according to map of M.R. Walton, Registered Surveyor, dated May-June 1962 entitled "Map of Survey for Teal A. Rivenbark", Burgaw Township, Pender County, North Carolina, reference to which is hereby made for a more particular description.

Subject however, to the right-of-way in favor of Four County Electric Membership Corporation recorded in Book 226, at Page 282 of the Pender County Registry.

SECTION 2. This act has no effect upon the validity of any liens of the Town of Burgaw for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the Town of Burgaw.

SECTION 3. This act becomes effective July 1, 2012.

HOUSE BILL 1169:
Town of Burgaw/Deannexation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Justice	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 1169 would deannex two described areas from the Town of Burgaw.

[As introduced, this bill was identical to S946, as introduced by Sen. Rabon, which is currently in Senate Finance.]

CURRENT LAW: Under Section 1 of Article VII of the NC Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

Pursuant to this Section, the General Assembly enacted Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to *deannex* property – that power remains with the General Assembly.

BILL ANALYSIS:

Section 1 of House Bill 1169 would deannex two described tracts from the Town of Burgaw.

Section 2 of the bill would provide that liens for property taxes or special assessments on property in the area outstanding before the effective date would remain in effect.

EFFECTIVE DATE: House Bill 1169 would be effective July 1, 2012.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

H1169-SMTD-148(e1) v1

HOUSE BILL 1197

Short Title:	Add Stokes Cty to Tax Cert Before Recordation.	(Local)
Sponsors:	Representative Holloway (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government.	

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE STOKES COUNTY TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31 reads as rewritten:

"**§ 161-31. Tax certification.**

(a) Tax Certification. – The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

(a1) Exception to Tax Certification. – If a board of county commissioners adopts a resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register of deeds shall accept without certification a deed submitted for registration under the supervision of a closing attorney and containing this statement on the deed: "This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

(b) Applicability. – This section applies only to Alamance, Alexander, Anson, Beaufort, Bertie, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, Yadkin, and Yancey Counties."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1197:
Add Stokes Cty to Tax Cert Before Recordation

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Holloway	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 857 authorizes Stokes County to require payment of delinquent property taxes prior to recording deeds conveying property.

[As introduced, this bill was identical to S857, as introduced by Sen. East, which was given a favorable report by Senate Finance on June 5, 1012.]

CURRENT LAW: *G.S. 161-31(a)* allows a county board of commissioners, by resolution, to require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

G.S. 161-31(a1) provides an exception. It requires the register of deeds to accept, without certification, a deed containing the following statement: "This instrument prepared by: _____ _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

G.S. 161-31(b) lists the 73 counties to which this provision currently applies.[1]

The following 4 counties have a similar requirement but under different authorizing legislation:

Avery County	Chapter 305 of the 1963 Session Laws, as amended by S.L. 1997-410 and S.L. 1998-73[2]
Ashe County	S.L. 1993-657, as amended by S.L. 1997-410 and S.L. 2005-433[3]
Alleghany County	S.L. 1997-410
Mitchell County	S.L. 1987-537, as amended by S.L. 1997-410 and S.L. 1999-326[4]

These local acts provide that the Register of Deeds shall not record any deed unless it is accompanied by a certification that all delinquent taxes have been paid. These local acts are in contrast to G.S. 161-31, which gives certain counties the discretion to pass a resolution to that effect.

BILL ANALYSIS: Senate Bill 857 amends G.S. 161-31(b) to add Stokes County to the list of counties in which the board of commissioners is permitted to pass a resolution requiring the register of deeds not to accept any deed transferring real property unless the county tax collector certifies that the taxes listed in the statute are not delinquent and are not a lien on the property.

EFFECTIVE DATE: This bill is effective when it becomes law.

H1197-SMSV-132(e1) v1

[1] The Register of Deeds in Duplin County must also receive a certification that no municipal taxes or any other taxes the collector is charged with collecting are a lien on the property before a deed transferring the property may be recorded.

[2] The Town of Newland was added in 1997; the Town of Banner Elk was added in 1998.

[3] S.L. 2005-433 provides that in addition to receiving a certification from the county tax collector, the Register of Deeds must also receive a certification from any municipal tax collector, where applicable, verifying that all delinquent taxes on the property have been paid.

[4] This local act also provides that if the property is located in the Town of Spruce Pine or the Town of Bakersville, the deed must also be accompanied by a certification from the town tax collector that all municipal taxes have been paid with respect to the property.

HOUSE BILL 1202*
Committee Substitute Favorable 6/13/12

Short Title: Roanoke Rapids Deannex/Halifax N'hmpt Airport. (Local)

Sponsors:

Referred to:

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO DEANNEX FROM THE CITY OF ROANOKE RAPIDS A PARCEL PREVIOUSLY ANNEXED BY A LEGISLATIVE ANNEXATION AND AMENDING THE AUTHORIZING LEGISLATION FOR THE HALIFAX-NORTHAMPTON REGIONAL AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The following property, which was annexed to the City of Roanoke Rapids by S.L. 2005-9, is removed from the corporate limits of the City of Roanoke Rapids: Halifax County Tax Office Parcel ID 1201473.

SECTION 1.(b) The City of Roanoke Rapids may exercise all the powers granted by Article 19 of Chapter 160A of the General Statutes in the area removed from the corporate limits by Section 1 of this act.

SECTION 1.(c) This section becomes effective June 30, 2012.

SECTION 2.(a) Section 4(a)(1) of S.L. 1997-275, as amended by S.L. 1998-130, reads as rewritten:

"(a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, control, lease, equip, improve, maintain, operate, and regulate or otherwise dispose of lands, facilities, and improvements for the use, restoration, manufacture, or repair of airplanes and other aircrafts; to finance and refinance for public and private parties airport facilities and improvements which relate to, develop, or further airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, transportation, distribution, storage, and aviation facilities and improvements; to secure any such financing or refinancing by all or any portion of their revenues, income, or assets or other available monies associated with any of their airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of its properties associated with its airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State. ~~airports and landing fields for the use of airplanes and other aircraft within the limits of the County and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property.~~ The Airport Authority

may exercise these powers alone or in conjunction with the City of Roanoke Rapids, the County of Northampton, or the County of Halifax."

SECTION 2.(b) Section 4(a)(12) of S.L. 1997-275 is repealed.

SECTION 3. Except as provided herein, this act is effective when it becomes law.

HOUSE BILL 1202: Roanoke Rapids Deannex/Halifax N'hmpt Airport

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Reps. Bryant, Bradley, Wray	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 1202 deannexes a described area from the City of Roanoke Rapids, and changes the powers of the Halifax-Northampton Regional Airport Authority.***

[As introduced, this bill was identical to S956, as introduced by Sen. Jones, which is currently in Senate State and Local Government.]

BILL ANALYSIS: House Bill 1202 makes the following changes:

- **Section 1.(a):** Deannexes a described area from the City of Roanoke Rapids.
- **Section 1.(b):** Provides that the deannexed area remains subject to the City's planning, zoning, subdivision, and other powers under Article 19 of Chapter160A
- **Section 2.(a):** Amends the powers of the Halifax-Northampton Regional Airport Authority to allow the authority to "purchase, acquire, establish, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, control, lease, equip, improve, maintain, operate, and regulate or otherwise dispose of lands, facilities, and improvements for the use, restoration, manufacture, or repair of airplanes and other aircrafts; to finance and refinance for public and private parties airport facilities and improvements which relate to, develop, or further airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, transportation, distribution, storage, and aviation facilities and improvements; to secure any such financing or refinancing by all or any portion of their revenues, income, or assets or other available monies associated with any of their airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of its properties associated with its airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State."
- **Section 2. (b):** Repeals Section 4(a)(12) of S.L. 1997-275, which authorized the Airport authority to : "To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 25 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans."

EFFECTIVE DATE: Section 1 becomes effective June 30, 2012. The remainder of the bill becomes effective when it becomes law.

BACKGROUND: Section 2 of the bill is requested to ensure adequate authorization for the development of the LSA America, Inc. permanent light sport aircraft production facility at the Airport.

Giles Perry, counsel to Senate State & Local Government, substantially contributed to this summary.

H1202-SMSV-138(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 1206
Committee Substitute Favorable 6/13/12

Short Title: Butner Boundary Clarification. (Local)

Sponsors:

Referred to:

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO MORE ACCURATELY DESCRIBE THE CORPORATE LIMITS OF THE TOWN OF BUTNER.

The General Assembly of North Carolina enacts:

SECTION 1. Article II of the Charter of the Town of Butner, being Section 1.1 of S.L. 2007-269, reads as rewritten:

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Butner are as shown ~~on a map produced June 12, 2007, by the Granville County Tax Department and kept on file in the Butner City Hall, the Granville County Planning Department, and in the office of the Granville County Board of Elections.~~ on the plat recorded at Plat Book 40, Page 168, Sheets 1-33, in the office of the Granville County Register of Deeds entitled "Corporate Limits Survey for the Town of Butner" and shall also include that certain tract of land consisting of 47.3523 acres and that certain tract of land consisting of 12.0022 acres as shown on that certain plat recorded at Plat Book 34, Page 144, in the office of the Granville County Register of Deeds entitled "Survey For: Public Acquisition/South Granville Water and Sewer Authority/Dutchville Township-Granville County/Butner, North Carolina." The area within said boundaries shall be in the Town of Butner and in no other municipality.

"Section 2.2. **Extraterritorial Jurisdiction.** Until modified in accordance with law, the extraterritorial jurisdiction of the Town of Butner under G.S. 160A-360 shall be as shown on a ~~map produced June 12, 2007, by the Granville County Tax Department and kept on file in the Butner Town Hall, the Granville County Planning Department, and in the office of the Granville County Board of Elections.~~maps recorded in Plat Book 40, Page 169, Sheets 1-13, in the office of the Granville County Register of Deeds entitled "Mapping of Extraterritorial Jurisdiction for the Town of Butner."

"Section 2.3. **Restrictions on Annexation as to Creedmoor.**

(a) The Town of Butner may not annex under Article 4A of Chapter 160A of the General Statutes any territory not shown in its corporate limits on the plats recorded at Plat Book 40, Page 168, Sheets 1-33, in the office of the Granville County Register of Deeds entitled "Corporate Limits Survey for the Town of Butner" or in its extraterritorial jurisdiction on the ~~map produced June 12, 2007, by the Granville County Tax Department and kept on file in the Butner Town Hall, the Granville County Planning Department, and the Granville County Board of Elections~~ maps recorded in Plat Book 40, Page 169, Sheets 1-13, in the office of the Granville County Register of Deeds entitled "Mapping of Extraterritorial Jurisdiction for the Town of Butner" located east of the centerline of Cash Road and south of Interstate 85 without first receiving approval of the City of Creedmoor Board of Commissioners.

(b) For a period of five years following the effective date of the incorporation of the Town of Butner, the Town of Butner may not involuntarily annex under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes any territory not shown in its corporate limits or extraterritorial jurisdiction ~~on the map produced June 12, 2007, by the Granville County Tax Department and kept on file in the Butner Town Hall, the Granville County Planning Department, and the Granville County Board of Elections~~ on the plats recorded at Plat Book 40, Page 168, Sheets 1-33, in the office of the Granville County Register of Deeds entitled "Corporate Limits Survey for the Town of Butner" or in its extraterritorial jurisdiction on the maps recorded in Plat Book 40, Page 169, Sheets 1-13, in the office of the Granville County Register of Deeds entitled "Mapping of Extraterritorial Jurisdiction for the Town of Butner" located west of the centerline of Cash Road and South of Interstate 85 without first receiving approval of the City of Creedmoor Board of Commissioners.

"Section 2.4. **Restrictions on Annexation and Extraterritorial Jurisdiction as to the City of Durham.**

(a) Notwithstanding the provisions of G.S. 160A-58.1(b)(2) and provided the remainder of the requirements of Part 4 of Article 4A of Chapter 160A of the General Statutes are met, the City of Durham may annex by satellite annexation pursuant to G.S. 160A-58.1, or any successor statute, any territory in Durham County that is closer to the primary corporate limits of the Town of Butner than to the primary corporate limits of the City of Durham. This subsection shall also be considered as part of the Charter of the City of Durham.

(b) In addition to any other requirements of law, the Town of Butner may not annex under Article 4A of Chapter 160A of the General Statutes any territory in Durham County, or exercise extraterritorial authority under Article 19 of Chapter 160A of the General Statutes in Durham County, without first receiving approval of the City of Durham, as evidenced by a resolution or ordinance adopted by the City Council.

(e) The Town of Butner shall not request any changes in this section of the Charter without first receiving approval of the City of Durham, as evidenced by a resolution or ordinance adopted by the City Council."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1206:
Butner Boundary Clarification

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Crawford	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 1206 does two things:

- ***Amends the Charter of the Town of Butner to reflect recorded documents establishing the corporate limits of the Town.***
- ***Adds to the corporate limits property on which the South Granville Water and Sewer Authority wastewater treatment plant is situated.***

CURRENT LAW & BILL ANALYSIS: The charter of the Town of Butner establishes the corporate limits and the extraterritorial jurisdiction. The description used in the charter is a reference to a map produced June 12, 2007, by the Granville County Tax Department and kept on file in the Butner Town Hall, the Granville County Planning Department, and the Granville County Board of Elections.

The bill would change the reference to the description to specific maps recorded in the Granville County Register of Deeds Office as follows:

- Corporate limits: Plat Book 40, Page 168, Sheets 1-33, entitled "Corporate Limits Survey for the Town of Butner"
- Extraterritorial jurisdiction: Plat Book 40, Page 169, Sheets 1-13, entitled "Mapping of Extraterritorial Jurisdiction for the Town of Butner"

The bill would also add approximately 60 acres to the corporate limits, on which is situated a wastewater treatment plant owned by the South Granville Water and Sewer Authority. Currently, the plant is within the planning and zoning jurisdiction of the Department of Health and Human Services. By adding the tracts to the corporate limits, the plant would be subject to the planning and zoning authority of the Town, which will facilitate the upgrade of the plant.

EFFECTIVE DATE: When it becomes law.

Erika Churchill, counsel to House Government, substantially contributed to this summary.

H1206-SMSV-137(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 1216*
Committee Substitute Favorable 6/14/12

Short Title: Town of Wallace/Satellite Annexations. (Local)

Sponsors:

Referred to:

May 31, 2012

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN RESTRICTIONS ON SATELLITE ANNEXATIONS FOR THE TOWN OF WALLACE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

(1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.

(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city, except as set forth in subsection (b2) of this section.

(3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

~~(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.~~

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Belmont, Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Apex, Ayden, Benson, Bladenboro, Bridgeton, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Huntersville, Jamestown, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Richlands, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

SECTION 2. This act applies only to the annexation of the property on which the Vidant Family Medicine facility is located.

SECTION 3. This act applies to the Town of Wallace only.

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 1216:
Town of Wallace/Satellite Annexations

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Dixon	**Prepared by:**	Trina Griffin
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 1216 changes the standards for voluntary satellite annexations applicable the Town of Wallace's voluntary satellite annexation of the property on which the Vidant Family Medicine facility is located.

[As introduced, this bill was identical to S944, as introduced by Sen. Jackson, which is currently in Senate Finance.]

CURRENT LAW: G.S. 160A-58.1 governs voluntary municipal annexation of noncontiguous property (known as voluntary satellite annexation). If all property owners in a satellite area petition a municipality for voluntary annexation of the noncontiguous property, the municipality may annex the property, if it meets all of the following five standards:

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. **If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.**
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

BILL ANALYSIS: House Bill 1216 exempts the Town of Wallace from the fourth standard for voluntary satellite annexation of the property on which the Vidant Family Medicine facility is located. The Town of Wallace was already exempted from standard #5, above.[1] The Town of Wallace will be required to provide municipal services (standard #3) to the voluntarily annexed satellite area.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: The General Assembly has exempted at least 16 other municipalities from the fourth standard.

Giles Perry, counsel to House Government, substantially contributed to this summary.

H1216-SMSV-136(e2) v1

[1] S.L. 2004-57.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 1217
Second Edition Engrossed 6/19/12

Short Title:	Asheville/Woodfin Boundary Adjustments.	(Local)
Sponsors:	Representatives Fisher, Moffitt, and Keever (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government.	

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE BOUNDARIES OF THE TOWN OF WOODFIN AND THE CITY OF ASHEVILLE, AS REQUESTED BY THE GOVERNING BOARDS OF THOSE MUNICIPALITIES, BY (1) ANNEXING INTO THE CITY OF ASHEVILLE CERTAIN STATE-OWNED PROPERTY, (2) REMOVING CERTAIN STATE-OWNED PROPERTY FROM THE TOWN OF WOODFIN AND ANNEXING IT INTO THE CITY OF ASHEVILLE, (3) REMOVING CERTAIN STATE-OWNED AND PRIVATE PROPERTY FROM THE CITY OF ASHEVILLE AND ANNEXING IT INTO THE TOWN OF WOODFIN, AND (4) UPON PETITION OF THE OWNER AND WITH THE CONCURRENCE OF THE TOWN OF WOODFIN, ALLOWING THE CITY OF ASHEVILLE TO ANNEX CERTAIN PROPERTY IN THE TOWN OF WOODFIN THAT, AS A RESULT OF THE OPERATION OF THIS ACT, IS SURROUNDED BY THE CITY OF ASHEVILLE OR A COMBINATION OF THE CITY OF ASHEVILLE AND UNINCORPORATED AREA, AND PROVIDING FOR THE CITY OF ASHEVILLE AND THE TOWN OF WOODFIN TO ENTER INTO AGREEMENTS REGARDING THE PROVISION OF MUNICIPAL SERVICES TO CERTAIN PROPERTIES IN EACH OTHER'S JURISDICTION.

The General Assembly of North Carolina enacts:

SECTION 1. All of that property shown on Sheet 1 of 6 of the "Survey for Asheville/Woodfin Boundary Adjustments and Annexations," recorded in Plat Book 132 at Pages 166 through 171 in the Buncombe County Registry (herein Asheville/Woodfin Boundary Survey) and designated as "Proposed Annexation Area Town of Woodfin (currently City of Asheville)" is hereby removed from the City of Asheville and annexed into the Town of Woodfin.

SECTION 2. The corporate limits of the City of Asheville and the Town of Woodfin are hereby adjusted and reestablished as shown on Sheets 2, 3, 4, 5, and 6 of the Asheville/Woodfin Boundary Survey such that:

(1) Those areas designated as "Proposed Annexation Area City of Asheville (currently Town of Woodfin)" are removed from the Town of Woodfin and annexed into the City of Asheville;

(2) Those areas designated as "Proposed Annexation Area City of Asheville (currently Buncombe County)" are annexed into the City of Asheville; and

(3) The remaining unincorporated area situated at the intersection of U.S. 19-23, Broadway Street, and Riverside Drive is annexed into the Town of Woodfin.

(4) All of that property described in a deed from W. T. Duckworth, et al. to the State of North Carolina, recorded July 1, 1968, in Deed Book 983, page 247, in the Buncombe County Registry, and shown on a plat recorded in Plat Book 37, page 89, Buncombe County Registry is annexed into the City of Asheville.

SECTION 3. Except as adjusted herein, the boundaries of the City of Asheville and the Town of Woodfin are unchanged.

SECTION 4. Any property shown on Sheets 2, 3, or 4 of the Asheville/Woodfin Boundary Survey as being part of the Town of Woodfin, and which by operation of this act is no longer contiguous with the primary limits of the Town of Woodfin, may be annexed by the City of Asheville pursuant to Part 1 of Article 4A of Chapter 160A of the General Statutes (or successor statute) upon petition of the property owner as provided in that Part, but only if the petition is accompanied by an ordinance of the Town of Woodfin consenting to such annexation. The annexation may only become effective on June 30 of a calendar year and does not extinguish tax liens of the Town of Woodfin. Nothing in this act shall be construed as limiting the powers of the City of Asheville or the Town of Woodfin under Article 4A of Chapter 160A of the General Statutes (or successor statute) with respect to any unincorporated area.

SECTION 5. In order to provide efficient delivery of services, the Town of Woodfin, the City of Asheville, and Buncombe County are hereby authorized to enter into intergovernmental agreements regarding delivery of municipal services to those parts of the Town of Woodfin made noncontiguous by operation of this act, and to unincorporated areas of Buncombe County that are completely surrounded by the City of Asheville or a combination of the City of Asheville and the Town of Woodfin by operation of this act.

SECTION 6. This act becomes effective June 30, 2012.

HOUSE BILL 1217:
Asheville/Woodfin Boundary Adjustments

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Reps. Fisher, Moffitt, Keever	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 1217 adjusts the boundaries of the Town of Woodfin and the City of Asheville, as requested by the governing boards of those municipalities.***

BILL ANALYSIS:

Section 1. Removes specified parcels of land from the city limits of Asheville and places them within the town limits of Woodfin.

Section 2. The bill:

- Removes specified parcels of land from the town limits of Woodfin and places them within the city limits of Asheville.
- Annexes certain areas in Buncombe County into the City of Asheville.
- Annexes a specified unincorporated area into the Town of Woodfin.

Section 3. Clarifies that all other boundaries of the City of Asheville and the Town of Woodfin not specified in this bill remain unchanged.

Section 4. Permits the City of Asheville to annex certain property in the Town of Woodfin that, as a result of this act, is surrounded by the City of Asheville, or a combination of the City of Asheville and an unincorporated area. For the annexation to occur, the owner must petition for the annexation, and the Town of Woodfin must concur by ordinance.

Section 5. Authorizes the Town of Woodfin, the City of Asheville, and Buncombe County to enter into intergovernmental agreements regarding delivery of municipal services to areas affected by the bill.

EFFECTIVE DATE: This act becomes effective June 30, 2012.

H1217-SMSV-135(e2) v1

Kelly Quick, committee staff to House Government, and Trina Griffin, Counsel to House Finance, contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 1114*
Committee Substitute Favorable 6/6/12

Short Title: NCEMPA/Use of Rate Revenue. (Public)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE CITIES AND TOWNS THAT ARE MEMBERS OF THE NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY SHALL USE REVENUE DERIVED FROM RATES FOR ELECTRIC SERVICE FOR PAYING THE DIRECT AND INDIRECT COSTS OF OPERATING THE ELECTRIC SYSTEM, TRANSFERRING AMOUNTS THAT REPRESENT A RATE OF RETURN ON THE INVESTMENT IN THE ELECTRIC SYSTEM, AND MAKING DEBT SERVICE PAYMENTS, AND TO MAKE CLARIFYING CHANGES TO THE AMOUNT OF THE RETURN ON INVESTMENT TRANSFER.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2011-129 reads as rewritten:

"**SECTION 2.** ~~This act only applies to the towns of Clayton, Selma, and Smithfield.~~ This act applies only to the following cities and towns that are members of the North Carolina Eastern Municipal Power Agency: Apex, Ayden, Belhaven, Benson, Clayton, Edenton, Elizabeth City, Farmville, Fremont, Greenville, Hamilton, Hertford, Hobgood, Hookerton, Kinston, LaGrange, Laurinburg, Louisburg, Lumberton, New Bern, Pikeville, Red Springs, Robersonville, Rocky Mount, Scotland Neck, Selma, Smithfield, Southport, Tarboro, Wake Forest, Washington, and Wilson."

SECTION 2. G.S. 159B-39(c), as enacted by S.L. 2011-129, reads as rewritten:

"(c) The total amount transferred to other funds of the municipality authorized as a rate of return on the investment of the municipality in the electric system ~~shall not exceed the amount allowed in this subsection. The amount to be transferred~~ shall be calculated using amounts reported in the municipality's audited financial statements for the preceding fiscal year. The amount transferred may be less than the following, but in no event may the amount transferred exceed the greater of ~~shall not exceed either of~~ the following:

(1) Three percent (3%) of the gross capital assets of the electric system at the end of the preceding fiscal year.

(2) Five percent (5%) of the gross annual revenues of the electric system for the preceding fiscal year."

SECTION 3. Section 1 of this act becomes effective July 1, 2014. The remainder of this act is effective when it becomes law.

HOUSE BILL 1114:
NCEMPA/Use of Rate Revenue

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Reps. Brawley, Collins	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 1114 would require revenues from the municipal owned electric systems of cities and towns that are members of the North Carolina Eastern Municipal Power Agency (NCEMPA) to be used only for the following:

- ***Direct and indirect costs of the systems.***
- ***Transfers to other funds of the municipality that represent a rate of return on the investment in the system.***
- ***Debt service payments on the system.***

CURRENT LAW: Cities are authorized to operate public enterprises, including electric power generation, transmission, and distribution systems. The cities have the authority to set rates for the electric system. Because the cities are not considered public utilities under the statutes, the rates set by municipalities for the electric systems are not subject to review by the Utilities Commission.

Cites are also authorized to establish and operate electric power projects by formation of a joint agency. These joint agencies are authorized to issue revenue bonds to finance the costs of a project. Two joint agencies have been formed under this authorization, North Carolina Municipal Power Agency No. 1 (NCMPA1) and North Carolina Eastern Power Agency (NCEMPA) were formed. NCMPA1 has 19 members; NCEMPA has 32 members; 19 other cities offer electric service but do not belong to either of the Municipal Power Agencies.

The NCEMPA owns interest in five generating units built and operated by Progress Energy. These facilities include three nuclear units, 2 units at the Brunswick Plant in Brunswick County, and 1 unit at Shearon Harris Plant in Wake County. The NCEMPA also owns an interest in two coal-fired plants in Person County. The debt for the NCEMPA as of June 1, 2012 is $2,153,770,000.00

Last session, S.L. 2011-129 was enacted to limit the use of revenues from the electric systems operated by **Clayton, Selma, and Smithfield.** The revenues may only be used to pay the direct and indirect costs of operating the system, transferring an amount that represents the rate of return on the system, or to make debt service payments.

The direct and indirect costs of the electric system include all of the following:

- Debt service payments on indebtedness incurred for the electric system or secured by revenues of the electric system.
- Capital improvements or equipment for the electric system.
- Payments for the cost of power purchased under contractual arrangements.
- Debt service, maintenance, renewal, and replacement or other reserves required by legal documents entered into by the municipality in connection with the issuance of bonds or other indebtedness for the electric system.
- Reserves deemed necessary by the governing body of the municipality to assure that funds are available to maintain the financial and operational integrity of the electric system.

- Maintaining a rate stabilization fund to minimize the impact of periodic rate changes that would otherwise be required to reflect changes in costs of operations and demand for electric service.
- Making payments in lieu of taxes to other governmental units to reflect property taxes that would have been collected by the other governmental unit if the municipality were not the owner of the electric system.
- Making transfers to the general fund or other funds of the municipality to reimburse the general fund or other funds for costs paid from the funds that are reasonably allocable to the electric system.

The total amount transferred as a rate of return on the municipality's investment in the electric system is one of the following:

- 3% of gross capital assets of the system in the prior year.
- 5% of the annual gross revenues of the system in the prior year.

The restrictions in the act do not apply to actions taken by the Local Government Commission.

BILL ANALYSIS: The proposed committee substitute to House Bill 1114 extends the restriction on the use of revenue in S.L. 2011-129 to all of the cities in the North Carolina Eastern Municipal Power Agency. The following cities and towns are members:

Apex, Ayden, Belhaven, Benson, Clayton, Edenton, Elizabeth City, Farmville, Fremont, Greenville, Hamilton, Hertford, Hobgood, Hookerton, Kinston, LaGrange, Laurinburg, Louisburg, Lumberton, New Bern, Pikeville, Red Springs, Robersonville, Rocky Mount, Scotland Neck, Selma, Smithfield, Southport, Tarboro, Wake Forest, Washington, and Wilson

EFFECTIVE DATE: This act becomes effective July 1, 2014.

H1114-SMTD-139(e2) v1

H 1

HOUSE BILL 991

Short Title:	Jackson Co. Occupancy Tax Changes.	(Local)
Sponsors:	Representative Haire (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government, if favorable, Finance.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO POSTPONE THE EFFECTIVE DATE OF CHANGES MADE TO THE JACKSON COUNTY OCCUPANCY TAX DURING THE 2011 REGULAR SESSION OF THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2011-170 reads as rewritten:

"**SECTION 7.** Part II and Section 5 of this act become effective January 1, 2013. ~~This~~ The remainder of this act is effective when it becomes law."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 991:
Jackson Co. Occupancy Tax Changes

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 27, 2012
Introduced by:	Rep. Haire	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 991 would delay the effective date of legislation enacted during the 2011 session authorizing Jackson County to levy an additional 3% room occupancy tax and requiring other administrative changes.

CURRENT LAW: In 1985, the General Assembly authorized several western counties, including Jackson, to levy an occupancy tax of 3%. The net proceeds of the tax are placed in a special Travel and Tourism Fund and may be used only to promote travel and tourism in the county. The county has discretionary authority to establish a tourism development authority to administer the funds.

In 2011, the General Assembly enacted S.L. 2011-170 (HB 96), which rewrote and recodified the law authorizing the 3% room occupancy tax in Jackson County to conform the content to the uniform format currently used for occupancy taxes. By conforming to the House Finance Occupancy Tax Guidelines, Jackson County may use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it could not do under the 1985 law. The 2011 legislation also authorized Jackson County to levy an additional 3% occupancy tax with the same conditions and requirements that apply to the first 3%.

BILL ANALYSIS: House Bill 991 would delay until January 1, 2013, the effective date of the 2011 legislation. The county has requested this legislation.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: As noted above, the 1985 legislation did not require the occupancy tax proceeds to be administered by a tourism development authority. In 1987, the legislation was amended to give the County discretionary authority to establish a travel and tourism authority. Jackson County currently has two travel and tourism authorities that administer the proceeds of the 3% room occupancy tax: the Jackson County Tourism Authority and the Cashiers Tourism Authority. Based upon the way the 2011 legislation was drafted, the County was required to establish a single, countywide Tourism Development Authority as soon as the act became law, regardless of when and whether the County enacted the additional 3% occupancy tax. The County believed that it would not have to establish a single TDA until it enacted the additional 3% tax. The County would like additional time to transition to a single TDA and, therefore, requested the effective date extension.

H991-SMSV-140(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Fiscal Note

BILL NUMBER: House Bill 991 (First Edition)

SHORT TITLE: Jackson Co. Occupancy Tax Changes.

SPONSOR(S): Representative Haire

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES	****No Fiscal Impact****				
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Jackson County

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY: House Bill 991 amends SL 2011-170 to postpone changes made to Jackson County's occupancy tax until January 1, 2013.

ASSUMPTIONS AND METHODOLOGY: The 2011 legislation allowed for an additional 3% occupancy tax to be levied with the same conditions and requirements that apply to the initial 3% rate. House Bill 991 would simply move the effective date of that legislation to January 1, 2013. There would be no fiscal impact, as the additional 3% occupancy tax is not being levied.

SOURCES OF DATA: Committee Counsel Report

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Mark Trogdon, Acting Director
Fiscal Research Division

DATE: June 4, 2012

Official Fiscal Research Division Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE PAGES ATTENDING

COMMITTEE: Finance ROOM: 544

DATE: 6-27 TIME: 12:30pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Chris Dougherty	Pinehurst	Blake
2 David Rosero	Black Mtn	Nesbitt
3 Damonique Levy	Sampson	Jackson
4 Staci Batts	Rocky Mount	Jenkins
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 27, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCCBA
[signature]	SA
[signature]	RLA
[signature]	NC HBA
[signature]	NC HBA
[signature]	Duke Energy
[signature]	NCAR
[signature]	"
[signature]	Progress Energy
[signature]	CA
[signature]	DRA

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 27, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tom Bean	EDF
Mitch Leonard	SCANC
David McKeown	NCAR
BRUCE THOMPSON	PARKER POE
Chip Mullin	nelson mullins
Jamie Stirewalt	NCAE
Kelly Goodman	NCAE
Melanie Hudson	NCAE
Lorie Batterman	NCAE
Nicholas Nostro Jr.	NCAE
Graham Dean	NCLM

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 27, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kellie Ma	NCCM
Mandy Thompson	Weyerhaeuser
Joel Mamnoo	CBM & Assoc
Andy Ellen	MHA

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 27, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Drew Saunders	Electri Cities
Penny Griffin	School & Gov.
Ashleigh Thompson	MWC
Susanna Hailey	K&L Gates
Darla Slipke	Rocky Mount Telegram
Michelle Fiorier	MFS
Mia Bailey	ElectriCities
Cameron Hanley	Electri Cities
Allison Waller	Nelson Mullins
Matt Meinig	NCLM
DAVID BARNES	PS

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 27, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Fred Bass	City & Hist Fdn
Dana Fountain	CLT
Kara Weishaar	SA
	MSC
Lorna Jesta	Aide for M.T. - Dist property
Murray Christensen	NCRLA
Nellie Jones	Nestle Purina
Patricia A. Gaines	NCANP
Susan R. DeJarnette	NCANP
Myron Pierce	

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 27, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jim Willis	NCLCV
Rebecca Troxler	NCACC

SENATE FINANCE COMMITTEE
Thursday, June 28, 2012 at 5:40 PM
Senate Chamber

MINUTES

The Senate Finance Committee met at 5:40 PM on June 28, 2012, on the floor of the Senate Chamber. Senator Bob Rucho presided.

HB 799 – Licensure by Endorsement/Military/Spouses.

Senator Brunstetter was recognized to explain the bill. It would allow military-trained applicants who have been awarded a military occupational specialty and military-spouse applicants who are licensed in another jurisdiction to receive occupational licenses in this State. The applicants would have to meet requirements either in the military or in another jurisdiction that are substantially equivalent to or exceed the State requirements for licensure. State occupational licensing boards would also be able to issue temporary practice permits to these applicants until a license is granted or a notice to deny a license is issued. Senator Brock moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 5:44 PM.

Bob Rucho
Senator Bob Rucho, Presiding

DeAnne Mangum
DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Thursday, June 28, 2012

Senator RUCHO,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS #2) **799** Licensure by Endorsement/Military/Spouses.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Brunstetter

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 4

HOUSE BILL 799
Second Edition Engrossed 6/6/11
Senate Commerce Committee Substitute Adopted 6/7/12
Senate Rules and Operations of the Senate Committee Substitute Adopted 6/28/12

Short Title: Licensure by Endorsement/Military/Spouses. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW LICENSURE BY ENDORSEMENT FOR MILITARY PERSONNEL AND MILITARY SPOUSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93B of the General Statutes is amended by adding a new section to read:

"**§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.**

(a) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

(1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: completed a military program of training, completed testing or equivalent training and experience as determined by the board, and performed in the occupational specialty.

(2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.

(4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(b) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

(1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(2) Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.

(4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.

(5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(c) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) or (b) of this section.

(d) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by an occupational licensing board in this State.

(e) Nothing in this section shall be construed to apply to the practice of law as regulated under Chapter 84 of the General Statutes.

(f) An occupational licensing board may issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of an occupational licensing board in this State. The military-trained applicant or military spouse may practice under the temporary permit until a license, certification, or registration is granted or until a notice to deny a license, certification, or registration is issued in accordance with rules adopted by the occupational licensing board.

(g) An occupational licensing board may adopt rules necessary to implement this section.

(h) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification, or registration requirements established by an occupational licensing board in this State.

(i) For the purposes of this section, the State Board of Education shall be considered an occupational licensing board when issuing teacher licenses under G.S. 115C-296.

(j) For the purposes of this section, the North Carolina Medical Board shall not be considered an occupational licensing board."

SECTION 2. Within one year from the effective date of this act, each occupational licensing board regulating an occupation in this State and subject to the provisions of Chapter 93B of the General Statutes shall implement the requirements of G.S. 93B-15.1, as enacted by Section 1 of this act.

SECTION 3. The Legislative Research Commission shall study the issue of allowing licensure by the North Carolina Medical Board for individuals with military training

and experience, for military spouses by endorsement, and for temporary licenses for military-trained applicants or military-spouse applicants. The Commission shall make a report on this issue, including any recommendations or legislative proposals, to the 2013 Regular Session of the General Assembly upon its convening.

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 799:
Licensure by Endorsement/Military/Spouses

2011-2012 General Assembly

Committee:	Senate Finance	**Date:**	June 28, 2012
Introduced by:	Reps. Martin, Killian	**Prepared by:**	Cindy Avrette
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: ***House Bill 799 would allow military-trained applicants who have been awarded a military occupational specialty and military-spouse applicants who are licensed in another jurisdiction to receive occupational licenses in this State. The applicants would have to meet requirements, either in the military or in another jurisdiction, that are substantially equivalent to or exceed the State requirements for licensure. State occupational licensing boards would also be able to issue temporary practice permits to these applicants until a license is granted or a notice to deny a license is issued.***

CURRENT LAW: An "occupational licensing board" means any board established for the primary purpose of regulating the entry of persons into a particular profession and the conduct of persons within the profession that is authorized to issue licenses. Occupational licensing board does not include State agencies staffed by full-time State employees who issue licenses as part of their regular duties.

BILL ANALYSIS: House Bill 799 would require occupational licensing boards to issue occupational licenses to military-trained applicants and military-spouse applicants if the following requirements are net:

- A military-trained applicant must:
  - Complete a military program of training.
  - Complete testing or equivalent training and experience as determined by the board. (THIS PROVISION WAS ADDED IN SENATE RULES)
  - Be awarded a military occupational specialty.
  - Perform in that specialty at a level that is substantially equivalent to or exceeds the requirements for licensure.
  - Engage in the active practice of the occupation in the discharge of official duties for at least two of the five years preceding the date of the application.
  - Not commit any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license.
  - Pay any fees required by the occupational licensing board.
- A military-spouse applicant must:
  - Hold a current license from another jurisdiction that has requirements for licensure substantially equivalent to or exceed the requirements for licensure.
  - Demonstrate competency in the occupation through methods as determined by the occupational licensing board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
  - Not commit any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license.
  - Be in good standing and not be disciplined by the agency that had jurisdiction to issue the license.
  - Pay any fees required by the occupational licensing board.

Occupational licensing boards would also be authorized to issue temporary practice permits to applicants until a license is granted or a notice to deny a license is issued.

The bill specifies that it would apply to the State Board of Education. The bill would not apply to the practice of law or to the North Carolina Medical Board. The practice of law is specifically excluded while the North Carolina Medical Board is effectively excluded since it is defined NOT to be an occupational licensing board. However, the bill directs the Legislative Research Commission to study the issue of allowing licensure by the North Carolina Medical Board in this manner.

EFFECTIVE DATE: The act would be effective when it becomes law. Each occupational licensing board would be required to implement the new statute within one year from the effective date.

H799-SMRB-169(e4) v1

SENATE FINANCE COMMITTEE
Monday, July 2, 2012 at 10:58 PM
Senate Chamber

MINUTES

The Senate Finance Committee met at 10:58 PM on July 2, 2012, on the floor of the Senate Chamber. Senator Bob Rucho presided.

HB 1077 – PPP Pilot Toll Project/Ferry Tolls.

Senator Brock was recognized to make a motion to adopt the proposed committee substitute (PCS) for discussion and the motion carried. Senator Rabon was recognized to explain the PCS which allows the Department of Transportation (DOT) to enter into a pilot public-private partnership project and to reallocate the money appropriated for studies related to the Mid-Currituck Bridge project to the DOT's Ferry Division. Beau Memory, DOT's legislative liaison, was recognized to further explain the PCS and answer questions. Senator Newton moved for a favorable report and the motion carried. A copy of the PCS is attached.

The meeting adjourned at 11:05 PM.

Bob Rucho
Senator Bob Rucho, Presiding

DeAnne Mangum
DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Co-Chair
Senator Bob Rucho, Co-Chair

Monday, July 02, 2012

Senator RUCHO,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1077** Increase DOT Public-Private Partnerships.-AB

Draft Number:	PCS 30670
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Rabon

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1077*
Committee Substitute Favorable 6/26/12
Committee Substitute #2 Favorable 6/27/12
PROPOSED SENATE COMMITTEE SUBSTITUTE H1077-PCS30670-RB-96

Short Title: PPP Pilot Toll Project/Ferry Tolls. (Public)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO A PILOT PUBLIC-PRIVATE PARTNERSHIP TOLL PROJECT AND TO REALLOCATE THE MONEY APPROPRIATED FOR STUDIES RELATED TO THE MID-CURRITUCK BRIDGE PROJECT TO THE DEPARTMENT OF TRANSPORTATION, FERRY DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18 reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

...

(39) To enter into partnership agreements with private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, and to plan, design, develop, acquire, construct, equip, maintain, and operate transportation infrastructure in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. No contract for transportation infrastructure subject to such an agreement that commits the Department to make nonretainage payments for undisputed capital costs of a completed transportation infrastructure to be made later than 18 months after final acceptance by the Department of such transportation infrastructure shall be executed without approval of the Local Government Commission. Any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to an agreement entered into under this section

shall comply with the competitive bidding requirements of Article 2 of this Chapter.

(39a) The Department of Transportation may enter into a partnership agreement with a private entity as provided under subdivision (39) of this section for which the provisions of this section may apply. The pilot project allowed under this subdivision must be one that is a candidate for funding under the Mobility Fund, that is planned for construction through a public-private partnership, and for which a Request for Qualifications has been issued by the Department no later than June 30, 2012.

a. A private entity or its contractors must provide performance and payment security in the form and in the amount determined by the Department of Transportation. The form of the performance and payment security may consist of bonds, letters of credit, parent guaranties, or other instruments acceptable to the Department of Transportation.

b. Notwithstanding the provisions of G.S. 143B-426.40A, an agreement entered into under this subdivision may allow the private entity to assign, transfer, sell, hypothecate, and otherwise convey some or all of its right, title, and interest in and to such agreement, and any rights and remedies thereunder, to a lender, bondholder, or any other party. However, in no event shall any such assignment create additional debt or debt-like obligations of the State of North Carolina, the Department, or any other agency, authority, commission, or similar subdivision of the State to any lender, bondholder, entity purchasing a participation in the right to receive the payment, trustee, trust, or any other party providing financing or funding of projects described in this section. The foregoing shall not preclude the Department from making any payments due and owing pursuant to an agreement entered into under this section.

c. The Department of Transportation may fix, revise, charge, and collect tolls and fees to the same extent allowed under Article 6H of Chapter 136 of the General Statutes. The Department may assign its authority to fix, revise, charge, and collect tolls and fees to the private entity.

...

(43) For the purposes of financing an agreement under subdivision (39a) of this section, the Department of Transportation may act as a conduit issuer for private activity bonds to the extent the bonds do not constitute a debt obligation of the State. The issuance of private activity bonds under this subdivision and any related actions shall be governed by The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, with G.S. 159-88 satisfied by adherence to the requirements of subdivisions (39) and (39a) of this section."

SECTION 2. If House Bill 950, 2011 Regular Session, becomes law, then Section 24.18(b) of that act reads as rewritten:

"**SECTION 24.18.(b)** ~~The Department of Transportation shall disregard Executive Order No. 116, or any other executive order pertaining to ferry tolls, and shall collect the tolls required by S.L. 2011-145 and this section, except for the Cherry Branch/Minnesott Beach route, for which the Department of Transportation shall not collect the increased tolls required by S.L. 2011-145 during fiscal year 2012-2013.~~ Notwithstanding the clarifying amendment to G.S. 136-82 made by subsection (a) of this section and notwithstanding the increase in ferry

toll revenue required by S.L. 2011-145, the Department of Transportation, Ferry Division, shall not collect the increased ferry tolls required by S.L. 2011-145 during fiscal year 2012-2013. Notwithstanding any other provision of this act, the sum of two million dollars ($2,000,000), nonrecurring, is not appropriated to the Turnpike Authority to supplement and advance project studies related to the Mid-Currituck Bridge project; instead, notwithstanding G.S. 136-176(b2) or any other provision of law, the sum of two million dollars ($2,000,000), nonrecurring, of the funds appropriated to the Turnpike Authority under G.S. 136-176(b2) is transferred from the Highway Trust Fund to the Highway Fund, and that sum is appropriated from the Highway Fund to the Department of Transportation, Ferry Division, for fiscal year 2012-2013. Notwithstanding any other provision of this act, the appropriation provided elsewhere in this act for the Reserve for General Maintenance in the Highway Fund is decreased by the sum of five hundred thousand dollars ($500,000), nonrecurring, and that sum is appropriated to the Department of Transportation, Ferry Division, for fiscal year 2012-2013."

SECTION 3. This act is effective when it becomes law.